

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

ORTHO-CLINICAL DIAGNOSTICS, INC.,

Plaintiff,

v.

MAZUMA CAPITAL CORP,

Defendant.

Civil Action No.

**COMPLAINT**

Plaintiff Ortho-Clinical Diagnostics, Inc. (“Ortho” or “Plaintiff”), by and through its attorneys, Chiesa Shahinian & Giantomasi PC, for its Complaint against defendant Mazuma Capital Corp. (“Mazuma” or “Defendant”), hereby alleges as follows:

**INTRODUCTION**

1. Ortho brings this action for a declaratory judgment that it has met its obligations under the parties’ Lease Agreements (as more precisely defined herein) such that Mazuma is required to negotiate in good faith for the sale of the equipment back to Ortho and the Lease Agreements do not automatically renew. Such a declaratory judgment is necessary because Mazuma has taken the position that if Ortho does not pay the amounts Mazuma unilaterally deems should be paid, the Lease Agreements automatically renew for an additional twelve or eighteen months.

2. In the alternative, in the event Mazuma’s interpretation of the Lease Agreements is correct, Ortho seeks a declaratory judgment that such an automatic renewal provision is unconscionable, void against public policy, and violative of New York’s General Obligations Law regarding automatic renewals.

3. Finally, through this action, Ortho is seeking a return of its security deposit of over \$9 million which Mazuma improperly refused to return because Ortho has met all of its obligations under the Lease Agreements.

### **PARTIES**

4. Ortho is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the State in Rochester, New York.

5. Mazuma is a corporation organized and existing under the laws of the State of Utah, with offices in South Jordan, Utah.

### **JURISDICTION**

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because Ortho and Mazuma are citizens of different states for purposes of diversity and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.

7. Mazuma is subject to the jurisdiction of this Court inasmuch as Mazuma regularly contracts business within the state of New York, including the business which is the subject of this dispute.

### **VENUE**

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), as the agreements giving rise to the claims alleged herein concern equipment which was assembled, installed and currently operates in Rochester, New York, which is within the geographical jurisdiction for which this Court is responsible.

9. Venue in this Court is also appropriate because, as set forth in further detail below, New York has a strong public policy against the enforcement of automatic renewal

clauses in personal property leases without adequate notice and in preventing the enforcement of unconscionable agreements such as the ones at issue here.

### **FACTS COMMON TO ALL COUNTS**

#### **A. Background of the Parties**

10. Ortho is an in vitro diagnostics company that manufactures, sells and distributes a variety of products, clinical chemistry and immunodiagnostic reagents, and sophisticated diagnostic equipment used to test for various diseases, conditions and substances in both humans and animals. Ortho operates a large research and development facility in Rochester, New York, which manufactures a variety of products utilized around the world.

11. Mazuma is a privately-owned leasing company that provides equipment financing to various industries.

#### **B. The Equipment at Issue**

12. Ortho designed and manufactured certain diagnostic equipment known as the IDEXX Veterinary Catalyst Work Center 3 Machine (the “IDEXX Machine”) and two Generation 7-R23 Slide Assembly Machines (the “R23 Machines”). The IDEXX Machine and R23 Machines are used to perform diagnostic veterinary testing. The equipment was assembled, installed and operated at Ortho’s plant in Rochester, New York.

#### **C. Ortho’s Sale and Leaseback of its Equipment to Mazuma**

13. Ortho entered into a series of agreements with Mazuma which were structured such that Ortho sold the IDEXX Machine and the R23 Machines that it manufactured with certain related components and costs to Mazuma, which then simultaneously leased the equipment back to Ortho. As part of the transactions, Ortho received \$36 million - \$27 million in cash and \$9 million held back as a security deposit.

14. Specifically, on or about June 20, 2016, Ortho and Mazuma entered into the following agreements to effectuate this sale and leaseback transaction: (i) Master Lease Agreement No. MCC1355, dated June 20, 2016 (the “Master Lease Agreement”), attached hereto as Exhibit A; (ii) Lease Schedule No. 001 to Master Lease Agreement, dated June 20, 2016 (“Lease Schedule 1”), attached hereto as Exhibit B; (iii) Lease Schedule No. 002 to Master Lease Agreement, dated June 20, 2016 (“Lease Schedule 2”), attached hereto as Exhibit C; and (iii) Lease Schedule No. 003 to Master Lease Agreement, dated June 20, 2016 (“Lease Schedule 3”), attached hereto as Exhibit D. (Lease Schedule 1, Lease Schedule 2, and Lease Schedule No. 3, which each incorporate the terms of the Master Lease Agreement, are collectively referred to herein as the “Lease Schedules” and, together with the Master Lease Agreement, are referred to as the “Lease Agreements”).

15. Simultaneous with executing the Lease Agreements, Ortho and Mazuma also entered into Security Agreements related to each respective Lease Agreement pursuant to which Ortho granted Mazuma a security interest in security deposits totaling approximately \$9.08 million that Mazuma retained under the Lease Agreements (the “Security Agreements”). The Security Agreements are attached to the Lease Agreements, which are attached hereto as Exhibits B through D.

16. On or about June 28, 2016, Mazuma assigned the Lease Agreements and the underlying Property (defined below) to KNG Ortho Funding, LLC, a California limited liability company, and granted them a security interest in same. Ortho made all payments to KNG Ortho Funding, LLC in California.

**D. The Master Lease Agreement**

17. Pursuant to the Master Lease Agreement, Mazuma agreed to lease to Ortho the Property described in any Schedule executed and delivered by Mazuma and Ortho in connection with the Master Lease Agreement. Each Schedule incorporates by reference the terms of the Master Lease Agreement and each Schedule constitutes a separate Lease, as defined in the Master Lease Agreement.<sup>1</sup>

18. The Master Lease Agreement and schedules provide for a twenty-four month term. Specifically, the Master Lease Agreement provides that the term of any Lease, as to all Property designated in the particular Schedule, shall commence on the date that Ortho accepts the Property designated on any Schedule and continues for a Base Period ending that number of months from the Lease Commencement Date (i.e., the date Ortho accepts the Property, if that date falls on a calendar quarter, otherwise the first date of the next calendar quarter following the date Ortho accepts the Property) as specified in the Schedule (in this case, twenty-four months). (Master Lease Agreement, Section 1). Thereafter, Ortho shall have those options as provided in Section 21(k) of the Master Lease Agreement. (Id.) (The options set forth in Section 21(k) are described below).

19. Section 21(k) of the Master Lease Agreement provides, in relevant part:

At the end of the Base Period of any Schedule, unless otherwise provided herein, the Schedule shall automatically renew for twelve (12) additional months at the rate specified on the respective Schedule. Provided that Lessee [Ortho] gives written notice to Lessor [Mazuma] by certified mail received by Lessor at least one hundred fifty days prior to the end of the Base Period of any Schedule, Lessee shall be granted the opportunity to negotiate with Lessor concerning one of the following options: (1) purchase the Property for a price to be determined by Lessor and Lessee, or (2) terminate the Schedule and return the Property to Lessor at

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<sup>1</sup> The Schedule is referred to herein interchangeably as the “Lease” and the “Schedule.”

Lessee's expense to a destination within the continental United States specified by Lessor provided, however, that for option (2) to apply, all accrued but unpaid late charges, interest, taxes, penalties, and any and all other sums due and owing under the Schedule must first be paid in full, the provisions of Sections 8e, 8h and 9c hereof must be specifically complied with, and Lessee must enter into a new Schedule with Lessor to lease Property which replaces the Property listed on the old Schedule. With respect to options (1) and (2), each party shall have the right in its sole discretion to accept or reject any terms of purchase or of any new Schedule, as applicable. In the event Lessor and Lessee have not agreed to either option (1) or (2) prior to the maturity of the Base Period, or if Lessee fails to give written notice via certified mail at least one hundred fifty (150) days prior to the maturity of the Base Period of its intent to negotiate, or if an Event of Default has occurred under any Schedule, then options (1) and (2) shall expire and the Schedule shall automatically renew as provided herein. At the maturity of the initial twelve (12) month renewal period provided above, the Schedule shall continue in effect at the rate specified in the respective Schedule for successive periods of six (6) months, each subject to termination at the maturity of any such successive six-month renewal period by either Lessor or Lessee giving the other party at least thirty (30) days prior written notice of termination. Lessee acknowledges that Lessor has no obligation to enter into any agreement as a result of the initiation of discussions concerning options (1) or (2).

(Master Lease Agreement, Section 21(k)).

20. With respect to payment, the Master Lease Agreement provides that Ortho is to pay to Mazuma the monthly rental fees set forth in the Schedules in advance on the first day of each month throughout the Base Period.

**E. Lease Schedule 1 – R23 Machines and Corresponding Security Deposit**

21. Simultaneous with entering into the Master Lease Agreement, Ortho and Mazuma entered into Lease Schedule 1, dated June 20, 2016, which incorporates by reference the terms and conditions of the Master Lease Agreement and constitutes a separate Lease between Ortho and Mazuma.

22. Under Lease Schedule 1, Ortho leased from Mazuma the two R23 Machines that it had sold to Mazuma together with related components and costs (defined under the terms of Lease Schedule 1 as the “Property”) at a monthly rental fee of \$443,369.57 plus applicable sales/use tax.

23. In addition, pursuant to the terms of Lease Schedule 1, Ortho paid to Mazuma a monthly payment deposit in the amount of \$443,369.57 upon executing Lease Schedule 1. Under Section 8 thereof, this deposit is to be applied to Ortho’s last monthly rental payment under Lease Schedule 1 provided that Ortho has made payment in full in cash for all amounts due in monthly rental payments and other payments under Lease Schedule 1 during the base period of the lease.

24. The Base Period for Lease Schedule 1 is twenty-four months starting on Lease Commencement Date (the first day of the calendar quarter following Ortho’s acceptance of the Property under Lease Schedule 1 on June 22, 2016, as defined in the Master Lease Agreement). Accordingly, the Base Period for Lease Schedule 1 is July 1, 2016 through June 30, 2018.

25. Section 11(k) of Lease Schedule 1 amends the terms of option (1) under Section 21(k) of the Master Lease Agreement as follows: “For purposes of this Schedule only, provided no Event of Default has occurred under the Lease, option (1) of Section 21(k) of the Master Lease shall be replaced with the following: ‘purchase the Property for a price to be determined by Lessor and Lessee which shall not be greater than fifty percent (50%) of the original Total Property Cost.’” (Lease Schedule 1, Section 11(k)).

26. The Total Property Cost identified in Lease Schedule 1 is \$10,683,604.00.

27. In addition to the monthly rental deposit described above, Lease Schedule 1 requires Ortho to provide Mazuma with a cash security deposit in the amount of 25% of the

Total Property Cost (i.e., \$2,670,901) (the “Lease 1 Security Deposit”), which Ortho paid upon executing Lease Schedule 1. Ortho granted Mazuma a security interest in the Lease 1 Security Deposit to secure Ortho’s obligations and agreements under Lease Schedule 1. The rights and remedies of the parties with respect to the security interest are set forth in a security agreement, dated June 20, 2016, between Ortho and Mazuma (the “Lease 1 Security Agreement”).

28. The Lease 1 Security Agreement provides for return of the Lease 1 Security Deposit to at the end of the Base Period of Lease Schedule 1, including continuation or renewals thereof. (Lease 1 Security Agreement, Section 2).

29. Lease Schedule 1 contains a similar provision governing the release of the Security Deposit that expressly provides:

Provided no Event of Default has occurred under the Lease, and at such time as Lessee’s then outstanding obligations under the Lease, including all Base Period Monthly Rental payments have been paid in full, in cash, then upon Lessee’s written request, Lessor agrees to release a portion of the Security Deposit that exceeds Lessee’s then total outstanding obligations owed under the Lease.

(Lease Schedule 1, Section 11(g)).

**F. Lease Schedule 2 – IDEXX Machine and Corresponding Security Deposit**

30. Simultaneous with entering into the Master Lease Agreement, Ortho and Mazuma entered into Lease Schedule 2, dated June 20, 2016, which incorporates by reference the terms and conditions of the Master Lease Agreement and constitutes a separate Lease between Ortho and Mazuma.

31. Under Lease Schedule 2, Ortho leased from Mazuma the IDEXX Machine that it sold to Mazuma together with related components and costs (defined under the terms of Lease

Schedule 1 as the “Property”) at a monthly rental fee of \$650,520.47, plus applicable sales/use tax.

32. In addition, pursuant to the terms of Lease Schedule 2, Ortho paid to Mazuma a monthly payment deposit in the amount of \$650,520.47 upon executing Lease Schedule 2. Under Section 8 thereof, this deposit is to be applied to Ortho’s last monthly rental payment under Lease Schedule 2 provided that Ortho has made payment in full in cash for all amounts due in monthly rental payments and other payments under Lease Schedule 2 during the base period of the lease.

33. The Base Period for Lease Schedule 2 is twenty-four months starting on Lease Commencement Date (the first day of the calendar quarter following Ortho’s acceptance of the Property under the Lease on June 22, 2016, as defined in the Master Lease Agreement). Accordingly, the Base Period for Lease Schedule 2 Machine is July 1, 2016 through June 30, 2018.

34. Section 11(k) of Lease Schedule 2 amends the terms of option (1) under Section 21(k) of the Master Lease Agreement as follows: “For purposes of this Schedule only, provided no Event of Default has occurred under the Lease, option (1) of Section 21(k) of the Master Lease shall be replaced with the following: ‘purchase the Property for a price to be determined by Lessor and Lessee which shall not be greater than fifty percent (50%) of the original Total Property Cost.’” (Lease Schedule 2, Section 11(k)).

35. The Total Property Cost identified in Lease Schedule 2 is \$15,675,192.00.

36. In addition to the monthly rental deposit described above, Lease Schedule 2 requires Ortho to provide Mazuma with a cash security deposit in the amount of 25% of the Total Property Cost (i.e., \$3,918,798) (the “Lease 2 Security Deposit”), which Ortho paid upon

executing the Lease Schedule 2. Ortho granted Mazuma a security interest in the Lease 2 Security Deposit to secure Ortho's obligations and agreements under Lease Schedule 2. The rights and remedies of the parties with respect to the security interest are set forth in a security agreement, dated June 20, 2016, between Ortho and Mazuma (the "Lease 2 Security Agreement").

37. The Lease 2 Security Agreement provides for return of the Lease 2 Security Deposit to at the end of the Base Period of Lease Schedule 2, including continuation or renewals thereof. (Lease 2 Security Agreement, Section 2).

38. Lease Schedule 2 contains a similar provision governing the release of the Security Deposit that expressly provides:

Provided no Event of Default has occurred under the Lease, and at such time as Lessee's then outstanding obligations under the Lease, including all Base Period Monthly Rental payments have been paid in full, in cash, then upon Lessee's written request, Lessor agrees to release a portion of the Security Deposit that exceeds Lessee's then total outstanding obligations owed under the Lease.

(Lease Schedule 2, Section 11(g)).

**G. Lease Schedule 3 – Soft Costs and Corresponding Security Deposit**

39. Simultaneous with entering into the Master Lease Agreement, Ortho and Mazuma entered into Lease Schedule 3, dated June 20, 2016, which incorporates by reference the terms and conditions of the Master Lease Agreement and constitutes a separate Lease between Ortho and Mazuma.

40. Lease Schedule 3 contains the same provisions as Lease Schedule Nos. 1 and 2. However, the "Property" that is the subject of Lease Schedule 3 are expenses and other costs

related to the development and implementation of Ortho's software systems, which are not tangible assets that can be returned, purchased for any value, or repossessed.

41. Under Lease Schedule 3, Ortho paid a "monthly rental fee" to Mazuma for Soft Costs in the amount of \$414,077.34, plus applicable sales/use tax.

42. In addition, pursuant to the terms of Lease Schedule 3, Ortho paid to Mazuma a monthly payment deposit in the amount of \$414,077.34 upon executing Lease Schedule 3. Under Section 8 thereof, this deposit is to be applied to Ortho's last monthly rental payment under Lease Schedule 3 provided that Ortho has made payment in full in cash for all amounts due in monthly rental payments and other payments under Lease Schedule 3 during the base period of Lease Schedule 3.

43. The Base Period for Lease Schedule 3 is twenty-four months starting on Lease Commencement Date (the first day of the calendar quarter following Ortho's acceptance of the "Property" under the Lease on June 22, 2016, as defined in the Master Lease Agreement). Accordingly, the Base Period for Lease Schedule 3 is July 1, 2016 through June 30, 2018.

44. Section 11(j) of Lease Schedule 3 amends the terms of option (1) under Section 21(k) of the Master Lease Agreement as follows: "For purposes of this Schedule only, provided no Event of Default has occurred under the Lease, option (1) of Section 21(k) of the Master Lease shall be replaced with the following: 'purchase the Property for a price to be determined by Lessor and Lessee which shall not be greater than fifty percent (50%) of the original Total Property Cost.'" (Lease Schedule 3, Section 11(j)).

45. The "Total Property Cost" identified in Lease Schedule 3 is \$9,977,767.11.

46. In addition to the monthly rental deposit described above, Lease Schedule 3 requires Ortho to provide Mazuma with a cash security deposit in the amount of 25% of the

“Total Property Cost” (i.e., \$2,494,441.77) (the “Lease 3 Security Deposit” and, together with the Lease 1 Security Deposit and the Lease 2 Security Deposit, the “Security Deposit”), which Ortho paid upon executing Lease Schedule 3. Ortho granted Mazuma a security interest in the Lease 3 Security Deposit to secure Ortho’s obligations and agreements under Lease Schedule 3. The rights and remedies of the parties with respect to the security interest are set forth in a security agreement, dated June 20, 2016, between Ortho and Mazuma (the “Lease 3 Security Agreement”).

47. The Lease 3 Security Agreement provides for return of the Security Deposit to at the end of the Base Period of Lease Schedule 3, including continuation or renewals thereof. (Lease 3 Security Agreement, Section 2).

48. Lease Schedule 3 contains a similar provision governing the release of the Security Deposit that expressly provides:

Provided no Event of Default has occurred under the Lease, and at such time as Lessee’s then outstanding obligations under the Lease, including all Base Period Monthly Rental payments have been paid in full, in cash, then upon Lessee’s written request, Lessor agrees to release a portion of the Security Deposit that exceeds Lessee’s then total outstanding obligations owed under the Lease.

(Lease Schedule 3, Section 11(f)).

49. Accordingly, in sum, the Lease Agreements are for a Base Period of twenty-four months from July 1, 2016 through June 30, 2018 with payments of \$1,507,967.38 per month for a total of \$36,191, 217.12, along with a security deposit of approximately \$9 million which Ortho paid. The Lease Agreements set forth a Total Property Cost of \$36,336,563.11.

**H. Ortho Satisfies Its Obligations Under the Lease Agreements and Exercises its Option to Negotiate the Purchase of the Property**

50. Subsequent to entering into the Lease Agreements, Ortho made payment in full in cash for all amounts due in monthly rental payments and other payments under the Lease Agreements during the two-year term (i.e., Base Period).

51. At no point (prior to May 25, 2018) did Mazuma provide written notice to Ortho calling attention to Section 21, Paragraph (k) of the Master Lease Agreement and the automatic renewal of the Lease Schedules under said provision if Ortho failed to provide notice of its intent to exercise options to negotiate the purchase of the Property or terminate the Lease Schedules at least one hundred and fifty (150) days prior to the expiration of the base period for the Lease Schedules.

52. In accordance with the terms of the Master Lease Agreement, Ortho sent written notice, dated June 30, 2017, to Mazuma informing that Ortho is exercising its rights under Section 21(k) of the Master Lease Agreement to negotiate with Mazuma the purchase of the Property set forth in the Lease Agreements.

53. On May 23, 2018, Ortho sent Mazuma a letter (i) reiterating that Ortho has invoked its right in accordance with Section 21(k) of the Master Lease Agreement to negotiate for the purchase of the Property, offering a purchase price of \$2,375,000.00; and (ii) requesting that Mazuma immediately return the Security Deposit pursuant to Section 11(g) and/or (f) of Lease Schedules 1, 2 and 3 by June 1, 2018. The purchase price was derived as a result of consultation with an outside equipment appraisal professional. Ortho intended to apply the monthly rental deposit that Ortho had paid to Mazuma pursuant to Section 8 of the respective Lease Schedules as Ortho's final monthly rental payment during the base periods of the Lease Schedules.

54. Mazuma rejected Ortho's offer to purchase the Property for \$2,375,000.00 and proposed a counteroffer to sell the Property to Ortho for \$18,168,281.56 – representing Mazuma's calculation of the maximum purchase amount permitted under the terms of the Lease Agreements. Mazuma stated that it would apply Ortho's Security Deposit towards this full purchase price and Ortho would be required to remit an additional \$9,084,140.78 (plus applicable taxes and fees) to Mazuma to purchase the Property.

55. In addition, Mazuma maintained the position that if Ortho paid the full purchase amount Mazuma was demanding by the end of the Base Period (i.e., June 30, 2018), then Mazuma would apply the monthly rental deposit that Ortho had paid to Mazuma pursuant to Section 8 of the respective Lease Schedules as Ortho's final monthly rental payment. However, Mazuma stated that if Ortho did not pay Mazuma the full purchase price it was demanding, (i) the monthly rental deposit would not be applied as the June 1, 2018 payment, (ii) the Lease Schedules would automatically renew for a twelve month period, and (iii) Ortho would purportedly be in default of the Lease Agreements if it did not pay the next monthly rental payment by June 10, 2018.

56. In subsequent communications between the parties, Ortho advised Mazuma that its position was unreasonable, in violation of New York law and public policy, and that Ortho had met its obligations under the Lease Agreements by electing to negotiate such that the Lease Schedules could not automatically renew.

57. Nevertheless, Mazuma refused to negotiate or revise its position and showed no willingness to accept anything less than an \$18,168,281.56 purchase price.

58. Mazuma further maintained its position that if Ortho did not agree to Mazuma's proposed purchase price by June 8, 2018, the Lease Schedules would automatically renew and

Ortho would be in default of the Lease Agreements if it did not make a monthly lease payment immediately thereafter. Mazuma also continued to refuse Ortho's demand to return the Security Deposit, which is in excess of \$9 million.

**FIRST CAUSE OF ACTION**

**(Declaratory Judgment – Ortho Has Complied Fully With Its Contractual Obligations)**

59. Ortho repeats and realleges each of the allegations set forth in the preceding paragraphs as if set forth fully herein.

60. Pursuant to Section 21, Paragraph (k) of the Master Lease Agreement, if Ortho provides notice to Mazuma at least one hundred and fifty (150) days prior to the end of the base period of any lease schedule, Mazuma is required to negotiate with Ortho concerning (1) the purchase of the property leased under that particular schedule, or (2) the termination of that particular schedule and the return of the property leased thereunder. (Master Lease Agreement, Section 21, Paragraph (k); Lease Schedule 1; Lease Schedule 2; Lease Schedule 3).

61. By letter dated June 30, 2017 (more than 150 days prior to the end of the base period of the Lease Schedules), Ortho gave notice to Mazuma of its intent to negotiate for the purchase of the Property.

62. Thereafter, by letter dated May 23, 2018, Ortho made a written offer to Mazuma to purchase the Property for \$2,375,000.00 and to engage in negotiations for the purchase of the Property. Ortho also demanded a return of the Security Deposit, but offered to allow Mazuma to apply it to the purchase price of the Property and return the balance.

63. Mazuma rejected Ortho's offer and demanded that Ortho pay \$18,168,281.56 – the maximum purchase price permitted under the terms of the Lease Agreements.

64. Mazuma also stated that if the parties were not able to agree on a purchase price before the end of the base period of the Lease Agreements, the Lease Agreements would automatically renew.

65. Ortho advised Mazuma that (a) Mazuma's demand that Ortho pay the maximum permissible purchase price was unreasonable and not a negotiation as contemplated by the Lease Agreements; (b) Ortho had met its obligation to give notice of its election to negotiate and thus the Lease Schedules did not and could not automatically renew; and (c) that Mazuma's position was unreasonable and required an interpretation of the Lease Agreements that was unconscionable and void as against public policy. Ortho also demanded the return of the Security Deposit.

66. Ortho also advised Mazuma that its position was obviously incorrect and particularly unreasonable because Mazuma's demand includes full payment for the soft costs associated with Schedule 3, which are not tangible assets that can be returned, purchased for any value, or repossessed.

67. Mazuma refused to change its position and/or lower its purchase price demand, and insisted that if Ortho did not agree to Mazuma's purchase price demand by June 8, 2018, the Lease Agreements would automatically renew and Ortho's failure to make further payment would result in a default. Mazuma also refused to return the Security Deposit.

68. In view of the foregoing, Ortho has fully complied with its obligations under the Lease Agreements because it made all payments due under the terms of the agreements, gave notice of its intent to negotiate for the purchase of the Property, and negotiated in good faith for the purchase of the Property.

69. Mazuma has failed to comply with its obligations under the Lease Agreements because it has not released the Security Deposit to Ortho upon request and has not negotiated in good faith with respect to the purchase of the Property.

70. An actual case or controversy exists between Ortho and Mazuma, with respect to their respective obligations under the Lease Agreements and their respective compliance with those obligations.

71. Ortho has no adequate remedy other than that sought herein and a judicial determination is necessary to establish the parties' rights and obligations under the terms of the Lease Agreements.

72. In light of the foregoing, a declaratory judgment is both necessary and proper in order to set forth and determine the rights, obligations and liabilities that exist among the parties to the Lease Agreements.

### **SECOND CAUSE OF ACTION**

#### **(Declaratory Judgment – Contract Provision Unenforceable)**

73. Ortho repeats and realleges each of the allegations set forth in the preceding paragraphs as if set forth fully herein.

74. Section 21, Paragraph (k) provides for the automatic renewal of the Lease Schedules unless Ortho provides notice of its desire to negotiate with Mazuma to (1) purchase the Property or (2) terminate the Lease Schedules and enter into a new schedule or schedules. (Master Lease Agreement).

75. Mazuma has taken the position that if Ortho does not agree to Mazuma's proposed purchase price under option (1) of Section 21, Paragraph (k), the Lease Agreements will automatically renew upon the expiration of their initial base period.

76. As set forth above, Ortho disputes this position, and asserts that the Lease Schedules will not automatically renew because it complied with its obligations by making all payments due under the terms of the Lease Schedules during the base periods for same, giving notice of its intent to negotiate for the purchase of the Property, and negotiating in good faith for the purchase of the Property.

77. If Mazuma's interpretation of Section 21, Paragraph (k) of the Master Lease Agreement is correct, such automatic renewals would result in Ortho being required to pay at least an additional eighteen (18) monthly payments of over \$1.5 million on a lease with an original base period of only twenty-four (24) months unless Ortho agrees to Mazuma's proposed terms for the purchase of the Property.

78. Therefore, even if Mazuma's interpretation of Section 21, Paragraph (k) is correct, the provision will still not operate to automatically renew the Lease Schedules because it is so excessively one-sided and oppressive so as to be substantively unconscionable.

79. Additionally, under New York law,

No provision of a lease of any personal property which states that the term thereof shall be deemed renewed for a specified additional period unless the lessee gives notice to the lessor of his intention to release the property at the expiration of such term, shall be operative **unless the lessor, at least fifteen days and not more than thirty days previous to the time specified for the furnishing of such notice to him, shall give to the lessee written notice, served personally or by mail, calling the attention of the lessee to the existence of such provision in the lease.** Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

N.Y. Gen. Oblig. Law § 5-901 (emphasis added).

80. New York has a fundamental public policy against enforcing automatic renewal provisions in leases for personal property, as evidenced by N.Y. Gen. Oblig. Law § 5-901.

81. Mazuma never provided written notice to Ortho of the automatic renewal provision in the Master Lease Agreement during the required timeframe prescribed by N.Y. Gen. Oblig. Law § 5-901.

82. Therefore, that statute renders Mazuma's interpretation of the automatic renewal provision of the Master Lease Agreement unenforceable.

83. An actual case or controversy exists between Ortho and Mazuma, with respect to the enforceability of Section 21, Paragraph (k) of the Master Lease Agreement.

84. Ortho has no adequate remedy other than that sought herein and a judicial determination is necessary to establish the parties' rights and obligations under the terms of the Lease Agreements.

85. In light of the foregoing, a declaratory judgment is both necessary and proper in order to set forth and determine the rights, obligations and liabilities that exist among the parties to the Lease Agreements.

### **THIRD CAUSE OF ACTION**

#### **(Breach of Contract)**

86. Ortho repeats and realleges each of the allegations set forth in the preceding paragraphs as if set forth fully herein.

87. Pursuant to Section 11, Paragraph (f) of the Lease Schedules, Ortho provided a security deposit to Mazuma in the amount of \$9,083,218.12, which represented 25% of the total cost of the Property at the time of Ortho's execution and delivery of the Lease Schedules.

88. Pursuant to Section 11, Paragraph (g) of the Lease Schedules, provided that no event of default has occurred under the Lease Schedules and all monthly rent payments for the base period of the Lease Schedules have been made in full, Mazuma is required to release a

portion of the Security Deposit exceeding the total outstanding obligations owed under the Lease Schedules upon written request of Ortho.

89. Furthermore, pursuant to Paragraph 2 of the Security Agreements executed in connection with the Lease Schedules, provided that no event of default has occurred under the Lease Schedules, Mazuma is required to return the Security Deposit at the end of the base period for the Lease Schedules.

90. No default has occurred under the Lease Schedules, and Ortho has made all monthly rent payments in full for the Base Period of the Lease Schedules.

91. By letters dated May 23, 2018 and May 31, 2018, Ortho requested the immediate release of the Security Deposit.

92. Mazuma has refused, and continues to refuse, to release the Security Deposit to Ortho.

93. Accordingly, Mazuma's actions constitute a breach of the Lease Agreements.

94. Mazuma's breach of the Lease Agreements has caused and will cause Ortho to sustain damages.

#### **FOURTH CAUSE OF ACTION**

##### **(Specific Performance – Return of Security Deposit)**

95. Ortho repeats and realleges each of the allegations set forth in the preceding paragraphs as if set forth fully herein.

96. Pursuant to Section 11, Paragraph (f) of the Lease Schedules, Ortho provided a security deposit to Mazuma in the amount of \$9,083,218.12, which represented 25% of the total cost of the Property at the time of Ortho's execution and delivery of the Lease Schedules.

97. Pursuant to Section 11, Paragraph (g) of the Lease Schedules, provided that no event of default has occurred under the Lease Schedules and all monthly rent payments for the base period of the Lease Schedules have been made in full, Mazuma is required to release a portion of the Security Deposit exceeding the total outstanding obligations owed under the Lease Schedules upon written request of Ortho.

98. Furthermore, pursuant to Paragraph 2 of the Security Agreements executed in connection with the Lease Schedules, provided that no event of default has occurred under the Lease Schedules, Mazuma is required to return the Security Deposit at the end of the Base Period.

99. No default has occurred under the Lease Schedules, and Ortho has made all monthly rent payments in full for the Base Period of the Lease Schedules.

100. By letters dated May 23, 2018 and May 31, 2018, Ortho requested the immediate release of the Security Deposit.

101. Mazuma has refused, and continues to refuse, to release the Security Deposit to Ortho.

102. Ortho is entitled to the return of the Security Deposit under the express terms of the Lease Agreements.

### **FIFTH CAUSE OF ACTION**

#### **(Conversion)**

103. Ortho repeats and realleges each of the allegations set forth in the preceding paragraphs as if set forth fully herein.

104. Ortho has made a request for the Security Deposit, but Mazuma has refused, and continues to refuse, to release the Security Deposit to Ortho.

105. Mazuma's continued possession of and refusal to release the Security Deposit without right to same constitutes a conversion of the Security Deposit.

106. Mazuma's continued possession of and refusal to release the Security Deposit has caused and will cause Ortho to sustain damages.

**SIXTH CAUSE OF ACTION**

**(Breach of Good Faith and Fair Dealing)**

107. Ortho repeats and realleges each of the allegations set forth in the preceding paragraphs as if set forth fully herein.

108. Every contract is assumed to incorporate an implied covenant of good faith and fair dealing that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.

109. Mazuma's refusal to negotiate in good faith for the purchase of the Property constitutes a breach of the implied covenant of good faith and fair dealing, as it prevents Ortho from receiving the fruits of the Lease Agreements.

110. Mazuma's breach of the covenant of good faith and fair dealing has caused and will cause Ortho to sustain damages.

**WHEREFORE**, Ortho demands Judgment be entered in its favor and against Mazuma for:

- a. A declaration that (1) Ortho has complied fully with its obligations under the Lease Agreements, (2) Mazuma had an obligation under the terms of the Lease Agreements to negotiate in good faith with respect to the purchase of the Property once Ortho provided notice of its intent to exercise its option to negotiate for the purchase of the

- Property, and (3) that the Lease Agreements do not automatically renew and are terminated; and
- b. A declaration that, if Section 21, Paragraph (k) of the Master Lease Agreement provides for the automatic renewal of the Lease Agreements in the event that the parties cannot agree on a purchase price for the Property, the provision is unenforceable because (1) it is substantively unconscionable; and (2) Mazuma failed to give notice of the automatic renewal of the Lease Agreements in accordance with the New York General Obligations Law; and
  - c. The immediate return of the Security Deposit to Ortho; and
  - d. Compensatory damages, including accruing interest and expenses, to be determined at time of trial; and
  - e. Reasonable attorneys' fees; and
  - f. Such further relief that this Court may deem just and proper.

Dated: June 7, 2018

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