



new seating, providing a more modern and comfortable traveling experience. Many of the seats will be provided by Zodiac.

2. Zodiac claims to be one of the world's top manufacturers of commercial aircraft seats for airlines and major aircraft manufacturers. Zodiac purports to maintain an industry-leading market position on providing new and retrofitted seating.

3. In the Purchase Agreement, Zodiac agreed to provide certain specified products and services in a timely fashion for use on American's aircraft. In general terms, Zodiac was required to manufacture and supply the seats and spare parts for American's aircraft. Zodiac expressly agreed that (i) time was of the essence in delivering the products to American; (ii) Zodiac would timely deliver products and services that conformed to the Purchase Agreement's specifications; and, (iii) Zodiac would be liable to American for liquidated damages if it failed to deliver products in strict accordance with the delivery schedule set forth in the applicable purchase order.

4. Zodiac failed to timely deliver products to American. Zodiac's failure to timely deliver products constitutes a material breach of, and an event of default under, the Purchase Agreement. In addition to the misrepresentations about its ability to deliver on time, Zodiac made other representations to American that were material and untrue on the date such representations were made.

5. American seeks contractual damages (both actual and liquidated) that American sustained as a result of Zodiac's failure to timely deliver products. American also seeks a declaration that American properly terminated a portion of the Purchase Agreement for cause, thereby entitling it to recover cost-of-cover damages.

**II.**  
**DISCOVERY CONTROL PLAN**

6. American intends that discovery be conducted under Level 3 pursuant to Texas Rule of Civil Procedure 190.4.

**III.**  
**PARTIES**

7. American is a Delaware corporation with its principal place of business in Tarrant County, Texas.

8. Zodiac is a Texas limited liability company with its principal place of business at 2000 Weber Drive, Gainesville, TX, 76240. Zodiac can be served by serving its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701.

**IV.**  
**JURISDICTION & VENUE**

9. This Court has subject-matter jurisdiction over this lawsuit because the amounts in controversy are within this Court's jurisdictional limits. At this time, American seeks monetary relief that exceeds \$1,000,000.

10. This Court has personal jurisdiction over Zodiac because: (i) Zodiac's principal place of business is in Texas; (ii) Zodiac agreed to personal jurisdiction in Texas; (iii) Zodiac breached a contract that was entered into and performed in Texas; and, (iv) Zodiac systematically conducts business in this State.

11. Venue is proper in Tarrant County because Zodiac specifically agreed in the Purchase Agreement to venue in Tarrant County. Section 15.002 of the Texas Civil Practice & Remedies Code also makes venue proper in Tarrant County because a substantial part of the

activities, events and damages that give rise to American's claims in this lawsuit occurred in Tarrant County.

**V.**  
**FACTS**

**A. Breach of Contract.**

12. On December 23, 2010, American and Zodiac entered into the Purchase Agreement. Zodiac agreed to supply "Products" and "Services" to American for use on American's aircraft. The "Products" and "Services" included all materials and services required to manufacture and supply aircraft seats and spare parts.

13. Zodiac agreed that (i) time was of the essence in delivering the seats to American; (ii) Zodiac would timely deliver seats; and, (iii) Zodiac would be liable to American for liquidated damages if it failed to timely deliver products.

14. Late deliveries constitute a "material breach of" the Purchase Agreement. Specifically, Section 5 of the Purchase Agreement requires Zodiac to "deliver the Products in strict accordance with the delivery schedule set forth in the applicable purchase order ..." and that failure to do so "will constitute a material breach of [the Purchase Agreement] resulting in damages to American..."

15. Zodiac agreed that its failure to deliver products in strict accordance with American's delivery schedule would cause damages to American that would be impossible or impractical to calculate. Accordingly, Zodiac further agreed to pay liquidated damages to American. Paragraph 5(c) of the Purchase Agreement provides in relevant part:

Supplier agrees to pay American a sum equal to five thousand U.S. dollars (\$5,000) for each day any shipset or partial shipset is delayed beyond the scheduled delivery date, subject to a maximum of twenty five percent (25%) of the shipset price. The liquidated damages provided for herein are a genuine pre-agreed estimate of the loss suffered by American. In addition to the foregoing

liquidated damages, Supplier shall reimburse American for all late charges imposed upon American by airframe manufacturers provided that Supplier is the sole reason for delay and provided that American uses reasonable commercial efforts to mitigate such airframe manufacturer charges.

16. Zodiac's deliveries have been late. American has demanded payment of the liquidated damages for those late deliveries, but Zodiac failed and refuses to pay the liquidated damages it owes. Zodiac's untimely deliveries may also prove to be the sole cause of late fees that may be imposed by an airframe manufacturer upon American. American will use reasonable commercial efforts to mitigate those charges, but if such fees are imposed, American will seek reimbursement from Zodiac.

**B. Declaratory Judgment**

17. Paragraph 26 of the Purchase Agreement enumerates certain events of default. One event of default occurs where Zodiac "fail[s] in the performance of any of its obligations contained in this agreement, which failure shall continue uncured for a period of thirty (30) days following written notice from American or, if such failure cannot be cured within such period, shall continue without commencement of a cure for such period or without diligent pursuance of a cure thereafter..." Paragraph 26.2 of the Purchase Agreement entitles American to terminate the Purchase Agreement upon an event of default.

18. On June 11, 2015, American provided Zodiac with a formal written Notice of Default. In the Notice of Default, American notified Zodiac:

In light of the performance failures represented by the continuing delays in the production and delivery of (aircraft seats), this letter is to notify Zodiac, per section 26 of the Purchase Agreement dated 12/23/2010, that failure to cure such delays within 30 days following receipt of this notice shall constitute an Event of Default under the Agreement. In such event we shall be entitled to exercise any and/or all rights and/or remedies available to us by contract, at law or in equity.

19. Zodiac did not cure the material breaches within 30 days of the Notice of Default. Zodiac also failed to (i) commence a cure to remedy the default and (ii) diligently pursue a cure. Indeed, Zodiac has not cured its material breaches to this day.

20. In the Purchase Agreement, Zodiac also made numerous material representations about its ability to perform its contractual obligations. Based on the evidence accumulated over the term of the Agreement, several of those material representations have proven to be untrue as of the date they were made. For instance, Zodiac's representations regarding the "Schedule" (Ex. A. ¶4) and "appropriate" "Personnel and Program Support" (¶43) were material and untrue as of the date they were made. Similarly, Zodiac's statement that it was aware that "time was of the essence (to American)" was material and untrue. Each of these misrepresentations, individually and collectively, constitute separate acts of default under paragraph 26.1(d) of the Purchase Agreement.

21. Because of Zodiac's failure to perform its obligations in the Purchase Agreement to make timely deliveries and its subsequent failure to cure its performance failures, American terminated part of the Purchase Agreement. American also terminated part of the Purchase Agreement because of the material representations that Zodiac made that have proven to have been untrue as of the date such representations were made.

22. Because of Zodiac's failure to perform its obligations under the Purchase Agreement and the material misrepresentations it made, American properly terminated part of the Purchase Agreement for cause pursuant to ¶¶ 26.2 and 26.3 of the Agreement.

23. Because the Purchase Agreement was partially terminated for cause, American is entitled to procure products similar to those that remain to be delivered or produced under the Purchase Agreement, and Zodiac is obligated to reimburse American for the costs incurred in doing so.

**VI.**  
**CAUSES OF ACTION**

**A. BREACH OF CONTRACT**

24. American and Zodiac entered into a valid, enforceable written agreement. In exchange for American's substantial payments, Zodiac agreed that (i) time was of the essence in delivering the products that American purchased under the Purchase Agreement; (ii) Zodiac would timely deliver products and services; and, (iii) Zodiac would be liable to American for liquidated damages if it failed to deliver products in strict accordance with the delivery schedule set forth in the applicable purchase order.

25. Zodiac breached the Purchase Agreement by failing to timely deliver products. This failure constitutes a material breach of the Purchase Agreement.

26. Zodiac's breach of contract caused injury to American. For the untimely deliveries, American has sustained damages that are difficult, if not impossible, to quantify. Therefore, American requests the Court to award it the liquidated damages specified in the Purchase Agreement. Such liquidated damages are a reasonable forecast of just compensation and do not operate as a penalty.

**B. REQUEST FOR DECLARATORY RELIEF**

27. On June 11, 2015, American provided Zodiac with a formal Notice of Default.

28. Zodiac did not cure the material breaches identified in the Notice of Default within 30 days of the Notice of Default. Zodiac also failed to (i) commence a cure to remedy the default and (ii) diligently pursue a cure. Indeed, Zodiac has not cured its material breaches to this day.

29. In the Purchase Agreement, Zodiac also made numerous material representations about its ability to perform its contractual obligations. Based on the evidence accumulated over

the term of the Agreement, several of those material representations have proven to be untrue as of the date they were made. For instance, Zodiac's representations regarding the "Schedule" (Ex. A. ¶4) and "appropriate" "Personnel and Program Support" (¶43) were material and untrue as of the date they were made. Similarly, Zodiac's statement that it was aware that "time was of the essence (to American)" was material and untrue. Each of these misrepresentations, individually and collectively, constitute separate acts of default under paragraph 26.1(d) of the Purchase Agreement.

30. A controversy exists between American and Zodiac. American contends that it properly terminated part of the Purchase Agreement for cause on September 23, 2015. Because American properly terminated a part of the Purchase Agreement for cause, American is entitled under paragraph 26.3 to procure products similar to those that remain to be delivered under the Purchase Agreement, and Zodiac must reimburse American for the costs incurred in procuring those products.

31. American respectfully requests that the Court declare the parties' rights and obligations regarding American's termination and cost of cover. Specifically, American asks the court to declare that:

- A) American properly terminated part the Purchase Agreement for cause on September 23, 2015;
- B) Zodiac must reimburse American for the costs in excess of what American would have paid Zodiac incurred by American to procure products similar to those that remain to be delivered under the Purchase Agreement.

**C. ATTORNEYS' FEES**

32. In order to prosecute its claims against Zodiac, American has been required to retain the undersigned legal counsel. In accordance with §§ 37.009 and 38.001 of the Texas

Civil Practice and Remedies Code, American seeks the recovery of the reasonable and necessary attorneys' fees it incurs in prosecuting this action.

**D. CONDITIONS PRECEDENT**

33. All conditions precedent have been performed or have occurred, as is required.

**E. JURY DEMAND**

34. American demands a jury trial and tenders all of the jury fees with this petition.

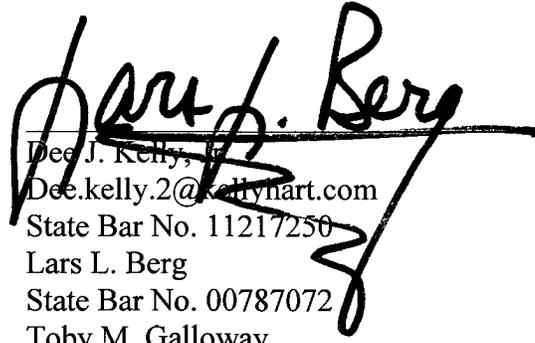
**VII.  
REQUEST FOR RELIEF**

For the above-stated reasons, American respectfully requests that the Court, upon final trial of this lawsuit, issue a final judgment in favor of American and against Zodiac as follows:

- i) Award all contractual damages;
- ii) Award American pre- and post-judgment interest at the highest rate allowed by applicable law;
- iii) Award American the reasonable and necessary attorneys' fees;
- iv) Award American Costs of Court;
- v) Enter a declaration that:
  - A) American properly terminated part of the Purchase Agreement for cause on September 23, 2015;
  - B) Zodiac must reimburse American for the costs in excess of what American would have paid Zodiac incurred by American to procure products similar to those that remain to be delivered under the Purchase Agreement; and,
- vi) Award American all other relief to which it may be entitled.

153-281198-15

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lars L. Berg". The signature is written over a horizontal line that underlines the text below it.

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