

VERIFIED COUNTERCLAIM

1. On or about [insert], plaintiff and defendant PQR, Inc., entered into a commercial lease agreement which related to defendant PQR=s use and occupancy of commercial space at [insert address], in the Township of [insert].
2. Defendant PQR intended to use the commercial space for the operation of a [insert description].
3. Defendant PQR took possession of the said space and began operation in accordance with the terms of the lease agreement.
4. The [insert date] lease agreement stated that the commercial space lease by defendant PQR was [insert #] square feet.
5. The lease further provided that it was for a term of [insert number of years] years with an option to extend the term upon satisfaction of certain conditions.
6. Based on the square feet of space rented to defendant PQR, the lease provided that PQR would pay a Afixed minimum rent@ of \$_____ per square foot for the first year, \$_____ for the second year, \$_____ for the third year, \$_____ for the fourth year, and \$_____ for the fifth year. In each instance the dollar amount per square foot was multiplied times the amount of square feet (i.e., 1,000) to arrive at an annual and monthly rent amount. Said calculations appear at Sections _____ and _____ of the lease.
7. Similarly, the lease provided that defendant PQR would also pay a common area maintenance charge (or ACAM@ charge) based on the square footage leased to PQR. Said calculations appear at Sections _____ and _____.
8. The lease agreement also provided that defendant PQR would be obligated to pay its proportionate share of real estate taxes. Said provision appears at Sections _____ and _____.

- _____.
9. Finally, the lease agreement provided that defendant PQR would be obligated to pay management fees which are part of, and included within, defendant PQR=s CAM charges. Said provision appears at Section _____.
 10. Despite the foregoing, it has come to the attention of defendant PQR that in fact the square footage of its leased area is not _____ square feet but rather, _____ square feet.
 11. Thus, upon reviewing calculations relating to the monthly rent paid by PQR, PQR has been overbilled and has overpaid various amounts of monthly rent.
 12. Additionally, PQR has been overbilled and has overpaid various amount of CAM and tax charges.
 13. Finally, plaintiff has attempted to bill PQR for an amount for a Acapital replacement cost fund@ which plaintiff has included in PQR=s CAM charges despite the fact that there is no such authority or provision for said charge.

FIRST COUNTBMUTUAL MISTAKE

14. There exists a mutual mistake of fact which was material to the [insert date], lease agreement as to the gross amount of square footage as to defendant PQR=s leased space.
15. Said mutual mistake warrants the equitable remedy of reformation of the [insert date] lease agreement so as to modify said lease to adjust the amount of square footage.
16. Additionally, defendant PQR is entitled to a credit for amounts overpaid to plaintiff as a result of overcharges to PQR=s monthly rent amounts, CAM charges, and taxes.

WHEREFORE, defendant PQR prays for relief as follows:

- a) For a finding that a mutual mistake occurred as to the representation of square footage of PQR=s leased space in the [insert date] lease agreement;

b) For reformation of any and all provisions respecting the square footage of leased space as contained in the [insert date] lease agreement in accordance with the mutual mistake;

c) For a credit to PQR for any and all amounts which were overbilled and/or overpaid by PQR to plaintiff as a result of the mutual mistake;

d) For counsel fees and costs relating to this action; and

e) For any other relief which this court deems is just and necessary.

COUNT TWOBUNILATERAL MISTAKE

17. Defendant PQR herein repeats and realleges the allegations contained in the First Count of this counterclaim as if same were fully set forth herein at length.

18. In the event the court finds that only defendant PQR was mistaken as to the amount of square footage respecting its leased space, defendant is still entitled to the equitable remedy of reformation since the enforcement of the erroneous and mistaken representation of square footage of PQR=s leased space would be unconscionable and plaintiff either knew or had reason to know of the mistake.

WHEREFORE, defendant PQR prays for relief as follows:

a) For a finding that a unilateral mistake occurred as to the representation of square footage of PQR=s leased space;

b) For reformation of any and all provisions respecting the square footage of leased space as contained in the [insert date] lease agreement in accordance with the unilateral mistake;

c) For a credit to PQR for any and all amounts which were overbilled and/or overpaid by PQR to plaintiff as a result of the unilateral mistake;

d) For counsel fees and costs relating to this action; and

e) For any other relief which this court deems is just and necessary.

COUNT THREE UNJUST ENRICHMENT

19. Defendant PQR herein repeats and realleges the allegations contained in the First and Second Counts of this counterclaim as if same were fully set forth herein at length.
20. Because of the overbilling and overpayments to plaintiff by PQR, plaintiff has been unjustly enriched to the detriment of PQR.

WHEREFORE, defendant PQR prays for relief as follows:

- a) For a credit and/or compensatory damages to PQR for any and all amounts which were overbilled and/or overpaid by PQR to plaintiff;
- b) For counsel fees and costs relating to this action; and
- c) For any other relief which this court deems is just and necessary.

COUNT FOUR BREACH OF CONTRACT

21. Defendant PQR herein repeats and realleges the allegations contained in the First, Second and Third Counts of this counterclaim as if same were fully set forth herein at length.
22. Plaintiff has breached the [insert date] lease agreement by overbilling and overcharging defendant PQR for amounts of monthly rent, CAM charges, and management fees.

WHEREFORE, defendant PQR prays for relief as follows:

- a) For a credit and/or consequential damages to PQR for any and all amounts which were overbilled and/or overpaid by PQR to plaintiff;
- b) For counsel fees and costs relating to this action; and
- c) For any other relief which this court deems is just and necessary.

COUNT FIVE DECLARATORY JUDGMENT

23. Defendant PQR herein repeats and realleges the allegations contained in the First, Second, Third and Fourth Counts of this counterclaim as if same were fully set forth

herein at length.

24. Plaintiff=s attempt to interpose a Acapital replacement cost fund@ charge and include same in defendant PQR=s CAM charges is not permitted or authorized under the terms of the [insert date] lease agreement.
25. Defendant PQR is uncertain as to its rights under the terms of the [insert date] lease agreement and accordingly it is need of declaratory relief barring and prohibiting plaintiff from interposing, billing, or charging PQR with any costs relating to a Acapital replacement cost fund.@

WHEREFORE, defendants demand judgment as follows:

- a) Declaring and finding that plaintiff may not interpose or charge defendant PQR with any contribution or charge relating to any Acapital replacement cost fund@ under the [insert date] lease agreement;
- b) For counsel fees and costs relating to this action; and
- c) For any other relief which this court deems is just and necessary.

DESIGNATED TRIAL COUNSEL

Defendants hereby designate John Lawyer, Esq. as trial counsel in this matter.

ENTIRE CONTROVERSY CERTIFICATION

I hereby certify pursuant to Rule 4:5-1 that this matter is not the subject of any other action pending in any Court or of a pending arbitration proceeding, and that there exist no other parties to be joined to this action.

JOHN LAWYER, ESQ.
Attorneys for defendants

Dated:

By:_____