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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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VOLKSWAGEN OF AMERICA, INC.,) Case No. 2:13-CV-00802-JAM-EFB

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Plaintiff,) **ORDER GRANTING PLAINTIFF'S**
MOTION FOR SUMMARY JUDGMENT

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v.)

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MAVERICK AUTO GROUP 2, LLC dba)
VOLKSWAGEN OF FAIRFIELD and)
RAHIM HASSANALLY,)

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Defendants.)

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This matter is before the Court on Plaintiff Volkswagen of

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America, Inc.'s ("Plaintiff") Motion for Summary Judgment (Doc.

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#19). Defendants Maverick Auto Group 2, LLC dba Volkswagen of

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Fairfield ("Defendant Fairfield") and Rahim Hassanally ("Defendant

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Hassanally") (collectively "Defendants") oppose Plaintiff's motion

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(Doc. #21). Plaintiff filed a reply (Doc. #25). For the following

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reasons, Plaintiff's motion is GRANTED.¹

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I. FACTUAL AND PROCEDURAL BACKGROUND

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Plaintiff is the exclusive distributor of Volkswagen of

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America vehicles within the United States. Defendants' Response to

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Plaintiff's Statement of Undisputed Facts ("DRSUF") ¶ 1. On

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was originally scheduled for November 19, 2014.

1 January 12, 2011, Plaintiff and Defendant Fairfield entered into a
2 Volkswagen Dealer Agreement ("Dealer Agreement") authorizing
3 Defendant Fairfield as a Volkswagen of America Dealer. DRSUF ¶ 2.
4 As part of the Dealer Agreement, Defendant Fairfield agreed to
5 construct a new or renovated Volkswagen dealership facility by
6 January 12, 2013, that complied in full with all of Plaintiff's
7 requirements for a "White Frame Facility." DRSUF ¶ 3. The Dealer
8 Agreement further provided for a \$600,000 Capital Contribution from
9 Plaintiff to Defendant Fairfield. DRSUF ¶ 4. Defendants allege
10 that Plaintiff also made oral representations to Defendants that
11 the Volkswagen dealership in Napa, California would be moved to a
12 location outside Defendant Fairfield's marketing area. Defendants'
13 Statement of Undisputed Facts ("DSUF") ¶ 1. Defendants further
14 allege that Plaintiff made representations that Defendant Fairfield
15 would be receiving an increased allocation of inventory from
16 Plaintiff. DSUF ¶ 2. Defendants allege that these oral
17 representations were part of the January 12, 2011 agreement between
18 Plaintiff and Defendants. DSUF ¶¶ 1-2.

19 Also on January 12, 2011, Defendant Hassanally entered into a
20 personal guarantee ("Guarantee") in which he agreed to be liable to
21 Plaintiff for all indebtedness of Defendant Fairfield to Plaintiff
22 arising out of the Dealer Agreement. DRSUF ¶ 9.

23 On February 9, 2012, Plaintiff sent Defendants a letter
24 reminding them of the upcoming construction deadlines and the need
25 to meet those deadlines or face repayment of the Capital
26 Contribution. DRSUF ¶ 11. On March 20, 2012, Plaintiff sent
27 Defendants a letter informing them that Defendant Fairfield was in
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1 breach of the Dealer Agreement due to its failure to meet the
2 interim construction deadlines set forth in the agreement. DRSUF
3 ¶ 13. In this same letter, Plaintiff agreed to extend two of the
4 interim construction deadlines to accommodate Defendants' needs.
5 DRSUF ¶ 14. On September 5, 2012, Plaintiff sent Defendants a
6 letter in which it granted Defendant Fairfield a one-time extension
7 of the final deadline to complete construction of the new facility,
8 now requiring that construction be completed by June 12, 2013.
9 DRSUF ¶ 16. On October 17, 2012, Plaintiff sent Defendants a
10 letter in which Plaintiff expressed concern over Defendant
11 Fairfield's lack of progress towards completion of the new
12 facility. DRSUF ¶ 19. Plaintiff also expressed its position that
13 continued lack of progress would constitute an anticipatory breach
14 of the Dealer Agreement by Defendant Fairfield. DRSUF ¶ 19.

15 On February 20, 2013, Plaintiff sent Defendants a letter
16 requesting adequate assurances that construction of a White Frame
17 compliant facility would be completed by June 12, 2013. DRSUF
18 ¶ 21. On March 6, 2013, Defendant Fairfield responded to
19 Plaintiff's February 20th letter. DRSUF ¶ 22. In this letter,
20 Defendant Fairfield maintained that Plaintiff had made oral
21 representations to Defendants about its plans to relocate the Napa
22 dealership outside of the Fairfield marketing area, and that the
23 amount of inventory allocated to Defendants' dealership would be
24 increased. DRSUF ¶ 23.

25 On March 14, 2013, Plaintiff responded to Defendants' letter,
26 informing Defendant Fairfield that it had failed to provide
27 adequate assurances, and giving it until March 25, 2013 to do so.
28 DRSUF ¶ 25. On March 22, 2013, Defendants sent Plaintiff a letter,

1 asking for more time and reiterating their position regarding the
2 relocation of the Napa dealership and increased vehicle allocation
3 issues. DRSUF ¶¶ 26-27. On April 1, 2013, Plaintiff sent
4 Defendants a letter, demanding immediate repayment of the \$600,000
5 Capital Contribution. DRSUF ¶ 28. Defendants have not repaid the
6 \$600,000 to Plaintiff. DRSUF ¶ 29.

7 On April 24, 2013, Plaintiff filed the Complaint (Doc. #1) in
8 this Court. Plaintiffs' Complaint includes the following causes of
9 action: (1) Breach of Contract against Defendant Fairfield; and
10 (2) Breach of Guarantee against Defendant Hassanally.

11 12 II. OPINION

13 A. Defendants' Late-filed Opposition

14 As discussed in the Court's November 14, 2014 minute order
15 (Doc. #22), Defendants' opposition was filed eight days late.
16 Defendants filed a response (Doc. #24) to the Court's minute order,
17 attempting to explain the tardiness of their filing. Because the
18 Court prefers to adjudicate cases on their merits, the Court finds
19 that Defendants have, barely, met the standard for excusable
20 neglect under Rule 6(b)(1)(B) of the Federal Rules of Civil
21 Procedure ("FRCP"). The Court will consider Defendants' late-filed
22 opposition and the supporting documents.

23 B. Analysis

24 The parties' sole dispute revolves around the two oral
25 promises allegedly made by Plaintiff to Defendants prior to the
26 execution of the written agreement. First, Defendants contend that
27 Plaintiff agreed to move a Volkswagen dealership from Napa, CA to
28 an alternate location. Second, Defendants maintain that Plaintiff

1 promised to increase the number of vehicles allocated to
2 Defendants' dealership. Plaintiff argues that any evidence of
3 these alleged oral promises is inadmissible because the Dealer
4 Agreement contained a merger clause, and because the oral promises
5 are fundamentally inconsistent with the terms of the written
6 contract. Mot. at 12, 17. Defendants respond that the merger
7 clause does not bar Court's consideration of the collateral oral
8 terms. Opp. at 7.

9 California law restricts the admissibility of parol evidence
10 where a written contract exists. Specifically, the parol evidence
11 rule provides that terms "set forth in a writing intended by the
12 parties as a final expression of their agreement with respect to
13 such terms as are included therein may not be contradicted by
14 evidence of any prior agreement or of a contemporaneous oral
15 agreement." Cal. Civ. Proc. Code § 1856(a). The Ninth Circuit has
16 noted that "the parties' inclusion of an integration clause in the
17 written contract is but one factor" in determining the
18 admissibility of parol evidence. Sicor Ltd. v. Cetus Corp., 51
19 F.3d 848, 859 (9th Cir. 1995). Nevertheless, "an integration or
20 merger clause is persuasive evidence of full integration." Cent.
21 Coast Pipe Lining, Inc. v. Pipe Shield USA, Inc., 2013 WL 6442603
22 at *4 (C.D. Cal. Dec. 9, 2013).

23 The Agreement contains such a merger clause, which provides as
24 follows: "This instrument contains the entire agreement between the
25 parties. No representations or statements other than those
26 expressly set forth or referred to herein were made or relied upon
27 in entering into this Agreement." Collins Dec., Ex. 1, Standard
28 Provisions, Article 17(4). This clause is "persuasive evidence"

1 that the Agreement was fully integrated, and that no parol evidence
2 may be considered by the Court. Cent. Coast Pipe Lining, 2013 WL
3 6442603 at *4.

4 However, as noted by the Court in its November 20, 2013 Order,
5 the analysis does not end here. Rather, the Court must consider
6 the nature of the alleged collateral terms, and "determine whether
7 the parties intended [them] to be a part of their bargain."
8 Gerdlund v. Elec. Dispensers Int'l, 190 Cal.App.3d 263, 271 (1987).
9 Importantly, "proof of a collateral agreement which contradicts an
10 express provision of the written agreement" is never admissible, as
11 "it cannot reasonably be presumed that the parties intended to
12 integrate two directly contradictory terms in the same agreement."
13 Gerlund, 190 Cal.App.3d at 271. Therefore, the overarching rule is
14 that parol evidence may admitted only "to prove the existence of a
15 separate oral agreement as to any matter . . . which is not
16 inconsistent with [the written agreement's] terms." Gerlund, 190
17 Cal.App.3d at 271.

18 The Dealer Agreement provides that "Dealer shall repay the
19 entire \$600,000 Capital Contribution to VWoA, immediately upon
20 written notice from VWoA, if for any reason Dealer fails to comply
21 in full with the Construction Deadlines, or the White Frame
22 Commencement Date fails to occur by the deadline[.]" Collins Dec.,
23 Ex. 1, Addendum at 6(b). Plaintiff argues that this "for any
24 reason" language is fundamentally inconsistent with the collateral
25 terms allegedly agreed upon by the parties. Specifically,
26 Plaintiff argues that "the plain language of the agreement makes
27 repayment contingent upon the timely building of the White Frame
28 Facility" and the unconditional nature of the "for any reason"

1 language forecloses the existence of additional obligations by
2 Plaintiff, such as the relocation of the Napa dealership, or an
3 increased vehicle allocation to Defendants. Mot. at 21.
4 Inexplicably, Defendants do not address this argument in their
5 opposition.

6 The Court concludes that the "for any reason" language of the
7 written agreement is wholly incompatible with the oral terms
8 alleged by Defendants. If the parties intended Defendants'
9 repayment of the Capital Contribution to be excused by Plaintiff's
10 failure to relocate the Napa dealership, or by Plaintiff's failure
11 to effect an increased vehicle allocation to Defendants'
12 dealership, they would not have included the written provision
13 quoted above. The clear and unambiguous meaning of "for any
14 reason" is that Defendants' failure to comply with the applicable
15 deadlines would result in the unconditional repayment of the
16 Capital Contribution. Because the proffered parol evidence is
17 "inconsistent with [the Agreement's] terms," its admissibility is
18 statutorily barred. Gerlund, 190 Cal.App.3d at 271; Cal. Civ.
19 Proc. Code § 1856(a).

20 Defendants' reliance on the Court's November 20, 2013 Order,
21 which denied Plaintiff's motion for judgment on the pleadings, is
22 unavailing. Included in this Order was a discussion of the parol
23 evidence rule, as well as the following conclusion: "Although the
24 written agreement between Plaintiff and Defendants included an
25 integration clause, this clause would not necessarily exclude
26 evidence that the agreement included additional material terms.
27 . . . As long as the additional terms agreed upon do not
28 contradict the terms of the written agreement, such parol evidence

1 may still be admissible." Order at 7. Defendants' argument to the
2 contrary notwithstanding, this Order does not control the issue
3 presently before the Court. Opp. at 8. It was far from a
4 definitive statement that the Court would consider the alleged oral
5 agreement: rather, it was an invitation for Defendants to develop -
6 through discovery - evidence of additional oral terms *which did not*
7 *contradict the written agreement*. As discussed above, Defendants
8 have failed to present such evidence.

9 The inadmissibility of Defendants' proposed parol evidence is
10 dispositive on both of Plaintiff's claims. Notably, Defendants do
11 not dispute any of the 29 facts set forth in Plaintiff's separate
12 statement of undisputed facts. See generally, DRSUF. It is
13 undisputed that Plaintiff requested adequate assurances from
14 Defendants, pursuant to California Commercial Code § 2609, due to
15 Defendants' lack of progress towards complying with its facility
16 obligations. DRSUF ¶ 21. It is similarly undisputed that
17 Defendant Fairfield's response "did not state that Fairfield would
18 construct the White Frame compliant facility by the extended
19 deadline." DRSUF ¶ 24. After Defendants failed to provide
20 adequate assurances that it would comply with the extended
21 deadline, Plaintiff demanded repayment of the \$600,000 Capital
22 Contribution, pursuant to the terms of the Agreement. DRSUF ¶ 28.
23 Defendant Fairfield's failure to repay the Capital Contribution is
24 in violation of the Dealer Agreement, and Defendant Fairfield has
25 breached the contract. Accordingly, Plaintiff's motion for summary
26 judgment on its first cause of action for breach of contract
27 against Defendant Fairfield is GRANTED.

28 Similarly, it is undisputed that Defendant Hassanally signed a

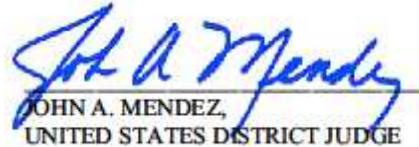
1 personal guarantee, in which he agreed to be "liable to VWOA for
2 all indebtedness of Fairfield to VWOA arising out of [the Dealer
3 Agreement]." DRSUF ¶9. Defendant Hassanally's failure to pay
4 Plaintiff the amount owed by Defendant Fairfield is a breach of
5 that guarantee. Accordingly, Plaintiff's motion for summary
6 judgment on its second cause of action for breach of guarantee
7 against Defendant Hassanally is GRANTED.

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9 III. ORDER

10 For the foregoing reasons, Plaintiff's Motion for Summary
11 Judgment is GRANTED.

12 IT IS SO ORDERED.

13 Dated: December 10, 2014

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16 JOHN A. MENDEZ,
17 UNITED STATES DISTRICT JUDGE
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