COMMONWEALTH OF KENTUCKY
DAVIESS CIRCUIT COURT
CIVIL ACTION NO. 24-CI-01426

MATTHEW HAYDEN, and ESTATE OF JACK T. WELLS,
individually and derivatively on behalf of
DAVIS AUTO GROUP, LLC PLAINTIFFS

v.

JERALD RAY DAVIS, JR., EQ BUSINESS SERVICES, LLC,
EQ GROUP REINSURANCE, INC. DEFENDANTS,

DAVIS AUTO GROUP, LLC NOMINAL DEFENDANT

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR TEMPORARY INJUNCTION

Plaintiffs Matthew Hayden ("Hayden") and Estate of Jack T. Wells (the "Estate"), individually and derivatively on behalf of Davis Auto Group, LLC ("Davis Auto"), respectfully move this court for a temporary injunction against Defendant Jerald Ray Davis, Jr. ("Davis") that (1) removes Davis as manager of Davis Auto, (2) enjoins Davis from acting on behalf of Davis Auto, and (3) expels Davis as a member of Davis Auto.

INTRODUCTION

Since June of 2020, Davis Auto has operated a Chrysler Dodge Jeep Ram ("Chrysler") auto dealership in Owensboro, Kentucky. As manager and the sole individual responsible for conducting the day-to-day business since the dealership's inception, Davis has left a wide trail of misconduct in his wake which threatens the very existence of Davis Auto going forward. Davis has gone behind the backs of Davis Auto's other members – who are the Plaintiffs in this action – to orchestrate self-dealing transactions, engage in unauthorized transactions, and divert business opportunities from the company. Moreover, he has recklessly failed to ensure that Davis Auto met its tax obligations, leaving the company exposed to hundreds of thousands of dollars in liability. Perhaps most egregiously, Davis has used Davis Auto as his personal wallet, having spent at least $300,000 on personal expenses wholly unrelated to Davis Auto's business activities. Plaintiffs therefore brought this action, individually and on behalf of Davis Auto, seeking to recover damages from Davis and to expel him as both a manager and member of Davis Auto, and to enjoin him from causing further damage to the business.

In light of Davis's gross and willful misconduct, Plaintiffs are entitled to temporary injunctive relief from this Court. First, Plaintiffs are likely to succeed on the merits of their claims that (1) Davis owed and breached a fiduciary duty to Hayden, the Estate, and Davis Auto; (2) Davis violated the duties of loyalty and care under K.R.S. § 275.170; (3) Davis breached the implied covenant of good faith and fair dealing with respect to the Operating Agreement; (4) Plaintiffs are entitled to a judicial order expelling Davis as a member of Davis Auto; and (5) Davis, EQ Business Services, LLC ("EQ Business"), and EQ Group Reinsurance, Inc. ("EQ Reinsurance") have been unjustly enriched at Davis Auto's expense. Second, Plaintiffs will be irreparably injured absent the extraordinary relief, because Davis Auto will suffer from continued exposure to liability if Davis continues to act as manager, and most critically, risks losing its dealership status. Third, the injunction sought here would not be inequitable if granted – Davis would remain an assignee of his membership interest in Davis Auto, and Davis Auto's business would carry on without interruption. Because all three factors weigh strongly in favor of relief, this Court should grant this Motion.

STATEMENT OF FACTS

In 2019, Hayden, Jack Wells ("Wells"), and Davis purchased a Chrysler Dodge Jeep Ram auto dealership from an existing operator in Owensboro, Kentucky; Davis Auto was formed to own and operate this newly-acquired dealership. (Exhibit 1 at ¶ 2). To fund Davis Auto's initial operations, Hayden and Wells each made capital contributions of $1,100,000, while Davis contributed $500,000. (Exhibit 1 at ¶ 2). Although Davis contributed substantially less capital, Davis received a 60% ownership interest in Davis Auto, while Hayden and Wells each received a 20% ownership interest. (Exhibit 1 at Exhibit A, Section 4.1). Hayden, Wells and Davis executed the "OPERATING AGREEMENT OF DAVIS AUTO GROUP LLC A KENTUCKY LIMITED LIABILITY COMPANY (Manager Governed)" (the "Operating Agreement") on February 24, 2020. (Exhibit 1 at Exhibit A). On June 3, 2020, Hayden, Wells, and Davis executed the "AMENDMENT TO OPERATING AGREEMENT" (the "Amendment"). (Exhibit 1 at ¶ 2). Wells died in August of 2020; the Estate has continued to own his membership units at all times following his passing. (Exhibit 1 at ¶ 2).

Because Hayden and Wells contributed a disproportionate amount of money compared to their ownership interests in Davis Auto, the Amendment provided that any profits allocated to Mr. Davis from the company's operations would first be paid to Hayden and Wells. (Exhibit 1 at ¶ 2). Hayden and Wells' capital accounts would then be reduced accordingly. (Exhibit 1 at ¶ 2). This profit distribution arrangement would continue until all three of the members' capital accounts were equalized. (Exhibit 1 at ¶ 2). However, prior to each profit distribution, each member would receive a payment referred to as a 'tax distribution' equal to each member's anticipated annual tax liability arising from his ownership interest in the company. (Exhibit 1 at ¶ 2).

The Operating Agreement named Davis as the initial manager of Davis Auto, and Davis has remained the sole manager of Davis Auto at all times following the execution of the Operating Agreement. (Exhibit 1 at Exhibit A, Section 2.1). Davis Auto's approved initial budget listed Davis's annual salary as manager at $156,000. (Exhibit 1 at ¶ 5). Although the Operating Agreement gives the manager considerable authority to conduct Davis Auto's day-to-day operations, it requires unanimous member consent for certain actions, including making expenditures in excess of $250,000 and borrowing money. (Exhibit 1 at Exhibit A, Section 3.3).

Davis Auto's monthly financial statements show that the company's gross sales increased in 2021 and 2022. (Exhibit 1 at ¶ 7). However, Hayden and Wells never received profit distributions for either year. (Exhibit 1 at ¶ 7). During this two-year period, Davis Auto's financial statements show an increase for the "Salaries – Owners and Officers" line item; this figure increased from $156,000 in 2020, to $314,590 in 2021, then to $410,916 in 2022. (Exhibit 1 at ¶ 7). Additionally, Davis's K-1 for 2023 shows that he received $711,690 in total compensation from Davis Auto. (Exhibit 1 at ¶ 7). For that same year, the "Salaries – Owners and Officers" line disclosed Davis's salary to be only $410,400. (Exhibit 1 at ¶ 7). Hayden and the Estate never approved a salary of $410,400, nor did they agree that the company would pay Davis an additional $301,290. (Exhibit 1 at ¶ 7).

Davis Auto's financial statement for August 2024 shows an entry for payroll tax liabilities in excess of $223,000. (Exhibit 1 at ¶ 12). When Hayden asked Davis about these liabilities, he issued a letter stating that (1) the company's previous controller failed to file payroll tax reports or pay the associated liability in two quarters of 2021, (2) that Davis learned about the liability in August 2024, and (3) that Davis had been working with the controller to resolve the issue. (Exhibit 1 at Exhibit D). Davis also stated that the company may owe the State of Kentucky for unpaid sales tax for the year 2021. (Exhibit 1 at ¶ 12). Before issuing the letter, Davis had never disclosed anything to Hayden about tax liabilities that had existed for more than three years. (Exhibit 1 at ¶ 12). Additionally, over $12,000 in penalties have been assessed against Davis Auto for failure to timely pay its taxes. (Exhibit 1 at Exhibit D).

Davis Auto's financial statements further reveal that Davis has used company funds to pay for personal expenses. (Exhibit 1 at ¶ 13). For example, in November 2022, Davis began living in a residential condominium located at 101 Frederica Street, Unit 202, Owensboro, Kentucky. (Exhibit 1 at ¶ 13). Davis paid the condominium's rent and association fees with Davis Auto funds. (Exhibit 1 at ¶ 13). The condominium was used only by Davis, his child, and his dog. (Exhibit 1 at ¶ 13). Additionally, statements for Davis Auto's American Express credit card and excerpts from Davis Auto's general ledger reveal several personal expenses, such as:

- $67,000 for the jewelry store, Tiffany & Co.
- Over $100,000 for airline tickets, cruise tickets, hotel reservations, and meals at locations where no auto-related professional conferences were being held at the time
- Over $20,000 for tickets to concerts and sporting events
- Meals at restaurants in Owensboro on a near-daily basis
- Hundreds of dollars at the lingerie store, Victoria's Secret
- Hundreds of dollars at cosmetics stores
- House cleaning expenses for Mr. Davis's residence
- Weekly dry cleaning
- The purchase of a dog and training services for that dog
- Nightclub tabs, sometimes exceeding $11,000 in one night
- Spa treatments
- A personalized poker table.

(Exhibit 1 at ¶ 14).

Additionally, on one occasion Davis chartered a private plane to travel with his girlfriend to Nashville, Tennessee. (Exhibit 1 at ¶ 15). Hayden asked Davis whether Davis Auto funds were used to pay for this trip or other trips; Davis stated that company funds were used for the Nashville trip and that Davis later reimbursed Davis Auto for the amount paid. (Exhibit 1 at ¶ 15). Neither Hayden nor the Estate approved the use of Davis Auto funds for this expense. (Exhibit 1 at ¶ 15).

It is unclear whether Davis Auto actually was reimbursed for this expense. (Exhibit 1 at ¶ 15).

On August 31, 2021, Davis arranged for Davis Auto to borrow $484,000 from German American Bank. (Exhibit 1 at Exhibit C). Hayden and the Estate never consented to this loan. (Exhibit 1 at ¶ 11). Rather, Davis independently negotiated the loan and signed all loan documents. (Exhibit 1 at ¶ 11). The loan granted German American Bank a security interest in all of Davis Auto's property. (Exhibit 1 at ¶ 11).

Davis explained to Hayden that in addition to selling vehicles and offering maintenance services, Davis Auto received revenue from the sale of extra warranties and gap insurance and from arranging indirect financing on vehicle purchases. (Exhibit 1 at ¶ 6). Davis consistently stated that the company was "all in on these things." (Exhibit 1 at ¶ 6). Although Davis Auto may receive some portion of the money that customers pay for the sale of warranties, gap insurance, and financial services, a large portion of that money goes to Davis or a company he owns, named EQ Reinsurance. (Exhibit 1 at ¶ 10). Indeed, Davis – or EQ Reinsurance – has received over $1,000,000 in financial compensation for such services. Davis never disclosed this arrangement to Hayden or the Estate. (Exhibit 1 at ¶ 10).

EQ Business is an entity solely owned by Davis. (Exhibit 1 at ¶ 9). In exchange for rental payments, EQ Business leased equipment to Davis Auto. (Exhibit 1 at ¶ 9). Davis never disclosed this leasing arrangement to Hayden or the Estate. (Exhibit 1 at ¶ 9). Additionally, EQ Business receives a $200 "commission" payment from Davis Auto for each vehicle Davis Auto sells. Davis likewise failed to disclose this arrangement to Hayden or the Estate. (Exhibit 1 at ¶ 9). Davis never offered Hayden or the Estate an opportunity to participate in EQ Business's commission business. (Exhibit 1 at ¶ 9).

Davis is involved in a romantic relationship with a Davis Auto employee. (Exhibit 1 at ¶

17). This employee has accompanied Davis on trips paid for with Davis Auto funds. (Exhibit 1 at ¶ 17). Davis has also been involved in at least one other romantic relationship with a Davis Auto employee. (Exhibit 1 at ¶ 17). As manager of Davis Auto, Davis has supervisory authority over all the company's employees. (Exhibit 1 at Exhibit A, Section 2.3).

Hayden recently discovered that Davis was previously convicted of numerous felonies, including theft by deception and forgery in Jessamine County, Kentucky and Fayette County, Kentucky, in 1993, 1997, 2001 and 2002. (Exhibit 1 at ¶ 16). Davis never disclosed his criminal history to Hayden or the Wells Estate. (Exhibit 1 at ¶ 16). If Hayden knew of Davis's criminal history, he never would have agreed to form a business with Davis or entrust him with managing his multi-million dollar investment. (Exhibit 1 at ¶ 16).

The most recent financial statement from Davis Auto shows that Davis Auto's working capital was $656,122 – an approximately $600,000 shortfall from Chrysler's recommended level of $1,287,377. (Exhibit 1 at ¶ 18). Davis Auto is at risk of losing its status with Chrysler if it continues to be noncompliant with Chrysler's dealership standards. (Exhibit 1 at ¶ 18).

ARGUMENT

I. Plaintiffs are Entitled to Injunctive Relief.

Rule 65.04(1) of the Kentucky Rules of Civil Procedure sets forth the framework for granting injunctions:

> A temporary injunction may be granted during the pendency of an action on motion if it is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.

Under this rule, a circuit court may grant injunctive relief when it finds "(1) that the movant's position presents 'a substantial question' on the underlying merits of the case, i.e. that there is a substantial possibility that the movant will ultimately prevail; (2) that the movant's remedy will be irreparably impaired absent the extraordinary relief; and (3) that an injunction will not be inequitable, i.e. will not unduly harm other parties or disserve the public." *SM Newco Paducah, LLC v. Kentucky Oaks Mall Company*, 499 S.W.3d 275, 278 (Ky. 2016).

Here, each of these factors weighs in favor of injunctive relief.

A. Plaintiffs' position presents a substantial question on the underlying merits of the case, i.e. there is a substantial possibility Plaintiffs will ultimately prevail.

Both the law and the facts overwhelmingly support Plaintiffs' action, showing much more than the required substantial likelihood of success for at least one claim. To support a temporary injunction, one must show that a substantial question exists that "tends to create a substantial possibility" that the movant will ultimately prevail on the merits. *Norsworthy v. Kentucky Bd. of Medical Licensure*, 330 S.W.3d 58, 63 (Ky. 2009).

1. Plaintiffs will likely succeed on their claim for breach of fiduciary duty.

To establish a claim of breach of fiduciary duty, a plaintiff must establish: (1) the existence of a fiduciary duty, (2) a breach of that duty, (3) and that the breach caused injury to the party to whom the duty was owed. *Seeger Enterprises, Inc. v. Town & Country Bank and Trust Company*, 518 S.W.3d 791, 795 (Ky. Ct. App. 2017). A fiduciary duty "… exists in all cases where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 485 (Ky. 1991) (quoting *Security Trust Co. v. Wilson*, 307 Ky. 152, 157 (Ky. Ct. App. 1948). As a result, the manager of a limited liability company owes a common-law fiduciary duty to the company. *Patmon v. Hobbs*, 280 S.W.3d 589, 593-594 (Ky. Ct. App. 2009). Additionally, the manager owes a fiduciary duty of good faith to the other members of the company. *Id.* at 595.

As the sole manager of Davis Auto, Davis has owed a fiduciary duty to the company and its members since the parties' execution of the Operating Agreement and the company's inception. Accordingly, Davis was at all relevant times charged with acting in good faith and with due regard to the interests of Davis Auto, as well as its members. Davis's conduct as manager of Davis Auto has fallen below this standard on several occasions.

EQ Business's "commission" arrangement with Davis Auto is an example of one such instance. As the sole owner of EQ Business and the sole manager of Davis Auto, Davis sat on both sides of each commission payment that Davis Auto made to EQ Business, a circumstance that neither Hayden nor the Estate were aware of. Indeed, neither Hayden nor the Estate knew anything about the 'commission' arrangement at all. In effect, then, Davis bled money from Davis Auto through sham 'commission' payments while Hayden and the Estate were left in the dark. Davis Auto gained nothing in return for these "commissions." Thus, Davis's conduct as manager regarding the commission scheme amounts to self-dealing, and he thereby breached his fiduciary duty to Davis Auto. And because Davis Auto lost money with each transaction while receiving nothing in return, the company was injured by Davis's self-dealing.

Davis's equipment-lease, financial services and warranty-sale arrangements likewise breached his fiduciary duty. Davis never disclosed the equipment-lease arrangement to Hayden or the Estate. Nor did Davis inform Hayden or the Estate that Davis – or a company owned solely by him – received what were essentially kickbacks from the sale of warranties and other financial services to Davis Auto customers. Davis's failure to disclose the true nature of these arrangements, all while directly benefiting from them, amounts to bad faith, and is therefore a breach of his fiduciary duty to Davis Auto and its members. And because of these arrangements, Davis Auto has lost out on a significant chunk of revenue – over $1,000,000 during the past four years. (Exhibit

1 at ¶ 10).

Davis Auto's $484,000 loan from German American Bank, which Davis independently negotiated and obtained without the consent from either Hayden or the Estate, as required by the Operating Agreement, and which subjected all of Davis Auto's property to a security interest in favor of the bank, also breached Davis's fiduciary duty to Davis Auto and its members. As a result of the loan, Davis Auto became exposed to substantially more liability than it otherwise would have been.

Perhaps the most blatant managerial misconduct is Davis's misappropriation of Davis Auto funds. In spending over $300,000 of company funds on such items as jewelry, nightclub tabs, private plane charters and personal travel expenses, Davis essentially has abused his power as manager by using the company as his personal checking account to draw from at a whim. Davis Auto derived no benefit from these transactions. Through such use of company funds, Davis breached his fiduciary duty to Davis Auto, and Davis Auto suffered losses north of $300,000.

2. Plaintiffs will likely succeed on their claim that Davis violated K.R.S. § 275.170.

K.R.S. § 275.170 imposes a statutory fiduciary duty on the manager of a limited liability company. Specifically, the statute provides that a limited liability company's manager owes a duty of loyalty and a duty of care to the company. *Id.* Regarding a manager's duty of care, the statute sets forth the following standard:

> With respect to any claim for breach of the duty of care, a member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless the act or omission constitutes wanton or reckless misconduct.

Id.

As manager of Davis Auto, Davis was responsible for ensuring the company met all of its tax obligations. His failure to ensure that Davis Auto timely met its tax obligations has left the company owing more than $220,000 owed in payroll taxes and over $12,000 in penalties. (Exhibit 1 at Exhibit D). Despite these tax liabilities being nearly three years old, Davis never informed Hayden about them until 2024. A payroll tax liability for such an amount can only result from wanton or reckless mismanagement, given the relatively small number of employees at Davis Auto and those employees' total wages. Thus, Davis's failure to ensure that Davis Auto timely met all its tax obligations constitutes a breach of his duty of care as manager of the company.

Under § 275.170's duty of loyalty, each manager must "account to the limited liability company and hold as trustee for it any profit or benefit derived by that person without the consent of… a majority-in-interest of the members…" when such profit or benefit is from the manager's use of company property. *Id.* Company property for this purpose includes "confidential or proprietary information of the limited liability company or other matters entrusted to the person as a result of his or her status as manager…" *Id.* Importantly, on the issue of member consent, the statute provides that:

> In determining whether a transaction has received the approval of a majority-in-interest of the members, membership interests owned by or voted under the control of the member or manager whose actions are under review in accordance with subsection (2) of this section, and membership interests owned by an entity owned by or voted under the control of that member or manager, <u>shall not be counted</u> in a vote of the members to determine whether to consent, and the membership interests shall not be counted in determining whether a quorum, if required by a written operating agreement, exists to consider whether to consent.

Id. (emphasis added).

Davis has spent over $300,000 of Davis Auto's funds on purely personal items. Neither Hayden nor the Estate – the only other members of Davis Auto – consented to Davis's use of company funds for his personal expenses. By using company property to make transactions that only benefitted himself, and by doing so without the consent of any other member of the company, Davis breached his duty of loyalty under § 275.170. All the while, Davis continued to pay himself a higher and higher salary, without the consent of Plaintiffs, and despite Plaintiffs having never received profit distributions reflective of the increased gross sales.

Similarly, Davis's use of EQ Business to obtain 'commissions' from Davis Auto, without the consent of Hayden or the Estate, constitutes a breach of his duty of loyalty as manager of Davis Auto. Davis benefitted from these transactions at Davis Auto's expense.

3. Plaintiffs will likely succeed on their claim that Davis breached the implied covenant of good faith and fair dealing.

Within every contract, there is an implied covenant of good faith and fair dealing. *Farmers Bank and Trust Co. of Georgetown, Kentucky v. Willmott Hardwoods, Inc.*, 171 S.W.3d 4, 11 (Ky. 2005). Good faith performance of a contract "emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party." *Bank of America, N.A. v. Corporex Realty & Inv., LLC,* 875 F.Supp.2d 689, 699-700 (E.D. KY June 19, 2012); *see also* Restatement (Second) of Contracts, § 205.

The Operating Agreement, which is an enforceable contract under Kentucky law, made Davis the sole manager of the company. Hayden and the Estate made Davis the manager of Davis Auto because they trusted that he would manage the business in good faith, and would act in the best interests of the Davis Auto and its owners. Davis has not only committed express breaches of the Operating Agreement— the unauthorized loan from German American Bank as one example— he has completely disregarded its common purpose and the justified expectations of Plaintiffs through his gross misconduct discussed herein. Accordingly, it is more than likely that Plaintiffs will succeed on this claim.

4. Plaintiffs will likely succeed on their claim for expulsion of Davis as member of Davis Auto.

Pursuant to K.R.S. § 275.172, Davis can be expelled from Davis Auto by judicial order if Plaintiffs can show any of the following:

1. Davis has engaged or is engaging in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, Davis Auto's activities;
2. Davis has willfully and persistently committed, or is willfully and persistently committing, a breach of the Operating Agreement or his duties or obligations under K.R.S. § 275.170; or
3. Davis has engaged or is engaging in conduct relating to Davis Auto's activities which makes it not reasonably practicable to carry on the activities with Davis as member.

Here, Plaintiffs can demonstrate each of the above conditions.

As outlined throughout, Davis's self-dealing, ignoring conflicts of interests, failure to pay taxes on behalf of Davis Auto, and using the company as his personal wallet is the exact type of wrongful conduct adversely and materially affecting Davis Auto that is contemplated by the statute. For these same reasons, and as also discussed in the previous sections, Davis is in breach of the Operating Agreement and obligations under K.R.S. § 275.170. Finally, Davis's misconduct is directly related to Davis Auto's activities, and it is not reasonably practicable for Davis Auto to carry on such activities so long as Davis maintains his majority ownership stake.

5. Plaintiffs will likely succeed on their claim for unjust enrichment.

For a party to prevail under the theory of unjust enrichment, it must prove three elements: (1) a benefit conferred upon the defendant at the plaintiff's expense; (2) a resulting appreciation of benefit by the defendant; and (3) inequitable retention of benefit without payment for its value."

Superior Steel, Inc. v. Ascent at Roebling's Bridge, LLC, 540 S.W.3d 770, 778-779 (Ky. 2017).

Here, Davis's use of EQ Business – an entity he solely owns – to extract $200 'commissions' from Davis Auto directly benefited Davis at Davis Auto's expense. Davis undoubtedly appreciated a benefit receiving an extra $200 for each vehicle sold by the dealership he manages. And letting Davis continue receiving $200 'commission' payments directly or through EQ Business would be inequitable, because neither Hayden nor the Estate agreed to such an arrangement, and Davis never offered Hayden or the Estate an opportunity to participate in EQ Business's business.

Davis's equipment-lease, financial services and warranty-sale schemes also benefitted Davis at the expense of Davis Auto, as a substantial amount of revenue that could otherwise have gone to Davis Auto instead went into Davis's pockets (i.e., either to Davis himself or a company owned solely by him). Davis knew of this arrangement and appreciated receiving the revenue, all while hiding it from the other members of Davis Auto and failing to receive their consent. Thus, letting Davis – or EQ Business – retain the benefit of the revenue it received from the equipment leasing and financial services schemes would be inequitable. Davis should not be allowed to do an end-run-around the other members of Davis Auto to put extra money in his own pocket. Finally, and most obviously, Davis's use of Davis Auto funds for his personal benefit constitutes blatant unjust enrichment.

B. Plaintiffs will suffer irreparable injury absent injunctive relief.

Plaintiffs will suffer irreparable injury absent the requested injunctive relief, because Davis's gross misconduct has placed Davis Auto's status with Chrysler in jeopardy. After multiple requests, Davis finally provided the September 2024 financial statement for Davis Auto on October 25, 2024. Therein, it was revealed that Davis Auto's working capital was approximately

$600,000 short of the level recommended by Chrysler. (Exhibit 1 at ¶ 18). In doing so, Davis has placed Davis Auto out of compliance with the dealership standards that Davis Auto is obligated to uphold, thereby placing Davis Auto in serious risk of losing its dealership status. Obviously, monetary relief cannot cure the injury of a business entity formed for the purpose of operating a car dealership, no longer being able to conduct such business. As a result, it is crucial that the requested relief be afforded, so that Davis is no longer in a position to jeopardize Davis Auto's dealership status. If Davis is not removed as manager and enjoined from acting on Davis Auto's behalf, the almost certain consequence will be the revocation of Davis Auto's dealership status.

Even if the risk to Davis Auto's dealership status was not sufficient to establish irreparable injury, Davis's waste of corporate assets has been conducted in such a manner that unless he is enjoined from causing further damage, Plaintiffs have no hope of being made whole through a monetary judgment. As outlined above and in the statement of facts, Davis is not simply taking money from Davis Auto and placing it in a personal bank account. Rather, Davis Auto funds are being depleted and directed to a number of sources including travel expenses, tickets to concerts and sporting events, meals, cosmetics, and personal services. In addition, Davis Auto funds are being directed to sham "employees" in the form of wages for positions that do not merit the level of compensation being provided. If further scattering of Davis Auto funds is not enjoined, any monetary judgment rendered at the conclusion of what could be a lengthy and complex litigation has little hope of making Plaintiffs whole.

C. An injunction will not unduly harm other parties or disserve the public.

The Kentucky Court of Appeals has stated that, because injunctions are extraordinary remedies, the "sufficiency of the evidence must be evaluated in light of both substantive and equitable principles." *Maupin v. Stansbury*, 575 S.W.2d 695, 697 (1978). The requested relief is not inequitable, because removing Davis as manager and member and enjoining him from taking further action on behalf of Davis Auto would protect, not injure, other parties, and such relief would serve the public interest of ensuring that corporate formalities are respected and adhered to and that fiduciaries are held accountable for their willful misconduct. *See SM Newco Paducah, LLC*, 499 S.W.3d at 278.

Moreover, in the event the requested relief is granted, Plaintiffs remain ready, willing, and able to step in and ensure that the business activities of Davis Auto continue without interruption.

Finally, removal of Davis as member of Davis Auto pursuant to K.R.S. § 275.172 would not injure Davis, as he would remain an assignee of his ownership interest in Davis Auto. *See* K.R.S. § 275.172(2); K.R.S. § 275.255.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter a temporary injunction: (1) removing Davis as manager of Davis Auto; (2) enjoining Davis from acting on behalf of Davis Auto; and (3) expelling Davis as a member of Davis Auto, and all other relief just and proper in the premises.

Respectfully submitted,

Ziemer, Stayman, Weitzel & Shoulders, LLP

By: /s/ *Karey L. Cain*

Karey L. Cain, KBA No. 91987
20 N.W. First Street - 9th Floor
P.O. Box 916
Evansville, Indiana 47706-0916
Tel. No. (812) 424-7575
Fax No. (812) 421-5089
kcain@zsws.com
Attorneys for Plaintiffs