

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X Index No.: _____/2020

693 FIFTH OWNER LLC,

Plaintiff,

-against-

COMPLAINT

VALENTINO U.S.A., INC. and VALENTINO
FASHION GROUP, S.p.A.,

Defendants.

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Plaintiff, 693 Fifth Owner LLC (“Plaintiff”), by its attorneys, Cyruli Shanks & Zizmor LLP, complaining of defendants, Valentino U.S.A., Inc. (“Tenant”) and Valentino Fashion Group, S.p.A. (“Guarantor”) (collectively, “Defendants”) alleges as follows:

1. At all times hereinafter mentioned, Plaintiff was and remains a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in New York.

2. At all times hereinafter mentioned, upon information and belief, Tenant was and remains a foreign corporation organized and existing under the laws of the State of Delaware and authorized to conduct business in New York.

3. At all times hereinafter mentioned, upon information and belief, Guarantor was and remains a foreign corporation organized and existing under the laws of Italy.

4. At all times hereinafter mentioned, upon information and belief, Tenant was and remains a wholly owned subsidiary of Guarantor.

5. On or about May 3, 2013, Plaintiff’s predecessor-in-interest, Thor 693 LLC, as landlord, and Tenant, as tenant, entered into a written lease agreement (the “Lease”) for the rentable portion of the lower level, ground floor, second floor and third floor (the “Premises”) of

the building located at 693 Fifth Avenue, New York, New York 10022 (the “Building”) for a term commencing on August 1, 2013 and expiring on July 31, 2029 (the “Term”) under the terms, covenants, and conditions contained therein.

6. Guarantor executed a guaranty, dated as of May 6, 2013, in favor of Plaintiff’s predecessor-in-interest, Thor 693 LLC, as landlord under the Lease (the “Guaranty”) in which, inter alia, Guarantor unconditionally guaranteed to landlord the full prompt payment of fixed rent, additional rent, and all other charges and amounts payable by Tenant under the Lease (hereinafter, and in the Lease, collectively defined as “Rent”), and the full and complete performance of all obligations of the Tenant under the Lease.

7. On or about April 15, 2016, Thor 693 LLC transferred to Plaintiff all of its right, title, and interest in and to the Building.

8. On or about June 10, 2016, by assignment of leases (“Assignment of Leases”), Thor 693 LLC assigned to Plaintiff, inter alia, all of its right, title, and interest in and to the Lease.

**TENANT FILES ACTION SEEKING
TO AVOID ITS LEASE OBLIGATIONS**

9. On June 1, 2020, Tenant served upon Plaintiff a notice of Tenant’s intent to vacate the Premises by December 31, 2020 (the “Vacate Notice”), approximately eight and one-half (8 ½) years before the end of the Lease.

10. The express terms of the Lease did not grant Tenant any right to terminate the Lease as contemplated in the Vacate Notice.

11. Thereafter, on or about June 21, 2020, Tenant filed a complaint (a copy of which is annexed hereto and made a part hereof as **Exhibit A**) (hereinafter “Tenant’s Complaint”) against Plaintiff in Supreme Court, New York County, Index No.: 652605/2020 (hereinafter

“Tenant’s Suit”) seeking, among other things, to void the remaining eight and one-half (8 ½) years of its obligations under the Lease, and thereby freeing Guarantor of its corresponding obligations under the Guaranty.

12. Tenant’s Vacate Notice and Tenant’s Suit were an opportunistic attempt to capitalize upon and pervert the international COVID-19 pandemic in order to mitigate market difficulties the House of Valentino had been suffering since well before the COVID-19 pandemic.

13. On July 27, 2020, Plaintiff moved to dismiss the Tenant’s Complaint (the “Motion to Dismiss”).

14. Tenant ceased operations in the Premises in or about December 2020.

15. Tenant vacated and abandoned the Premises on or about December 31, 2020.

16. By decision and order dated January 27, 2021 (Borrok, J.) (the “Decision”) this Court granted Plaintiff’s motion and dismissed Tenant’s Complaint in its entirety. A copy of the Decision is annexed hereto and made a part hereof as **Exhibit B**.

17. In the Decision, this Court found that, inter alia, “(n)o wrongful act of the landlord is alleged to have caused the necessity” of Tenant’s decision to vacate the Premises (see Ex. B, pg. 2).

**GUARANTOR’S BUSINESS SLOWS IN 2018
AS CUSTOMERS MIGRATE TO ONLINE RETAILERS**

18. Upon information and belief, in fiscal year 2018, business began to slow for Guarantor.

19. In April 2019, discussing Guarantor’s fiscal year 2018, its Chief Executive Officer, Stefano Sassi¹, was quoted by *uk.reuters.com* stating that business had not grown “at the

¹ Mr. Sassi executed the Guaranty on behalf of Guarantor.

pace we were used to” (see *Reuters.com* article, dated April 17, 2019, annexed hereto and made a part hereof as **Exhibit C**).

20. Upon information and belief, concurrent with Guarantor’s declining growth, throughout 2018 and 2019 retailers worldwide increasingly shifted their focus to online sales in response to ongoing consumer migration to online retail outlets.

21. Notwithstanding the foregoing, the Fifth Avenue shopping district has and remains among the most desirable and expensive retail locations in Manhattan and the world.

22. In Tenant’s own words, Tenant operates a retail store at the Premises “for customers to view and sample Valentino’s merchandise in a luxurious setting, in addition to experiencing high-quality service – and amenities” (see Ex. A, ¶ 6) complete with champagne, and an in-house café (see Ex. A, ¶ 5-11), having chosen the Premises because the Building was in a “heavily trafficked area” and that it also “served a focal point of high-end New York City fashion buyers” (see Ex. A, ¶ 10).

23. According to Defendants, the introduction of online shopping has compromised Valentino’s ability to offer in-person opportunities for customers to view its “merchandise in a luxurious setting, in addition to experiencing high-quality service – and amenities” (see Ex. A ¶6).

24. In fact, it is in response to these declining business prospects that Defendants have opportunistically attempted to capitalize upon and pervert the international COVID-19 pandemic in order to evade their lawful obligations under the Lease and Guaranty, respectively.

25. Upon information and belief, historically and to date retailers have maintained flagship locations among the world-renowned in luxury shops on Fifth Avenue, regardless of sales at those locations, due to the prestige and exposure afforded retailers.

26. Tenant's Suit and subsequent media blitz in 2020 speak only of its Manhattan-based patrons, never acknowledging the robust and broadly national and international pedestrian traffic for which luxury shops on Fifth Avenue are well-known.

THE COVID-19 PANDEMIC

27. In 2020, in reaction to the COVID-19 pandemic, New York State Governor Andrew Cuomo issued a series of Executive Orders, entitled "Temporary Suspension and Modification of Laws Relating to the Disaster Emergency" (hereinafter, "Temporary Orders").

28. On March 20, 2020, Governor Cuomo issued Temporary Order 202.8, which resulted in the temporary closing of non-essential retail establishments, including the Premises.

29. Over the course of 2020, the State of New York gradually scaled back the Temporary Orders, in the process, allowing retailers to reopen subject to prescribed safety precautions.

30. In Tenant's Complaint, Tenant claimed that the "financial disruptions" to the lives of New Yorkers will render them unable to partake of Tenant's in-person experiences (complete with personalized fittings, champagne, and an in-house cafés) and that, consequently, Defendants should be relieved of all obligations under the Lease and Guaranty, respectively (see Ex. A, ¶ 5-21).

31. Notably, at no time did Tenant accuse Plaintiff of preventing Tenant's access to or use of the Premises. (see Ex. B).

32. In fact, Plaintiff never prevented Tenant's access to or use of the Premises.

33. At the same time that Tenant and Guarantor disparaged the Fifth Avenue shopping district and Manhattan, and bemoaned the effects of the COVID-19 pandemic on its business:

- (i) Tenant continued to maintain a retail outlet at 821 Madison Avenue (at 68th St.), New York, New York 10065, a mere avenue and fourteen (14) streets from the Premises; and
- (ii) Tenant simultaneously expanded its presence in other parts of the country, among them, by 690 square feet to its 2,505 square foot boutique in Highland Park Village, a prestigious shopping center in Dallas, Texas (see theRealDeal.com article dated June 24, 2020, copy annexed hereto and made a part hereof as **Exhibit D**); and
- (iii) upon information and belief, Tenant was negotiating for a new retail location at 135 Spring Street, New York, New York 10012, which ultimately resulted in a new lease for Tenant at that location sometime in 2020 or early 2021.

PLAINTIFF SERVES THE RPAPL § 235-e(d)
RENT NOTICE TO TENANT AND GUARANTOR

34. On or about July 10, 2020, Plaintiff sent Tenant a notice pursuant to RPAPL § 235-e(d) (“Default Notice”) (a copy of which is annexed hereto and made a part hereof as **Exhibit E**), stating, in part:

(i) if you fail to pay the sum set forth above in full within ten (10) days of the date of this notice, the Landlord may commence appropriate legal proceedings against you to recover all sums due under the Lease, including, without limitation the \$3,180,241.78 referenced above. In that event, in addition to all sums due pursuant to the Lease, Landlord will seek to collect all attorney's fees, costs and disbursements incurred by Landlord in connection therewith, together with interest and late charges.

35. The Default Notice was also delivered to the Guarantor in satisfaction of the requirements of Sections 3, 10(a), and 15 of the Guaranty.

TENANT'S RENT DEFAULT

36. Tenant failed to pay Rent from September 2020 through February 2021, in the aggregate sum of \$6,638,390.44.

TENANT ABANDONS THE PREMISES

37. Tenant vacated and abandoned the Premises on or about December 31, 2020.

38. Tenant turned over the Premises to Plaintiff with its valuable components having been destroyed.

39. Specifically, Tenant and/or those claiming by under or through Tenant, caused or permitted substantial damage to occur in the Premises (the "Property Damage") including, but not limited to:

- (a) defacing the Venetian Terrazzo marble panels with Carrara chippings throughout the Premises with paint or a similar substance and leaving sizable holes in the Venetian Terrazzo marble panels with Carrara chippings throughout the Premises;
- (b) defacing the Venetian Terrazzo marble panels with Carrara chippings in the elevator at the Premises with paint or a similar substance; and
- (c) defacing the Venetian Terrazzo marble panels with Carrara chippings of the interior staircase at the Premises with paint or a similar substance and leaving sizable holes in the Venetian Terrazzo marble panels with Carrara chippings.

40. Section 21.5 of the Lease requires that at the expiration or earlier termination of the Lease, Tenant deliver the Premises "broom clean, free of debris and Tenant's property, in good order, condition and state of repair."

41. Section 6.1 of the Lease requires that all fixtures, equipment, alterations,

improvements and installations attached to, or built into, the Premises as of the Commencement Date or during the Term shall be and remain a part of the Premises and be deemed the property of Plaintiff.

42. Section 8.1(a) of the Lease states that Tenant shall take good care of the Premises and pay the cost of any injury, damage, or breakage done by Tenant or by its employees, licensees, or invitees.

43. Section 6.1 of the Lease further requires that Tenant shall repair or shall reimburse Plaintiff upon demand for the cost of repairing any damage to the Premises or the Building occasioned by the removal of Tenant's movable trade fixtures.

44. Plaintiff will be required to spend no less than \$12,861,757.50 to repair and restore the Premises as a result of the Property Damage.

AS AND FOR A FIRST CAUSE OF ACTION

45. Plaintiff repeats reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 44, above, as if fully set forth at length herein.

46. Tenant has defaulted in its monetary obligations under the Lease.

47. Tenant has failed to pay Rent from September 2020 through February 2021, in the aggregate sum of \$6,638,390.44.

48. By reason of the foregoing, Tenant is liable to Plaintiff in the sum of \$6,638,390.44, representing Rent from September 2020 through February 2021.

AS AND FOR A SECOND CAUSE OF ACTION

49. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 48, above, as if fully set forth at length herein.

50. By way of the Guaranty, Guarantor unconditionally guaranteed to Plaintiff the full

and prompt payment of Rent, and the full and complete performance of all obligations of Tenant under the Lease.

51. Section 1(a) of the Guaranty further states:

Guarantor hereby covenants and agrees with Landlord that if default shall at any time be made by Tenant or its successors or assigns in the payment of any Rent or other charges...in each case after notice to Tenant and the expiration of any applicable cure period, Guarantor, in each and every instance, shall and will forthwith pay such Rent and other charges to Landlord and any arrears thereof...

52. By reason of the foregoing, Guarantor is liable to Plaintiff in the sum of \$6,638,390.44, representing Rent due under the Lease from September 2020 through February 2021.

AS AND FOR A THIRD CAUSE OF ACTION

53. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 52, above, as if fully set forth at length herein.

54. On June 1, 2020, Tenant served the Vacate Notice which stated that Tenant intended to vacate the Premises by December 31, 2020 (the "Vacate Date").

55. The Lease is set to expire on July 31, 2029, under the terms, conditions and covenants contained therein ("Expiration Date").

56. The Vacate Notice was unequivocal in its expression that Tenant was unilaterally terminating the Lease on or about December 31, 2020, approximately eight and one-half (8 ½) years prior to the Expiration Date.

57. The Lease provided Tenant with no right to terminate the Lease as contemplated in the Vacate Notice.

58. The Tenant vacated and abandoned the Premises on or about the Vacate Date.

59. Tenant has repudiated its duties under the Lease prior to the time designated for performance and before it has received all of the consideration due it thereunder.

60. Tenant has breached its obligation to pay Rent due under the Lease from September 2020 through the Expiration Date.

61. Tenant's termination of the Lease was a unilateral, unauthorized, early termination of the Lease.

62. Pursuant to Section 19.2 of the Lease:

In the event of a termination of this Lease, Tenant shall pay to Landlord as damages...sums equal to the aggregate of all Rent which would have been payable by Tenant had this Lease not terminated, payable upon the due dates therefor specified herein until the date hereinbefore set forth for the expiration of the Term.

63. In accordance with Section 19.2 of the Lease in computing the net amount of Rent to be collected through the Expiration Date, Tenant is duly indebted to Plaintiff in the aggregate sum of no less than \$184,077,065.40.

64. By reason of the foregoing, Tenant is liable to Plaintiff for all Rent due under the Lease through the Expiration Date, in the aggregate sum of no less than \$184,077,065.40.

AS AND FOR A FOURTH CAUSE OF ACTION

65. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 64, above, as if fully set forth at length herein.

66. The Default Notice dated July 10, 2020, was delivered to Guarantor pursuant to Sections 3, 10(a), and 15 of the Guaranty.

67. Section 10 of the Guaranty states:

Guarantor acknowledges and agrees that it shall be deemed in default under this Guaranty if at any time during the duration of this Guaranty ... (a) (i) f, after notice to Guarantor of a default under the Lease, Guarantor shall fail to perform or cause the performance

of Tenant's obligations under the Lease...and such default shall continue for ten (10) days after Landlord notifies Guarantor thereof.

68. Guarantor failed to perform or cause the performance of Tenant's obligations under the Lease within the ten (10) days after Guarantor was notified of the default stated in the Default Notice.

69. Pursuant to Section 10 of the Guaranty, Guarantor is in default under the Guaranty.

70. Due to Guarantor's default under the Guaranty, Guarantor is not entitled to the benefit of Section 1(b) of the Guaranty which limits Guarantor's liability.

71. Due to Guarantor's default under the Guaranty, Guarantor is liable for the full measure of Tenant's outstanding obligations to pay Rent due under the Lease from September 2020 through the Expiration Date.

72. By reason of the foregoing, Guarantor is liable to Plaintiff for all Rent due under the Lease from September 2020 through the Expiration Date in the aggregate sum not less than \$184,077,065.40.

AS AND FOR A FIFTH CAUSE OF ACTION

73. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 72, above, as if fully set forth at length herein.

74. Section 1(b) of the Guaranty states:

...if after the Commencement Date Tenant (i) provides Landlord with written notice that Tenant intends to vacate the Premises and Tenant, (ii) delivers possession of the Premises to Landlord in the condition required by the Lease...then Guarantor's liability under this Paragraph 1 shall be limited to the amount of Rent that is due and payable by the Tenant pursuant to the Lease for the period commencing on the Rent Commencement Date through the date

that is the third (3rd) anniversary of the Vacate Date. (emphasis added).

75. The Property Damage caused and/or which was left unrepaired by Tenant is in violation of Sections 6.1, 8.1(a), and 21.5 of the Lease.

76. There was no Conforming Surrender in that as a result of the Property Damage, Tenant did not deliver possession of the Premises to Landlord in the condition required by the Lease.

77. Guarantor is not entitled to the benefit of Section 1(b) of the Guaranty which limits Guarantor's liability.

78. Guarantor is therefore liable for the full measure of Tenant's outstanding obligations to pay Rent due under the Lease from September 2020 through the Expiration Date.

79. By reason of the foregoing, Guarantor is liable to Plaintiff for all Rent due under the Lease from September 2020 through the Expiration Date in the aggregate sum not less than \$184,077,065.40.

AS AND FOR A SIXTH CAUSE OF ACTION

80. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 79, above, as if fully set forth at length herein.

81. Pursuant to Section 1(b) of the Guaranty, if at any time after the Lease's commencement date, Tenant: (i) provides Plaintiff with written notice that Tenant intends to vacate the Premises and Tenant, (ii) delivers possession of the Premises to Plaintiff in the condition required by the Lease, and (iii) executes and delivers to Plaintiff a surrender declaration form (collectively, a "Conforming Surrender"), then Guarantor's liability shall be limited to the amount of Rent that are due and payable by Tenant pursuant to the Lease through the date that is the third (3rd) anniversary of the Conforming Surrender date.

82. At the time Tenant surrendered possession of the Premises to Plaintiff by way of Tenant's vacatur and abandonment on or about December 31, 2020, Tenant was in default in its payment of Rent under the Lease from September 2020 through December 2020 in the sum of \$6,638,390.44.

83. Pursuant to the Guaranty, the Guarantor is liable to Plaintiff through the actual date of the Conforming Surrender in the sum of \$3,182,321.00, representing Rent from September 2020 through December 2020.

84. Pursuant to the Guaranty, as the Tenant vacated and abandoned on or about December 31, 2020, the Guarantor is liable to Plaintiff through the date that is the third (3rd) anniversary of the actual date of the Conforming Surrender in the sum of \$58,404,509.44, representing Rent from January 2021 through December 2023.

85. By reason of the foregoing, Guarantor in the aggregate sum of not less than \$61,586,830.44.

AS AND FOR A SEVENTH CAUSE OF ACTION

86. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 85, above, as if fully set forth at length herein.

87. The Property Damage is a violation of Sections 6.1, 8.1(a), and 21.5 of the Lease.

88. Pursuant to Section 6.1 of the Lease, the Tenant shall reimburse Plaintiff for the cost of repairing the Property Damage and/or restoring the Premises.

89. Plaintiff will be required to expend and forgo rents in the aggregate sum of not less than \$15,374,257.50 in order to restore the Premises and remedy the extensive Property Damage.

90. By reason of the foregoing, Tenant is liable to Plaintiff for all expenses in

restoring the Premises and repair the Property Damage in an amount to be determined at trial but not less than \$15,374,257.50.

AS AND FOR AN EIGHTH CAUSE OF ACTION

91. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 90, above, as if fully set forth at length herein.

92. Pursuant to Section 2.2 of the Lease, all charges, sums, and amounts payable by Tenant pursuant to any provision of the Lease, shall be deemed additional rent and referred to, collectively with fixed rent, as "Rent."

93. Pursuant to Section 1a of the Guaranty, the Guarantor unconditionally guaranteed to Plaintiff, the full "prompt payment of Rent (as defined in the Lease) and all other charges payable by Tenant."

94. By reason of the foregoing, Guarantor is liable to Plaintiff for all expenses in restoring the Premises and repairing the Property Damage in an amount to be determined at trial but in not less than \$15,374,257.50.

AS AND FOR A NINTH CAUSE OF ACTION
(Against Tenant Seeking Attorneys' Fees in the Within Action)

95. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 94, above, as if fully set forth at length herein.

96. Pursuant to Section 21.7 of the Lease:

If Landlord or Tenant shall bring any action or proceeding for any relief against the other, arising out of or in connection with this Lease, the losing party shall reimburse the successful party for all reasonable attorneys' fees and disbursements incurred by the successful party in such suit.

97. In accordance with Section 21.7 of the Lease, Plaintiff is entitled to recover from Tenant as damages all reasonable attorneys' fees and disbursements incurred by Plaintiff should

Plaintiff prevail in this action.

98. By reason of the foregoing, if Plaintiff is the successful party in this action, Tenant is liable to Plaintiff for all costs, expenses, interest and attorneys' fees incurred in relation to this action in an amount to be determined at trial.

AS AND FOR A TENTH CAUSE OF ACTION
(Against Guarantor Seeking Attorneys' Fees in the Within Action)

99. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 98, above, as if fully set forth at length herein.

100. Pursuant to Section 1 of the Guaranty, Plaintiff is entitled to recover from Guarantor as damages all reasonable attorneys' fees and disbursements incurred by Plaintiff relating to a default and/or enforcement of the Guaranty.

101. By reason of the foregoing, Guarantor is liable to Plaintiff for all costs, expenses, interest and attorneys' fees incurred in relation to this action in an amount to be determined at trial.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
(Against Guarantor Seeking Attorneys' Fees in the Tenant's Suit)

102. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 101, above, as if fully set forth at length herein.

103. This Court dismissed Tenant's Complaint in the Tenant's Suit in its entirety. (see Ex. B).

104. As previously stated, Section 21.7 of the Lease states:

If Landlord or Tenant shall bring any action or proceeding for any relief against the other, arising out of or in connection with this Lease, the losing party shall reimburse the successful party for all reasonable attorneys' fees and disbursements incurred by the successful party in such suit. (emphasis added)

105. Plaintiff was the successful party in Tenant's Suit.

106. Pursuant to Section 1a of the Guaranty, Guarantor unconditionally guaranteed to Plaintiff, the full "prompt payment of Rent (as defined in the Lease) and all other charges payable by Tenant."

107. Plaintiff is therefore entitled to recover from Guarantor as damages all reasonable attorneys' fees and disbursements incurred by Plaintiff in Tenant's Suit.

108. By reason of the foregoing, Guarantor is liable to Plaintiff for all costs, expenses, interest and attorneys' fees incurred by Plaintiff in Tenant's Suit in an amount to be determined at trial.

AS AND FOR A TWELFTH CAUSE OF ACTION

109. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 108, above, as if fully set forth at length herein.

110. In accordance with Section 19.2 of the Lease in computing the net amount of Rent to be collected through the Expiration Date, Tenant is duly indebted to Plaintiff in the aggregate sum of no less than \$184,077,065.40.

111. Plaintiff will be required to expend and forego rent in the aggregate sum of not less than \$15,374,257.50 in order to restore the Premises and repair the Property Damage.

112. Pursuant to Section 26.1(a) of the Lease, if Tenant fails to pay any Rent, Tenant shall pay interest at an annual rate of no less than 9.25% until the date the Rent is paid.

113. In accordance with Section 26.1(a) of the Lease, Tenant is duly indebted to Plaintiff in the sum of not less than \$7,650,545.43.

114. By reason of the foregoing, Tenant is liable to Plaintiff in the aggregate sum of not less than \$207,101,868.33.

AS AND FOR A THIRTEENTH CAUSE OF ACTION

115. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs 1 thru 114, above, as if fully set forth at length herein.

116. In accordance with Section 19.2 of the Lease in computing the net amount of Rent to be collected through the Expiration Date, Tenant is duly indebted to Plaintiff in the aggregate sum of no less than \$184,077,065.40.

117. Plaintiff will be required to spend no less than \$15,374,257.50 to restore the Premises and repair the Property Damage.

118. Pursuant to Section 26.1(a) of the Lease, if Tenant fails to pay any Rent, Tenant shall pay interest at an annual rate of no less than 9.25% until the date the Rent is paid.

119. In accordance with Section 26.1(a) of the Lease, Tenant is duly indebted to Plaintiff in the sum of not less than \$7,650,545.43.

120. Pursuant to Section 1a of the Guaranty, Guarantor unconditionally guaranteed to Plaintiff, the full “prompt payment of Rent (as defined in the Lease) and all other charges payable by Tenant.”

121. By reason of the foregoing, Guarantor is liable to Plaintiff in the aggregate sum of not less than \$207,101,868.33.

WHEREFORE, Plaintiff demands judgment as follows:

- a) on the first cause of action, against Tenant, in the sum of \$6,638,390.44, plus interest thereon from February 1, 2021; and
- b) on the second cause of action, against Guarantor, in the sum of \$6,638,390.44, plus interest thereon from February 1, 2021; and
- c) on the third cause of action, against Tenant, in the aggregate sum of not less than \$184,077,065.40; and
- d) on the fourth cause of action, against Guarantor, in the aggregate sum of not less than \$184,077,065.40; and
- e) on the fifth cause of action, against Guarantor, in the aggregate sum of not less than \$184,077,065.40; and
- f) on the sixth cause of action, against Guarantor, in the sum of \$61,586,830.44 plus interest thereon from February 1, 2021; and
- g) on the seventh cause of action, against Tenant in an amount to be determined at trial, but not less than \$15,374,257.50; and
- h) on the eighth cause of action, against Guarantor, in an amount to be determined at trial, but not less than \$15,374,257.50; and
- i) On the ninth cause of action, against Tenant, in an amount to be determined at trial; and
- j) On the tenth cause of action, against Guarantor, in an amount to be determined at trial; and
- k) On the eleventh cause of action, against Guarantor, in an amount to be determined at trial; and
- l) On the twelfth cause of action, against Tenant, in the aggregate sum of not less than \$207,101,868.33; and
- m) On the thirteenth cause of action, against Guarantor, in the aggregate sum of not less than \$207,101,868.33; and
- n) statutory costs, interest, and disbursements; and
- o) such other and further relief as to this court may seem just and proper.

Dated: New York, New York
February 19, 2021

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