

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

NOSTRUM LABORATORIES, INC., and	)	
NOSTRUM PHARMACEUTICALS, LLC	)	
Plaintiffs,	)	
	)	
v.	)	Civil No. 4:16-cv-01040-W-ODS
	)	
BALBOA CAPITAL CORPORATION,	)	
	)	
Defendant.	)	

**FIRST AMENDED ANSWER AND COUNTERCLAIMS OF  
DEFENDANT BALBOA CAPITAL CORPORATION**

Comes now Defendant Balboa Capital Corporation ("Balboa") and for its First Amended Answer to the Complaint filed by Plaintiffs Nostrum Laboratories, Inc. ("Nostrum Laboratories") and Nostrum Pharmaceuticals, LLC ("Nostrum Pharmaceuticals") and its Counterclaims against Nostrum Laboratories and Nostrum Pharmaceuticals states as follows:

**ANSWER**

**The Parties**

1. On information and belief, Balboa admits that Nostrum is a New Jersey corporation. Balboa lacks sufficient knowledge or information as to the remaining allegations contained in paragraph 1 of the First Amended Complaint and, therefore, denies the remaining allegations.

2. On information and belief, Balboa admits that Nostrum Pharmaceuticals is a Delaware limited liability company. Balboa lacks sufficient knowledge or information as

to the remaining allegations contained in paragraph 2 of the First Amended Complaint and, therefore, denies the remaining allegations.

3. Balboa admits the allegations contained in paragraph 3 of the First Amended Complaint.

### **Jurisdiction and Venue**

4. Based on the allegations in the First Amended Complaint, Balboa admits that this Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) as alleged in paragraph 4 of the First Amended Complaint.

5. Balboa admits the allegations contained in paragraph 5 of the First Amended Complaint.

6. Based on the allegations contained in Nostrum's Complaint, Balboa admits that venue is proper in this District under 28 U.S.C. § 1391(b)(2) as alleged in paragraph 6 of the First Amended Complaint.

7. Balboa admits the allegations contained in paragraph 7 of the First Amended Complaint.

### **Generally Applicable Facts**

8. Balboa lacks sufficient knowledge or information concerning the allegations contained in paragraph 8 of the First Amended Complaint and, therefore, denies those allegations.

9. Balboa admits that all relevant times Nostrum Laboratories has conducted business with Balboa from a location within Kansas City, Jackson County, State of

Missouri, as alleged in paragraph 9 of the First Amended Complaint. Balboa lacks sufficient information concerning the remaining allegations in paragraph 9 of the First Amended Complaint and, therefore, denies the remaining allegations.

10. Balboa lacks sufficient knowledge or information concerning the allegations contained in paragraph 10 of the First Amended Complaint and, therefore, denies those allegations.

11. Balboa lacks sufficient knowledge or information as to the location of the equipment acquired by Nostrum Laboratories through the leases with Balboa and, therefore, Balboa denies the allegations contained in paragraph 11 of the First Amended Complaint.

12. Balboa admits that it had communications with Nostrum Laboratories about potential equipment leasing prior to Nostrum Laboratories' execution of the Master Lease, Lease No. 140869 (the "Master Lease"), and related documents on or about September 6, 2011. Balboa denies all other allegations contained in paragraph 12 of the First Amended Complaint.

13. Balboa denies the allegations contained in paragraph 13 of the First Amended Complaint.

14. Balboa admits that Nostrum executed the Master Lease on or about September 6, 2011. Balboa denies the remaining allegations contained in paragraph 14 of the First Amended Complaint.

15. Balboa admits that Nostrum Pharmaceuticals executed a guaranty for the

Master Lease as alleged in paragraph 15 of the First Amended Complaint. Balboa denies the remaining allegations contained in paragraph 15 of the First Amended Complaint.

16. Balboa admits that pursuant to the Master Lease, Nostrum Laboratories subsequently entered into seven equipment-specific leases: Lease Nos. 140869-001 ("Lease No. 1"); 140869-002 ("Lease No. 2"); 140869-003 ("Lease No. 3"); 140869-004 ("Lease No. 4"); 140869-005 ("Lease No. 5"); 140869-006 ("Lease No. 6") and 140869-007 ("Lease No. 7") (collectively with the Master Lease, the "Lease Agreements") and that Nostrum Pharmaceuticals executed a guaranty for the Lease Agreements. Balboa denies all other allegations contained in paragraph 16 of the First Amended Complaint.

17. Balboa denies the allegations contained in paragraph 17 of the First Amended Complaint.

18. Balboa admits that it assigned certain temporary rights and interests under the Lease Agreements to third parties who provided financing to Balboa. Balboa denies the remaining allegations contained in paragraph 18 of the First Amended Complaint.

19. Balboa denies the allegations contained in paragraph 19 of the First Amended Complaint.

20. Balboa denies the allegations contained in paragraph 20 of the First Amended Complaint.

21. Balboa denies the allegations contained in paragraph 21 of the First Amended Complaint.

22. Balboa denies the allegations contained in paragraph 22 of the First Amended Complaint.

23. Balboa denies the allegations contained in paragraph 23 of the First Amended Complaint.

24. Balboa denies the allegations contained in paragraph 24 of the First Amended Complaint.

25. Balboa denies the allegations contained in paragraph 25 of the First Amended Complaint.

26. Balboa admits that Nostrum Laboratories provided notice for the purchase of equipment leased under Lease No. 1. Balboa denies that Nostrum Laboratories provided notice for the purchase of equipment leased under Lease Nos. 2-7 as alleged in paragraph 26 of the First Amended Complaint.

27. Balboa denies the allegations contained in paragraph 27 of the First Amended Complaint.

28. Balboa admits that it provided a "Payoff Quote" as alleged in paragraph 28 of the First Amended Complaint. Balboa denies all other allegations contained in paragraph 28 of the First Amended Complaint.

29. Balboa denies the allegations contained in paragraph 29 of the First Amended Complaint.

30. Balboa denies the allegations contained in paragraph 30 of the First Amended Complaint.

31. Balboa denies the allegations contained in paragraph 31 of the First Amended Complaint.

32. Balboa denies the allegations contained in paragraph 32 of the First Amended Complaint.

33. Balboa admits that it provided a "Payoff Quote" as alleged in paragraph 33 of the First Amended Complaint. Balboa denies all other allegations contained in paragraph 33 of the First Amended Complaint.

34. Balboa denies the allegations contained in paragraph 34 of the First Amended Complaint.

35. Balboa admits that its representative sent Nostrum Laboratories a demand letter and proposed complaint asserting claims under the Lease Agreements and seeking payment from Nostrum Laboratories for amounts due thereunder in the amount of \$2,418,347.11. Balboa denies all other allegations contained in paragraph 35 of the First Amended Complaint.

36. Paragraph 36 of the First Amended Complaint states a legal conclusion to which no response is required. To the extent a response to paragraph 36 might be deemed necessary, Balboa denies the allegations contained in paragraph 36 of the First Amended Complaint.

37. Balboa denies the allegations contained in paragraph 37 of the First Amended Complaint.

### **Count I: Declaratory Judgment**

38. Balboa hereby re-alleges and reincorporates by reference its responses to the allegations in paragraphs 1-37 of the First Amended Complaint as set forth above.

39. Balboa admits the allegations contained in paragraph 39 of the First Amended Complaint.

40. Balboa denies the allegations contained in paragraph 40 of the First Amended Complaint.

41. Balboa admits that the controversy concerning the parties' rights and obligations under the Lease Agreements is ripe for determination as alleged in paragraph 41 of the First Amended Complaint. Balboa denies all other allegations in paragraph 41 of the First Amended.

42. Balboa denies the allegations contained in paragraph 42 of the First Amended Complaint.

43. Balboa denies that Plaintiffs are entitled to any remedy, at law or otherwise, and denies any and all other allegations, assumptions or implications contained in paragraph 43 of the First Amended Complaint.

44. Balboa denies that Plaintiffs are entitled to any declaration by this Court or any relief alleged in paragraph 44 of the First Amended Complaint.

45. Balboa denies the allegations contained in paragraph 45 of the First Amended Complaint.

46. Balboa denies the allegations contained in paragraph 46 of the First Amended Complaint.

**Count II: Breach of Covenant of Good Faith and Fair Dealing**

47. Balboa hereby re-alleges and reincorporates by reference its responses to the allegations in paragraphs 1-46 of the First Amended Complaint as set forth above.

48. Balboa denies the allegations contained in paragraph 48 of the First Amended Complaint.

49. Balboa denies the allegations contained in paragraph 49 of the First Amended Complaint.

50. Balboa denies the allegations contained in paragraph 50 of the First Amended Complaint.

51. Balboa denies the allegations contained in paragraph 51 of the First Amended Complaint.

**Count III: Reformation Based on Mutual Mistake**

52. Balboa hereby re-alleges and reincorporates by reference its responses to the allegations in paragraphs 1-51 of the First Amended Complaint as set forth above.

53. Balboa admits the allegations contained in paragraph 53 of the First Amended Complaint.

54. Balboa denies the allegations contained in paragraph 54 of the First Amended Complaint.



55. Balboa denies the allegations contained in paragraph 55 of the First Amended Complaint.

56. Balboa denies the allegations contained in paragraph 56 of the First Amended Complaint.

57. Balboa denies the allegations contained in paragraph 57 of the First Amended Complaint.

58. Balboa denies the allegations contained in paragraph 58 of the First Amended Complaint.

**Count IV: Reformation Based on Unilateral Mistake**

59. Balboa hereby re-alleges and reincorporates by reference its responses to the allegations in paragraphs 1-58 of the First Amended Complaint as set forth above.

60. Balboa admits the allegations contained in paragraph 60 of the First Amended Complaint.

61. Balboa denies the allegations contained in paragraph 61 of the First Amended Complaint.

62. Balboa denies the allegations contained in paragraph 62 of the First Amended Complaint.

63. Balboa denies the allegations contained in paragraph 63 of the First Amended Complaint.

64. Balboa denies the allegations contained in paragraph 64 of the First Amended Complaint.

65. Balboa denies the allegations contained in paragraph 65 of the First Amended Complaint.

66. Balboa denies the allegations contained in paragraph 66 of the First Amended Complaint.

### **Count V – Promissory Estoppel**

67. Balboa hereby re-alleges and reincorporates by reference its responses to the allegations in paragraphs 1-66 of the First Amended Complaint as set forth above.

68. Balboa denies the allegations contained in paragraph 68 of the First Amended Complaint.

69. Balboa denies the allegations contained in paragraph 69 of the First Amended Complaint.

70. Balboa denies the allegations contained in paragraph 70 of the First Amended Complaint.

Balboa further denies that Plaintiffs are entitled to any of the relief requested in their First Amended Complaint, and Balboa prays for judgment in its favor and against Plaintiffs on all of their claims asserted against Balboa and for any and all relief requested by Plaintiffs in their First Amended Complaint.

### **AFFIRMATIVE DEFENSES**

1. Plaintiffs have failed to state a claim upon which relief can be granted for mutual or unilateral mistake as mistake is not pled with sufficient particularity as required by Fed. R. Civ. Proc. 9(b).

2. Plaintiffs have failed to state a claim for unilateral mistake because they have not alleged (a) that they do not bear the risk of their mistake; and (b) the effect of their mistake is that enforcement of the Lease Agreements would be unconscionable.

3. Plaintiffs have failed to state a claim for promissory estoppel because they have not alleged reliance that was both reasonable and foreseeable.

4. Plaintiffs' claims are barred by the doctrine of estoppel because Balboa reasonably relied on Nostrum Laboratories' execution of the Lease Agreements and possession and use of the equipment provided under the Lease Agreements to its detriment in acquiring, financing and permitting Nostrum Laboratories' possession and use of the equipment.

5. Plaintiffs' claims are barred by the doctrine of laches because the Master Lease was executed more than five (5) years ago and during that time Plaintiffs neglected or delayed bringing suit to remedy the wrongs alleged in their First Amended Complaint, which taken together with that length of time, prejudiced Balboa in terms of acquiring the equipment and permitting Nostrum Laboratories' possession and use of the equipment all the while.

6. Plaintiffs' claims are barred by the doctrine of waiver because Nostrum Laboratories has intentionally relinquished or abandoned its rights under the Lease Agreements by failing to perform its obligations, including, but not limited to, the payment of rent and other charges due under the Lease Agreements, and because Nostrum Laboratories partially performed under the terms of the Lease Agreements and accepted

the benefits of the Lease Agreements it now seeks to avoid or reform.

7. Plaintiffs' claims are barred by their failure to do equity in that Nostrum Laboratories has partially performed and accepted the benefits of the Lease Agreements it now seeks to avoid or reform.

8. Plaintiffs' claims are barred by the doctrine of ratification because, Donald F. Hansen's alleged representations prior to Nostrum Laboratories' execution of the Master Lease notwithstanding, Nostrum Laboratories subsequently executed the Master Lease and partially performed under it and each of the other Lease Agreements, thereby accepting and ratifying their terms and conditions.

9. Plaintiffs' claims are barred by unclean hands because Plaintiffs have not acted fairly in the matter of the Lease Agreements by accepting the benefits of possession and use of the equipment for years only to now come into court and seek to avoid or reform the terms of the Lease Agreements under which they have benefitted.

10. Plaintiffs' claims fail for lack of consideration because there was no additional consideration for Donald F. Hansen's alleged modification of the Lease Agreements to furnish Nostrum Laboratories the additional benefit of purchasing the equipment for a nominal fee, which was not provided under the express terms of the Lease Agreements.

11. Plaintiffs' claims are barred by the Statute of Frauds as the alleged understanding and oral agreement between Donald F. Hansen and Nostrum Laboratories purportedly modifying the express terms of the Lease Agreements was not in writing and

was not to be performed within one year from when allegedly made.

12. Plaintiffs' claims are barred by the parole evidence rule because they contradict the express terms and agreement of the parties as memorialized by the Master Lease and the other Lease Agreements. The Master Lease alleged in Plaintiffs' First Amended Complaint was intended to be the full expression of the parties' agreement with respect to the leased equipment and any oral agreements not contained in such written agreements are unenforceable. The allegations set forth in the First Amended Complaint directly conflict with the terms of the Master Lease and are therefore barred by the express terms of the Master Lease.

13. Plaintiffs' claims are barred by failure to satisfy conditions precedent under the Lease Agreements, specifically including, but not limited to, Nostrum Laboratories' failure to pay all rent and other amounts due under the Lease Agreements.

14. Plaintiffs' claims are barred to the extent they failed to mitigate their alleged damages.

### **COUNTERCLAIMS AGAINST NOSTRUM LABORATORIES**

For its counterclaims against Nostrum Laboratories, Balboa alleges as follows:

#### **Additional Facts in Support of Counterclaims against Nostrum Laboratories**

1. Paragraph C of the Master Lease between Nostrum Laboratories and Balboa provides that "'Master Lease' shall mean this agreement; 'Lease' shall mean each Schedule entered into between [Balboa] and [Nostrum Laboratories] pursuant to this Master Lease."

2. Section 4 of the Master Lease, titled "Finance Lease Status," provides that it is a "finance lease" as defined by Section 10103(a)(7) of the California Uniform Commercial Code.

3. Section 9 of the Master Lease, titled "Ownership," provides that, "[t]he Equipment . . . shall at all times be and remain, the sole and exclusive property of [Balboa], and [Nostrum Laboratories] shall have no right, title or interest therein or thereto except as expressly set forth in this [Master Lease]. Plates, labels, or other markings stating that the Equipment is owned by [Balboa] shall be affixed to or placed on the Equipment by [Balboa] or, at [Balboa's] request or if required by law, by [Nostrum Laboratories] at [Nostrum Laboratories'] expense, and [Nostrum Laboratories] shall keep the same in a prominent position thereon."

4. Section 18 of the Master Lease, titled "Return of Equipment," provides that "[u]pon expiration of the term of any Lease, (unless Lessee shall have duly exercised any purchase option with respect to such Lease), or after default, on demand by [Balboa], [Nostrum Laboratories] will at its sole cost and expense deliver the Equipment (in the same condition as when delivered to [Nostrum Laboratories], reasonable wear and tear resulting from authorized use excepted) to [Balboa's] premises set forth above or any place designated by [Balboa] in writing, for such disposition as [Balboa] may determine. No such return shall constitute termination of this Lease unless [Balboa] shall agree so in writing."

5. Section 30 of the Master Lease, titled "Miscellaneous," provides that:

\* \* \*

THIS LEASE IS SUBJECT TO APPROVAL AND ACCEPTANCE BY BALBOA CAPITAL CORPORATION'S FINANCE COMMITTEE AND SHALL NOT BECOME BINDING UPON [BALBOA] UNTIL EXECUTED BY AN OFFICER OF [BALBOA]. Such officer shall be the C.E.O., President, C.O.O. or Vice President. No other officer, employee or agent of [Balboa] has the authority to waive, alter or add any term, provision or condition of this Master Lease and/or each Schedule. . . ANY AMENDMENT TO THIS MASTER LEASE AND/OR SCHEDULE TO BE EFFECTIVE MUST BE IN WRITING SIGNED BY [BALBOA] AND [NOSTRUM LABORATORIES]. This Master Lease constitutes the entire agreement between the parties hereto with respect to the leasing of the Equipment.

6. The obligations sued upon herein are commercial in nature and the Counterclaims herein are not subject to the provisions of California *Civil Code* Sections 1801, *et seq.* (Unru Retail Installment Sales Act) and/or California *Civil Code* Sections 2981, *et seq.* (Rees-Levering Motor Vehicle Sales and Finance Act).

**FIRST CAUSE OF ACTION:  
Breach of Lease No. 140869-001 against Nostrum Laboratories**

7. Balboa incorporates paragraphs 1 through 6, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

8. On or about November 23, 2011, Balboa executed and delivered to Nostrum Laboratories that certain written Lease No. 140869-001, together with various addendums, amendments and schedules ("Lease No. 1"), under the terms of which Nostrum Laboratories leased from Balboa certain equipment (hereinafter referred to collectively as the "Lease No. 1 Equipment") which is more particularly described in Lease No. 1. Lease

No. 1 required twelve (12) quarterly rental payments of \$38,000.43; plus applicable sales tax, payable on the twenty-ninth day of each quarter, beginning November 29, 2011.

9. On or about November 23, 2011, Nostrum Laboratories executed a Delivery and Acceptance Certificate representing that it was accepting the Lease No. 1 Equipment, making its obligations under Lease No. 1 absolute and non-cancellable.

10. Pursuant to Paragraph 2 of Lease No. 1, Nostrum Laboratories is required, at least one hundred twenty (120) days prior to the end of the Base Term of Lease No. 1, to give written notice, via certified mail, of its intention to either purchase the Lease No. 1 Equipment for its fair market value or to return the Lease No. 1 Equipment to the Balboa.

11. Defendant Nostrum Laboratories complied with the notice provisions described in Lease No. 1 stating that it intended to purchase the Lease No. 1 Equipment but, to date, has failed and refused and continues to fail and refuse to either purchase the Lease No. 1 Equipment or return the Lease No. 1 Equipment to Balboa.

12. Pursuant to Lease No. 1, the quarterly rental payments will continue to be owed to Balboa until the Lease No. 1 Equipment is either purchased or returned. Thereafter, on or about November 28, 2014, Nostrum Laboratories breached Lease No. 1 by failing to make the quarterly payment due on that date and/or any date thereafter.

13. In accordance with Lease No. 1, and as a proximate result of Nostrum Laboratories' default thereunder, Balboa is entitled to recover the sum of all unpaid rents and other payments due under Lease No. 1 that have accrued. As of the date of this filing, there became due the sum of \$304,003.44, plus sales tax on that amount in the sum of



\$21,584.24 in unpaid rents, exclusive of interest, attorney's fees and costs, no portion of which sum has been paid by Nostrum Laboratories.

14. Accordingly, pursuant to Lease No. 1, there became due, owing and unpaid the sum of \$304,003.44, plus sales tax on that amount in the sum of \$21,584.24, together with additional rental payments that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 1 Equipment, plus interest at the rate of ten percent (10%) per annum from the due date of each payment.

15. Additionally, the terms of Lease No. 1 provide that in the event of default by Nostrum Laboratories of any of the terms of said lease, Balboa is entitled to retake the Lease No. 1 Equipment and to sell, lease, or otherwise dispose of the Lease No. 1 Equipment at Balboa's option.

16. The terms of Lease No. 1 further provide that Nostrum Laboratories is liable to Balboa for any personal property tax due on the equipment. Property tax in the sum of \$4,771.32, plus sales tax on that amount in the sum of \$338.76 is now due and owing.

17. Balboa has performed all of the terms, conditions, and covenants required to be performed by Balboa under the terms of Lease No. 1, except as excused or prevented by the conduct of Nostrum Laboratories.

18. As a proximate result of Nostrum Laboratories' breach of Lease No. 1, Balboa has been damaged in the total sum of \$330,697.76, plus additional rental payments that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 1 Equipment, plus interest at the rate of ten percent (10%) per annum from November 28,

2014, until judgment is entered.

19. Pursuant to Paragraph 22 of Lease No. 1, Nostrum Laboratories promised to pay all costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement of Lease No. 1. Therefore, Balboa requests the Court award Balboa its reasonable attorneys' fees and costs.

**SECOND CAUSE OF ACTION:**

**Claim and Delivery of Lease No. 1 Equipment against Nostrum Laboratories**

20. Balboa incorporates paragraphs 1 through 19, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

21. Balboa is, and at all times herein mentioned was, the legal owner of the Lease No. 1 Equipment which is more particularly described in Lease No. 1.

22. Balboa is informed and believes, and thereon alleges, that all of the Lease No. 1 Equipment described is currently in the possession of Nostrum Laboratories.

23. Following a default thereunder, the terms of Lease No. 1 provide that Balboa is entitled to recover immediate possession of the Lease No. 1 Equipment for disposition under the terms of Lease No. 1.

24. Although Balboa has demanded that Nostrum Laboratories surrender possession of the Lease No. 1 Equipment, Nostrum Laboratories continues to withhold possession of the Lease No. 1 Equipment in violation of Balboa's right to possession. This Counterclaim, in addition to previous demands, shall constitute demand upon Nostrum

Laboratories to surrender possession of the Lease No. 1 Equipment to Balboa.

25. The Lease No. 1 Equipment may be easily destroyed and damaged and its parts may be readily moved and/or sold. Further, the continued use of the Lease No. 1 Equipment by Nostrum Laboratories will cause its value to depreciate, which will render Balboa's ownership interest in the Lease No. 1 Equipment valueless.

26. As a proximate result of the wrongful detention and possession of the Lease No. 1 Equipment by Nostrum Laboratories, Balboa has been damaged in an amount yet to be ascertained for the diminution in value of the Lease No. 1 Equipment or its reasonable value in the event possession of the Lease No. 1 Equipment cannot be recovered. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

27. The continued use by Nostrum Laboratories of the Lease No. 1 Equipment unless enjoined by this Court will cause irreparable injury to Balboa. Further, Balboa has no adequate or speedy remedy at law for the damages and injuries described, nor does Balboa have an adequate means to determine the loss of value of the Lease No. 1 Equipment during Nostrum Laboratories' wrongful detention and possession.

28. Nostrum Laboratories' wrongful refusal to deliver possession of the Lease No. 1 Equipment to Balboa further constitutes a conversion of the Lease No. 1 Equipment. As a further proximate result of that conversion, Balboa has been damaged in an amount which is no less than \$82,700.00, plus sales tax on that amount in the sum of \$5,871.70, which is the fair market value of Balboa's Lease No. 1 Equipment. When the exact amount

of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

**THIRD CAUSE OF ACTION:  
Indebtedness under Lease No. 1 against Nostrum Laboratories**

29. Balboa incorporates paragraphs 1 through 28, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

30. Nostrum Laboratories is indebted to Balboa in the sum of \$330,697.76, plus interest at the rate of ten percent (10%) per annum from November 28, 2014.

**FOURTH CAUSE OF ACTION:  
Conversion of Lease No. 1 Equipment against Nostrum Laboratories**

31. Balboa incorporates paragraphs 1 through 30, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

32. At all times mentioned, Balboa was, and still is, the owner and was, and still is, entitled to possession of the Lease No. 1 Equipment.

33. On or about November 28, 2014, Nostrum Laboratories took the Lease No. 1 Equipment from Balboa and converted it to Nostrum Laboratories' own use and purpose.

34. Balboa has, since November 28, 2014, made repeated oral and written demand to Nostrum Laboratories to return the Lease No. 1 Equipment. Nostrum Laboratories has failed and refused, and continues to fail and refuse, to return the Lease No. 1 Equipment to Balboa.

35. As a proximate result of this conversion by Nostrum Laboratories, Balboa has been damaged in a sum not yet fully ascertained but in no event less than \$82,700.00, plus sales tax on that amount in the sum of \$5,871.70, which is the fair market value of the Lease No. 1 Equipment.

**FIFTH CAUSE OF ACTION:  
Breach of Lease No. 140869-002 against Nostrum Laboratories**

36. Balboa incorporates paragraphs 1 through 35, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

37. On or about January 27, 2012, Balboa executed and delivered to Nostrum Laboratories that certain written Lease Agreement No. 140869-002, together with various addendums, amendments and schedules ("Lease No. 2"), under the terms of which Nostrum Laboratories leased from Balboa certain equipment (hereinafter referred to collectively as the "Lease No. 2 Equipment") which is more particularly described in Lease No. 2. Lease No. 2 required twelve (12) quarterly rental payments of \$37,373.82, plus applicable sales tax, payable on the thirty-first day of each quarter, beginning January 31, 2012.

38. On or about January 26, 2012, Nostrum Laboratories executed a Delivery and Acceptance Certificate representing that it was accepting the Lease No. 2 Equipment, making its obligations under Lease No. 2 absolute and noncancellable.

39. Pursuant to Paragraph 2 of Lease No. 2, Nostrum Laboratories is required,

at least one hundred twenty (120) days prior to the end of the Base Term of Lease No. 2, to give written notice, via certified mail, of its intention to either purchase the Lease No. 2 Equipment for its fair market value or to return the Lease No. 2 Equipment to Balboa.

40. Nostrum Laboratories alleges that it complied with the notice provisions described in Lease No. 2 stating that it intended to purchase the Lease No. 2 Equipment but, to date, has failed and refused and continues to fail and refuse to either purchase the Lease No. 2 Equipment or return the Leased No. 2 Equipment to Balboa.

41. Pursuant to Lease No. 2, the quarterly rental payments will continue to be owed to Balboa until the Lease No. 2 Equipment is either purchased or returned. Thereafter, on or about January 27, 2015, Nostrum Laboratories breached Lease No. 2 by failing to make the quarterly payment due on that date and/or any date thereafter.

42. In accordance with Lease No. 2, and as a proximate result of Nostrum Laboratories' default thereunder, Balboa is entitled to recover the sum of all unpaid rents and other payments due under Lease No. 2 that have accrued. As of the date of the filing of Balboa's Counterclaim, there became due the sum of \$261,616.74 in unpaid rents, exclusive of interest, attorney's fees and costs, no portion of which sum has been paid by Nostrum.

43. Accordingly, pursuant to Lease No. 2, there became due, owing and unpaid the sum of \$261,616.74, together with additional rental payments that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 2 Equipment, plus interest at the rate of ten percent (10%) per annum from the due date of each payment.

44. Additionally, the terms of Lease No. 2 provide that in the event of default by Nostrum Laboratories of any of the terms of said lease, Balboa is entitled to retake the Lease No. 2 Equipment and to sell, lease, or otherwise dispose of the Lease No. 2 Equipment at Balboa's option.

45. Further, the terms of Lease No. 2 provide that Nostrum Laboratories is liable to Balboa for late charges on all payments not made in a timely manner. As of the date of this filing, late charges in the sum of \$40,363.74 are now due and owing.

46. The terms of Lease No. 2 further provide that Nostrum Laboratories is liable to Balboa for any personal property tax due on the Lease No. 2 Equipment. Property tax in the sum of \$5,993.93 is now due and owing.

47. Balboa has performed all of the terms, conditions, and covenants required to be performed by Balboa under the terms of Lease No. 2, except as excused or prevented by the conduct of Nostrum Laboratories.

48. As a proximate result of Nostrum Laboratories' breach of Lease No. 2, Balboa has been damaged in the total sum of \$307,974.41, plus additional rental payments that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 2 Equipment, plus interest at the rate of ten percent (10%) per annum from January 27, 2015, until judgment is entered.

49. Pursuant to Paragraph 22 of Lease No. 2, Nostrum Laboratories promised to pay all costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement of Lease No. 2. Therefore, Balboa requests the Court award Balboa its reasonable

attorneys' fees and costs.

**SIXTH CAUSE OF ACTION:**

**Claim and Delivery of Lease No. 2 Equipment against Nostrum Laboratories**

50. Balboa incorporates paragraphs 1 through 49, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

51. Balboa is, and at all times herein mentioned was, the legal owner of the Lease No. 2 Equipment which is more particularly described in Lease No. 2.

52. Balboa is informed and believes, and thereon alleges, that all of the Lease No. 2 Equipment described herein is currently in the possession of Nostrum Laboratories.

53. Following a default thereunder, the terms of Lease No. 2 provide that Balboa is entitled to recover immediate possession of the Lease No. 2 Equipment for disposition under the terms of Lease No. 2.

54. Although Balboa has demanded that Nostrum Laboratories surrender possession of the Lease No. 2 Equipment, the Nostrum Laboratories continues to withhold possession of the Lease No. 2 Equipment in violation of Balboa's right to possession. This Counterclaim, in addition to previous demands, shall constitute demand upon Nostrum Laboratories to surrender possession of the Lease No. 2 Equipment to Balboa.

55. The Lease No. 2 Equipment may be easily destroyed and damaged and its parts may be readily moved and/or sold. Further, the continued use of the Lease No. 2 Equipment by Nostrum Laboratories will cause its value to depreciate, which will render



Balboa's ownership interest in the Lease No. 2 Equipment valueless.

56. As a proximate result of Nostrum Laboratories' wrongful detention and possession of the Lease No. 2 Equipment, Balboa has been damaged in an amount yet to be ascertained for the diminution in value of the Lease No. 2 Equipment or its reasonable value in the event possession of the Lease No. 2 Equipment cannot be recovered. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

57. The continued use by Nostrum Laboratories of the Lease No. 2 Equipment unless enjoined by this Court will cause irreparable injury to Balboa. Further, Balboa has no adequate or speedy remedy at law for the damages and injuries described, nor does Balboa have an adequate means to determine the loss of value of the Lease No. 2 Equipment during the Nostrum Laboratories' wrongful detention and possession.

58. Nostrum Laboratories' wrongful refusal to deliver possession of the Lease No. 2 Equipment to Balboa further constitutes a conversion of the Lease No. 2 Equipment. As a further proximate result of that conversion, Balboa has been damaged in an amount which is no less than \$81,985.00, which is the fair market value of Balboa's Lease No. 2 Equipment. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

**SEVENTH CAUSE OF ACTION:  
Indebtedness under Lease No. 2 against Nostrum Laboratories**

59. Balboa incorporates paragraphs 1 through 58, inclusive, of these

Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

60. Nostrum Laboratories is indebted to Balboa in the sum of \$307,974.41, plus interest at the rate of ten percent (10%) per annum from January 27, 2015.

**EIGHTH CAUSE OF ACTION:  
Conversion of Lease No. 2 Equipment against Nostrum Laboratories**

61. Balboa incorporates paragraphs 1 through 60, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

62. At all times mentioned, Balboa was, and still is, the owner and was, and still is, entitled to possession of the Lease No. 2 Equipment.

63. On or about January 27, 2015, Nostrum Laboratories took the Lease No. 2 Equipment from Balboa and converted it to Nostrum Laboratories' own use and purpose.

64. Balboa has, since January 27, 2015, made repeated oral and written demand to Nostrum Laboratories to return the Lease No. 2 Equipment. Nostrum Laboratories has failed and refused, and continues to fail and refuse, to return the Lease No. 2 Equipment to Balboa.

65. As a proximate result of this conversion by Nostrum Laboratories, Balboa has been damaged in a sum not yet fully ascertained but in no event less than \$81,985.00, which is the fair market value of the Lease No. 2 Equipment.

**NINTH CAUSE OF ACTION:  
Breach of Lease No. 140869-003 against Nostrum Laboratories**

66. Balboa incorporates paragraphs 1 through 65, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

67. On or about May 25, 2012, Balboa executed and delivered to Nostrum Laboratories that certain written Lease Agreement No. 140869-003, together with various addendums, amendments and schedules ("Lease No. 3"), under the terms of which Nostrum Laboratories leased from Balboa certain equipment (hereinafter referred to collectively as the "Lease No. 3 Equipment") which is more particularly described in Lease No. 3. Lease No. 3 required twelve (12) quarterly rental payments of \$50,141.15, plus applicable sales tax, payable on the thirtieth day of each quarter, beginning May 30, 2012.

68. On or about May 23, 2012, Nostrum Laboratories executed a Delivery and Acceptance Certificate representing that it was accepting the Lease No. 3 Equipment, making its obligations under Lease No. 3 absolute and noncancellable.

69. Pursuant to Paragraph 2 of Lease No. 3, Nostrum Laboratories is required, at least one hundred twenty (120) days prior to the end of the Base Term of Lease No. 3, to give written notice, via certified mail, of its intention to either purchase the Lease No. 3 Equipment for its fair market value or to return the Lease No. 3 Equipment to Balboa.

70. Nostrum Laboratories alleges that it complied with the notice provisions

described in Lease No. 3 stating that it intended to purchase the Lease No. 3 Equipment but, to date, has failed and refused and continues to fail and refuse to either purchase the Lease No. 3 Equipment or return the Lease No. 3 Equipment to Balboa.

71. Pursuant to Lease No. 3, the quarterly rental payments will continue to be owed to Balboa until the Lease No. 3 Equipment is either purchased or returned. Thereafter, on or about May 15, 2015, Nostrum Laboratories breached Lease No. 3 by failing to make the quarterly payment due on that date and/or any date thereafter.

72. In accordance with Lease No. 3, and as a proximate result of Nostrum Laboratories' default thereunder, Balboa is entitled to recover the sum of all unpaid rents and other payments due under Lease No. 3 that have accrued. As of the date of this filing, there became due the sum of \$300,846.90 in unpaid rents, exclusive of interest, attorney's fees and costs, no portion of which sum has been paid by Nostrum Laboratories.

73. Accordingly, pursuant to Lease No. 3, there became due, owing and unpaid the sum of \$300,846.90, together with additional rental payments that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 3 Equipment, plus interest at the rate of ten percent (10%) per annum from the due date of each payment.

74. Additionally, the terms of Lease No. 3 provide that in the event of default by Nostrum Laboratories of any of the terms of said lease, Balboa is entitled to retake the Lease No. 3 Equipment and to sell, lease, or otherwise dispose of the Lease No. 3 Equipment at Balboa's option.

75. Further, the terms of Lease No. 3 provide that Nostrum Laboratories is liable to Balboa for late charges on all payments not made in a timely manner. As of the date of this filing, late charges in the sum of \$45,127.05 are now due and owing.

76. The terms of Lease No. 3 further provide that Nostrum Laboratories is liable to Balboa for any personal property tax due on the equipment. Property tax in the sum of \$7,837.40 is now due and owing.

77. Balboa has performed all of the terms, conditions, and covenants required to be performed by Balboa under the terms of Lease No. 3, except as excused or prevented by the conduct of Nostrum Laboratories.

78. As a proximate result of Nostrum Laboratories breach of Lease No. 3, Balboa has been damaged in the total sum of \$353,811.35, plus additional rental payments that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 3 Equipment, plus interest at the rate of ten percent (10%) per annum from May 15, 2015, until judgment is entered.

79. Pursuant to Paragraph 22 of Lease No. 3, Nostrum Laboratories promised to pay all costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement of Lease No. 3. Therefore, Balboa requests the Court award Balboa its reasonable attorneys' fees and costs.

**TENTH CAUSE OF ACTION:  
Claim and Delivery of Lease No. 3 Equipment against Nostrum Laboratories**

80. Balboa incorporates paragraphs 1 through 79, inclusive, of these

Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

81. Balboa is, and at all times herein mentioned was, the legal owner of the Lease No. 3 Equipment which is more particularly described in Lease No. 3.

82. Balboa is informed and believes, and thereon alleges, that all of the Lease No. 3 Equipment described herein is currently in the possession of Nostrum Laboratories.

83. Following a default thereunder, the terms of Lease No. 3 provide that Balboa is entitled to recover immediate possession of the Lease No. 3 Equipment for disposition under the terms of Lease No. 3.

84. Although Balboa has demanded that Nostrum Laboratories surrender possession of the Lease No. 3 Equipment, Nostrum Laboratories continue to withhold possession of the Lease No. 3 Equipment in violation of Balboa's right to possession. This Counterclaim, in addition to previous demands, shall constitute demand upon Nostrum Laboratories to surrender possession of the Lease No. 3 Equipment to Balboa.

85. The Lease No. 3 Equipment may be easily destroyed and damaged and its parts may be readily moved and/or sold. Further, the continued use of the Lease No. 3 Equipment by Nostrum Laboratories will cause its value to depreciate, which will render Balboa's ownership interest in the Lease No. 3 Equipment valueless.

86. As a proximate result of Nostrum Laboratories' wrongful detention and possession of the Lease No. 3 Equipment, Balboa has been damaged in an amount yet to be ascertained for the diminution in value of the Lease No. 3 Equipment or its reasonable

value in the event possession of the Lease No. 3 Equipment cannot be recovered. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

87. The continued use by Nostrum Laboratories of the Lease No. 3 Equipment unless enjoined by this Court will cause irreparable injury to Balboa. Further, Balboa has no adequate or speedy remedy at law for the damages and injuries described, nor does Balboa have an adequate means to determine the loss of value of the Lease No. 3 Equipment during Nostrum Laboratories' wrongful detention and possession.

88. Nostrum Laboratories' wrongful refusal to deliver possession of the Lease No. 3 Equipment to Balboa further constitutes a conversion of the Lease No. 3 Equipment. As a further proximate result of that conversion, Balboa has been damaged in an amount which is no less than \$106,280.00, which is the fair market value of Balboa's Lease No. 3 Equipment. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

**ELEVENTH CAUSE OF ACTION:  
Indebtedness under Lease No. 3 against Nostrum Laboratories**

89. Balboa incorporates paragraphs 1 through 88, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

90. Nostrum Laboratories is indebted to Balboa in the sum of \$353,811.35, plus interest at the rate of ten percent (10%) per annum from May 15, 2015.

**TWELFTH CAUSE OF ACTION:  
Conversion of Lease No. 3 Equipment against all Counter-Defendants**

91. Balboa incorporates paragraphs 1 through 90, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

92. At all times mentioned, Balboa was, and still is, the owner and was, and still is, entitled to possession of the Lease No. 3 Equipment.

93. On or about May 15, 2015, Nostrum Laboratories took the Lease No. 3 Equipment from Balboa and converted it to the Nostrum Laboratories' own use and purpose.

94. Balboa has, since May 15, 2015, made repeated oral and written demand to Nostrum Laboratories to return the Lease No. 3 Equipment. Nostrum Laboratories have failed and refused, and continue to fail and refuse, to return the Lease No. 3 Equipment to Balboa.

95. As a proximate result of this conversion by Nostrum Laboratories, Balboa has been damaged in a sum not yet fully ascertained but in no event less than \$106,280.00, which is the fair market value of the Lease No. 3 Equipment.

**THIRTEENTH CAUSE OF ACTION:  
Breach of Lease No. 140869-004 against Nostrum Laboratories**

96. Balboa incorporates paragraphs 1 through 95, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.



97. On or about March 28, 2012, Balboa executed and delivered to Nostrum Laboratories that certain written Lease Agreement No. 140869-004, together with various addendums, amendments and schedules ("Lease No. 4"), under the terms of which Nostrum Laboratories leased from Balboa certain equipment (hereinafter referred to collectively as the "Lease No. 4 Equipment") which is more particularly described in Lease No. 4. Lease No. 4 required twelve (12) quarterly rental payments of \$63,819.00, plus applicable sales tax, payable on the thirtieth day of each quarter, beginning June 30, 2012.

98. On or about March 26, 2012, Nostrum Laboratories executed a Delivery and Acceptance Certificate representing that it was accepting the Lease No. 4 Equipment, making its obligations under Lease No. 4 absolute and noncancellable.

99. Pursuant to Paragraph 2 of Lease No. 4, Nostrum Laboratories is required, at least one hundred twenty (120) days prior to the end of the Base Term of Lease No. 4, to give written notice, via certified mail, of its intention to either purchase the Lease No. 4 Equipment for its fair market value or to return the Lease No. 4 Equipment to Balboa.

100. Nostrum Laboratories alleges that it complied with the notice provisions described in Lease No. 4 stating that it intended to purchase the Lease No. 4 Equipment but, to date, has failed and refused and continues to fail and refuse to either purchase the Lease No. 4 Equipment or return the Lease No. 4 Equipment to Balboa.

101. Pursuant to Lease No. 4, the quarterly rental payments will continue to be owed to Balboa until the Lease No. 4 Equipment is either purchased or returned. Thereafter,

on or about June 30, 2015, Nostrum Laboratories breached Lease No. 4 by failing to make the quarterly payment due on that date and/or any date thereafter.

102. In accordance with Lease No. 4, and as a proximate result of Nostrum Laboratories' default thereunder, Balboa is entitled to recover the sum of all unpaid rents and other payments due under Lease No. 4 that have accrued. As of the date of this filing, there became due the sum of \$319,095.00 in unpaid rents, exclusive of interest, attorney's fees and costs, no portion of which sum has been paid by Nostrum Laboratories.

103. Accordingly, pursuant to Lease No. 4, there became due, owing and unpaid the sum of \$319,095.00, together with additional rental payments that become due while Nostrum is in possession of Balboa's Lease No. 4 Equipment, plus interest at the rate of ten percent (10%) per annum from the due date of each payment.

104. Additionally, the terms of Lease No. 4 provide that in the event of default by Nostrum Laboratories of any of the terms of said lease, Balboa is entitled to retake the Lease No. 4 Equipment and to sell, lease, or otherwise dispose of the Lease No. 4 Equipment at Balboa's option.

105. Further, the terms of Lease No. 4 provide that Nostrum Laboratories is liable to Balboa for late charges on all payments not made in a timely manner. As of the date of this filing, late charges in the sum of \$34,462.26 are now due and owing.

106. The terms of Lease No. 4 further provide that Nostrum Laboratories is liable to Balboa for any personal property tax due on the equipment. Property tax in the sum of \$7,812.30 is now due and owing.

107. Balboa has performed all of the terms, conditions, and covenants required to be performed by Balboa under the terms of Lease No. 4, except as excused or prevented by the conduct of Nostrum Laboratories.

108. As a proximate result of Nostrum Laboratories' breach of Lease No. 4, Balboa has been damaged in the total sum of \$361,369.56, plus additional rental payments that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 4 Equipment, plus interest at the rate of ten percent (10%) per annum from June 30, 2015, until judgment is entered.

109. Pursuant to Paragraph 22 of Lease No. 4, Nostrum Laboratories promised to pay all costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement of Lease No. 4. Therefore, Balboa requests the Court award Balboa its reasonable attorneys' fees and costs.

**FOURTEENTH CAUSE OF ACTION:  
Claim and Delivery of Lease No. 4 Equipment against Nostrum Laboratories**

110. Balboa incorporates paragraphs 1 through 109, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

111. Balboa is, and at all times herein mentioned was, the legal owner of the Lease No. 4 Equipment which is more particularly described in Lease No. 4.

112. Balboa is informed and believes, and thereon alleges, that all of the Lease No. 4 Equipment described herein is currently in the possession of Nostrum Laboratories.

113. Following a default thereunder, the terms of Lease No. 4 provide that Balboa is entitled to recover immediate possession of the Lease No. 4 Equipment for disposition under the terms of Lease No. 4.

114. Although Balboa has demanded that Nostrum Laboratories surrender possession of the Lease No. 4 Equipment, Nostrum Laboratories continues to withhold possession of the Lease No. 4 Equipment in violation of Balboa's right to possession. This Counterclaim, in addition to previous demands, shall constitute demand upon Nostrum Laboratories to surrender possession of the Lease No. 4 Equipment to Balboa.

115. The Lease No. 4 Equipment may be easily destroyed and damaged and its parts may be readily moved and/or sold. Further, the continued use of the Lease No. 4 Equipment by Nostrum Laboratories will cause its value to depreciate, which will render Balboa's ownership interest in the Lease No. 4 Equipment valueless.

116. As a proximate result of Nostrum Laboratories' wrongful detention and possession of the Lease No. 4 Equipment, Balboa has been damaged in an amount yet to be ascertained for the diminution in value of the Lease No. 4 Equipment or its reasonable value in the event possession of the Lease No. 4 Equipment cannot be recovered. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

117. The continued use by Nostrum Laboratories of the Lease No. 4 Equipment unless enjoined by this Court will cause irreparable injury to Balboa. Further, Balboa has no adequate or speedy remedy at law for the damages and injuries described, nor does

Balboa have an adequate means to determine the loss of value of the Lease No. 4 Equipment during Nostrum Laboratories' wrongful detention and possession.

118. Nostrum Laboratories' wrongful refusal to deliver possession of the Lease No. 4 Equipment to Balboa further constitutes a conversion of the Lease No. 4 Equipment. As a further proximate result of that conversion, Balboa has been damaged in an amount which is no less than \$140,000.00, which is the fair market value of Balboa's Lease No. 4 Equipment. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

**FIFTEENTH CAUSE OF ACTION:  
Indebtedness under Lease No. 4 against Nostrum Laboratories**

119. Balboa incorporates paragraphs 1 through 118, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

120. Nostrum Laboratories is indebted to Balboa in the sum of \$361,369.56, plus interest at the rate of ten percent (10%) per annum from June 30, 2015.

**SIXTEENTH CAUSE OF ACTION:  
Conversion of Lease No. 4 Equipment against Nostrum Laboratories**

121. Balboa incorporates paragraphs 1 through 120, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

122. At all times mentioned, Balboa was, and still is, the owner and was, and still is, entitled to possession of the Lease No. 4 Equipment.

123. On or about June 30, 2015, Nostrum Laboratories took the Lease No. 4 Equipment from Balboa and converted it to Nostrum Laboratories' own use and purpose.

124. Balboa has, since June 30, 2015, made repeated oral and written demand to Nostrum Laboratories to return the Lease No. 4 Equipment. Nostrum Laboratories has failed and refused, and continues to fail and refuse, to return the Lease No. 4 Equipment to Balboa.

125. As a proximate result of this conversion by Nostrum Laboratories, Balboa has been damaged in a sum not yet fully ascertained but in no event less than \$140,000.00, which is the fair market value of the Lease No. 4 Equipment.

**SEVENTEENTH CAUSE OF ACTION:  
Breach of Lease No. 140869-005 against Nostrum Laboratories**

126. Balboa incorporates paragraphs 1 through 125, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

127. On or about October 29, 2012, Balboa executed and delivered to Nostrum Laboratories that certain written Lease Agreement No. 140869-005, together with various addendums, amendments and schedules ("Lease No. 5"), under the terms of which Nostrum Laboratories leased from Balboa certain equipment (hereinafter referred to collectively as the "Lease No. 5 Equipment") which is more particularly described in Lease No. 5. Lease No. 5 required twelve (12) quarterly rental payments

of \$31,216.05, plus applicable sales tax, payable on the thirty-first day of each quarter, beginning October 31, 2012.

128. On or about October 30, 2012, Nostrum Laboratories executed a Delivery and Acceptance Certificate representing that it was accepting the Lease No. 5 Equipment, making its obligations under Lease No. 5 absolute and noncancellable.

129. Pursuant to Paragraph 2 of Lease No. 5, Nostrum Laboratories is required, at least one hundred twenty (120) days prior to the end of the Base Term of Lease No. 5, to give written notice, via certified mail, of its intention to either purchase the Lease No. 5 Equipment for its fair market value or to return the Lease No. 5 Equipment to Balboa.

130. Nostrum Laboratories alleges that it complied with the notice provisions described in Lease No. 5 stating that it intended to purchase the Lease No. 5 Equipment but, to date, has failed and refused and continues to fail and refuse to either purchase the Lease No. 5 Equipment or return the Lease No. 5 Equipment to Balboa.

131. Pursuant to Lease No. 5, the quarterly rental payments will continue to be owed to Balboa until the Lease No. 5 Equipment is either purchased or returned. Thereafter, on or about October 30, 2015, Nostrum Laboratories breached Lease No. 5 by failing to make the quarterly payment due on that date and/or any date thereafter.

132. In accordance with Lease No. 5, and as a proximate result of Nostrum Laboratories' default thereunder, Balboa is entitled to recover the sum of all unpaid rents and other payments due under Lease No. 5 that have accrued. As of the date of the filing of Balboa's Counterclaim, there became due the sum of \$124,864.20 in unpaid rents,

exclusive of interest, attorneys' fees and costs, no portion of which sum has been paid by Nostrum Laboratories.

133. Accordingly, pursuant to Lease No. 5, there became due, owing and unpaid the sum of \$124,864.20, together with additional rental payments that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 5 Equipment, plus interest at the rate of ten percent (10%) per annum from the due date of each payment.

134. Additionally, the terms of Lease No. 5 provide that in the event of default by Nostrum Laboratories of any of the terms of said lease, Balboa is entitled to retake the Lease No. 5 Equipment and to sell, lease, or otherwise dispose of the Lease No. 5 Equipment at Balboa's option.

135. Further, the terms of Lease No. 5 provide that Nostrum Laboratories is liable to Balboa for late charges on all payments not made in a timely manner. As of the date of this filing, late charges in the sum of \$16,856.67 are now due and owing.

136. The terms of Lease No. 5 further provide that Nostrum Laboratories is liable to Balboa for any personal property tax due on the equipment. Property tax in the sum of \$5,067.15 is now due and owing.

137. Balboa has performed all of the terms, conditions, and covenants required to be performed by Balboa under the terms of Lease No. 5, except as excused or prevented by the conduct of Nostrum Laboratories.

138. As a proximate result of Nostrum Laboratories' breach of Lease No. 5, Balboa has been damaged in the total sum of \$146,788.02, plus additional rental payments



that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 5 Equipment, plus interest at the rate of ten percent (10%) per annum from October 30, 2015, until judgment is entered.

139. Pursuant to Paragraph 22 of Lease No. 5, Nostrum Laboratories promised to pay all costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement of Lease No. 5. Therefore, Balboa requests the Court award Balboa its reasonable attorneys' fees and costs.

**EIGHTEENTH CAUSE OF ACTION:  
Claim and Delivery of Lease No. 5 Equipment against Nostrum Laboratories**

140. Balboa incorporates paragraphs 1 through 139, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

141. Balboa is, and at all times herein mentioned was, the legal owner of the Lease No. 5 Equipment which is more particularly described in Lease No. 5.

142. Balboa is informed and believes, and thereon alleges, that all of the Lease No. 5 Equipment described herein is currently in the possession of Nostrum Laboratories.

143. Following a default thereunder, the terms of Lease No. 5 provide that Balboa is entitled to recover immediate possession of the Lease No. 5 Equipment for disposition under the terms of Lease No. 5.

144. Although Balboa has demanded that Nostrum Laboratories surrender possession of the Lease No. 5 Equipment, Nostrum Laboratories continues to withhold

possession of the Lease No. 5 Equipment in violation of Balboa's right to possession. This Counterclaim, in addition to previous demands, shall constitute demand upon Nostrum Laboratories to surrender possession of the Lease No. 5 Equipment to Balboa.

145. The Lease No. 5 Equipment may be easily destroyed and damaged and its parts may be readily moved and/or sold. Further, the continued use of the Lease No. 5 Equipment by Nostrum Laboratories will cause its value to depreciate, which will render Balboa's ownership interest in the Lease No. 5 Equipment valueless.

146. As a proximate result of the Nostrum Laboratories' wrongful detention and possession of the Lease No. 5 Equipment, Balboa has been damaged in an amount yet to be ascertained for the diminution in value of the Lease No. 5 Equipment or its reasonable value in the event possession of the Lease No. 5 Equipment cannot be recovered. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

147. The continued use by Nostrum Laboratories of the Lease No. 5 Equipment unless enjoined by this Court will cause irreparable injury to Balboa. Further, Balboa has no adequate or speedy remedy at law for the damages and injuries described, nor does Balboa have an adequate means to determine the loss of value of the Lease No. 5 Equipment during Nostrum Laboratories' wrongful detention and possession.

148. Nostrum Laboratories' wrongful refusal to deliver possession of the Lease No. 5 Equipment to Balboa further constitutes a conversion of the Lease No. 5 Equipment. As a further proximate result of that conversion, Balboa has been damaged

in an amount which is no less than \$68,625.00, which is the fair market value of Balboa's Lease No. 5 Equipment. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

**NINETEENTH CAUSE OF ACTION:  
Indebtedness under Lease No. 5 against Nostrum Laboratories**

149. Balboa incorporates paragraphs 1 through 148, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

150. Nostrum Laboratories is indebted to Balboa in the sum of \$146,788.02, plus interest at the rate of ten percent (10%) per annum from October 30, 2015.

**TWENTIETH CAUSE OF ACTION:  
Conversion of Lease No. 5 Equipment against Nostrum Laboratories**

151. Balboa incorporates paragraphs 1 through 150, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

152. At all times mentioned, Balboa was, and still is, the owner and was, and still is, entitled to possession of the Lease No. 5 Equipment.

153. On or about October 30, 2015, Nostrum Laboratories took the Lease No. 5 Equipment from Balboa and converted it to Nostrum Laboratories' own use and purpose.

154. Balboa has, since October 30, 2015, made repeated oral and written demand to Nostrum Laboratories to return the Lease No. 5 Equipment. Nostrum Laboratories has

failed and refused, and continues to fail and refuse, to return the Lease No. 5 Equipment to Balboa.

155. As a proximate result of this conversion by the Counter-Defendants, Balboa has been damaged in a sum not yet fully ascertained but in no event less than \$68,625.00, which is the fair market value of the Lease No. 5 Equipment.

**TWENTY-FIRST CAUSE OF ACTION:  
Breach of Lease Agreement No. 140869-006 against Nostrum Laboratories**

156. Balboa incorporates paragraphs 1 through 155, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

157. On or about February 5, 2013, Balboa executed and delivered to Nostrum Laboratories that certain written Lease Agreement No. 140869-006, together with various addendums, amendments and schedules ("Lease No. 6"), under the terms of which Nostrum Laboratories leased from Balboa certain equipment (hereinafter referred to collectively as the "Lease No. 6 Equipment") which is more particularly described in Lease No. 6. Lease No. 6 required twelve (12) quarterly rental payments of \$24,953.88, plus applicable sales tax, payable on the eleventh day of each quarter, beginning February 11, 2013.

158. On or about January 23, 2013, Nostrum Laboratories executed a Delivery and Acceptance Certificate representing that it was accepting the Lease No. 6 Equipment, making its obligations under Lease No. 6 absolute and noncancellable.

159. Pursuant to Paragraph 2 of Lease No. 6, Nostrum Laboratories is required, at least one hundred twenty (120) days prior to the end of the Base Term of Lease No. 6, to give written notice, via certified mail, of its intention to either purchase the Lease No. 6 Equipment for its fair market value or to return the Lease No. 6 Equipment to Balboa.

160. Nostrum Laboratories alleges that it complied with the notice provisions described in Lease No. 6 stating that it intended to purchase the Lease No. 6 Equipment but, to date, has failed and refused and continues to fail and refuse to either purchase the Lease No. 6 Equipment or return the Lease No. 6 Equipment to Balboa.

161. Pursuant to Lease No. 6, the quarterly rental payments will continue to be owed to Balboa until the Lease No. 6 Equipment is either purchased or returned. Thereafter, on or about February 3, 2016, Nostrum Laboratories breached Lease No. 6 by failing to make the quarterly payment due on that date and/or any date thereafter.

162. In accordance with Lease No. 6, and as a proximate result of Nostrum Laboratories' default thereunder, Balboa is entitled to recover the sum of all unpaid rents and other payments due under Lease No. 6 that have accrued. As of the date of this filing, there became due the sum of \$74,861.64, plus sales tax on that amount in the sum of \$6,625.26 in unpaid rents, exclusive of interest, attorney's fees and costs, no portion of which sum has been paid by Nostrum Laboratories.

163. Accordingly, pursuant to Lease No. 6, there became due, owing and unpaid the sum of \$74,861.64, plus sales tax on that amount in the sum of \$6,625.26, together with additional rental payments that become due while Nostrum is in

possession of Balboa's Lease No. 6 Equipment, plus interest at the rate of ten percent (10%) per annum from the due date of each payment.

164. Additionally, the terms of Lease No. 6 provide that in the event of default by Nostrum Laboratories of any of the terms of said lease, Balboa is entitled to retake the Lease No. 6 Equipment and to sell, lease, or otherwise dispose of the Lease No. 6 Equipment at Balboa's option.

165. Further, the terms of Lease No. 6 provide that Nostrum Laboratories is liable to Balboa for late charges on all payments not made in a timely manner. As of the date of the filing of Balboa's Counterclaim, late charges in the sum of \$13,474.60 are now due and owing.

166. The terms of Lease No. 6 further provide that Nostrum Laboratories is liable to Balboa for any personal property tax due on the equipment. Property tax in the sum of \$1,276.67 is now due and owing.

167. Balboa has performed all of the terms, conditions, and covenants required to be performed by Balboa under the terms of Lease No. 6, except as excused or prevented by the conduct of Nostrum Laboratories.

168. As a proximate result of Nostrum Laboratories' breach of Lease No. 6, Balboa has been damaged in the total sum of \$96,238.17, plus additional rental payments that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 6 Equipment, plus interest at the rate of ten percent (10%) per annum from February 3, 2016, until judgment is entered.

169. Pursuant to Paragraph 22 of Lease No. 6, Nostrum Laboratories promised to pay all costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement of Lease No. 6. Therefore, Balboa requests the Court award Balboa its reasonable attorneys' fees and costs.

**TWENTY-SECOND CAUSE OF ACTION:  
Claim and Delivery of Lease No. 6 Equipment against Nostrum Laboratories**

170. Balboa incorporates paragraphs 1 through 169, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

171. Balboa is, and at all times herein mentioned was, the legal owner of the Lease No. 6 Equipment which is more particularly described in Lease No. 6.

172. Balboa is informed and believes, and thereon alleges, that some or all of the Lease No. 6 Equipment described herein is currently in the possession of Nostrum Laboratories.

173. Following a default thereunder, the terms of Lease No. 6 provide that Balboa is entitled to recover immediate possession of the Lease No. 6 Equipment for disposition under the terms of Lease No. 6.

174. Although Balboa has demanded Nostrum Laboratories surrender possession of the Lease No. 6 Equipment, Nostrum Laboratories continues to withhold possession of the Lease No. 6 Equipment in violation of Balboa's right to possession. This Counterclaim,

in addition to previous demands, shall constitute demand upon Nostrum Laboratories to surrender possession of the Lease No. 6 Equipment to Balboa.

175. The Lease No. 6 Equipment may be easily destroyed and damaged and its parts may be readily moved and/or sold. Further, the continued use of the Lease No. 6 Equipment by Nostrum Laboratories will cause its value to depreciate, which will render Balboa's ownership interest in the Lease No. 6 Equipment valueless.

176. As a proximate result of Nostrum Laboratories' wrongful detention and possession of the Lease No. 6 Equipment, Balboa has been damaged in an amount yet to be ascertained for the diminution in value of the Lease No. 6 Equipment or its reasonable value in the event possession of the Lease No. 6 Equipment cannot be recovered. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

177. The continued use by Nostrum Laboratories of the Lease No. 6 Equipment unless enjoined by this Court will cause irreparable injury to Balboa. Further, Balboa has no adequate or speedy remedy at law for the damages and injuries described, nor does Balboa have an adequate means to determine the loss of value of the Lease No. 6 Equipment during Nostrum Laboratories' wrongful detention and possession.

178. Nostrum Laboratories' wrongful refusal to deliver possession of the Lease No. 6 Equipment to Balboa further constitutes a conversion of the Lease No. 6 Equipment. As a further proximate result of that conversion, Balboa has been damaged in an amount which is no less than \$54,740.00, plus sales tax on that amount in the sum



of \$4,844.49, which is the fair market value of Balboa's Lease No. 6 Equipment. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

**TWENTY-THIRD CAUSE OF ACTION:  
Indebtedness under Lease No. 6 against Nostrum Laboratories**

179. Balboa incorporates paragraphs 1 through 178, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

180. Nostrum Laboratories is indebted to Balboa in the sum of \$96,238.17, plus interest at the rate of ten percent (10%) per annum from February 3, 2016.

**TWENTY-FOURTH CAUSE OF ACTION:  
Conversion of Lease No. 6 Equipment against Nostrum Laboratories**

181. Balboa incorporates paragraphs 1 through 180, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

182. At all times mentioned, Balboa was, and still is, the owner and was, and still is, entitled to possession of the Lease No. 6 Equipment.

183. On or about February 3, 2016, Nostrum Laboratories took the Lease No. 6 Equipment from Balboa and converted it to Nostrum Laboratories' own use and purpose.

184. Balboa has, since February 3, 2016, made repeated oral and written demand to Nostrum Laboratories to return the Lease No. 6 Equipment. Nostrum Laboratories has

failed and refused, and continues to fail and refuse, to return the Lease No. 6 Equipment to Balboa.

185. As a proximate result of this conversion by Nostrum Laboratories, Balboa has been damaged in a sum not yet fully ascertained but in no event less than \$54,740.00, plus sales tax on that amount in the sum of \$4,844.49, which is the fair market value of the Lease No. 6 Equipment.

**TWENTY-FIFTH CAUSE OF ACTION:  
Breach of Lease No. 140869-007 against Nostrum Laboratories**

186. Balboa incorporates paragraphs 1 through 185, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

187. On or about October 25, 2013, Balboa executed and delivered to Nostrum Laboratories that certain written Lease Agreement No. 140869-007, together with various addendums, amendments and schedules ("Lease No. 7"), under the terms of which Nostrum Laboratories leased from Balboa certain equipment (hereinafter referred to collectively as the "Lease No. 7 Equipment") which is more particularly described in Lease No. 7. Lease No. 7 required twelve (12) quarterly rental payments of \$45,643.09, plus applicable sales tax, payable on the twenty-eighth day of each quarter, beginning October 28, 2013.

188. On or about October 21, 2013, Nostrum Laboratories executed a Delivery and Acceptance Certificate representing that it was accepting the Lease No. 7 Equipment,

making its obligations under Lease No. 7 absolute and noncancellable.

189. Pursuant to Paragraph 2 of Lease No. 7, Nostrum Laboratories is required, at least one hundred twenty (120) days prior to the end of the Base Term of Lease No. 7, to give written notice, via certified mail, of its intention to either purchase the Lease No. 7 Equipment for its fair market value or to return the Lease No. 7 Equipment to Balboa.

190. Nostrum Laboratories alleges that it complied with the notice provisions described in Lease No. 7 stating that it intended to purchase the Lease No. 7 Equipment but, to date, has failed and refused and continues to fail and refuse to either purchase the Lease No. 7 Equipment or return the Lease No. 7 Equipment to Balboa.

191. Pursuant to Lease No. 7, the quarterly rental payments will continue to be owed to Balboa until the Lease No. 7 Equipment is either purchased or returned. Thereafter, on or about October 28, 2015, Nostrum Laboratories breached Lease No. 7 by failing to make the quarterly payment due on that date and/or any date thereafter.

192. In accordance with Lease No. 7, and as a proximate result of Nostrum Laboratories' default thereunder, Balboa is entitled to recover the sum of all unpaid rents and other payments due under Lease No. 7 that have accrued. As of the date of this filing, there became due the sum of \$182,572.36 in unpaid rents, exclusive of interest, attorney's fees and costs, no portion of which sum has been paid by Nostrum Laboratories.

193. Accordingly, pursuant to Lease No. 7, there became due, owing and unpaid the sum of \$182,572.36, together with additional rental payments that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 7 Equipment, plus interest at

the rate of ten percent (10%) per annum from the due date of each payment.

194. Additionally, the terms of Lease No. 7 provide that in the event of default by Nostrum Laboratories of any of the terms of said lease, Balboa is entitled to retake the Lease No. 7 Equipment and to sell, lease, or otherwise dispose of the Lease No. 7 Equipment at Balboa's option.

195. Further, the terms of Lease No. 7 provide that Nostrum Laboratories is liable to Balboa for late charges on all payments not made in a timely manner. As of the date of this filing, late charges in the sum of \$24,647.28 are now due and owing.

196. The terms of Lease No. 7 further provide that Nostrum Laboratories is liable to Balboa for any personal property tax due on the equipment. Property tax in the sum of \$5,102.01 is now due and owing.

197. Balboa has performed all of the terms, conditions, and covenants required to be performed by Balboa under the terms of Lease No. 7, except as excused or prevented by the conduct of Nostrum Laboratories.

198. As a proximate result of Nostrum Laboratories' breach of Lease No. 7, Balboa has been damaged in the total sum of \$212,321.65, plus additional rental payments that become due while Nostrum Laboratories is in possession of Balboa's Lease No. 7 Equipment, plus interest at the rate of ten percent (10%) per annum from October 28, 2015, until judgment is entered.

199. Pursuant to Paragraph 22 of Lease No. 7, Nostrum Laboratories promised to pay all costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement

of Lease No. 7. Therefore, Balboa requests the Court award Balboa its reasonable attorneys' fees and costs.

**TWENTY-SIXTH CAUSE OF ACTION:  
Claim and Delivery of Lease No. 7 Equipment against Nostrum Laboratories**

200. Balboa incorporates paragraphs 1 through 199, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

201. Balboa is, and at all times herein mentioned was, the legal owner of the Lease No. 7 Equipment which is more particularly described in Lease No. 7.

202. Balboa is informed and believes, and thereon alleges, that all of the Lease No. 7 Equipment described herein is currently in the possession of Nostrum Laboratories.

203. Following a default thereunder, the terms of Lease No. 7 provide that Balboa is entitled to recover immediate possession of the Lease No. 7 Equipment for disposition under the terms of Lease No. 7.

204. Although Balboa has demanded that Nostrum Laboratories surrender possession of the Lease No. 7 Equipment, Nostrum Laboratories continues to withhold possession of the Lease No. 7 Equipment in violation of Balboa's right to possession. This Counterclaim, in addition to previous demands, shall constitute demand upon Nostrum Laboratories to surrender possession of the Lease No. 7 Equipment to Balboa.

205. The Lease No. 7 Equipment may be easily destroyed and damaged and its parts may be readily moved and/or sold. Further, the continued use of the Lease No. 7

Equipment by Nostrum Laboratories will cause its value to depreciate, which will render Balboa's ownership interest in the Lease No. 7 Equipment valueless.

206. As a proximate result of Nostrum Laboratories' wrongful detention and possession of the Lease No. 7 Equipment, Balboa has been damaged in an amount yet to be ascertained for the diminution in value of the Lease No. 7 Equipment or its reasonable value in the event possession of the Lease No. 7 Equipment cannot be recovered. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

207. The continued use by Nostrum Laboratories of the Lease No. 7 Equipment unless enjoined by this Court will cause irreparable injury to Balboa. Further, Balboa has no adequate or speedy remedy at law for the damages and injuries described, nor does Balboa have an adequate means to determine the loss of value of the Lease No. 7 Equipment during Nostrum Laboratories' wrongful detention and possession.

208. Nostrum Laboratories' wrongful refusal to deliver possession of the Lease No. 7 Equipment to Balboa further constitutes a conversion of the Lease No. 7 Equipment. As a further proximate result of that conversion, Balboa has been damaged in an amount which is no less than \$64,100.00, which is the fair market value of Balboa's Lease No. 7 Equipment. When the exact amount of such damage is determined, Balboa will seek leave of this Court to amend this Counterclaim.

**TWENTY-SEVENTH CAUSE OF ACTION:  
Indebtedness under Lease No. 7 against Nostrum Laboratories**

209. Balboa incorporates paragraphs 1 through 208, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

210. Nostrum Laboratories is indebted to Balboa in the sum of \$212,321.65, plus interest at the rate of ten percent (10%) per annum from October 28, 2015.

**TWENTY-EIGHTH CAUSE OF ACTION:  
Conversion of Lease No. 7 Equipment against Nostrum Laboratories**

211. Balboa incorporates paragraphs 1 through 210, inclusive, of these Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

212. At all times mentioned, Balboa was, and still is, the owner and was, and still is, entitled to possession of the Lease No. 7 Equipment.

213. On or about October 28, 2015, Nostrum Laboratories took the Leased Equipment from Balboa and converted it to Nostrum Laboratories' own use and purpose.

214. Balboa has, since October 28, 2015, made repeated oral and written demand to Nostrum Laboratories to return the Lease No. 7 Equipment. Nostrum Laboratories has failed and refused, and continues to fail and refuse, to return the Lease No. 7 Equipment to Balboa.

215. As a proximate result of this conversion by Nostrum Laboratories, Balboa has been damaged in a sum not yet fully ascertained but in no event less than \$64,100.00,

which is the fair market value of the Lease No. 7 Equipment.

### **COUNTERCLAIM AGAINST NOSTRUM PHARMACEUTICALS**

For its counterclaim against Nostrum Pharmaceuticals, Balboa alleges as follows:

#### **Additional Facts in Support of Counterclaim against Nostrum Pharmaceuticals**

216. On or about October 23, 2013, Nostrum Pharmaceuticals executed a Guaranty (the "Guaranty") in favor of Balboa.

217. The Guaranty was signed by Nirmal Mulye as President of Nostrum Pharmaceuticals.

218. The Guaranty was provided in consideration for Balboa entering into any Master Lease Agreement, Lease Schedule or other financial transaction of any kind whatsoever, then or thereafter made with Nostrum Laboratories.

219. Pursuant to the Guaranty, Nostrum Pharmaceuticals unconditionally guaranteed to Balboa the prompt payment, observance and performance when due of all obligations of Nostrum Laboratories under all Master Lease Agreements, Lease Schedules, financial transactions and all other agreements related thereto (collectively, the "Guaranteed Obligations").

220. Upon a default in the payment or performance of the Guaranteed Obligations by Nostrum Laboratories, Nostrum Pharmaceuticals' liabilities and obligations for the Guaranteed Obligations became due and payable to Balboa immediately without demand or notice of any nature, all of which were expressly waived by Nostrum Pharmaceuticals.

221. The Master Lease Agreement and Lease Schedules at issue in this case



between Nostrum Laboratories and Balboa are among the Guaranteed Obligations for which Nostrum Pharmaceuticals is liable to Balboa under the Guaranty.

222. As stated in Balboa's Counterclaims against Nostrum Laboratories, the Guaranteed Obligations owed to Balboa exceed \$2,400,000.00.

223. In addition, under the Guaranty Nostrum Pharmaceuticals agreed to pay all of Balboa's attorneys' fees and costs incurred by reason of any default by Nostrum Laboratories under any agreement relating to the Guaranteed Obligations as well as to enforce Balboa's rights against Nostrum Pharmaceuticals under the terms of the Guaranty.

**TWENTY-NINTH CAUSE OF ACTION:  
Breach of Guaranty against Nostrum Pharmaceuticals**

224. Balboa incorporates paragraphs 1 through 223, inclusive, of its Counterclaims and its responses to paragraphs 1-70 of the First Amended Complaint herein as though set forth in full.

225. Nostrum Pharmaceuticals executed the Guaranty in favor of Balboa in consideration for Balboa entering into the Guaranteed Obligations with Nostrum Laboratories.

226. Pursuant to the terms of the Guaranty, Nostrum Pharmaceuticals guaranteed satisfaction of Nostrum's Laboratories' Guaranteed Obligations to Balboa.

227. Nostrum Laboratories defaulted and failed to satisfy the Guaranteed Obligations.

228. Nostrum Pharmaceuticals' liabilities and obligations for the Guaranteed Obligations became due and payable upon Nostrum Laboratories' default.

229. Nostrum Pharmaceuticals has not satisfied the Guaranteed Obligations and they remain due and payable.

230. Balboa has suffered damages as a result of Nostrum Pharmaceuticals' failure to satisfy its obligations and liabilities under the Guaranty.

**PRAYER FOR RELIEF**

WHEREFORE, Balboa prays for Judgment against Nostrum Laboratories and Nostrum Pharmaceuticals as follows:

**As to the First Cause of Action**

231. For the total sum of \$330,697.76, plus interest at the rate of ten percent (10%) per annum from November 28, 2014;

232. For late charges and non-sufficient funds charges in an amount to be proven at trial; and

233. For reasonable attorneys' fees and costs.

**As to the Second Cause of Action**

234. For possession of the Lease No. 1 Equipment which is the subject of Lease No. 1 or, if the Lease No. 1 Equipment cannot be delivered, for its reasonable value according to proof; and

235. For an order that Nostrum Laboratories immediately deliver possession of the Lease No. 1 Equipment to Balboa so that it may be kept and maintained for disposition

under the terms of Lease No. 1 and the California *Uniform Commercial Code*.

**As to the Third Cause of Action**

236. For the principal sum of \$330,697.76, plus interest at the rate of ten percent (10%) per annum from November 28, 2014.

**As to the Fourth Cause of Action**

237. For a Judgment against the Nostrum Laboratories for compensatory damages in an amount according to proof; however, in no event less than \$82,700.00, plus sales tax on that amount in the sum of \$5,871.70, which is the fair market value of the Lease No. 1 Equipment.

**As to the Fifth Cause of Action**

238. For the total sum of \$307,974.41, plus interest at the rate of ten percent (10%) per annum from January 27, 2015;

239. For late charges and non-sufficient funds charges in an amount to be proven at trial; and

240. For reasonable attorneys' fees and costs.

**As to the Sixth Cause of Action**

241. For possession of the Lease No. 2 Equipment which is the subject of Lease No. 2 or, if the Lease No. 2 Equipment cannot be delivered, for its reasonable value according to proof; and

242. For an order that Nostrum Laboratories immediately deliver possession of the Lease No. 2 Equipment to Balboa so that it may be kept and maintained for disposition

under the terms of Lease No. 2 and the California *Uniform Commercial Code*.

**As to the Seventh Cause of Action**

243. For the principal sum of \$307,974.41, plus interest at the rate of ten percent (10%) per annum from January 27, 2015.

**As to the Eighth Cause of Action**

244. For a Judgment against Nostrum Laboratories for compensatory damages in an amount according to proof; however, in no event less than \$81,985.00, which is the fair market value of the Lease No. 2 Equipment.

**As to the Ninth Cause of Action**

245. For the total sum of \$353,811.35, plus interest at the rate of ten percent (10%) per annum from May 15, 2015;

246. For late charges and non-sufficient funds charges in an amount to be proven at trial; and

247. For reasonable attorneys' fees and costs.

**As to the Tenth Cause of Action**

248. For possession of the Lease No. 3 Equipment which is the subject of Lease No. 3 or, if the Lease No. 3 Equipment cannot be delivered, for its reasonable value according to proof; and

249. For an order that Nostrum Laboratories immediately deliver possession of the Lease No. 3 Equipment to Balboa so that it may be kept and maintained for disposition under the terms of Lease No. 3 and the California *Uniform Commercial Code*

**As to the Eleventh Cause of Action**

250. For the principal sum of \$353,811.35, plus interest at the rate of ten percent (10%) per annum from May 15, 2015.

**As to the Twelfth Cause of Action**

251. For a Judgment against Nostrum Laboratories for compensatory damages in an amount according to proof however, in no event less than \$106,280.00, which is the fair market value of the Lease No. 3 Equipment.

**As to the Thirteenth Cause of Action**

252. For the total sum of \$361,369.56, plus interest at the rate of ten percent (10%) per annum from June 30, 2015;

253. For late charges and non-sufficient funds charges in an amount to be proven at trial; and

254. For reasonable attorneys' fees and costs.

**As to the Fourteenth Cause of Action**

255. For possession of the Lease No. 4 Equipment which is the subject of Lease No. 4 or, if the Lease No. 4 Equipment cannot be delivered, for its reasonable value according to proof; and

256. For an order that Nostrum Laboratories immediately deliver possession of the Lease No. 4 Equipment to Balboa so that it may be kept and maintained for disposition under the terms of Lease No. 4 and the California *Uniform Commercial Code*

**As to the Fifteenth Cause of Action**

257. For the principal sum of \$361,369.56, plus interest at the rate of ten percent (10%) per annum from June 30, 2015.

**As to the Sixteenth Cause of Action**

258. For a Judgment against Nostrum Laboratories for compensatory damages in an amount according to proof; however, in no event less than \$140,000.00, which is the fair market value of the Lease No. 4 Equipment.

**As to the Seventeenth Cause of Action**

259. For the total sum of \$146,788,02, plus interest at the rate of ten percent (10%) per annum from October 30, 2015;

260. For late charges and non-sufficient funds charges in an amount to be proven at trial; and

261. For reasonable attorneys' fees and costs.

**As to the Eighteenth Cause of Action**

262. For possession of the Lease No. 5 Equipment which is the subject of Lease No. 5 or, if the Lease No. 5 Equipment cannot be delivered, for its reasonable value according to proof; and

263. For an order that Nostrum Laboratories immediately deliver possession of the Lease No. 5 Equipment to Balboa so that it may be kept and maintained for disposition under the terms of Lease No. 5 and the California *Uniform Commercial Code*.

**As to the Nineteenth Cause of Action**

264. For the principal sum of \$146,788.02, plus interest at the rate of ten percent (10%) per annum from October 30, 2015.

**As to the Twentieth Cause of Action**

265. For a Judgment against Nostrum Laboratories for compensatory damages in an amount according to proof; however, in no event less than \$68,625.00, which is the fair market value of the Lease No. 5 Equipment.

**As to the Twenty-First Cause of Action**

266. For the total sum of \$96,238.17, plus interest at the rate of ten percent (10%) per annum from February 3, 2016;

267. For late charges and non-sufficient funds charges in an amount to be proven at trial; and

268. For reasonable attorneys' fees and costs.

**As to the Twenty-Second Cause of Action**

269. For possession of the Lease No. 6 Equipment which is the subject of Lease No. 6 or, if the Lease No. 6 Equipment cannot be delivered, for its reasonable value according to proof; and

270. For an order that Nostrum Laboratories, immediately deliver possession of the Lease No. 6 Equipment to Balboa so that it may be kept and maintained for disposition under the terms of Lease No. 6 and the California *Uniform Commercial Code*.

**As to the Twenty-Third Cause of Action**

271. For the principal sum of \$96,238.17, plus interest at the rate of ten percent (10%) per annum from February 3, 2016.

**As to the Twenty-Fourth Cause of Action**

272. For a Judgment against Nostrum Laboratories for compensatory damages in an amount according to proof; however, in no event less than \$54,740.00, plus sales tax on that amount in the sum of \$4,844.49, which is the fair market value of the Lease No. 6 Equipment.

**As to the Twenty-Fifth Cause of Action**

273. For the total sum of \$212,321.65, plus interest at the rate of ten percent (10%) per annum from October 28, 2015;

274. For late charges and non-sufficient funds charges in an amount to be proven at trial; and

275. For reasonable attorneys' fees and costs.

**As to the Twenty-Sixth Cause of Action**

276. For possession of the Lease No. 7 Equipment which is the subject of Lease No. 7 or, if the Lease No. 7 Equipment cannot be delivered, for its reasonable value according to proof; and

277. For an order that Nostrum Laboratories immediately deliver possession of the Lease No. 7 Equipment to Balboa so that it may be kept and maintained for disposition under the terms of Lease No. 7 and the California *Uniform Commercial Code*.



**As to the Twenty-Seventh Cause of Action**

278. For the principal sum of \$212,321.65, plus interest at the rate of ten percent (10%) per annum from October 28, 2015.

**As to the Twenty-Eighth Cause of Action**

279. For a Judgment against Nostrum Laboratories for compensatory damages in an amount according to proof; however, in no event less than \$64,100.00, which is the fair market value of the Lease No. 7 Equipment.

**As to the Twenty-Ninth Cause of Action**

280. For the payment of the amounts due and owing for the Guaranteed Obligations in excess of \$2,400,000.00 to be proven at trial;

281. For the payment of Balboa's attorneys' fees and costs incurred by reason of Nostrum Laboratories' default, including, but not limited to, those incurred in defending Nostrum Laboratories' claims against Balboa and Balboa's counterclaims against Nostrum Laboratories;

282. For the payment of Balboa's attorneys' fees and costs incurred by reason of the enforcement of the Guaranty against Nostrum Pharmaceuticals;

**As to All Causes of Action**

283. For costs of suit incurred herein; and

284. For such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMAND**

Balboa hereby demands a jury trial of all claims and causes of action so triable.

Respectfully submitted,

*/s/ Jason A. Dunn*

\_\_\_\_\_  
Jason A. Dunn, MO Bar No. 54905

Michael R. Perri (*pro hac vice*)

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***Attorneys for Defendant***

***Balboa Capital Corporation***

**CERTIFICATE OF SERVICE**

This is to certify that on April 27, 2017, a true and correct copy of the above and foregoing document has been electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel:

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*/s/ Jason A. Dunn*

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