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COMMONWEALTH OF KENTUCKY
DAVIESS CIRCUIT COURT, DIVISION I
CIVIL ACTION NO. 24-CI-01426
Electronically Filed

OWENSBOROTIMES

MATTHEW HAYDEN
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

**ANSWER OF DEFENDANTS JERALD RAY DAVIS, JR.,
EQ BUSINESS SERVICES, LLC, AND EQ GROUP REINSURANCE, INC.**

Defendants Jerald Ray Davis, Jr. ("Davis"), EQ Business Services, LLC ("EQ Business"),
and EQ Group Reinsurance, Inc. ("EQ Reinsurance") (collectively, the "Answering Defendants"),
state as follows for their Answer to Plaintiffs' Complaint:

FIRST DEFENSE

Parties

1. Answering Defendants admit the allegations in Paragraph 1 of Plaintiffs' Complaint.
2. Answering Defendants lack sufficient knowledge to admit or deny the allegations set forth in Paragraph 2 of Plaintiffs' Complaint, and therefore deny same.
3. Answering Defendants lack sufficient knowledge to admit or deny the allegations set forth in Paragraph 3 of Plaintiffs' Complaint, and therefore deny same.
4. Answering Defendants admit the allegations set forth in Paragraph 4 of Plaintiffs' Complaint.

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5. Answering Defendants admit the allegations set forth in Paragraph 5 of Plaintiffs' Complaint.

6. Answering Defendants admit the allegations set forth in Paragraph 6 of Plaintiffs' Complaint.

7. Answering Defendants admit the allegations set forth in Paragraph 7 of Plaintiffs' Complaint.

8. Answering Defendants admit the allegations set forth in Paragraph 8 of Plaintiffs' Complaint.

9. Answering Defendants admit the allegations set forth in Paragraph 9 of Plaintiffs' Complaint.

10. Answering Defendants admit the allegations set forth in Paragraph 10 of Plaintiffs' Complaint.

11. Answering Defendants admit the allegations set forth in Paragraph 11 of Plaintiffs' Complaint.

12. Answering Defendants deny the allegations set forth in Paragraph 12 of Plaintiffs' Complaint.

13. Answering Defendants admit the allegations set forth in Paragraph 13 of Plaintiffs' Complaint.

Jurisdiction and Venue

14. Paragraph 14 of Plaintiffs' Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Answering Defendants deny the allegations set forth in Paragraph 14.

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15. Paragraph 15 of Plaintiffs' Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Answering Defendants deny the allegations set forth in Paragraph 14

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Factual Allegations

Formation of Davis Auto

16. Answering Defendants admit the allegations set forth in Paragraph 16 of Plaintiffs' Complaint.

17. As to the allegations set forth in Paragraph 17 of Plaintiffs' Complaint, Answering Defendants admit that Hayden, Davis, and Wells signed an operating agreement date February 24, 2024 related to Davis Auto Group, LLC.

18. Paragraph 18 of Plaintiffs' Complaint contains no factual allegations requiring a response. To the extent a response is required, Answering Defendants deny that Exhibit A is a true and accurate copy of the Original Operating Agreement. Rather, it purports to be an Operating Agreement of OWB CDP, LLC.

19. Regarding the allegations set forth in Paragraph 19 of Plaintiffs' Complaint, Answering Defendants admit that the Original Operating Agreement purports to make Davis, Hayden, and Wells members of Davis Auto, but deny that Hayden and Wells ever became members of Davis Auto due to their respective failures to make certain capital contributions as required by the Operating Agreement.

20. Answering Defendants admit the allegations set forth in Paragraph 20 of Plaintiffs' Complaint.

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21. Paragraph 21 of Plaintiffs' Complaint contains no factual allegations requiring a response. To the extent a response is required, Answering Defendants admit Exhibit B is a true and accurate copy of the Buy-Sell Agreement.

22. Without admitting the enforceability of the "Amendment to Operating Agreement," which is expressly denied, answering Defendants admit the allegations set forth in Paragraph 22 of Plaintiffs' Complaint.

23. Paragraph 23 of Plaintiffs' Complaint contains no factual allegations requiring a response. To the extent a response is required, Answering Defendants admit Exhibit C is a true and accurate copy of the Operating Agreement Amendment, and deny the enforceability of same.

24. Answering Defendants deny the allegations set forth in Paragraph 24 of Plaintiffs' Complaint. Hayden breached the original Operating Agreement from the outset by failing to make the requisite initial capital contribution.

25. Answering Defendants deny the allegations set forth in Paragraph 25 of Plaintiffs' Complaint.

26. Answering Defendants deny the allegations set forth in Paragraph 26 of Plaintiffs' Complaint.

27. Answering Defendants admit the allegations set forth in Paragraph 27 of Plaintiffs' Complaint.

28. Answering Defendants admit the allegations set forth in Paragraph 28 of Plaintiffs' Complaint.

29. Answering Defendants admit the allegations set forth in Paragraph 29 of Plaintiffs' Complaint.

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30. Answering Defendants deny the allegations set forth in Paragraph 30 of Plaintiffs' Complaint, as the Operating Agreement and Amendment speak for themselves.

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31. Answering Defendants admit the allegations set forth in Paragraph 31 of Plaintiffs' Complaint.

32. Answering Defendants deny the allegations set forth in Paragraph 32 of Plaintiffs' Complaint, as Hayden breached the terms of the Original Operating Agreement.

33. Answering Defendants deny the allegations set forth in Paragraph 33 of Plaintiffs' Complaint.

34. Answering Defendants admit the allegations set forth in Paragraph 34 of Plaintiffs' Complaint.

Failure to Pay Taxes

35. Answering Defendants deny the allegations set forth in Paragraph 35 of Plaintiffs' Complaint.

36. Answering Defendants deny the allegations set forth in Paragraph 36 of Plaintiffs' Complaint.

37. Answering Defendants deny the allegations set forth in Paragraph 37 of Plaintiffs' Complaint.

EQ Reinsurance

38. Answering Defendants admit the allegations set forth in Paragraph 38 of Plaintiffs' Complaint.

39. Answering Defendants admit the allegations set forth in Paragraph 39 of Plaintiffs' Complaint.

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40. Answering Defendants admit the allegations set forth in Paragraph 40 of Plaintiffs' Complaint.

41. Answering Defendants admit the allegations set forth in Paragraph 41 of Plaintiffs' Complaint.

42. Answering Defendants admit the allegations set forth in Paragraph 42 of Plaintiffs' Complaint.

43. Regarding the allegations set forth in Paragraph 43 of Plaintiffs' Complaint, EQ Reinsurance received compensation from Davis Auto for services provided, and for which Davis Auto was unable to perform directly.

44. Answering Defendants deny the allegations set forth in Paragraph 44 of Plaintiffs' Complaint.

45. Answering Defendants deny the allegations set forth in Paragraph 45 of Plaintiffs' Complaint.

EQ Business

46. Answering Defendants admit the allegations set forth in Paragraph 46 of Plaintiffs' Complaint.

47. Answering Defendants admit the allegations set forth in Paragraph 47 of Plaintiffs' Complaint.

48. Answering Defendants admit the allegations set forth in Paragraph 48 of Plaintiffs' Complaint.

49. Answering Defendants admit the allegations set forth in Paragraph 49 of Plaintiffs' Complaint.

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50. Answering Defendants admit the allegations set forth in Paragraph 50 of Plaintiffs' Complaint.

51. Regarding the allegations set forth in Paragraph 51 of Plaintiffs' Complaint, EQ Reinsurance received compensation from Davis Auto for services provided, and for which Davis Auto was unable to perform directly.

52. Answering Defendants deny the allegations set forth in Paragraph 52 of Plaintiffs' Complaint.

53. Answering Defendants deny the allegations set forth in Paragraph 53 of Plaintiffs' Complaint.

Self-Dealing

54. Answering Defendants deny the allegations set forth in Paragraph 54 of Plaintiffs' Complaint.

55. Answering Defendants deny the allegations set forth in Paragraph 55 of Plaintiffs' Complaint.

56. Answering Defendants deny the allegations set forth in Paragraph 56 of Plaintiffs' Complaint.

Request for Records and Information

57. Answering Defendants deny the allegations set forth in Paragraph 57 of Plaintiffs' Complaint, as the referenced correspondence speaks for itself.

58. Paragraph 58 of Plaintiffs' Complaint contains no factual allegations requiring a response. To the extent a response is required, Answering Defendants lack sufficient knowledge to admit or deny whether Exhibit D is a true and accurate copy of the "June 6 Correspondence," and therefore deny same.

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59. Answering Defendants deny the allegations set forth in Paragraph 59 of Plaintiff's Complaint, as the referenced correspondence speaks for itself.

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60. Paragraph 60 of Plaintiffs' Complaint contains no factual allegations requiring a response. To the extent a response is required, Answering Defendants lack sufficient knowledge to admit or deny whether Exhibit E is a true and accurate copy of the "July 5 Correspondence," and therefore deny same.

61. Answering Defendants deny the allegations set forth in Paragraph 61 of Plaintiffs' Complaint.

62. Answering Defendants deny the allegations set forth in Paragraph 62 of Plaintiffs' Complaint.

63. Answering Defendants admit the allegations set forth in Paragraph 63 of Plaintiffs' Complaint.

64. Answering Defendants deny the allegations set forth in Paragraph 64 of Plaintiffs' Complaint, as the referenced correspondence speaks for itself.

65. Paragraph 65 of Plaintiffs' Complaint contains no factual allegations requiring a response. To the extent a response is required, Answering Defendants lack sufficient knowledge to admit or deny whether Exhibit F is a true and accurate copy of the "October 9 Records Correspondence," and therefore deny same.

66. Answering Defendants deny the allegations set forth in Paragraph 66 of Plaintiffs' Complaint, as the referenced correspondence speaks for itself.

67. Paragraph 67 of Plaintiffs' Complaint contains no factual allegations requiring a response. To the extent a response is required, Answering Defendants lack sufficient knowledge

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to admit or deny whether Exhibit G to the Complaint is a true and accurate copy of the “October 9 Tax Correspondence,” and therefore deny same.

68. Answering Defendants admit the allegations set forth in Paragraph 68 of Plaintiffs’ Complaint.

69. Paragraph 69 of Plaintiffs’ Complaint contains no factual allegations requiring a response. To the extent a response is required, Answering Defendants lack sufficient knowledge to admit or deny whether Exhibit H to the Complaint is a true and accurate copy of the “Davis October 18 Tax Correspondence,” and therefore deny same.

70. Answering Defendants deny the allegations set forth in Paragraph 70 of Plaintiffs’ Complaint, as the referenced correspondence speaks for itself.

71. Answering Defendants deny the allegations set forth in Paragraph 71 of Plaintiffs’ Complaint.

Derivative and Demand Futility Allegations

72. Paragraph 72 of Plaintiffs’ Complaint states legal conclusions, to which no responses are required. To the extent responses are required, Answering Defendants deny the allegations set forth in Paragraph 72.

73. Answering Defendants deny the allegations set forth in Paragraph 73 of Plaintiffs’ Complaint.

74. Answering Defendants deny the allegations set forth in Paragraph 74 of Plaintiffs’ Complaint, and specifically deny that Davis has engaged in any wrongful course of conduct as alleged by Plaintiffs.

75. Answering Defendants deny the allegations set forth in Paragraph 75 of Plaintiffs’ Complaint, as the Original Operating Agreement and Amendment speak for themselves.

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76. Answering Defendants deny the allegations set forth in Paragraph 76 of the Plaintiffs' Complaint.

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Causes of Action

Count I – Breach of Fiduciary Duties

77. Answering Defendants adopt and incorporate their responses to the foregoing paragraphs of this Answer as if fully restated herein.

78. Paragraph 78 of Plaintiffs' Complaint states legal conclusions, to which no responses are required. To the extent responses are required, Answering Defendants deny the allegations set forth in Paragraph 78.

79. Paragraph 79 of Plaintiffs' Complaint states legal conclusions, to which no responses are required. To the extent responses are required, Answering Defendants deny the allegations set forth in Paragraph 79.

80. Answering Defendants deny the allegations set forth in Paragraph 80 of Plaintiffs' Complaint.

81. Answering Defendants deny the allegations set forth in Paragraph 81 of Plaintiffs' Complaint.

Count II – Breach of K.R.S. § 275.170

82. Answering Defendants adopt and incorporate their responses to the foregoing paragraphs of this Answer as if fully restated herein.

83. Paragraph 83 of Plaintiffs' Complaint states legal conclusions, to which no responses are required. To the extent responses are required, Answering Defendants deny the allegations set forth in Paragraph 83.

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84. Answering Defendants deny the allegations set forth in Paragraph 84 of Plaintiffs' Complaint.

85. Answering Defendants deny the allegations set forth in Paragraph 85 of Plaintiffs' Complaint.

Count III – Breach Covenant of Good Faith and Fair Dealing

86. Answering Defendants adopt and incorporate their responses to the foregoing paragraphs of this Answer as if fully restated herein.

87. Paragraph 87 of Plaintiffs' Complaint states legal conclusions, to which no responses are required. To the extent responses are required, Answering Defendants deny the allegations set forth in Paragraph 87.

88. Answering Defendants deny the allegations set forth in Paragraph 88 of Plaintiffs' Complaint.

89. Answering Defendants deny the allegations set forth in Paragraph 89 of Plaintiffs' Complaint.

Count IV – Expulsion of Member of Limited Liability Davis Auto

90. Answering Defendants adopt and incorporate their responses to the foregoing paragraphs of this Answer as if fully restated herein.

91. Answering Defendants deny the allegations set forth in Paragraph 91 of Plaintiffs' Complaint.

92. Answering Defendants deny the allegations set forth in Paragraph 92 of Plaintiffs' Complaint.

93. Answering Defendants deny the allegations set forth in Paragraph 93 of Plaintiffs' Complaint.

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94. Paragraph 94 of Plaintiffs' Complaint contains no factual allegations requiring a response. To the extent a response is required, Answering Defendants deny Plaintiffs are entitled to the relief requested in Paragraph 94.

Count VI – Unjust Enrichment

95. Answering Defendants adopt and incorporate their responses to the foregoing paragraphs of this Answer as if fully restated herein.

96. Answering Defendants deny the allegations set forth in Paragraph 96 of Plaintiffs' Complaint.

97. Answering Defendants deny the allegations set forth in Paragraph 97 of Plaintiffs' Complaint.

98. Answering Defendants deny the allegations set forth in Paragraph 98 of Plaintiffs' Complaint.

99. Answering Defendants deny Plaintiffs are entitled to any of the relief sought in the prayer of their Complaint, either individually or in their capacity as a shareholder derivative representatives on behalf of Davis Auto Group, LLC.

SECOND DEFENSE

Plaintiffs' Complaint fails to state a claim against the Answering Defendants upon which relief may be granted or for which the damages sought can be awarded.

THIRD DEFENSE

Any allegation in Plaintiffs' Complaint that is not specifically admitted herein by the Answering Defendants is denied.

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FOURTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the affirmative defenses of estoppel, statute of frauds, misrepresentation, release, payment, waiver, accord and satisfaction, acceptance of payment, failure of consideration, and the doctrine of unclean hands.

FIFTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations and of repose.

SIXTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the equitable doctrine of laches.

SEVENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by ratification and/or acquiescence.

EIGHTH DEFENSE

Plaintiffs' damages are barred, in whole or in part, by Plaintiffs' failure to mitigate their damages.

ELEVENTH DEFENSE

Answering Defendants did not and do not owe a fiduciary duty to Plaintiffs in their individual capacities or their capacities as members of Davis Auto.

TWELFTH DEFENSE

Plaintiffs have failed to allege any harm to them that is individual in nature, and separate and distinct from an alleged harm to Davis Auto.

THIRTEENTH DEFENSE

Plaintiffs brought this suit in bad faith and without regard for the best interest of Davis Auto.

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FOURTEENTH DEFENSE

Plaintiffs brought this suit without first conducting an adequate investigation into the allegations set forth in their Complaint and have therefore failed to satisfy CR 11.

FIFTEENTH DEFENSE

At all times relevant to the Complaint, Davis has exercised reasonable business judgement and acted in the best interests of Davis Auto.

SIXTEENTH DEFENSE

Should proof develop that Answering Defendants engaged in any conflicted transactions, those transactions were on terms reasonable to Davis Auto and in its best interests.

SEVENTENTH DEFENSE

Plaintiffs lack the capacity and/or standing to bring the claims in their Complaint.

EIGHTEENTH DEFENSE

The punitive damages sought by Plaintiffs are prohibited under the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution and the Constitution of the Commonwealth of Kentucky.

NINETEENTH DEFENSE

To the extent Plaintiffs have been damaged, those alleged damages were caused by the Plaintiffs' own acts or omissions.

TWENTIETH DEFENSE

Answering Defendants reserve the right to assert additional defenses, affirmative defenses, and/or claims as this case proceeds.

WHEREFORE, Defendants Jerald Ray Davis, Jr., EQ Business Services, LLC, and EQ Group Reinsurance, Inc., respectfully pray for the following relief:

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1. For Plaintiffs' Complaint against them to be dismissed with prejudice and the Plaintiffs to take no relief thereunder;

2. For an award of their costs expended, including attorney's fees;

3. For a trial by jury as may be necessary; and

4. For any and all other relief to which they may be entitled.

* * *

COUNTERCLAIM OF JERALD RAY DAVIS, JR.

Defendant/Counterclaim-Plaintiff Jerald Ray Davis, Jr. ("Davis") states as follows for his Counterclaim against Plaintiffs/Counterclaim-Defendants Matthew Hayden ("Hayden") and the Estate of Jack T. Wells (the "Wells Estate"):

1. On February 24, 2020, Davis, Hayden, and Jack T. Wells ("Wells") executed the "Operating Agreement of Davis Auto Group LLC – A Kentucky Limited Liability Company" (the "Operating Agreement"). See Operating Agreement, dated February 24, 2020 (attached as "Exhibit 1"). Generally, the Operating Agreement sets forth each putative member's respective obligations and duties owed to Davis Auto Group, LLC ("Davis Auto").

2. Article IV, Section 4.1, provides that "[e]ach Member agrees to make the following initial capital contributions to [Davis Auto]:

- a. Jerald Ray Davis to contribute \$500,000.00 in exchange for a 60% majority interest in Davis Auto;
- b. Jack T. Wells to contribute \$1,450,000.00 in exchange for a 20% interest; and
- c. Matthew R. Hayden to contribute \$1,450,000.00 in exchange for a 20% interest.

3. Hayden has failed to make a full capital contribution of \$1,450,000.00 as required by Article IV, Section 4.1 of the Operating Agreement.

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4. During his lifetime, Wells similarly failed to make a full capital contribution of \$1,450,000.00 as required by Article IV, Section 4.1 of the Operating Agreement.

5. To date, the Wells Estate has not fulfilled Wells' outstanding financial obligation to Davis Auto.

6. On May 28, 2020, Davis—acting in his capacity as Davis Auto's Manager—executed a "Floorplan Financing and Security Agreement" with Santander Bank, N.A ("Santander"). See Dealership Financing Agreement (attached as "Exhibit 2").

7. Per its terms, Santander extended Davis Auto an \$11,000,000 credit facility for the purpose of purchasing new and used vehicles for eventual sale in the normal course of business—repayment personally guaranteed by Davis, Hayden and Wells.

8. Less than a week later, Hayden and Wells demanded that Davis execute an amendment to Davis Auto's Operating Agreement (the "Amendment"). See Amendment to Operating Agreement, executed June 3, 2020 (attached as "Exhibit 3")

9. As reflected in the Amendment, Hayden and Wells unilaterally decided that Davis Auto's "allocation of ownership [was] disproportionate to the cash contributed" by its purported members, and that Davis should contribute an additional \$3,850,000 of his own funds "in order for the capitalization and ownership to be proportionate." *Id.* at 2.

10. Notwithstanding Hayden and Wells' demand for additional capital investment from Davis, his obligations to and ownership interest in Davis Auto under the Operating Agreement remained exactly the same.

11. Upon information and belief, Hayden and Wells threatened to breach the Operating Agreement and withdraw their initial capital investments if Davis did not agree to execute the Amendment.

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12. Davis, wishing to avoid a situation in which Davis Auto failed before getting off the ground, and having already personally guaranteed repayment of the \$11,000,000 loan from Santander, had no choice but to accept the lesser of two evils, even though the demand was based on misrepresentations and also lacked consideration.

COUNT I

(Breach of Operating Agreement)

13. Davis restates and incorporates by reference the foregoing Paragraphs as if set forth fully herein.

14. By failing to satisfy their respective obligations to capitalize Davis Auto, Hayden and the Wells Estate have breached the Operating Agreement.

15. As a direct and proximate result of Hayden and Wells' breach, Davis has suffered harms for which he is entitled to compensatory damages, in an amount to be determined at trial.

COUNT II

(Declaratory Judgment—Lack of Consideration)

16. Davis restates and incorporates by reference the foregoing Paragraphs as if set forth fully herein.

17. The Operating Agreement is a contract. As such, any amendment to the Operating Agreement must be made with due consideration. *Vinaird v. Bodkin's Adm'x*, 72 S.W.2d 707, 711 (Ky. 1934) (citations omitted) (“[G]enerally a new consideration is required in order for an attempted modification of a contract to be valid.”).

18. Davis and Davis Auto received no “new consideration” under the purported-Amendment to the Operating Agreement, in exchange for Davis's promise to provide an additional capital contribution to Davis Auto.

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19. Accordingly, Davis respectfully requests that this Court enter a judgment in its favor, pursuant to CR 57, declaring that the purported Amendment to its Operating Agreement is invalid as a matter of law.

COUNT III

(Declaratory Judgment – Duress in the Inducement)

20. Davis restates and incorporates by reference the foregoing Paragraphs as if set forth fully herein.

21. The Operating Agreement is a contract. Contracts are voidable when induced under duress. *See Fears v. United Loan & Deposit Bank*, 189 S.W. 226, 232 (Ky. 1916) (holding that duress in the inducement of a contract may be found to exist “where one, by the unlawful act of another, is induced to make a contract or perform some act under circumstances which deprive him of the exercise of his free will.”).

22. As described in Paragraphs 8 through 12 of this Counterclaim, Davis was coerced by Hayden and Wells to execute the purported-Amendment to Davis Auto’s Operating Agreement, or suffer the consequences of Hayden and Wells’ threat to breach the Operating Agreement by withdrawing their capital investments, effectively crippling Davis Auto and, by extension, causing Davis to default on scheduled loan repayments to Santander.

23. Accordingly, Davis respectfully requests that this Court enter a judgment, pursuant to CR 57, declaring that Davis was coerced to execute the purported-Amendment under duress, and that the purported-Amendment is void, or voidable, as a matter of law.

WHEREFORE, Davis respectfully requests the following relief:

1. A judgment in favor of Davis awarding him all compensatory damages prayed for herein, including pre-judgment and post-judgment interest;

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2. Declaratory relief as described herein;
3. An award of his costs, including his reasonable attorney's fees;
4. Any and all further relief as the Court may deem just and equitable; and
5. A jury trial on all issues triable.

This November 20, 2024.

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/s/ Kyle G. Bumgarner

Kyle G. Bumgarner
Colton W. Givens
Counsel for Davis, EQ Business, & EQ Reinsurance

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing was electronically filed and emailed as follows on November 20, 2024:

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