

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

THERESA MADDICKS, JOHN AMBROSIO, PAUL WILDER, SAMUEL WILDER, ALYSSA O'CONNELL, JOHANNA S. KARLIN, BRIAN WAGNER, TYLER STRICKLAND, DANIEL ROBLES, ELENA RICARDO, LIAM CUDMORE, JENNIFER MAK, JOSHUA BERG, ANISH JAIN, JOHN CURTIN, JONATHAN FIEWEGER, MARIA FUNCHEON, JORDANI SANCHEZ, MELISSA MICKENS, M.D. IVEY, DEVIN ELTING, SEMI PAK, KAITLIN CAMPBELL, SARAH NORRIS, MIKIALA JAMISON, SHERESA JENKINS-RISTEKI, YANIRA GOMEZ and KRISTEN PIRO, on behalf of themselves and all others similarly situated,

Plaintiffs,

-v-

BIG CITY PROPERTIES, LLC, and BIG CITY REALTY MANAGEMENT, LLC

Defendants.

Date Filed: \_\_\_\_\_

Index No. \_\_\_\_\_  
(NYSCEF Case)

**SUMMONS**

Plaintiffs designate New York County as the place of trial. The basis of venue is the situs of the real property at issue in this action.

TO THE ABOVE-NAMED DEFENDANTS:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiffs' attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear and answer, judgment will be taken against you by default for the relief demanded in the complaint

DATED: New York, New York  
December 6, 2016

**NEWMAN FERRARA LLP**

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**SUPREME COURT OF THE STATE OF NEW YORK  
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THERESA MADDICKS, JOHN AMBROSIO,  
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STRICKLAND, DANIEL ROBLES, ELENA  
RICARDO, LIAM CUDMORE, JENNIFER  
MAK, JOSHUA BERG, ANISH JAIN, JOHN  
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MELISSA MICKENS, M.D. IVEY, DEVIN  
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GOMEZ and KRISTEN PIRO, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

-v-

BIG CITY PROPERTIES, LLC, and BIG CITY  
REALTY MANAGEMENT, LLC

Defendants.

Index No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Theresa Maddicks, John Ambrosio, Paul Wilder, Samuel Wilder, Alyssa O’Connell, Johanna S. Karlin, Brian Wagner, Tyler Strickland, Daniel Robles, Elena Ricardo, Liam Cudmore, Jennifer Mak, Joshua Berg, Anish Jain, John Curtin, Jonathan Fieweger, Maria Funcheon, Jordani Sanchez, Melissa Mickens, M.D. Ivey, Devin Elting, Semi Pak, Kaitlin Campbell, Sarah Norris, Mikiala Jamison, Sheresa Jenkins-Risteki, Yanira Gomez, and Kristen Piro (collectively “Plaintiffs”), individually and on behalf of all others similarly situated, by and through their attorneys, bring this class action complaint against defendants Big City Properties,

LLC and Big City Realty Management, LLC (collectively “Defendants”). Plaintiffs’ allegations are based upon knowledge as to their own acts and experiences and upon information and belief as to all other matters. Plaintiffs’ information and belief are based upon, among other things, a comprehensive analysis undertaken by their attorneys, public records, tenancy-related documents, and the relevant law. Plaintiffs believe that after a reasonable opportunity for discovery, substantial additional evidentiary support will exist for the allegations set forth herein.

### **INTRODUCTION**

1. Plaintiffs bring this lawsuit to end the illegal and fraudulent practices employed by Defendants over the course of their ownership and operation of over 20 apartment buildings in the City of New York (the “Big City Portfolio”).

2. In sum, Defendants have pursued (and continue to pursue) a scheme designed to inflate rents over and above the amounts which they are legally permitted to charge.

3. Upon information and belief, Defendants use four different methods to accomplish their scheme.

4. First, several of the apartment buildings owned and operated by Defendants receive, or have received, certain tax abatements and/or exemptions pursuant to the J-51 tax benefits program (the “J-51 Program”).

5. Buildings receiving J-51 tax benefits, such as Defendants’ apartment building at 535 W. 155th Street, are required to provide their tenants with rent-stabilized leases as a condition of receiving the tax benefits.

6. Plaintiff Kaitlin Campbell lives at 535 W. 155<sup>th</sup> Street.

7. Although Campbell's rental history filed by Defendants with DHCR states Campbell was provided with a rent-stabilized lease, she was in fact provided with a free-market lease.

8. Second, Defendants misrepresented and obfuscated, and continue to misrepresent and obfuscate, the costs of Individual Apartment Improvements performed on Plaintiffs' apartments and those of similarly situated tenants (the "Class").

9. Generally speaking, and as described more fully below, landlords are entitled to a rent increase of 1/40<sup>th</sup> (or 1/60<sup>th</sup> where the building contains 36 apartments or more) of the cost of an Individual Apartment Improvements ("IAI").

10. IAIs are items such as new doors, counters, and cabinets that improve the apartment, rather than a repair.

11. For instance, the legal regulated rent on Plaintiff Liam Cudmore's apartment at 408 W. 129<sup>th</sup> Street, increased from \$975.69 to \$2030.58 between 2009 and 2010, which would have required over \$32,000 in IAIs to be justifiable.<sup>1</sup>

12. There is no evidence that IAIs in that amount took place in Plaintiff Cudmore's apartment, and in fact, an inspection of that apartment suggests to the contrary.

13. Third, on other apartments in the Big City Portfolio, Defendants and their predecessors-in-interest repeatedly failed to register rental information, as required by New York State and New York City law, rendering it impossible to calculate the correct legal regulated rent.

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<sup>1</sup> To calculate the required IAIs for the purposes of this pleading, the maximum vacancy and MCI allowances were assumed (20% for vacancy and 6% for MCI allowances) and the amount of IAIs to justify any further increases was calculated by multiplying any such surplus increase by 40 or 60, depending on the number of units in the building.

14. For instance, on Johanna Karlin's apartment at 408 W. 129<sup>th</sup> Street, Defendants and their predecessors in interest failed to register the apartment in 2001, from 2004 to 2005, from 2007 to 2010, and from 2012 to 2015.

15. Finally, Defendants and their predecessors in interest have inflated the fair market rent on apartments that have exited rent controlled status.

16. When an apartment exits rent controlled status, the next tenant and landlord agree on a fair market rent, which becomes the legal regulated rent for the apartment, subject to a fair market rent appeal.

17. Defendants and their predecessors in interest however, provided tenants with a preferential rent and a significantly higher, purported legal regulated rent.

18. The preferential rent represents the actual, agreed upon fair market value, and thus is the actual, legal regulated rent.

19. For instance, on Theresa Maddicks' apartment 106 Convent Avenue, the first rent-stabilized lease had a legal regulated rent of \$1675.60, but Maddicks was given a preferential rent of \$1,100.

20. As \$1,100 represents the true value of the apartment as agreed upon by the landlord and tenant, Defendants and their predecessors in interest were required to base future rent increases, as allowed under New York State and New York City law, upon that figure.

21. Accordingly, Maddicks' monthly rent should be \$1178.55, but her monthly lease amount is currently \$1707.56.

22. The aforementioned conduct represent Defendants' blatant attempt to circumvent New York City's rent regulation process, at the expense of tenants residing in buildings in the

Big City Portfolio. Left unchecked, this conduct will force countless tenants from their homes, and continue the demise of affordable rental housing in New York City.

### **NATURE OF THE ACTION**

23. Defendants own and operate more than 20 apartment buildings, primarily in Harlem.

24. In their efforts to wring value from the portfolio, Defendants have engaged in a clear pattern and practice of improper and illegal conduct.

25. This conduct includes, but is not limited to

- a. providing tenants in apartment buildings receiving J-51 tax exemptions with free market leases, instead of the rent-stabilized leases to which they are entitled;
- b. claiming erroneous and undocumented IAIs;
- c. failing to register apartments with New York State Division of Housing and Community Renewal (“DHCR”); and
- d. misrepresenting the legal regulated rents on decontrolled apartments.

26. Defendants’ conduct violates the terms of the J-51 Program and New York City’s Rent Stabilization Law (“RSL”), as codified by the Rent Stabilization Code (“RSC”), issued by DHCR.

27. Defendants’ conduct violates the New York Consumer Protection Act, N.Y. General Business Law (GBL) § 349, *et seq.*, inasmuch as it is part of an overarching pattern and practice of:

- a. collecting rents in the amounts that are not permitted under the law based on misrepresentations as to an apartments’ legal regulated rent;
- b. collecting rents in amounts that are not permitted under the law based on misrepresentations as to the cost and status of individual apartment improvements; and

- c. falsely representing that apartments are not rent-stabilized.

28. Plaintiffs, individually and on behalf of the Class, seek a judgment from this

Court, providing:

- a. declaratory and injunctive relief, directing Defendants to provide rent-stabilized leases reflecting the accurate and legal amount permitted by law;
- b. an independent audit and accounting of rents demanded by Defendants;
- c. disgorgement of any rent overcharges;
- d. compensatory, statutory, and punitive damages;
- e. reasonable attorneys' fees and expenses; and
- f. any other relief this Court deems just and proper under the circumstances.

## **PARTIES**

### **Plaintiffs**

29. Plaintiff Theresa Maddicks lives in Apartment 14 at 106 Convent Avenue in Manhattan.

30. Apartment 14 was allegedly decontrolled in 2011, and the first rent-stabilized lease had a legal regulated rent of \$1657.60.

31. However, the first rent-stabilized tenant of Apartment 14 was provided with a lease containing a preferential rent of \$1,100, and all future rent increases were required to be based upon that figure.

32. While Maddicks' monthly rent should be \$1178.55, her monthly rent amount is currently \$1707.56.

33. Plaintiff John Ambrosio lives in Apartment 17 at 106 Convent Avenue in Manhattan.



34. Apartment 17 was allegedly decontrolled in 2007, and the first rent-stabilized lease had a legal regulated rent of \$1799.50.

35. However, the first rent-stabilized tenant of Apartment 17 was provided with a lease containing a preferential rent of \$1,250, and all future rent increases were required to be based upon that figure.

36. Moreover, Apartment 17 was listed as a high rent vacancy and purportedly deregulated in 2010 which would have required over \$17,000 in IAIs to be justifiable.

37. There is no evidence that IAIs in that amount were implemented in Apartment 17; to the contrary, an inspection of the apartment supports the conclusion that no such improvements were made.

38. Plaintiff Paul and Samuel Wilder live in Apartment 1 at 110 Convent Avenue in Manhattan.

39. Apartment 1 was listed as a “High Rent Vacancy” and purportedly deregulated in 2011, which would have required over \$19,000 in IAIs to cross the high rent vacancy threshold.

40. There is no evidence that IAIs in that amount took place in Apartment 1; to the contrary, an inspection of that apartment supports the conclusion that no such improvements were made.

41. Plaintiff Alyssa O’Connell lives in Apartment 11 at 110 Convent Avenue in Manhattan.

42. Between 2009 and 2010, the legal regulated rent for Apartment 11 was increased 136%, which would have required over \$30,000 in IAIs to be justifiable.

43. There is no evidence that IAIs in that amount were implemented in Apartment 11; to the contrary, an inspection of that apartment supports the conclusion that no such improvements were made.

44. Plaintiff Johanna S. Karlin lives in Apartment 4 at 408 W. 129<sup>th</sup> Street in Manhattan.

45. Apartment 4 was not registered from 2004 to 2005, 2007 to 2010, and 2012 to 2015.<sup>2</sup>

46. Plaintiff Karlin is entitled to a rent-stabilized lease with monthly rent calculated as described in ¶ 152-154.

47. Upon information and belief, that calculation would result in a monthly rent over than Plaintiff Karlin's current rent.

48. Plaintiff Brian Wagner lives in Apartment 14 at 408 W. 129<sup>th</sup> Street in Manhattan.

49. Between 2012 and 2013, the legal regulated rent for Apartment 14 was increased 97%, which would have required over \$31,000 in IAIs to be justifiable.

50. There is no evidence that IAIs in that amount were implemented in Apartment 14; to the contrary, an inspection of that apartment supports the conclusion that no such improvements were made.

51. Plaintiffs Tyler Strickland and Daniel Robles live in Apartment 15 at 408 W. 129<sup>th</sup> Street in Manhattan.

52. Between 2013 and 2014, the legal regulated rent for Apartment 15 was increased 82%, which would have required over \$25,000 in IAIs to be justifiable.

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<sup>2</sup> Apartment 4 was registered as "Exempt: Owner Occupied/Employee in 2011.

53. There is no evidence that IAI in that amount were implemented in Apartment 15; to the contrary, an inspection of that apartment supports the conclusion that no such improvements were made.

54. Plaintiff Elena Ricardo lived in Apartment 20 at 408 W. 129<sup>th</sup> Street in Manhattan.

55. Between 2013 and 2014, the legal regulated rent for Apartment 20 increased 104%, which would have required over \$29,000 in IAIs to be justifiable.

56. There is no evidence that IAIs in that amount were implemented in Apartment 20; to the contrary, an inspection of that apartment supports the conclusion that no such improvements were made.

57. Plaintiff Liam Cudmore lives in Apartment 28 at 408 W. 129<sup>th</sup> Street in Manhattan.

58. Between 2009 and 2010, the legal regulated rent for Apartment 28 was increased 113%, which would have required over \$32,000 in IAIs to be justifiable.

59. There is no evidence that IAIs in that amount were implemented in Apartment 28; to the contrary, an inspection of that apartment supports the conclusion that no such improvements were made.

60. Plaintiff Jennifer Mak lives in Apartment 4 at 412 W. 129<sup>th</sup> Street in Manhattan.

61. Plaintiff Mak was provided with a free-market lease, although her apartment is registered as rent-stabilized lease with DHCR.

62. Plaintiff Joshua Berg lives in Apartment 6 at 412 W. 129<sup>th</sup> Street in Manhattan.

63. Apartment 6 was not registered from 2002 to 2011.

64. Plaintiff Berg is entitled to a rent-stabilized lease with a monthly rent calculated as described in ¶¶ 152-154.

65. Upon information and belief, that calculation would result in a monthly rent lower than Plaintiff Berg's current rent.

66. Plaintiffs Anish Jain and John Curtin live in Apartment 11 at 412 W. 129<sup>th</sup> Street in Manhattan.

67. Apartment 11 was unregistered from 2003 to 2009, and from 2012 to 2014.

68. Plaintiffs Jain and Curtin are entitled to a rent-stabilized lease with a monthly rent calculated as described in ¶¶ 152-154.

69. Upon information and belief, that calculation would result in a monthly rent lower than Jain's and Curtin's current rent.

70. Plaintiffs Jonathan Fieweger and Maria Funcheon live in Apartment 20 at 412 W. 129<sup>th</sup> Street in Manhattan.

71. Apartment 20 was unregistered from 2002 to 2010 and from 2012 to 2015. Plaintiffs Fieweger and Funcheon are entitled to a rent-stabilized lease with a monthly rent calculated as described in ¶¶ 152-154.

72. Upon information and belief, that calculation would result in a monthly rent lower than Plaintiffs Fieweger's and Funcheon's current rent.

73. Plaintiff Jordani Sanchez lives in Apartment 25 at 412 W. 129<sup>th</sup> Street in Manhattan.

74. Apartment 25 was unregistered from 2003 to 2009.

75. Plaintiff Sanchez is entitled to a rent-stabilized lease with a monthly rent calculated as described in ¶¶ 152-154.

76. Upon information and belief, that calculation would result in a monthly rent figure in an amount lower than Sanchez's current rent.

77. 510 W. 134<sup>th</sup> Street receives J-51 tax credits from New York City, entitling the tenants of that building to a rent-stabilized lease.

78. Plaintiff Melissa Mickens lives in Apartment 33 at 510 W. 134<sup>th</sup> Street in Manhattan.

79. According to Plaintiff Mickens' rental history on file with DHCR, she was not provided with a rent-stabilized lease.

80. Plaintiff M.D. Ivey lived in Apartment 53 at 510 W. 134<sup>th</sup> Street in Manhattan.

81. Between 2011 and 2012, the legal regulated rent for Apartment 53 was increased 33%, which would have required over \$20,000 in IAIs to be justifiable.

82. There is no evidence that IAIs in that amount were implemented in Apartment 53; to the contrary, an inspection of that apartment supports the conclusion that no such improvements were made.<sup>3</sup>

83. 512 W. 134<sup>th</sup> Street receives J-51 tax credits from New York City, entitling the tenants of that building to a rent-stabilized lease.

84. Plaintiff Devin Elting lives in Apartment 33 at 512 W. 134<sup>th</sup> Street in Manhattan.

85. According to Plaintiff Elting's rental history on file with DHCR, he was not provided with a rent-stabilized lease.

86. Plaintiff Semi Pak lives in Apartment 42 at 512 W. 134<sup>th</sup> Street in Manhattan.

87. According to Plaintiff Pak's rental history on file with DHCR, she was not provided with a rent-stabilized lease.

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<sup>3</sup> Plaintiff Ivey was also entitled to a rent stabilized lease during her tenancy at 510 W. 134<sup>th</sup> Street, but did not receive one.

88. 535 W. 155<sup>th</sup> Street receives J-51 tax credits from New York City, entitling the tenants of that building to a rent-stabilized lease.

89. Plaintiff Kaitlin Campbell lives in Apartment 41 at 535 W. 155<sup>th</sup> Street in Manhattan.

90. Plaintiff Campbell's rental history on file with DHCR states that she was provided a rent-stabilized lease.

91. Plaintiff Campbell was actually provided with a free market lease.

92. Plaintiff Sarah Norris lives in Apartment 63 at 3750 Broadway in Manhattan.

93. Between 2011 and 2012, the legal regulated rent for Apartment 64 increased 254%, which would have required over \$56,700 in IAs to be justifiable.

94. There is no evidence that IAs in that amount were implemented in Apartment 63. To the contrary, an inspection of that apartment supports the conclusion that no such improvements were made.

95. Plaintiff Mikiala Jamison lives in Apartment 3 at 555 W. 151<sup>st</sup> Street in Manhattan.

96. Apartment 3 has not been registered since 2012.

97. Jamison is entitled to a rent-stabilized lease with a monthly rent calculated as described in ¶¶ 152-154.

98. Upon information and belief, that calculation would result in a monthly rent lower than Jamison's current rent.

99. Plaintiff Sheresa Jenkins-Risteski lives in Apartment 31 at 555 W. 151<sup>st</sup> Street in Manhattan.

100. In 2006, Apartment 31 was impermissibly registered as exempt, although 555 W. 151<sup>st</sup> Street was receiving J-51 tax credits at that time.

101. Apartment 31 was registered as exempt until 2013, when it was registered for one year at a legal regulated rent of \$1715.00.

102. In 2014, Apartment 31 was again registered as exempt, which would have required over \$13,500 in IAIs to be justifiable.

103. There is no evidence that IAIs in that amount were implemented in Apartment 31; to the contrary, an inspection of that apartment supports the conclusion that no such improvements were made.

104. Plaintiff Yanira Gomez lives in Apartment 24 at 605 W. 151<sup>st</sup> Street in Manhattan.

105. In 2009, Apartment 24 was registered as exempt, which would have required over \$30,000 in IAIs to be justifiable.

106. There is no evidence that IAIs in that amount were implemented in Apartment 24; to the contrary, an inspection of that apartment supports the conclusion that no such improvements were made.

107. Plaintiff Kristen Piro lives in Apartment 3A at 545 Edgecombe Avenue in Manhattan.

108. Apartment 31 was listed as a “High Rent Vacancy” and deregulated in 2013, which would have required over \$81,700 in IAIs to cross the high rent threshold in place at that time.

109. There is no evidence that IAIs in that amount were implemented in Apartment 3A; to the contrary, an inspection of that apartment supports the conclusion that they were not.

## **Defendants**

110. Defendant Big City Properties, LLC is a limited liability company with its principal place of business in New York City.

111. Upon information and belief, Big City Properties LLC serves as the holding company for the LLCs in the Big City Portfolio.

112. Defendant Big City Real Estate Management, LLC is a limited liability company with its principal place of business in New York City.

113. Big City Real Estate Management, LLC is the property management company for the buildings that make up the Big City Portfolio.

## **THE APPLICABLE STATUTORY AND REGULATORY ENVIRONMENT**

### **The J-51 Program**

114. In 1955, the New York State Legislature enacted Real Property Tax Law (“RPTL”) § 489, which authorized cities to promulgate local laws that would provide multiple dwelling owners with tax incentives to rehabilitate their properties or convert them to residential use.

115. Pursuant to the 1955 Legislative Annual, the purpose of the J-51 Program was to “provide decent safe and sanitary homes for lower income families.” NY Legis. Ann., 1955, at 267-268.

116. After the enactment of RPTL § 489, the City of New York adopted Administrative Code § J51-2.5<sup>4</sup> (now Administrative Code § 11-243) as an incentive to reward

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<sup>4</sup> The J-51 Program is the successor to former J-41-2.4 of the Administrative Code. Thereafter, it was renumbered as § J51-2.5.



residential major capital improvement, moderate rehabilitation and conversion projects with real property tax exemption and abatement benefits for certain enumerated projects.

117. While the J-51 Program has been expanded over the years to cover various types of rehabilitations and conversions, its focus has essentially remained to “increase the supply of moderate rental housing that meets satisfactory standards.”

118. The J-51 Program has been repeatedly amended to impose additional requirements concerning, *inter alia*, the use of the buildings and apartments that are eligible for J-51 treatment.

119. In furtherance of its original purpose, to strike a balance between creating affordable and safe housing, the City of New York adopted Administrative Code § 11-244, which provides in relevant part as follows:

- d. During the period of tax exemption or abatement pursuant to this section, each of the following shall be a condition precedent to the continuation of the exemption and/or abatement:

\* \* \*

- (ii) all dwelling units, except owner occupied units, shall be subject to the emergency housing rent control law or the local housing rent control act or the tenant protection act of nineteen hundred seventy-four, or any local laws enacted pursuant thereto or the rent stabilization law of nineteen hundred sixty-nine;

\* \* \*

See Administrative Code § 11-244.

120. In other words, as a condition to receiving Benefits pursuant to the J-51 Program, a building owner must provide its tenants with the protections of the rent stabilization laws.

121. Indeed, the apartments in a building receiving Benefits pursuant to the J-51 Program, must be subject to the rent stabilization laws while the building is receiving those benefits, even if those apartments would otherwise be exempt.

122. In 1985, the Legislature amended Real Property Tax Law § 489 so as to allow rent regulation to continue after the expiration of the J-51 Benefits until the first vacancy thereafter, unless each and every lease and renewal issued during the period during which the Building is receiving Benefits contains a prominent notice informing the tenant that rent regulation will expire when the tax benefits expire, and the approximate date thereof. RPTL § 489(7)(b)(2).

123. To that end, the City of New York adopted Administrative Code § 26-504(c) provides, in relevant part, that:

... Upon the expiration or termination for any reason of the benefits of section 11-243 or section 11-244 of the code or article eighteen of the private housing finance law any such dwelling unit shall be subject to this chapter until the occurrence of the first vacancy of such unit after such benefits are no longer being received or if each lease and renewal thereof for such unit for the tenant in residence at the time of the expiration of the tax benefit period has included a notice in at least twelve point type informing such tenant that the unit shall become subject to deregulation upon the expiration of such tax benefit period and states the approximate date on which such tax benefit period is scheduled to expire, such dwelling unit shall be deregulated as of the end of the tax benefit period; provided however, that if such dwelling unit would have been subject to this chapter or the emergency tenant protection act of nineteen seventy-four to the same extent and in the same manner as if this subdivision had never applied thereto.

Administrative Code § 26-504(c); see also, Rent Stabilization Code § 2520.11(o)(2).

## **The RSL and RSC**

124. Over a million New York City housing units are subject to some form of rent regulation.

### **Rent Stabilization**

125. In 1969, citing a continuing shortage of residential rental housing, the New York City Council enacted its rent stabilization statute, the RSL, N.Y. Unconsol. Law § 26-501 (McKinney).

126. Thereafter, the New York City Council gave DHCR authority to promulgate regulation in furtherance of the RSL. DHCR did so by establishing the RSC, N.Y. Comp. Codes R. & Regs. Tit. 9, § 2520.1, *et seq.*

127. The RSL and RSC limit the rent that landlords can charge and circumscribe the manner in which landlords are able to raise rents, cover the cost of improvements, and deregulate apartments.

128. The rent that a landlord can charge for a regulated unit is based on an initial legal rent.

129. The initial legal rent is based on the rent the previous tenant paid.

130. Landlords of rent-stabilized apartments may be entitled to increase rents:

(a) when permitted by the Rent Guidelines Board (“RGB”);

(b) following DHCR approved Major Capital Improvements (“MCIs”);

(c) an increase following a vacancy; and/or

(d) following IAIs that are properly supported by documentation, and made either during the vacancy of an apartment or agreed upon by the tenant.

### ***RGB Rental Increases***

131. In New York City, the RGB sets the maximum rates for rent increases once a year that are effective for leases commencing on or after October 1<sup>st</sup> of each year through September 30<sup>th</sup> of the following year. RSC § 2522.4.

132. For the past two years, allowable rent increases have been 0% for one-year leases, and 2% for two-year leases.

### ***MCI Rental Increases***

133. When a landlord performs an MCI, the landlord is entitled to collect from each rent-regulated tenant a rental increase.

134. The MCI increase is allocated on a per-room basis, and is required to be approved by the DHCR. RSC § 2522.4(2).

135. A landlord who performs an MCI on a residential apartment building subject to rent regulation is permitted to adjust the rent of rent regulated apartments in the building based on the actual, verified, cost of the improvements. *Id.*

136. An MCI cannot be an ordinary repair but rather work performed for the operation, preservation, and maintenance of the building. *Id.*

137. An MCI must benefit all tenants. *Id.*

138. MCI increases are equal to 1/60<sup>th</sup> of the cost (including installation but excluding finance charges), divided by the number of rooms in the building, charged per-apartment and based on the number of rooms. *Id.*

### ***Vacancy Rental Increases***

139. Subject to certain statutorily-defined adjustments, upon any vacancy in a rent-stabilized apartment, a landlord is permitted to increase the rent amount by 20%. RSC § 2522.8.

### ***IAI Rental Increases***

140. A landlord is entitled to secure rent increases based on a substantial modification or enlargement of a dwelling space, and/or upon provision of additional services, improvements, equipment, furniture, or furnishings to a rent-stabilized apartment. RSC § 2522.4(a).

141. If a tenant occupies an apartment for which an IAI rental increase is sought, the landlord must get the tenant's written consent for the IAI rental increase. RSC § 2522.4(a)(1).

142. Ordinary maintenance and repairs do not qualify for IAI rental increases. *Id.*

143. In a building with 35 or fewer units, a landlord may add to a rent-stabilized tenant's rent the equivalent of 1/40<sup>th</sup> of the cost of the new service or equipment (including installation costs, but not finance charges). *Id.*

144. In a building with 36 or more units, a landlord may add to a rent-stabilized tenant's rent the equivalent of 1/60<sup>th</sup> of the cost of the new service or equipment (including installation costs, but not finance charges). *Id.*

145. Further, the base from which a rent-regulated tenant's payments are calculated is the legal regulated rent charged for a given apartment. The base rent can be increased by adding a percentage of the cost the landlord has spent on IAIs.

146. If a tenant challenges any IAIs, landlords of rent regulated buildings are required to demonstrate that the cost of the improvements is supported by adequate documentation.

### ***Decontrol of Rent Controlled Apartments***

147. Rent control limits the rent an owner may charge for an apartment, and restricts the right of an owner to evict tenants. RSC § 2525.1.

148. When a tenant moves out of a rent controlled apartment, the apartment becomes decontrolled. 9 NYCRR 2200.2(f)(17).

149. If the decontrolled apartment is in a building built before January 1, 1974, and is in a building containing six or more units, the apartment becomes rent-stabilized, unless the apartment is above the then existing Deregulation Rent Threshold. RSC § 2520.11

150. The owner must register the unit with DHCR by completing an Initial Apartment Registration, and must provide a copy to the first rent-stabilized tenant a copy by certified mail. RSC § 2528.2

151. The owner may charge the first rent-stabilized tenant a rent negotiated between them, which is to be a fair market rent. RSC §2521.1(a)(1).

### **Base Date Rent for Unregistered Apartments**

152. As a general rule, when examining rent overcharge claims, courts will look to the rent reflected in the annual DHCR registration statement filed four years prior to a complaint (the “Base Date”).

153. However, when the rent charged on the Base Date cannot be determined, a full rental history from the Base Date is not provided, or the Base Date rent is the product of a fraudulent scheme to deregulate the apartment, or a rental practice proscribed under RSC § 2525.3(c) and (d) has been committed, courts utilize a default formula to ascertain the Base Date rent for any overcharge complaint (the “Default Formula”). RSC § 2526.1 (g)

154. When applying the Default Formula, courts fix the rent on the Base Date by choosing the lowest of (a) the lowest rent registered rent for a comparable apartment in the building in effect on the date that Plaintiff first occupied their apartment; (b) the plaintiff’s initial rent reduced by the percentage adjustment authorized for any vacancy lease; or (c) the last registered rent paid by the prior tenant (if within four years of the date of the complaint). In the event that none of the foregoing is available, or utilization of same would be inappropriate, the

rent on the Base Date shall be calculated by using data and sampling methods promulgated by the DHCR. RSC § 2526.1(g)

### **THE DEFENDANTS' UNLAWFUL ACTIVITIES**

155. Upon information and belief, the buildings in the Big City Portfolio are subject to the RSL by virtue of the fact that they are multiple dwelling residential buildings, containing more than six (6) units, which were built prior to 1974, and not operated as a cooperative or condominium.

156. Upon information and belief, the apartments of Plaintiffs and the Class were all subject to rent control and/or rent stabilization and previously registered as such with DHCR.

157. Upon information and belief, Defendants, and their predecessors in interest, knowingly and willfully failed to comply with the requirements of the RSL by, among other things, failing to provide tenants in J-51 buildings with rent-stabilized leases, failing properly to register the apartments with DHCR, increasing rents beyond the limits set forth by the RGB, improperly declaring the apartments deregulated due to “High Rent Vacancy,” and failing to negotiate actual fair market leases with the first stabilized tenants in formerly rent-controlled apartments.

158. Defendants have engaged in a pattern and practice of:

- (a) altering and misrepresenting the legal regulated rent records provided to tenants to justify charging higher initial rents;
- (b) inflating and/or misrepresenting the amount of IAIs that were completed; and
- (c) using such false information to increase rents and/or deregulate apartments that should remain rent stabilized.

### **CLASS ALLEGATIONS**

### **The Class and Sub-Class**

159. This action may be properly maintained as a class action under the provisions of Article 9 of the CPLR.

160. The proposed Class consists of current and former tenants of Big City Portfolio buildings who, between December 6, 2012 and the present date, resided in rent-stabilized or unlawfully-deregulated apartments, and who paid rent in excess of the legal limit based on misrepresentations by Defendants, or any predecessor in interest, concerning legal regulated rents and improvements (the “Class”).

161. The Class seeks certification of claims for damages.

162. In addition, Plaintiffs propose a Sub-Class Consisting of all current tenants of Big City Portfolio building, who currently reside in a rent-stabilized apartment or unlawfully deregulated apartment (the “Sub-Class”).

163. The Sub-Class seeks certification of claims for declaratory and injunctive relief as described more fully below.

### **Class and Sub-Class Meet Requirements for Certification**

164. The Class and Sub-Class are so numerous that joinder of all members is impracticable. Although the exact number and identities of the members of the Class and Sub-Class are currently unknown to Plaintiffs, it is reasonable to conclude that the practices complained of herein affect hundreds, if not thousands, of current and former tenants residing in Big City Portfolio buildings.

165. Nearly all factual, legal, and statutory relief issues that are raised in this Complaint are common to each of the members of the Class and Sub-Class and will apply uniformly to every member of the Class and Sub-Class.



166. The claims of the representative Plaintiffs are typical of the claims of each member of the Class. They, like all other members of the Class, sustained damages arising from Defendants' rent overcharges. The representative Plaintiffs and the members of the Class were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct.

167. The claims of certain of the representative Plaintiffs are typical of the claims of each member of the Sub-Class. They, like all other members of the Sub-Class, are entitled to the same declaratory and injunctive relief as the members of the Sub-Class.

168. The representative Plaintiffs will fairly and adequately represent and protect the interests of the Class and Sub-Class. There are no material conflicts between the claims of the representative Plaintiffs and the members of the Class and Sub-Class that would make class certification inappropriate.

169. The counsel selected to represent the Class and Sub-Class will fairly and adequately protect the interest of the Class and Sub-Class. They are lawyers who have experience in class and complex litigation and are competent counsel for this class action litigation. Counsel for the Class and Sub-Class will vigorously assert the claims of all members of the Class and Sub-Class.

170. This action is properly maintained as a class action in that common questions of law and fact exist as to the members of the Class and Sub-Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- a. the interests of the members of the Class and Sub-Class in individually controlling the prosecution or defense of separate actions;

- b. the impracticability or inefficiency of prosecuting or defending separate actions;
- c. the extent and nature of any litigation concerning the controversy already commenced by or against members of the Class and Sub-Class;
- d. the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- e. the difficulties likely to be encountered in the management of a class action.

171. Among the numerous questions of law and fact common to the Class and Sub-Class are:

- a. whether the Defendants act or refuse to act on grounds generally applicable to the Plaintiffs, the Class, and the Sub-Class
- b. whether the Defendants have established a pattern, practice, or policy of misrepresenting tenants' rent stabilization status or of failing to notify tenants that their apartments are, or should be, rent-stabilized;
- c. whether the Defendants have established a pattern, practice, or policy of unlawfully deregulating apartments;
- d. whether the Defendants have established a pattern, practice, or policy of misrepresenting legal regulated rents;
- e. whether the Defendants have established a pattern, practice, or policy of failing to provide rent-stabilized leases to tenants in J-51 buildings;
- f. whether Defendants have established a pattern, practice, or policy of misrepresenting the amounts of IAIs performed on individual apartments;
- g. whether Defendants have established a pattern, practice, or policy of overcharging rent;
- h. whether Defendants' practices, acts, communications, and representations constitute deceptive acts or practices in the conduct of business, trade, and commerce, and/or in the furnishing of services in violation of GBL § 349;
- i. whether Defendants' practices, acts, and conduct violate the RSL and RSC;

- j. to what extent Plaintiffs and members of the Class are entitled to damages; and
- k. to what extent Plaintiffs and members of the Sub-Class are entitled to injunctive relief.

**COUNT ONE**  
**VIOLATION OF THE RENT STABILIZATION LAW § 26-512**  
*(on behalf of the Class)*

172. Plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint.

173. At all times relevant hereto, apartments of Plaintiffs and the members of the Class were subject to the provision of the RSL.

174. Defendants, either directly or indirectly, charged Plaintiffs and members of the Class market rate rents or rents at rates otherwise in excess of the legal regulated rent for their apartments.

175. Defendants, either directly or indirectly, overcharged Plaintiffs and the members of the Class an amount equal the difference between their monthly rents and the appropriate legal regulated rent-stabilized rents.

176. Upon information and belief, at all relevant times, the rent overcharges by Defendants were willful.

177. Plaintiffs and members of the Class are entitled to recover monetary damages from Defendants based on the unlawful overcharges, as well as an award of interest thereon.

**COUNT TWO**  
**VIOLATION OF RSL § 26-512**  
*(on behalf of the Sub-Class)*

178. Plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint.

179. A justiciable controversy exists between the parties in that, among other things, Plaintiffs and the members of the Sub-Class allege that their respective apartments are subject to rent stabilization coverage, pursuant to the RSL.

180. Defendants, either directly or indirectly, entered into leases with Plaintiffs and the members of the Sub-Class, which incorrectly, falsely, and illegally misrepresented the amount of rent Defendants and/or the entities controlled by Defendants were legally entitled to collect and/or falsely represented that their apartments were not subject to rent stabilization.

181. As described above, and upon information and belief, Defendants' conduct was willful and designed to remove the apartments of Plaintiffs and members of the Sub-Class from the protections of rent stabilization.

182. A justiciable controversy exists in that, upon information and belief, Defendants dispute that the apartments of Plaintiffs and members of the Sub-Class are subject to rent stabilization under the RSL and RSC.

183. Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

184. By reason of the foregoing, Plaintiffs and members of the Sub-Class are entitled to a declaratory judgment adjudging and determining:

- a. the apartments of Plaintiffs and members of the Sub-Class are each subject to the RSL and RSC;
- b. Plaintiffs and members of the Sub-Class are each entitled to a rent-stabilized lease in a form promulgated by the DHCR;
- c. the amount of the legal regulated rent for the apartments of Plaintiffs and members of the Sub-Class;
- d. any leases offered by Defendants to Plaintiffs and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and

- e. Plaintiffs and members of the Sub-Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, said Plaintiffs and members of the Sub-Class.

185. Plaintiffs and members of the Sub-Class are entitled to reformation of their leases to provide that their units were and are, in fact, subject to rent stabilization.

186. Plaintiffs and members of the Sub-Class are entitled to reformation of their leases to represent accurately the amount of rent Defendants are legally entitled to charge Plaintiffs and members of the Sub-Class.

**COUNT THREE**  
**DECLARATORY RELIEF**  
*(on behalf of the Sub-Class)*

187. Plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint.

188. A justiciable controversy exists between the parties in that, among other things, Plaintiffs and members of the Sub-Class allege that their respective apartments are subject to rent stabilization coverage.

189. Notwithstanding the clear requirements of the RSL and RSC, Defendants have not provided Plaintiffs and members of the Sub-Class with rent-stabilized leases and/or rent-stabilized leases in the correct amount, as required by law.

190. Moreover, as set forth in more detail above, and upon information and belief, Defendants' conduct was willful and designed to remove the apartments of Plaintiffs and members of the Sub-Class from the protections of rent stabilization.

191. Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

192. By reason of the foregoing, Plaintiffs and members of the Sub-Class are entitled to a declaratory judgment adjudging and determining:

- a. the apartments of Plaintiffs and members of the Sub-Class members are subject to the RSL and RSC and any purported deregulation by Defendants was invalid as a matter of law;
- b. Plaintiffs and members of the Sub-Class are each entitled to a rent-stabilized lease in a lease form promulgated by DHCR;
- c. the amount of the legal regulated rent for the apartments of Plaintiffs and members of the Sub-Class;
- d. any leases offered by Defendants to Plaintiffs and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and
- e. Plaintiffs and members of the Sub-Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, said Plaintiffs and members of the Sub-Class.

**COUNT FOUR**  
**VIOLATION OF GBL § 349**  
*(on behalf of the Class)*

193. Plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint.

194. Defendants have engaged and continue to engage in deceptive consumer-orientated acts and practices by subjecting rent-stabilized tenants, including Plaintiffs and members of the Class, to demands for rent above that permitted under law based upon its misrepresentations of legal regulated rents and performed IAIs that were not made or insufficient to justify the dramatic rent increases charged, for the purposes of illegal commercial gain.

195. Defendants' deceptive consumer orientated acts and practices are misleading to a reasonable consumer in a material way.

196. Plaintiffs and members of the Class have suffered injury as a result of Defendants' deceptive consumer-orientated acts and practices.

197. Defendants' deceptive consumer-orientated acts and practices have had a broad impact on consumers at large and cause injury and harm to the public interest.

198. Defendants' practices, acts, communications, and representations violate GBL § 349, because they constitute deceptive acts or practices in the conduct of business, trade, and commerce, and/or in the furnishing of services.

**COUNT FIVE**  
**ILLEGALITY AND MISTAKE OF CONTRACT**  
*(on behalf of the Class)*

199. Plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint.

200. Defendants, either directly or indirectly, entered into leases which incorrectly, falsely, and illegally misrepresented the amount of rent Defendants and/or the entities controlled by Defendants were legally entitled to collect.

201. Plaintiffs and members of the Class are entitled to recover monetary damages from Defendants based upon Defendants' illegal, false, and/or mistaken provisions in their leases, as well as an award of interest thereon.

**COUNT SIX**  
**ILLEGALITY AND MISTAKE OF CONTRACT**  
*(on behalf of the Sub-Class)*

202. Plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this complaint.

203. Defendants, either directly or indirectly, entered into leases which incorrectly, falsely, and illegally misrepresented the amount of rent Defendants and/or the entities controlled by Defendants were legally entitled to collect.

204. Plaintiffs and members of the Sub-Class are entitled to reformation of their leases to provide that their units were and are, in fact, subject to rent stabilization.

205. Plaintiffs and members of the Sub-Class are entitled to reformation of their leases to represent accurately the amount of rent Defendants are legally entitled to charge Plaintiffs and members of the Sub-Class.

### **PRAYER FOR RELIEF**

WHEREFORE, and for the foregoing reasons, Plaintiffs pray to this Court for the following relief:

- A. Certifying the Class and Sub-Class proposed by Plaintiffs, appointing the Plaintiffs as representatives of the Class and Sub-Class; and appointing Plaintiffs' counsel as Class Counsel for the Class and Sub-Class;
- B. Appropriate money damages against Defendants resulting from their violation of the RSL and RSC;
- C. Because Plaintiffs and members of the Sub-Class have no adequate remedy at law for Defendants' ongoing violations of the RSL and RSC, against Defendants for injunctive relief to undertake all appropriate and corrective remedial measures, including, but not limited to, appointing an independent individual or entity to audit and undertake an accounting of every rent-stabilized and deregulated apartment in the Big City Portfolio, and reforming leases to comply with the RSL and RSC where necessary;
- D. Temporarily, preliminarily, and permanently enjoining Defendants from continuing to violate the RSL and RSC;



- E. An order the Defendants have violated GBL § 349 and providing appropriate relief, including treble damages, and attorneys' fees;
- F. Against Defendants for disgorgement of profits from fees earned as a direct and proximate result of rent overcharges;
- G. Against Defendants a judgment in the amount of Plaintiffs' attorneys' fees, costs and disbursements in an amount to be determined at a hearing or trial; and
- H. Granting such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all issues so triable.

DATED: New York, New York  
December 6, 2016

**NEWMAN FERRARA LLP**

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