

CHANEN & OLSTEIN

7373 Lincoln Ave., Suite 100 ▪ Lincolnwood, IL 60712 ▪ (847) 469-4669
Stuart@ChanenOlstein.com ▪ Ariel@ChanenOlstein.com

October 19, 2020

BY EMAIL and
BY CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Jonathan Delagrave
Racine County Executive
730 Wisconsin Avenue
Racine, WI 53403

Mr. David DeGroot
Mount Pleasant Village President
8811 Campus Drive
Mount Pleasant, WI 53406

Re: *Demand Letter: Foxconn Development Agreement*

Dear Sirs:

I represent Daniel R. Hintz (“Hintz”), a citizen, resident, and taxpayer of Racine County, and Hintz Real Estate Development Company LLC (“HRED”), a taxpayer of the Village of Mount Pleasant.

As you well know, on December 1, 2017, Racine County and the Village of Mount Pleasant (the “Municipalities”) entered into a contract with FEWI Development Corporation, AFE, Inc., and SIO International Wisconsin, Inc. (hereafter, collectively, “the “Foxconn Subsidiaries,” and along with their parent companies, affiliates, and guarantors, collectively, “Foxconn”). The December 1, 2017 contract is generally referred to as the Foxconn Project Development Agreement (hereafter, the “Agreement”).

Foxconn has breached the Agreement, causing substantial harm to the Municipalities and its citizens, residents and taxpayers.

By this letter, Hintz and HRED demand that the Municipalities file a lawsuit against the Foxconn Subsidiaries and certain additional guarantors to enforce the Agreement and/or recover damages to the Municipalities caused by the breach (the “Lawsuit”).

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The Foxconn Subsidiaries have breached the Development Agreement in at least four ways:

1. The Foxconn Subsidiaries have explicitly repudiated their obligation to build a Gen 10.5 TFT-LCD fabrication plant. § V, ¶ 5;
2. By making themselves ineligible to receive approximately \$2.85 billion in State of Wisconsin incentives, the Foxconn Subsidiaries have caused themselves to be unable to perform their obligation to invest approximately \$10 billion in Racine County (§ V, ¶ 5);
3. By failing to take all necessary actions to allow development of the housing and schools required for potential employees and their families, the Foxconn Subsidiaries have made themselves unable to perform their obligation to hire approximately 13,000 people (§ V, ¶ 9); and
4. The Foxconn Subsidiaries have not striven, in good faith, to hire Racine County residents whenever reasonably possible. § V, ¶ 10.

When a contractual promisor informs the promisee that he “will not or cannot perform his contractual duties or does any voluntary act which renders performance of his contractual duties impossible,” then, the Wisconsin Supreme Court has held, those statements constitute an “anticipatory repudiation of [the] contract and is considered a total breach.” *Pure Milk Prod. Cooperative v. Nat’l Farmers Org.*, 64 Wis.2d 241, 254 (1974).

Among other things, the Foxconn Subsidiaries have, through their own voluntary acts, impaired their credibility with both prospective employees and with prospective financiers of the housing needed for such employees. Such impaired credibility makes performance by the Foxconn Subsidiaries impossible. Facts that support this conclusion include, but are not limited to:

1. Foxconn and the Foxconn Subsidiaries repudiated the obligation to build a Gen 10.5 TFT-LCD fabrication plant.

2. Foxconn and the Foxconn Subsidiaries continues to fail to state with specificity what they will manufacture in Mount Pleasant other than masks and ventilators, while the Agreement called for the manufacture of far more sophisticated equipment.
3. Foxconn and the Foxconn Subsidiaries have given varying descriptions of the work to be performed in Racine County by Foxconn.
4. The conduct of Foxconn and the Foxconn Subsidiaries has called into question their credibility and their commitment to performing their obligations under the Development Agreement.
5. Foxconn and the Foxconn Subsidiaries have failed to take all necessary steps to enable their prospective employees to reside in Racine County.
6. Foxconn and the Foxconn Subsidiaries have stated on several occasions that they are unable to hire the people they need in Racine County.
7. The lack of housing and schools of the type expected by the people Foxconn and the Foxconn Subsidiaries hope to hire contributes significantly to their inability to hire such people.
8. Foxconn and the Foxconn Subsidiaries have failed to provide assurances that it will invest approximately \$10 billion in Racine County adequate to persuade prospective financiers of housing in Racine County to finance the housing needed if Foxconn were to invest \$10 billion.
9. Foxconn and the Foxconn Subsidiaries have failed to provide assurances that it will hire about 13,000 people adequate to persuade prospective financiers of housing in Racine County to finance the housing needed if Foxconn were to hire about 13,000 people.
10. Foxconn and the Foxconn Subsidiaries have failed to provide the assurances essential to the development of the right type of housing at the right time such as a timetable for hiring Foxconn employees and information on the compensation of such employees,

11. Foxconn and the Foxconn Subsidiaries have failed to provide the necessary assurances to the various governmental entities responsible for schools, such as a timetable for hiring Foxconn employees and information on the compensation of such employees.
12. Foxconn and the Foxconn Subsidiaries have failed to state publicly that it will not compete with other prospective developers of housing.
13. The refusal of Foxconn and the Foxconn Subsidiaries to state their plans for Racine County has resulted in the Wisconsin Economic Development Corp. (“WEDC”) declaring Foxconn ineligible for economic incentives of about \$2.85 billion.
14. Foxconn and the Foxconn Subsidiaries have as refused to renegotiate its contract with WEDC so as to qualify for economic incentives from WEDC.

The Municipalities and their residents, citizens, and taxpayers have taken great risks in reliance upon the contractual promises of Foxconn and the Foxconn Subsidiaries, and as result of their breaches, the Municipalities have suffered severe financial harm.

The Municipalities, along with affiliates of the Municipalities, have spent approximately \$200 million on land acquisition, \$185 million on the development of water and sewer lines, and \$12 million on roads within the Municipalities. This is in addition to the approximately \$500 million spent on improvements to I-94 (\$252 million State, \$246.2 million Federal), \$350 million that WE Energies and American Transmission Company have spent on the development of gas and electric transmission facilities, and an additional \$135 million that Wisconsin has spent on additional roads, all for the express purpose of supporting the Project.

Applicable Wisconsin statutes provide the Municipalities ninety days from receipt of this demand to decide whether they will file a Lawsuit against the Foxconn Subsidiaries and Guarantors and to inform Hintz and HRED of their decision. If the Municipalities make a decision prior to the expiration of the ninety days – whether it be “to file” or “not to file” such Lawsuit – we would

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appreciate hearing from you at that time. If Mr. Hintz and HRED have not received any response from you by COB on January 14, 2020, we will assume the Municipalities have chosen not to file such a Lawsuit.

If the Municipalities conclude that they need additional time beyond ninety days to analyze the claims against the Foxconn Subsidiaries and Guarantors, we trust that you will so advise us, and we will work with you cooperatively to agree to a revised, longer date for a final decision.

If the Municipalities decide not to pursue a Lawsuit, Mr. Hintz and HRED intend to file one as a derivative action on behalf of the Municipalities.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Stuart J. Chanen", written in a cursive style.

Stuart J. Chanen,
Chanen & Olstein

*On behalf of Daniel Hintz and
Hintz Read Estate Development Co. LLC*

cc: Mr. Michael Lanzdorf, Racine County Corporation Counsel
Mr. Bruce Block, counsel to Racine County
Mr. Alan Marcuvitz, counsel to the Village of Mount Pleasant