

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN AND
FOR FLAGLER COUNTY, FLORIDA

CASE NO.: 2019 CA 000803

TWO COMMERCE LLC, a Florida limited
liability company,

Plaintiff,

v.

PALM COAST DATA LLC, a Delaware
limited liability company; STUDIO
MEMBERSHIP SERVICES, LLC, a Delaware
limited liability company; MEDIA DATA
RESOURCES, LLC, a Delaware limited
liability company; and FULCIRCLE MEDIA,
LLC, a Delaware limited liability company,

Defendants.

**DECLARATION OF CHRISTOPHER VITALE
AS TO TENANT'S NON-PAYMENT OF RENT**

1. My name is Christopher Vitale, I am over 18 years of age, and I have personal knowledge of the facts contained in this Declaration.

2. I am an authorized representative of Plaintiff Two Commerce LLC ("**Landlord**" or "**Plaintiff**").

3. I have personal knowledge of the Lease dated April 26, 2019 between Landlord and Defendant Palm Coast Data LLC ("**Tenant**" or "**Defendant**", and together with Landlord/Plaintiff, the "**Parties**") for Tenant's lease of the Premises located on the Property.¹

4. Pursuant to the Lease, Tenant's rent payments are due on the first day of each and every calendar month during the Lease Term.

¹ Capitalized terms not defined herein shall have the meaning assigned to them in the Lease, which is attached to the Complaint as Exhibit A.

5. As of the filing of the Complaint, Tenant failed to pay all of the rent due under the Lease for December 2019, including base rent, late charges, interest, and sales tax.

6. On March 23, 2020, following Tenant's failure to timely pay all amounts due to Landlord's affiliate under a settlement agreement,² Landlord filed the Parties' "Joint Stipulation for Final Judgment for Possession, Eviction, and Damages" ("**Joint Stipulation**") seeking entry of a "Stipulated Final Judgment for Possession, Eviction, and Damages ("**Stipulated Final Judgment**"). The Parties' proposed Stipulated Final Judgment is attached to that Joint Stipulation as Exhibit 1.

7. The Joint Stipulation states in part:

In the event sums due under the Lease for past due or future accruing rent are not paid, **Landlord, upon the filing of an affidavit of non-payment, shall be entitled to the entry of the Final Judgment for eviction and possession of the Premises, and shall be awarded damages to the extent of unpaid sums then due under the Lease.** The Plaintiff's affidavit of non-payment may include a calculation of the then unpaid sums due under the Lease, which sums may be included in the Final Judgment. Defendant stipulates to such sums being included in the Final Judgment, and waives any defense to entry of the Final Judgment, except for the defense of payment, and the Parties agree that sums will not be included in the Final Judgment, nor shall eviction be, based on any rents which have in fact been paid.

Joint Stipulation at ¶ 4 (emphasis added).

8. As of the filing of this Declaration, Tenant has failed to pay all of the rent due under the Lease from December 2019 through May 2020, including base rent, late charges, interest, and sales tax. Tenant also failed to pay the property taxes for the Premises. As to the property taxes, the Joint Stipulation states: "The Court finds that, if Defendant fails to pay the real estate taxes for the Premises when they become due, Plaintiff may pay the taxes directly to

² The complete settlement agreement is attached as Exhibit 1 to Plaintiff's "Response to Defendant's Motion for Status Conference and Other Relief" filed on April 3, 2020.

the tax collector and recover same from Defendant as part of the past-due rent due under the Lease.” *Id.* at ¶ 8.

9. Attached hereto is a copy of Landlord’s current statement of account (as of May 20, 2020) showing a past-due rent balance of \$418,281.52, which includes the rent owed for December 2019 through May 2020 (including base rent, late charges, interest, and sales tax) as well as the property taxes that Landlord paid on Tenant’s behalf.

10. Landlord has credited Tenant for any and all rent payments made to date.

11. As set forth in the Joint Stipulation, pursuant to Section 14.4 of the Lease and Section 83.251, Florida Statutes, the Parties stipulated and agreed that Plaintiff is entitled to its attorneys’ fees, costs, and expenses incurred in prosecuting this action and enforcing the Lease. *Id.* at ¶ 5. Plaintiff will apply to the Court for entry of a separate or amended judgment for its attorneys’ fees, costs, and expenses.

Under penalties of perjury, I declare that I have read the foregoing Declaration and that the facts stated therein are true and correct.

By: Christopher V. Vitale
Christopher Vitale

Palm Coast Data rents

TWO COMMERCE PAST DUE RENTS

Date	Description	Balances outstanding				as of 5/20/2020 # days	daily interest		
		Rent	Late Fee	Property Taxes	Interest			sales tax	Total due
12/1/2019	December 2019 rent	47,500.00			4,029.04	3,452.45	\$ 54,981.49	172	23.42
1/1/2020	January 2020 rent	47,500.00			3,302.88	3,302.19	\$ 54,105.07	141	23.42
2/1/2020	February 2020 rent	47,500.00			2,576.71	3,254.99	\$ 53,331.70	110	23.42
3/1/2020	March 2020 rent	47,500.00			1,897.40	3,210.83	\$ 52,608.23	81	23.42
4/1/2020	April 2020 rent	47,500.00			1,171.23	3,163.63	\$ 51,834.86	50	23.42
5/1/2020	May 2020 rent	48,537.50			478.73	3,186.05	\$ 52,202.28	20	23.94
10/1/2019	Late fee for October 2019 (see letter to Rory Burke)		5,700.00		654.95	425.78	\$ 6,780.73	233	2.81
12/1/2019	Late fee for December 2019 (12%)		5,700.00		483.48	414.29	\$ 6,597.77	172	2.81
1/1/2020	Late fee for January 2020 (12%)		5,700.00		396.35	396.26	\$ 6,492.61	141	2.81
2/1/2020	Late fee for February 2020 (12%)		5,700.00		309.21	390.60	\$ 6,399.81	110	2.81
3/1/2020	Late fee for March 2020 (12%)		5,700.00		227.69	385.30	\$ 6,312.99	81	2.81
4/1/2020	Late fee for April 2020 (12%)		5,700.00		140.55	379.64	\$ 6,220.19	50	2.81
5/1/2020	Late fee for May 2020 (12%)		5,824.50		57.45	382.33	\$ 6,264.28	20	2.87
4/15/2020	2019 Property Taxes			49,864.06	885.26	3,400.20	\$ 54,149.52	36	24.59
	Total Two Commerce	\$ 286,037.50	\$ 40,024.50	\$ 16,610.92	\$ 25,744.54	\$ 418,281.52			

* Effective Jan. 1, 2020, the applicable Florida sales tax rate was reduced from 6.7% to 6.5% (the State sales tax rate is now 5.5% plus a 1% surtax charged in Flagler County)