

4/1/2021 4:01 PM

FOR COURT USE ONLY  
 Clerk of Court  
 Superior Court of CA,  
 County of Santa Clara  
 21CV381730  
 Reviewed By: V. Taylor

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Edward Gaus (SBN 289561)

Shook, Hardy &amp; Bacon LLP

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TELEPHONE NO: 415-544-1900

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E-MAIL ADDRESS (Optional): egaus@shb.com

ATTORNEY FOR (Name): CSC Serviceworks, Inc.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF** Santa Clara

STREET ADDRESS: 191 North First Street

MAILING ADDRESS:

CITY AND ZIP CODE: San Jose, California, 95113

BRANCH NAME: Downtown

PLAINTIFF: CSC Serviceworks, Inc.

DEFENDANT: Casa Real, LP, FKA KDF Fontaine SJC, LP

☐ DOES 1 TO \_\_\_\_\_**CONTRACT**☒ **COMPLAINT**☐ **AMENDED COMPLAINT (Number):**☐ **CROSS-COMPLAINT**☐ **AMENDED CROSS-COMPLAINT (Number):****Jurisdiction (check all that apply):**☐ **ACTION IS A LIMITED CIVIL CASE**Amount demanded ☐ does not exceed \$10,000☐ exceeds \$10,000 but does not exceed \$25,000☒ **ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)**☐ **ACTION IS RECLASSIFIED by this amended complaint or cross-complaint**☐ from limited to unlimited☐ from unlimited to limited

CASE NUMBER:

21CV381730

1. **Plaintiff\* (name or names):**

CSC Serviceworks, Inc.

alleges causes of action against **defendant\* (name or names):**

Casa Real, LP, FKA KDF Fontaine, SJC, LP

## 2. This pleading, including attachments and exhibits, consists of the following number of pages:

## 3. a. Each plaintiff named above is a competent adult

☒ **except** plaintiff (name): CSC Serviceworks, Inc.(1) ☒ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ other (specify):b. ☐ Plaintiff (name):a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name (specify):b. ☐ has complied with all licensing requirements as a licensed (specify):c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

## 4. a. Each defendant named above is a natural person

☒ **except** defendant (name): Casa Real, LP(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☒ other (specify): Limited Partnership☐ **except** defendant (name):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):

\* If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

Page 1 of 2

SHORT TITLE: CSC Serviceworks v. Casa Real	CASE NUMBER:
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## 4. (Continued)

b. The true names of defendants sued as Does are unknown to plaintiff.

- (1) ☐ Doe defendants (*specify Doe numbers*): \_\_\_\_\_ were the agents or employees of the named defendants and acted within the scope of that agency or employment.
- (2) ☐ Doe defendants (*specify Doe numbers*): \_\_\_\_\_ are persons whose capacities are unknown to plaintiff.

c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.d. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (*names*):5. ☐ Plaintiff is required to comply with a claims statute, **and**

- a. ☐ has complied with applicable claims statutes, *or*
- b. ☐ is excused from complying because (*specify*):

6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.

## 7. This court is the proper court because

- a. ☒ a defendant entered into the contract here.
- b. ☐ a defendant lived here when the contract was entered into.
- c. ☐ a defendant lives here now.
- d. ☒ the contract was to be performed here.
- e. ☐ a defendant is a corporation or unincorporated association and its principal place of business is here.
- f. ☒ real property that is the subject of this action is located here.
- g. ☐ other (*specify*):

8. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- ☒ Breach of Contract
- ☐ Common Counts
- ☐ Other (*specify*):

9. ☒ Other allegations:  
Allegations described in Attachment10. **Plaintiff prays** for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. ☒ damages of: \$29,857.08
- b. ☒ interest on the damages
- (1) ☒ according to proof
- (2) ☐ at the rate of (*specify*): \_\_\_\_\_ percent per year from (*date*):
- c. ☒ attorney's fees
- (1) ☐ of: \$
- (2) ☒ according to proof.
- d. ☒ other (*specify*):

Lost Revenue proximately caused by Defendant's Breach of Contract

11. ☐ The paragraphs of this pleading alleged on information and belief are as follows (*specify paragraph numbers*):

Date: April 1, 2021

Edward Gaus

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

SHORT TITLE:

CSC Serviceworks, Inc. v. Casa Real, L.P.

CASE NUMBER:

First

(number)

**CAUSE OF ACTION—Breach of Contract**ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): CSC Serviceworks, Inc.

alleges that on or about (date): 10/23/17

a ☒ written ☐ oral ☐ other (specify):

agreement was made between (name parties to agreement):

CSC Serviceworks and Casa Real, L.P. FKA KDF Fontaine SJC, LP,

☒ A copy of the agreement is attached as Exhibit A, or☐ The essential terms of the agreement ☐ are stated in Attachment BC-1 ☐ are as follows (specify):

Plaintiff and Defendant entered into a written lease agreement for a term of 84 months (7 years). Plaintiff paid a one-time payment of \$57,000 to Defendant for use of the premises. Pursuant to the Lease Addendum, executed the same day, in the event of Defendant's early termination, Plaintiff is entitled to the return of a pro-rata amount of \$678.57 for each month remaining under the agreement within 10 days of termination.

BC-2. On or about (dates): January 15, 2021

defendant breached the agreement by ☒ the acts specified in Attachment BC-2 ☐ the following acts (specify):

Defendant sought to terminate the Lease on 1/5/21 due to a fire that occurred in Laundry Room #2 on or about 9/24/20. On 11/11/20, the parties signed a Property Damage Release that called for CSC to pay Defendant \$15,889.00 in exchange for a release of all claims resulting from the fire. Payment was delivered and accepted. Since then, Defendant has barred CSC access from Laundry Room #2 which is a breach of the lease and constitutes a constructive eviction.

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement

☐ as stated in Attachment BC-4 ☒ as follows (specify):

CSC is entitled to its lost anticipated revenue through the remainder of the term. This will be calculated to a reasonable certainty using the historical collection data. Additionally, CSC is entitled to the unearned share of the \$57,000 upfront payment as stipulated under the Pro Rata Addendum. Both of these figures shall be determined at trial

BC-5. ☒ Plaintiff is entitled to attorney fees by an agreement or a statute☐ of \$☒ according to proof.BC-6. ☐ Other:

# EXHIBIT A

## LAUNDRY SPACE LEASE AGREEMENT

This lease is between CSC ServiceWorks, Inc., a Delaware corporation, with its local branch at 32910 Alvarado-Niles Rd Union City, CA 94587 hereinafter called Lessee, and KDF FONTAINE SJC L.p. A CALIFORNIA LIMITED PARTNERSHIP currently located at 2580 FONTAINE AVE SAN JOSE, CA 95121, hereinafter called Lessor. In consideration of the mutual covenants hereinafter contained, and the duties and obligations set forth, the parties agree as follows:

- 1.) The Lessor hereby leases to the Lessee the exclusive use and possession of those certain areas, spaces and or rooms being the laundry facilities of the Lessor's premises located at 2580 FONTAINE AVE SAN JOSE, CA 95121 (hereinafter "Leased Premises")
- 2.) The Lessee agrees to install at the Leased Premises the following pay-per-use laundry equipment: 12 washers and 16 dryers. (hereinafter "Equipment"). The Lessee agrees to service and keep the Equipment in good repair at its own cost and expense. Vending prices shall be determined by Lessee and Lessor. Title to the Equipment will remain with the Lessee at all times. Lessor agrees that Lessee shall have the right of quiet enjoyment of the Leased Premises, including unobstructed access and egress to the Leased Premises at all times.
- 3.) The Lessor shall not move or remove, disconnect or tamper with the Equipment for any reason whatsoever and Lessor further agrees that it will not permit any other pay-per-use or free laundry machines for the use of its tenants on the premises whether the same be owned and operated by the Lessor or others, unless such machines are placed on the Leased Premises pursuant to an agreement with Lessee. The Lessor will promptly report any machine malfunction to the Lessee.
- 4.) The Lessor shall, at its own expense, clean the common areas of the Leased Premises and maintain same in good condition and repair. Lessor shall provide to the Lessee, and bear the expense of, electricity, plumbing, water, gas, sewage disposal, drainage, and all other utilities required for the proper and safe use of the Equipment. The Lessor shall be responsible for ensuring that the Leased Premises comply with all state, county or municipal building and safety codes including fire safety codes.
- 5.) Lessee agrees to pay Lessor as rent for the use and possession of the Leased Premises, an amount equal to the greater of \$5.00 per month or FORTY PERCENT (40%) of the Lessee's gross income from Lessee's washers and dryers in the Leased Premises, less any applicable gross receipts, sales, use value added, or similar excise taxes.
- 6.) This lease is for a term of Seven (7) years from the date hereof and shall not be amended except upon mutual written consent of the parties. The described lease term for later constructed sections or phases of the premises shall commence on completion of such construction. This lease shall be automatically renewed for successive month-to-month terms unless either party notifies the other by certified mail, return receipt requested, of its intent to terminate. All terms and conditions of this lease shall apply to the renewed terms of this lease.
- 7.) This lease shall be binding upon and inure to the benefit of the heirs, assigns, personal representatives and successors of the parties hereto. If any litigation results in connection with this lease, the prevailing party shall be entitled to reasonable attorney's fees and costs from the other party.
- 8.) This lease is entered into by Lessor through its duly authorized agent or owner with full knowledge of the contents hereof and acquiescence thereto by the owner of the Leased Premises.
- 9.) ~~Lessor is responsible for all security and maintenance of the Leased Premises. Lessor is responsible for any claims of personal injury or property damage arising from lack of appropriate security. Lessor is responsible for any theft or vandalism of the Equipment, including consequential damages and lost revenue to Lessee. Lessee shall repair/replace such stolen/vandalized Equipment as needed and invoice Lessor with the right to set off against future rent due. Lessor shall pay Lessee's invoice within ten (10) days of receipt. In the event that vandalism becomes excessive or in any three (3) consecutive month period the Equipment usage does not exceed an average of three (3) cycles per machine per day, Lessee shall be entitled to remove the Equipment with thirty days' notice.~~ SB  
GR
- 10.) Lessor represents and warrants that there is no other lease license or agreement in effect covering the premises and will defend Lessee against all claims to the contrary.
- 11.) If Lessor is not 100% satisfied with Lessee or any aspect of the Lease arrangement at any time during the first 180 days of the Lease, Lessor may terminate this Lease by (1) Lessor notifying Lessee in writing of its decision to terminate the Lease, AND (2) simultaneously returning in-full any additional rents, advance rents, or decorating costs incurred or paid by Lessee under the terms of the Lease. If Lessor complies with both (1) and (2) above within the 180-day period, the Lease will terminate and Lessee will, within 30 days, remove all its equipment. There will be no further obligation by either Lessee or Lessor. Should Lessee fail to remove its equipment from the Leased Premises within 30 days after the termination of the Lease, Lessor may remove Lessee's equipment and store it at Lessee's expense. It is understood that the lease termination privileges of this paragraph will expire on the 181st day of this Lease.

10/23/17

LESSOR:

By:

Authorized Agent

Witness

Witness

LESSEE: CSC ServiceWorks, Inc.

By:

Area Sales Manager

Witness

Witness



## Schedule A

### 1. Leased Premises Description

Location Name

2580 FONTAINE AVE

2580 FONTAINE AVE

Room Name

2580 FONTAINE  
AVE-RM 2

2580 FONTAINE  
AVE-NORTH  
SIDE C

Address

2580 FONTAINE AVE-RM 2 , CA 95121-  
2100

2580 FONTAINE AVE-NORTH S , CA 95121

### 2. Equipment Detail

Room Name

2580 FONTAINE AVE-RM 2

2580 FONTAINE AVE-NORTH SIDE C

Quantity

4  
6

4  
6

Equipment Description

Speed Queen Stacked Dryers  
Speed Queen Top Load Washers

Speed Queen Stacked Dryers  
Speed Queen Top Load Washers

### 3. Other:

  
LESSOR

10/23/17  
Date

  
LESSEE (Sales Representative)

10/23/17  
Date

### PRO-RATA ADDENDUM

This Addendum ("Addendum") is attached to and made part of the Lease Agreement by and between KDF FONTAINE SJC l.p. A CALIFORNIA LIMITED PARTNERSHIP ("Lessor") and CSC ServiceWorks, Inc. ("Lessee") dated 10/23/17 for the property located at 2580 FONTAINE AVE SAN JOSE, CA 95121 ("Lease Agreement").

Lessee shall make a one-time payment to Lessor in the amount of \$57,000.00 ("Allowance") within 30 days of installation completion. In the event that the Lease Agreement is terminated by Lessor prior to the expiration of its term, Lessor warrants that the unearned pro rata share of the Allowance will be refunded to Lessee within ten (10) days following termination of the Lease Agreement. The term of this Addendum is 84 months. The monthly value of this Addendum is \$678.57 for pro rata determination. Lessee's acceptance of the pro rata refund shall not preclude further exercise of other rights and remedies to which it is entitled under the Lease Agreement. The Allowance is paid for the Original Term only and does not renew with the Lease Agreement.

Lessee and Lessor shall comply with all other terms and conditions of the Lease Agreement which are to remain in full force and effect, and not be modified, altered, or amended in any manner by this Addendum except as expressly set forth herein.

In the event of any conflict between the provisions of the Lease Agreement and the provisions of this Addendum, this Addendum shall govern in all respects.

LESSOR: KDF FONTAINE SJC l.p. A  
CALIFORNIA LIMITED PARTNERSHIP

BY: [Signature]  
SIGNATURE, AUTHORIZED AGENT

DATE: 10/23/17

NAME: SCOTT J. BARKER  
PRINT NAME, AUTHORIZED AGENT

LESSEE: CSC ServiceWorks, Inc.

NAME: [Signature]  
SIGNATURE, AUTHORIZED AGENT

DATE: 10/23/17

NAME: Gordon Rosenberg  
PRINT NAME, AUTHORIZED AGENT