

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

-----X
THE CITY OF NEW YORK,

Index No. _____/2021

Plaintiff,

-against-

SUMMONS

METROBUTLER LLC, METROBUTLER INC., and
METROBUTLER INC. dba MAKOMI,

Defendants.

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TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED TO ANSWER the Verified Complaint in this action and to serve a copy of your answer on the Plaintiff THE CITY OF NEW YORK within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of the venue designated is the residence of the Plaintiff and the county in which most of the properties affected by this action are located. Plaintiff designates New York County as the place of trial.

Dated: New York, New York
October 13, 2021

By:



PIERRE RIVERA
Special Assistant Corporation Counsel
Mayor's Office of Special Enforcement
22 Reade Street, 4th Floor
New York, NY 10007
Tel.: 646 576-3480
Cell: 646-965-1525
Email: privera@ose.nyc.gov

TO:

METROBUTLER LLC
c/o Mr. Matthew Lerner
200 East 24th Street, Suite 603
New York, New York 10010

METROBUTLER INC.
c/o Mr. Matthew Lerner
200 East 24th Street, Suite 603
New York, New York 10010

METROBUTLER INC.
c/o MAKOMI INC.
4720 Colony Villas Drive
Bonita Springs, Fl 34134

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

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THE CITY OF NEW YORK,

Plaintiff,

Index No. _____/2021

-against-

VERIFIED COMPLAINT

METROBUTLER LLC, METROBUTLER INC, and
METROBUTLER INC dba MAKOMI,

Defendants.
-----X

Plaintiff, THE CITY OF NEW YORK, by its attorney, GEORGIA M. PESTANA,
Corporation Counsel of the City of New York, for its complaint against Defendants, alleges as
follows, upon information and belief:

INTRODUCTION

1. Plaintiff, the City of New York (the “City”) brings this action to shut down,
penalize, and prevent any recurrence of the illegal and hazardous transient use (less than 30
consecutive days) operation that METROBUTLER LLC, METROBUTLER INC (New York),
and METROBUTLER INC (Delaware) dba MAKOMI (“MetroButler”) has deceptively
advertised and facilitated on www.Airbnb.com (“Airbnb”) and www.HomeAway.com, a sister
company of www.VRBO.com (“HomeAway/VRBO”), among other internet platforms, as New
York City seeks to re-open to tourism following the worldwide COVID-19 pandemic.

A. MetroButler LLC, MetroButler Inc (New York), and MetroButler Inc (Delaware) dba
Makomi (collectively, “MetroButler”)

2. MetroButler LLC is currently an inactive domestic limited liability company that
was registered to do business in the state of New York in March of 2015 by its registered agent
and co-founder Matthew Lerner.

3. MetroButler Inc (New York) is currently an inactive domestic business corporation that was registered to do business in the state of New York in July of 2015 by its registered agent and co-founder Mathew Lerner.

4. MetroButler Inc (Delaware) is currently an active foreign business corporation that was registered to do business in the state of New York in August of 2018 by its registered agent and co-founder Mathew Lerner.

5. These three entities used to perpetrate the unlawful short-term rental MetroButler operation were all co-founded by the same three individuals, Mathew Lerner, Brandon McKenzie, and Jessie Gross.

B. MetroButler's Business Model Based on Illegal Activity Between 2015 and 2020 (the "Investigation Period")

6. MetroButler's original slogan read, "[i]f you think of Airbnb as the world's largest hotel, MetroButler is the front desk, concierge, and maid service, all in one."

7. During the Investigation Period, MetroButler's business model was based on the illegal activity of advertising and facilitating the renting of permanent residential units (units that can only be occupied for 30 days or more) for illegal short-term stays (stays less than 30 days).

8. MetroButler is a third-party commercial service company that did not own any of the permanent residential units it advertised and rented, but rather billed itself as a property manager and concierge for short-term rentals, helping occupants of permanent residential units illegally advertise and rent their own units for illegal short-term rentals on platforms like Airbnb, in return for a hefty commission on the rental fees.

9. MetroButler required three sets of its clients' keys and used its clients' permanent residential units to create what is analogous to a conventional hotel but spread out over hundreds of apartments in buildings across the City of New York.

10. MetroButler offered its clients services such as photographing their property, creating online profiles and listings on platforms like Airbnb, managing bookings and reservations on those platforms, handling guest communications, and cleaning and restocking supplies such as sheets and towels for each short-term rental.

C. MetroButler's Consumer Deception and Illegal Activity

11. MetroButler repeatedly violated the law when it failed to disclose to consumers, most of them visitors to New York City, that its short-term rental listings of permanent residential units were for stays that were both illegal and unsafe.

12. MetroButler's illegal listings utilized deceptive and enticing titles in order to effectively advertise illegal occupancy, such as "Your Elegant Chelsea Getaway" or "Bright and Beautiful 1BR in the LES," which were advertised at the nightly rates of \$202 and \$170 per night, respectively.

13. By illegally advertising permanent residential units for illegal short-term stays, not disclosing to the unsuspecting consumer that the accommodations advertised were illegal and hazardous, and finally by facilitating the actual illegal short-term rental, MetroButler broke a wide array of laws throughout the Investigation Period, including but not limited to, the New York City Administrative Code ("Admin. Code") and the New York State Multiple Dwelling Law ("MDL").

D. MetroButler's Extensive Past Illegal Activity

14. MetroButler's commercial operation sold over 4,000 illegal and unsafe short-term stays to unsuspecting consumers leading to Airbnb disbursing over \$3.2 million dollars to MetroButler and its clients as a direct result of MetroButler's illegal operation.

15. At MetroButler's peak during the Investigation Period, MetroButler was servicing 270 properties across New York City and managing over 300 illegal short-term listings for its clients on platforms such as Airbnb.

E. Lack of Fire Safety Measures

16. The thousands of illegal short-term rentals MetroButler charged its clients to facilitate were in permanent residential dwelling units that did not have the heightened fire safety measures required in all short-term accommodations, such as multiple sufficient means of egress on each floor, a fire alarm system connected to a central station, and an adequate sprinkler system in every room.

17. The lack of these fire safety measures created dangerous fire and safety conditions for guests, neighboring permanent residents, and first responders called to any emergency.

F. MetroButler Created and Maintained the Illegal Listings and the Accounts

18. Airbnb and HomeAway/VRBO records for the Investigation Period indicate that MetroButler had a significant level of involvement in the creation of the illegal short-term rental listings because the accounts for those listings were managed by MetroButler and were created from shared internet protocol ("IP") addresses, indicating a co-working space.

19. Airbnb records indicate that MetroButler had significant involvement in the facilitation and management of the illegal short-term stays stemming from the illegal listings because MetroButler interchangeably used several phone numbers linked backed to the co-founders, the company, and/or its employees as contact information for its clients' Airbnb and HomeAway/VRBO accounts.

G. MetroButler's Control of the Illegal Listings

20. MetroButler not only created and managed host accounts and listings for illegal short-term use, but also maintained control of all listings posted on Airbnb on behalf of its clients.

21. MetroButler ensured its clients could not directly access or edit their Airbnb account and listings as clients could only use MetroButler's Calendar Makomi Dashboard, and even then clients could only accept or reject proposed reservations and block off calendar dates.

22. In at least one instance, documentation shows that a client needed to request MetroButler to remove the client's illegal listing, which MetroButler promptly did, because the client did not have access.

H. Payment Process for MetroButler's Illegal Short-term Operation

23. The payment process of MetroButler's illegal operation began with the short-term listing platform, like Airbnb, paying MetroButler as host for the booked reservations.

24. After receiving the payment from the platform, MetroButler would then take out a 25%-33% commission from the payment before releasing the funds to its clients.

25. Separate from the commission, MetroButler also charged fees, including a \$250 fee for creating a new listing, another \$250 fee for creating a custom host profile if the client did not have one and a \$250 fee for reservation cancellations.

26. During the Investigation Period, Airbnb disbursed over \$3.2 million dollars in payments to MetroButler and its clients as a direct result of MetroButler's illegal advertising and short-term rental operation.

I. Inspected Buildings

27. MetroButler operated out of nearly 270 buildings across New York City. The Mayor's Office of Special Enforcement ("OSE") encountered the results of their deceptive

operation – deceived and endangered tourists – on occasions where the illegal operation generated 311 complaints that led to administrative code inspections.

28. On each occasion, OSE inspectors found illegal conversion of permanent-only dwelling units to short-term occupancy, and issued violations to unit owners in accordance with the law at the following buildings, (hereinafter collectively the “Inspected Buildings”):

- a. 344 East 120th Street, New York, NY;
- b. 349 West 71st Street, New York, NY;
- c. 331 West 18th Street, New York, NY;
- d. 30 Bayard Street, Brooklyn, NY;
- e. 218 West 10th Street, New York, NY; and
- f. 100 Jane Street, New York, NY.

29. The OSE Inspection Teams discovered that MetroButler advertised, facilitated and managed the illegal short-term rentals found at each of the Inspected Buildings.

30. The City’s extensive pre-litigation administrative efforts to enjoin such unlawful activities for almost five years from 2015 to 2020, include: (1) conducting eight administrative code inspections in response to complaints or as part of an ongoing investigation; (2) finding illegal transient use in each of those eight administrative code inspections; and (3) issuing 29 violations to building owners or unit owners, including MetroButler clients.

J. MetroButler Knew That Its Short-term Rental Service Was Illegal but Did Not Stop

31. MetroButler was made aware, no earlier than January 2018, by one of its clients that MetroButler’s short-term rental service resulted in a summons being issued to that client and that the illegal listing needed to be taken down immediately.

32. Violations issued by the City have been adjudicated at the Office of Administrative Trials and Hearings (OATH) where one of MetroButler’s founders who is an attorney personally appeared to defend MetroButler’s clients from those same violations at OATH.

33. MetroButler was able to continue its operation undeterred by its illegality because it evaded detection and liability from law enforcement by using its clients as the faces for its illegal listings and by maintaining its stock of 270 dwelling units across nearly 270 buildings in New York City.

34. By using its clients as the faces for its illegal listings, MetroButler shifted the risk of detection to its clients, only to turn around and self-servingly show up to represent its clients at OATH and attempt to defend them from the very consequences of the illegality MetroButler facilitated and profited from.

K. MetroButler's Business Model Now

35. MetroButler paused its illegal short-term rental operation in March of 2020 because of the worldwide coronavirus pandemic that has affected tourism in New York City since March 2020.

36. MetroButler changed its business model during the worldwide coronavirus pandemic and, under the name Makomi, its website now promotes its "Vacation Management Training" program.

37. MetroButler's "Vacation Management Training" program is an online self-paced training program that, as described on its website, helps clients "grow and scale a profitable business in the short-term rental industry," without mentioning the industry's illegality in New York City.

38. Initially charging a price of \$499, then by January 2021 charging \$999, for the "Vacation Management Training" program, MetroButler's website explains that it is now offering a partnership phase with its clients, charging 10% of any revenue made from the first live listing.

L. City's Request for a Permanent Injunction

39. The City seeks to permanently enjoin MetroButler from committing further deceptive trade practices in its advertising and operation of transient accommodations to foreign and domestic tourists in New York City that are neither legal nor safe; to compel MetroButler to pay in court all monies, properties, and other proceeds thereof received as a result of its years of unabated deceptive trade practices, and to be paid, in whole or in part, as restitution to aggrieved consumers; to enjoin the public nuisance created by its years-long unlawful and hazardous hotel and operations; and to obtain statutory civil penalties and compensatory and punitive damages.

40. The City brings this action pursuant to and by authority of New York General City Law § 20; New York City Charter § 394; New York City Administrative Code (“Admin. Code”) § 20-703 (the enforcement section of the Consumer Protection Law of 1969, Title 20, Chapter 5, Subchapter 1, § 20-700 et seq.) (“Consumer Protection Law”); Multiple Dwelling Law (“MDL”) § 121 and Admin. Code §27-287.1 (collectively, the “Advertising Act”); MDL § 306; and pursuant to the common law doctrine of public nuisance.

41. The City also brings this action because of the public nuisance maintained by Defendants, caused by: (1) creating, managing and maintaining illegal online listings for illegal transient use; (2) illegally renting permanent residential dwelling units to numerous unsuspecting transient guests without the more stringent fire and safety features required in buildings legally designed to serve transient occupants; (3) failing to inform the transient guests that the accommodations were illegal and hazardous; and (4) creating significant security risks in and about permanent residential dwellings not staffed to handle the security issues associated with transient occupancy, and causing a degradation in the quiet enjoyment, safety, and comfort of the surrounding residents and neighborhood by noise, filth, and the excessive traffic of unknown and constantly changing individuals entering places of abode or neighboring properties.

42. The conditions in the buildings in which those units being used for short-term accommodations are situated, as well as the areas surrounding those buildings, negatively affect the health, safety, security, and general welfare of the residents of the City of New York and its visitors.

GENERAL BACKGROUND

A. The Mayor's Office of Special Enforcement Is Charged with Protecting the Public from Short-Term Rentals That Are Illegal and Dangerous

43. OSE is a governmental entity established by the City through Mayoral Executive Order No. 96 of 2006 to address quality of life issues citywide, including illegal hotels, lawless clubs and adult establishments, and trademark counterfeiting bazaars.

44. Through Mayoral Executive Order No. 22 of 2016, OSE is further tasked with enforcing unlawful advertising of illegal occupancy in Class A multiple dwellings.

45. Misleading online advertisements for illegal short-term "hotel" or "hostel" accommodations located within buildings designed only for permanent residency increasingly entice tourists and other visitors to New York City.

46. Many of these visitors are thus unwittingly led to book accommodations that are not only illegal, but also pose a heightened risk to their health and safety, as well as to the health and safety of the lawful residents of those buildings.

47. A business that purveys illegal and unsafe consumer goods or services without any indication that those goods or services are not legal or safe, misleads consumers and commits a deceptive trade practice.

48. Federal, state, and local consumer protection laws, including the Consumer Protection Law ("CPL") prohibit this kind of deceptive trade practice.

49. Moreover, under the common law, the advertising and booking of transient accommodations in buildings where such accommodations are illegal and unsafe creates a public nuisance.

50. The common law has long recognized that conditions or practices which endanger or injure the property, health, safety or comfort of a considerable number of persons constitute a public nuisance, which affects not only tourists and visitors to New York City, but also those who reside in and around the residential buildings which are being illegally used as hotels.

51. New York City government continually receives complaints from many sources – calls to “311”, letters and emails from the public, communications from elected officials and community groups – regarding strangers wandering around their buildings, excessive noise, overflowing trash, vomit and cigarette smoke in hallways, increased risk of fire, fighting, drugs, prostitution, and elevators or laundry equipment damaged by constant traffic and excessive usage by the tourists.

52. Notwithstanding occupancy and safety rules prohibiting such use, permanent residential dwelling units in apartment buildings located throughout New York City are increasingly advertised and used as transient occupancy units for tourists and other short-term occupants.

53. The phenomenal growth of the internet travel industry has abetted this practice and unfortunately it is during a time when available housing accommodations for the residents of New York City remain at historically low levels.¹

¹ The City’s “acute shortage of dwellings” has created an affordable housing crisis that is a “serious public emergency.” See Emergency Housing Rent Control Law § 1, codified as N.Y. Unconsol. Law Ch. 249, § 1 (Lexis 2016) (making these legislative findings in establishing rent control system). See also Local Emergency Housing Rent Control Act § 1(2), codified as N.Y. Unconsol. Law Ch. 249-A, § 1(2) (Lexis 2016), Emergency Tenant Protection Act of Nineteen Seventy-Four § 2, codified as N.Y. Unconsol. Law Ch. 249-B, § 2 (Lexis 2016) (making

Continued...

54. The spread of illegal transient occupancies, which some observers in New York City termed an “epidemic,”² creates a number of serious problems for the City:

- (1) a growing number of complaints from tourists who book accommodations over the internet, in most cases responding to advertisements unaware that rooms are being offered in violation of the law, only to find that the accommodations are in buildings parading as “hotels” or “hostels” which often lack the barest essentials that short-term guests would normally expect;
- (2) serious safety hazards, in particular with regard to fire protection, as code requirements for permanent residency buildings are not nearly as stringent as those for units and buildings geared to transient occupancy, but also with regard to severe over-crowding;
- (3) a burgeoning number of transient occupants, inter-mixed with permanent residents, whose presence poses security risks in buildings not equipped to handle the security problems associated with transient occupancy, as well as a degradation of quality of life for those residents in the buildings and for those in the surrounding neighborhood;
- (4) faster and more substantial increases in rent, as well as harassment of permanent residents by owners who may seek to evict those tenants illegally in order to pursue a more lucrative transient market; and
- (5) an illegal siphoning off of a significant portion of the city’s housing stock, occurring most acutely in the affordable housing stock sector.

55. Because of these deleterious effects on the City’s housing market, and the safety concerns for its residents, tourists, the general public and emergency response personnel, illegal hotel operations are a point of vital concern to the City in fulfilling its duty to protect New Yorkers’ quality of life.

B. The 2010 and 2016 MDL Amendments Prohibit Unlawful Transient Occupancy and Advertising of Unlawful Transient Occupancy in Multiple Dwellings And New York

identical legislative findings in establishing successor rent stabilization systems); and *Bucho Holding Co. v. Temporary State Housing Rent Comm.*, 11 N.Y.2d 469, 473 (1962) (“The existence of an emergency justifying continued control of rents in the areas here involved *may not*, and indeed is not, denied”).

² “Hey, Wanna Rent My Couch; Short-term rentals have officially become illegal – and sneaking around the law has officially become epidemic,” by S. Johanna Roebeldo, *New York*, November 27, 2011.

City Administrative Code §27-287.1 Prohibits Advertising Occupancy Or Use Of Dwelling Units In A Class A Multiple Dwelling For Other Than Permanent Residence Purposes

56. To begin to address this situation, the New York State Legislature enacted Chapter 225 of the Laws of New York State of 2010 (“Chapter 225”).

57. Chapter 225, which went into effect on May 1, 2011, unambiguously prohibits renting any unit in “Class A” multiple dwellings, as defined under the MDL and the New York City Housing Maintenance Code (“HMC”), for less than 30 days.

58. Before the enactment of Chapter 225, the MDL and HMC provided that Class A multiple dwellings were to be “occupied, as a rule, for permanent residence purposes.” MDL § 4(8), Admin. Code § 27-2004.a.8(a).

59. In January 2009, the First Department, contrary to long-held administrative understanding, construed the term “as a rule” to mean that owners of Class A buildings could rent up to half of their rooms for “nonpermanent or transient occupancy,” so long as the majority of the rooms were rented for longer than 30 days. *See City of N.Y. v. 330 Continental LLC*, 60 A.D.3d 226, 230-31 (1st Dep’t 2009).³

60. The Legislature enacted Chapter 225 in response to the *330 Continental* Court’s decision, amending the MDL and other related laws to make clear, among other things, that the rental of *any* unit in a Class A building for less than 30 days is prohibited.

61. Chapter 225 became effective May 1, 2011. The legislative justification for Chapter 225 was explained by the law’s sponsor:

The Multiple Dwelling Law and local Building, Fire and Housing Maintenance Codes establish stricter fire safety standards for dwellings such as hotels that rent rooms on a day to day (transient) basis than the standards for dwellings intended for month to month (permanent)

³ *330 Continental* was settled after the Legislature enacted Chapter 225, with the defendants agreeing to a permanent injunction against managing their properties as “illegal hotels” and to pay the City \$600,000.

residence. There are substantial penalties for owners who use dwellings constructed for permanent occupancy (Class A) as illegal hotels. However, the economic incentive for this unlawful and dangerous practice has increased, while it is easier than ever to advertise illegal hotel rooms for rent to tourists over the internet. This is especially so in New York City, which is attracting visitors and tourists from around the world in record numbers. In most cases tourists responding to such advertisements are unaware that the rooms are being offered in violation of the law. Not only does this practice offer unfair competition to legitimate hotels that have made substantial investments to comply with the law but it is unfair to the legitimate “permanent” occupants of such dwellings who must endure the inconvenience of hotel occupancy in their buildings and it decreases the supply of affordable permanent housing. It endangers both the legal and illegal occupants of the building because it does not comply with fire and safety codes for transient use. Recently, law enforcement actions against illegal hotels have been hindered by challenges to the interpretation of “permanent residence” that enforcing agencies have relied on for decades.

See New York State Assembly Memorandum in Support of Legislation (S. 6873-B, 233rd Leg.

(N.Y. 2010 (Sponsor’s Memo) Bill No. A10008), available at

<https://www.nysenate.gov/legislation/bills/2009/s6873/amendment/b>.

62. As a further step to address this issue, the Legislature amended the MDL and the Admin. Code in 2016 to expressly prohibit *advertising* the use or occupancy of dwelling units in Class A multiple dwellings for other than permanent residence purposes (i.e., short-term rental for less than thirty days).

63. Admin. Code §27-287.1(1), prohibits advertising a Class A multiple dwelling unit for other than permanent residence use:

It shall be unlawful to advertise occupancy or use of dwelling units in a class A multiple dwelling for occupancy that would violate subdivision eight of section four of the multiple dwelling law defining a “class A” multiple dwelling as a multiple dwelling that is occupied for permanent residence purposes.

64. Admin. Code §27-287.1(2) imposes a penalty of \$1,000 for the first violation of Admin. Code §27-287.1(1), \$5,000 for the second violation and \$7,000 for the third and subsequent violations:

Any person found to have violated the provisions of subdivision one of this section shall be liable for the civil penalty of not more than one thousand dollars for the first violation, five thousand dollars for the second violation and seven thousand five hundred dollars for the third and subsequent violations.

65. Admin. Code §27-287.1(3) defines the word “advertise”:

For the purposes of this section, the term “advertise” shall mean any form of communication for marketing that is used to encourage, persuade or manipulate viewers, readers or listeners into contracting for goods and/or services as may be viewed through various media including, but not limited to, newspapers, magazines, flyers, handbills, television commercials, radio, signage, direct mail, websites or text messages.

66. Admin. Code §27-287.1(2) authorizes the Mayor’s Office of Special Enforcement to enforce Admin. Code §27-287.1121:

The provisions of this section shall be enforced by the mayor’s office of special enforcement.

67. The law’s sponsor explained the justification for adding a new Section 121 to the MDL and a new Article 18 to subchapter three of chapter one of title twenty-seven of the Admin. Code (i.e., Admin. Code § 27-287.1) as follows:

In 2010, in the face of an explosion of illegal hotel operators in single room occupancy buildings in New York City, New York State clarified and strengthened the laws regarding transient occupancy in class A multiple dwellings. Now, with the proliferation of online home sharing platforms that allow users to advertise their apartments for use that directly violates New York State’s “illegal hotels” law, the purpose of the “illegal hotels” law is at risk of being undone.

While it is already illegal to occupy a class A multiple dwelling for less than 30 days, this legislation would clarify that it also illegal to advertise units for occupancy that would violate New York law. However, online home sharing platforms still contain advertisements for use of units that would violate New York law. It rests with the city and state to protect

communities and existing affordable housing stock by prohibiting advertisements that violate the law, creating a civil penalty structure for those who violate the prohibition, and clarifying activities that constitute advertising.

See New York State Senate Memorandum in Support of Legislation (A. 8704C, 239th Leg.

(N.Y. 2016 (Sponsor's Memo) Bill No. S6340A) (emphasis added), available at

<https://www.nysenate.gov/legislation/bills/2015/S6340>.

68. Advertising, maintaining and operating properties for prohibited and unsafe short-term transient use deceives consumers.

69. It also creates a public nuisance because the advertising, maintaining and operating properties for prohibited and unsafe short-term transient use endangers or injures the property, health, safety, and comfort of residents in those buildings, residents in the surrounding areas, and tourists and visitors to New York City.

C. The Consumer Protection Law, Admin. Code § 20-700, et seq., Prohibits Unfair and Deceptive Trade Practices, Including Listing Permanent Housing Units for Short-Term Rental

70. Admin. Code § 20-700, prohibits unfair trade practices:

No person shall engage in any deceptive or unconscionable trade practice in the sale, lease, rental or loan or in the offering for sale, lease, rental, or loan of any consumer goods or services, or in the collection of consumer debts.

71. Admin. Code § 20-701(a) defines deceptive trade practices as:

Any false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind made in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental, or loan of consumer goods or services ... which has the capacity, tendency or effect of deceiving or misleading consumers. Deceptive trade practices include but are not limited to ... representations that goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have ... goods or services are of a particular standard, quality, grade, style or model, if they are of another ... the use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material

fact or failure to state a material fact if such use deceives or tends to deceive ... offering goods or services with intent not to sell them as offered....

72. While Admin. Code §§ 20-703(a) & (b) authorize the City to institute proceedings for unfair trade practices and recover civil penalties, §§ 20-703(c) & (d) authorize the City to bring an action for injunctive relief and restitution to consumers, as follows:

- a. The violation of any provision of this subchapter or of any rule or regulation promulgated thereunder, shall be punishable upon proof thereof, by the payment of a civil penalty in the sum of fifty dollars to three hundred and fifty dollars, to be recovered in a civil action.
- b. The knowing violation of any provision of this subchapter or of any rule or regulation promulgated thereunder, shall be punishable upon conviction thereof, by the payment of a civil penalty in the sum of five hundred dollars, or as a violation for which a fine in the sum of five hundred dollars shall be imposed, or both.
- c. Upon a finding by the commissioner of repeated, multiple or persistent violation of any provision of this subchapter or of any rule or regulation promulgated thereunder, the city may, except as hereinafter provided, bring an action to compel the defendant or defendants in such action to pay in court all monies, property or other things, or proceeds thereof, received as a result of such violations.
- d. Whenever any person has engaged in any acts or practices which constitute violations of any provision of this subchapter or of any rule or regulation promulgated thereunder, the city may make application to the supreme court for an order enjoining such acts or practices and for an order granting a temporary or permanent injunction, restraining order, or other order enjoining such acts or practices.

73. Admin. Code § 20-703(e) further provides that actual injury to consumers need not be shown to establish a cause of action.

74. In the seminal case of *City of New York v. Smart Apartments LLC*, 39 Misc. 3d 221 (Sup. Ct. N.Y. Co. 2013) (Engoron, J.), the Court held that the Consumer Protection Law covers marketing transient accommodations, and the Court granted a temporary restraining order

and preliminary injunction against the defendants' enjoining any further advertising and booking of illegal transient accommodations in New York City.⁴

D. The Parties

75. **Plaintiff THE CITY OF NEW YORK** ("City") is a municipal corporation incorporated under the laws of the State of New York.

76. **Defendant METROBUTLER LLC** is a domestic limited liability company that registered to do business in the state of New York in March of 2015 and profited from the illegal hotel operation and then became inactive on July 1, 2015.

77. **Defendant METROBUTLER INC (New York)** is a domestic business corporation formed on July 1, 2015 and profited from the illegal hotel operation until it merged out of existence on August 20, 2018 to, upon information and belief, become part of MetroButler Inc (Delaware).

78. **Defendant METROBUTLER INC (Delaware) dba MAKOMI** is a foreign business corporation formed on August 15, 2018 that profited from the illegal hotel operation.

79. MAKOMI is a registered service mark of MetroButler.

80. On November 13, 2018, MetroButler filed with the United States Patent and Trademark Office ("USPTO") to register MAKOMI as:

Providing information in the field of temporary lodging and accommodations; Providing online reservations and bookings for temporary lodging and accommodations; Travel agency services, namely, making reservations and booking for temporary lodging; Arranging temporary housing accommodations.

81. MetroButler's clients are owners and tenants of permanent residential use dwellings throughout New York City.

⁴ The case was later settled with the defendants agreeing to a permanent injunction against such practices, a \$1,000,000 penalty, and the creation of a fund for consumer restitution.

82. MetroButler provided specialists to its clients in order to create its illegal listings and guide clients step-by-step in the illegal rental of clients' permanent residential dwelling units.

83. In addition to creating the illegal listing itself, MetroButler accepted booking requests, checked in and checked out guests, hired "independent contractor" cleaners, who labored for little pay and no benefits, to prepare the apartment for the next round of guests, and managed illegal reservation payouts from the platforms, like Airbnb, to the clients (after taking its 25-33% cut off every stay).

STATEMENT OF FACTS

A. MetroButler Operated on a Commercial Level

1) MetroButler used a step-by-step client intake process to efficiently create and maintain its illegal listings.

84. Founded in 2015, MetroButler publicly described itself as a property manager and concierge for short-term rentals in New York City even though transient rentals of entire dwelling units, or of shared dwelling units by three or more people violate a wide array of laws including, but not limited to, the Consumer Protection Law, Advertising Act, New York City Building Code, New York City Administrative Code, New York State Multiple Dwelling Law, New York City Housing Maintenance Code, and the New York City Zoning Resolution.

85. According to MetroButler's website it provided clients with "Airbnb property management, a service that unlocks both the opportunity and freedom for you to travel the world, work elsewhere-live in a home away from home- and make money while doing it."

86. MetroButler utilized a client intake process to efficiently create illegal short-term listings for its clients and manage (and profit from) the illegal short-term bookings resulting from those listings.

87. MetroButler's client intake process guided clients through the eight-step process described below, but then kept control of all host accounts and listings, receiving all proceeds itself and then pocketing its 25%-33% commission before paying out the balance to its clients.

- i. An informational phone call with a team member of MetroButler to answer any questions potential clients may have;
- ii. Interested clients agreed to MetroButler's Terms of Service which included MetroButler's attempt to disclaim legal liability from using its service;
- iii. Clients filled out MetroButler's listing information form with their property details;
- iv. MetroButler's "On-boarding Specialists" contacted the clients to schedule photography shoots of the clients' properties in order to use the photos in the soon to be created listings and helped with Airbnb's identification verification and tax information requirements;
- v. The On-boarding Specialists built new listings or edited existing listings for the clients;
- vi. The clients consulted with the growth and development representatives of MetroButler, signed the Terms of Service and filled intake forms with questions about the property that was to be rented out;
- vii. The clients provided MetroButler with three sets of keys, one set for guests, one set for the housekeeping team, and one set in case of an emergency; and
- viii. The clients would log into the "Makomi Dashboard" portal to set available booking dates or block out dates.

88. Upon information and belief, MetroButler implemented this elaborate multi-step process to maximize the illegal short-term rentals of its clients' properties and therefore its own profits.

89. MetroButler maintained control of the illegal listings it created for its clients and explicitly prohibited clients from being able to access the Airbnb account for the listing.

2) MetroButler created, managed, and maintained hundreds of illegal short-term listings for its clients on Airbnb and HomeAway/VRBO.

90. MetroButler claimed to be merely a “service provider” and attempted to disclaim responsibility for any legal issues associated with its illegal short-term rentals in its Terms of Service, but subpoenaed Airbnb and HomeAway/VRBO records show MetroButler was significantly involved in creating the illegal listings and managing the resulting illegal short-term rentals.

91. During the Investigation Period, Airbnb records show that MetroButler created and managed at least 310 distinct listings for illegal transient use in 270 permanent only residential dwelling units across New York City.

92. MetroButler is not the tenant or owner of the 270 dwelling units that it illegally advertised but rather relied on its clients to provide the dwelling unit free of charge for MetroButler to profit from.

93. Upon information and belief, MetroButler had not disclosed to its clients the illegality of the advertisements it created and instead placed its clients as the “hosts” on the face of the illegal advertisements.

94. MetroButler placing its clients as the “hosts” on the face of the illegal advertisements shifted all of the risk of detection by law enforcement to its clients, leaving MetroButler free to collect payment for the illegal short-term stays in its clients’ homes, pocketing its fee before remitting the balance.

95. MetroButler charged fees to its clients for creating host accounts and listings on Airbnb in the clients’ names, but then required its clients to turn over control of the host accounts and listings to MetroButler.

96. Clients had no direct access to their host accounts and could only view reservations through MetroButler’s Makomi Dashboard.

97. At its peak during the Investigation Period, MetroButler used its 310 illegal advertisements and its inventory of 270 permanent residential units to facilitate over 4,000 illegal and deceptive short-term rental reservations and stays, leading to Airbnb disbursing over \$3.2 million dollars to MetroButler and its clients as a direct result of MetroButler's illegal operation.

B. During the Investigation Period, OSE Actually Found Deceived and Endangered Tourists Present in Several of MetroButler's Hundreds of Illegal Accommodations

98. While MetroButler profited from the 310 deceptive short-term listings that it placed and used to deceive thousands of guests, these deceptive short-term listings had actual real-world effects, as OSE found actual tourists present in these illegal and unsafe accommodations that MetroButler controlled and deceptively advertised. For example, in one instance, the OSE Inspection Team was shown the Makomi Dashboard during an inspection that confirmed the illegal transient stay of the guests.

99. At MetroButler's peak during the Investigation Period, MetroButler had 270 units spread across almost 270 buildings throughout New York City, making it difficult for OSE Inspection Teams to quickly find MetroButler's units because OSE Inspection Teams inspected one building at a time in response to publicly filed complaints of illegal activity.

100. Although MetroButler's diversification of locations for its units and the limited resources available to OSE helped MetroButler evade detection by law enforcement, during the Investigation Period, OSE nonetheless found six buildings, the Inspected Buildings noted previously, that had permanent residential units that MetroButler advertised and facilitated illegal short-term rentals in.

101. The Inspected Buildings serve as only a few examples of the real world consequences of MetroButler's illegal actions because OSE found actual tourists staying in the illegal and hazardous accommodations.

102. During the Investigation Period and as a result of OSE's inspections, Department of Building ("DOB") inspectors issued Notices of Violations ("NOVs"), also known as summonses, for illegal short-term rentals to the building owners or unit owners in the Inspected Buildings.

103. In addition to charges for conversion of permanent dwelling units to illegal transient housing, the summonses also held building or unit owners liable for violating fire safety requirements.

104. Transient use in any unit of a building requires enhanced fire safety protections like automatic sprinklers, fire alarms and at least two means of egress from each floor of the building.

105. These heightened requirements are legally required because short-term visitors are likely not to be as familiar with the building as permanent residents.

106. In the Inspected Buildings, OSE traced the illegal short-term advertisements and rentals to MetroButler.

107. OSE's inspections under this investigation are briefly described below and set forth in greater detail and with accompanying evidence in affidavits and exhibits attached thereto in support of the City's contemporaneously filed motion for a preliminary injunction.

108. All of the residential units in the Inspected Buildings can only be occupied for permanent residential use and therefore the transient occupancy that MetroButler advertised there was unlawful and unsafe.

1) Inspected Building 344 East 120th Street, Apartment 2

109. The certificate of occupancy (“C of O”) for 344 East 120th Street indicates that it is a four-story Class “A” Multiple Dwelling with three dwelling units and therefore its only lawful residential use is permanent occupancy (30 consecutive days or more).

110. On April 6, 2019 the City received two complaints to 311, one alleging that there was illegal transient use and another alleging an illegal conversion of the basement into an apartment.

111. On April 13, 2017, DOB Inspector Zheng and the OSE Inspection Team inspected 344 East 120th Street Apartment 2 on the first floor in response to the public complaints.

112. The OSE Inspection team interviewed a guest from Australia who had booked Apartment 2 on the first floor through Airbnb from April 4, 2019 through April 15, 2019 with the guest’s boyfriend and paid 3,000 in Australian dollars for the accommodations.

113. The guest allowed Inspector Zheng to photograph their cellphone booking confirmation which shows the reservation dates, listing name, payment details and identifies the host who, according to Airbnb records, is a client of MetroButler.

114. The guest also allowed Inspector Zheng to photograph text messages between the host and the guest, showing that the contact phone number for the host is [REDACTED]-2091 – a phone number Airbnb records show is linked to MetroButler.

115. Based upon Inspector Zheng’s observations and interviews of the occupant at 344 East 120th Street Apartment 2 on April 10, 2019, Inspector Zheng issued four NOVs to the building owner.

116. For these NOVs, all due to the unlawful transient occupancy at this location, the specific remedy required was for the building owner to “discontinue illegal occupancy.”

117. Each violation is summarized below and in Inspector Zheng's affidavit in support of the City's contemporaneously filed preliminary injunction motion:

NOV No.	Date	Violations Noted
35405976P	4/10/19	Permanent dwelling used converted for other than permanent residential purposes. C of O #102824491 indicates building to be legally approved as a Class "A" multi dwelling. Now first floor apartment used/converted to transient use. Noted: first floor apartment having 2 guests without host – staying less than 30 days – booked online on Airbnb.com.
35405977R	4/10/19	Failure to maintain building in a code compliant matter – lack of required number of means of egress for every floor for transient use at first floor apartment.
35405978Z	4/10/19	Failure to provide fire alarm for transient use at first floor apartment.
35405979K	4/10/19	Failure to maintain building in a code compliant manner – lack of a system of automatic sprinklers where required for transient use at first floor apartment.

118. At an OATH hearing on September 26, 2019, the building owner was found "in violation" of all four of the summonses written on April 10, 2019 for 344 East 120th street.

119. After Inspector Zheng's April 10, 2019 inspection of 344 East 120th street, he investigated online the illegal transient occupancy offered and advertised at the location and discovered an online advertisement for Apartment 2 on Airbnb.

120. According to Airbnb records, the online advertisement for Apartment 2 is identified as MetroButler's listing.

121. Although on April 10, 2019, OSE found illegal transient use at 344 East 120th Street in response to 311 complaints, Airbnb records show that during the Investigation Period, MetroButler had facilitated 149 distinct illegal short-term stays at the 344 East 120th Street building and maintained two illegal listings to facilitate those illegal short-term stays, thereby

placing hundreds more unsuspecting tourists in illegal and hazardous accommodations that the City was unaware of.

2) Inspected Building 349 West 71st Street, Unit 2

122. According to the C of O for 349 West 71st street, it is a five-story Class A multiple dwelling building with six dwelling units and therefore its only lawful residential use is permanent occupancy (30 consecutive days or more).

123. On January 29, 2020, the City received a complaint to 311 for illegal transient use at 349 West 71st street.

124. On February 10, 2020 at around 9:50 a.m., along with the rest of the OSE Inspection Team, DOB Inspector Zheng inspected 349 West 71st Street.

125. A tenant let the OSE Inspection Team into the building and informed the OSE Inspection Team that the owner was operating short-term rentals on the upper floors of the building.

126. The OSE Inspection Team found illegal transient use in apartments 2 and 3.

127. At the time of inspection, a married couple, traveling from Minnesota, was occupying Apartment 2.

128. The couple stayed in Apartment 2 from February 7, 2020 to February 10, 2020, booked their stay through Airbnb, and paid a total of \$632.04 for the accommodations.

129. During Inspector Zheng's interview with the short-term guests he found at 349 West 71st Street Apartment 2, he was able to take photographs of the wife's smartphone, which depicts the electronic confirmations of the couple's illegal transient stay reservation as provided by Airbnb.

130. Based upon the OSE Inspection Team's observations and interviews of the occupants at 349 West 71st Street Apartment 2 and 3 on February 10, 2020, Inspector Zheng

issued the same NOV's to this owner, 349 West 71st Street LLC, as set forth above for 344 East 120th Street.

131. These NOV's were all issued due to the unlawful transient occupancy that he observed, and the remedy required was for the building owner to "discontinue illegal occupancy."

132. Each violation issued on February 10, 2020 is described in further detail in Inspector Zheng's Affidavit in support of the City's contemporaneously filed preliminary injunction motion.

133. After Inspector Zheng's February 10, 2020 inspection of Apartments 2 and 3 at 349 West 71st Street, he investigated online the illegal transient occupancy offered and advertised at the location and discovered online advertisements for Apartment 2 and 3 on Airbnb.

134. Airbnb records show that the online advertisement for Apartment 2 is identified as MetroButler's listing.

135. At an OATH hearing on June 3, 2021, the owner of the building, 349 West 71 LLC, was found "in violation" on all four of the summonses.

136. After the January 29, 2020 complaint to 311, 311 received another complaint on March 11, 2020 alleging transient use in Apartment 2.

137. The OSE Inspection team with DOB Assistant Chief Inspector Pugach returned to 349 West 71st Street on March 11, 2020, where it once again found illegal transient use in Apartment 2.

138. Based upon the OSE Inspection Team's observations and interviews of the occupants at 349 West 71st Street Apartment 2 on March 11, 2020, Assistant Chief Inspector Pugach issued the same four NOV's to the building owner, 349 West 71st Street LLC, as DOB

Inspector Zheng did on February 10, 2020, and which are set to be heard at OATH on September 9, 2021.

139. Although the OSE Inspection team found illegal transient use on February 10, 2020 and March 11, 2020 at 349 West 71st Street, Airbnb records reveal that, during the Investigation Period, MetroButler facilitated 48 distinct illegal short-term stays for Apartment 2 at the 349 West 71st Street building.

140. Airbnb records also show that MetroButler maintained the illegal listing that facilitated those 48 illegal short-term stays, resulting in dozens of unsuspecting tourists being lured into illegal and hazardous accommodations.

141. The result of these inspections and the revelation from Airbnb records of how rampant illegal transient use was at Apartment 2 exemplifies why the City needs judicial intervention because MetroButler's stock of residential units is so vast and diversified that OSE's strategy of inspecting one building at a time had been futile in curbing MetroButler's illegal activity.

3) Inspected Building 331 West 18th Street, Unit 2, and Unit 3

142. The applicable DOB record for 331 West 81st Street is the I-Card, which is maintained by the Department of Housing Preservation and Development ("HPD").

143. According to the I-Card, 331 West 18th Street is a three-story building classified as a 1-family dwelling, and thus only permanent residential use and occupancy is allowed under the Building and Housing and Maintenance Codes ("BC" and "HMC" respectively).

144. On March 11, 2020, DOB Assistant Chief Inspector Pugach and the OSE Inspection Team inspected 331 West 18th Street and discovered illegal transient occupancy in Apartment 2 on the 3rd floor.

145. Apartment 2 of 331 West 18th Street was occupied by three guests traveling together from France who were staying in Apartment 2 from March 7 through March 14, 2020.

146. While inspecting 331 West 18th Street, the OSE Inspection Team encountered a woman who introduced herself as the assistant to the owner of the building and who, using MetroButler's platform "Makomi Dashboard," showed the OSE Inspection Team the reservation confirmation for the transient guests in Apartment 2 which Assistant Chief Inspector Pugach photographed.

147. Based upon the observation and interviews of the OSE Inspection Team, Assistant Chief Inspector Pugach issued five NOV's to the building owner, XELT LLC, four of which were issued due to the unlawful transient occupancy and the remedy required was for the building owner to "discontinue illegal occupancy."

148. Each violation issued on March 11, 2020 is described in further detail in Assistant Chief Inspector Pugach's affidavit in support of the City's motion for a preliminary injunction.

149. At the Office of Administrative Trials and Hearings ("OATH") hearing on June 10, 2021, the owner of 331 West 18th Street, XELT LLC, was found "in violation" on all five summonses.

150. After inspecting 331 West 18th Street, the OSE Inspection Team investigated online for offerings of illegal transient occupancy and discovered two Airbnb advertisements for illegal transient occupancy, one for Apartment 2 and one for Apartment 3 at 331 West 18th Street.

151. Airbnb records show that illegal online advertisements for Apartment 2 and Apartment 3 at 331 West 18th Street are identified as MetroButler listings and were for the same one client.

152. Although the OSE Inspection Team found one occasion of illegal transient use on March 11, 2020, Airbnb records reveal that during the Investigation Period, MetroButler facilitated at least 43 distinct illegal short-term stays at 331 West 18th Street.

4) Inspected Building 30 Bayard Street, Apartment 5E

153. No certificate of occupancy is on file for 30 Bayard Street and so the applicable occupancy record is the Building Registration Summary Report of HPD which indicates that 30 Bayard Street is a thirteen-story Class “A” Multiple Dwelling with 51 Class “A” dwelling units. This Inspected Building’s only lawful residential use is therefore permanent residential use (30 consecutive days or more).

154. On November 3, 2017, the City received a complaint to 311, alleging that “housing erected on terrace serving as hotel room..no fire alarm” (Complaint #3626347).

155. On November 16, 2017, the OSE Inspection Team inspected 30 Bayard Street and found transient use in Apartment 5E that traced back to MetroButler.

156. At Apartment 5E, the OSE Inspection Team interviewed a short-term guest that booked their stay from November 10 to November 17, 2017 through Airbnb.

157. During the OSE Inspection Team’s interview of the short-term guest in Apartment 5E, the OSE Inspection Team was able to photograph their cellphone, showing the reservation confirmation for Apartment 5E with the address, length of stay, and total cost of accommodations.

158. Based upon the OSE Inspection Team’s observations and interview of the illegal short-term guest at 30 Bayard Street Apartment 5E on November 16, 2017, an NOV was issued to the owner of Apartment 5E.

159. This owner filed a Certificate of Correction package (“COC”) for this NOV to DOB in January 2018 demonstrating that he informed MetroButler that due to his building receiving a summons from the City, he needed to cease using MetroButler’s service for renting his apartment short-term, and the COC shows that MetroButler thereafter removed this client’s listing.

160. At an OATH hearing on January 8, 2018 for the above NOV, the owner was found “in violation” of the summons.

161. After the inspection of Apartment 5E at 30 Bayard Street, OSE investigated online the illegal transient occupancy offered and advertised at the Inspected Building and discovered an illegal online advertisement for short-term occupancy of Apartment 5E on Airbnb.

162. Airbnb records show that the illegal advertisement for Apartment 5E is identified as MetroButler’s listing.

163. While the OSE Inspection Team, during the Investigation Period, only found one instance of illegal transient use at Apartment 5E in 30 Bayard Street, Airbnb records show that during the Investigation Period the illegal short-term listing MetroButler had created and maintained facilitated 17 separate illegal short-term stays at Apartment 5E.

5) Inspected Building 218 West 10th Street, Apartment 5A

164. According to the C of O for 218 West 10th Street, it is a six-story Class “A” Multiple Dwelling with 42 Class “A” dwelling units and therefore the building’s only lawful residential use and occupancy is for permanent residency, e.g., 30 consecutive days or more.

165. On December 19, 2014, the City received a complaint to 311 alleging illegal transient use at the building.

166. On January 10, 2015, the OSE Inspection Team inspected 218 West 10th Street and found illegal transient use in Apartment 5A.

167. As a result of the illegal transient use in Apartment 5A, on January 10, 2015, Assistant Chief Inspector Pugach issued four NOVs to the building owner, Phillips and Huyler LLC.

168. Further details of the inspection and of the violations can be found in Assistant Chief Inspector Pugach's Affidavit.

169. At an OATH hearing on May 28, 2015, owner Phillips and Huyler LLC was found "in violation" on all four summonses.

170. On January 15, 2015, the City received another 311 complaint alleging illegal transient use at 218 West 10th Street.

171. On February 23, 2015, the OSE Inspection Team inspected 218 West 10th street, Apartment 5A and found illegal transient use that was traced back to MetroButler.

172. Based upon the illegal transient use in Apartment 5A, on February 23, 2015, the OSE Inspection Team issued four NOVs to the building owner Phillips and Huyler, LLC.

173. Further details of the inspection and of each violation can be found in Assistant Chief Inspector Pugach's affidavit.

174. At an OATH hearing on April 13 and April 24, 2015, Phillips and Huyler LLC was found "in violation" on all four of the summonses.

175. While OSE, during the Investigation Period, only found two instances of illegal transient use at 218 West 10th Street, Airbnb records show that during the Investigation Period, MetroButler had created and maintained an illegal listing for its client at 218 West 10th Street Apartment 5A and it facilitated at least three separate illegal short-term stays there.

6) Inspected Building 100 Jane Street, Apartment 4A

176. The C of O of 100 Jane Street indicates it is a nine-story Multiple Dwelling mixed use building with a total of 148 Class "A" dwelling units and therefore this Inspected Building's only lawful residential use is permanent residential occupancy (30 consecutive days or more).

177. On November 19, 2019, the City received a 311 complaint for illegal transient use at 100 Jane Street.

178. On December 3, 2019, the OSE Inspection Team inspected 100 Jane Street and found illegal transient use in Apartment 4A.

179. The OSE Inspection Team took photos of the short-term guests' electronic confirmations of the illegal transient stay reservation which include instructions from MetroButler to the transient guest signed "All the best, The Makomi Team."

180. Based upon the illegal transient use in Apartment 4A, three NOV's were issued to the building owner, 100 Janes Street LP.

181. Further details of the inspection and of the violations can be found in Assistant Chief Inspector Pugach's Affidavit.

182. At an OATH hearing on November 12, 2020, the building owner, 100 Jane Street LP, was found "in violation" on all three of the summonses.

183. After the December 3, 2019 inspection of 100 Jane Street, Apartment 4A, OSE investigated online the illegal transient occupancy advertised for this location and discovered an illegal online advertisement for Apartment 4A on Airbnb.

184. Airbnb records show that the illegal advertisement for Apartment 4A is identified as MetroButler's listing and that MetroButler facilitated at least ten illegal short-term stays there.

185. For this inspection, fortunately the 311 complaint specified which of the 148 Class A dwelling units had illegal transient use, but if the complaint had not been so specific, OSE would have had to begin inspecting each unit one by one trying to find the one dwelling unit out of 270 across New York City that MetroButler facilitated illegal short-term stays in.

FIRST CAUSE OF ACTION
CONSUMER PROTECTION LAW - DECEPTIVE TRADE
PRACTICES

186. Plaintiff repeats and realleges the allegations in the foregoing paragraphs as if fully set forth herein.

187. The Consumer Protection Law provides that “[n]o person shall engage in any deceptive or unconscionable trade practice in the sale, lease, rental or loan or in the offering for sale, lease, rental, or loan of any consumer goods or services, or in the collection of consumer debts.”

188. Admin. Code § 20-701 defines a deceptive trade practice as:

any ... representation of any kind made in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental, or loan of consumer goods or services ... which has the capacity, tendency or effect of deceiving or misleading consumers. Deceptive trade practices include but are not limited to: ... (2) the use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive.

189. A merchant impliedly represents that the products and services which she or he advertises and sells are both legal and safe.

190. Defendants’ illegal advertisements induced tourists to book accommodations in permanent dwellings for unlawful and hazardous stays of less than 30 consecutive days.

191. Defendants' advertisements are therefore false representations and omissions of material fact which have misled or deceived or tried to mislead and deceive consumers as to the use of those accommodations.

192. By inducing tourists and other visitors to New York City to book illegal and unsafe accommodations in Class A multiple dwellings for stays of less than 30 consecutive days, Defendants knowingly misled consumers into booking and using those accommodations and failed to state material facts about those accommodations, doing so in a manner that tends to deceive and that has resulted in actual deception of thousands of consumers.

193. Defendants have thereby committed deceptive trade practices in violation of the Consumer Protection Law, Admin. Code § 20-700.

194. Upon information and belief, every building in New York City in which Defendants have unlawfully advertised, booked, operated, and maintained transient accommodations for illegal and hazardous short-term stays of less than 30 days has the heightened fire-safety features required for transient accommodations.

195. Pursuant to Admin. Code § 20-703, the Commissioner of Consumer Affairs and Worker Protection made a finding that Defendants committed repeated, multiple, and persistent violations of law.

196. Pursuant to Admin. Code § 20-703, on or about October 5, 2021, Defendants were served a statutory five-day notice of the Plaintiff's intent to file a lawsuit.

SECOND CAUSE OF ACTION
ADVERTISING OF ILLEGAL OCCUPANCIES IN MULTIPLE
DWELLINGS IN VIOLATION OF THE ADVERTISING ACT
(ADMIN. CODE §27-287.1 AND MDL §121)

197. Plaintiff repeats and realleges the allegations in the foregoing paragraphs as if fully set forth herein.

198. Admin. Code § 27-287.1(1) prohibits advertising a Class A multiple dwelling unit for other than permanent residence use:

It shall be unlawful to advertise occupancy or use of dwelling units in a class A multiple dwelling for occupancy that would violate subdivision eight of section four of the multiple dwelling law defining a "class A" multiple dwelling as a multiple dwelling that is occupied for permanent residence purposes.

199. Subdivision eight of section four of the multiple dwelling law, MDL § (4)(8)(a), provides that "A class A multiple dwelling shall only be used for permanent residence purposes," the term "permanent residence purposes" being defined by the statute to "consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more...."

200. Admin. Code § 27-287.1(2) imposes a penalty of \$1,000 for the first violation of Admin. Code § 27-287.1(1), \$5,000 for the second violation and \$7,500 for the third and subsequent violations:

Any person found to have violated the provisions of subdivision one of this section shall be liable for the civil penalty of not more than one thousand dollars for the first violation, five thousand dollars for the second violation and seven thousand five hundred dollars for the third and subsequent violations.

201. Admin. Code §27-287.1(3) defines the word "advertise":

For the purposes of this section, the term "advertise" shall mean any form of communication for marketing that is used to encourage, persuade or manipulate viewers, readers or listeners into contracting for goods and/or services as may be viewed through various media including, but not limited to, newspapers, magazines, flyers, handbills, television commercials, radio, signage, direct mail, websites or text messages.

202. Admin. Code §27-287.1(2) authorizes the Mayor's Office of Special Enforcement to enforce Admin. Code §27-287.1:

The provisions of this section shall be enforced by the mayor's office of special enforcement.

203. The certificates of occupancy or other applicable DOB/HPD record for 170 buildings out of the nearly 270 that Defendants illegally advertised and had at least one client unit in show that the 170 buildings are all class A multiple dwellings and therefore their only legal residential use is for permanent residential use (30 days or more).

204. Notwithstanding the requirements of the Admin. Code, Defendants advertised these class A multiple dwellings for short-term transient occupancies of less than 30 consecutive days, in violation of the Admin. Code §27-287.1.

205. MDL § 121 likewise prohibits advertising transient occupancy or use of dwelling units in a Class A multiple dwelling in language nearly identical to Admin. Code §27-287.1.

THIRD CAUSE OF ACTION
ILLEGAL OCCUPANCY IN MULTIPLE DWELLINGS IN
VIOLATION OF THE MDL

206. Plaintiff repeats and realleges the allegations in the foregoing paragraphs as if fully set forth herein.

207. The certificate of occupancy or other applicable DOB/HPD record for 170 buildings that Defendants had units in establishes that the buildings are class A multiple dwellings and therefore the only legal residential use is for permanent residential use (30 days or more).

208. Notwithstanding the requirements of the MDL, Defendants advertised, maintained, and used these class A multiple dwellings for short-term transient occupancies of less than 30 consecutive days, in violation of the MDL.

209. Pursuant to MDL § 306, Plaintiff is entitled to judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert with it, permanently enjoining Defendants from advertising, using or occupying, or maintaining, managing, operating,

or permitting the use or occupancy of any of the units in the multiple dwellings for transient use and occupancy as prohibited by the MDL.

FOURTH CAUSE OF ACTION
GENERAL CITY LAW – CITYWIDE INJUNCTION

210. Plaintiff repeats and realleges the allegations in the foregoing paragraphs as if fully set forth herein.

211. The New York General City Law § 20(22), empowers the City to maintain an action in a court of competent jurisdiction in order to compel compliance with or to restrain any violation of the Administrative Code.

212. Defendants violated the Consumer Protection Law by advertising the use or occupancy of permanent residential dwelling units for short-term rentals of less than 30 consecutive days.

213. As a result of the foregoing, Plaintiff is entitled to a judgment against Defendants, permanently restraining them, their agents, assigns, employees, and all persons acting individually or in concert with it, from continuing to advertise, offer, and maintain the use or occupancy of permanent residential dwelling units for other than permanent residence purposes (i.e., short-term rental for less than 30 days) throughout New York City.

FIFTH CAUSE OF ACTION
COMMON LAW PUBLIC NUISANCE
INJUNCTION AND NOMINAL AND PUNITIVE DAMAGES

214. Plaintiff repeats and realleges the allegations in the foregoing paragraphs as if fully set forth herein.

215. Under common law principles in New York, a public nuisance is an offense against the State:

It consists of conduct or omissions which offend, interfere with or cause damage to the public in the exercise of rights common to all (New York

Trap Rock Corp. v. Town of Clarkston, 299 NY 77, 80), in a manner such as to offend public morals, interfere with the use by the public of a public place or endanger or injure the property, health, safety or comfort of a considerable number of persons (Melher v. City of New York, 190 NY 481, 488; Restatement, Torts, notes preceding § 822, p. 217).

Copart Industries v. Consolidated Edison, 41 N.Y.2d 564, 568 (1977); *City of New York v. Smokes-Spirits.Com*, 12 N.Y.3d 616, 626 (2009) (quoting *Copart Industries v. Consolidated Edison, Co.*, 41 N.Y.2d 564, 568 [1977]).

216. Similarly, the Restatement of Torts 2d, § 821B, defines a public nuisance to be “an unreasonable interference with a right common to the general public,” and further describes circumstances which can constitute a public nuisance to include significant interference with “public safety,” “public peace,” and “conduct proscribed by a statute, ordinance or administrative regulation.”

217. It is well settled that a governmental entity such as the City may bring an action to abate a public nuisance. *City of New York v. Smokes-Spirits.Com*, 12 N.Y.3d 616, 626 (2009); *New York Trap Rock Corp. v. Town of Clarkstown*, 299 N.Y. 77, 83, (1949).

218. Defendants advertised, operated, and maintained apartments for short-term stays of less than 30 days in numerous class A multiple dwellings and private dwellings which legally are only available for permanent residency, creating serious safety risks for the transient occupants of those apartments, significant security risks in buildings not equipped to handle the security problems associated with transient occupancy, and a degradation in the quality and comfort of the surrounding residents, created by noise, filth, and the excessive traffic of unknown and constantly changing individuals entering their places of abode or neighborhood.

219. The unlawful activities promoted, maintained and allowed by Defendants through their illegal practices, and the unsafe building conditions allowed by Defendants, as described in this complaint, are detrimental to the welfare, property, and safety of the citizens of the City of New York and the public at large.

220. Defendants offended, interfered with, and caused damage to the public in the exercise of rights common to all, in a manner such as to endanger or injure the property, safety and well-being of a considerable number of persons.

221. Defendants therefore maintained a public nuisance as known at common law and in equity jurisprudence.

222. Unless restrained by order of this court, Defendants could at any time renew its illegal activities and absorb the costs of any fines and penalties imposed upon it as routine operating expenses.

223. In addition, the Plaintiff would be forced to continue expending its limited resources in continued attempts to abate this harmful nuisance through administrative inspections, summonses, and violation orders.

224. The Plaintiff therefore has no adequate remedy at law.

225. As a result of the foregoing, the Plaintiff is entitled to a judgment against Defendants, their agents, assigns, employees, and all persons acting individually or in concert with it, permanently restraining the above-described common law public nuisance.

226. Defendants acted willfully, wantonly, and with a recklessness betokening an improper motive, and engaged in intentional misconduct and recklessly and wantonly disregarded the safety, welfare, and rights of others in permitting and maintaining the aforesaid common law public nuisance.

227. Defendants actively advertised and sought to rent numerous permanent residence apartments to tourists and visitors to New York City for stays of less than 30 days, knowing that this constituted an illegal occupancy.

228. Plaintiff is thus entitled to compensatory and punitive damages because of the knowing common law nuisance created and maintained by Defendants.

WHEREFORE, the Plaintiff demands judgment against Defendants as follows:

1. A declaration that the Defendants had knowledge of the existence of the unlawful acts complained of herein, and failed to take reasonable measures to abate such unlawful activity;

2. A declaration that Defendants managed, used, advertised, booked, and operated numerous apartments in permanent residential dwellings for illegal transient use and occupancy though prohibited by State and local laws so as to constitute deceptive trade practices and a public nuisance;

3. With respect to the FIRST CAUSE OF ACTION, pursuant to § 20-703 of the Administrative Code, an order:

- a. permanently enjoining Defendants, their agents, employees or representatives, and every person or entity acting individually or in concert with them, from further violating the Consumer Protection Law and from committing the deceptive acts or practices alleged herein;
- b. imposing upon Defendants penalties for each violation of the Consumer Protection Law of Three Hundred Fifty Dollars (\$350), or Five Hundred Dollars (\$500) if the violation was knowing; and
- c. compelling Defendants to pay in court all monies, property or other things, or proceeds thereof, received as a result of their violations of the Consumer Protection Law and directing that the amount of money or the property or other things recovered be paid into an account from which shall be paid over to any and all persons who purchased the goods or services during the period of violation such sum as was paid by them in a transaction involving the prohibited acts or practices, plus any costs incurred by such claimants in making and pursuing their complaints;

4. With respect to the SECOND CAUSE OF ACTION, pursuant to § 27-287.1 of the Administrative Code and § 121 of the Multiple Dwelling Law, an order:

- a. imposing upon Defendants penalties for each illegal advertisement in violation of the Advertising Act of One Thousand Dollars (\$1,000);

5. With respect to the THIRD CAUSE OF ACTION, pursuant to MDL § 306, an order permanently enjoining Defendants, their agents, assigns, employees or representatives, and every person or entity acting individually or in concert with them, from further violating the MDL and from committing the deceptive advertising acts or practices alleged herein that promote the use of dwelling units in a Class A multiple dwelling for other than permanent residence purposes;

6. With respect to the FOURTH CAUSE OF ACTION, pursuant to § 20(22) of the New York General City Law, permanently restraining Defendants from continuing to advertise, offer, and maintain the use or occupancy of dwelling units in Class A multiple dwellings for other than permanent residence purposes (i.e., short-term rental for less than thirty days) throughout New York City;

7. With respect to the FIFTH CAUSE OF ACTION, pursuant to the common law doctrine of public nuisance, an order and judgment:

- a. permanently and perpetually enjoining Defendants, their agents, assigns, employees or representatives, and every person or entity acting individually or in concert with them, from conducting, maintaining or in any way permitting the common law public nuisance described herein; and
- b. awarding the Plaintiff compensatory damages in an amount to be set by the court, and punitive damages in the amount of \$1,000,000 for Defendants' willful and wanton perpetuation of a common law public nuisance;

8. Taxing and allowing the costs and disbursements against Defendants and directing that Plaintiff have execution therefor; and

9. Granting to Plaintiff such other and further relief as the Court may deem just, proper and equitable.

Pursuant to section 130-1.1a of the Rules of the Chief Administrator, I certify that, to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, the presentation of the papers attached hereto and the contentions contained in them are not frivolous.

Dated: New York, New York
October 8, 2021

GEORGIA M. PESTANA
Corporation Counsel, City of New York
Attorney for Plaintiffs



PIERRE RIVERA
Special Assistant Corporation Counsel
Mayor's Office of Special Enforcement
22 Reade Street, 4th Floor
New York, NY 10007
Tel.: (212) 416-5294
Cell: (646) 965-1525

VERIFICATION

SHERYL NEUFELD, an attorney admitted to practice before the courts of the State of New York, hereby affirms the following to be true, under the penalties of perjury pursuant to CPLR 2106:

I have been duly designated as Corporation Counsel of the City of New York and as such, I am an officer of the City of New York in the within action. I have read the foregoing complaint and know the contents thereof; the same are true to my knowledge except as to those matters I believe them to be true.

The reason this verification is not made by the City of New York is that it is a corporation. My belief as to all matters not stated upon my knowledge is based upon information obtained from various departments of the city government and from statements made to me by certain officers or agents of the City of New York.

Dated: New York, New York
October 8, 2021


SHERYL NEUFELD

City v. METROBUTLER LLC, METROBUTLER INC, METROBUTLER INC dba MAKOMI