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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

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Zhejiang Wanfeng Auto Wheel Co., Ltd.,	:	Case No.:
	:	Judge
Plaintiff,	:	EMERGENCY COMPLAINT TO COMPEL ARBITRATION AND SEEKING INJUNCTIVE AND OTHER RELIEF (INCLUDING A TRO), AS PROVISIONAL ARBITRATION REMEDIES
v.	:	
Sunland Logistics Solutions, Inc.,	:	
Defendant.	:	

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Plaintiff, ZHEJIANG WANFENG AUTO WHEEL CO., LTD (“Wanfeng”), by and through its undersigned counsel, states as its Complaint against Defendant, SUNLAND LOGISTICS SOLUTIONS, INC. (“Sunland”), the following:

Overview

1. This case involves compelling arbitration of disputes between Wanfeng and Sunland relating to the storage and distribution of high-end, high-quality aluminum alloy wheels produced by Wanfeng and shipped to Sunland’s Toledo facility for storage, and then distribution to Wanfeng’s customers, including General Motors (“GM”), Ford Motor Company (“Ford”), Fiat Chrysler of America (“Chrysler”), and Nissan. Sunland seeks tremendous damages for Wanfeng’s alleged failure to meet minimum shipment volumes of approximately 60,000 wheels per month to

Sunland's Toledo location, although that lower performance level is excused under the parties' contract's (the "Contract's") section 5.1 Force Majeure provisions (Ex. A hereto), due to the GM strike, and acts of governmental authorities of tariffs and COVID-19 shut-downs. However, Sunland refuses to comply with the Contract's section 8.1 arbitration provisions -- Wanfeng has demanded arbitration pursuant to the contract; Sunland has refused.

2. Moreover, while refusing to arbitrate, Sunland has seized over 50,000 wheels owned by Wanfeng (the "Toledo Wheels") and desperately needed by Wanfeng's U.S. customers, including GM, Ford, and Chrysler. Sunland's seizure and lockdown not only breaches the parties' Contract, but more critically, Sunland's breaches threaten to disrupt the re-opening of automotive production and service plants in the U.S., Canada, and Mexico at a time when such plants are eager to re-open as soon as possible following the shut-downs caused by the COVID-19 pandemic. Thus, in addition to asking the Court to compel arbitration of disputes concerning the wheel shipment volumes, Wanfeng also seeks injunctive relief (or, alternatively, replevin) from the Court, requiring Sunland to release the Toledo Wheels for distribution to GM, Ford, and Chrysler. Please note that Wanfeng is not waiving Wanfeng's arbitration rights under the Contract.

3. Thus, Wanfeng is seeking emergency provisional arbitration remedies in the form of injunctive and/or replevin relief from the Court requiring Sunland to release the Toledo Wheels into distribution, in conjunction, of course, with posting a bond for such relief. Such injunctive and/or replevin relief is not immediately available through arbitration; hence, Wanfeng must seek such relief from this Court and doing so is not – and should not be construed as – a waiver of Wanfeng's arbitration rights under the parties' Contract.

4. Specifically, as referenced above, Wanfeng is seeking to compel arbitration under the express provisions of section 8.1 of its Contract with Sunland, and is seeking to obtain

emergency provisional remedies from this Court, in the form of injunctive and related relief, including a temporary restraining order and an injunction requiring Sunland to release the Toledo Wheels into distribution. In the alternative, Wanfeng seeks an order for immediate possession of its wheels pursuant to O.R.C. Chapter 2737, Ohio's replevin statute.

5. Sunland has made it clear it intends to withhold Wanfeng's automotive production and service parts, specifically the Toledo Wheels manufactured by Wanfeng and stored at a Sunland facility in Toledo, Ohio, in an improper seizure and "lockdown" at its distribution facility in Toledo, Ohio.

6. Sunland's lockdown, and wrongful withholding of Wanfeng's Toledo Wheels, will immediately lead to a loss of production and service parts for GM, Ford, Chrysler, and Nissan. Especially with respect to GM and Chrysler, Sunland's lockdown will lead to the shutdown of production lines and/or an entire factory, just as companies and governmental authorities in the United States and North America are trying to restart the economy. Sunland's actions are improper and wrong.

Parties and Jurisdiction

7. Sunland is a South Carolina corporation, incorporated in South Carolina, and has a place of business located at located at 4100 Bennett Road, Toledo, Ohio 43162, and which regularly, systematically, and/or otherwise conducts business in a facility in Toledo, Ohio. Sunland is engaged in logistical assistance in the tiered automotive supply chain (and perhaps other industries), and stores and assists with distribution of products, including the Toledo Wheel products manufactured by Wanfeng and purchased by GM, Ford, Chrysler and Nissan.

8. Wanfeng is an entity formed under the laws of the People's Republic of China, and has a principal place of business located at Wanfeng Industrial Zone, Xinchang, Zhejiang, 312500, P.R. China. Wanfeng is a manufacturer of high-quality, high-end aluminum alloy wheels.

9. The events and omissions giving rise to this cause of action, and the claims stated herein, occurred within the Northern District of Ohio, Western Division. Additionally, the Toledo Wheels, the subject of this action, are situated in the Northern District of Ohio, Western Division.

10. The amount in controversy in this lawsuit exceeds \$75,000, exclusive of interest and costs, a jurisdictional requirement of this Court. Additionally, Wanfeng seeks equitable relief to compel arbitration, and in the form of provisional remedies in aid of arbitration and injunctive relief.

11. This Court has jurisdiction pursuant to 28 U.S.C. §1332, since the amount in controversy exceeds \$75,000, exclusive of interest and costs, and under §1332(a)(2) since there is a dispute between a citizen of South Carolina and a citizen of a foreign state and a substantial part of the events and omissions giving rise to the claim occurred in this District, and a substantial amount of (all of) the property subject to the claim is located in this District.

12. Thus, this Honorable Court has jurisdiction over this case, and venue is appropriate pursuant to 28 U.S.C. §1391(b). Venue is further proper before this Court, given the location of the Toledo Wheels in Toledo, the presence of witnesses, and application of Ohio law.

Background Facts

13. Wanfeng has produced wheels for original equipment manufacturers ("OEMs") of vehicles for over 20 years. Wanfeng manufactures high-end, high-quality aluminum alloy wheels, and provides wheels to global OEMs including GM, Ford, Chrysler, BMW, Mercedes,

Volkswagen, Honda, Peugeot, Renault, Nissan, and virtually every major vehicle OEM around the world.

14. The larger Wanfeng organization has facilities on three continents, and customers on five continents.

15. Wanfeng and Sunland first began conducting business in approximately 2013, when Sunland began work to store and distribute wheels for BMW.

16. Then, in 2015, Wanfeng and Sunland began conducting similar business in Toledo to supply additional Wanfeng customers, namely, GM, Ford, Chrysler, and Nissan.

**The Wanfeng-Sunland Contract
covers only wheels to be supplied to U.S. Customers; Sunland Breaches**

17. As referenced above, the parties entered into the Contract dated (approximately) May 15, 2015 (See Ex. A).

18. The wheels covered by the Contract are only Wanfeng wheels which would actually, and ultimately, be supplied to U.S. customers, providing at section 1.1 the following:

Parties agree that WANFENG will employ and/or appoint Sunland for logistics and supply handling services (Services) such as but not limited to the **storage**, handling (unloading, visual inspection for shipping damage, order preparation), **distribution** and management of Aluminum Alloy wheels (hereafter the “Goods”) **supplied to the Wanfeng assigned AUTO MOBILE CUSTOMERS in US.** ...

Emphasis added.¹

19. Specifically, with respect to the wheels to be supplied to U.S. customers, Sunland is contractually obligated to store the wheels, prepare Wanfeng’s wheels for delivery to GM, Ford,

¹ Significantly, Sunland’s duties concern only wheels that are actually “supplied to the Wanfeng assigned AUTO MOBILE CUSTOMERS in [the] US,” and will not include other wheels. This is significant because Sunland has erroneously claimed that Wanfeng should have shipped, to Sunland, additional wheels that had not been ordered or purchased by, or supplied to, Wanfeng’s U.S. customers.

Chrysler, and Nissan, and load outbound trucking and transportation to deliver the wheels to GM, Ford, Chrysler, and Nissan. (The primary U.S. customers supplied through the Sunland-Toledo warehouse are GM, Ford, and Chrysler; the Nissan wheel volume is quite low.) Section 1.2 of the Contract provides the following, in pertinent part:

The Services which Sunland will provide are:

- Repack the Goods into Wanfeng assigned AUTO MOBILE CUSTOMERS pallets...
- Storage of Goods and empty Packaging...
- Preparation ... of the required Goods by the end customer(s) [GM, Ford, and Chrysler]...
- Loading of the outbound transport [to GM, Ford, and Chrysler]...

20. Sunland is in breach of its contractual obligations, despite the fact that Wanfeng has paid all charges for the actual Toledo Wheels in Sunland's possession, with the exception of two invoices that are not yet due. (As discussed below, Sunland is erroneously claiming enormous charges for wheels not in Sunland's possession, which are charges excused by the Contract's force majeure provisions.)

21. Pursuant to the Contract, Sunland was originally entitled to \$1.39 for each Wanfeng wheel received by the Sunland facility, with a potential for certain high-volume and other discounts. This price was to cover all costs for handling, storage, repacking, and other costs detailed in the scope of work of the Contract, including facilitating delivery to GM, Ford, Chrysler, and Nissan. Indeed, Section 2 of the Contract provides, in part, the following:

\$1.39 per piece Billed on The Inbound Receipt ...

Piece price is all inclusive of Handling, Storage, Repacking and other cost as detailed in the Scope of Work. ...

22. Then, as an accommodation to Sunland, the parties entered into an addendum providing additional payments to Sunland, in approximately December 2015. (See Addendum 1

at Ex. B). Additionally, the parties entered into an addendum in 2017, yet again providing additional funding for Sunland, and due to additional payments made by Wanfeng, providing that Wanfeng owns half of 4 inspection tables. (See Addendum 2 at Ex. C).

23. Despite being paid more money, Sunland has had serious problems performing under the Contract, and committed numerous and repeated breaches of substantial terms of the Contract, including the following:

1. Sunland has delivered the wrong product to Wanfeng customers (GM, Ford, and Chrysler), or not enough product (for example, delivering 19 pallets of wheels, rather than 20), on multiple occasions.
2. Sunland has accepted clearly damaged products for intake, but then improperly issued/executed a “clean” bill of lading, causing significant harm to Wanfeng and its customers, GM, Ford, and Chrysler.
3. There have been numerous labeling issues concerning the wheels.

These numerous breaches have been repeatedly documented through written notice to Sunland.

24. Indeed, these breaches by Sunland violate the following provisions of Section 1.2 of the Contract, among others:

The Services which Sunland will provide are:

- Unloading of incoming containers from WANFENG China, discharging of Goods and stock intake into warehouse ...
- Scanning of the material label and checking that data correspond to base information supplied by WANFENG ...
- Checking that delivery note correspond to the consignment note ...
- Checking of the Packaging upon arrival in the warehouses regarding quantum and externally visible damages ...
- Putting the Packaging in the Store per part number ...
- Visual Inspection of the Goods on transport damage ...

**Force Majeure events, including the GM Strike, U.S. Government Tariffs,
and the Novel Coronavirus fully excuse minimum quarterly volumes**

25. The Contract provided that there would be a minimum volume requirement of wheels, at 180,000 wheels per quarter, i.e., approximately 60,000 wheels per month.² Specifically, Section 2.1 of the Contract provides the following: “Minimum requirement of 180,000 wheels per quarter starting June 01, 2015 for the length of this contract. At the end of each quarter, the shortage will be invoiced by \$1.39 per wheel.”

26. Indeed, prior to 2019, Wanfeng’s wheel volume and shipments to Sunland’s Toledo facility averaged well in excess of 180,000 wheels per quarter.

27. However, a GM strike completely stopped production and wheel purchases around the time of the strike, from September 16 through October 25, 2019. Thus, for this approximately six-week period, GM’s production and purchases from Wanfeng simply stopped due to the strike.

28. Prior to the 2019 GM Strike, and prior to the imposition of tariffs (discussed below), GM was Wanfeng’s largest customer supplied by the Sunland Toledo facility. The GM wheels accounted for well over half of the Wanfeng wheel shipments to Toledo.

29. Sunland has insisted that Wanfeng could have continued to ship wheels to Toledo, even if GM would not ultimately purchase the wheels – which would mean the wheels would not be supplied to one of Wanfeng’s U.S. customers – despite the language of the contract that Sunland would only receive wheels to be supplied to U.S. customers.

30. However, under the GM-Wanfeng contract, GM completely controls the shipping of the wheels -- starting in China. Specifically, GM actually and specifically directs if and when

² Note that the 3-month quarters under the Contract do not match traditional calendar quarters; this is a fact that is not in dispute. Quarter 1 in a year is from February to April, with Quarter 4 extending from November of the year to January of the next year.

Wanfeng can fill GM’s shipping containers in China, only authorizing such shipping through a GM-issued “release.” Thus, when GM does not issue a release, Wanfeng is not authorized, under the GM-Wanfeng contract, to ship any goods to the U.S. (Sunland has taken an un-credible position that Wanfeng could have continued to ship wheels to Toledo even if GM would not ultimately purchase the wheels: this is patently false.)

31. Moreover, with an impact far greater than the GM strike, after months of discussions on the imposition of tariffs, on approximately September 24, 2018, the United States imposed 10% tariffs on aluminum products from China, including wheels, such as those purchased by GM, Ford, Chrysler, and Nissan. These aluminum tariffs were increased to 25% on approximately June 1, 2019.

32. Upon information and belief, the tariffs impacted Wanfeng’s U.S. customers prior to the actual imposition of the tariffs in September of 2018, given the publicity of the fact the tariffs were coming. Specifically, it appears the impact of the tariffs occurred as early as the second quarter of 2018.

33. Thus, Wanfeng’s wheel volume decreased to a point significantly below 180,000 per quarter. Specifically, the volumes decreased significantly by 2019, as reflected below.

2017 Quarterly Wheel Volume			Critical Force Majeure Events
Quarter	Quarter Volume	Annual Quarterly Average	
1	262,606		
2	208,697		
3	194,851		
4	170,213	209,092	

2018 Quarterly Wheel Volume			Critical Force Majeure Events
Quarter	Quarter Volume	Annual Quarterly Average	
1	215,096		

2	127,578		Tariffs discussed/ planned
3	173,733		10% Tariffs, 9/24/18
4	182,471	174,720	10% Tariffs

2019 Quarterly Wheel Volume			Critical Force Majeure Events
Quarter	Quarter Volume	Annual Quarterly Average	
1	138,036		10% Tariffs
2	115,310		25% Tariffs, 6/1/19
3	98,040		(1) GM strike, 9/16-10/25/19 & (2) 25% Tariffs
4	77,040	107,106	(1) COVID-19 & (2) 25% Tariffs

34. Additionally, the global pandemic of the novel coronavirus, COVID-19, is going to continue to negatively impact the intake of wheels at Sunland-Toledo. The pandemic, and acts of governmental authorities in response to the pandemic, are further affecting and reducing shipments of wheels to GM, Ford, Chrysler, and Nissan.

35. The Contract's force majeure provision at Section 5, excuses the quarterly shortfall:

5.1. **Notwithstanding anything in this Agreement to the contrary, neither party shall be liable to the other party for any failure to perform, or delay in the performance of that party's obligations mentioned below, when such failure to perform or delay in performance is caused by an event of force majeure;** provided, however, that the party whose performance is prevented or delayed by such event of force majeure shall have given prompt notice thereof to the other party and has made its best efforts to prevent such failure or delay. For the purpose of this article, **the term "force majeure" shall include war, strike, civil disturbance, fire, flood, acts of governmental authorities, acts of God, terrorism or any other causes or conditions beyond the reasonable control of the parties.**

5.2. If either party is affected by an event of force majeure, it will forthwith notify the other party of the nature and extent of such force majeure and **the Parties will enter into bona fide discussions with a view to alleviating its effects and to agreeing such alternative arrangements as may be fair, reasonable and practicable,** the party affected by a force majeure being under the obligation to give the full particulars thereof and to use its best efforts to minimize the effect of occurrence and to take the necessary remedial measures.

36. The GM strike is covered by the force majeure language specifically stating that “... the term ‘force majeure’ shall include ... strike”

37. Additionally, the acts of United States governmental authorities to impose tariffs on Chinese aluminum products are covered by the force majeure provisions that provide “...the term ‘force majeure’ shall include ... acts of governmental authorities, ... or any other causes or conditions beyond the reasonable control of the parties.”

38. Both of these force majeure events have caused Wanfeng’s wheel volumes to fall below 180,000 per quarter -- which is exactly what the force majeure provisions of the Contract contemplate.

39. Additionally, as stated above, yet another force majeure event - the novel coronavirus and actions taken to address this global pandemic – impacted Wanfeng’s wheel volumes. The factors caused by this global pandemic constitute one or more of the following force majeure events: “civil disturbance, ... acts of governmental authorities, acts of God, ... or any other causes or conditions beyond the reasonable control of the parties...”

40. Force majeure events excuse Wanfeng from making quarterly wheel shipments to Toledo that fall below the quarterly minimum volume specified at section 2.1 of the Contract. Thus, Wanfeng is excused from paying for the quarterly shortfall for the 4th quarter of 2019, for 102,960 wheels not sent (180,000 target volume minus 77,040 wheels actually delivered to Sunland), in the amount of \$143,114.40.

41. Similarly, Wanfeng is excused, by force majeure events, from volume short falls in 2020, for these very same force majeure events.

42. Moreover, Wanfeng is excused from volume shipment shortfalls during concerning quarters 1, 2, and 3 of 2019, and is due refunds of payments made (after giving notice of force

majeure events, and under protest), because Wanfeng is excused from non-performance and/or delayed performance with Section 2.1 minimum volumes due to the nature and extent of force majeure impact. Thus, Wanfeng is not liable for the provisions of Section 2.1, for the shortfalls for Q1-2019 (41,964 wheels), Q2-2019 (64,690 wheels), and Q3-2019 (81,960 wheels). Thus, Sunland owes Wanfeng a refund of the quarterly payments made for Q1 – Q3, of approximately \$58,329.96 (Q1, 41,964 x \$1.39) and \$89,919.10 (Q2, 64,690 x \$1.39) and \$113,924.40 (Q3, 81,960 x \$1.39) – for a total of \$262,173.46 that Sunland owes back to Wanfeng.

43. Wanfeng has completely complied with all requirements to exercise force majeure rights under the Contract.

44. Sunland has erroneously claimed that the minimum volume damages are secured by a warehouse lien in the Toledo Wheels it possesses, under O.R.C. § 1307.209.

45. However, Sunland is incorrect: even if force majeure does not excuse the minimum volume shortfalls, Sunland only has a specific warehouse lien securing charges related to the Toledo Wheels it possesses. Sunland's specific warehouse lien does not secure charges for items not directly and specifically related to the Toledo Wheels, like minimum volume damages for wheels Sunland never received.

46. The warehouse lien of Sunland is a specific lien, and only secures payment specifically related to the wheels held by Sunland.

47. In order to have a broader, general warehouse lien, Sunland would need a lien granted in the Contract or a warehouse receipt, which Sunland does not have.

48. Thus, Sunland does not have a general lien for amounts not specifically related to the Toledo Wheels because the minimum volumes relate to wheels that were not shipped to Sunland, and charges related to these unshipped wheels. See O.R.C. § 1307.209.

49. Thus, based on a false claim that Wanfeng owes Sunland \$143,114.40 for unshipped 2019 Q4 minimum volumes, and falsely claiming a warehouse lien for the debt falsely claimed, Sunland is holding over 50,000 Toledo Wheels. These wheels have a sales price to the specific U.S. customers in excess of \$6 million; the auction sale for scrap value would be roughly \$500,000 to \$750,000. These wheels should be released to Wanfeng for distribution to U.S. Customers.

50. Additionally Sunland is improperly withholding dunnage, the materials used to hold the wheels during shipment, which should be returned to Wanfeng, and half of four inspection tables owned by Wanfeng as a result of extra pricing Wanfeng agreed to pay (see Addendum 2 at Ex. C).

51. Wanfeng has received current orders from GM, Ford, and Chrysler for wheels withheld by Sunland.

52. For example, the following are just some examples of orders that are overdue and coming due, with Wanfeng having contractual obligations to deliver wheels to the following automotive plants by the dates indicated:

Customer/Location	Part #	Requested Ship Date	Quantity
GM Lake Orion, MI	95087758	May 18	40
GM Customer Care & Aftersales Pontiac, MI	84760166	April 20 May 11	3,692 384
	84497727	April 20	36
	84520425	April 20	32
		April 27	8
		May 4	4
84444234	April 20	48	

Ford Customer Service Division Dearborn, MI	FA1Z1007H (FA1C-1007-F1B)	April 13	32
	FL1Z1007B (FL14-1007-FC)	April 20	12
GM CAMI Assembly Plant Ingersoll, Ontario, Canada	84443869	May 25	1,152
		June 1	1,600
		June 8	1,632
Chrysler Brampton Assembly Plant Brampton, Ontario, Canada	6DD07VXWAB	April 27	32
		May 4	224
		May 11	256
Chrysler Saltillo Assembly Plant Mexico	04755284AB	April 27	120
		May 4	270
		May 11	270
	04755285AB	April 27	120
		May 4	270
		May 11	270

These customers require these wheels so they can produce and service vehicles. Failure to make those deliveries timely will not simply create a problem for Wanfeng. Rather, it will impact the production process at those automotive plants.

53. However, as of April 15 and confirmed on April 24, 2020, counsel for Sunland has made it clear that Sunland is (wrongfully) withholding all of Wanfeng's Toledo Wheels. Sunland's employees and representatives have also stated this directly to Wanfeng's employees and representatives by refusing to permit any distribution of the Toledo Wheels.

54. Wanfeng has attempted to resolve the disputes through "friendly negotiation" for the 90 days required by the Contract. Wanfeng gave notice of the effects of the tariffs by the first quarter of 2019.

55. By November of 2019, both parties involved counsel, beginning a series of numerous communications between counsel that started with Sunland's November 12, 2019 letter

to Wanfeng, to which Wanfeng's counsel responded on November 27, 2019. Note that some discussions are covered by FRE 408, and so the text is not included in the exhibits included with the affidavit filed by Wanfeng in conjunction with this action. Additionally, the parties have conferred by email, conferences, telephone calls, further communications between counsel, and otherwise.

56. On April 9, 2020, Wanfeng demanded arbitration. Sunland rejected Wanfeng's April 9 arbitration demand on April 15, 2020. That same day, April 15, 2020, Sunland indicated it would not ship goods out of the Toledo facility, suggesting Sunland was improperly seizing and locking-down 50,000 wheels needed by Wanfeng customers, GM, Ford, Chrysler, and Nissan.

57. Wanfeng and its counsel continued to attempt to resolve the disputes, and had conversations on Friday, April 17, and Monday, April 20, 2020, in an effort to resolve the disputes. On Friday, April 17, Sunland clarified that it claimed a warehouse lien in the 50,000+ wheels at the Toledo warehouse, and falsely asserted that all damages claimed by Sunland for minimum volumes were covered by the warehouse lien and thus secured by the wheels. This is incorrect.

58. Wanfeng actively continued to attempt to resolve this matter throughout the week of April 20, including an extensive email communication on April 22, 2020; on Friday, April 24, 2020, at approximately 10:27 PM, Sunland rejected Wanfeng's settlement attempts. Also, at this time late in the evening on April 24, Sunland made it clear that it was continuing to seize and lock-down the 50,000+ Toledo Wheels, and disclosed that Sunland had run out and filed suit in South Carolina while Wanfeng was attempting intense negotiations to resolve disputes, despite the fact that the wheels are in Ohio and Ohio law will apply. As discussed below, venue for Sunland's suit is improper in South Carolina, and Sunland clearly filed the South Carolina suit – as an anticipatory

suit, or strike suit -- to attempt to complicate Wanfeng's efforts to free its 50,000+ wheels. Thus, the first-filed rule does not apply for these reasons, and because Wanfeng is seeking arbitration.

Count I: Wanfeng is Seeking to Compel Arbitration

59. The previous allegations, and all other allegations in other counts of this complaint, are incorporated herein by reference.

60. Under applicable arbitration law, at 9 U.S.C. § 1 *et seq.*, and section 8.1 of the Contract, this dispute should be arbitrated.

61. The arbitration clause in the Contract, at Section 8.1, states as follows:

8.1 The parties shall attempt to resolve disputes through friendly negotiation, in case that no settlement can be reached through this process within 90 days, either party has the right to submit the dispute to the America [sic] International Economic and Trade Arbitration Commission, Which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of apply for arbitration.

62. The Contract specifically states that the "America International Economic and Trade Arbitration Commission" will arbitrate the dispute "in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration." However, there is no "America International Economic and Trade Arbitration Commission" – and there never has been such an organization, and thus there have never been rules of such an organization.

63. There is, however, the "China International Economic and Trade Arbitration Commission" ("CIETAC"), which has been in existence with that name since 1988, and prior to that under other names. Thus, CIETAC has the better part of a century of arbitration and dispute resolution experience – and this "Commission" has "arbitration rules in effect at the time of applying for arbitration." The parties intended CIETAC to be the arbitrator and apparently simply made a scrivener's error in its name.

64. Alternatively, even if the Court found CIETAC not to be the intended arbitrator, Wanfeng requests this Court designate an appropriate arbitrator to carry out the parties' clear intent that disputes under the Contract be arbitrated.

65. Indeed, the Federal Arbitration Act provides as follows:

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court... The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, **the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.** The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed....

§ 5. Appointment of arbitrators or umpire

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, **then upon the application of either party to the controversy the court shall designate and appoint an arbitrator** or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein ...

66. This Court should appoint an arbitrator to proceed with the arbitration and compel Sunland to arbitrate its minimum wheel volume claims.

Count II: Wanfeng is Entitled to Injunctive Relief, Including a Temporary Restraining Order and/or Preliminary Injunction

67. The previous allegations, and all other allegations in other counts of this complaint, are incorporated herein by reference.

68. As discussed above, Sunland is asserting that it is owed damages for minimum volume targets excused by the force majeure clause.

69. Alternatively, even if the amounts are not excused by force majeure law (which they are), Sunland is improperly asserting a warehouse lien in the Sunland-possessed wheels.

70. If Sunland continues in its action to “lockdown” the Sunland-possessed wheels, the actions will cause a disruption to the production and servicing of automobiles, and could lead to the closure of automotive production plants, right when governments in the United States and Canada are attempting to reopen their economies.

71. As demonstrated in this complaint, Wanfeng has a strong likelihood of success of the merits.

72. Additionally, if the relief is not granted, Wanfeng and others will suffer irreparable injury if injunctive relief is not granted.

73. The issuance of a preliminary injunction will not cause substantial harm to others. Rather, the failure to grant injunctive relief would harm GM, Ford, Chrysler, their dealers, their factory workers, and others.

74. The public interest would be served by injunctive relief.

**Count III: Alternative and Secondary Request for
Replevin (O.R.C. Chapter 2737)**

75. The previous allegations, and all other allegations in other counts of this complaint, are incorporated herein by reference.

76. Ohio’s replevin statute, O.R.C. § 2737.01 *et seq.*, provides at § 2737.02 that “possession of specific personal property may be recovered in a civil action prior to the entry of judgment” as provided in the replevin statute.

77. Section 2737.20 of the replevin statute, entitled **Injunctions**, specifically allows a party seeking to regain possession of personal property to opt for injunctive relief, reading:

In addition to, or in lieu of, any other relief available under sections 2737.01 to 2737.19 of the Revised Code, the court may grant a temporary restraining order, preliminary injunction, or permanent injunction in accordance with the Rules of Civil Procedure.

78. Wanfeng has therefore at this time elected the remedy of injunctive relief to obtain possession of its property in this matter, as expressly permitted above.

79. In the alternative, Wanfeng seeks recovery of the Toledo Wheels through other (than injunctive relief) provisions of Ohio's replevin statute.

80. Specifically, Wanfeng has met the procedural requirements of O.R.C. § 2737.03, entitled **Motion for order of possession**, which sets forth the requirements for such an order:

Any party to an action involving a claim for the recovery of specific personal property, upon or at any time after commencement of the action, may apply to the court by written motion for an order of possession of the property. The motion shall have attached to it the affidavit of the movant, his agent, or his attorney containing all of the following:

- (A) A description of the specific personal property claimed and the approximate value of each item or category of property claimed;
- (B) The specific interest of the movant in the property and, if the interest is based upon a written instrument, a copy of that instrument;
- (C) The manner in which the respondent came into possession of the property, the reason that the detention is wrongful and, to the best of the knowledge of the movant, the reason, if any, that the respondent may claim the detention is not wrongful;
- (D) The use to which the respondent has put the property, as determined by the movant after such investigation as is reasonable in the circumstances;
- (E) The extent, if any, to which the movant is or will be damaged by the respondent's detention of the property;
- (F) To the best of the movant's knowledge, the location of the property;

(G) That the property was not taken for a tax, assessment, or fine pursuant to statute, or seized under execution of judgment against the property of the movant or, if so seized, that it is statutorily exempt from seizure.

81. The Affidavit of Jeffrey E. Dornseifer, Wanfeng North America, Inc.'s Vice President, North American Operations and Sales, filed in conjunction with this action, provides the required information.

82. Pursuant thereto, and in the alternative to its request for injunctive relief, Wanfeng requests an Order of Possession from the Court.

WHEREFORE, Wanfeng requests the following.

- A. That this Honorable Court compel arbitration of disputes between the parties concerning the Contract, including identification and/or appointment of the arbitrator;
- B. That this Court grant emergency provisional remedies in the form of injunctive relief and related remedies, requiring Sunland to release the 50,000+ Toledo Wheels into distribution as directed by Wanfeng and GM, Ford, Chrysler and Nissan, and release all of Wanfeng's dunnage and return 2 inspection tables specified in Addendum 2 (Ex. C) to Wanfeng;
- C. That the Court grant any other provisional remedies that would free up all of Wanfeng's wheels and the dunnage;
- D. Alternatively, that this Court grant an order for immediate possession of the Toledo Wheels, dunnage, and inspection tables pursuant to O.R.C. Chapter 2737: and,
- E. Such other and further relief in favor of Wanfeng and in support of arbitration as is equitable, just, and proper.

Respectfully submitted,

/s/ Matthew D. Harper

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Auto Wheel Co., Ltd.

PROOF OF SERVICE

This is to certify that a copy of the foregoing has been filed electronically this 4th day of May, 2020. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Finally, a copy of the foregoing was served by email to the following attorneys on behalf of the Defendant: Marty Howard (racelaw57@gmail.com), John Horvath (jhorvath@hlpc-law.com), and John P. "Jack" Riordan (JRiordan@foxrothschild.com).

/s/ Matthew D. Harper

An Attorney for Plaintiff Zhejiang Wanfeng
Auto Wheel Co., Ltd.

INDEX OF EXHIBITS

Ex.	Description
A	May 5, 2015 Wanfeng-Sunland Contract
B	Addendum 1 to Contract, December of 2015
C	Addendum 2 to Contract, July of 2017