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10 Proposed Attorneys for Debtor and  
Debtor in Possession

11 **UNITED STATES BANKRUPTCY COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
**SANTA ANA DIVISION**

13 In re:

14 American Suzuki Motor Corporation,<sup>1</sup>  
15 Debtor.

Case No.: 12-\_\_\_\_ (\_\_\_\_)

Chapter 11

**DECLARATION OF M. FREDDIE REISS,  
PROPOSED CHIEF RESTRUCTURING  
OFFICER, IN SUPPORT OF  
EMERGENCY FIRST DAY MOTIONS**

17  
18 M. Freddie Reiss, being duly sworn, hereby deposes and says:

19 I am the proposed Chief Restructuring Officer of American Suzuki Motor Corporation, a  
20 corporation organized under the laws of the State of California (the "Debtor").<sup>2</sup> American Suzuki  
21 Motor Corporation is the debtor and debtor in possession in the above-captioned chapter 11 case.  
22 FTI and I were initially engaged in May 2012 to advise the Debtor regarding a long-term business  
23 plan and evaluate restructuring alternatives. Between the time of the engagement and the petition  
24 date, I have become familiar with the Debtor's business operations and analyzed various alternative

25  
26 <sup>1</sup> The last four digits of the Debtor's federal tax identification number are (8739). The Debtor's address is: 3251 East  
Imperial Highway, Brea, California 92821.

27 <sup>2</sup> Contemporaneously filed herewith, the Debtor is seeking authorization to engage Mr. Reiss and FTI by the *Motion*  
28 *Pursuant to Section 363 of the Bankruptcy Code Approving the Services Agreement Regarding the Employment of (I) M.*  
*Freddie Reiss as Chief Restructuring Officer of the Debtor and (II) FTI Consulting, Inc. to Assist the CRO, Nunc Pro*  
*Tunc to the Petition Date.*

1 ways to restructure the Debtor's operations. Based upon my and my firm's involvement with the  
2 Debtor, I am generally familiar with the day-to-day operations, business, and financial affairs of the  
3 Debtor, and the various first day motions and other pleadings filed in connection with the chapter 11  
4 petition filed by the Debtor.

5 I am a senior managing director in FTI Consulting Inc.'s ("FTI") Corporate  
6 Finance/Restructuring practice and based in Los Angeles. I have 30 years of experience in: strategic  
7 planning, cash management, liquidation analysis, covenant negotiations, forensic accounting and  
8 valuation. I specialize in advising on bankruptcies, reorganizations and business restructurings and  
9 in providing expert witness testimony for underperforming companies, with an expertise in the field  
10 of financial restructuring, and was the examiner appointed in the chapter 11 case of Daewoo Motors  
11 America.

12 I have also acted in several fiduciary capacities including as interim management including: a  
13 fiduciary, chief restructuring officer and trustee for certain financially troubled companies. My  
14 industry experience includes real estate, manufacturing, healthcare, entertainment, retail, financial  
15 services, municipalities, natural resources and energy, and nonprofit and government services. I  
16 have provided expert testimony on insolvency, fraudulent transfers, cash collateral, debtor-in-  
17 possession lending claims, damages matters, plans of reorganization, substantive consolidation and  
18 valuation issues. I have advised on more than 100 bankruptcy-related matters, which include:  
19 PG&E, America West, K-Mart, Circle K, Daewoo Motors America, Orange County Investors' Pool  
20 and Executive Life, Refco and Iridium. I have also advised on multiple out-of-court restructurings  
21 for corporations, such as Euro Disney, Musicland, K-Mart, Syncora, Tower Records and Edwards  
22 Theatres. My merger and acquisition transaction advisories include Edwards Theatres and Resort  
23 Theaters.

24 Prior to joining FTI Consulting, I was a partner and West Region leader at  
25 PricewaterhouseCoopers, where I co-founded the Business Restructuring Services practice.

26 I hold an M.B.A. from City University of New York's Baruch College and a B.B.A. from  
27 City College of New York's Bernard Baruch School of Business. I am a certified public accountant  
28 in New York and California, a certified insolvency and restructuring advisor, and a certified

1 turnaround professional. I completed the Director Education and Certification Program at the John  
2 E. Anderson Graduate School of Management at UCLA. I am a member of the American Institute  
3 of Certified Public Accountants, and the New York and California Societies of Certified Public  
4 Accountants. I previously served on the boards of the American Bankruptcy Institute, the American  
5 College of Bankruptcy, and the Los Angeles Venture Association, where I was also the former  
6 president, the Association of Insolvency & Restructuring Advisors, the Los Angeles Bankruptcy  
7 Forum and the Turnaround Management Association.

8 I am authorized by the Debtor to submit this Declaration (the "Declaration"). I submit this  
9 Declaration to assist the Court and other parties in interest in understanding the circumstances that  
10 led to the commencement of this chapter 11 case and in support of (a) the Debtor's petition for relief  
11 under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") filed on the date  
12 hereof (the "Petition Date"), and (b) the requested relief, in the form of motions and applications,  
13 that the Debtor has filed with the Court (the "First Day Motions") and the other pleadings and  
14 documents contemporaneously filed therewith. The Debtor seeks the relief set forth in the First Day  
15 Motions with the goal of minimizing the potential adverse effects of the commencement of its  
16 chapter 11 case on its business.

17 Except as otherwise indicated, all facts set forth in this Declaration are based on: my  
18 personal knowledge, information supplied by employees under my supervision, or my opinion based  
19 on experience, knowledge, and information concerning the operations of the Debtor and the  
20 automotive, motorcycle, all-terrain vehicle ("ATV"), and outboard marine industries in the  
21 continental United States as they pertain to the Debtor. Some of the general historical information in  
22 Part II and Part III is based on company business records and information provided to me by various  
23 officers of the Debtor. It is my belief that the relief sought in the First Day Motions is essential to  
24 ensure the uninterrupted operation of the Debtor's business, and to the success of the Debtor's  
25 reorganization.

26 I have reviewed each of the First Day Motions, am familiar with the factual information set  
27 forth therein, and incorporate such facts into this Declaration by reference and adopt them as my  
28 own as if they were set forth herein. If I were called upon to testify, I would testify competently to

1 the facts set forth herein and in the First Day Motions. Unless otherwise indicated, the financial  
2 information contained herein and in the First Day Motions is un-audited.

3 **I.**

4 **INTRODUCTION**

5 The Debtor is the sole distributor in the continental United States of Suzuki automobiles,  
6 motorcycles, all-terrain vehicles (“ATV”), and marine outboard engines (the “Suzuki Products”). As  
7 of the Petition Date, the Debtor wholesaled the Suzuki Products through three primary business  
8 divisions: automotive (the “Automotive Division”), motorcycles and ATV (the “Motorcycles/ATV  
9 Division”), and outboard marine motors and related products (the “Marine Division” and together  
10 with the Automotive Division and Motorcycles/ATV Division, the “Divisions”).

11 The Debtor commenced this chapter 11 case to restructure its Automotive Division. The  
12 Automotive Division has recently faced and will continue to face numerous adverse business issues  
13 including: (a) declining sales volume and market-share, (b) unfavorable foreign currency exchange  
14 rates for products manufactured outside the United States, (c) the high cost associated with growing  
15 and maintaining an automotive distribution system in the continental United States, (d) having a  
16 limited number of models in its line-up that are being offered to consumers in an already highly  
17 competitive automotive market, (e) disproportionately high and increasing compliance costs  
18 associated with stringent state and federal automotive regulatory requirements unique to the  
19 continental United States market, and (f) existing and potential litigation costs. In the face of these  
20 business challenges, Debtor’s efforts to reduce operating costs have proven to be insufficient to meet  
21 the rising cost of maintaining a competitive and profitable automobile distribution network in the  
22 continental United States.

23 As part of the Automotive Division restructuring, the Debtor will discontinue new  
24 automotive sales after its existing automotive inventory is sold. Certain of its existing automotive  
25 dealers will be extended an offer to transition their existing dealerships from new sales to provide  
26 only service and parts. Through the service and parts dealers, manufacturer’s warranties relating to  
27 the Debtor’s automobiles will be honored to the extent authorized under the Debtor’s pending  
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1 motion filed contemporaneously herewith, and the cost associated with such service will continue to  
2 be reimbursed to the participating dealers as part of the Continuing Business (as defined below).

3 By restructuring the Automotive Division in the manner proposed, the Debtor will be able to  
4 devote its resources to the Motorcycles/ATV and Marine Divisions. The Motorcycles/ATV and  
5 Marine Divisions should remain largely unaffected by the proposed restructuring and the  
6 manufacturer's warranties associated with the products sold from these divisions will be honored as  
7 set forth in the pending motion regarding customer programs. While the Debtor expects to  
8 implement some limited measures to effectuate operational efficiencies within these divisions, the  
9 Debtor generally intends to continue operating the Motorcycles/ATV and Marine Divisions in the  
10 ordinary course of business (together with the parts and service operation, the "Continuing  
11 Business") pending implementation of its proposed plan or reorganization (the "Plan").

12 As discussed in greater detail herein, the Debtor intends to effectuate the Automotive  
13 Division restructuring through the proposed Plan that was filed contemporaneously herewith.  
14 Through the Plan, the Debtor will transfer the Continuing Business through a private sale to an entity  
15 designated by Suzuki Motor Corporation. The Plan and other motions filed contemporaneously  
16 herewith are designed to maximize the value of the Debtor's estate so that creditors receive the  
17 greatest amount available to satisfy their claims resulting from this chapter 11 case.

18 In the event the Debtor determines that selling certain of its operations through the Plan is not  
19 feasible, it will instead seek the Court's authorization to sell its assets through a stand-alone sale. In  
20 this context, the sale of assets will be subject to bidding procedures in which bids will be solicited  
21 from third parties for the highest and best offer. Further, unlike the proposed sale through the Plan,  
22 the stand-alone sale process will not provide for the distribution of sale proceeds to holders of  
23 allowed claims. Instead, any distribution of the sale proceeds will be subject to the confirmation of a  
24 proposed plan.

25 The remainder of this Declaration is organized as follows: Part II (History of Debtor and  
26 Suzuki Products), Part III (Description of Debtor's Business), Part IV (Description of Debtor's  
27 Organizational Structure), Part V (Description of Debtor's Capital Structure, Part VI (Events  
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1 Leading to Chapter 11 Case), Part VII (Overview of Restructuring), and Part VIII (Overview of First  
2 Day Motions and Non-Emergency Motions).

3 **II.**

4 **HISTORY OF THE DEBTOR AND THE SUZUKI PRODUCTS**

5 **A. Early Suzuki Products**

6 The manufacturing of Suzuki Products began in 1909 by Suzuki Loom Works in  
7 Hamamatsu, Japan. In 1920 Suzuki Loom Works was organized as Suzuki Loom Manufacturing  
8 Co., the predecessor to Suzuki Motor Corporation (“SMC”). Later, SMC began developing a variety  
9 of products that have continued to influence the transportation and recreation industry to this day.

10 In 1953, SMC created a motorized bicycle called the “Power Free,” featuring a 36cc two-  
11 stroke engine with a double sprocket gear system that enabled the rider to pedal with the engine  
12 assisting, pedal without the engine assisting, or disconnect the pedals and run on engine power alone.

13 In 1955, SMC manufactured its first mass-produced car, the “Suzulight,” which was  
14 recognized as a technical marvel. It included radical innovations for the time such as front-wheel  
15 drive, four-wheel suspension, and rack-and-pinion steering. In 1963, SMC brought its innovative  
16 motorcycle lineup to the United States, and quickly became a major player in the motorcycle market.  
17 In 1977, SMC launched its marine product division to market its proven marine outboard motors in  
18 the United States

19 **B. The Rise of the Motorcycles/ATV and Marine Divisions**

20 In 1983, SMC took the lead in the ATV market by introducing the first four-wheeled ATV,  
21 the QuadRunner LT 125. The QuadRunner had a huge impact on the ATV industry as it ushered in  
22 the 4-wheel revolution. The success of this ATV was followed by a release of a wide-ranging line-  
23 up of 4-wheel ATVs.

24 In 1985, SMC introduced the first-generation GSX-R motorcycle, with the company’s first  
25 aluminum frame for unprecedented light weight and superb torsional rigidity and an oil-cooled, 4-  
26 stroke, 4-cylinder engine. The GSX-R750 was designed to win national and world championships  
27 while bringing the sporting experience to street riders. The GSX-R Suzuki sport-bikes have gone on  
28 to win an unprecedented 11 American Superbike Championships.

1 In 2004, SMC launched revolutionary, compact 4-stroke V6 outboard motors with 200, 225,  
2 and 250 horsepower to compliment the full line of 4-stroke outboard motors. These engines  
3 included the industry's most powerful V6 4-stroke motors that are also light and compact. SMC's  
4 marine division was honored with the NMMA® (National Marine Manufacturers Association)  
5 Innovation Award.

6 **C. Automotive Division**

7 In 1985, prior to the establishment of the Debtor, Suzuki of America Automotive Corp. was  
8 the sales subsidiary of SMC. At that time, through an agreement between SMC and General Motors,  
9 Suzuki of America Automotive Corp. began selling a version of its Suzuki Cultus in the continental  
10 United States as the Chevrolet Sprint. This model was initially sold as a 3-door hatchback and was  
11 at that time Chevrolet's smallest model.

12 In 1986, the Samurai was the first automobile introduced to the continental United States by  
13 the newly created Suzuki of America Automotive Corp. Notably, no other Japanese company sold  
14 more cars in the United States in its first year than Suzuki of America Automotive Corp., whose  
15 name was changed to American Suzuki Motor Corporation in 1986. The Samurai was available as a  
16 convertible or hardtop and the Debtor's automotive sales substantially increased in 1987 with  
17 approximately 81,350 units sold.

18 In 1999, the Debtor's automotive sales began to climb. In 2000, the Debtor became the  
19 "Fastest Growing Japanese Auto Company in America" as reported by Automotive News. In 2001,  
20 the Debtor introduced the first affordable seven passenger SUV, the Suzuki XL-7. In 2006 and  
21 2007, the Debtor's automotive sales reach its highest levels, exceeding 100,000 units. Around this  
22 same period, the Debtor introduced the Verona and Forenza sedans, the Reno and Forenza wagons,  
23 and the Grand Vitara, and its sales continued to grow.

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**III.**

**THE DEBTOR'S BUSINESS**

In the operation of its business, the Debtor purchases Suzuki Products from SMC,<sup>3</sup> Suzuki Manufacturing America Corporation (“SMAC”),<sup>4</sup> and certain other non-debtor affiliates. In turn, the Debtor wholesales virtually all of its inventory through a network of independently owned and unaffiliated dealerships located throughout the continental United States. The dealers then market and sell the Suzuki Products to retail customers. As of the Petition Date, there are approximately 220 automotive remaining dealerships (from a high of over 500), over 900 motorcycle/ATV dealerships, and over 780 outboard marine dealerships.

SMC and its affiliates manufacture virtually all of the Suzuki Products, including SMAC who manufactures most of the ATVs in a facility located in Rome, Georgia. In addition, the truck model named “Equator” is manufactured by Nissan. Each of the Divisions is described in greater detail below.

**A. The Automotive Division**

The Debtor sells the majority of its automotive inventory to its network of dealers (the “Automotive Dealers”) within the continental United States. The Debtor sells a portion of its automotive inventory (less than 10%) to car rental companies and others that lease the vehicles (less than 2%) to retail customers. The Debtor purchases the majority of its automotive parts from SMC and certain unaffiliated companies. The Debtor does not have any standing relationship with automotive part retailers. Instead, the Debtor generally resells automotive parts directly to the Automotive Dealers and other authorized warranty service providers.

The Automotive Dealers generally submit purchase orders to the Debtor for new automobiles two or three months in advance of the time they expect to take delivery. However, it takes approximately four to five months for the Debtor to deliver the automotive vehicle from the time the order is placed with SMC. Accordingly, the Debtor attempts to forecast what the Automotive Dealer will want based on market share estimates and local demand.

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<sup>3</sup> SMC is the 100% interest holder in the Debtor and SMAC is an affiliated company of the Debtor.

<sup>4</sup> SMC and SMAC are not debtors in this chapter 11 case or any other insolvency proceeding.

1 Prepetition, the Debtor placed automobile orders with SMC approximately once per month.  
2 After the new vehicles arrived, they were allocated among the Automotive Dealers; however, dealers  
3 were permitted to reject a proposed vehicle allocation. If an Automotive Dealer was holding more  
4 than four months' inventory, the Debtor generally did not allocate any new inventory to such dealer.

5 New automobile shipments from Japan generally arrived daily to one of the following ports:  
6 Hueneme, California, Seattle, Washington, Jacksonville, Florida, and Baltimore, Maryland. After  
7 their arrival, new automobiles generally remained on the shipping vessel for approximately two  
8 weeks, then at the port for up to twenty days, during which time the new automobiles were  
9 inspected. The new automobiles were then shipped to the Automotive Dealers by rail and truck.

10 The Debtor has arrangements with certain lenders, including American Suzuki Financial  
11 Services Co. (which is independently owned and not affiliated or related to the Debtor) and  
12 Automotive Finance Corporation / AFC Cal, LLC, that provide flooring financing to the Debtor's  
13 dealers and/or retail financing to consumers to purchase the Debtor's automobiles, which such  
14 arrangements are facilitated by the Debtor through finance/lease program, repurchase, marketing and  
15 other agreements with such lenders.

16 For the fiscal years 2011 and 2012, the Debtor's sales for its Automotive products have  
17 averaged approximately 25,000 units. For the same periods, the Debtor's market share was  
18 approximately 0.2%

19 **B. The Motorcycles/ATV Division**

20 Through the Motorcycles/ATV Division, the Debtor offers a full line-up of motorcycles  
21 (sport-bike, dual-sport, motocross, super-moto, off-road, and touring) and ATVs (utility and sport).  
22 Generally, the Debtor only sells Suzuki brand motorcycles and ATVs to its unaffiliated motorcycle  
23 and ATV dealer network (the "Motorcycles/ATV Dealers"). However, at times, the Debtor sells  
24 overstocked motorcycle and ATV units to other countries through a trading company.

25 Generally, Motorcycles/ATV Dealers submit orders every three to four months. The  
26 motorcycles and ATVs are shipped to the four ports described above and also to Long Beach,  
27 California. After the new motorcycles and ATVs arrive at port, they generally remain on the  
28 shipping vessel for approximately two weeks, then at the port for up to twenty days during which

1 time the new motorcycles and ATVs are inspected. The motorcycles and ATVs are then shipped to  
2 distribution warehouses and then immediately to the Motorcycles/ATV Dealers.

3 The Debtor has flooring financing contracts with GE Commercial Distribution Finance  
4 Corporation (“GE Commercial”). The Debtor receives payment from GE Commercial within  
5 approximately fifteen days after Suzuki Product is invoiced to the Motorcycles/ATV Dealer. In  
6 addition, GE Capital Retail Finance (“GE Retail”) and Sheffield Financial (“Sheffield”) provide  
7 retail financing to consumers that purchase Suzuki Products. The Debtor is having separate  
8 discussions with GE Commercial, GE Retail, and Sheffield regarding their individual continuation of  
9 providing the necessary floor, incentive, and retail financing, as applicable, on the same or  
10 substantially similar terms. Upon reaching an agreement between the Debtor and applicable  
11 counterparty, the Debtor intends to file a motion that seeks the Court’s approval regarding the  
12 Debtor’s obligations under the applicable agreements.

13 For the fiscal years ending March 2011 and 2012, the Debtor’s sales for its motorcycle  
14 products have averaged approximately 22,000 units per year. For the same periods, the Debtor’s  
15 market-share for its ATV products was approximately 6%-7%. Prior to the recession, the Debtor’s  
16 market-share had reached as high as 14.1%. As economic conditions stabilize, the Debtor estimates  
17 that its sales will increase.

18 For the fiscal years ending March 2011 and 2012, the Debtor’s sales for its ATV products  
19 have been approximately 5,000 and 7,000 units, respectively. For the same periods, the Debtor’s  
20 market-share for its motorcycle products was approximately 5% and 5.4%, respectively. The Debtor  
21 believes that its motorcycles and ATVs are the most competitive Suzuki Products in the  
22 marketplace. The overwhelming majority of the Motorcycles/ATV Dealers are performing well in  
23 the marketplace.

24 **C. The Marine Division**

25 The Marine Division distributes marine products through approximately 780 marine dealers  
26 (the “Marine Dealers”). The Debtor’s Marine Division has a long history of advancements  
27 contributing to a line of powerful, fuel efficient, and long-lasting marine products. The Debtor’s  
28 marine outboard motors are powered by 4-stroke technology that is ideally suited to today’s boats.

1 The Debtor's outboard motors include the industry's largest all-4-stroke lineup. The sales to the  
2 Marine Dealers primarily consist of marine products that are easily movable or not a permanent  
3 fixture to the boat. The Debtor estimates that approximately 40% of its marine related sales are  
4 directly to Marine Dealers.

5 In addition to the sales to Marine Dealers, the Debtor also sells marine products directly to  
6 approximately 150 boat manufacturers (the "Boat Manufacturers"). The marine products sold to the  
7 Boat Manufacturers are large and generally built into the boat as a permanent fixture. Once the boats  
8 are complete, they are sold to the Marine Dealers as a complete unit. The Debtor estimates that  
9 approximately 60% marine related sales are directly to the Boat Manufacturers.

10 Each year, the Debtor collects manufacturing forecasts from the Boat Manufacturers. In turn,  
11 the Debtor uses these forecasts to place orders with SMC on a monthly basis. All units are shipped  
12 to a port in Los Angeles, California, then shipped to one of two distribution warehouses (either  
13 Industry, California or Jonesborough, Georgia) where the units remain for approximately one week  
14 before being delivered to the Boat Manufacturers. There is an approximate three-month lead time  
15 between order by and delivery to the Boat Manufacturer.

16 The Debtor has flooring financing contracts with GE Commercial for its marine related  
17 Suzuki Products. The Debtor receives payment from GE Commercial within approximately fifteen  
18 days after Suzuki Product is invoiced to the Marine Dealer. The Debtor is having discussions with  
19 GE Commercial regarding its continuation of providing the necessary floor financing on the same or  
20 substantially similar terms. Upon reaching an agreement between the Debtor and GE Commercial,  
21 the Debtor intends to file a motion that seeks the Court's approval regarding the Debtor's obligations  
22 under the applicable agreements.

23 At its peak in the continental United States market, the Debtor's sales of marine products  
24 reached approximately 300,000 units. However, after the recession, the market size has decreased.  
25 For the fiscal years ending March 2011 and 2012, the Debtor's market share for its marine related  
26 products was approximately 7%. As economic conditions stabilize, the Debtor estimates it should  
27 increase its sales.  
28

1 IV.

2 **ORGANIZATIONAL STRUCTURE**

3 The Debtor is a California corporation that was organized in 1986. The Debtor is privately  
4 owned by SMC. The Debtor also owns 80% of SMAC, which is the primary manufacturer of ATVs  
5 distributed by the Debtor. The remaining 20% of SMAC is owned by SMC. Although SMC is the  
6 sole equity holder of the Debtor, the Debtor and SMC are separately represented by counsel and, as  
7 discussed below, the Debtor has two independent members on its board of directors.

8 The Debtor's board of directors (the "Board") consists of five (5) members: Takashi  
9 Iwatsuki, Seiichi Maruyama, Toru Muraki, Michael M. Ozawa, and R. Todd Neilson. Mr. Iwatsuki  
10 is the Chairman of the Board and oversees all Divisions. Mr. Maruyama is President of the Debtor  
11 and manages the day-to-day operations of the Divisions. Mr. Muraki is an Executive Vice President  
12 that oversees the operation of the Motorcycles/ATV Division.

13 Mr. Ozawa and Mr. Neilson recently were appointed to the Board to advise the Debtor  
14 regarding its restructuring efforts. Mr. Ozawa and Mr. Neilson are each independent Board  
15 members as they have no current or prior affiliation with SMC or any of its affiliates.

16 Mr. Ozawa is a Managing Director and Partner of Avant Advisory Group. He has more than  
17 20 years of experience in restructuring and bankruptcy, transaction/M&A advisory and forensic  
18 accounting matters. He is a Certified Insolvency & Restructuring Advisor (CIRA), a licensed CPA  
19 with a financial forensics specialization credential (CPA/CFF), a Certified Global Management  
20 Accountant (CGMA) and a Certified Fraud Examiner. He has led numerous out-of-court  
21 restructurings and bankruptcy engagements representing the company, the debtor, equity holders,  
22 secured lenders, unsecured creditors' committees, unsecured debt holders, trustees and receivers.  
23 Some of the issues addressed and solutions implemented involved liquidity, solvency, cash flow  
24 projections and business plan reviews. The businesses ranged from private enterprises with annual  
25 revenues of \$20 million to public entities with revenues in excess of \$2 billion.

26 Mr. Neilson is currently a Director at Berkeley Research Group LLC. Previously, Mr.  
27 Neilson was a Director with LECG LLC and was a founding partner of Neilson Elggren LLP  
28 (formerly Neilson, Elggren, Durkin & Co.). He is one of the nation's foremost experts in bankruptcy

1 and forensic accounting with over thirty years combined experience in public accounting and as a  
2 Special Agent with the FBI. Mr. Neilson is a seasoned professional having acted as a trustee,  
3 financial consultant and expert witness in numerous high-profile accounting related litigation  
4 engagements involving complex bankruptcy reorganization matters including accounting and fraud  
5 issues, tracing of funds, financial data reconstruction, damages and lost profits, Ponzi and RICO  
6 matters, valuation, and business viability issues. Mr. Neilson has acted as bankruptcy Trustee for  
7 notable clients such as Mike Tyson, Suge Knight and Death Row Records. As trustee, he has also  
8 operated, and negotiated the sale of an extremely large and diverse array of assets, including one of  
9 the largest Ford dealerships in the nation, an ownership interest in both the Los Angeles Kings' and  
10 Nashville Predators' hockey franchises, luxury hotels, sand and rock quarries, antique art collections,  
11 real estate, and trucking companies. Having evaluated and sold well over \$1 billion dollars of assets,  
12 Mr. Neilson brings substantial credibility to the court - credibility borne of practical, not just  
13 theoretical experience.

14 **V.**

15 **CAPITAL STRUCTURE**

16 Pursuant to memoranda of understandings entered into between SMC and the Debtor, SMC  
17 agreed to extend credit to the Debtor in connection with the purchase of products from SMC, and  
18 agreed that the Debtor could request deferrals of amounts owing based on economic conditions and  
19 the Debtor's financial needs. Prepetition, SMC extended credit on approximately 105-day terms.  
20 Each year from 2009 until 2012, SMC confirmed its agreement to provide financial support to the  
21 Debtor in accordance with the memoranda of understandings, and necessary working capital  
22 financing necessary to maintain the Debtor's normal operations and the Debtor as a going concern.  
23 In July of 2012, SMC and the Debtor entered into the that certain Loan and Security Agreement,  
24 dated July 27, 2012 (the "Loan and Security Agreement") governing SMC's extension of financial  
25 accommodations to the Debtor in the form of inventory financing (the "Inventory Financing") and a  
26 line of credit (the "Revolver") that the Debtor utilized for the day-to-day operations of the Divisions.  
27 The prepetition Loan and Security Agreement covered only extensions credit made on and after the  
28 effectiveness of that agreement.

1 The Debtor's capital structure consists primarily of the line of credit provided by the Loan  
2 and Security Agreement. The amount outstanding under the Loan and Security Agreement for the  
3 Revolver as of the Petition Date is approximately \$32,000,000. As of the Petition Date, the amount  
4 outstanding for Inventory Financing under the Loan and Security Agreement is approximately  
5 \$120,000,000. The Debtor also has approximately \$9,430,000 in inventory loans outstanding to  
6 SMC that are not secured by the Loan and Security Agreement.

7 In addition to the indebtedness described above, the Debtor incurs trade debt in the ordinary  
8 course of its business. The trade debt outstanding as of the Petition Date is not substantial and totals  
9 approximately \$4,000,000, which does not include accrued but unbilled for October. In addition to  
10 the unsecured trade debt, the Debtor expects that additional non-priority, general unsecured claims  
11 will result from the wind-down of the Automotive Division and from some limited measures  
12 implemented in the Debtor's other divisions.

13 As of September 30, 2012, the Debtor had assets of approximately \$233,000,000, and  
14 liabilities of approximately \$346,000,000. The Debtor's revenues for the 2011 fiscal year (12  
15 months ending March 31, 2012) were approximately \$1,044 million and the revenues for the six  
16 months ending September 30, 2012 was approximately \$490 million.

## 17 VI.

### 18 **THE EVENTS LEADING TO THE COMMENCEMENT OF THE CHAPTER 11 CASE**

19 After the global subprime recession began in 2008, the Debtor's continental United States  
20 automotive sales declined along with the rest of the United States automotive industry. With  
21 declining sales, the Debtor faced and will continue to face a number of serious financial and  
22 operational challenges in the highly regulated and competitive automotive industry in the continental  
23 United States market. These challenges include declining market share, declining sales volume,  
24 unfavorable foreign currency exchange rates, the rising cost associated with growing and  
25 maintaining a distribution system in the continental United States, a limited number of models in its  
26 line-up, disproportionately high and increasing costs associated with meeting more stringent state and  
27 federal automotive regulatory requirements unique to the continental United States market, and  
28 existing and potential litigation costs.

1 The Debtor's automobile sales volume in the continental United States is not competitive. Its  
2 most recent market share is only approximately 0.2%. Further, as a result of the declining sales  
3 volume, the Debtor's fixed cost per automotive unit, including development, production, marketing,  
4 and sales activities, is substantially higher than its competitors'. These factors have and will  
5 continue to have direct adverse effect on the Debtor's competitiveness and profitability.

6 While many of the Debtor's automotive competitors, including Japanese brands, produce  
7 their main models in North America, all of the Debtor's automotive models, except Equator,<sup>5</sup> are  
8 produced abroad. As a result, the manufacturing costs are greater than its competitors' costs due to  
9 the unfavorable foreign currency exchange rate. However, with respect to motorcycles, ATVs, and  
10 marine products, the Debtor's Japanese competitors are similarly impacted by foreign currency  
11 exchange rates.

12 In addition, the Debtor has been solely responsible for the development of its automotive  
13 distribution system in the continental United States. This is an expensive endeavor that requires  
14 continuing commitment of time and money to maintain an exclusive network of dealers that are able  
15 to sustain healthy sales. Currently, the Debtor's Automotive Dealer network under performs relative  
16 to the dealers associated with the Motorcycles/ATV and Marine Divisions. For example, out of the  
17 approximate 220 Automotive Dealers, only approximately 90 Automotive Dealers sell significant  
18 units of new vehicles. Approximately 130 of the Automotive Dealers sell fewer than five units per  
19 month and others may sell as few as one or two units per month. Approximately 60% of the  
20 Debtor's automotive related revenue is derived from the Northeast, where notable demand exists  
21 (due to the weather) for the economically priced 4-wheel drive Suzuki Products. This is one reason  
22 why automotive Suzuki Products account for only a 0.2% market share in the continental United  
23 States. The fact that there is a modest demand for Suzuki automobiles in certain regions of the  
24 United States, however, do not offset that fact that the Debtor's overall sales are flat at best and are  
25 generally declining even in regions where the Debtor has competitive products to offer consumers.

26 In response to consumer demands in the continental United States, most of the Debtor's  
27 competitors offer larger sized automobile models. The automotive Suzuki Products are geared  
28

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<sup>5</sup> As noted above, the Equator is manufactured by Nissan in the United States

1 toward compact and economy models. In comparison with larger automobiles, per unit, compact  
2 automobiles end up bearing higher development and manufacturing costs to meet applicable  
3 environmental and regulatory requirements. Competitors' larger automobiles, on the other hand, sell  
4 at higher prices and generate larger profits and more easily offset the regulatory costs. The Debtor  
5 does not have the capacity to deliver larger, higher priced automobiles to help sustain the sale of  
6 smaller more costly automobiles, as the Debtor's competitors do.

7 In an attempt to address each of these economic pressures prepetition, the Debtor took a  
8 variety of measures to reduce the cost of operations. Lay-offs were implemented, employee benefits  
9 were reduced, vendor prices were reduced through negotiations, the marketing budget was revised,  
10 and certain dealer operations within the Automotive Division were discontinued. These efforts, and  
11 the sacrifices of the Debtor's employees, went a great distance to reduce costs and move the business  
12 toward profitability. Unfortunately, however, the Debtor's efforts did not provide an economically  
13 viable means for the Debtors to continue distributing automobiles in the continental United States.  
14 Thus, after exhausting all reasonable business options, the Debtor made the difficult but necessary  
15 decision to orderly wind down and discontinue new automobile sales in the continental United  
16 States. The Debtor determined that the best way to preserve and enhance the value of its overall  
17 business is to wind down new sales of the Automotive Division (*i.e.*, the Auto Sales Business, as  
18 defined below) in the continental United States and realign its business focus on the long-term  
19 growth of its Motorcycles/ATV and Marine Divisions while also maintaining service and part  
20 centers for existing automobile consumers.

## 21 VII.

### 22 OVERVIEW OF RESTRUCTURING

#### 23 A. Overview of the Sale Transaction Under the Plan

24 Contemporaneous with the filing of this case, the Debtor filed the Plan. The Plan  
25 implements a private sale of substantially all of the Debtor's assets, with certain exceptions as  
26 described in the Plan and herein, to NounCo, Inc. (the "Purchaser"), a subsidiary of SMC.

1 Specifically, the Debtor intends to sell certain assets, pursuant to the terms of a proposed  
2 asset purchase agreement (the “APA”)<sup>6</sup> (filed concurrently herewith), that will include, without  
3 limitation, all property, rights, and interests comprising and/or relating to the Debtor’s  
4 Motorcycles/ATV Division, Marine Division, and other non-automotive business lines (“Non-Auto  
5 Business Lines”) and the Debtor’s automotive parts/service business line (“Auto Parts/Service  
6 Business” and, together with the Non-Auto Business Lines, the “Purchased Business”), including in  
7 relation to the Purchased Business, all inventory, parts, equipment, accounts receivable, contracts,  
8 leases, claims and causes of action (including related avoidance actions) as designated by the  
9 Purchaser (“Designated Contracts”), other contractual rights, deposits, licenses and permits (to the  
10 extent transferrable), prepaid expenses, books and records, insurance policies, goodwill and other  
11 intangible property, and all intellectual property rights.

12 In connection with the sale under the Plan, the Purchaser intends to honor express factory and  
13 distributor warranty/service obligations to consumer customers of the Debtor’s automobile inventory  
14 and property, rights and interests comprising or solely relating to the Debtor’s automotive sales  
15 business in the continental United States (“Auto Sales Business”) and Non-Auto Business Lines,  
16 whether arising prior to or after the effectiveness of the Plan pursuant to a post-effective date  
17 warranty program (“Post-Effective-Date Warranty Program”) to the extent approved under the  
18 Customer Program Motion (as defined below).

19 The Purchased Assets will not include the Debtor’s Auto Sales Business, including the cash  
20 and cash equivalents held by the Debtor on the effective date of Plan, and contracts and leases that  
21 are not Designated Contracts. The Purchased Assets also exclude certain assets (including real  
22 property, facilities, and equipment) that are not necessary or beneficial to the continued operation of  
23 the Purchased Business, and the estate’s avoidance actions, claims and causes of action that have not  
24 been designated for assignment to Purchaser. To effectuate an orderly wind down and  
25 discontinuance of the Auto Sales Business in the continental U.S, the Debtor intends to market and  
26 sell its remaining United States automobile inventory through its Automotive Dealers.

27  
28 <sup>6</sup> The description of the APA herein is intended as a summary. If there is any inconsistency between the description  
herein and the terms in the APA, the terms of the APA control.

1           Upon the effectiveness of the Plan (the “Effective Date”), the Purchased Assets will be  
2 transferred, and the Designated Contracts will be assumed by the Debtor and assigned to the  
3 Purchaser, under the Plan to the fullest extent permissible under sections 363, 365, 1123, 1129, and  
4 1141 of the Bankruptcy Code and applicable nonbankruptcy law, free and clear of liens, interests,  
5 claims, and encumbrances and together with the obligations arising under the Post-Effective-Date  
6 Warranty Program.

7           The Plan will be funded through a combination of cash on hand, net proceeds from ordinary  
8 course operations, the consideration proceeds under the APA, the Release Consideration (as  
9 hereinafter defined), and liquidation of the Retained Assets.

10           In the event that the Debtor ultimately determines not to proceed with the proposed Plan, the  
11 Debtor will seek the Court’s authorization to sell the Purchased Assets through a stand-alone sale  
12 (the “Sale”) pursuant to sections 363 and 365 of the Bankruptcy Code outside of any proposed plan.  
13 The Debtor intends to file a motion shortly after the filing of the bankruptcy case seeking  
14 authorization to implement bidding and notice procedures for the sale of the Purchased Assets. As  
15 part of this process, the Debtor is seeking the Court’s authorization to retain Imperial Capital, LLC  
16 as its investment banker to market the Purchased Assets with the goal of obtaining the highest and  
17 best offer for the benefit of all parties in interest.

18           Whether the restructuring of the Divisions is effectuated through the Plan or the Sale, during  
19 the pendency of this case, the Debtor intends to honor its warranty program, subject to the terms of  
20 the concurrently filed *Emergency Motion for Order Authorizing the Debtor to Honor Certain*  
21 *Prepetition Obligations for the Benefit of its Dealers and Other Customers and to Otherwise*  
22 *Continue Customer Programs and Practices Including Warranty Programs in the Ordinary Course*  
23 (the “Customer Program Motion”). Subject to Court approval, the Customer Program Motion is  
24 intended to provide consumers the uninterrupted provision of warranty and service repair work that  
25 is essential to maintaining the high quality of the Debtor’s products as well as to promoting  
26 consumer safety. In some cases, the Debtor’s warranty and service obligations may be mandated by  
27 federal or state law, such as, for example, compliance with federal EPA emission standards and  
28 seatbelt safety laws.

1 **B. Overview of Restructured Business**

2 One of the primary purposes of the wind-down of the Auto Sale Business is to enable the  
3 Debtor to redirect its resources on the Motorcycles/ATV and Marine Divisions. Accordingly, the  
4 Motorcycles/ATV and Marine Divisions will remain largely unaffected by the proposed  
5 restructuring. While the Debtor might implement measures to effectuate certain operational  
6 efficiencies within these divisions, the Debtor otherwise intends to continue operating the  
7 Motorcycles/ATV and Marine Divisions in the ordinary course of business.

8 By the Plan, the Debtor intends to transition its current Automotive Division from the sale of  
9 new automotive vehicles to the sale of automotive parts and service. The Debtor intends to select  
10 certain of its existing and willing automotive dealers (collectively, the “Automotive Dealers”) to  
11 convert their new vehicle sales dealerships into parts and service only operations. As discussed  
12 above, the warranties associated with the automotive Suzuki Products will continue subject to the  
13 terms of the any relief granted by the Customer Program Motion.

14 **C. The Proposed Automotive Dealer and Creditor Settlements**

15 As a result of the restructuring of the Automotive Division, the Debtor expects that a  
16 substantial number of claims will be asserted by Automotive Dealers and trade counterparties that  
17 primarily provide goods and services to the Automotive Division.

18 To address these claims, the Debtor has filed contemporaneously herewith the *Emergency*  
19 *Motion for Order (I) Authorizing Debtor to Enter Into Service and Parts Agreements With*  
20 *Automobile Dealers; (II) Approving Uniform Procedures for Consensual Rejection of Pre-Petition*  
21 *Agreements and Resolution of Claims; and (III) Granting Related Relief*) (the “Dealer Settlement  
22 Procedures Motion”) that seeks authorization for the Debtor to enter into settlements with  
23 Automotive Dealers within the Debtor’s existing Automotive Dealer network (the “Settling Auto  
24 Dealers”).<sup>7</sup>

25 Provided that the Dealer Settlement Procedures Motion is approved by the Court, the Debtor  
26 intends to make offers to Automotive Dealers (the “Letter Agreement”) that include the resolution

27  
28 <sup>7</sup> A more thorough description of the proposed settlement protocol is set forth in greater detail in the Dealer Settlement Procedures Motion.

1 of the following: (a) the consensual rejection by the Debtor of the automotive dealership agreement  
2 and ancillary contracts (each, a “Dealer Agreement”) between each Settling Auto Dealer and the  
3 Debtor, (b) the liquidation of all claims against the Debtor by the applicable dealer, including claims  
4 arising from the rejection of the Dealer Agreement but excluding prepetition warranty claims,  
5 holdbacks and incentive programs (the “Settling Dealer Liquidated Claim”), and (c) entry into a  
6 service and parts agreement pursuant to which the applicable Automotive Dealer will remain an  
7 authorized new Suzuki brand automobile dealer for the purpose of selling remaining inventory, and  
8 for a defined period of time, will continue providing authorized warranty and non-warranty service  
9 and selling genuine SMC brand parts (the “Service and Parts Agreement”). The Service and Parts  
10 Agreement will be assigned to and assumed by the Purchaser on the Effective Date. Each Letter  
11 Agreement will be signed by the Debtor and the applicable Settling Auto Dealer.

12 As part of the transactions, SMC or its designee will offer to enter into a separate agreement  
13 (the “Participation Agreement”) with the Settling Auto Dealer on the following terms: (a) the  
14 applicable Automotive Dealer will provide a general release (the “Settling Auto Dealer Release”)   
15 covering any and all claims and causes of action, whether known or unknown, accruing prior to the  
16 Effective Date, against SMC, its subsidiaries and affiliates, and their respective present and former  
17 officers, directors, managers, employees, professionals, advisors and other agents (collectively,  
18 “Agents”) (but excluding the Debtor), effective upon the parties’ entry into the Dealer Settlement  
19 Agreements (“Settlement Date”), (b) in consideration for the Settling Auto Dealer Release, SMC or  
20 the Purchaser will provide an early cash payment (“Participation Cash Payment”) to each Settling  
21 Auto Dealer equal to approximately 50% the Settling Dealer Liquidated Claim, provided the Settling  
22 Dealer executes and returns the Letter Agreement, the Participation Agreement and the Service and  
23 Parts Agreement on or before November 30, 2012 (c) SMC will obtain the right to participate  
24 (“SMC Participation”) in any distribution by or on behalf of the Debtor’s estate on account of the  
25 Settling Dealer Liquidated Claim after the Settling Auto Dealer has been paid for the portion of the  
26 claim not subject to the Participation Payment in the chapter 11 case or in any subsequent chapter 7  
27 case, (d) under any Plan for the Debtor, SMC will agree to subordinate its right to payment of its  
28 first priority secured claim for the benefit of Settling Auto Dealer Claims, and (e) if for any reason

1 the Service and Parts Agreement is not assigned by the Debtor to the Purchaser on the Effective  
2 Date, the applicable Settling Auto Dealer will promptly enter into the Service and Parts Agreement  
3 with the Purchaser. If the Settling Auto Dealer does not return the foregoing documents by  
4 November 30, 2012, it will not receive a Participation Payment and will not be assured of a Service  
5 and Parts Agreement but it will receive the benefit of SMC's subordination. The offer contained in  
6 the Letter Agreement is null and void if the Service and Parts Agreement is not executed and  
7 returned on or before December 28, 2012.

8 On the Effective Date of the Plan, distributions made on account of the Settling Auto Dealer  
9 Claims will be made first to the Settling Auto Dealers to the extent of the unpaid claim, with the  
10 remaining distribution made directly to SMC on account of the Participation Cash Payment. Each  
11 Settling Auto Dealer will retain the right to vote the full amount of its Settling Dealer Liquidated  
12 Claim.

13 The purpose of the Settlement Procedures Motion is to maximize the assets available to  
14 Automotive Dealers and to promote public safety by the preservation of a network of service and  
15 parts dealers. The prompt and efficient liquidation of the dealer's claims and the Participation  
16 Payment and subordination by SMC provide the additional benefit of mitigating the financial impact  
17 of the Debtor's withdrawal from the new vehicle automobile market in the continental United States.

18 I believe that approval of the Dealer Settlement Procedures Motion is critical to the Debtors  
19 plan confirmation efforts and its efforts to preserve the going concern value of the estate. I have  
20 worked closely with the Debtors and their advisors to develop the Dealer Settlement Procedures that  
21 I believe will: (a) facilitate an uninterrupted transition of critical warranty and service repair work  
22 and parts for hundreds of thousands of Suzuki automobile owners and thereby promote public safety;  
23 (b) provide greater certainty in administering the claims objection process by providing an overall  
24 framework for a consensual resolution of what would otherwise be contingent and disputed damages  
25 claims; (c) provide a mechanism for the agreed rejection of Automobile Dealer Agreements, while  
26 providing appropriate notice to parties in interest and an opportunity for them to object; (d) ease the  
27 financial burden of the chapter 11 process and rejection of the Automobile Dealer Agreement by  
28 providing Settling Auto Dealers with a means to receive cash upon the Settlement Date; (e) establish

1 an efficient mechanism to settle and allow Claims, while providing appropriate notice to parties in  
2 interest and an opportunity for them to object, and (f) help minimize the expense, delay and  
3 uncertainty in the claims objection and settlement process, which, in turn, will help conserve the  
4 resources of the Court and the Debtor's estate.

5 The Debtor proposes that other creditors would also be entitled to similar treatment (*e.g.* the  
6 benefit of the SMC subordination) provided (a) their asserted claim is liquidated in the amount  
7 reflected in the Debtor's books and records or in an amount that is agreed to between the Debtor and  
8 each applicable creditor, and (b) such creditor elects on its ballot to provide a release that includes  
9 the same releasees as the Settling Auto Dealer Release.

10 **VIII.**

11 **OVERVIEW OF FIRST DAY MOTIONS AND NON-EMERGENCY MOTIONS<sup>8</sup>**

12 **First Day Motions**

13 **A. Dealer Settlement Procedures**

14 A summary of the Dealer Settlement Procedure Motion is discussed above in Part VII.

15 **B. Customer Programs/Warranty**

16 As a distributor of the Suzuki Products, the Debtor offers various limited warranties for parts,  
17 systems, and accessories. I have been advised that, in some instances, these warranties are offered to  
18 ensure compliance with federal and state health and safety regulations, such as, for example, to  
19 ensure compliance with government-established emission standards and seatbelt safety laws. The  
20 Debtor's ability to seamlessly continue warranty service and repair work on its products is essential  
21 to public safety as well as to preserving the Debtor's value as a going concern.

22 In addition, it is my understanding that retail consumers generally interface with the Debtor's  
23 authorized dealers rather than the Debtor directly in respect to its Suzuki Products. During the  
24 chapter 11 case, the Debtor must be able to provide a "business as usual" experience to the ultimate  
25 retail consumer of Suzuki Products. Maintaining the continuing support of customers is essential to  
26 the preservation and protection of the Suzuki brand and the Debtor's estate.

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<sup>8</sup> Capitalized terms not defined in Part VIII have the meanings used in the applicable motions.

1 For these reasons, the Debtor is seeking an order authorizing it to honor and perform, in its  
2 sole discretion, prepetition obligations related to (i) sales promotions and incentives for the purchase  
3 of Suzuki Products (the “Sales Incentives”), including, as described in the motion, cash incentives,  
4 sales personnel incentives, employee cash back, the Suzuki No-Charge First Service for certain  
5 Suzuki automobiles, fleet incentives, and certain volume discounts; (ii) dealer support programs (the  
6 “Dealer Support Programs”), which facilitate cash flows between the Debtor and its dealers, the  
7 dealers’ ability to finance their inventory, and shared advertising costs; and (iii) limited warranty  
8 programs under which the Debtor is contractually obligated to repair or replace parts or components  
9 that may be defective or provide general service repair obligations under the terms of the applicable  
10 limited warranty for a specified period of time (the “Warranty Programs”, and together with the  
11 Sales Incentives, and Dealer Support Programs, the “Customer Programs”), and to the extent the  
12 Court’s authorization is necessary, continue, renew, replace, implement or terminate such Customer  
13 Programs in the ordinary course of business, without further order of the Court.

14 Honoring the Customer Programs is essential to the Debtor’s business operations in that it  
15 ensures that the Debtor remains competitive among its major competitors and assists the Debtor in  
16 maintaining customer confidence and satisfaction, which are necessary for the success of the  
17 reorganized business.

18 **C. GE and Sheffield Assumption Motions**

19 Many of the Debtor’s authorized dealers purchased Suzuki Products, including motorcycles,  
20 ATVs and outboard motors, from the Debtor through floor financing provided by GE; in addition,  
21 GE Retail and Sheffield offer financing to consumer purchasers of the Debtor’s motorcycles, ATVs  
22 and similar products at the dealership level. The continued provision of dealer and consumer  
23 financing by these finance companies is essential to the Debtor’s business operations. Absent these  
24 finance companies continuing to provide such financing and other arrangements post-petition, many  
25 of the Debtor’s dealers and customers would be unable to finance the purchase of Suzuki vehicles  
26 and products distributed by the Debtor, and the Debtor’s flow of revenue would be substantially  
27 harmed. By its motions, the Debtor seeks to assume the subject agreements to ensure that these  
28 finance companies continue to perform under the agreements and provide dealer and customer

1 financing in connection therewith. Alternatively, the Debtor seeks authorization from the  
2 Bankruptcy Court allowing the Debtor to continue operating and honoring its obligations under the  
3 parties' pre-petition arrangements, pending assumption of the pre-petition agreements, in order to  
4 incentivize the finance companies to continue to furnish services under the existing agreements and  
5 financing to dealers and customers, as applicable.

6 **D. Wages Motion**

7 Due to the timing of the commencement of this case, certain Employees accrued prepetition  
8 salaries and wages for which payment would otherwise be made postpetition. I believe that failure  
9 to pay these claims would result in decreased Employee morale that would lead to disruptions to the  
10 Debtor's operations to the detriment of the Debtor's going concern value. In particular, due to  
11 unavoidable timing issues associated with the commencement of this case, certain payroll  
12 obligations may have accrued (as described in the motion), but gone unpaid, prior to the filing of the  
13 case. If the Debtor is not permitted to meet all payroll-related obligations in the ordinary course of  
14 business, the Debtor could suffer unmanageable Employee turnover to the detriment of all parties to  
15 the Debtor's bankruptcy estate. Any significant number of Employee departures or deterioration in  
16 morale at this time will substantially and adversely impact the Debtor's businesses and result in  
17 immediate and irreparable harm to the Debtor's estate. Similarly, it is critical that the Debtor  
18 continue to honor its existing benefits policies as set forth in detail in the Wages Motion.

19 I believe that the amounts to be paid pursuant to the Wages Motion are comparatively small  
20 in light of the importance and necessity of preserving the Employees' services and morale and the  
21 difficulties and losses the Debtor will suffer if Employees leave in significant numbers. Further, I  
22 believe that there is ample justification for its belief that even the slightest delay in providing this  
23 relief to its Employees will hamper operations and damage the Debtor's estate and as a consequence  
24 the Debtor is anxious to reassure its Employees.

25 Moreover, all of the Prepetition Wages and Employee Benefits which the Debtor requests  
26 authority to pay are entitled to priority in payment under sections 507(a)(4) and (a)(8)(D) of the  
27 Bankruptcy Code. In no instance does the aggregate Prepetition Wages due and owing by the Debtor  
28

1 to a particular Employee exceed the sum of \$11,725 allowable as a priority claim under section  
2 507(a)(4) of the Bankruptcy Code.

3 Further, as provided by Local Bankruptcy Rule 2081-1(a)(6), (a) the Employees subject to  
4 the Motion are still employed by the Debtor, (b) the payment of the claims subject to this Motion are  
5 necessary in that they will preserve moral, ensure the Debtor can maintain operating its business, and  
6 will support the Debtor's efforts to reorganize, and (c) the unpaid wages to hourly and salaried  
7 Employees are not insiders.<sup>9</sup>

8 **E. Critical Vendor Claims Motion**

9 The Debtor will experience irreparable harm if the Critical Vendors are not paid as proposed  
10 in the Critical Vendor Claims Motion. The critical vendors fall into one of four general categories:  
11 (i) sole-source suppliers or original equipment manufacturers whose goods are irreplaceable in the  
12 marketplace and without which the Debtor would not be able to sell its products or provide critical  
13 warranty and service repair for its products; (ii) suppliers of parts and accessories who, although the  
14 Debtor may be able to eventually replace, because of quality control issues, cannot be replaced  
15 without a lengthy approval process, which could take years; (iii) vendors who maintain the Debtor's  
16 information technology systems, including the Debtor's website and internal dealer network its  
17 systems, who have gained specialized knowledge of the Debtor's operations and cannot be easily  
18 replaced without months of disruption to bring another vendor up to speed; and (iv) various vendors  
19 or claims relating to government requirements or regulations. The Debtor requires the goods and  
20 services supplied by these vendors because they are essential to the operation of its ongoing  
21 businesses and the preservation of the Debtor's business as a going concern enterprise.

22 The Debtor believes that it is fairly current with all Critical Vendors and estimates that it may  
23 owe Critical Vendors approximately \$900,000 as of the Petition Date. Of this amount, the Debtor  
24 estimates that a large portion, or 60%, of this amount is entitled to priority under section 503(b)(9) of  
25 the Bankruptcy Code as such goods were delivered within 20 days of the Petition Date. However, if  
26 the Debtor is not able to make these payments to Critical Vendors, the Debtor's operations could be  
27 put at risk since may not have access to certain goods and services that are necessary for the

28 \_\_\_\_\_  
<sup>9</sup> The salaries of Ex-Pat Employees will be subject to notice as provided by Local Bankruptcy Rule 2014-1.

1 operation of its business. Or, the Debtor could be required to obtain such goods and services from  
2 other providers at costs that are far in excess of the amount the Debtor pays its current providers.  
3 Accordingly, I believe that granting the motion will benefit the estate as it will help ensure the  
4 Debtor maintains the stream of goods and services necessary to operate its business.

5 **F. Shippers' Claims Motion**

6 The Debtor does not manufacture any Suzuki Products; rather, these products and related  
7 parts are purchased from (a) SMC or the Debtor's non-debtor affiliates, who are located overseas in  
8 four Asian countries, (b) its non-debtor domestic affiliate located in Rome, Georgia, and (c) various  
9 third-party suppliers. In addition to the shipment of automobiles, motorcycles/ATVs, and marine  
10 outboard motors, the Debtor also relies on a steady supply of parts from its non-SMC suppliers to  
11 ship to its authorized dealers, who then service such vehicles under various warranty programs. The  
12 Debtor also exports parts and products to its non-debtor affiliate in Canada to support sales of Suzuki  
13 vehicles in Canada.

14 In order to ensure the steady movement of Suzuki Products, the Debtor relies on a complex  
15 and international network of shippers, railroad carriers, freight carriers (the "Transporters") who ship  
16 the Suzuki Products, parts, and accessories (collectively, the "Goods") from their warehouses or to  
17 warehouses operated by third-parties (the "Warehousemen"). Suzuki Products that are received  
18 from overseas affiliates are shipped to various ports in the United States, cleared for customs, loaded  
19 onto railroad containers, and finally moved onto trucks, which transport the products to the six  
20 warehouse facilities located throughout the United States. From the warehouse facilities, the Goods  
21 are shipped to the Debtor's various authorized dealers.

22 To the extent that Goods are received from international sources, the Debtor is required to  
23 pay customs duty charges and the Debtor utilizes the services of customs brokers (the "Customs  
24 Brokers") who facilitate the payment of the customs duty charges and fees. If the Debtor fails to pay  
25 any Customs Broker, Transporter, or Warehouseman (collectively, the "Lien Claimants") for charges  
26 incurred in connection with the use, storage, or transport of the products, various statutes, tariffs and  
27 agreements permit the Lien Claimants to assert liens against the products in their possession. With  
28 respect to Suzuki Products purchased from the Debtor's non-debtor domestic affiliate, the process is

1 similar except that the Suzuki Products do not need to clear customs and are shipped directly by rail  
2 or truck from the Rome, Georgia facility to the Debtor's U.S. warehouse facilities or directly to  
3 authorized dealers.

4 On average, the Debtor pays \$2.6 million per month to the Lien Claimants. As of the  
5 Petition Date, the Debtor estimates that approximately \$2 million is owed on account of such claims.  
6 The Debtor's business is dependent upon the ability to timely deliver the Goods to its authorized  
7 dealers for sale to customers. While the Debtor believes that it is relatively current on its payments  
8 to the Lien Claimants, to the extent that additional amounts are found to be outstanding (most likely  
9 due to delayed invoicing or the timing of certain shipments), the Debtor must be able to pay such  
10 amounts to gain access to the Goods. The Debtor requires timely receipt of the Goods to be able to  
11 sell them and to timely service consumers' vehicles and marine motors. Any disruption in the  
12 Debtor's complex movement of Goods could result in devastating consequences to the Debtor's  
13 business, including potential safety issues for the Debtor's ultimate retail customer if critical service  
14 and warranty repair work cannot be completed in a timely manner because of any delay in the  
15 Debtor's supply chain. As such, the Debtor proposes to pay such claims when, in the Debtor's  
16 business judgment, such creditors' exercise of their legitimate remedies would unduly disrupt the  
17 Debtor's business.

18 **G. DIP Financing Motion**

19 The Debtor has an urgent and immediate need for access to cash collateral and borrowings  
20 under the DIP Credit Agreement with SMC in the principal amount of up to \$50,000,000 in  
21 postpetition advances and \$50,000,000 in inventory loans following entry of the Final DIP Order, of  
22 which \$15,000,000 in postpetition advances and \$30,000,000 in inventory loans would be available  
23 under the proposed Interim DIP Order. Under the proposed DIP Credit Facility and associated  
24 Interim DIP Order and Final DIP Order, the Debtor will have access to three types of financing: (1)  
25 access to cash collateral in which SMC asserts an interest under a prepetition loan arrangement; (2)  
26 availability under a new revolving line of credit to the extent necessary; and (3) continuing deliveries  
27 of product from SMC, including motorcycles, outboard marine motors, ATVs, and assorted parts  
28

1 utilized in the Divisions, on fifteen-day credit terms. As to item (3), SMC's extension of credit will  
2 constitute advances under the inventory loan portion of the DIP Credit Facility.

3 The Debtor, as borrower, and SMC, as lender, are parties to the Existing Senior Secured  
4 Credit Facility. Pursuant to the Existing Senior Secured Credit Facility, SMC made loans and  
5 provided other financial accommodations to or for the benefit of the Debtor. As of the Petition Date,  
6 the Debtor is indebted to the Existing Senior Lender, under the Existing Senior Secured Credit  
7 Facility, in the amount of no less than approximately \$152,300,000 (the "Existing Prepetition  
8 Debt"). The Debtor also owes SMC approximately \$9,400,000 on account of unsecured prepetition  
9 obligations. Pursuant to the Existing Senior Secured Credit Facility and related documents (the  
10 "Existing Senior Secured Loan Documents"), the Existing Senior Lender asserts that the Existing  
11 Prepetition Debt is secured by valid, perfected, first priority liens (the "Existing Prepetition Liens")  
12 on substantially all of the property of the Debtor (the "Existing Prepetition Collateral"), including  
13 the cash collateral of the Debtor within the meaning of section 363(a) of the Bankruptcy Code.

14 In addition to the foregoing secured indebtedness, the Debtor has certain outstanding  
15 equipment lease obligations and undrawn lines of credit with Union Bank, N.A., Bank of Tokyo-  
16 Mitsubishi, The Shizuoka Bank, Ltd., and Mizuho Corporate Bank, Ltd.

17 The Debtor requires immediate access to the DIP Credit Facility provided by SMC and use  
18 of cash collateral in order to sustain its ongoing operations and administer this chapter 11 case. As  
19 noted above, the Debtor is the sole distributor of the Suzuki Products in the United States. The  
20 Debtor has hundreds of dealers, employees and vendors that depend on the Debtor to satisfy its  
21 obligations, and the Debtor fully intends to do so on a postpetition basis. The Debtor, in turn, is  
22 dependent on continuing to have access to product from SMC. The DIP Credit Facility provides the  
23 Debtor with inventory loans on interest-free fifteen-day terms that will allow the Debtor to continue  
24 to seamlessly receive and distribute the Suzuki Products and to preserve the Debtor's going concern  
25 business. In addition, the line of credit provided under the DIP Credit Facility is essential for the  
26 Debtor to obtain credit from vendors, as the existence of this facility will afford vendors a level of  
27 comfort that the Debtor will be able to pay for the goods and services that it will receive on credit.  
28 Absent immediate funding through the DIP Credit Facility and use of cash collateral, the Debtor

1 would be forced to shut-down its business and convert this case to chapter 7, which would have a  
2 tremendously adverse effect on the Debtor's estate, its dealers, employees, vendors and other  
3 constituents.

4 Although SMC is the sole equity holder of the Debtor, the Debtor and SMC are separately  
5 represented by counsel and the Debtor has two independent members on its board of directors (the  
6 "Special Committee"). Prior to agreeing to enter into the DIP Credit Facility with SMC, the Debtor  
7 contacted alternative funding sources. The Debtor was advised that any provision of credit would be  
8 on substantially less attractive credit terms than those offered by SMC through the DIP Credit  
9 Facility. As a result, the Debtor and its professionals negotiated with SMC and its professionals as  
10 to the terms of the DIP Credit Facility and the proposed Interim DIP Order, including consensual  
11 priming of the Existing Senior Secured Credit Facility and access to cash collateral. Such  
12 negotiations were conducted at arms' length and in good faith. Ultimately, the proposed DIP Credit  
13 Facility was presented to, and approved by, the Special Committee. The Debtor believes, in the  
14 exercise of its sound business judgment, that the DIP Credit Facility and the other terms of the  
15 proposed Interim DIP Order are the best credit terms currently available to this estate.

16 Without the proposed postpetition financing and use of cash collateral, the Debtor will not  
17 have any liquidity to operate its business, and therefore will be unable to fund its ordinary course  
18 expenditures or pay the expenses necessary to administer the chapter 11 case. Accordingly, the  
19 Debtor has an urgent and immediate need for the borrowings under the DIP Credit Agreement and  
20 use of cash collateral contemplated therein.

21 **H. Cash Management Motion**

22 The Debtor's Bank Accounts and Cash Management System facilitate the timely and  
23 efficient collection, management, and disbursement of funds used in the Debtor's business. Because  
24 of the disruption to the business that would result if the Debtor was forced to close these accounts, it  
25 is critical that the Debtor maintain its Cash Management System and the Bank Accounts, and have  
26 the Banks designate them as debtor in possession bank accounts.

27 Requiring the Debtor to close the Bank Accounts and to open new accounts will disrupt the  
28 Debtor's administration of its cash and business operations. Further, closing the Bank Accounts and

1 opening new accounts will also increase the work required of the Debtor's accounting personnel,  
2 who already must deal with the many and varied issues related to this chapter 11 case, and would  
3 needlessly cost the Debtor time and money with no discernible benefit to the estate.

4 I believe that cause exists to grant the motion to convert the Bank Accounts to debtor in  
5 possession account because all but three of the Bank Accounts are located at depositories authorized  
6 by the U.S. Trustee. The other three Bank Accounts located at Mizuho Bank, Shizuoka Bank, Ltd.,  
7 and Sumitomo Mitsui Bank, generally contain little or no money and are used as disbursement  
8 accounts when paying SMC. The funds in these accounts are not at risk because the amounts on  
9 deposit are within the FDIC limits or such amounts are instantaneously transferred to satisfy  
10 outstanding accounts payable.

11 Because there are only 14 Bank Accounts, there will be no confusion of postpetition  
12 transactions with prepetition ones. Requiring the Debtor to close the Bank Accounts would serve no  
13 purpose but would, as stated, delay the Debtor's ability to utilize its funds, put further burdens on  
14 accounting personnel dealing with the Debtor's many financial issues and cost the Debtor time and  
15 money better used in its efforts to maximize value of the estate for its creditors.

16 **I. Notice Procedures Motion**

17 I believe that, due to the large number of creditors and other parties in interest in these cases  
18 (approximately 50,000) it would be appropriate to limit notice of the matters as set forth in this  
19 motion. Service of notice of all pleadings and other documents to all creditors would substantially  
20 delay the provision of notice in each particular instance, thereby hampering the conduct of Debtor's  
21 business and impeding the consummation of transactions, or the granting of other relief that may be  
22 advantageous to Debtor's estates and creditors. Moreover, service of notice to all creditors with  
23 respect to such matters would substantially increase the cost of service to Debtor's estates. No party  
24 is prejudiced by this procedure, because each party in interest that desires notice of pleadings and  
25 other documents may, by requesting special notice, receive such notice.

26 The Debtor's proposed noticing procedures fall well within the Court's authority to regulate  
27 notices and will mitigate the administrative and economic burdens that would otherwise be imposed  
28

1 upon the Court, the Clerk's office and Debtor's estates, without diminishing creditors' opportunity to  
2 receive notice if they so desire.

3 **J. Schedules and Statements Extension Motion**

4 November 19, 2012 is the Debtor's current deadline to file its schedules of assets and  
5 liabilities and statement of financial affairs (collectively, the "Schedules"). Due to the demands on  
6 the Debtor created by (i) filing this chapter 11 case and the financial difficulties giving rise thereto,  
7 (ii) the need to maintain continuity in the Debtor's businesses, (iii) the need to prepare and file  
8 numerous "First Day Motions," and (iv) the immediate need to comply with the filing requirements  
9 as set forth in the "*Guidelines for Fulfilling the Requirements of the United States Trustee*," the  
10 Debtor will not be able to complete the Schedules within the fourteen day statutory period. As such,  
11 given the foregoing, the Debtor requires a modest extension to compile the requisite information  
12 necessary to ensure that accurate and complete Schedules will be filed.

13 Because the requested extension of time (i) is short, (ii) will allow the Debtor to file more  
14 accurate Schedules, and (iii) will not prejudice creditors, I believe that cause has been shown for the  
15 requested 15 day extension from the current November 19, 2012 to December 4, 2012. However,  
16 the Debtor reserves the right to seek further extensions upon further notice of motion and an  
17 appropriate showing of cause.

18 **K. Indemnification Agreement Motion**

19 Like all other companies, in order to induce highly competent persons to serve the Debtor as  
20 directors and officers, the Debtor must provide such persons with adequate protection against risks  
21 of claims and actions against them arising out of their service to and activities on behalf of the  
22 Debtor. Typically, companies provide such protection through directors' and officers' liability  
23 insurance ("D&O Insurance"). However, the Debtor does not maintain D&O Insurance in the  
24 ordinary course of business and has been unable to obtain cost-effective D&O Insurance on  
25 satisfactory terms. Consequently, the Board of Directors of the Debtor determined that (1) it is  
26 essential to the best interests of all of the Debtor's stakeholders that the Debtor act to assure its  
27 current Directors as of the Petition Date and CRO that there will be increased certainty of such  
28 protection in the future, and that (2) it is reasonable, prudent and necessary for the Debtor

1 contractually to obligate itself to indemnify such persons to the fullest extent permitted by applicable  
2 law so that they will continue to serve the Debtor free from undue concern that they will not be so  
3 indemnified. The Debtor entered into the Director Indemnity Agreement with its Directors  
4 immediately prior to the Petition Date, which provides indemnification for the Director signatories  
5 thereto effective as of (and for services rendered commencing on and after) September 10, 2012 (or  
6 October 3, 2012 in the case of Mr. R. Todd Neilson who was appointed on October 3, 2012). The  
7 Debtor also entered into the Officer Indemnity Agreement immediately prior to the Petition Date,  
8 which provides for my indemnification effective as of the date the Debtor is authorized to engage me  
9 pursuant to Bankruptcy Court Order for services rendered commencing on and after such date. The  
10 Indemnity Agreements generally provide for indemnification to the maximum extent permissible  
11 under applicable California law and grant certain security to the Directors and CRO in the form of  
12 the DIP Carveout and the Cash Indemnification Reserve, as set forth in those agreements.

13 **Non-Emergency Motions**

14 **L. Utility Motion**

15 The Debtor receives one or more of its essential utility services from various utility providers  
16 (each a "Utility Company" and collectively the "Utility Companies"). At this critical time,  
17 uninterrupted electricity, gas, local and long distance telephone services, internet services, and other  
18 utility services are essential to the ongoing operations of the Debtor's business and to the  
19 preservation of the value thereof. Any interruption, however brief, in utility services to the Debtor  
20 will severely disrupt the Debtor's operations.

21 The Debtor routinely pays its regular monthly utility obligations when due. In addition, the  
22 Debtor's chapter 11 filings occurred during the billing cycles for many, if not all, of the Utility  
23 Companies. As a result, there are likely outstanding prepetition amounts owed to the Utility  
24 Companies.

25 The Debtor has and will have adequate cash to meet all of its necessary postpetition  
26 operating expenses on a current basis, including payments to the Utility Companies. The Debtor has  
27 specifically included in its budget amounts for payments to Utility Companies, including the  
28 payment of the Utility Deposits.

1 Under the circumstances of this case in which the Debtor has no significant outstanding  
2 prepetition utility obligations and has already arranged to maintain current payment for postpetition  
3 services, I believe that the proposed Utility Deposits to be provided to those Utility Companies that  
4 make a timely request will provide such Utility Companies with the necessary assurance of the  
5 Debtor's ability to pay its utility cost going forward.

6 **M. Tax Motion**

7 In the ordinary course of business, the Debtor incurs a variety of taxes payable to various  
8 governmental authorities. The taxes include (a) personal property taxes on the Debtor's tangible  
9 assets, (b) sales and use taxes on goods that the Debtor has sold or assets that the Debtor acquires,  
10 (c) franchise taxes payable to various states where the Debtor conducts business, (d) property taxes  
11 on the various real properties owned by the Debtor, and (e) other taxes or assessments that may be  
12 imposed by various state or local authorities (collectively, the "Taxes"). In the aggregate, the Debtor  
13 estimates that approximately \$960,000 in Taxes will be owed for the Prepetition Period.

14 Most of the Taxes collected prepetition are not property of the Debtor's estate, and must for  
15 that reason be turned over to the Governmental Authorities. To the extent that they are not actually  
16 the property of the Governmental Authorities, they may well give rise to priority claims or statutorily  
17 secured claims. Moreover, the Debtor also seeks to pay prepetition Taxes to forestall Governmental  
18 Authorities from taking actions that might interfere with the Debtor's successful reorganization,  
19 including possibly bringing personal liability actions against directors, officers and other employees  
20 in connection with non-payment of Taxes. Actions against the Debtor's directors, officers and other  
21 employees would likely distract key personnel, whose full-time attention to the Debtor's  
22 reorganization efforts is required, and would likely cause potential business disruptions. Any such  
23 business disruptions would likely erode the Debtor's customer base and negatively impact this  
24 chapter 11 case. Finally, the Debtor has filed the Plan that provides for the payment of such Taxes.  
25 Payment now will avoid the accrual of additional interest or other penalties. Accordingly, I believe  
26 that the proposed relief is in the best interest of the Debtor's estate and its creditors.

1 **N. Ordinary Course Professionals**

2 The Debtor customarily retains the services of various attorneys, accountants, and other  
3 professionals in matters arising in the ordinary course of business that are unrelated to the underlying  
4 chapter 11 case (each an “OCP” and collectively, the “OCPs”).

5 The Debtor requires the services of the OCPs listed on Exhibit B to the motion and any  
6 additional OCPs whose services may be required during this chapter 11 in order to continue to  
7 operate its business as a debtor in possession. The work of the OCPs, albeit ordinary course, is  
8 directly related to the preservation of the value of the Debtor’s estate, even though the amount of  
9 fees and expenses incurred by the OCPs is relatively small.

10 The operation of the Debtor’s business would be severely hindered if the OCPs were delayed  
11 in performing their work on behalf of the Debtor while the Debtor (i) submitted to this Court an  
12 application, affidavit, and proposed retention order for each OCP; (ii) waited until such order was  
13 approved before such OCP continued to render services; and (iii) withheld payment of the normal  
14 fees and expenses of the OCPs until they complied with the compensation procedures applicable to  
15 professionals hired pursuant to section 327(a) or (e). In addition, the OCPs do not generally work  
16 for debtors in bankruptcy cases and are generally unfamiliar with the required employment and  
17 compensation procedures. Therefore, the Debtor would expend significant amounts of money and  
18 time educating the OCPs as to these procedures and assisting them with their compliance with the  
19 procedures.

20 Further, some OCPs might be unwilling or unable to assume the administrative and cost  
21 burden of such employment and fee procedures and may therefore be unwilling to work with the  
22 Debtor if these requirements are imposed, forcing the Debtor to incur additional and unnecessary  
23 expenses to retain other professionals who would not have the background and expertise of the  
24 OCPs and could potentially charge higher rates. The uninterrupted services of the OCPs are  
25 important to the Debtor’s continuing operations and its ability to move toward a successful  
26 reorganization.

1 **O. Sale Procedures/Sale Motion**

2 Shortly after the filing of the Petition, the Debtor will be filing a Motion to authorization,  
3 pursuant to the terms of an Asset Purchase Agreement to sell substantially all of the Debtor's assets  
4 related to the Debtor's business of distributing, selling and servicing Suzuki brand motorcycles, all-  
5 terrain vehicles, marine outboard motors and related parts and products, and the servicing of Suzuki  
6 automobiles, including any warranty work and the sale of parts in connection with such servicing  
7 business (together, the "Acquired Business"). The Purchased Assets exclude certain assets  
8 comprising or relating to the Debtor's business of distributing and selling Suzuki automobiles, cash  
9 and cash equivalents held by the Debtor upon closing, contracts that are not Designated Contracts,  
10 the estate's avoidance actions unrelated to the Acquired Business, and certain other excluded assets.  
11 The proposed Purchaser is a newly formed company, NounCo, Inc. ("Purchaser"), an affiliate of  
12 Suzuki Motor Corporation ("SMC"). The proposed Sale is subject to overbid by a Qualified Bidder.  
13 SMC is the Debtor's sole equity holder and primary secured creditor. I was involved in the  
14 negotiation of the proposed Sale and consulted on a regular basis with the two members of the  
15 Special Committee who, as I discussed above, are independent directors and not affiliated with either  
16 SMC or the proposed purchaser.

17 Through the proposed Sale, the Debtor's estate (the "Estate") will receive as consideration  
18 approximately \$95,000,000 in cash and the assumption of applicable cure claims, warranty  
19 obligations, and certain other liabilities. The Debtor has determined that Purchaser is the party likely  
20 to provide the greatest consideration for the Purchased Assets, subject to a further marketing effort  
21 and higher and better bids. The Debtor has retained Imperial Capital, LLC as investment banker and  
22 will proceed with a thorough marketing process for the Purchased Assets over the next 60-90 days. I  
23 believe that that proposed Sale will maximize the value of the Acquired Business and preserve the  
24 Acquired Business as a going concern outside of a plan.

25 After considering potential alternatives and as a parallel track transaction to the proposed  
26 Plan, I believe that the proposed Sale of the Purchased Assets is in the best interest of the Debtor, the  
27 Estate and its creditors and stakeholders for the following reasons. The proposed Sale will preserve  
28 a substantial portion of the Debtor's business as a going concern. Additionally, the consideration to

1 be paid by Purchaser represents a fair and reasonable offer in light of all the terms of the proposed  
2 Sale, and as a result of the Debtor's postpetition marketing efforts, such offer (or any higher and  
3 better offer obtained through the proposed Bid Procedures and Auction) will provide maximum  
4 value to the Debtor under the current circumstances. Finally, the assumption and assignment of the  
5 Designated Contracts will benefit the Estate as that will be part of a Sale yielding substantial  
6 proceeds for the Estate, as well as minimizing unsecured claims based on rejection of contracts.

7 Overall, the proposed Sale's benefits greatly exceed those of any piecemeal liquidation. The  
8 proposed Sale is supported by sound business reasons and is in the best interests of the Debtor and  
9 its Estate.

10 As to the proposed Bid Procedures, I believe good cause exists to approve such procedures  
11 because they are fair and reasonable under the circumstances and will encourage competitive  
12 bidding and the highest and best price for the Purchased Assets. Specifically, the Expense  
13 Reimbursement is justified, given the benefits to the Debtor's estate of having a stalking horse  
14 bidder by virtue of a definitive asset purchase agreement and the risk to the Stalking Horse Bidder  
15 that a third-party offer may ultimately be accepted, and that approval of the Expense Reimbursement  
16 under the terms of the APA is necessary to preserve and enhance the value of the Debtor's estate.

17 The APA and the Debtor's agreement to pay the Expense Reimbursement are the product of  
18 good faith, arm's length negotiations between the Debtor and Stalking Horse Bidder. While  
19 Purchaser is an affiliate of SMC, an insider of the Debtor, the proposed Sale to Purchaser was  
20 negotiated in good faith, at arms' length and without collusion or fraud of any kind. Both the  
21 Consideration and the terms and conditions of the proposed Sale were the subject of extensive  
22 negotiations between the Debtor and representatives of Purchaser.

23 For these reasons, the Debtor's request for approval of: (a) the proposed overbid protections  
24 including the Expense Reimbursement; (b) the Bid Procedures for the conduct of overbidding, the  
25 Auction and selection of the Successful Bidder(s); (c) the procedures set forth in the Motion for  
26 notice to counterparties under contracts and leases proposed to be assumed, assigned and sold in  
27 connection with the proposed Sale, and the determination and payment of applicable Cure Costs; (d)  
28

1 the scheduling of the Sale Hearing and other matters for which scheduling is requested so that the  
2 Sale can be approved; and (e) the related relief sought by the Motion.

3  
4 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and  
5 correct.

6 Executed on this 5th day of November, 2012 at Brea, California.

7  
8 

9  
10 \_\_\_\_\_  
11 M. Freddie Reiss