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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF NEVADA**

10 LEAF FUNDING, INC., a Delaware corporation,

11 Plaintiff,

CASE NO.:

12 v.

COMPLAINT

13 CALNEVA PARTNERS, INC., dba
WINDERMERE REAL ESTATE NORTHERN
14 NEVADA, a Nevada corporation; JOYCE ANN
EMORY, an individual; RYAN FEIER, an
15 individual; PATRICK JOHN KEIGHER, an
individual; and NATHAN W. HEIBECK, an
16 individual,

17 Defendants.

18
19 **COMPLAINT**

20 Plaintiff LEAF FUNDING, INC., a Delaware corporation (alternatively “Leaf Funding”
21 or “Plaintiff”), for its Complaint against the Defendants CALNEVA PARTNERS, INC.
22 (“CalNeva”), PATRICK JOHN KEIGHER (“Keigher”), JOYCE ANN EMORY (“Emory”),
23 RYAN FEIER (“Feier”), and NATHAN W. HEIBECK (“Heibeck”) (collectively referred to as
24 “Defendants” or “Lessees”), hereby alleges as follows:

25 **JURISDICTION**

26 1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C.
27 1332(a)(1), because there is complete diversity of citizenship between the Plaintiff and the
28 Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

1 VENUE

2 2. Venue is proper in this Court pursuant to 28 U.S.C. 1391(a), because two of the
3 Defendants are residents of Washoe County, Nevada, and at all relevant times Washoe County,
4 Nevada was the primary place of business for Defendant CalNeva.

5 PARTIES

6 3. Plaintiff is, and at all times relevant herein was, a Delaware corporation doing
7 business in the State of Nevada.

8 4. At all relevant times, Defendant CalNeva was doing business as Windermere Real
9 Estate Northern Nevada, a Nevada corporation under the laws of the State of Nevada, with its
10 chief executive offices located in Reno, Nevada, and with its principal place of business located
11 in Reno, Washoe County, Nevada.

12 5. At all relevant times, Defendant Keigher was an individual residing in Reno,
13 Washoe County, Nevada, the President of CalNeva and a co-lessee of the Lease.

14 6. At all relevant times, Defendant Emory was an individual residing in Reno,
15 Washoe County, Nevada, and a co-lessee of the Lease.

16 7. At all relevant times, Defendant Feier was an individual residing in Palm Springs,
17 California, and a co-lessee of the Lease.

18 8. At all relevant times, Defendant Heibeck was an individual residing in Palm
19 Springs, California, and a co-lessee of the Lease.

20 FIRST CLAIM FOR RELIEF

21 **(Breach of Contract – Master Lease)**

22 9. Plaintiff Leaf Funding incorporates by reference Paragraphs 1 through 7 of this
23 Complaint as though fully set forth herein.

24 10. On April 12, 2005, Leaf Funding and CalNeva executed a Master Lease
25 Agreement (“Master Lease”), for the lease of computer equipment and telephone systems.

26 11. On or around April 15, 2005, Leaf Funding entered into the Addendum to Master
27 Lease Agreement (“Addendum”) with Defendants Keigher, Emory, Feier, and Heibeck (the “Co-
28 Lessees”), under which they agreed to serve as Co-Lessees with CalNeva under the Lease,

1 binding the Co-Lessees as jointly and severally responsible for fulfilling all obligations under the
2 Master Lease.

3 12. On April 15, 2005, Leaf Funding and CalNeva executed Master Lease Schedule
4 1, which incorporates the Master Lease, for the lease of computer equipment, which included
5 five (5) Dell computers, server sale with server, power protection module, Dell 20" wide screen
6 LCD, switches, printer sale, fax machines, software sale, four (4) hubs and four (4) ports, which
7 is collectively referred to as the "Equipment." Leaf Funding is the owner of the Equipment
8 identified in the Master Lease Schedule 1.

9 13. Under Master Lease Schedule 1, the Defendants agreed to make six (6) monthly
10 lease payments in the amount of \$2,168.14, followed by forty-two (42) monthly lease payments
11 in the amount of \$4,334.99. Pursuant to Master Lease Schedule 1, the lease payments were due
12 on the first (1st) day of every month thereafter. According to Master Lease Schedule 1, at the
13 expiration of the Master Lease, the Defendants could exercise the option to return the Equipment
14 to Leaf Funding by delivering the Equipment to Leaf Funding, or to purchase the Equipment
15 from Leaf Funding for \$1.00 plus any applicable taxes.

16 14. On April 15, 2005, Leaf Funding and CalNeva executed Master Lease Schedule
17 2, which incorporates the Lease, for CalNeva's lease of telephone equipment, which included,
18 among other things, a Modular ICS, Modular 6.1 Software, T7316e and T7208 telephone sets,
19 fiber cartridges, voice messaging mailboxes, jacks, cables and wall mounts, which is collectively
20 referred to as the "System." Leaf Funding is the owner of the System identified in the Master
21 Lease Schedule 2.

22 15. Under Master Lease Schedule 2, the Defendants agreed to make six (6) monthly
23 lease payments in the amount of \$401.29, followed by forty-two (42) monthly lease payments in
24 the amount of \$830.48. Pursuant to Master Lease Schedule 2, the lease payments were due on
25 the first (1st) day of every month thereafter. According to Master Lease Schedule 2, at the
26 expiration of the Lease, CalNeva could exercise the option to return the System to Leaf Funding
27 by delivering the System to Leaf Funding, or to purchase the System from Leaf Funding for
28 \$1.00 plus any applicable taxes.

1 16. On or about April 22, 2006, Defendant CalNeva took possession of the
2 Equipment and System, and agreed to pay Leaf Funding pursuant to the terms of the Master
3 Lease.

4 17. The Defendants defaulted by failing to make timely lease payments to Leaf
5 Funding under the Master Lease. The Defendants missed lease payments for June 27, 2006
6 through August 8, 2006. Leaf Funding received its last payment under the Master Lease from
7 the Defendants on June 27, 2006, and the Defendants have made no payments to Leaf Funding
8 since that date.

9 18. On August 11, 2006, the Defendants executed a Surrender Agreement
10 acknowledging Lessees' failure to make monthly payments under the Master Lease, and
11 Lessees' desire to surrender possession of the Equipment and System. Pursuant to the terms of
12 the Surrender Agreement, the parties agreed that the Lessees were in default on the Master Lease
13 and the entire unpaid balance of the Master Lease was accelerated and immediately due and
14 payable.

15 19. Under the Surrender Agreement, the Lessees surrendered the Equipment and
16 System to Leaf Funding for disposition in accordance with the terms of the Master Lease.

17 20. Leaf Funding sold a portion of the Equipment subject to the Master Lease in
18 connection with Master Lease Schedule 1 for \$42,044.00, resulting in a credit to the Defendants
19 of the unpaid balance due and owing to Leaf Funding under the Master Lease.

20 21. As of August 8, 2006, the outstanding balance due under the Master Lease in
21 connection with Master Lease Schedule 1 was approximately \$139,527.21, plus accrued, but
22 unpaid interest, to which a credit of \$42,044.00 was applied from the proceeds of the sale,
23 leaving a balance of approximately \$97,483.21 due and owing under Master Lease Schedule 1.
24 To this amount must also be added the costs of collection including attorneys' fees and costs
25 pursuant to the terms of the Master Lease.

26 22. As of August 8, 2006, the outstanding balance due under the Master Lease in
27 connection with Master Lease Schedule 2 was approximately \$33,729.15. To this amount must
28

1 also be added the costs of collection including attorneys' fees and costs pursuant to the terms of
2 the Master Lease.

3 23. As of August 8, 2006, the total amount due and owing under the Master Lease in
4 connection with Master Lease Schedules 1 & 2 is \$131,212.36, excluding attorney's fees and
5 costs.

6 24. Leaf Funding entered into the Master Lease with Defendants CalNeva and Co-
7 Lessees whereby Leaf Funding agreed to lease the Equipment and System to Defendants in
8 connection with Master Lease Schedules 1 and 2, and Defendants agreed to pay Leaf Funding
9 the agreed upon lease payments for the Equipment and System.

10 25. Plaintiff Leaf Funding fully performed under the Master Lease by delivering
11 possession of the Equipment and System to Defendant CalNeva.

12 26. Defendants breached the Master Lease and accompanying Master Lease
13 Schedules 1 and 2 by failing or refusing to pay the agreed upon lease payments to Leaf Funding
14 for use of the Equipment and System.

15 27. Plaintiff Leaf Funding has made demand upon Defendants for said amounts due
16 and owing to Leaf Funding under the Master Lease.

17 28. Defendants were notified of these defaults, but failed and refused to cure the
18 defaults pursuant to the terms and conditions of the Maser Lease.

19 29. Pursuant to the terms and conditions of the Master Lease, Leaf Funding has
20 accelerated the indebtedness and is entitled to immediate payment of the outstanding obligation
21 under the Master Lease, together with legal fees and costs, and accrued interest.

22 30. As a direct and proximate cause of Defendants' breach of the Master Lease,
23 Plaintiff Leaf Funding has suffered damages in excess of \$75,000.00, the exact amount to be
24 determined at trial.

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DEMAND


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WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. With respect to the First Claim for Relief (Breach of Contract – Master Lease), judgment in an amount in excess of \$75,000.00;
- 2 For attorney’s fees and costs incurred by Plaintiff Leaf Funding in enforcing it rights under the Maser Lease, including but not limited to, attorney’s fees and costs incurred in bringing this action; and
3. For such other and further relief as the Court may deem just and proper.

DATED this 14th day of December, 2006.

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON


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