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

SCHULTE ROTH & ZABEL LLP, Plaintiff, - against - METROPOLITAN 919 3rd AVENUE LLC, in its individual capacity and as successor in interest to 919 THIRD AVENUE ASSOCIATES L.P., Defendant.	Mot. Seq. 001 Index No. 655632/2020 Assigned to Justice Andrea Masley Part 48 Oral Argument Requested

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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Defendant Metropolitan 919 3rd Avenue LLC ("Landlord" or "SLG"), respectfully submits this reply memorandum in further support of its motion (the "Motion") to dismiss the Complaint (NYSCEF Doc. No. 2) (the "Complaint") by Plaintiff, Schulte Roth & Zabel LLP ("Tenant" or "Schulte").[1] All capitalized terms not otherwise defined herein have the same meaning as in the Landlord's Memorandum of Law in support of its Motion (NYSCEF Doc. No. 9) (the "Init.Mem").

PRELIMINARY STATEMENT

Schulte's ruse with this lawsuit is clear: it wants to reap the benefits of its office space without having to pay for it. Instead of taking simple safety precautions at the Premises, Schulte has brought this action for a ***100%*** rent abatement, notwithstanding that it is able to use the Premises under current New York State directives, and it *has in fact been using the Premises* for the entire duration of the pandemic. Schulte's method is to contort the plain language of the Lease—cherry-picking phrases and contradicting its own logic—and by misleading the Court. At bottom, Schulte's Memorandum of Law (NYSCEF Doc. No. 34) (the "Opposition") merely regurgitates the incorrect reading of the Lease asserted in the Complaint, and thus this action should be dismissed.

This simple contract interpretation case is ripe for summary dismissal. Schulte has failed to state any cause of action because the black-letter terms of the Lease preclude any argument that it was or is entitled to a rent abatement. Under Lease Section 5.4(a), Schulte must demonstrate, *inter alia*, that its inability to use the Premises for the ordinary conduct of its business is "due to

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[1] Unless noted otherwise, all references to "Ex." are to the exhibits attached to the Affirmation of Janice Mac Avoy ("Mac Avoy Aff.") (NYSCEF Doc. No. 10), submitted as part of the Landlord's Motion, and all internal quotation marks and citations are omitted. All emphasis in quoted material is added, unless otherwise noted.

Landlord's breach…." But Schulte has not asserted, and cannot assert, any breach by Landlord—as it must to survive this Motion—because *there simply has not been one*.

Schulte wishes that Section 5.4(a) said that whenever Tenant is unable to use the Premises for the "ordinary conduct" of its business due to an "Unavoidable Delay" for more than 15 consecutive business days, it will be entitled to a rent abatement. Opposition at 7. But Section 5.4 is focused solely on Landlord's provision of services; by contrast, access to the Building—which Schulte wrongly claims it has been denied—is expressly *not* subject to the Section 5.4 abatement.

In order to achieve its hoped-for result, Schulte cherry-picks into the "parenthetical" within Section 5.4(a) *only half* of the predicate conditions (Tenant's inability "to use the Premises . . . for the ordinary conduct of [Schulte's] business"), but ignores the other half ("due to Landlord's breach"). Schulte asserts, on the one hand, that the parenthetical is a "separate and independent trigger[]" to a rent abatement, yet it also admits that its claim depends on importing the phrase "ordinary conduct of Tenant's business" from outside of that "independent trigger[]" into the parenthetical. *See* Opposition at 9, 12. By thus conceding that the parenthetical does not stand alone within Section 5.4(a), Schulte cannot deny that the full predicate, which includes "due to Landlord's breach," must be read to modify the parenthetical.

Likewise, Schulte now admits that the phrase "such condition" in the parenthetical cannot refer to the only possible antecedent within the parenthetical (*i.e.*, "Unavoidable Delays"), but rather must refer to something outside the parenthetical. But Schulte then invents an antecedent for the phrase "such condition" that is nowhere in the parenthetical, nor indeed anywhere within the clause (*viz.* "unfitness of the Premises for SRZ's ordinary conduct of its business.") But the actual phrase "such condition" has a simple and obvious antecedent: Tenant's inability to use the

Premises for the ordinary conduct of its business due to Landlord's breach. Schulte's reading is illogical and internally inconsistent, and so it must fail.

Moreover, Schulte has admitted that it has maintained staff at the Premises for the duration of the pandemic, and it has deliberately mischaracterized the Interim Office Guidance, which has allowed Schulte to occupy the Premises since June 22 at 50% of its ***permitted*** occupancy (which is in excess of Schulte's actual occupancy). Complaint ¶¶ 4, 41. Schulte cannot elect to keep its attorneys working remotely and also claim a windfall rent abatement. This action must be dismissed.

ARGUMENT

I. SCHULTE HAS FAILED TO STATE A CAUSE OF ACTION

Schulte's Opposition pays lip service to the familiar standards of contract interpretation, but then disregards them under the guise of contract interpretation. This is not allowed. *Riverside S. Plan. Corp. v. CRP/Extell Riverside, L.P.*, 60 A.D.3d 61, 66 (1st Dep't 2008) (the Court "may not, in the guise of interpreting a contract, add or excise terms."), *aff'd*, 13 N.Y.3d 398 (2009). Schulte's position is that an Unavoidable Delay, which renders the Premises unusable for the ordinary conduct of its business, by itself, will entitle it to a rent abatement. *See* Opposition at 9. But upon a proper reading, Schulte can only claim a rent abatement where its inability to use the Premises for the ordinary conduct of its business results from, among other conditions, Landlord's breach. Schulte's action fails because it is unable to allege the prerequisite Landlord breach in order to claim the rent abatement, and its inconsistent and nonsensical reading should be rejected.

A. Schulte has Misconstrued Section 5.4(a)

Lease Section 5.4 addresses Schulte's right to a rent abatement in circumstances where it is unable to occupy the Premises for the ordinary conduct of its business "due to Landlord's breach

of an obligation under this Lease to provide services, perform repairs, or comply with Legal Requirements[.]" Ex. 2 § 5.4 (NYSCEF Doc. No. 12), at pdf p. 248. That section—contained in the Landlord's repair obligations article—provides in full as follows:

> Notwithstanding anything to the contrary contained in any other provision of this Lease, in the event that (a) ***Tenant is unable to use the Premises***, or any portion thereof consisting of 750 Rentable Square Feet or more, for the ordinary conduct of Tenant's business, ***due to Landlord's breach of an obligation under this Lease to provide services, perform repairs, or comply with Legal Requirements***, in each case other than as a result of Unavoidable Delays or Tenant Delays (or, if Tenant's inability to use the Premises or portion thereof results, in whole or in part, from Unavoidable Delays and ***such condition*** continues for a period in excess of fifteen (15) consecutive Business Days) after Tenant gives a notice to Landlord (the "**Abatement Notice**") stating that Tenant's inability to use the Premises or such portion thereof is solely due to ***such condition***, (b) Tenant does not actually use or occupy the Premises or such portion thereof during such period, and (c) ***such condition*** has not resulted from the negligence or misconduct of Tenant or any Tenant Party, then Fixed Rent, Tenant's Tax Payment and Tenant's Operating Payment shall be abated as to the Premises or affected portion on a per diem basis for the period commencing immediately (or on the fifteenth (15th) Business Day, if ***such condition*** results, in whole or in part, from Unavoidable Delays) after Tenant gives the Abatement Notice, and ending on the earlier of (i) the date Tenant reoccupies the Premises or such portion thereof for the ordinary conduct of its business, or (ii) the date on which ***such condition*** is substantially remedied and Landlord has notified Tenant thereof.

Id. (emphases added).

Schulte's reading of Section 5.4(a)—that Tenant is entitled to a rent abatement when it is "unable to use" the Premises "for the ordinary conduct of [its] business," due to an Unavoidable Delay that continues for more than 15 days—is achieved by characterizing the phrase within the parenthetical as a "separate and independent trigger[]" to a rent abatement. Opposition at 9. That is, Schulte argues it is entitled to a rent abatement when it is unable to use the Premises ordinarily

either (i) due to Landlord's breach, or (ii) due to Unavoidable Delays. But Schulte's interpretation would require this Court to re-write the terms of the Lease. The only way the Court can achieve Schulte's desired re-write is by super-imposing romanettes into the clause, adding a phrase from the prior predicate into the parenthetical, and inventing a new substitute for the phrase "such condition" (all shown below in **bold underline**), as follows:

> in the event that (a) Tenant is unable to use the Premises, ... , for the ordinary conduct of Tenant's business, ***(i)*** due to Landlord's breach of an obligation under this Lease to provide services, perform repairs, or comply with Legal Requirements, in each case other than as a result of Unavoidable Delays or Tenant Delays (or, ***(ii)*** if Tenant's inability to use the Premises or portion thereof ***for the ordinary conduct of Tenant's business*** results, in whole or in part, from Unavoidable Delays and ***the unfitness of the Premises for the ordinary conduct of Tenant's business*** continues for a period in excess of fifteen (15) consecutive Business Days)

First, Schulte asks the Court to cherry-pick the concept of "ordinary conduct" from the predicate into the parenthetical phrase, despite its own characterization of the parenthetical phrase as a freestanding trigger. Without explanation, Schulte states that the parenthetical "clearly harkens back" to include the concept of ordinary conduct, but offers no explanation for why the parenthetical doesn't likewise "harken back" to include the requirement of Landlord's breach. *See* Opposition at 12. Schulte claims that the requirement of Landlord's breach *must* be expressly repeated within the parenthetical for it to apply, but it has no issue in incorporating the concept of "ordinary conduct" into the parenthetical even where that concept is glaringly absent. Opposition at 10-11. Given that Schulte concedes that the parenthetical is not the "separate and independent" condition hoped for, it cannot arbitrarily exclude the predicate requirement of Landlord's breach. As this Court has noted (and Schulte acknowledges), the fact that the "plain language is disadvantageous or inequitable toward [Schulte] is not a reason to disregard it." *Advanced Alt.*

Media, Inc. v. Hindlin, No. 655916/2018, 2020 N.Y. Misc. LEXIS 4449, at *8 (Sup. Ct. N.Y. Cty. Aug. 14, 2020).

The only purported justification for Schulte's reading is the non-controversial proposition that the word "or" is disjunctive. Opposition at 10. The generic precedent that Schulte cites—outside of the lease context—takes this point no further. But this proposition does not refute Landlord's reading that the word "or" within the parenthetical introduces a second *timing* alternative to a rent abatement—in the event that Tenant's inability to use the Premises due to Landlord's breach is *due to an Unavoidable Delay*. *See* Init.Mem at 17 & n.6.[2]

Schulte complains that Landlord's reading would provide "no rent abatement whatsoever in the event that [Schulte] is unable to conduct business as usual in its offices as a direct result of Unavoidable Delays." Opposition at 9. But this is *exactly* what the Lease provides. Landlord's obligations to provide the Premises with electricity, HVAC, elevator service, cleaning, and water, are all expressly subject to Section 5.4. Ex. 2 §§ 9.2(e), 9.3(d), 9.4, 9.5, 9.7, and 9.8, at pdf pp. 264-274. By contrast, Section 9.12 provides that Tenant's 24-hour access to the Building is subject to "Unavoidable Delays and applicable Legal Requirements" *only*. Ex. 2 § 9.12, at pdf p. 277. That is: Tenant's 24-hour access to the Building is ***not*** subject to Section 5.4. Under Section 5.4, Landlord's breach of an obligation to provide building services must be the event that renders the Premises unusable for Tenant's ordinary conduct. Landlord's breach can be due to Unavoidable Delay, in which case a rent abatement will be available after 15 days, or due to something "other

[2] Moreover, the illustration *supra* shows the absurdity of Schulte's reading because the parentheticals themselves would be entirely redundant. The draftsmen would not need to include parentheticals if the branching of a "separate and independent trigger[]" to a rent abatement was achieved by the "or".

than" as a result of an Unavoidable Delay, in which case a rent abatement will be available immediately.

Second, Schulte proposes to replace the phrase "such condition" as used throughout Section 5.4 with "unfitness [*sic*] of the Premises for [Schulte's] ordinary conduct of its business—regardless of the cause." Opposition at 14. By doing so, Schulte has conceded that its earlier interpretation of the phrase "such condition" to mean "Unavoidable Delays" was nonsense. *See* Init.Mem at 14-15. So Schulte invents another substitute for the phrase "such condition," that reaches outside of the parenthetical. But in reaching outside of the parenthetical, it has plucked the concept of "unfitness" out of thin air. Moreover, Schulte offers no reasoning for its hoped-for interpretation, and it fails to explain how Landlord's reading (under which the phrase "such condition" refers to Tenant's inability to use the Premises in the ordinary course due to Landlord's breach) is incorrect. By contrast, Landlord's reading is based upon the common-sense principle that the word "such" must refer to an actual antecedent phrase. *See, e.g., Such*, *Black's Law Dictionary* (11th ed. 2019) ("such" means "[t]hat or those; ***having just been mentioned***"); *see also People ex rel. Negron v. Superintendent*, 36 N.Y.3d 32, 36-38 (2020) (the phrase "such person" in a sentencing statute referred to the entire antecedent phrase comprised of two elements).

Tellingly, Schulte attacks Landlord's construction of Section 5.4 without identifying a single situation where it would be entitled a rent abatement and Landlord *is not* in breach of its building service obligations.[3] Schulte's rhetorical question about how Tenant could identify the cause of Landlord's breach in its abatement notice is easily answerable: Schulte could allege that its inability to use the Premises was Landlord's fault (which Landlord could refute by showing an

[3] The impermissible Y2K example is discussed *infra* Sec. I.B.

Unavoidable Delay), *or* Schulte could claim a rent abatement after 15 days where Tenant's inability to use the Premises owed to a manifest Unavoidable Delay event beyond Landlord's control. In either event, Schulte's assertion as to the apparent reason for a building service failure is no more than an assertion, and the Lease does not require Schulte to be 100% certain of the cause of the building service failure in order to assert its claim.

Finally, Schulte's position that the phrase "in each case" in Section 5.4(a) refers "back to the three enumerated types of Landlord breaches" (being the obligations to "provide services, perform repairs, ***or*** comply with Legal Requirements" (Opposition at 13) renders the phrase "in each case" superfluous by ignoring the already-existing disjunctive "or" (highlighted.) Because the "or" is already in place, the words "in each case" serve no function if they only referred to the three enumerated Landlord obligations. Schulte offers no authority for its proposed reading, and indeed persuasive precedent has rejected readings of the phrase "in each case" where the phrase would similarly have been "mere surplusage." *See Wolf v. Rawlings Sporting Goods Co.,* No. 10 Civ. 3713, 2010 U.S. Dist. LEXIS 116294, at *6-7 (S.D.N.Y. Oct. 26, 2010) (the words "including in each case" referred to "***each of the cases*** previously identified"); *Tarcher v. Penguin Putnam, Inc.*, No. 01 CIV. 6754, 2001 U.S. Dist. LEXIS 21162, at *2-3, *6-9 (S.D.N.Y. Dec. 20, 2001) (the words following "in each case" qualified *both* antecedents). On Landlord's reading, the phrase "in each case" is put to work: it indicates the two branching alternatives of circumstances "other than as a result of Unavoidable Delays," and circumstances "result[ing] in whole or in part, from Unavoidable Delays." *See* Init.Mem at 16-18.

B. The Lease is Unambiguous

As a fallback, Schulte tries to argue that Section 5.4(a) is ambiguous in a transparent attempt to introduce impermissible parol evidence. *See* Opposition at 14-16. Section 5.4(a) is not

ambiguous, and the clause should "not [] be subverted by straining to find an ambiguity which otherwise might not be thought to exist." *Uribe v. Merchants Bank of N.Y.,* 91 N.Y.2d 336, 341 (1998). Schulte's claim that Section 5.4(a) is ambiguous is no more than a Trojan Horse for parol evidence which is "not admissible to create an ambiguity in a written agreement which is complete and clear and unambiguous on its face." *Intercontinental Plan., Ltd. v. Daystrom, Inc.*, 24 N.Y.2d 372, 379 (1969).[4]

Schulte's assertion that the original intent of Section 5.4(a) was to protect against the Y2K bug, besides being *wholly unsupported* by the record before the Court, just reinforces Landlord's point that Section 5.4 is concerned with a predicate Landlord breach. The "technological mayhem" rendering the Premises "unavailable" due to Y2K (*See* Opposition at 15-16) would *precisely* be due to a breach by Landlord of its obligations: if Y2K caused a widespread power outage, then Landlord would be in breach of its obligations to provide the building services that enable Tenant to access the Premises in the ordinary course (*e.g.,* elevators, HVAC). In that case, Landlord's breach would be due to an Unavoidable Delay and Tenant would receive a rent abatement under Section 5.4(a) if the "technological mayhem" continued for 15 consecutive business days. *See* Opposition at 16. Without any of these building system failures, the Y2K bug would not prevent Schulte from using its offices—its lawyers could still dust off law books, review physical files, and type briefs, just as lawyers did in 1998 when few lawyers had computers on their desks.

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[4] This evidence is not binding on SLG in any event because it was "not a party to the [original] lease and whatever unrevealed considerations the parties to the lease had in mind when it was executed will not bind [successor landlord] except to the extent that such intent is revealed by the language of the agreement." *Square Lex 48 Corp. v. Shelton Tower Assocs.*, 98 Misc. 2d 1039, 1042, 1041-43 (Sup. Ct. N.Y. Cty. 1978).

C. Schulte has Failed to Allege Satisfaction of the Remaining Conditions Required for a Rent Abatement

For Schulte's claim to survive this Motion, it must allege that it has satisfied all three mandatory conditions in Section 5.4 of the Lease, including Section 5.4(b), which requires that Tenant "does not actually use or occupy the Premises" during the period for which it claims the abatement. Ex. 2 § 5.4(b), at pdf p. 248. Although Section 5.4(b) does not refer to use of the Premises for the "ordinary conduct" of Schulte's business, Schulte's only attempt to allege that it has satisfied this condition is to say that this clause merely "ensures the *bona fides* of" the inability to use the Premises for the "ordinary conduct" of its business. *See* Opposition at 12. But again: Schulte can only achieve this by cherry-picking the concept of "ordinary conduct" from Section 5.4(c)(i) (defining the end-date of the abatement), while ignoring that romanette Section 5.4(c)(ii) provides that the abatement ends on the day that "*such condition* is substantially remedied." Ex. 2 § 5.4(c)(i)-(ii), at pdf p. 248.[5] The reason why Schulte repeats its exercise in cherry-picking is obvious: the phrase "such condition" in romanette (ii) can only refer to Tenant's inability to use the Premises due to Landlord's default. *See* Init.Mem at 16. This is another example of Schulte conceding that it must read Section 5.4 as a whole, but failing to do so properly.

Because Schulte has failed to state a cause of action to a rent abatement under Lease Section 5.4, Schulte is required to pay rent "without any set-off, offset, abatement or deduction whatsoever, except as specifically set forth in this Lease." Ex. 2 § 1.1, at pdf p. 231. Without Section 5.4 to rely upon, Schulte must look elsewhere in the Lease for a rent abatement, but no such provision

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[5] This is a calculated attempt to raise a factual question which is not necessary to consider on this Motion, namely: whether or not Schulte has used the Premises for the "ordinary conduct" of its business. The Court does not need to consider this question, because Schulte's failure to properly state a cause of action for a rent abatement under a proper reading of Section 5.4 conclusively defeats this action.

exists, nor does Schulte claim that one exists. Indeed, the Unavoidable Delay provision in Article 24 provides that "[e]xcept as expressly provided herein to the contrary," an "Unavoidable Delay" will not affect Tenant's obligation to pay rent or "perform all of the other covenants and agreements hereunder on the part of Tenant to be performed[.]" Ex. 2, art. 24, at pdf p. 313. Whether or not the Workforce Reduction Orders and the COVID-19 pandemic constitute "Unavoidable Delays" is beside the point. Landlord is not claiming that Schulte's action is based on a "garden-variety *force majeure*" claim, as Schulte suggests. Rather, Landlord has shown that upon a complete reading of the Lease that takes into account all of its provisions, Schulte is not entitled to a rent abatement in circumstances where it cannot satisfy Lease Section 5.4.

II. DOCUMENTARY EVIDENCE CONCLUSIVELY REFUTES SCHULTE'S CLAIMS

Schulte has been permitted to use the Premises in the ordinary course since June 22. Schulte deliberately misled the Court in its Complaint by suggesting that it could only access the Premises after June 22 "at fifty percent occupancy," *i.e.*, 50% relative to the actual occupancy pre-COVID. *See* Complaint ¶ 41. In fact, however, the Interim Office Guidance shows that Schulte has been allowed to occupy the Premises since June 22 at 50% of its permitted occupancy under the Certificate of Occupancy. Ex. 14 (NYSCEF Doc. No. 24) at 4.

Contrary to Schulte's assertions (Opposition at 18-19), the documentary evidence proffered by Landlord is proper. In particular, the Affirmation of Janice Mac Avoy and Affidavit of Thomas Munafo ("Munafo Aff.") (NYSCEF Doc. No. 28) are properly considered on this motion because they are the "appropriate vehicle[s]" for submitting relevant documentary evidence, and they provide "connecting link[s]" between the documentary evidence and the challenged statements. *Muhlhahn v. Goldman*, 93 A.D.3d 418, 418-19 (1st Dep't 2012). Schulte

rightly concedes that the Workforce Reduction Orders (Exs. 4, 5, 6, NYSCEF Doc. Nos. 14, 15, 16), the Interim Office Guidance (Ex. 14), and the Certificate of Occupancy (Munafo Aff. Ex. 3, NYSCEF Doc. No. 31) constitute permissible documentary evidence. *See* Opposition at 19; *see also Garber v. Bd. of Trs. of State Univ. of N.Y.,* 38 A.D.3d 833, 834-35 (2d Dep't 2007) (allegations of illegality contradicted by enabling legislation); *Cochard-Robinson v. Concepcion,* 60 A.D.3d 800, 802 (2d Dep't 2009) (undisputed certificate of occupancy defeated factual allegations). Further, the record of Schulte staff with access to the Premises (Munafo Aff. Ex. 2, NYSCEF Doc. No. 30) was provided by Schulte to SLG, and therefore meets the "essentially undeniable" standard in order to be considered on this motion. *See, e.g., WFB Telecomms., Inc. v. NYNEX Corp.*, 188 A.D.2d 257, 258-59 (1st Dep't 1992) (granting dismissal on the basis of a letter from plaintiff that contradicted the complaint), *lv. denied,* 81 N.Y.2d 709 (1993). Finally, the record showing the Schulte personnel who have accessed the Premises during the pandemic (Munafo Aff. Ex. 1, NYSCEF Doc. No. 29) is likewise admissible as a business record. *One Step Up, Ltd v. Webster Bus. Credit Corp.*, 87 A.D.3d 1, 11-13, 14 (1st Dep't 2011) (affirming dismissal based on business records).

The Certificate of Occupancy shows that the current 50% cap would allow Schulte to have 120 persons per floor at the Premises. Munafo Aff. Ex. 3; Init.Mem at 20. Further, Schulte's *own business records* show that the number of Schulte staff with pre-COVID access to the Premises is dramatically below the 50% cap on occupancy. Munafo Aff. Ex. 2. Schulte has not denied, and cannot deny, that with simple precautions it *can* accommodate all of its attorneys within the nine leased floors.

Schulte's only substantive response to this documentary record is that these documents "do[] not resolve all of the factual issues [they] attempt[] to raise, as [they] must." Opposition at

20. But it is not for the Court to issue an advisory opinion on how Schulte should implement safe working procedures. Schulte would rather seek a windfall 100% rent abatement and have the Court speculate on various safety protocols rather than implement them now and send its attorneys back, as is permitted.

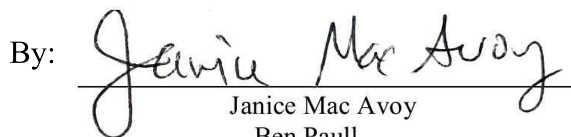
Finally, the documentary evidence shows that Schulte has misled the Court in claiming that it "vacate[d]" the Premises. *See* Complaint ¶¶ 4, 24, 39, 44, 45, 54, Opposition at 5. In fact, Schulte admits that it has at all times maintained "rotating skeleton crews" of employees consisting of at least mail and delivery personnel. *See* Complaint ¶ 4. This admission is glaringly absent from its Opposition. The record of Schulte personnel that have accessed the Premises during the pandemic likewise shows that Schulte has in fact been "actually us[ing] or occupy[ing] the Premises" for the entire duration of the COVID-19 pandemic. *See* Init.Mem at 20 n.9; Munafo Aff. ¶¶ 7, 21; Munafo Aff. Ex. 1. Accordingly, this action should be summarily dismissed.

CONCLUSION

For all of the foregoing reasons, Defendant's Motion should be granted in its entirety, and the Court should award such other and further relief as it deems just.

Dated: New York, New York
March 5, 2021

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP

By: 

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CERTIFICATION

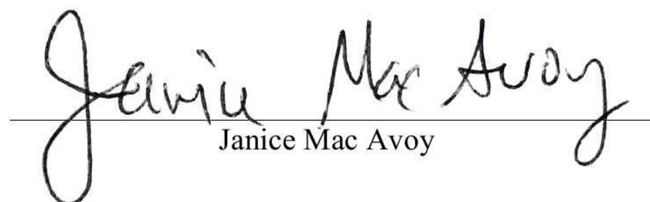
I hereby certify pursuant to Commercial Division Rule 17, 22 NYCRR § 202.70(g)(17) as follows:

1. I filed via NYSCEF the foregoing memorandum of law.

2. The foregoing document was prepared on a computer using Microsoft Word. The total number of words in the document, exclusive of caption, table of contents, table of authorities, signature block, and this certification is 4,199 words.

3. The foregoing document is in compliance with the word count limit set forth in Commercial Division Rule 17, effective October 1, 2018.

Dated: New York, New York
March 5, 2021



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