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

VICTORIA'S SECRET STORES, LLC, successor in interest to VICTORIA'S SECRET STORES, INC.; and L BRANDS INC., successor in interest to THE LIMITED, INC. and INTIMATE BRANDS, INC.,	Index No. 651833/2020
Plaintiffs,	Justice Andrew Borrok
v.	**Motion Sequence No. 002**
HERALD SQUARE OWNER LLC, successor in interest to 1328 BROADWAY, LLC,	
Defendant.	

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEFENDANT'S COUNTERCLAIMS

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PRELIMINARY STATEMENT

L Brands, a publicly-traded global retail company with thousands of stores, a market cap of over $16 billion, and experienced counsel, asks this Court to release it from the plain terms of its Lease.[1] The Court should decline this request.

The sole issue on this motion, and the only one remaining in this action, is whether Landlord can recover bargained-for holdover damages from Plaintiffs. Plaintiffs offer four defenses. None are availing.

First, Plaintiffs contend that Governor Cuomo's COVID-19 Executive Orders (the "EOs") and the Court's COVID-19 safety protocols prohibited Landlord from terminating the Lease *and* barred VS from seeking *Yellowstone* relief once Landlord served notices of default. That is wrong. New York's suspension of eviction *proceedings* did not preclude Landlord from serving a *contractual* lease termination notice, nor bar Plaintiffs from seeking Yellowstone relief, during *all stages* of the crisis. Moreover, under New York law a tenant may surrender possession and stop incurring holdover damages without removing its personal property. VS could have surrendered possession of the Premises during the lockdown orders.

Second, Plaintiffs contend that Landlord cannot recover holdover damages because it did not include the "magic words" — "liquidated" or "holdover" damages — in its counterclaims. Landlord's counterclaims sought not less than $25,000,000 in damages for breaches of the Lease and Guaranty. Holdover damages are just that. Under notice pleading rules, that is enough.

Third, Plaintiffs contend that Landlord is "estopped" from recovering holdover damages. This defense is barred by the Lease's broad anti-waiver clause: "[n]o provision of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord."

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[1] Defined terms not defined herein have the same meaning as in Landlord's opening Memorandum of Law ("LLmem.").

Plaintiffs do not allege any such writing exists, and have failed to establish the elements of estoppel.

Fourth, Plaintiffs contend that the Lease's three-times rent, liquidated damages clause is an unlawful penalty. But the cases hold otherwise.

In sum, Plaintiffs' arguments all fail. As Plaintiffs have not contested Landlord's damages computations, this Court should enter judgment as demanded by Landlord.

ARGUMENT

I. THE LEASE WAS LAWFULLY TERMINATED

VS contends that its Lease never terminated for three reasons: (i) the termination notice was invalid because it amounted to a *de facto* eviction prohibited by the EOs; (ii) enforcement of the termination notice was stayed by the EOs; and (iii) court closures because of COVID-19 prevented VS from seeking a *Yellowstone* injunction. All three of these arguments fail.

A. EO's Do Not Prohibit Landlords from Serving Lease Termination Notices.

Landlord cited *135 East 57th St., LLC v. Saks Inc.*, 2021 WL 305771, at *4-*5 (Sup. Ct. N.Y. Cnty. Jan. 29, 2021) and *138-77 Queens Blvd LLC v. QB Walsh LLC*, Index No. 715071/2020, NYSCEF No. 59, at p. 3 (Sup. Ct. Queens Cnty. Jan. 15, 2021) for the proposition that the EOs do not bar Landlord from enforcing contractual remedies — only from commencing *eviction proceedings*. Plaintiffs do not even bother to discuss those cases. Instead, Plaintiffs argue that the Landlord's Notices to Cure and Terminate are tantamount to an eviction. But Landlord never threatened, much less commenced, an eviction proceeding.

Yes, Landlord's notices said VS was required to "quit and surrender" the Premises as termination notices must and always provide, but that is of no moment. Landlord had no lawful ability to expel VS from the Premises and never took any steps to do so. *Melendez v. City of New*

York, 2020 WL 7705633, at *10 (S.D.N.Y. Nov. 25, 2020) ("Informing a tenant that she will be obligated to vacate her home if she fails to make the payments for which she contracted is not the same thing as — for example — commencing repeated frivolous court proceedings against her."). Indeed, VS remained in possession long after the notices were sent. Landlord's notices do not threaten to re-enter the Premises or to commence any proceeding to recover their possession, and thus they did not even "threaten" to violate the EO's.

On May 25, 2020, before Landlord served its Notices to Cancel the Lease, Plaintiffs commenced this action in which they sought rescission. As Landlord noted in the prior motion sequence, a tenant "must surrender possession before he can maintain an action for rescission of the instrument under which he obtained possession." *Edgar A. Levy Lasing Co., Inc. v. Siegel*, 230 N.Y. 634, 637 (1921) (McLaughlin, J., dissenting, but writing for the Court on this point).

Ironically, the very claims Plaintiffs chose to bring required them to surrender the very possession which they now contend Landlord had no right to seek.

Plaintiffs argued that their "massive flagship [store is] filled with inventory and branding, all of which needed to be methodically removed in order to tender the Premises back to the landlord in accordance with the Lease terms." NYSCEF 89, at p. 2. Doing this, according to Plaintiffs, takes "months of work and thousands of man-hours." *Id.* According to Plaintiffs, the EOs made it impossible for VS to lawfully surrender possession of the Premises. But this, too, is not so.

New York law provides that a tenant's failure to surrender possession of the premises in the condition specified in the lease does not vitiate an otherwise valid surrender of possession; it just means that the landlord has a claim for damages equal to the cost of restoring the premises to the condition required by the Lease. *Solow Mgmt. Corp. v. Hochman*, 191 A.D.2d 250, 251 (1st Dep't 1993).

Thus, VS could have surrendered possession at any time by simply turning over all keys and otherwise complying with Articles 21 and 24 of the Lease. True, VS might have risked losing the inventory and branding in the Premises, but if preserving the inventory and branding was really that valuable, Plaintiffs should either have negotiated a different holdover clause to begin with, or accepted the holdover damages as the price it needed to pay preserve its right to remove, and not abandon, its inventory and branding. In all events, no one disputes that by June 22, 2020 retail stores in Manhattan were permitted to reopen. Yet even then, VS, for at least six more months, did not take any steps to remove its personal property from the Premises.

B. Landlord is Entitled to Holdover Damages Even Though It Could Not Summarily Evict VS.

Plaintiffs, relying solely on *Prestige Deli & Grill Corp. v. PLG Bedford Holdings LLC*, 2020 WL 4059137 (Sup. Ct. Kings Cnty. July 17, 2020), contend the EOs "clearly prohibit[] the enforcement of a termination of a commercial lease. . . ." NYSCEF 89, at p. 6. As explained at LLmem. at 14-15, *Prestige Deli* provides Plaintiffs with no relief. In *Prestige Deli*, the court granted a *Yellowstone* injunction, thereby implicitly recognizing that landlord *could* terminate the lease, absent such relief. (In fact, in *Prestige Deli*, the Landlord had already terminated the lease before tenant sought *Yellowstone* relief.) Certainly, *Prestige Deli* said nothing about whether a landlord can recover holdover damages after a tenant seeks rescission but fails to surrender possession of the premises.

By contrast, U.S. District Judge Laura Taylor Swain recently held, in *Gap Inc. v. Ponte Gadea New York LLC*, 2021 WL 861121 (S.D.N.Y. Mar. 8, 2021), that holdover damages were recoverable where a tenant stopped paying rent after the COVID-19 pandemic began, New York ordered non-essential retail stores to close and the tenant thereafter sued for rescission. *Id.* at *12.

C. VS Could Have Sought Yellowstone Relief but Chose Not To.

Plaintiffs contend that they could never have obtained a *Yellowstone* injunction because Landlord served its Notices to Cure when New York courts were closed to all but non-essential filings. But the courts were accepting applications for *Yellowstone* injunctions as "essential" filings during the period courts were closed to nonessential filings. Indeed, many such *Yellowstone* proceedings were brought. *See, e.g.*, *Philippe MP LLC v. Sahara Dreams LLC*, Index No. 153043/2020 (Sup. Ct. N.Y. Cnty. May 18, 2020).[2] Thus, VS could have sought *Yellowstone* relief before the courts began accepting non-essential filings on May 25, 2020.

In any event, Landlord did not send its Notice to Cancel for the Retail Premises until June 4, 2020 and did not cancel the Lease for the Office Premises until June 18. But rather than move for *Yellowstone* relief on May 25, 2020, Plaintiffs filed this action seeking rescission that very day.

And this is a "tell." VS never really wanted to seek *Yellowstone* relief because it was never "ready and willing" to cure by paying its rent (until its complaint was dismissed). Rather, Plaintiffs wanted to leverage concessions from Landlord by cutting off nearly $1,000,000 per month in cash flow while maintaining the optionality of selling the VS brand to a buyer who wanted to reopen the flagship Herald Square location.[3] Unfortunately for Plaintiffs, their negotiating ploy failed; now they should be required to pay the holdover damages specified in the Lease.

II. LANDLORD WAS NOT REQUIRED TO EXPLICITLY ALLEGE "LIQUIDATED" OR "HOLDOVER" DAMAGES

To plead a breach of contract claim, it is "sufficient that the complaint contain[] allegations from which damages attributable to the defendant's breach might be reasonably inferred." *CAE*

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[2] *See* the accompanying Affirmation of Howard S. Koh, dated April 1, 2021 ("Koh Aff."), Exs. 1-3.

[3] A deal to sell the VS brand to hedge fund Sycamore Partners for $525 million fell apart on May 4, 2020. Koh Aff., Ex. 4.

Indus. Ltd. v. KPMG Peat Marwick, 193 A.D.2d 470, 473 (1st Dep't 1993). As long as the basis for liability for money damages is adequately alleged, a party seeking money damages is not required to present a computation of damages in its pleading. *Seaport Glob. Sec. LLC v. SB Grp. Holdco, LLC*, 162 A.D.3d 466, 468 (1st Dep't 2018).

Here, Landlord's allegations in the counterclaims put Plaintiffs on notice of the contracts respectively breached by each Plaintiff (*i.e.*, the Lease and Guaranty). The availability of money damages, including liquidated (holdover) damages, is apparent and easily ascertained from the plain language of these contracts, and it is indisputable that the liquidated damages requested by Landlord are directly "attributable to [Plaintiffs'] breach." *CAE Indus.*, 193 A.D.2d at 473. Landlord's counterclaims broadly requested monetary damages "in an amount to be determined at trial which is not less than $25,000,000.00," plus interest and attorneys' fees.

Thus, nothing precludes Landlord from establishing, on summary judgment, any appropriate money damages arising from the breach of the Lease and Guaranty, including liquidated damages available under the plain terms of the Lease. *Wenger Const. Co., Inc. v. City of Long Beach*, 152 A.D.3d 726, 728 (2d Dep't 2017).

Plaintiffs' reliance on the Southern District's decision in *Creative Waste Mgmt., Inc. v. Capitol Envtl. Servs., Inc.*, 495 F. Supp. 2d 353 (S.D.N.Y. 2007) is misplaced, as Plaintiffs mischaracterize the narrow scope of that decision and ignore its underlying rationale.[4]

In *Creative Waste*, the defendant asked the court to instruct the jury to award damages pursuant to a liquidated damages clause at the charging conference. The court declined, noting that the defendant did not allege such damages in its counterclaims, defendant did not present the liquidated damages clause to the jury during the trial, and the court itself "did not learn of" the

[4] The New York Practice treatise Plaintiffs cite itself cites only to *Creative Waste*.

liquidated damages claim "until the charge conference." *Id.* at 362. Hence, the court concluded that the defendant was not entitled to liquidated damages. *Id.*

The holding in *Creative Waste* concerned the jury charge, not the sufficiency of defendant's pleading. The rationale for the court's decision is that by seeking liquidated damages for the first time in the charge conference — *i.e.*, *after* the parties presented all of their evidence to the jury, none of which concerned holdover damages — the defendant effectively sought to deprive plaintiff of the opportunity to present rebuttal evidence in opposition to the defendant's request for liquidated damages. Here, Landlord is seeking summary judgment before trial, and in any event, sought its holdover damages in its moving papers. Thus, no such risk of prejudice exists in this case, as Plaintiffs have had a full and fair opportunity to respond to Landlord's motion for summary judgment, including Landlord's arguments with respect to liquidated holdover damages.

This Court should also swiftly reject Plaintiffs' disingenuous assertion that they have been prejudiced because "Tenant had no opportunity to consider [the] risk" that Landlord would seek liquidated damages. NYSCEF 89 at p. 10. Contrary to Plaintiffs' assertion, the liquidated damages clause has hardly been a "secret"; that clause is, and has always been, right there in the Lease. Plaintiffs had every opportunity — before and after VS decided to stop paying rent to Landlord — to analyze the Lease's allocation of risks and the potential measures of damages resulting from Tenant's breach, including the risk of liquidated damages. The uber-sophisticated Plaintiffs' claim of surprise strains credulity, rings hollow and is irrelevant.[5] Plaintiffs have no legal basis for opposing Landlord's request for liquidated damages.

[5] There is no dispute that Plaintiffs were aware of Landlord's liquidated damages claim by no later than November 2020. *See* Colin Mathews Affidavit submitted by Plaintiff ("Mathews Aff."), ¶ 19; Affirmation of Stephen B. Meister dated February 16, 2021 ("Meister Aff."), Ex. D.

III. LANDLORD IS NOT "ESTOPPED" FROM ENFORCING THE LIQUIDATED DAMAGES CLAUSE

VS contends that Landlord is estopped from enforcing the Lease's liquidated damages clause for four reasons: (i) Landlord sent invoices that did not include charges for liquidated damages; (ii) Landlord never demanded that VS surrender possession; (iii) Landlord endorsed the Ulta easement; and (iv) Landlord allegedly negotiated toward VS's continued possession of the premises. Each of these arguments fail.

As set forth in LLmem., six elements are necessary to successfully claim an estoppel: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than and inconsistent with, those which the party subsequently seeks to assert; (2) an intention, or at least expectation, that such conduct will be acted upon by the other party; (3) and, in some situations, knowledge, actual or constructive, of the real facts. The party claiming estoppel must show it (4) lacked knowledge of the true facts; (5) relied upon the conduct of the party estopped; and (6) a prejudicial change in position. *BWA Corp. v. Alltrans Express USA, Inc.*, 112 A.D.2d 850, 853 (1st Dep't 1985). Each of Plaintiffs' estoppel theories fails to meet at least one of these elements.

A. The Lease Requires All Landlord Waivers to Be Written and Signed.

Section 24 of the Lease provides, "[n]o provision of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord." Courts uniformly enforce such unambiguous non-waiver clauses. *Awards.com, LLC v. Kinko's, Inc.*, 42 A.D.3d 178, 188-89 (1st Dep't 2007), *aff'd*, 14 N.Y.3d 791 (2010); *see also Jefpaul Garage Corp. v. Presbyterian Hosp. in City of New York*, 61 N.Y.2d 442, 446 (1984).

In *Elite Gold, Inc. v. TT Jewelry Outlet Corp.*, 31 A.D.3d 338, 340 (1st Dep't 2006), the First Department reversed the lower court's dismissal of a complaint for holdover damages where

the landlord invoiced the tenant at the regular rental rate set forth in the lease. In so doing, the *Elite Gold* court wrote that by disregarding the lease's "clear and unambiguous language," the "motion court effectively rendered the no waiver clause of the lease meaningless." Plaintiffs ask this Court to do the same. The Court should deny this request. *See also Teri-Nichols Institutional Food Merchants, LLC v. Elk Horn Holding Corp.*, 64 A.D.3d 424 (1st Dep't 2009).

Plaintiffs attempt to avoid the Lease's non-waiver clause by disguising their claim as one for "estoppel." But that maneuver fails. Plaintiffs could not have reasonably relied on the invoices as a complete statement of the amount owed to Landlord. Nowhere do the invoices state that the Landlord will not be seeking holdover damages and the Notices to Cancel were never revoked. Moreover, the Notices to Cancel expressly state that VS "shall remain liable as provided in the Lease." NYSCEF 58, 60. Thus, Plaintiffs actually received affirmative notice that they remained responsible for all charges due under the Lease. Moreover, Plaintiffs did not prejudicially change their position in reliance on the invoices. Plaintiffs stopped paying rent as of April 2020 and came to this Court on May 25, 2020 claiming the right to rescind the Lease. Yet despite claiming the Lease had been rescinded, VS never surrendered possession of the premises. Plaintiffs did not change their position; their position remained the same.

And when Plaintiffs finally did pay — in February 2021, almost a year late and only after this Court dismissed their complaint — Landlord explicitly reserved its rights when depositing that payment, and Tenant did not dispute that reservation of rights. *See* Meister Aff., Ex E.

B. Landlord Properly Demanded VS Surrender Possession.

Plaintiffs' claim that Landlord never demanded possession is also false. As Plaintiffs admit when it serves their purposes, the Notices to Cancel plainly demand VS "quit and surrender" the Premises. Section 18 of the Lease provides that upon a termination of the Lease after an Event of

Default, Landlord may "re-enter the Premises or any part thereof, either by summary proceedings, or by any other applicable action or proceeding … and may repossess the Premises and dispossess Tenant and any other persons from the Premises …." NYSCEF 53 at p. 40. However, the Lease does not provide Landlord with a self-help remedy and, thus, Landlord's notice cannot be construed as a threat to evict as Landlord simply had no right to evict without first obtaining a warrant of eviction. That Plaintiffs chose to ignore this demand does not mean it was never made. The email exchange between Messrs. Mathews and Herschenfeld that Plaintiffs cite does not vitiate the Notices to Cancel. The email exchange simply shows Landlord never had any plans to illegally lock-out VS from the Premises. Mathews wrote that VS employees reported they were told that locks at the Premises would be changed. Herschenfeld wrote that was not true. Herschenfeld's statement denying that Landlord was going to lock VS out of the Premises cannot possibly be interpreted as a withdrawal of the Notices to Cancel.

C. The Ulta Easement Acknowledges the Parties' Dispute over the Validity of Landlord's Lease Termination.

Recital F of the Ulta Easement, attached as Exhibit G to the Mathews Aff., cites this case and provides: "Grantee [*i.e.*, Ulta Salon, Cosmetics & Fragrance, Inc.] acknowledges that Grantor is presently involved in litigation adverse to [Landlord] …." NYSCEF 83. The Ulta Easement continues, "Grantee affirms its understanding that the rights purported to be conveyed from Grantor to Grantee in this Agreement may be of no force and effect, depending upon the outcome and/or resolution of the Litigation [*i.e.*, this case]." *Id.* The Ulta Easement concludes: "Any rights conveyed in this Agreement, thus, are conveyed only to the extent that Grantor has good and valid leasehold title to [the Premises], a matter which is at issue in the Litigation." *Id.* Thus, contrary to the Mathews Aff., Landlord carefully insisted that the Ulta Easement not "ratify" VS's leasehold in the Premises when it permitted the Ulta Easement.

D. Plaintiffs Cannot Rely on Inadmissible Settlement Discussions.

CPLR 4547 bars parties from presenting evidence of settlement offers and specifically provides that "[e]vidence of any conduct or statement made during compromise negotiations shall also be inadmissible." Moreover, the Parties' pre-negotiation letter agreement (Meister Aff., Ex. G), expressly provides that settlement discussions "and other actions … shall not constitute or evidence any agreement, waiver, *estoppel*, … of any Party's rights or remedies under the Lease, [or] the Guaranty." NYSCEF 72, at p. 4.

Thus, the settlement discussions cannot form the basis of an estoppel. None of the cases Plaintiffs cite at pages 13 to 14 of their memo of law involve settlement discussions, much less a pre-negotiation agreement. Hence, the Court should rule that Landlord is not estopped by any settlement discussions.

IV. THE LEASE'S LIQUIDATED DAMAGES CLAUSE IS ENFORCEABLE

In LLmem. at 16, Landlord identified six cases upholding three-times holdover damages clauses. Without addressing, much less distinguishing, any of these six authorities, Plaintiffs contend that the holdover damages Landlord seeks are grossly disproportionate to Landlord's actual damages.

Plaintiffs bungle their analysis. The appropriate time to determine whether a liquidated damages clause is disproportionate to expected damages is when the clause is agreed to, not when it is breached. *JMD Holding Corp. v. Cong. Fin. Corp.*, 4 N.Y.3d 373, 380 (2005); *Parsons & Whittemore, Inc. v. 405 Lexington L.L.C.*, 299 A.D.2d 156, 157 (1st Dep't 2002). Here, the Lease was signed in 2001, nearly twenty years before VS's breach. The three-times liquidated damages clause was reasonable given the long-term nature of the Lease, and therefore, as the indistinguishable authorities hold, not an unlawful penalty.

Besides disregarding controlling law, Plaintiffs also contend that the Lease's liquidated damages clause is unenforceable because the Lease provides that the Landlord can recover actual damages in addition to holdover damages (*see* Lease para. 21(A) and (B)). As a threshold matter, unlike liquidated damages clauses in most contract settings (*e.g.*, a contract vendee who fails to close), holdover damages not only compensate a landlord for its loss, they also force a tenant holding over to pay for the unlawful benefit it gains by trespassing on landlord's property. *See 140 W. 28th St. Assocs., LLC v. 140 W. Assocs., LLC*, 32 Misc. 3d 1239(A) (Civ. Ct. N.Y. Cnty. 2011).

Here, VS's unlawful occupation of the Premises after the Lease terminated provided VS with real value. Not only did VS's trespass provide it with storage space for VS's inventory and branding, it also provided VS with the means to preserve valuable "optionality" concerning their flagship store, while VS continued to negotiate with Landlord and a potential buyer of the VS brand.[6] Plaintiffs should pay the bargained-for holdover damages for that benefit.

This result does not change merely because the Lease, by separate subsection, grants Landlord the right to recover special consequential damages arising from interference with a new lease, when VS holds over for more than thirty days beyond expiration. *See* Lease at § 21(B).[7] This question has been squarely addressed by the Appellate Division. In *Fed. Realty Ltd. P'ship v. Choices Women's Med. Ctr., Inc.*, 289 A.D.2d 439 (2d Dep't 2001), the lease contained an integrated three-times liquidated holdover damages clause, which also permitted landlord to

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[6] L Brands has been actively searching for a buyer of the VS brand ever since its $525 million deal to sell that brand to Sycamore Partners fell apart (n.3, *supra*). The marketplace appreciated L Brands' positioning: market cap has increased over $10 billion during the pandemic. Koh Aff., Ex 5.

[7] While the additional consequential damages clause (21(B)) applies only if the tenant holds over 30 days or more, the liquidated holdover damages clause (21(A)) applies once tenant holds over beyond 24 hours. *See 1009 Second Ave. Assocs. v. N.Y.C. Off-Track Betting Corp.*, 248 A.D.2d 106, 109 (1st Dep't 1998) (permitting consequential damages arising from holdover interfering with new lease where existing lease expressly so provides, but not otherwise).

recover consequential damages arising from the holdover interfering with a new lease. Appellate Division rejected tenant's claim that a holdover damages clause could not exist alongside a consequential damages clause, holding that (internal citations omitted):

> [The three-times holdover liquidated damages] provision is essentially an estimate, made by the parties at the time they enter into their agreement, of the extent of the injury that would be sustained as the result of a breach . . . . Here, the parties' leases contain provisions which clearly and unambiguously permit the plaintiff landlord to recover a reasonable amount of damages for any injuries resulting from the failure to timely surrender the premises. Accordingly, the liquidated damages provisions are legally enforceable . . . .

Id. at 441–42.

In any event, here Landlord does not seek additional consequential damages beyond the liquidated holdover damages.

The cases Plaintiffs cite — none of which arise in the landlord-tenant context where the holdover tenant gains a benefit by its trespass — are not to the contrary. In each of those cases, the contracts themselves demonstrated that damages resulting from a future breach could be ascertained at the time of contracting. Here, that is not the case, and, as expressly permitted by *Fed. Realty Ltd. P'ship*, Landlord has chosen to seek only the bargained-for — and reasonable — liquidated damages that accrued during the holdover period.

In sum, the three-times liquidated damages clause is enforceable under controlling law.

CONCLUSION

The Lease requires Plaintiffs to pay holdover damages if VS failed to surrender the Premises upon the Lease's termination. The Lease was properly terminated yet VS did not surrender the Premises. Plaintiffs do not dispute Landlord's damages computations and the three-times holdover damages clause is enforceable under controlling law. The Court should enter judgment (1) against VS and L Brands, jointly and severally, in the amount of $19,979,593.08;

(2) against VS only in the additional amount of $2,754,846.10; and (3) dismissing all of Plaintiffs' affirmative defenses in Plaintiffs' Reply to Defendant's Counterclaims.

Dated: New York, New York
April 1, 2021

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CERTIFICATE OF COMPLIANCE

The total number of words in the foregoing memorandum of law, inclusive of headings and footnotes and exclusive of the caption, table of contends, table of authorities, and signature blocks, is 4,194 and is in compliance with Rule 17 of the Rules of the Commercial Division of the Supreme Court, effective October 1, 2018.

Dated: New York, New York
April 1, 2021

/s/ Stephen B. Meister
STEPHEN B. MEISTER