

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

3445 PT BUCKHEAD LLC,)
)
Plaintiff,)
)
v.) PROCEEDING AGAINST TENANT
) HOLDING OVER
) CASE NO: 19DD000100
INFORM, INC.,)
)
Defendant.)

CONSENT ORDER

IT APPEARING TO THE COURT that Plaintiff 3445 PT BUCKHEAD LLC and Defendant INFORM, INC. are parties to that certain commercial office lease dated July 3, 2013 (the "Office Lease"), as amended by the First Amendment to Office Lease dated September 30, 2014 (the "First Amendment"), the Second Amendment to Office Lease dated April 24, 2015 (the "Second Amendment"), and the Third Amendment to Office Lease dated November 18, 2016 (the "Third Amendment"); the Office Lease, First Amendment, Second Amendment and Third Amendment are collectively referred to herein as the "Lease") whereby Plaintiff leases to Defendant certain premises commonly known as Suite 1000 of the building located at 3445 Peachtree Road NE, Atlanta, Georgia 30326 (the "Premises"), for a term that commenced on or about October 1, 2013, and that is scheduled to expire on November 30, 2020 (the "Term");

IT FURTHER APPEARING TO THE COURT that a dispute arose between Plaintiff and Defendant, which dispute resulted in Plaintiff filing this Proceeding Against Tenant Holding Over against Defendant (the "Dispossessory Proceeding");

IT FURTHER APPEARING TO THE COURT that Defendant was personally served with process in this Dispossessory Proceeding, as shown in the Affidavit of Service verifying same filed in this action on July 16, 2019, and that Defendant timely filed an Answer on July 19, 2019;

IT FURTHER APPEARING TO THE COURT that all statutory prerequisites to the filing of this Dispossession Proceeding have been met or waived by the parties;

IT FURTHER APPEARING TO THE COURT that Plaintiff and Defendant have agreed and consented, and do hereby mutually agree and consent, to compromise, settle and resolve all claims and matters in controversy between them raised or which could have been raised in this Dispossession Proceeding, whether by claim or counterclaim, in accordance with the terms and conditions set forth herein, and that all such claims, counterclaims and matters in controversy and issues may be decided by the entry of this Consent Order and by this Court sitting without a jury, the parties hereto having expressly waived the right to a trial by jury by the execution of this Consent Order;

IT IS THEREFORE ORDERED as follows:

1.

Provided no Uncured Default, defined below, by Defendant occurs hereunder, Defendant's right to possession of the Premises is hereby reinstated as of the date of this Consent Order, and Defendant may remain in possession of the Premises pursuant to the terms of the Lease and this Consent Order.

2.

As of the date hereof, Defendant is indebted to Plaintiff for past-due rent and other charges that have accrued under the Lease in the aggregate amount of **One Hundred Eighty-three Thousand, Eighty-six and 23/100 Dollars (\$183,086.23)** (the "Rental Arrearage"), which amount is comprised of the following:

- **\$155,532.45**, which amount is comprised of Base Rent due under the Lease for the months of March 2019 through July 2019 in the aggregate amount of \$156,888.55 (calculated at the rate of \$31,377.71 per month), less a credit for the 2018

reconciliation of operating expenses applied to Defendant's account in the amount of \$1,356.10;

- **\$5,861.55**, for Tenant's Proportionate Share of Operating Expenses due under the Lease for the months of March 2019 through July 2019, calculated at the rate of \$1,172.31 per month;
- **\$617.63**, for unpaid electricity charges due under the Lease through May 2019;
- **\$12,881.34**, for late charges due under the Lease, which is comprised of late charges accrued through April 2019 in the amount of \$7,999.57 and late charges on unpaid rent due for the months of May 2019 through July 2019 in the amount of \$4,881.77 (the "May-June 2019 Late Charges");
- **\$4,155.84**, for interest accruing on unpaid amounts due under the Lease at the rate of 10.5% per annum pursuant to Section 12(f) of the Lease, which is comprised of interest in the amount of \$3,219.84 that had accrued as of the date of the filing of this Dispossessory Proceeding as stated in the Dispossessory Proceeding and interest in the amount of \$936.00 that has accrued from such filing through July 29, 2019;
- **\$2,147.42**, for Plaintiff's reasonable attorneys' fees, calculated in accordance with the Lease and Georgia law, as stated in the Dispossessory Proceeding; and
- **\$1,890.00** for additional reasonable attorneys' fees incurred by Plaintiff since the Dispossessory Proceeding was filed, calculated in accordance with the Lease and Georgia law.

3.

In consideration of the agreements and mutual promises contained herein, Defendant shall pay to Plaintiff the sum of **One Hundred Seventy Thousand Eleven and 22/100 Dollars (\$170,011.22)**

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(the "Settlement Funds"), which amount represents the Rental Arrearage less the May-June 2019 Late Charges and the interest and attorneys' fees, in equal monthly payments of **Thirty-four Thousand, Two and 24/100 Dollars (\$34,002.24)** (each, an "Installment Payment," collectively, the "Installment Payments") payable over a period of five (5) consecutive months commencing with the month of August 2019 (the "Payment Period"), due on or before the fifteenth (15th) day of each month during the Payment Period, with the first Installment Payment being due on August 15, 2019 and the final Installment Payment being due on December 15, 2019. The Installment Payments shall be made payable to Plaintiff and shall be delivered in good funds by Defendant to Plaintiff at the address where payments of rent due under the Lease are to be paid. Unless an Uncured Default, defined below, occurs under this Consent Order, Plaintiff shall accept full payment of the Settlement Funds in full satisfaction of the Rental Arrearage.

4.

By execution of this Consent Order by their counsel, the parties agree that all terms and conditions of the Lease, as the same may be amended from time to time, shall continue in full force and effect and that Rent, defined in the Office Lease, due under the Lease shall continue to be due and payable to Plaintiff in accordance with the terms of the Lease, and any further amendments thereto; it being expressly understood that the parties are in negotiations to further amend the lease to reduce the size of the Premises and the amount of Rent due and payable to Plaintiff under the Lease. Provided no Uncured Default shall occur under this Consent Order, Defendant shall be provided with an abatement of one-half (1/2) of the Base Rent and Tenant's Proportionate Share of Operating Expenses due and payable on August 1, 2019 in the aggregate amount of Sixteen Thousand, Two Hundred Seventy-five and 01/100 Dollars (\$16,275.01) (the "Abated Rent"). All Rent due and payable under the Lease shall continue to be payable to Plaintiff at Plaintiff's address for payments

stated in the Lease.

5.

If Defendant shall fail to pay any Installment Payment when due under this Consent Order, or any installment of Rent when due under the Lease while this Consent Order is in effect, Defendant shall be in default in its obligations under this Consent Order, and if Defendant shall fail to cure such default within five (5) days after Defendant's receipt of written notice thereof from Plaintiff, provided in accordance with the notices provision of this Consent Order that appears below, then such continued failure shall constitute an "Uncured Default" under this Consent Order. Upon the occurrence of an Uncured Default hereunder:

- (a) The entire outstanding balance of the Rental Arrearage, less any portion of the Settlement Funds paid by Defendant to Plaintiff as of the date of such Uncured Default (the "Arrearage Balance"), plus the Abated Rent, shall become immediately due and payable to Plaintiff hereunder, and interest shall accrue thereon at the rate of ten and one-half percent (10.5%) per annum (the "Interest Rate"), the rate specified in the Lease;
- (b) Plaintiff shall be entitled to the entry of a consent judgment for the Arrearage Balance, as provided hereinafter, the Abated Rent and any unpaid installments of Rent that have accrued hereunder as of the date of such Uncured Default (the "Past-Due Rent"), plus accrued interest thereon, calculated at the Interest Rate; and
- (c) This Court shall, upon application of Plaintiff, issue a writ of possession of the Premises in favor of the Plaintiff, without any notice, other than as provided below, and without hearing on this matter.

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