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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 DATA SALES CO., INC., a Minnesota
11 corporation,

12 Plaintiff,

13 v.

14 PATH NETWORK, INC., a Delaware
15 corporation,

16 Defendant.

Case No. CV2025-027770

**RESPONSE IN OPPOSITION TO
PLAINTIFF'S RENEWED
APPLICATION FOR ORDER TO
SHOW CAUSE WHY PLAINTIFF
SHOULD NOT BE GRANTED THE
PROVISIONAL REMEDY OF
REPLEVIN**

(Assigned to Hon. Joseph Kreamer)

17 Defendant Path Network, Inc. ("Path"), hereby files its response in opposition to
18 Plaintiff Data Sales Co., Inc.'s ("Data Sales") *Renewed Application For Order To Show*
19 *Cause Why Plaintiff Should Not Be Granted The Provisional Remedy of Replevin Pursuant to*
20 *Either A.R.S. § 12-2402 or A.R.S. § 12-2403* ("Renewed Application").

21 Path Network is a leading provider of cloud-based denial of service (DDos) mitigation
22 and cyber-security solutions to its customers across the USA, Europe, and Asia. Path's
23 services require the use of custom-built, high-performing servers and related equipment,
24 which it either owns outright or leases through Data Sales. Data Sales now asks the Court to
25 issue a writ of replevin over 124 servers and other pieces of equipment located in Arizona
26 ("Arizona Property"). The Court should deny the Renewed Application for three reasons:

27

1 **First**, Data Sales already agreed to withdraw its request for replevin of the Arizona
2 Product if Path delivered 94 other pieces of equipment, as set forth in Exhibit A to the parties’
3 *Stipulated Motion to Vacate Replevin Hearing* filed August 25, 2025 (“Withdrawal
4 Stipulation”), and the Court’s order approving the same on August 26, 2025 (“Withdrawal
5 Order”). Path delivered each and every piece of equipment specified in Exhibit A to the order,
6 fully complying with its obligations. Data Sales’s attempt to renew its application for replevin
7 of the Arizona Property is a violation of the parties’ stipulation and should be rejected.

8 **Second**, Data Sales has not satisfied its burden to prove that it owns the Arizona
9 Property or that the Arizona Property is wrongfully detained by Path, as required by A.R.S. §
10 12-1301(2) to obtain a writ of replevin. *See also*, A.R.S. §§ 12-2402(A)(2), 2403(1). Path has
11 the right to possess the Arizona Property pursuant to its leasehold interest. Whereas Data
12 Sales’ Complaint alleges it has the right to repossess the Arizona Property t because Path
13 defaulted on its payment obligations, Path’s Counterclaim asserts that it is Data Sales who
14 breached the leases by frustrating and refusing to honor Path’s right to exercise its buyout
15 option upon expiration of the lease term. Among other things, Path’s Counterclaim seeks
16 specific performance and a declaratory judgment requiring Data Sales to honor Path’s buyout
17 rights and restoring Path’s rights and status under the leases. Indeed, the dispute over who
18 breached the leases and who is entitled to possession of the leased equipment is the core legal
19 issue to be determined in this lawsuit and should be adjudicated through the normal course of
20 discovery and litigation. Data Sales’ Renewed Application completely ignores Path’s
21 Counterclaim, but by asking the Court to find that Path has wrongfully detained the Arizona
22 Property and order a writ of replevin Data Sales is essentially asking for the Court to enter a
23 summary judgment order against Path in a provisional remedy context.

24 **Third**, even if Data Sales could establish its entitlement to a writ of replevin, Data
25 Sales’ proposed form of order includes injunctive relief that goes far beyond the remedy of
26 replevin, which is limited by statute to “an order requiring the sheriff, or if in a justice court
27 the constable, to take the property specified in the affidavit from the defendant and deliver it

1 to the plaintiff[,]” subject to Path’s right to retain the property by posting a re-delivery bond.
2 A.R.S. §§ 12-1302, 1304. Data Sales has not filed an application for preliminary injunction or
3 temporary restraining order, and its veiled attempt to obtain such relief through a replevin
4 application must be rejected. *Valley Drive-In Theatre Corp. v. Superior Ct.*, 79 Ariz. 396, 400
5 (1955) (“when a statute creates a right and also provides a complete and valid remedy for the
6 right created, the remedy thereby given is exclusive.”).

7 **I. The Renewed Application is a Violation of Data Sales’ Agreement to Withdraw**
8 **Its Request for Replevin of the Arizona Property In Exchange For the**
9 **Surrendered Equipment, Which Path Timely Delivered.**

10 **A. Path Fully Complied With the Withdrawal Order.**

11 The Renewed Application should be rejected because Data Sales already agreed to
12 withdraw its request for replevin of the Arizona Property in exchange for delivery of other
13 equipment, which Path in fact delivered. By renewing its request, Data Sales is not only
14 violating the parties’ agreement but is essentially seeking recovery of nearly double the
15 equipment it otherwise would have obtained if Path had not opposed the original replevin
16 application in the first place.

17 In particular, Data Sales filed its original *Application For Order To Show Cause Why*
18 *Plaintiff Should Not Be Granted The Provisional Remedy of Replevin Pursuant to Either*
19 *A.R.S. § 12-2402 or A.R.S. § 12-2403* on August 13, 2025 (“Initial Application”), and a
20 hearing was set for September 5, 2025. In subsequent negotiations, Data Sales offered to
21 withdraw its Initial Application if Path delivered, without the need for Data Sales to post a
22 bond, 94 pieces of equipment identified in a detailed list, which specified the equipment
23 components and their estimated value totaling \$66,968 (“Surrendered Equipment”).¹ Path
24 agreed, and the parties’ agreement is reflected in the Withdrawal Stipulation filed August 25,
25 2025 and Withdrawal Order entered August 26, 2025.

26 ¹ Although Path initially provided the list (offering to deliver the Surrendered Equipment as part of a
27 global settlement), it was Data Sales who counter-proposed to accept the Surrendered Equipment in
satisfaction of its request for replevin of the Arizona Property.

1 Path promptly and fully complied with its obligations under the Withdrawal Order. In
2 particular, Path delivered the Surrendered Equipment in two pallets, one shipped August 27,
3 2025, and the other shipped August 28, 2025. Data Sales acknowledged receipt of the
4 deliveries, and there is no dispute that the equipment Data Sales received exactly matches the
5 Surrendered Equipment detailed in Exhibit A to the Withdrawal Order. Data Sales now has
6 possession of the Surrendered Equipment and the right to sell or use it as it desires, whereas
7 Path is now deprived of its use. Accordingly, Path has fulfilled its obligations under the
8 Withdrawal Order, thereby fully resolving Data Sales’ request for replevin of the Arizona
9 Product.

10 By filing its Renewed Application and attempting to obtain the same relief it already
11 agreed to withdraw, Data Sales’ is breaching its obligations under the Withdrawal Stipulation.
12 Moreover, by attempting to revive its replevin application while also keeping the Surrendered
13 Equipment (which equipment was located outside of Arizona and would have been beyond
14 outside the scope of any provisional remedy available to Data Sales in this Court), Data Sales
15 is trying to unwind the parties’ bargain while also retaining its benefits. While it is Path’s
16 position that the Court should enforce the parties’ agreement and reject the Renewed
17 Application altogether, to the extent the Court would consider unwinding the parties
18 agreement in order to enter a writ of replevin over the Arizona Property, Data Sales should at
19 least be required to return the Surrendered Equipment to Path.

20 **B. There is No Valid Basis to Renew the Application for Replevin.**

21 Data Sales attempts to justify the renewal of its request for replevin notwithstanding its
22 receipt of the Surrendered Equipment by asserting facts that are irrelevant, unsupported by
23 evidence, and false.

24 **First**, in Section F of the Renewed Application (“Troubling Facts Arise Warranting
25 Renewal of the Application”), Data Sales alleges that implicit in the parties’ agreement was
26 that the Surrendered Equipment would actually be the same property leased by Data Sales. As
27 a threshold matter, neither the Withdrawal Stipulation nor Withdrawal Order contain any such

1 representation, whether explicit or implicit. Rather, Exhibit A to both documents contains
2 specific technical descriptions of the Surrendered Equipment. To the extent Data Sales
3 required such equipment to be its own leased property, it had every opportunity to confirm
4 that fact prior to entering into the Withdrawal Stipulation. To the extent any of the
5 Surrendered Equipment is in fact not Data Sales' leased property (which Path disputes, as
6 discussed more below), that would not be a breach of the Withdrawal Stipulation or Order.

7 **Second**, Path believed, and still believes, that all of the Surrendered Equipment was in
8 fact Data Sales' leased property. Data Sales vaguely contends that only a portion of the
9 Surrendered Equipment can be "confirmed" as Data Sales' leased property, but offers no facts
10 whatsoever to explain that contention. The Renewed Application does not specify which
11 pieces of equipment Data Sales believes are not its property, nor does it explain Data Sales'
12 basis for that belief. Indeed, based on subsequent correspondence with Data Sales' counsel, it
13 appears the issue is not that Data Sales actually knows that the Surrendered Equipment is not
14 its' leased property, but rather that it is unable to confirm whether or not it is.

15 In particular, following delivery of the Surrendered Equipment, Data Sales' counsel
16 emailed Path's counsel that "A preliminary check of readily available serial numbers reveals
17 that a good amount of the items delivered *do not actually belong to our client.*" However,
18 Path does not believe there is any way Data Sales could have made that determination based
19 on serial numbers, because serial numbers were never printed or placed on any of the
20 equipment. To the extent serial numbers were referenced in the invoices of the original
21 manufacturer and/or in by the original lessor in the equipment leases, it is not clear where
22 those serial numbers came from as they do not follow a consistent format.² Path's best guess
23 is that the serial numbers relate to individual components inside the servers, which would not
24

25 ² A brief review of Exhibit 1 and Exhibit 2 attached to Data Sales' Renewed Application shows that
26 there is no consistency amongst the serial numbers, which are sometimes numerical, alpha-numerical,
27 and are of widely varying lengths. Examples include: "7713P0000000000000001";
"EAS0R80000922"; "1010"; "121211"; "1001A"; and "1806-01D000000000719."

1 be accessible without disassembling the servers. Data Sales’ counsel further indicated that it
2 would perform a more comprehensive audit to determine the extent to which the Surrendered
3 Equipment is or is not its leased property. However, Data Sales never provided the results of
4 that audit, nor did it make any reference to it in its Renewed Application.

5 In a recent call, on Monday, October 27, 2025, undersigned counsel asked Data Sales’
6 counsel to explain exactly why Data Sales believes some of the Surrendered Equipment is not
7 Data Sales’ leased property. In that call, Data Sales’ counsel indicated that it was because the
8 specs of a few items did not match the specs of any equipment Data Sales leased (not because
9 of any issue with the serial numbers).³ If truly based on the equipment specs, that information
10 was listed in Exhibit A and Data Sales could have raised and resolved that concern in
11 advance. To the extent that Data Sales believes that delivery of non-leased equipment would
12 constitute a valid legal basis to set aside the parties’ Withdrawal Stipulation and renew its
13 request for replevin (which Path disputes as discussed above), Data Sales has the burden of
14 proving that the Surrendered Equipment is not in fact its leased property. Data Sales has not
15 done so, and instead has only vaguely contended, without evidence, that “that *may* not be the
16 case” as to some of the Surrendered Equipment. Renewed Application, at 8 (emphasis added).

17 **Third**, Data Sales contends that renewal of its application is justified because it has
18 received emails from third parties suggesting that Path is insolvent and is shifting assets to
19 defraud creditors. However, Data Sales received these emails *before* entering into the
20 Withdrawal Stipulation, so even to the extent Data Sales believes that those emails create
21 legitimate concerns (which Path disputes, as discussed further below), the emails are not
22 “new” information warranting renewal of the application. In particular, the August 16, 2025
23 email attached as Exhibit 2⁴ to the Renewal Application was received nine days before the
24

25 ³ Undersigned counsel asked Data Sales’ counsel to provide a list of the specific equipment Data
26 Sales believes is not its leased property and to further explain the basis for that belief, but as of the
27 filing of this Response has not received any additional information.

⁴ The Renewed Application has two exhibits identified as “Exhibit 2.” The email is in the second
exhibit.

1 parties filed the Withdrawal Stipulation, and on August 21, 2025, Data Sales filed a *Notice of*
2 *Lodging Amended Form of Order Granting Provisional Remedy of Replevin/Writ of Replevin*
3 attempting to use the email as a basis to expand the requested relief.

4 Moreover, those emails are of no evidentiary value whatsoever, as they are from an
5 anonymous individual whose identity, knowledge, and motives are unknown, and constitute
6 unverifiable hearsay. Notably, the emails were sent from a Proton Mail account, which is an
7 encrypted email domain based in Switzerland that is designed to hide the sender’s identity,
8 and Path believes the emails may have been sent by an individual affiliated with one of Path’s
9 competitors who Path has been suing for the better part of two years for theft of company
10 information.⁵ The content of the emails is also of no relevance as it is essentially comprised of
11 broad speculation and/or false allegations that Path is potentially insolvent and is moving
12 assets. Even the September 13, 2025 email, which appears to be sent by the same individual
13 using a new email address and alias, and purports to share “quoted” text from an email
14 supposedly received from another unidentified individual suggesting that Path is defunct and
15 trying to move assets to another company, starts with the caveat “I cannot confirm nor deny
16 this[.]” Moreover, as it relates to the Arizona Property, which is the sole subject of the
17 Renewed Application, the August 16, 2025 email actually states that it is “highly likely” that
18 the Arizona Property remains in its warehouse in Phoenix. Suffice to say, Path denies
19 engaging in any conduct that violates its agreements with Data Sales, and the Court should
20 ignore these irrelevant emails altogether.

21 **Fourth**, Data Sales’ speculation that some of the Surrendered Equipment might be
22 subject to third party liens is baseless conjecture. All of Path’s equipment is either (1) leased

23 _____
24 ⁵ An exhaustive discussion is beyond the scope of this Response, but in short, a prior executive of
25 Path’s subsidiary conspired with Path’s competitor to steal company data and hold it ransom. Path
26 initiated litigation in Canada to obtain records confirming the identities of individuals involved and
27 are now continuing to pursue those individuals in U.S. courts. During the pendency of that process,
Path’s competitor has relentlessly sought to destroy Path’s business by tarnishing its reputation
through message boards and anonymous emails directly to customers using, notably, various Proton
Mail email accounts.

1 from Data Sales, or (2) owned outright free and clear of liens, and Data Sales offers no
2 evidence to the contrary. Notably, the only UCC-1 Data Sales found is recorded against
3 Path’s subsidiary, Tempest Hosting, LLC (“Tempest”). Liens on Tempest’s property do not
4 extend to Path’s property, and Data Sales has no basis to conclude that the Surrendered
5 Equipment is Tempest’s property (it isn’t). Data Sales’ possession of the Surrendered
6 Equipment does not expose it to any liability; to the contrary, it now is in possession of more
7 equipment than it otherwise could have obtained through replevin.

8 **II. Data Sales Cannot Satisfy the Statutory Requirements for Replevin.**

9 To obtain the provisional remedy of replevin with notice pursuant to A.R.S. § 12-
10 2403,⁶ Data Sales has the burden of satisfying each of the statutory requirements set forth in
11 A.R.S. § 12-1301. Namely, that (1) Data Sales is the owner of the Arizona Property or is
12 lawfully entitled to its possession; (2) that the Arizona Property is wrongfully detained by the
13 Path; and (3) the actual value of the Arizona Property and that the property has not been
14 seized under any process, execution, or attachment against the property.

15 First, Data Sales has not established that it is legally entitled to the property or that the
16 property is wrongfully detained. That legal issue is at the core of Path’s Counterclaims in this
17 case. As set forth in more detail in Path’s Counterclaim filed September 17, 2025, the Master
18 Lease and Lease Schedules give Path the right to buy out the equipment at the end of the lease
19 term for fair market value. Path attempted to exercise that right in September 2024 by
20 informing Data Sales that it intended to exercise its buy-out rights and requesting a buyout
21 quote. Despite multiple follow-ups, Data Sales ignored the request for two months. Data Sales
22 did not provide a buy-out quote until November 22, 2024, the Friday before the Thanksgiving
23 holiday, and arbitrarily and unreasonably demanded payment of the buy-out by December 1,
24

25 ⁶ Data Sales alternatively sought entry of a provisional remedy without notice or a hearing pursuant to
26 A.R.S. § 12-2402, which request is now moot given the Court’s setting of a hearing in this matter.
27 Even if it were not moot, Data Sales has not satisfied the requirements of § 12-2402(A)(1)-(3) for the
same reasons discussed in this Section II, and also because Data Sales did not serve the notice
required by § 12-2402(E).

1 2024, the Sunday after the Thanksgiving holiday. Adding to the confusion, four days later
2 Data Sales sent a separate email with conflicting information regarding Path’s alleged
3 balance. When Path did not pay by December 1st (which it could not reasonably do given the
4 subsequent conflicting email), Data Sales declared them in default and asserted that Path had
5 forfeited its buyout rights. In subsequent negotiations to try and resolve the issue, Data Sales
6 demanded changing and conflicting balances, all while threatening legal action, declaring all
7 Lease Schedules in default and accelerating the balance, and refusing to honor the prior buy-
8 out quote or any buy-out rights under any Lease Schedule. Data Sales’ conduct and refusal to
9 honor Path’s buy-out rights breaches the express terms of the Master Lease and Lease
10 Schedules as well as the implied covenant of good faith and fair dealing. *Fowler v. Dana*, 7
11 Ariz. App. 72, 74 (1968) (“If one party to a contract prevents the other party from performing
12 one of the conditions to the contract, then he cannot use the failure to perform to deny his own
13 obligation under the agreement.”).

14 In addition to its claim for breach of contract, Path seeks specific performance and a
15 declaratory judgment allowing it to exercise its buy-out rights on all Lease Schedules to the
16 same extent it would have been able to do if not for Data Sales’ conduct, and otherwise
17 reinstating and determining the respective obligations of the parties under the leases going
18 forward. Of course, if Path prevails on its Counterclaims, then Data Sales will have no right to
19 possess the Arizona Property (or other Property) because Path will either buy out the
20 equipment for fair market value, in which case it will become the owner the equipment, or
21 continue leasing the equipment, in which case it will retain the right to possess the equipment
22 under its leasehold interest.

23 To grant Data Sales a writ of replevin, this Court will essentially have to pass judgment
24 on the core legal issues underlying the claims of both parties, and would thereby render Path’s
25 Counterclaims for specific performance and declaratory judgment a nullity (at least with
26 respect to the Arizona Property) by eliminating Path’s ability to buy or continue leasing the
27 equipment.

1 Second, the Renewed Application does not “sufficiently describe” the Arizona
2 Property with enough information for the Sheriff to identify and seize it, as required by
3 A.R.S. § 12-1301(1). While Exhibit 1 to the Renewed Application indeed lists serial numbers
4 and describes some technical specifications for the servers, as discussed above with respect to
5 the Surrendered Equipment, serial numbers are not an effective way of identifying servers
6 because neither the manufacturer nor Data Sales’ predecessors marked servers with the
7 numbers, Data Sales has refused to accept matching technical specifications as sufficient
8 confirmation that the equipment is their leased equipment, and Data Sales has not offered any
9 other method acceptable to them to confirm the identity of the servers. This begs the question,
10 how is the sheriff supposed to execute upon a writ of replevin if Data Sales will not accept the
11 use of any of the information contained in Exhibit 1 to discern between leased and non-leased
12 equipment?

13 **III. Data Sales’ Proposed Form of Order Goes Far Beyond Replevin.**

14 Even if Data Sales were entitled to a writ of replevin over the Arizona Property, their
15 proposed form of order goes far beyond the limited remedy of replevin. In addition to
16 expansive factual findings not supported by the Renewed Application, the form of order
17 contains additional injunctive relief:

- 18 • Requiring Path to, within 2 business days, prepare a list with the location of all
19 “Product”⁷ (i.e., not only the Arizona Product to which the application relates, but
20 also equipment located outside of Arizona and even outside the United States);
21 • Requiring Path to, within 7 business days, “take all necessary steps to disassemble,
22 deinstall, protect, package, remove, ship, and cause the Product to be delivered to”
23 Data Sales;

24 _____
25 ⁷ The Renewed Application defines “Product” to include not only the Arizona Product to which the
26 application relates, but also all other leased equipment located outside of Arizona and even outside
27 the United States. To the extent “Product” as used in the form of order is intended to share the same
definition, that is clearly overbroad, as the Court cannot enter a writ of replevin ordering the
Maricopa County Sheriff to seize property outside of Maricopa County.

- 1 • Requiring Path to, within 7 business days, provide Data Sales “with a letter from
2 the manufacturer certifying that the Product is in good operating condition and is
3 eligible for continued maintenance, and that the operating system is at the then
4 current level, unless the Product is under a manufacturer’s service contract” (this is
5 essentially a request for specific performance of certain lease provisions);
- 6 • Requiring Path to take back the Surrendered Equipment if it cannot definitively
7 prove that delivered equipment is free from liens and encumbrances, with
8 “definitely proven” ambiguously defined to mean evidence that “Plaintiff, in its
9 sole discretion, considers sufficient.”

10 It is only after this additional, affirmative injunctive relief that Data Sales’s proposed
11 form of order mentions a writ of replevin. If Data Sales seeks affirmative injunctive relief, it
12 must file a proper application for preliminary injunction or temporary restraining order under
13 Rule 65 and must prove the four elements required to obtain that relief, including irreparable
14 harm. *City of Flagstaff v. Arizona Dep’t of Admin.*, 255 Ariz. 7, 12 (App. 2023). Data Sales’
15 attempt to obtain injunctive relief through an application for replevin is improper.

16 Lastly, the proposed form of order does not mention Path’s statutory right to execute a
17 re-delivery bond within two days of the taking by a Sheriff to re-acquire possession of the
18 taken equipment, as provided for by A.R.S. § 12-1304.

19 **IV. Conclusion.**

20 Path requests that this Court deny the Renewed Application because (1) Path fulfilled
21 its promise to deliver the Surrendered Equipment in exchange for withdrawal of the
22 application, (2) Data Sales cannot demonstrate its right to possess the property without fully
23 adjudicating Path’s counterclaims, which would be premature at this early stage of the case,
24 and (3) Data Sales attempts to tack additional injunctive relief onto the statutory remedy of
25 replevin.

26 **DATED** this 29th day of October, 2025.

27 **ENGELMAN BERGER PC**

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