

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

-----X
ANDREW KOZAK;
DANIEL PORVIN;
DARLA STACHECKI;
MONIQUE SAFFORD;
MICHAEL MAHER;
and ANA SUSSMANN

Index No. _____ / 2020

on behalf of themselves and all others similarly situated,

SUMMONS

Plaintiffs,

FILED ON: _____

-against-

KUSHNER VILLAGE 329 EAST 9TH, LLC; and
WESTMINSTER MANAGEMENT, a/k/a WESTMINSTER
MANAGEMENT, LLC, a/k/a WESTMINSTER CITY
LIVING

Defendants.

-----X

VENUE

Plaintiffs designate New York County as Venue. Venue is based upon Plaintiffs' address at 329-335 East 9th Street, New York, New York, and the location of the transactions complained of.

TO THE PERSON(S) NAMED AS DEFENDANT(S) ABOVE:


PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint of the Plaintiff(s) herein and to serve a copy of your answer on the attorneys for the plaintiff(s) at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT, should you fail to answer, a judgment will be entered against you by default for the relief demanded in the Complaint.

Dated: September 15, 2020

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 09/15/2020



Yours, Etc.

GRIMBLE & LOGUIDICE, LLP

Attorneys for the Plaintiffs

By: Robin LoGuidice

217 Broadway, Suite 304

New York, NY 10007

212 349-0450

rml@grimblelaw.com

Jack L. Lester

LAW OFFICES OF JACK LESTER

Co-Counsel for Plaintiffs

By: Jack L. Lester, Esq.

99 Park Avenue, Suite 1100

New York, NY 10016

(212) 832-5357

jllcomlaw@aol.com

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

-----X
ANDREW KOZAK;
DANIEL PORVIN;
DARLA STACHECKI;
MONIQUE SAFFORD;
MICHAEL MAHER;
and ANA SUSSMANN

Index No. _____ / 2020

on behalf of themselves and all others similarly situated,

VERIFIED
COMPLAINT

Plaintiffs,

-against-

KUSHNER VILLAGE 329 EAST 9TH, LLC; and
WESTMINSTER MANAGEMENT, a/k/a WESTMINSTER
MANAGEMENT, LLC, a/k/a WESTMINSTER CITY
LIVING

Defendants.

-----X
PLEASE TAKE NOTICE, that Plaintiffs, on behalf of themselves and all others similarly situated, hereby appear by their attorneys, Grimble & LoGuidice, LLP, and the Law Offices of Jack Lester, and complain of the Defendants as follows:

PRELIMINARY STATEMENT

1. Plaintiffs are tenants of a series of four adjacent buildings located at 329-335 East 9th Street, New York, New York (collectively the "Subject Buildings"), and bring this action on behalf of themselves and all others similarly situated, against Defendants-Owners of the Subject Buildings for relief related to unlawful and dangerous construction in those buildings and Defendants' failure to obtain Certificates of Occupancy ("COs).

2. Defendants added a new floor and completed construction of new penthouses on the roof of each of the Subject Buildings in 2015 and offered the penthouses for rent.

3. Upon information and belief, the penthouses were all occupied by the end of August 2015 and have been continuously occupied since that date.

4. As a condition of the addition of penthouses to the Subject Buildings, Defendants were required by the New York City Department of Buildings (“DOB”) to obtain a Certificate of Occupancy (“CO”) for each of the Subject Buildings.

5. Instead of expeditiously proceeding to obtain the legally required COs, Defendants applied for and received a series of Temporary Certificates of Occupancy (“TCOs”) from on or about July 2015 through the date herein.

6. Upon information and belief, Defendants have perpetrated a fraud by claiming that the penthouses have been continuously under construction in order to renew its TCOs indefinitely in order to avoid complying with the DOB’s requirements for obtaining COs.

7. As part of this fraudulent scheme Defendants have failed to disclose the existence of the new, occupied residential units from public agencies, including the DOB, New York Department of Housing Preservation and Development (“HPD”); the Board of Standards and Appeals (“BSA”); the New York City Department of Finance (“DIF”); and New York City Civil Court, by filing false documents and false sworn statements with said agencies that failed to disclose the increased occupancy of the buildings.

8. As a result thereof, Defendants have circumvented fire safety and other protections required by the DOB including: failing to install operable sprinklers throughout the Subject Buildings; failing to legalize the height of the existing boiler chimney that services all four buildings; and other fire egress conditions that threaten the lives and safety of the Plaintiffs; other tenants similarly situated; and the public.

9. Plaintiffs seek damages, on behalf of themselves and others similarly situated, and injunctive relief to compel Defendants to comply with the law; obtain COs for the Subject Buildings; and declaratory and injunctive relief under Multiple Dwelling Law (“MDL”) §302, barring Defendants from collecting rent until such time as the safety issues are corrected and a CO obtained for each of the Subject Buildings.

PARTIES and SUBJECT BUILDINGS

SUBJECT BUILDINGS

10. The Subject Buildings have tax map designations as follows:

- a. 329 East Ninth Street ("329E9"), which bears tax map designation Block 451, Lot 47;
- b. 331 East Ninth Street ("331E9"), which bears tax map designation Block 451, Lot 46;
- c. 333 East Ninth Street ("333E9"), which bears tax map designation Block 451, Lot 45;
- d. 335 East Ninth Street ("335E9"), which bears tax map designation Block 451, Lot 44.

PARTIES

11. Plaintiffs currently reside and/or do business in the State of New York, County of New York, and in the Subject Buildings as follows:

- a. ANDREW KOZAK ("Kozak") is a tenant and resident of Apt. 6 in 335E9.
- b. DANIEL PORVIN ("Porvin") is a tenant and resident of Apt 7 in 335E9.
- c. DARLA STACHECKI ("Stachecki") is a tenant and resident of Apt. 5 in 333E9.
- d. MONIQUE SAFFORD ("Safford") is a tenant and resident of Apt. 3 in 333E9.
- e. MICHAEL MAHER ("Maher") is a tenant and resident of Apt. 7 in 331E9.
- f. ANA SUSSMANN ("Sussmann") is a tenant and resident of Apt. 5 in 329E9.

12. Upon information and belief and based upon the public records of the New York State Department of State ("DOS"), KUSHNER VILLAGE 329 EAST 9TH LLC ("Kushner") is a domestic limited liability company, formed on or about January 17, 2013, with an address of c/o National Registered Agents, 28 Liberty Street, New York 10005.

13. Upon information and belief, Kushner also maintains a place of business at c/o Kushner Companies, 666 5th Avenue, 15th Floor, New York, NY 10103.

14. Upon information and belief, and based upon public records, WESTMINSTER MANAGEMENT, a/k/a WESTMINSTER MANAGEMENT, LLC, a/k/a WESTMINSTER CITY LIVING ("Westminster") is a wholly owned unit of Kushner Companies, with an address of c/o National Registered Agents, 28 Liberty Street, New York 10005.

15. Upon information and belief, Westminster also maintains a place of business at 504 East 12th Street, New York, NY 10009.

JURISDICTION AND VENUE

16. Pursuant to the New York Civil Practice Law and Rules (“CPLR”) §301, the Court has jurisdiction over this action and jurisdiction to grant the relief sought herein.

17. Pursuant to CPLR §503, the basis of venue is Plaintiffs’ residences and the Defendants’ place of business.

COMMON ISSUES OF FACT

18. The Subject Buildings are located in the East Village area of Manhattan. The Buildings have had common ownership for several decades.

19. The “East Village,” previously referred to as the Lower East Side, has seen rapid changes in demographics in recent years, having been an area replete with abandoned buildings, *in rem* buildings – subject to foreclosure by the City for failure to pay real estate taxes – and largely comprised of old law tenements, many of which were in poor repair.

20. With the Manhattan real estate boom of the 1980’s and after, the area became, first, simply an affordable place to live, and, later, a more desirable location.

21. Over a relatively short period of time, the demand for housing in the East Village increased and gravitated towards higher income tenants.

22. Many East Village landlords, including Defendants, have attempted with varying degrees of success to increase income from buildings by renovating apartments and/or entire buildings and/or, as alleged below, creating additional units in existing buildings.

23. In this period of transformation and continuing to date, many East Village rent regulated buildings were repaired, improved, modified, or the subject of apartment by apartment renovations, with consequent increases in rent and/or attempted, and often successful, deregulation of units under the prior “high rent vacancy” deregulation provisions.

24. In this case, Defendants have, by virtue of their scheme to expand the occupancy of the Subject Buildings and increase their profits thereby, flagrantly violated the law and endangered the safety of the Tenants and the public.

25. The Subject Buildings were constructed in about 1900 and are referred to as “tenements” and/or old law tenements.

26. Occupancy of each Subject Building commenced prior to 1938.

27. Each Subject Building is a multiple dwelling, within the meaning of MDL §300, *et seq.*

28. While the Subject Buildings are four separate structures, they share a common boiler and other facilities.

29. In about 2015, Defendants added a new floor to each of the Subject Buildings, and a total of five penthouses, increasing the height and the residential occupancy thereof.

30. In addition, Defendants performed substantial work to the existing structures, that impacted the health and safety of tenants in occupancy, including, but not limited to: gutting and reconfiguring units, combining units; failing to legalize the use and occupancy of existing units from commercial to residential and from residential to mixed use; all, upon information and belief, without proper DOB permits, and without obtaining a CO for such change in use, egress and occupancy.

31. Defendants failed to comply with the New York City Department of Building's ("DOB") requirements to obtain the required COs, including the requirements for fire suppression and egress.

32. Kushner is the fee owner of the Subject Buildings pursuant to a deed dated on or about March 14, 2013.

33. Upon information and belief, based upon records on file with the New York City Department of Finance ACRIS service, Kushner's predecessor in interest is: 327-335 East 9 Realty, LLC, ("327-335") (not a party to this action), with an address of 418 Lafayette Street, Fifth Floor, New York, NY 10003.

34. Upon information and belief, 327-335 is a domestic limited liability company which is still in operation and which owns and operates 327 East 9th Street, New York, NY, a building immediately to the west of 329E9, which said building was constructed after the Subject Buildings were conveyed to Kushner.

35. Kushner has, for each Subject Building, filed a Managing Agent Designation ("MDR card") with the New York City Department of Housing Preservation and Development ("HPD").

36. Each current MDR card for the Subject Buildings shows "Kushner Village 329 East 9th" as the fee owner thereof, with an address of 504 East 12th Street, New York, NY 10009, given.

37. Each current MDR card for the four Subject Buildings shows “Rene Zemp” (“Zemp”) (not a party to this action) as both the head officer and the designated managing agent, with the address of 504 East 12th Street, New York, NY 10009, given.

38. Upon information and belief, Zemp is a principal of Defendants with a financial interest in Defendants.

39. Upon information and belief, Zemp is the person in day-to-day control of the Subject Buildings.

40. Each current MDR card for the four Subject Buildings shows “Westminster Management” a business entity of unknown form, and a Defendant herein, having an address at 504 East 12th Street, New York, NY 10009, as the company that manages the Subject Buildings.

41. Upon information and belief, Zemp is in charge of and/or is the principal of Westminster.

42. Upon information and belief, Zemp and Westminster have acted, with regard to the actions alleged in this Complaint, as Defendants’ agents, in both a disclosed and undisclosed capacity.

43. Upon information and belief, Defendants’ principals include several members of the Kushner family, who have been involved in real estate ventures and development in New York for many years.

44. Upon information and belief, Zemp and Westminster have acted as alter egos for the Kushner family in the ownership, control, management, and other aspects of a number of tenement buildings in New York City, of which the Subject Buildings are representative.

45. Defendants’ principals and officers are, through various business entities, landlords of numerous buildings in the City of New York.

46. Said principals and officers are experienced landlords who are well acquainted with the statutes, rules, and regulations applicable to the alteration of existing tenement buildings and increasing the floor area thereof.

47. Defendants and its principals are knowledgeable of the provisions of MDL §301, *et seq.*, as it relates to the necessity of a Certificate of Occupancy in altered tenement buildings.

48. Defendants and its principals are knowledgeable of the legal requirements relating to proper fire egress and proper fire safety in altered tenement buildings.

49. Defendants and its principals are knowledgeable of the provisions of N.Y.C. Ad. Code. Title 28 §118.1 and §118.16.1.

50. Defendants and its principals are knowledgeable of the legal requirements requiring that apartment units and apartment buildings in New York must be kept in good repair.

51. Defendants and its principals are knowledgeable of the provisions of MDL §302, as it relates to the prohibition against the collection of rent in the absence of a CO.

52. The actions alleged in this Complaint are typical of a pattern and practice by Defendants' principals' management of a numbers of buildings and are typical of buildings owned and controlled by Westminster, Zemp, and members of the Kushner family.

CERTIFICATE OF OCCUPANCY ISSUES:
LEGAL REQUIREMENTS

CERTIFICATES OF OCCUPANCY

53. Under Multiple Dwelling Law ("MDL") Section 302, multiple dwellings are required to have a valid Certificate of Occupancy ("CO"), issued by the New York City Department of Buildings ("DOB").

54. A consequence of failing to have a CO is that the owner of the multiple dwelling is barred from rent collections.

55. A CO states the legal use of a building and the type of permitted occupancy.

56. Existing buildings must obtain a current or amended CO when there is a change in use, egress or type of occupancy.

57. The DOB issues a final CO when the completed work substantially conforms to the plans submitted and is approved by the DOB, either for a new building, or for substantial alterations to an existing building.

58. Buildings built prior to 1938, such as the Subject Buildings, are not required to have a CO, unless alterations are made that change its use, egress or occupancy.

59. In this case, the DOB has specifically required a CO for each of the Subject Buildings, as a result of the plans filed by Defendants with the DOB.

TEMPORARY CERTIFICATES OF OCCUPANCY

60. In certain circumstances, an owner may apply for a Temporary Certificate of Occupancy ("TCO").

61. A TCO indicates that the property or partial property is safe for occupancy.
62. Owners of structures undergoing work while a TCO is in place are expected to complete work expeditiously and promptly comply with all legal requirements to obtain a permanent CO.
63. By law, TCOs are limited to a period of time not to exceed 90 days but in no instance, may the renewals of the original TCO be longer than two years from the date of the original TCO application. *See* MDL §301 (4)
64. Pursuant to N.Y.C. Ad. Code Title 28 §118.1, the issuance of a TCO or a CO shall not be construed as an approval of violations of the Building Code or any other applicable law and rules.

PARTIAL TCOs

65. In this case the TCOs are a Partial TCOs, issued for an additional floor and one penthouse unit for each building.
66. Partial TCOs are subject to N.Y.C. Ad. Code Title 28 §118.16.1 (Construction Law), which allows a partial certificate of occupancy to issue to a specific floor or floors of an existing building erected prior to January 1, 1938.
67. Section 118.16.1, sets forth five conditions for such partial TCO, including that the “building is of noncombustible construction and protected with an automatic sprinkler system,” and “[A]dequate means of egress are provided from all floors.”
68. Upon information and belief, and based upon the documents on file for the Subject Buildings with DOB and BSA, the Subject Buildings are “non fire-proof tenements,” such that the inclusion of working sprinklers in all of the Buildings are a mandatory condition to the legal alterations of the Buildings
69. Upon information and belief, in order to obtain the TCOs, Defendants falsely claimed in its DOB filings that sprinklers were installed and working.
70. There are no working sprinklers in the Subject Buildings.
71. Defendants commenced installing the sprinklers and then abandoned the installation, leaving it inoperable, after Defendants had fully rented out the penthouse apartments.
72. The Defendants have applied for and obtained TCOs, based upon false statements.
73. The Defendants have applied for multiple TCOs over a period of five years to avoid complying with the DOB and BSA requirements for obtaining final COs.

CERTIFICATE OF OCCUPANCY ISSUES:
UNLAWFUL AND DANGEROUS CONSTRUCTION IN
THE SUBJECT BUILDINGS

74. The existing portions of the Subject Buildings have been altered to such an extent that a CO is required for each building.

75. Defendants' predecessor, 327-335, filed plans with the DOB and the BSA, in about 2011, for substantial alterations to the Subject Buildings, including the addition of an additional floor and new penthouse apartments on each building.

76. The DOB and the BSA both required that 327-335 obtain new CO's for the Subject Buildings.

77. Instead of completing the construction and obtaining the mandated COs, Defendants did a portion of the work; sufficiently completed the added penthouses for rental; and stopped the building-wide construction. Defendants left crucial items such as the building-wide sprinklers incomplete and, upon information and belief, Defendants failed to restore fire retardant walls, and failed to complete the renovation of the existing fire escapes.

78. Upon information and belief, the removal and/or relocation of fire rated walls requires permission from the DOB, pursuant to RCNY §101-14, and is a crucial fire issue that impacts the issuance of a CO.

79. In addition, the chimney serving the boiler to all of the buildings was not raised to a sufficient legal height above the new penthouses, required because the penthouse additions increased the height of the buildings.

80. The scupper, which allows access to the roof, is inoperable, impairing Fire Department roof access.

81. This causes an additional fire hazard to these structures.

82. The alterations to the existing portions of the Subject Buildings have changed the use, occupancy and egress thereof, and would require COs to be issued, even in the absence of the explicit DOB directive.

83. Upon information and belief, and based upon the DOB records of violations, Defendants performed at least part of the work described herein without DOB approval, and without approval of any agency charged with enforcement of the rent regulatory laws.

84. Upon information and belief, and based upon publicly available records, Defendants have substantially altered the existing buildings such that Defendants' partial TCO's are not sufficient to allow Kushner to collect rent from any tenant in the Subject Buildings, pursuant to MDL§302.

CERTIFICATE OF OCCUPANCY ISSUES:
FRAUDULENT FILINGS

85. Zoning laws, rules and regulations, as applies in the City of New York, regulates the floor area, height, and number of rooms of buildings.

86. Kushner's predecessor, 327-335, filed a zoning lot merger agreement, for the purposes of, *inter alia*, consolidating the expansion rights for the Subject Buildings.

87. In this way, the vertical expansion rights (FAR) for each Building would be combined, and the increases would combine the Subject Buildings' FAR for the purposes of expansion, as one horizontal multiple dwelling.

88. The proposed additional units were the subject of a review by the BSA.

89. Both the DOB and BSA imposed specific requirements that new COs would have to be obtained as a condition to the work on the Subject Buildings.

90. The 327-335 initial DOB application for the enlargement work on the Subject Buildings was filed in 2011.

91. The DOB requires the disclosure of tenant occupancy on such applications in order to take steps to ensure the safety of tenants when construction is done in occupied buildings.

92. 327-335 falsely represented on their application that the Subject Buildings were vacant.

93. That misstatement was never corrected by Kushner in subsequent DOB filings of plans, which, upon information and belief, amended 327-335's 2011 filings.

94. In its August 2013 DOB applications, Kushner failed to disclose that the Subject Buildings were occupied.

95. By filing amended plans and failing to correct the previously filed false statement as to tenant occupancy, Kushner adopted the misrepresentations made by the 327-335.

96. That representation was a materially false statement and its adoption by the Kushner resulted in Class 1 Immediately Hazardous Violations being placed by the DOB for each of the Subject Buildings.

97. Defendants ignored the violations placed on the Subject Buildings and proceeded with substantial construction, without proper permits and without protecting the tenants in occupancy, including Plaintiffs.

THE PARTIAL TCOs

98. **329E9**: In 329E9, the first Partial TCO – for one new penthouse apartment, effective, July 27, 2015, stated that there were operable sprinklers for fire suppression.

99. Subsequently, the Defendants applied for and obtained renewals of the Partial TCO, for the construction of one penthouse apartment for 329E9, based upon the false representation that there were operable sprinklers for fire suppression.

100. Upon information and belief and based upon the documents on file with the DOB, the DOB attempted to inspect the sprinklers and plumbing in 329E9 on October 12, 2018 and was denied access by Defendants' superintendent and management.

101. Thereafter, to date, Defendants have renewed the 329E9 Partial TCO ten additional times, without completing the sprinklers in the building and without adequate fire egress.

102. There are 14 outstanding DOB requirements for obtaining a Final CO in 329E9, pending since 2015.

103. **331E9**: In 331E9, the first Partial TCO – for one new penthouse apartment, effective August 20, 2015, stated that there were operable sprinklers for fire suppression.

104. On August 20, 2015, Defendants had already completed *two* penthouses on the new sixth floor of 331E9 but applied for, and received, a Partial TCO for only one penthouse.

105. Subsequently, the Defendants applied for and obtained renewals of the Partial TCO, for the construction of one penthouse apartment for 331E9, based upon the false representation that there were operable sprinklers for fire suppression.

106. Upon information and belief and based upon the documents on file with the DOB, the DOB attempted to inspect the sprinklers and plumbing in 331E9 on October 12, 2018 and was denied access by Defendants' superintendent and management.

107. Thereafter, to date, Defendants renewed the 331E9 Partial TCO for one new penthouse apartment 10 additional times, without completing the sprinklers in the building and without adequate fire egress.

108. There are 13 outstanding DOB requirements for obtaining a Final CO in 331E9, pending since 2015.

109. **333E9**: In 333E9, the first Partial TCO – for one new penthouse apartment, effective August 21, 2015, stated that there were operable sprinklers for fire suppression.

110. Subsequently, the Defendants applied for and obtained renewals of the Partial TCO, for the construction of one penthouse apartment for 333E9, based upon the false representation that there were operable sprinklers for fire suppression.

111. Upon information and belief and based upon the documents on file with the DOB, the DOB attempted to inspect the sprinklers and plumbing in 333E9 on October 12, 2018 and was denied access by Defendants' superintendent and management.

112. Defendants have renewed the 333E9 Partial TCO ten additional times, without completing the sprinklers and without adequate fire egress.

113. There are 15 outstanding DOB requirements for obtaining a Final CO in 333E9, pending since 2015.

114. **335E9**: In 335E9, the first Partial TCO, for one new penthouse apartment, effective August 21, 2015, stated that there were operable sprinklers for fire suppression.

115. Subsequently, the Defendants applied for and obtained renewals of the Partial TCO, for the construction of one penthouse apartment for 335E9, based upon the false representation that there were operable sprinklers for fire suppression.

116. Upon information and belief and based upon the documents on file with the DOB, the DOB gained access to 335E9 to inspect the sprinklers and plumbing on October 12, 2018 and found that the sprinkler system was inoperable.

117. Defendants have renewed the 335E9 Partial TCO 10 additional times, without having sprinklers in the building and without adequate fire egress.

118. There are 13 outstanding DOB requirements for obtaining a final CO in 335E9, pending since 2015.

DEFENDANTS FRAUDULENTLY CONCEALED THE CHANGE

IN OCCUPANCY FROM PUBLIC AGENCIES

119. Owners are required to inform the DOB and other public agencies about the existing occupancy, including the number and type of use on each floor.

120. The applications for COs are required to list information about a building's existing occupancy, including the number and type of units on each floor.

121. Upon information and belief, the Fire Department of the City of New York, relies upon the accuracy of the records filed with HPD and DOB when responding to a fire emergency.

122. Upon information and belief, the Subject Buildings currently have approximately the following number of actual residential and commercial units, which are rented out by Defendants and/or offered for rental by Defendants:

- a. 329E9 has six residential units, including one newly constructed penthouse unit, and no commercial units.
- b. 331E9 has eleven residential units including *two* newly constructed penthouse units, one purely commercial unit, and one unit occupied for combined residential and commercial purposes.
- c. 333E9 has ten residential units, including one newly constructed penthouse unit, two commercial units, and an attached "carriage house" at the rear of the Building, which was upon information and belief, previously converted from commercial to residential use, and two commercial units.
- d. 335E9 has eight residential units, including one newly constructed penthouse unit, and two commercial units.

123. The HPD "I-Cards," which are the original records of permissible occupancy on record with HPD, show occupancy different from the current occupancy.

124. The current occupancy shows an increase in the number of units and a change in in the use and occupancy of the buildings.

125. Upon information and belief, and based upon public records, the Defendants misrepresented the number of residential units in the Subject Buildings to government agencies, including the DOB.

126. Upon information and belief, and based upon public records, Defendants have failed to report the increased number of residential units to HPD.

127. Upon information and belief and based upon public records, Defendants have failed to report the increased number of residential units to the New York City Department of Finance.

128. Upon information and belief, the Fire Safety Guides required to be provided to the Tenants by NYC Rules §408-02 do not disclose the added stories and occupied apartments on an additional story to each Building and falsely claim that the Buildings are non-combustible.

129. Upon information and belief and based upon documents on file with BSA and DOB, the buildings are “non-fireproof tenements.”

130. The number of units offered for rent in the Subject Buildings by Defendants, dating back to 2015, are shown online at the website StreetEasy.com, under the address for each building. Upon information and belief, those records reflect the increase in units offered for rent by Defendants in the Subject Buildings since 2015.

131. Upon information and belief, the concealment by Defendants of the actual occupancy and configuration of the Subject Buildings, coupled with an inoperable roof scuttle (necessary to allow FDNY access to the roof), the dangerously short boiler chimney, and inadequate fire suppression, creates a dangerous impediment for responding members of the New York City Fire Department as well as the Tenants and the public.

WARRANTY OF HABITABILITY ISSUES

132. Defendants breached the Warranty of Habitability as a matter of applicable law, in failing to meet the basic health, safety, and fire protections and the specific requirements of the DOB and BSA alleged above.

133. Defendants is required, *inter alia*: a) to keep all of the Subject Buildings in good and proper repair; and b) to provide adequate fire protection, fire egress, and fire suppression system in the form of sprinklers in each of the Subject Buildings.

134. Plaintiffs herein complain of conditions relating to the public and common areas of the Subject Buildings, reserving all claims as to issues that do not affect the Class.

135. Defendants’ alteration work was performed while there were tenants, including Plaintiffs in occupancy.

136. During the period of construction, tenants suffered from noise, dirt, dust, construction noise and construction debris.

137. Defendants' work caused cascading leaks into the tenants' apartments, mold and mildew conditions, and cracks in the walls and ceilings.

138. Defendants performed construction in a manner intended to cause unsafe conditions, and to annoy tenants, and to decrease the habitability of tenants' apartments and drive them from their homes.

139. Defendants have prevented and/or hindered HPD and/or DOB inspections.

140. Defendants' construction has caused leaks into the buildings below, which said leaks have led to ceiling collapses, mold and mildew conditions.

141. Defendants have refused to make repairs to the apartments of the Plaintiffs and other tenants, in an attempt to empty the Subject Buildings of their long term, rent regulated tenants.

142. Defendants have generally failed to keep the Subject Buildings in good and safe condition.

143. Many of the conditions outlined above are continuous.

144. As a result of the conditions, the Plaintiffs and others similarly situated have suffered injury to their health and safety; emotional distress; and the loss of the beneficial use and enjoyment of their homes.

145. Upon information and belief, the conditions alleged above are part of a common course of action and unlawful scheme used by Defendants in buildings owned and/or controlled by them as part of an illegal scheme to drive out rent regulated tenants.

146. Upon information and belief, Defendants and other Kushner entities engage in these tactics as part of the "Kushner Model."

COLLATERAL ESTOPPEL

147. On or about March 24, 2020, the Housing court rendered a decision in the matter of *Kushner Village 329 East 9th LLC v. Winkler*, NY Civil Index No. 87375/2015, holding, *inter alia*, that the Defendants violated the applicable certificate of occupancy requirements for 331E9.

148. Said decision has *res judicata* and/or collateral estoppel effect as to tenants of 331E9.

149. Despite the determination, Zemp and other of Defendants' agents badgered tenants for rent payments, despite the COVID 19 epidemic raging at the time.

150. Upon information and belief, Zemp repeatedly threatened to evict tenants during the COVID moratorium on evictions.

151. Upon information and belief, Defendants' and Zemp's tactics were intended to, and did scare tenants of the Subject Buildings into paying rent that was legally not collectable, during the COVID 19 epidemic.

152. Upon information and belief, Defendants and Zemp were well aware of the provisions of MDL §302, *et seq.* that, while barring any action or proceeding to collect rent when there is no valid CO, do not provide for recovery of rents paid during said period, and acted to ensure that tenants would pay rents that Defendants were not entitled to collect.

153. Upon information and belief, Defendants and Zemp were aware of the eviction moratorium, and still persisted in threatening the tenants, including Plaintiffs, with eviction.

154. When the *Winkler* decision became known by the tenants of the Subject Building, Zemp and/or other Defendants' agents, contacted tenants and demanded rent payments, falsely characterizing the decision in said proceeding and facts relating thereto.

155. Said false representations were made knowingly and intentionally.

156. Upon information and belief, various tenants of the Subject Buildings believed the facts represented as alleged above and in reliance thereon paid rents to Defendants.

CLASS ALLEGATIONS

CLASS DEFINITIONS

157. The proposed Class is defined as: All tenants of the Subject Building, as of the date of commencement of this action.

158. Plaintiffs are all members of said proposed Class.

159. This class is further refined into Subclasses., which subclasses are based upon the specific Subject Building in which the class members reside, and the nature of their occupancy.

160. Proposed Subclass 1 (the "329 Subclass") is defined as: all members of the Class who are tenants of 329 East 9th Street.

161. Proposed Subclass 2 (the "331 Subclass") is defined as: all members of the Class who are tenants of 331 East 9th Street.

162. Proposed Subclass 3 (the "333 Subclass") is defined as: all members of the Class who are tenants of 333 East 9th Street.

163. Proposed Subclass 4 (the "335 Subclass") is defined as: all members of the Class who are tenants of 335 East 9th Street.

164. Proposed Subclass 5 (the “Penthouse Subclass”) is defined as all tenants of the recently constructed penthouse apartments.

165. Proposed Subclass 6 (the “Commercial Subclass”) is defined as all commercial tenants using space rented to them for purely commercial purposes.

CLASS REPRESENTATIVES

166. The claims of the Plaintiffs are typical of the claims of each member of the Class.

167. The Plaintiffs and the members of the Class were and are similarly and/or identically harmed by the same unlawful, deceptive, unsafe and pervasive pattern of misconduct.

168. The claims of the Plaintiffs are typical of the claims of each member of the Subclasses.

169. The Plaintiffs will fairly and adequately represent and protect the interests of the Class and the Subclasses.

170. There are no material conflicts between the claims of the Plaintiffs and the members of the Class and the Subclasses.

171. **ANDREW KOZAK** (“Kozak”) is the rent stabilized tenant of Apartment 6 at 335E9.

172. Kozak has resided in that apartment for about 38 years, and he is familiar with the history of ownership and occupancy of that building.

173. Kozak is an Architectural Interior Designer and holds a bachelor’s degree in fine arts.

174. Kozak has personal knowledge of the acts of the Defendants complained of herein.

175. Kozak has met with proposed class counsel and assisted in the preparation of the Complaint.

176. Kozak hereby waives his rights to any punitive damages, as required by CPLR Rule 901, Subd.b.

177. **DANIEL PORVIN** (“Porvin”) is the rent stabilized tenant of Apartment 7 at 335E9, as required by CPLR Rule 901, Subd.b.

178. Porvin has resided in that apartment for about 35 years, and he is familiar with the history of the ownership and occupancy of that building.

179. Porvin is a Higher Education/Technology Educator by profession.

180. Porvin has personal knowledge of the acts of the Defendants complained of herein.
181. Porvin has met with proposed class counsel and assisted in the preparation of the Complaint.
182. Porvin hereby waives his rights to any punitive damages, as required by CPLR Rule 901, Subd.b.
183. **DARLA STACHECKI** (“Stachecki”) is the rent stabilized tenant of Apartment 5 at 333E9.
184. Stachecki has resided in that apartment for about 23 years, and she is familiar with the history of ownership and occupancy of that building.
185. Stachecki holds a Bachelor of Arts Degree, and a Master of Science in Real Estate. Stachecki is a Real Estate Asset Manager.
186. Stachecki has personal knowledge of the acts of the Defendants complained of herein.
187. Stachecki has met with proposed class counsel and assisted in the preparation of the Complaint.
188. Stachecki hereby waives her rights to any punitive damages, as required by CPLR Rule 901, Subd.b.
189. **MONIQUE SAFFORD** (“Safford”) is the rent stabilized tenant of Apartment 3 at 333E9.
190. Safford has resided in that apartment for about 31 years, and she is familiar with the history of ownership and occupancy of that building.
191. Safford holds a master’s degree in Fine Arts. She is retired from her position as the Visual Resource Curator at the New School – Parsons School of Design.
192. Safford has personal knowledge of the acts of the Defendants complained of herein.
193. Safford has met with proposed class counsel and assisted in the preparation of the Complaint.
194. Safford hereby waives her rights to any punitive damages, as required by CPLR Rule 901, Subd.b.
195. **MICHAEL MAHER** (“Maher”) is the rent stabilized tenant of Apartment 7 at 331E9.

196. Maher has resided in that apartment for about 38 years, and he is familiar with the history of ownership and occupancy of that building.

197. Maher holds a Master's Degree in Special Education for the Hearing Impaired. He worked as teacher for ten years, but is primarily an actor, since about 1982.

198. Maher has personal knowledge of the acts of the Defendants complained of herein.

199. Maher has met with proposed class counsel and assisted in the preparation of the Complaint.

200. Maher hereby waives his rights to any punitive damages, as required by CPLR Rule 901, Subd.b.

201. ANA SUSSMANN ("Sussmann") is the rent stabilized tenant of Apartment 5 at 329E9.

202. Sussmann has resided in that apartment for about 40 years, and she is familiar with the history of ownership and occupancy of that building.

203. Sussmann holds a master's degree. She is a yoga instructor and has been teaching for over 30 years.

204. Sussmann has personal knowledge of the acts of the Defendants complained of herein.

205. Sussmann has met with proposed class counsel and assisted in the preparation of the Complaint.

206. Sussmann hereby waives her rights to any punitive damages, as required by CPLR Rule 901, Subd.b.

207. Detailed Affidavits of Plaintiffs are annexed as Exhibit "A."

STATUTORY CLASS ACTION CRITERIA
CPLR §901 CONSIDERATIONS

NUMEROSITY

208. The Class is sufficiently numerous.

209. Although the exact number and identities of the members of the Class and Sub-Classes are currently unknown to Plaintiffs, there are, upon information and belief, as alleged above, approximately 36 actual residential units currently occupied in the Subject Buildings

(including 5 penthouse units; a commercial unit converted to residential use; and a mixed residential/commercial unit in the Subject Buildings); and approximately six commercial units (including the commercial portion of the mixed use unit), for a total of 41 units in the Subject Buildings.

210. All units in the Subject Buildings are occupied by class members.

211. This constitutes a sufficient number of class members under CPLR §901.

COMMONALITY AND TYPICALITY

212. There are common question of law and fact that affect class member,

213. The named Plaintiffs' claims are typical and representative of those of the class, and common to the members of the class, and affect all or virtually all tenants of the Subject Buildings.

214. The claims of class members are common to class members, as the issues relating to building safety, fire egress and fire safety of Subject Buildings are building wide.

215. The claims of class members are common to class members, as, upon information and belief, the tenants of the Subject Buildings are tenants under either written or oral agreements, or agreements implied by law under the Rent Stabilization law and/or emergency Rent Control Law, to pay rent in monthly installments.

216. For said reason, issues as to the collectability of rent arise on a monthly basis for all class members.

217. The Plaintiffs collectively are tenants of each of the Subject Buildings.

218. The questions of law or fact common to the class which predominate over any questions affecting only individual members, include:

- a. The effect of the lack of a final CO, and the effect of the Partial TCO's for portions of the Subject Buildings, on the Defendants' rights to demand and collect rents.
- b. Whether Defendants have engaged in unfair and improper business practices by misrepresenting the collateral estoppel effects of the decision noted above.
- c. Whether Plaintiffs and other class members are provided with adequate fire egress, fire safety measures, and proper repairs and maintenance of the public and common areas of the Subject Buildings.

- d. Whether Defendants are barred from demanding, seeking, or collection of any rent held or withheld by class members during the period that there is no proper CO for the Subject Buildings.
- e. To what extent Plaintiffs, Class members, and members of the Subclasses are entitled to declaratory and injunctive relief.

ADEQUACY

219. Each of the Plaintiffs is affected by the CO issues and repair and construction issues in their respective buildings; their knowledge and experience make them adequate as class representatives.

220. The Plaintiffs will fairly and adequately represent and protect the interests of the Class and Subclasses.

221. Each named Plaintiff is qualified to act as a class representative, for the reasons set forth in detail above.

222. All of the named Plaintiffs were present and residing in the Subject Buildings at the time of construction, and personally observed that construction.

223. Each Plaintiff has observed the Subject Building in which he/she resides and has personal knowledge of the current conditions thereof

224. Each named Plaintiff is ready, willing, and able to provide such cooperation as may be needed to prosecute this class action.

225. In that the costs of this action are to be borne by counsel the financial situation of the named Plaintiffs is irrelevant.

SUPERIORITY

226. A Class Action the best means of resolving claims.

227. This action will result in declaratory and injunctive relief on a building-wide basis.

228. Resolution of the CO and the fire safety issues on a building-wide basis is favored as a matter of public policy.

CPLR §902 CONSIDERATIONS

229. The criteria set forth in CPLR §902 are met.

230. It is impractical for individual class members to assert their own rights, and, other than the single case noted above, the CO issue in the four Subject Buildings has not been litigated.

231. Further for individual class members, the most usual way to assert such claims would be as a defense to a summary nonpayment proceeding, which may tenants are loath to invite.

232. Upon information and belief, there are no material conflicts between the claims of the representative Plaintiffs and the members of the Class that would make class certification inappropriate.

233. While one class member, Uta Winkler, who is represented by the same counsel, is involved in litigation. That ongoing litigation makes the prosecution of the class members' claims in a class action format more favorable rather than less.

234. The determination in the *Winkler* matter benefits all class members.

235. The counsel selected to represent the Class are lawyers who have experience in class and complex litigation and the laws that protect tenants in the City of New York; said counsel are competent counsel for this class action litigation who will fairly and adequately protect the interest of the Class.

236. In furtherance of the *Winkler* litigation, said counsel worked extensively with an expert architect to determine the extent and impact of Defendants' construction, and counsel are fully familiar with the issues raised herein.

237. No class member and counsel for the class has any conflict of interest that would interfere with the duties of the class representatives or the prosecution of this action as a class action.

238. Counsel for the Class will vigorously assert the claims of all members of the Class.

239. A class action is superior to other available methods for the fair and efficient adjudication of the controversy; class-wide litigation of common issues will greatly reduce litigation costs and promote greater efficiency and avoid the prospect of conflicting results.

FIRST CAUSE OF ACTION
Declaratory Relief on Behalf of The Entire Class

240. Plaintiffs re-allege and incorporate by reference each and every previous allegation as if fully set forth herein.

241. A justiciable controversy exists between the parties in that, among other things, Plaintiffs and the putative Class allege that:

- a. The TCOs obtained by Defendants are legally insufficient to permit Defendants to collect rent under Title 28, §118.16.1 and MDL §302;
- b. The determination in, *Kushner Village 329 East 9th LLC v. Winkler* has collateral estoppel effect as to every tenant of the Subject Buildings;
- c. The representations made by Zemp and other of Defendants' agents as to the collection of rent constituted and/or perpetuated a pattern and practice of fraud by which Defendants have enriched themselves;

242. Members of the Class, including Plaintiffs, lack an adequate remedy at law.

243. By reason of the foregoing, members of Class are entitled to a declaratory judgment, adjudging, declaring, determining and ordering and enjoining as follows:

- a. Defendants is barred from collection of rent in the Subject Buildings under the current Partial TCOs issued to cover the addition of an additional floor and a penthouse on each Building;
- b. Declaring that the Partial TCOs issued heretofore and renewed from time to time since 2015 are unlawful;
- c. Declaring that no rents are due from class members unless and until final COs are obtained for the Subject Buildings.

SECOND CAUSE OF ACTION

Plaintiffs are Entitled to Mandatory Injunctive Relief on Behalf of the Entire Class

244. Plaintiffs re-allege and incorporate by reference each and every previous allegation as if fully set forth herein.

245. Pursuant to applicable law, Defendants are required to provide adequate fire egress for all tenants of the Subject Building; Defendants have failed to provide proper fire egress.

246. Pursuant to applicable law, and requirements of the DOB and BSA, Defendants was and is required to provide fire safety measures and fire egress measures as specified by said agencies and by law.

247. Defendants have refused to comply with the DOB and BSA requirements to install sprinklers in the Subject Buildings.

248. The Subject Buildings have not been maintained in a manner consistent with proper and legally required fire safety measures.

249. Plaintiffs and the putative class face irreparable harm and have no adequate remedy at law by virtue of the ongoing dangerous and hazardous conditions to their life health and safety created by Defendants' pattern and practice of fraud and unlawful conduct.

250. By reason of the foregoing, Plaintiffs and members of the putative class are entitled to injunctive relief enjoining and compelling the following:

- a. Ordering and mandating Defendants to make the Subject Buildings safe for occupancy; to comply forthwith with all DOB requirements for the legalization of the Subject Buildings, and to obtain a proper final CO for the Subject Buildings; and
- b. Enjoining any action by Defendants to collect rent from class members unless and until Defendants obtains a final CO.

THIRD CAUSE OF ACTION
Violation of Warranty of Habitability
Building-Wide Conditions

251. Plaintiffs re-allege and incorporate by reference each and every previous allegation as if fully set forth herein.

252. Pursuant to applicable law, Defendants are required to maintain each and every portion, including specifically, all common and public areas, in good and proper repair.

253. Defendants have failed properly to maintain the Subject Buildings, particularly as to the public and common areas thereof.

254. Defendants have caused, *inter alia*, numerous ceiling collapses, gushing leaks, holes and cracks in walls and ceilings; mold conditions; dust conditions and other conditions that threaten the life and health of the Plaintiffs and the Putative Class Members.

255. Defendants have breached the warranty of habitability by failing to provide proper repairs and service at the Subject Buildings.

256. By virtue of these facts, Plaintiffs and class members are entitled to recover damages for the breaches of warranty of habitability.

FOURTH CAUSE OF ACTION
GBL §349 and NYC Admin. Code §20-700 On Behalf of the Class

257. Plaintiffs re-allege and incorporate by reference each and every previous allegation as if fully set forth herein.

258. Defendants have engaged in deceptive acts or practices in the conduct of its residential real estate business as prohibited by New York State General Business Law (“GBL”) §349(h).

259. Defendants have engaged in unconscionable trade practices pursuant to the New York City Consumer Protection Act, NYC Admin. Code §20-700.

260. 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.

261. Defendants’ deceptive acts and practices have had a broad impact on consumers at large and cause injury and harm to the public interest.

262. Defendants specifically engaged in violations of GBL §349 when Defendants offered illegal apartments, with no CO, to the public for rental.

263. Defendants falsely represented to the public that the apartments were legal and safe for human habitation.

264. Defendants falsely represented to the public that previously rent regulated apartments had been properly deregulated.

265. Defendants falsely represented to the public, the Plaintiffs and the Class that Defendants were entitled to collect rent, absent a final CO.

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

267. Defendants’ deceptive actions adversely affect the population of New York, specifically tenants and prospective tenants seeking rent regulated housing.

268. Plaintiffs are entitled to recover monetary damages from the Defendants based on the violations of the GBL and the New York Consumer Protection Law; an award of interest thereon; and attorney’s fees, and to obtain a permanent injunction enjoining Defendants from such practices and/or enjoining such other actions or trade or business as may be just and proper.

FIFTH CAUSE OF ACTION
Legal Fees

269. Pursuant to RPL §234, the Class is entitled to recover legal fees.

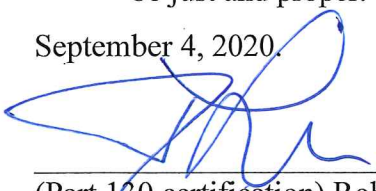
270. Pursuant to CPLR §909, the Court may award reasonable legal fees in any class action.

271. Plaintiffs and the Class are entitled to recover their reasonable legal fees from the Defendants and seek a monetary judgment against Defendants for same.

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

- A. Certify the Class and Subclasses proposed by Plaintiffs and appoint Plaintiffs as representatives of the Class and Subclass;
- B. Appoint Plaintiffs' undersigned counsels as counsel for the Class;
- C. Grant declaratory relief declaring the rights of the parties under MDL §302 as to the lack of a CO, and issue mandatory and/or prohibitory injunctive relief accordingly;
- D. Mandating that the Defendants correct all unlawful, unsafe and/or illegal conditions in the Subject Buildings;
- E. Enjoining, pursuant to GBL Section 349, Defendants and its principals from engaging in businesses of the same nature as alleged with regard to the Subject Buildings in this Action;
- F. Enjoining all illegal actions alleged herein;
- G. Awarding legal fees for the prosecution of this matter;
- H. Granting the relief specified hereinabove for each cause of action; and
- I. Granting such other and further monetary, declaratory and injunctive relief as shall be just and proper.

September 4, 2020.



(Part 130 certification) Robin LoGuidice
GRIMBLE & LOGUIDICE, LLP
Class Counsel for Plaintiffs
217 Broadway, Suite 304
New York, NY 10007
212 349-0450

Jack L. Lester

LAW OFFICES OF JACK LESTER

Class Counsel for Plaintiffs

By: Jack L. Lester, Esq.

99 Park Avenue, Suite 1100

New York, NY 10016

(212) 832-5357

jllcomlaw@aol.com

VERIFICATION

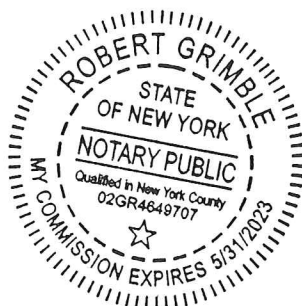
DANIEL PORVIN, being duly sworn hereby deposes and says under penalties of perjury, as follows:

I have read the annexed COMPLAINT, and it is true to my knowledge, except where stated to be on information and belief, and as to those items, I believe them to be true.

Sworn to September 4, 2020


DANIEL PORVIN


NOTARY PUBLIC



VERIFICATION

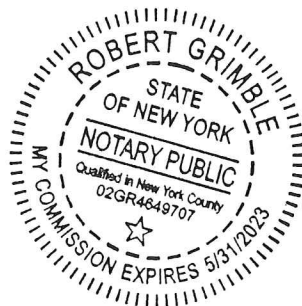
ANA SUSSMANN, being duly sworn hereby deposes and says under penalties of perjury, as follows:

I have read the annexed COMPLAINT, and it is true to my knowledge, except where stated to be on information and belief, and as to those items, I believe them to be true.

Sworn to September 4, 2020


ANA SUSSMANN


NOTARY PUBLIC



VERIFICATION

ANDREW KOZAK, being duly sworn hereby deposes and says under penalties of perjury, as follows:

I have read the annexed COMPLAINT, and it is true to my knowledge, except where stated to be on information and belief, and as to those items, I believe them to be true.

Sworn to September 9, 2020


ANDREW KOZAK

NOTARY PUBLIC

PLEASE SEE ATTACHED
NOTARY CERTIFICATE

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

On 09/09 /2020 before me, Amanpreet Kaur, Notary Public
(insert name and title of the officer)

personally appeared Andrew Kozak,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature

A handwritten signature in black ink, appearing to be 'Amanpreet Kaur', written over a horizontal line.

(Seal)

Verification

VERIFICATION

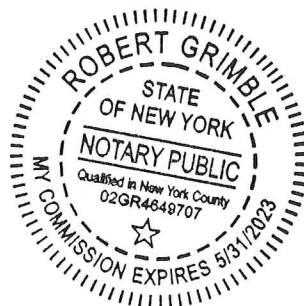
MICHAEL MAHER, being duly sworn hereby deposes and says under penalties of perjury, as follows:

I have read the annexed COMPLAINT, and it is true to my knowledge, except where stated to be on information and belief, and as to those items, I believe them to be true.

Sworn to September 4, 2020


MICHAEL MAHER


NOTARY PUBLIC



VERIFICATION

MONIQUE SAFFORD, being duly sworn hereby deposes and says under penalties of perjury, as follows:

I have read the annexed COMPLAINT, and it is true to my knowledge, except where stated to be on information and belief, and as to those items, I believe them to be true.

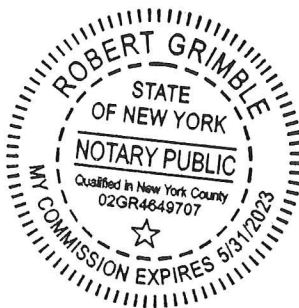
Sworn to September 4th, 2020



MONIQUE SAFFORD



NOTARY PUBLIC



VERIFICATION

DARLA STACHECKI, being duly sworn hereby deposes and says under penalties of perjury, as follows:

I have read the annexed COMPLAINT, and it is true to my knowledge, except where stated to be on information and belief, and as to those items, I believe them to be true.

Sworn to September 8, 2020


DARLA STACHECKI


NOTARY PUBLIC

STUART B. SHAPIRO
Notary Public, State of New York
No. 02SH6002248
Qualified in Suffolk County
Commission Expires Feb. 02, 2032