TATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2025-CP-08-01840
VOLVO CAR USA LLC, Plaintiff, v. LEAR CORPORATION, Defendant.	**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR EMERGENCY *EX PARTE* TEMPORARY RESTRAINING ORDER AND/OR TEMPORARY INJUNCTION**

NOW COMES the Plaintiff, VOLVO CAR USA LLC (hereinafter referred to as "VCUSA"), and hereby submits this Memorandum of Law in Support of its Motion for Emergency *Ex Parte* Temporary Restraining Order, pursuant to South Carolina Rule of Civil Procedure 65, seeking an Order requiring the Defendant, LEAR CORPORATION ("Lear"), to continue shipping certain unique, single-sourced automotive seat assemblies to VCUSA, on contract terms, in order to prevent the continued shutdown of VCUSA's vehicle assembly line located in Ridgeville, South Carolina, and the resulting catastrophic disruption to the automotive supply chain, including VCUSA's customers across the world.

INTRODUCTION

This matter arises from the refusal by Lear to ship and deliver certain automotive seat assemblies to VCUSA despite contractual obligations to do so, resulting in the shutdown of VCUSA's vehicle assembly line in Ridgeville, South Carolina, and a catastrophic disruption to the automotive industry supply chain. VCUSA seeks an emergency temporary restraining order, and will ultimately seek a preliminary injunction, requiring Lear to continue shipping certain unique automotive seat assemblies to VCUSA, on contract terms, in order to prevent the continued shutdown of VCUSA's vehicle assembly line. As more fully set forth below and in the supporting Verified Complaint and Affidavit of Daniel Harvey, balancing the elements for injunctive relief

and further balancing the equities of the parties weigh strongly in favor of granting VCUSA's request for a temporary restraining order.

FACTUAL BACKGROUND

The following facts are supported by VCUSA's Verified Complaint, the affidavit of Daniel Harvey, VCUSA's Senior Manager for Procurement Americas, and the other documents attached as exhibits to this Memorandum.

A. Contracts Between VCUSA and Lear

VCUSA, headquartered in Mahwah, New Jersey, and with its vehicle production facility located in Ridgeville, South Carolina, is the United States division of Volvo Cars, a Swedish multinational manufacturer of luxury vehicles. VCUSA assembles passenger vehicles at its Ridgeville facility, including model EX90 and Polestar 3 SUVs, for domestic sale and export. It currently employs more than two thousand employees at its Ridgeville facility.

Lear, headquartered in Southfield, Michigan, and with a manufacturing facility in Duncan, South Carolina, is a global automotive technology leader in seating and e-systems. It manufactures various component parts used in automotive assembly, including automotive seating and electrical systems.

Lear has been a supplier of certain automotive assemblies for VCUSA since it began vehicle assembly at the Ridgeville facility in 2018. VCUSA and Lear entered into Framework Purchase Agreements outlining the basic framework of their contractual relationship as to certain assemblies to be supplied by Lear. Under such Framework Purchase Agreements, VCUSA issues separate purchase orders for the parts needed for the specific seat assemblies to be ordered by VCUSA (the "Purchase Orders"). Pursuant to the currently outstanding Purchase Orders, VCUSA purchases 1,558 potential seat components from Lear (the "Parts"). Exhibit #1 – Purchase Orders

(redacted)[1]. A list of the relevant automotive seat components supplied by Lear to VCUSA pursuant to the outstanding Purchase Orders is set forth in the table attached hereto as Exhibit #2. Exhibit #2 – Parts List. All of the automotive seat components set forth in Exhibit #2 are currently used by VCUSA in its assembly line production of the model EX90 and Polestar 3 SUVs at its Ridgeville facility. Lear is VCUSA's sole supplier of these Parts, and Lear supplies 100% of VCUSA's requirements of these Parts. The complete seat assemblies supplied by Lear are extremely complex and come in multiple variations, based on color and material selections.

VCUSA's Purchase Orders to Lear for the automotive seat assemblies set forth in Exhibit #1 incorporate and are governed by VCUSA's Production Material Global Terms and Conditions (the "Terms"). Exhibit #3 – Production Material Global Terms and Conditions. Together, the Purchase Orders and Terms constitute the contracts between VCUSA and Lear (the "Contracts"). The Contracts set firm prices for each of the Parts. Lear ships the Parts to VCUSA's Ridgeville facility for use in its assembly line production of the model EX90 and Polestar 3 SUVs.

VCUSA purchases 100% of its requirements for the Parts from Lear, meaning Lear is VCUSA's sole source of supply for the Parts. These automotive seat components are critical to the vehicle assembly process. In the event Lear ceases shipping the Parts to VCUSA, it causes catastrophic disruptions in the assembly line at the Ridgeville facility and can even lead to the complete shutdown of the assembly line, resulting in over twelve hundred (1,200) assembly line workers being sent home. It further results in the inability of VCUSA to fulfill customer orders.

B. Breach of the Contracts by Lear

On May 5, 2025, Dave Wood, the Plant Manager for Lear in Duncan, South Carolina, sent an email to Daniel Harvey, Senior Manager of Procurement Americas for VCUSA, stating Lear

[1] Given the number of currently outstanding Purchase Orders between VCUSA and Lear, it would be overly burdensome to include all of them in this emergency motion. However, VCUSA has provided a sampling of such Purchase Orders. The Purchase Orders for the other Parts identified in Exhibit #2 are substantially similar to those attached hereto as Exhibit #1, except for the part number, description, price, and quantity.

would no longer honor the Contracts. Exhibit #4 – Lear Call-Off Rejection Email dated May 5, 2025. Lear stated that it would no longer fulfill its obligations unless VCUSA and Lear reached an agreement concerning cost increases for the Parts caused by an increase in tariffs. In response, VCUSA wrote Lear's counsel stating a binding agreement existed between VCUSA and Lear for Lear to supply the automotive seat components in accordance with the Purchase Orders and Terms. Exhibit #5 – VCUSA Response Letter dated May 13, 2025. VCUSA further reminded Lear that this procedure has been the standard practice between VCUSA and Lear since the inception of their business relationship and is also the prevailing industry practice. VCUSA notified Lear that if it failed to timely deliver conforming automotive seat components pursuant to the Purchase Orders that it would cause irreparable harm to VCUSA, its employees, and its customers.

On May 16, 2025, Mr. Wood sent a follow-up email reiterating that Lear would no longer be honoring its contractual obligations to VCUSA and would not be shipping any additional automotive seat components to VCUSA's Ridgeville facility. Exhibit #6 – Lear Follow-up Email dated May 16, 2025. Lear outlined the last sets of automotive seat components shipped to VCUSA and stated that VCUSA would likely see its "first impacts to [its] assembly line on 5/20/2025". Mr. Wood told VCUSA to "coordinate & communicate to your labor force the production impact date to minimize your costs" and stated Lear did "not assume any responsibility or costs attributable for plant shutdown…" Lear has followed through with its refusal to ship any additional automotive seat components to VCUSA's Ridgeville facility. VCUSA received its last shipment from Lear on or about May 19, 2025, even though additional "just in time, just in sequence" shipments were supposed to be delivered to VCUSA since then.

C. VCUSA's Irreparable Harm

In the Verified Complaint, VCUSA seeks specific performance of the Contracts by Lear pursuant to S.C. Code Ann. § 36-2-716. The Parts supplied by Lear to VCUSA pursuant to the

Contracts are unique, manufactured for use in VCUSA's vehicle models, and tested to satisfy VCUSA's performance and safety requirements. VCUSA employs a "just-in-time, just in sequence" inventory management system, and as a result, it does not have sufficient inventory of the Parts on hand to sustain its assembly line capacity. VCUSA relies upon timely delivery of automotive seat components from Lear in order to keep the assembly line working smoothly and at the appropriate capacity level.

Because Lear has refused to continue with its shipments to VCUSA, the Ridgeville facility has been forced to shut down its assembly line, resulting in over twelve hundred (1,200) assembly line workers being sent home. Given the nature of the Parts, VCUSA reasonably estimates that it would take approximately thirty-six (36) months to establish an adequate supply chain with a replacement supplier. Such a delay would cause immeasurable economic consequences to VCUSA and cause catastrophic disruption in the automotive industry, both domestic and abroad.

If the shutdown of VCUSA's Ridgeville facility continues, it will lead to the idling of a significant portion of VCUSA's assembly line workers and likely even the layoff or departure of hundreds of assembly line workers. Because of the assembly line shutdown, VCUSA is likely to lose a number of its assembly line workers to other employment opportunities, as these workers cannot idly sit through a prolonged shutdown without compensation, and VCUSA would need to lay off a significant amount of its workforce as a result. In such a scenario, it is unknown how long it may take for VCUSA to restore its workforce and its assembly line productivity to its current level. VCUSA has put forth significant efforts to recruit and hire assembly line workers at the Ridgeville facility in order to expand its assembly capabilities.

Further, because of the continued shutdown of the assembly line caused by Lear's refusal to deliver automotive seat components pursuant to the Contracts, VCUSA's relationship with its current and potential future customers will be immeasurably damaged. VCUSA, through the long

years of service by its parent corporation and through its own efforts in the local and global communities, has built significant goodwill and a strong reputation across the world. However, as this shutdown caused by Lear's refusal to deliver automotive seat components begins to cause significant delays in the delivery of completed vehicles to customers, VCUSA, and its parent corporation and affiliates, are likely to suffer irreparable damage to their reputation within the automotive industry.

STANDARD OF REVIEW

The granting of a temporary restraining order is governed by Rule 65, SCRCP. The same standard that applies to the application for a preliminary injunction applies to the application for a temporary restraining order. "An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450,454,626 S.E.2d 34, 36 (Ct. App. 2005). "Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508-09 (Ct. App. 2009) (citing *Scratch Golf Co. v. Dunes West Residential Golf Props.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004)). "Before granting an injunction, the trial court should balance the equities: the court should look at the particular facts of each case and the equities of each party and determine which side, if any, is more entitled to equitable relief." *Id.* (citing *Peek*, 367 S.C. at 455, 626 S.E.2d at 36-37). "The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation." *Id.* South Carolina courts generally issue a party temporary injunctive relief when reasonably necessary to protect a party's legal rights pending the judicial resolution of the facts at issue. *See Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 480-81, 167 S.E.2d 313, 315 (1969); *see also Peek*, 367 S.C. at 454, 626

S.E.2d at 36 (2005) ("To obtain an injunction, the plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation").

ARGUMENTS

VCUSA seeks an emergency temporary restraining order requiring Lear to continue shipping the Parts, as more fully set forth in the table provided Exhibit #2, to VCUSA, on contract terms, in order to prevent the continued shutdown of VCUSA's vehicle assembly line. Such a temporary restraining order is appropriate at this stage of the litigation. VCUSA is likely to succeed on the merits because binding contracts existed between VCUSA and Lear obligating Lear to supply VCUSA with the Parts, and Lear has refused to ship those Parts to VCUSA. If Lear is not required to continue shipping these Parts to VCUSA, on contract terms, VCUSA will suffer irreparable harm including, but not limited to, the continued shutdown of VCUSA's assembly line, the likely loss of some of its existing workforce, delays of unknown length in the restoration of the assembly line to its current assembly capacity, delays of unknown length in the delivery of completed vehicles to its customers, and immeasurable damage to VCUSA's goodwill and reputation. These harms to VCUSA caused by Lear's refusal to uphold its contractual obligations do not have an adequate remedy at law. When weighing the facts leading to the present circumstances, the equities favor requiring Lear to ship the Parts to VCUSA, on contract terms, and thereby restoring VCUSA's assembly line while the parties adjudicate the claims set forth in the Verified Complaint.

A. VCUSA is likely to succeed on the merits of its claims.

VCUSA is likely to prevail on its claims for breach of contract and specific performance against Lear. The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach. Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d

602, 610 (1962). "'In construing a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties.'" *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 183 (2013) (quoting *D.A. Davis Constr. Co. v. Palmetto Props., Inc.*, 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984)). "'Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions.'" *Id.* (quoting *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976)). "'If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect.'" *Id.* (quoting *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004)). Courts "are without authority to alter an unambiguous contract by construction or to make new contracts for the parties." *S.C. Dep't. of Transp. v. M & T Enters. of Mt. Pleasant*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008) (citations omitted). "A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Id.*

Under South Carolina law, a "requirements contract" is permissible and can constitute a binding, enforceable contractual agreement. S.C. Code Ann. § 36-2-306(1) (2005) provides:

> A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

S.C. Code Ann. § 36-2-306(1) (2005). Courts across the country have imposed preliminary injunctions to require specific performance of requirements contracts in the automotive industry. *See Dana Ltd. v. Mico Indus.*, 2015 Mich. Cir. LEXIS 73, at *11 (Kent County 2015) ("[S]upply-chain litigation in the automotive industry more readily lends itself to injunctive relief because a

breach of contract disrupting the 'just in time' delivery of components can cause catastrophic harm throughout the supply chain.") (citations omitted).

In the present case, the Contracts are enforceable requirement contracts under South Carolina law. Lear is VCUSA's sole supplier of the Parts and supplies 100% of the Parts required by VCUSA in its assembly of EX90 and Polestar 3 SUVs at the Ridgeville facility. These Parts are singly sourced from Lear by VCUSA. After VCUSA and Lear entered into Framework Purchase Agreements outlining the basic framework of their contractual relationship, VCUSA issues Purchase Orders for the parts needed for the specific seat assembles to be ordered by VCUSA. VCUSA then issues call-offs, individual orders under those Purchase Orders, in order to satisfy VCUSA's "just-in-time, just in sequence" inventory management system. This has been the practice between VCUSA and Lear since the very beginning of their contractual relationship, and it is the industry-wide standard practice.

Lear has not only accepted this practice through its prior performance but through its acceptance of each and every Purchase Order issued by VCUSA for each of the Parts. Each time Lear accepted a new Purchase Order, it accepted this procedure for VCUSA's purchase of the Parts. Each Purchase Order states it is governed by the written agreement between VCUSA and Lear and the global terms set forth in VCUSA's Production material Global Terms and Conditions. According to the Contract, Lear is required to supply the Parts for the life of the relevant programs.

Pursuant to S.C. Code Ann. § 36-2-716 (2005), a buyer may obtain specific performance "where the goods are unique or in other proper circumstances." As noted in the official comments, "[t]he test for uniqueness under this section must be made in terms of the total situation which characterizes the contract." S.C. Code Ann. § 36-2-716 (2005), cmt. 2. "Output and requirements contracts involving a particular or peculiarly available source or market present today the typical commercial specific performance situation…" S.C. Code Ann. § 36-2-716 (2005), cmt. 2. In the

present case, specific performance is especially appropriate where the Parts constitute an array of assemblies with multiple variations. Additionally, there are a limited number of potential suppliers of these Parts. These parts have been engineered and tested to satisfy the design and safety standards required by VCUSA.

Lear is the sole supplier of the Parts to VCUSA. These are unique components that form a full assembly with multiple variations. They are not readily accessible from alternative suppliers. For these reasons, VCUSA is likely to succeed on the merits.

B. VCUSA will suffer irreparable harm if Lear is not required to immediately continue its supply of the Parts to VCUSA.

There can be little to no doubt that VCUSA will suffer irreparable harm if the Court does not grant a temporary restraining order at this stage of the proceedings. As part of a request for a temporary restraining order, a plaintiff must demonstrate that it would suffer irreparable harm if the injunction is not granted. *Scratch Golf Co. v. Dunes West Residential Golf Props.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). "The sole purpose of an injunction is to preserve the status quo to avoid potential irreparable injury to the aggrieved party pending litigation." *Levine v. Spartanburg Reg'l Svcs. Dist., Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005). Whether "a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules." *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939). There is no showing of irreparable harm if the losses are compensable by money damages. *MailSource, LLC v. M.A. Bailey & Assoc., Inc.*, 356 S.C. 363, 369-70, 588 S.E.2d 635, 639 (Ct. App. 2003) (finding the resulting loss of business from violation of a non-compete agreement to be calculable and not constitute irreparable injury); *see also Hodges v. Abraham*, 253 F.Supp.2d 846, 864 (D.S.C. 2002); *see also* Wright & Miller, *Federal Practice and Procedure*, 11A Fed. Prac. & Proc. Civ. 2d § 2948.1 (2008). Because the harm caused to VCUSA by Lear's refusal to ship the Parts pursuant to its contractual obligations extends beyond

simple economic losses, VCUSA will suffer irreparable harm in the event the Court does not enter the temporary restraining order requiring Lear to continue shipping the Parts to VCUSA, on contract terms.

Because VCUSA employs a "just-in-time, just in sequence" inventory management system, when Lear stopped shipping the Parts to VCUSA, there was sufficient inventory of the Parts on hand to sustain VCUSA's assembly line capacity for a very limited period of time. Once the limited inventory of the Parts on hand had been used, VCUSA had no choice but to shut down the entire assembly line at the Ridgeville facility, thereby causing catastrophic harm to VCUSA's supply and production chain. Under these assembly line circumstances, the failure of one supplier, such as Lear, to fulfill its contractual obligations timely and as needed causes a ripple effect and disrupts the entire supply chain. Unless the Court enters an order requiring Lear to continue shipping the Parts to VCUSA, this shutdown will continue.

Hundreds, if not thousands, of assembly line workers will be without work. VCUSA has exerted tremendous resources and efforts into building its assembly line workforce in order to increase production and expand its initial scope of production beyond the model S60 sedan. The continued shutdown will likely lead to the departure of some workers to other job opportunities because they simply cannot sit idly by and wait for the assembly line to restart. The likely loss of some of its workforce during the shutdown caused by Lear's refusal to adhere to its contractual obligations is an irreparable harm for which VCUSA cannot be compensated through monetary damages.

Further, unless the Court enters an order requiring Lear to continue shipping the Parts to VCUSA, VCUSA will have to find a replacement supplier. Given the nature of the Parts and the strict performance and safety standards these Parts must meet, VCUSA reasonably estimates that it would take approximately thirty-six (36) months to establish an adequate supply chain with a

replacement supplier. Such a delay would cause immeasurable economic consequences to VCUSA and could even threaten VCUSA's very existence. S*ee Levine v. Spartanburg Reg'l Svcs. Dist., Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005) (finding a doctor "would also lose competency in anesthesiology if she were unable to ply her trade as the lawsuit progressed … [s]uch inactivity could lead to the loss of her professional practice and career, which can be an irreparable harm."); *see also District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C. 2000) ("While economic loss does not, in and of itself, constitute irreparable harm, such harm will be found if economic loss threatens the very existence of [plaintiff's] business."). This type of delay would also cause catastrophic disruption in the automotive industry, both domestic and abroad, and lead existing and potential customers to purchase from competitors with available inventory.

The shutdown will already cause delays in the delivery of vehicles to VCUSA's customers, but the continued shutdown is likely to result in such significant delays that it will cause irreparable harm to VCUSA's goodwill and reputation in the automotive industry. South Carolina courts have upheld injunctive relief to prevent the loss of a business or business goodwill. *See Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450,454,626 S.E.2d 34, 36 (Ct. App. 2005); *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994) (citing *Merrill Lynch, Pierce, Fenner & Smith v. Bradley*, 756 F.2d 1048, 1055 (4th Cir. 1985)) ("the possibility of permanent loss of customers to a competitor or the loss of goodwill" may indicate the existence of irreparable harm). Other courts have also held that the "loss of customer goodwill often amounts to irreparable injury because the damages flowing from such losses are difficult to compute." *Basicomputer Corp. v. Scott*, 973 F.2d 507, 512 (6th Cir. 1992).

If Lear is free to not comply with its contractual obligations to supply the Parts to VCUSA at the times and in the quantities specified in the call-offs, the irreparable harm to VCUSA will

only increase with each passing day. While there will be economic losses likely in the tens, if not hundreds, of millions of dollars, there will be harm caused to VCUSA for which it cannot be compensated, including the likely loss of some of its existing workforce, delays of unknown length in the restoration of the assembly line to its current assembly capacity, delays of unknown length in the delivery of completed vehicles to its customers, and immeasurable damage to VCUSA's goodwill and reputation. The certainty and scope of immediate and irreparable harm that VCUSA will suffer without the temporary restraining order necessitates its entry. Without the temporary restraining order, the very existence of VCUSA could be threatened.

C. There is not an adequate remedy at law for VCUSA.

Because the continued shutdown of VCUSA's assembly line caused by Lear's refusal to timely ship the Parts in the quantities ordered by VCUSA will cause disruptions in VCUSA's workforce and damages VCUSA's goodwill, there is not an adequate remedy at law available to VCUSA, and it requires the entry of a temporary restraining order requiring Lear to continue shipping the Parts to VCUSA. Whether "a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules." Kirk v. Clark, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939). There is an adequate remedy at law when a plaintiff's damages are compensable through money damages. *See MailSource, LLC v. M.A. Bailey & Assoc., Inc.*, 356 S.C. 363, 369-70, 588 S.E.2d 635, 639 (Ct. App. 2003) (finding business losses as a result of a breach of a non-compete agreement not to be irreparable injuries for which there is no adequate remedy at law); *see also Hodges v. Abraham*, 253 F.Supp.2d 846, 864 (D.S.C. 2002); *see also* Wright & Miller, *Federal Practice and Procedure*, 11A Fed. Prac. & Proc. Civ. 2d § 2948.1 (2008). Further, purely economic injuries, such as lost profits or lost market share, are not subject to preliminary injunctive relief because monetary

damages provide an adequate remedy at law. *See Southtech Orthopedics, Inc. v. Dingus*, 428 F.Supp.2d 410, 418 (E.D.N.C. 2006).

As noted in the section above, monetary damages will be insufficient to compensate VCUSA if Lear is not required to ship the Parts to VCUSA at the times and in the quantities ordered by VCUSA. Absent a temporary restraining order requiring Lear to continue to ship the Parts to VCUSA, on contract terms, VCUSA will have to find a replacement supplier. However, in order to bring a replacement supplier that will produce the Parts to the specifications and standards required by VCUSA, it will take approximately thirty-six (36) months to establish an adequate supply chain with the replacement supplier. This is the very reason why, in the Terms, should Lear terminate the contractual relationship without cause that it had to provide at least fifteen (15) months notice to VCUSA "in order to secure an alternative and acceptable supplier of goods equivalent to the Goods to prevent suspension of Buyer's serial production." Such a delay threatens the very existence of VCUSA, not to mention the irreparable harm that would be caused to VCUSA's goodwill and reputation. No monetary measure could compensate VCUSA, and as a result, there is no adequate remedy at law.

D. The balance of harms favors granting emergency relief to VCUSA in order to restore its operations.

In contract to the irreparable harm to VCUSA if the temporary restraining order is not granted, ordering Lear to continue to supply the Parts as required by the Contracts will merely maintain the status quo and require Lear to do nothing more than what it is obligated to do under the Contracts. A temporary restraining order "should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." *Poynter Invs. v. Century Builders of Piedmont*, 387 S.C. 583, 586-87,

694 S.E.2d 15, 17 (2010); e.g., *AJG Holdings, LLC v. Dunn,* 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009) (internal citation omitted).

Lear cannot escape its contractual obligations and cannot argue that its continued performance of the Contracts is impossible due to the increased performance costs caused by tariffs on its component parts. "A party to a contract must perform its obligations under the contract unless its performance is rendered impossible by an act of God, the law, or by a third party." *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 593, 493 S.E.2d 875, 879 (Ct. App. 1997). "Impossibility must be real and not a mere inconvenience." *Id.* "A party to a contract cannot be excused from performance on the theory of impossibility of performance unless it is made to appear that the thing to be done cannot by any means be accomplished, for if it is only improbable or out of the power of the obligor, it is not deemed in law impossible." *Id.* (internal quotation marks and citation omitted). "A party claiming impossibility of performance has the burden of proving the defense." *Id.* "Subjective impossibility, possibility which is personal to the promisor and does not inhere in the nature of the act to be performed, does not excuse nonperformance of a contractual obligation." *Moon v. Jordan*, 301 S.C. 161, 164, 390 S.E.2d 488, 490 (Ct. App. 1990). "Accordingly, the fact that one is unable to perform a contract because of his inability to obtain money, whether due to his poverty, a financial panic, or failure of a third party on whom he relies for furnishing the money, will not ordinarily excuse nonperformance in the absence of a contract provision in that regard." *Id.* (citing 17 Am. Jur. 2d *Contracts* § 415 (1964)).

An increase in costs incurred by a supplier in the performance of a contract does not render the contract impossible to perform. To the extent Lear believes that the parties' Contracts require VCUSA to bear some of the increased costs caused by the tariffs, the appropriate remedy for Lear is a suit for monetary damages. In the event this Court enters the temporary restraining order and requires Lear to continue to perform under the Contracts, the only harm suffered by Lear would

be increased costs. On the other hand, in the event this Court does not enter the temporary restraining order, VCUSA will suffer irreparable damage, including, but not limited to, the continued shutdown of VCUSA's assembly line, the likely loss of some of its existing workforce, delays of unknown length in the restoration of the assembly line to its current assembly capacity, delays of unknown length in the delivery of completed vehicles to its customers, and immeasurable damage to VCUSA's goodwill and reputation. Thus, the balance of harms between the parties weighs strongly in favor of granting VCUSA's request for a temporary restraining order.

Further, the potential harm caused to innocent third parties weighs in favor of granting VCUSA's request for a temporary restraining order. Without it, VCUSA's assembly line at the Ridgeville facility will remain shutdown until such time as VCUSA finds a suitable replacement supplier. This shutdown would harm the assembly line workers at the Ridgeville facility and other suppliers of VCUSA who would not be receiving orders from VCUSA until the assembly line restarts, which could be more than thirty-six (36) months from now when VCUSA is able to bring a replacement supplier of the Parts fully onboard. In other words, unless the Court orders Lear to continue shipping the Parts to VCUSA, on contract terms, not only will VCUSA's Ridgeville facility remain shut down, but it is likely other suppliers and sub-suppliers of VCUSA will also be forced to shut down.

CONCLUSION

For the foregoing reasons as set forth in this Memorandum as well as the exhibits and affidavits attached hereto, VCUSA respectfully asks this Honorable Court to enter a Temporary Restraining Order, substantially in the form attached to the Motion, ordering Lear to immediately resume and continue shipping the Parts to VCUSA for ten (10) days or until such time as the Court can schedule a hearing on VCUSA's request for a preliminary injunction.

BARNWELL WHALEY PATTERSON & HELMS, LLC

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May 29, 2025
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