

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.

JOINT STIPULATION FOR FINAL JUDGMENT FOR POSSESSION, EVICTION, AND DAMAGES

Plaintiff Two Commerce LLC (“**Plaintiff**”) and Defendant Palm Coast Data LLC (“**Defendant**,” together with Plaintiff, the “**Parties**”) file this Joint Stipulation for Final Judgment for Possession, Eviction, and Damages (“**Joint Stipulation**”), and state as follows:

1. Plaintiff brought this action against Defendant for, among other things, (i) (Count 1) eviction of Defendant from the leased premises and property (“**Premises**”), which are the subject of the lease at issue (“**Lease**”) in the Complaint, and (ii) (Count 2) damages against Defendant for breach of the Lease.

2. The Parties have agreed that Defendant shall be evicted and removed from the Premises, without further litigation, upon the entry of the Stipulated Final Judgment for Possession, Eviction, and Damages (“**Final Judgment**”) attached hereto as **Exhibit 1**.

3. The Parties have further agreed that Plaintiff shall be entitled to the damages set forth in the Final Judgment, which include unpaid amounts for the past-due rent, interest, sales tax, and late charges, as well as any damages that accrue in the future due to Defendant’s non-payment of rent due under the Lease. As of February 14, 2020, the total past-due amount under

the Lease is **\$174,441.23** (which includes unpaid rent for December 2019, January 2020, and February 2020), as follows:

- a. Pursuant to Section 3.1(a) of the Lease, the monthly base rent is \$47,500.00 during the first 12 months of the Lease.
- b. Pursuant to Section 3.4 of the Lease, Tenant is required to pay a late charge equal to 12% for each delinquent rent payment.
- c. Pursuant to Section 3.4 of the Lease, Tenant is required to pay interest (at the maximum rate permitted by law, currently 18%) on all past-due amounts due under the Lease.
- d. Pursuant to Section 3.5 of the Lease, Tenant is required to pay Florida sales tax on all payments of rent. The current sales tax rate is 6.7 percent.

4. 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.

5. The Parties also stipulate and agree that, pursuant to Section 14.4 of the Lease and Section 83.251, Florida Statutes, Plaintiff is entitled to its attorneys' fees, costs, and expenses incurred in prosecuting this action and enforcing the Lease.

6. Each of the Parties, by signing below, authorizes their counsel to file this Joint Stipulation and stipulate to:

- a. the entry of the Final Judgment attached hereto as Exhibit 1; and
- b. this Court retaining jurisdiction over this action to enforce compliance with the terms of the Final Judgment.

| TWO COMMERCE LLC | PALM COAST DATA LLC |
|------------------------------------|---------------------|
| By: <u>Christopher V. Vitale</u> | By: _____ |
| Name: <u>Christopher V. Vitale</u> | Name: _____ |
| Title: <u>President</u> | Title: _____ |
| Date: <u>February 18, 2020</u> | Date: _____ |

| TWO COMMERCE LLC | PALM COAST DATA LLC |
|------------------|---------------------------|
| By: _____ | By: <u>Cera Casey</u> |
| Name: _____ | Name: <u>CIARAN CASEY</u> |
| Title: _____ | Title: <u>MANAGER.</u> |
| Date: _____ | Date: <u>2-18-2020</u> |

Respectfully submitted,

DUANE MORRIS LLP
201 South Biscayne Boulevard, Suite 3400
Miami, Florida 33131
Tel: (305) 960-2200
Fax: (305) 960-2201

LOREN & KEAN LAW
7111 Fairway Drive, Suite 302
Palm Beach Gardens, FL 33418
Tel: (954) 474-7200
Fax: (561) 615-5708

By: /s/ Richard D. Shane
Michael J. Shuman, Esq.
Florida Bar No.: 17053
mjshuman@duanemorris.com
Richard D. Shane, Esq.
Florida Bar No.: 70611
rdshane@duanemorris.com
Counsel for Plaintiff
Two Commerce LLC

By: /s/ Michael I. Kean
Michael I. Kean, Esq.
Florida Bar No.: 970750
mkean@lorenkeanlaw.com
Counsel for Defendant
Palm Coast Data LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on this 23rd day of March, 2020 upon:

DUANE MORRIS LLP
Michael J. Shuman, Esq.
mjshuman@duanemorris.com
Richard D. Shane, Esq.
rdshane@duanemorris.com
201 South Biscayne Boulevard, Suite 3400
Miami, Florida 33131

Counsel for Plaintiff
Two Commerce LLC

LOREN & KEAN LAW
Michael I. Kean, Esq.
mkean@lorenkeanlaw.com
7111 Fairway Drive, Suite 302
Palm Beach Gardens, FL 33418

Counsel for Defendant
Palm Coast Data LLC

By: s/Richard D. Shane
Richard D. Shane

Exhibit 1

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.

STIPULATED FINAL JUDGMENT FOR POSSESSION, EVICTION, AND DAMAGES

THIS CAUSE is before the Court on Plaintiff Two Commerce LLC (“**Plaintiff**”) and Defendant Palm Coast Data LLC’s (“**Defendant**,” together with Plaintiff, the “**Parties**”) “Joint Stipulation for Final Judgment for Possession, Eviction, and Damages” (the “**Joint Stipulation**”), pursuant to which the Parties agree to the entry of this “Stipulated Final Judgment for Possession, Eviction, and Damages” (the “**Stipulated Final Judgment**”) in favor of Plaintiff and against Defendant, together with the affidavit of non-payment of Plaintiff referenced in the Joint Stipulation. The Court having reviewed the Record, being advised of the Parties’ agreement in the Joint Stipulation, and being otherwise duly advised in the Premises, it is hereby

ORDERED AND ADJUDGED AS FOLLOWS:

1. This Stipulated Final Judgment is entered in favor of Plaintiff and against Defendant as to Count 1 of Plaintiff’s Complaint (for Tenant Eviction) without further notice or hearing thereon, pursuant to the Joint Stipulation between the Parties.

2. The Court finds that Defendant is in breach of the Lease (defined below) for failing to pay rent that is due Plaintiff and Plaintiff shall immediately recover from Defendant the leased premises and property (“**Premises**”), which are the subject of the lease at issue (“**Lease**”)

in the Complaint, located at **2 Commerce Boulevard, Palm Coast, Florida 32164**, for which let Writ of Possession issue forthwith.

3. The Clerk of the Court shall forthwith issue a Writ of Possession in accordance with this Stipulated Final Judgment.

4. The Sheriff is authorized to serve the Writ of Possession forthwith.

5. As to Count 2 of the Complaint (for Damages against Defendant), the Court finds that Defendant is in breach of the Lease for failing to pay rent that is due Plaintiff. Therefore, this Stipulated Final Judgment be and the same is entered in favor of Plaintiff Two Commerce LLC, located at c/o of AMREP Corporation, 620 West Germantown Pike, Suite 175, Plymouth Meeting, Pennsylvania 19462, and against Defendant Palm Coast Data LLC, located at 347 West 36th Street, Unit 1300, New York, NY 10018, for past-due rent for December 2019, January 2020, and February 2020 as well as the associated interest, sales tax, and late charges (to which Plaintiff is entitled under Sections 3.4 and 3.5 of the Lease) accruing through February 14, 2020, in the total amount of **\$174,441.23** (ONE HUNDRED SEVENTY FOUR THOUSAND FOUR HUNDRED FORTY ONE DOLLARS AND TWENTY THREE CENTS) less any amounts paid for rent under the Lease after February 14, 2020, all of which shall bear interest at the applicable legal rate pursuant to Section 55.03, Florida Statutes (presently, 6.83% per annum) from the date of entry until satisfied, **ALL FOR WHICH LET EXECUTION NOW ISSUE FORTHWITH.**

6. The Court finds that, for illustration purposes, as of February 14, 2020, the total past-due amount is \$174,441.23, which includes unpaid base rent for December 2019, January 2020, and February 2020, as well as late charges, interest, and sales tax, as follows:

- a. Pursuant to Section 3.1(a) of the Lease, the monthly base rent is \$47,500.00 during the first 12 months of the Lease.
- b. Pursuant to Section 3.4 of the Lease, Tenant is required to pay a late charge equal to 12% for each delinquent rent payment.
- c. Pursuant to Section 3.4 of the Lease, Tenant is required to pay interest (at the maximum rate permitted by law, currently 18%) on all past-due amounts due under the Lease.
- d. Pursuant to Section 3.5 of the Lease, Tenant is required to pay Florida sales tax on all payments of rent. The current sales tax rate is 6.7 percent.

7. The Court finds that, in the event Defendant does not pay rent on February 15, 2020 or at any point thereafter, and until the Premises are relet, Defendant shall be in breach of

the Lease and Plaintiff shall recover from Defendant all monthly rent payments that accrue beginning in March 2020 and continuing through the remaining term of the Lease, along with all applicable interest, sales tax, late charges, less any payments or partial payments made by Defendant or its affiliated entities for Lease charges after February 14, 2020. Plaintiff may immediately apply to the Court for a separate or amended final judgment as to the amounts then accrued for monthly base rent, interest, sales tax, and late charges, along with all associated attorneys' fees, costs, and expenses, and the Court will forthwith enter judgment in Plaintiff's favor. Defendant stipulates and agrees to not contest Plaintiff's right to recover or entitlement to these amounts, other than in the event Defendant alleges such sums were paid.

8. 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 the tax collector and recover same from Defendant as part of the past-due rent due under the Lease.

9. The Court has jurisdiction over the Parties and the subject matter of this action.

10. The Court finds that, in connection with Counts 1 and 2 of the Complaint, Plaintiff is entitled to recover its attorneys' fees, costs, and expenses from Defendant pursuant to Section 14.4 of the Lease and Section 83.251, Florida Statutes. The Court reserves jurisdiction to enter a separate or amended final judgment upon a showing of Plaintiffs' attorneys' fees, costs, and expenses incurred in prosecuting this action and enforcing the Lease.

11. The Court retains jurisdiction to enforce this Stipulated Final Judgment and to make such other and further determinations as to the amount of future damages due and owing to Plaintiff.

DONE AND ORDERED in Bunnell, Flagler County, Florida this ____ day of _____, 2020.

HON. TERENCE PERKINS
CIRCUIT COURT JUDGE

Copies furnished to:

Michael J. Shuman, Esq.
mjshuman@duanemorris.com
Richard D. Shane, Esq.
rdshane@duanemorris.com
DUANE MORRIS LLP
201 South Biscayne Boulevard, Suite 3400
Miami, FL 33131
Attorneys for Plaintiff Two Commerce LLC

Michael I. Kean, Esq.
mkean@lorenkeanlaw.com
LOREN & KEAN LAW
7111 Fairway Drive, Suite 302
Palm Beach Gardens, FL 33418
Attorneys for Defendant Palm Coast Data LLC

DM1\10888756