

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

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

Index No. \_\_\_\_\_/2018

Plaintiff,

**SUMMONS**

-against-

BIG APPLE MANAGEMENT, LLC,  
321-3 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P.,  
THE LAND AND BUILDING KNOWN AS 321 WEST  
47<sup>TH</sup> STREET, BLOCK 1038, LOT 21, County, City and  
State of New York,  
THE LAND AND BUILDING KNOWN AS 323 WEST  
47<sup>TH</sup> STREET, BLOCK 1038, LOT 20, County, City and  
State of New York,  
328-30 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P.,  
THE LAND AND BUILDING KNOWN AS 328 WEST  
47<sup>TH</sup> STREET, BLOCK 1037, LOT 49, County, City and  
State of New York,  
332-4 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P.,  
THE LAND AND BUILDING KNOWN AS 332 WEST  
47<sup>TH</sup> STREET, BLOCK 1037, LOT 51, County, City and  
State of New York,  
THE LAND AND BUILDING KNOWN AS 334 WEST  
47<sup>TH</sup> STREET, BLOCK 1037, LOT 52, County, City and  
State of New York,  
348-58 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P.,  
THE LAND AND BUILDING KNOWN AS 348 WEST  
47<sup>TH</sup> STREET, BLOCK 1037, LOT 59, County, City and  
State of New York,  
THE LAND AND BUILDING KNOWN AS 350 WEST  
47<sup>TH</sup> STREET, BLOCK 1037, LOT 59, County, City and  
State of New York,  
FLAVIO RAUSEI, and  
“JOHN DOE” and “JANE DOE,” numbers 1 through 10,  
fictitiously named parties, true names unknown, the parties  
intended being the managers or operators of the business  
being carried on by defendant BIG APPLE  
MANAGEMENT, LLC, and any person claiming any right,  
title or interest in the real property which is the subject of  
this action,

Defendants.

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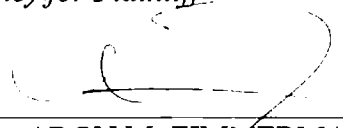
TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED TO ANSWER the verified complaint in this action and to serve a copy of your answer on the plaintiff 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 the properties affected by this action are located. Plaintiff designates New York County as the place of trial.

Dated: New York, New York  
June 4, 2018

ZACHARY W. CARTER  
Corporation Counsel of the City of New York  
*Attorney for Plaintiff.*

By:   
ARON M. ZIMMERMAN  
Special Assistant Corporation Counsel  
Mayor's Office of Special Enforcement  
22 Reade Street, 4<sup>th</sup> Floor  
New York, NY 10007  
Tel.: (646) 576-3517

TO:

BIG APPLE MANAGEMENT, LLC  
347 Fifth Avenue, Suite 1201  
New York, NY 10016

321-3 WEST 47TH STREET ASSOCIATES, L.P.  
347 Fifth Avenue, Suite 1201

New York, NY 10016

THE LAND AND BUILDING KNOWN AS 321 WEST 47TH STREET, BLOCK 1038, LOT 21, County, City and State of New York;

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THE LAND AND BUILDING KNOWN AS 332 WEST 47TH STREET, BLOCK 1037, LOT 51, County, City and State of New York

THE LAND AND BUILDING KNOWN AS 334 WEST 47TH STREET, BLOCK 1037, LOT 52, County, City and State of New York

348-58 WEST 47TH STREET ASSOCIATES, L.P.  
347 Fifth Avenue, Suite 1201  
New York, NY 10016

THE LAND AND BUILDING KNOWN AS 348 WEST 47TH STREET, BLOCK 1037, LOT 59, County, City and State of New York

THE LAND AND BUILDING KNOWN AS 350 WEST 47TH STREET, BLOCK 1037, LOT 59, County, City and State of New York

FLAVIO RAUSEI  
429 West 24<sup>th</sup> Street, Apr. #5D  
New York, NY 10011

“JOHN DOE” and “JANE DOE,” numbers 1 through 10

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

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THE CITY OF NEW YORK,

Index No. \_\_\_\_\_/2018

Plaintiff,

**VERIFIED COMPLAINT**

-against-

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FLAVIO RAUSEI, and  
“JOHN DOE” and “JANE DOE,” numbers 1 through 10,  
fictitiously named parties, true names unknown, the parties  
intended being the managers or operators of the business  
being carried on by defendant BIG APPLE  
MANAGEMENT, LLC, and any person claiming any right,  
title or interest in the real property which is the subject of  
this action,

Defendants.

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Plaintiff, THE CITY OF NEW YORK, by its attorney, ZACHARY W. CARTER, Corporation Counsel of the City of New York, for its verified complaint against defendants, alleges as follows:

1. Plaintiff THE CITY OF NEW YORK (the “City”) brings this action to shut down the illegal transient (less than 30-day) rentals that defendants have proven themselves unwilling to prevent and stop, despite multiple chances over the past seven years, in seven walk-up buildings along one stretch of 47<sup>th</sup> Street in Manhattan between 8<sup>th</sup> and 9<sup>th</sup> Avenues, clustered in one residential block adjacent to the Times Square hotel district.

2. Defendants have created, maintained, and/or permitted public nuisances in the form of illegal transient rentals in at least the following seven of the nine buildings they own on 47<sup>th</sup> Street (collectively, the “Subject Buildings”),<sup>1</sup> all five-story multiple dwellings that can only legally be used as permanent residences:

- a. 321 West 47<sup>th</sup> Street, Block 1038, Lot 21, County, City and State of New York (“321 West 47<sup>th</sup> St.”);
- b. 323 West 47<sup>th</sup> Street, Block 1038, Lot 20, County, City and State of New York (“323 West 47<sup>th</sup> St.”);
- c. 328 West 47<sup>th</sup> Street, Block 1037, Lot 49, County, City and State of New York (“328 West 47<sup>th</sup> St.”);
- d. 332 West 47<sup>th</sup> Street, Block 1037, Lot 51, County, City and State of New York (“332 West 47<sup>th</sup> St.”);
- e. 334 West 47<sup>th</sup> Street, Block 1037, Lot 52, County, City and State of New York (“334 West 47<sup>th</sup> St.”);

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<sup>1</sup> Besides the seven Subject Buildings, Defendant BIG APPLE MANAGEMENT, LLC also owns and operates the following three buildings on 47<sup>th</sup> Street between 8<sup>th</sup> and 9<sup>th</sup> Avenue: (1) 330 West 47<sup>th</sup> Street; and (2) 358 West 47<sup>th</sup> Street. While illegal transient occupancy has also been found in one of the two buildings, they are not named as defendants in this lawsuit at this time.

In addition, the City has received complaints of illegal short-term rental activity at 16 out of 21 of Big Apple’s managed buildings, and has issued violations at 11 buildings, including the seven Subject Buildings.

- f. 348 West 47<sup>th</sup> Street, Block 1037, Lot 59, County, City and State of New York (“348 West 47<sup>th</sup> St.”); and
- g. 350 West 47<sup>th</sup> Street, Block 1037, Lot 59, County, City and State of New York (“350 West 47<sup>th</sup> St.”).

3. To date, the City has identified and attempted to abate through extensive pre-litigation enforcement efforts and no fewer than thirty administrative code inspections since 2011, illegal, deceptive, and hazardous transient occupancies in the Subject Buildings owned and/or operated by Defendant BIG APPLE MANAGEMENT, LLC (“Big Apple”), which could easily but refuses to properly monitor the nearly non-stop unlawful short-term rentals taking place in twenty-six out of the approximately ninety-three apartments (almost thirty percent).

4. Instead, Big Apple, currently on the Public Advocate’s “Worst Landlord List,”<sup>2</sup> without addressing the almost four hundred open violations issued by the New York City Department of Housing Preservation & Development (“HPD”) for specific repairs and maintenance in the Subject Buildings, has equipped them (six of the seven buildings so far) with sophisticated Latch R series smart reader devices that accommodate frequent tourist turnover by allowing purely electronic entry via smart phone, keycard, or numeric code, raising public safety concerns of uncontrolled access to the permanent residential buildings.

5. For years, Big Apple and the defendant partnerships that own the Subject Buildings (collectively, “Owner Defendants”) have ignored the City’s administrative enforcement efforts to obtain their compliance with the law, and have shown they will not stop the illegal transient occupancy unless ordered to do so by the Court, despite the City’s having received approximately fifty complaints from residents and neighbors about unlawful transient occupancy since 2011.

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<sup>2</sup> <http://landlordwatchlist.com/landlord-BIG%20APPLE%20MGMT>. While illegal transient use has been found in two of the four Big Apple buildings on this list, only 328 West 47<sup>th</sup> St. is a Subject Building in this case at this time.

6. Owner Defendants have repeatedly treated the violations and civil penalties levied on them after administrative hearings as the cost of doing business – with more than \$120,000 in penalties imposed thus far and over \$88,000 remaining unpaid – regularly submitting certificates of correction to DOB after each violation and before first hearing dates in order to mitigate penalties imposed, with Big Apple’s Head Officer and Managing Agent Eric Gaugler (or his predecessors) swearing conclusorily each time that transient use has been “discontinued” in a given apartment “and throughout the entire building.” But Owner Defendants’ affidavits have been contradicted by subsequent testimony their attorneys have proffered from tenants, demonstrating that Defendants change their story whenever it is in their financial interest to do so, while at the same time turning a blind eye as the illegal short-term rentals resume time after time in their Subject Buildings.

7. While the Owner Defendants have repeatedly failed to adequately maintain the Subject Buildings in a safe and code-compliant manner – as they have unlawfully converted at least twenty-six apartments from permanent homes for New Yorkers to dangerous and illegal short-term rentals for tourists – fewer and fewer apartments in the Subject Buildings remain rent-stabilized.

8. The Owner Defendants’ own required reporting to the State Division of Housing and Community Renewal (“DHCR”) reveals that: (1) the number of rent-stabilized dwelling units in the Subject Buildings has fallen since at least 2009, around the same time the City started receiving complaints of illegal transient occupancy in the Subject Buildings; (2) at least seven dwelling units in the Subject Buildings that have fallen out of rent stabilization protection have been converted to illegal short-term rentals based on the City’s inspections; and (3) fewer than

half of the approximately ninety-three total dwelling units across the Subject Buildings remain rent stabilized today.

9. The City has identified at least five listings on the website [www.Airbnb.com](http://www.Airbnb.com) (“Airbnb”) advertising nightly short-term rentals within the Subject Buildings, with evidence indicating that Defendants have been and are deceptively offering transient occupancy therein (less than thirty days), without disclosing that such occupancy is both illegal and unsafe.

10. Unlawful advertisements for transient stays within 332 West 47<sup>th</sup> St. and 334 West 47<sup>th</sup> St. have been posted on Airbnb by one host identified by guests as using various identities – “Hector,” “Jaime,” and “Angel” – all traceable back to Defendant FLAVIO RAUSEI (“Rausei”) – who as an Airbnb “superhost”<sup>3</sup> is openly and deceptively using at least two different identities and two distinct Airbnb “Host” accounts to do so, in apparent contravention of the online platform’s restrictions on number of host accounts and listing addresses.<sup>4</sup>

11. Con Edison records list the account holders of the units advertised within 332 West 47<sup>th</sup> St. and 334 West 47<sup>th</sup> St. as Hector and Defendant Rausei himself.

12. Rausei has likewise ignored the City’s efforts to shut down his illegal short-term rental operations, with his deceptive advertisements on Airbnb still up and available to unsuspecting tourists to this day.

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<sup>3</sup> According to Airbnb, “superhosts” are hosts with “a 4.8+ overall rating,” who “respond within 24 hours at least 90% of the time,” and “host at least 10 stays a year,” with 0 cancellations. <https://www.airbnb.com/superhost>.

<sup>4</sup> According to Airbnb’s “terms of service,” a host “may not register more than one (1) Airbnb Account.” <https://www.airbnb.com/terms>.

On November 1, 2016, Airbnb launched a “one host, one home” policy for New York City, and states in an update on that policy that it is “concerned about hosts who may offer space that could otherwise have been on the long-term rental housing market in New York City.” <https://www.airbnbcitizen.com/wp-content/uploads/2016/07/OneHostOneHomeNewYorkCity-1.pdf>.

The site explains that, in “New York, NY,” “Hosts in select locations are only allowed to have listings at a single address within these locations. Hosts can have multiple listings at that address, but can’t have listings at different addresses.” <https://www.airbnb.com/help/article/1333/why-can-t-i-have-listings-at-more-than-one-address-in-select-locations>.



13. Hell's Kitchen has been identified as one of five "macro-neighborhoods" where a majority of all Airbnb listings in New York City are located, contributing to increased rental housing prices and reduction in the housing supply.<sup>5</sup>

14. A January 2018 report by Professor Wachsmuth of McGill University entitled "The High Cost of Short-Term Rentals in New York City" likewise found "Midtown," where the Subject Buildings are located, to be among "10 New York City neighborhoods with the highest total Airbnb host revenue."<sup>6</sup>

15. The illegal hotel operation perpetrated by Defendants in the Subject Buildings has continued for nearly seven years since 2011, notwithstanding the City's pre-litigation administrative enforcement efforts to enjoin such unlawful activities, including the issuance of one hundred fifty-four notices of violations ("NOVs")/Summonses with Commissioners' Orders to certify correction of violating conditions to the Subject Buildings' owners by the New York City Fire Department ("FDNY") and Department of Buildings ("DOB"). Furthermore, Defendants continue their illegal hotel operation despite the "in violation" adjudications of almost fifty NOVs/Summonses already heard by the New York City Environmental Control Board ("ECB"), and the pending prosecutions of DOB and FDNY Criminal Court Summonses.

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<sup>5</sup> A June 2016 report from MFY Legal Services titled "Short Changing New York City – The Impact of Airbnb on New York City's Housing Market" specified Chelsea/Hell's Kitchen as one of the "macro-neighborhoods" where "53 percent of all Airbnb listings are located."  
[http://www.hcc-nyc.org/documents/ShortchangingNYC2016FINALprotected\\_000.pdf](http://www.hcc-nyc.org/documents/ShortchangingNYC2016FINALprotected_000.pdf) at 5.

In its 2015 report titled "State of New York City's Housing and Neighborhoods in 2015," New York University's Furman Center for Real Estate and Urban Policy identified rapid increases in housing prices between 1990 and 2014, reduction in the supply of affordable housing, and changes in neighborhood composition.  
<http://furmancenter.org/research/sonychan/2015-report>.

In a May 2018 report entitled "The Impact of Airbnb on NYC Rents," the New York City Comptroller provides that "Airbnb listings are particularly concentrated in Manhattan below 59<sup>th</sup> Street, including . . . Midtown Business District," where the Subject Buildings are located.  
[https://comptroller.nyc.gov/wp-content/uploads/documents/AirBnB\\_050318.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/AirBnB_050318.pdf) at 2.

<sup>6</sup> <https://mcgill.ca/newsroom/files/newsroom/channels/attach/airbnb-report.pdf> at 16.

16. The City brings this action first to stop the public nuisance being maintained by all of the Defendants at the Subject Buildings, including: (1) the illegal rental of permanent residential dwelling units to numerous transient occupants, without having the more stringent fire and safety features required in buildings legally designed to serve transient occupants; (2) the creation of significant risks in buildings not staffed to handle the security issues associated with transient occupancy, and a degradation in the quiet enjoyment, safety, and comfort of permanent residents in the Subject Buildings and in neighboring buildings caused by noise, filth, and the excessive traffic of unknown and constantly changing individuals entering their places of abode; and (3) the unlawful reduction of the permanent housing stock available to the residents of New York City at a time when there is a legislatively declared housing emergency. The conditions created by Defendants' illegal conduct in the Subject Buildings negatively affect the health, safety, security, and general welfare of the residents of the City of New York and its visitors.

17. The City also brings this action because Defendants have been repeatedly committing deceptive trade practices against visitors and tourists seeking short-term accommodations in New York City, implicitly holding themselves out as engaging in a legal business, when in fact they are conducting a business which places consumers in illegal occupancies and exposes them to serious fire safety risks. These practices include advertising and promoting the booking of short-term accommodations in the Subject Buildings, properties in which transient, short-term occupancies of less than 30 days are prohibited by New York State and City laws.

18. The City brings this action pursuant to and by authority of section 20 of the New York General City Law, section 394 of the New York City Charter, and Section 20-703 of the Administrative Code of the City of New York (the "Admin. Code"), in order to enforce the

Consumer Protection Law of 1969, Title 20, Chapter 5, Subchapter 1, Section 20-700 et seq., of the Admin. Code (the “Consumer Protection Law”); Section 306 of the New York Multiple Dwelling Law (“MDL”); Sections 28-205.1, 7-704, and 7-706 of the Admin. Code; and pursuant to the common law doctrine of public nuisance.

19. By this action, the City seeks preliminary and permanent injunctive relief and the imposition of civil statutory penalties and compensatory and punitive damages against the owners, managers, lessees, licensees, operators and agents of the Subject Buildings, and against the Subject Buildings themselves, for violations under the MDL, the Consumer Protection Law, and the New York City Building Code (“Building Code”), for creating nuisances as defined in Section 7-701 et seq., of the Admin. Code (the “Nuisance Abatement Law”), and for creating common law public nuisances.

### **BACKGROUND**

20. The Mayor’s Office of Special Enforcement (“OSE”) is a governmental entity established by 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. To accomplish its duties, OSE oversees and conducts joint investigations and inspections with various City agencies to bring unsafe conditions into compliance with the law. When property owners fail to remedy violating conditions for an extended period of time through administrative enforcement mechanisms, the City seeks remedies in courts pursuant to the Nuisance Abatement Law and other statutes to compel compliance and halt flagrant violations. Through Mayoral Executive Order No. 22 of 2016, OSE is also tasked with enforcing unlawful advertising of illegal occupancy in multiple dwellings.

21. Tourists and other visitors to New York City have been enticed by misleading advertisements on numerous internet websites for short-term apartment accommodations located within buildings designed and constructed only for permanent residency. Many of these visitors are unwittingly led to book accommodations which 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 tenants of those buildings. A business that misleads consumers by purveying illegal and unsafe consumer goods or services without any indication that they are not legal or safe commits a deceptive trade practice prohibited by federal, state, and local consumer protection laws. *See* Admin. Code §§ 20-700 to 20-706.

22. Moreover, advertising, booking, and permitting transient accommodations in buildings where such accommodations are illegal create a public nuisance under both the Nuisance Abatement Law and the common law. The law has long recognized that the conditions and practices complained of herein, which endanger or injure the property, health, safety or comfort of a considerable number of persons, constitute a public nuisance adversely affecting both tourists and visitors to New York City, those who may lawfully reside in residential units in the Subject Buildings, as well as neighbors and emergency personnel who would respond to any situation at the Subject Buildings.

23. The City continually receives complaints about unlawful short-term transient occupancies from many sources – calls to “311,” letters and emails from the public, communications from elected officials and community groups – regarding excessive noise from tourists, overflowing trash, vomit in hallways, fires, loud fighting, drugs, prostitution, and the like.

24. Despite occupancy and safety rules prohibiting such use, dwelling units in permanent residential apartment buildings in New York City are increasingly being utilized as transient, short-term occupancy units for tourists and other visitors rather than tenants who intend to establish a permanent residence. This practice has been abetted by the phenomenal growth of the internet travel industry, and comes at a time when affordable housing accommodations for the residents of New York City remain at historically low levels.

25. The spread of illegal transient occupancies, which some observers in New York City have termed an “epidemic,”<sup>7</sup> 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;
- (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, and also with regard to severe overcrowding;
- (3) a burgeoning number of transient occupants, inter-mixed with permanent residents and neighbors, whose presence poses significant risks in buildings not equipped to handle the security problems associated with transient occupancy, as well as a degradation of quality of life for residents and neighbors;
- (4) harassment of permanent tenants by owners who seek to evict those tenants illegally in order to pursue a more lucrative (albeit unlawful) 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 sector.<sup>8</sup>

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<sup>7</sup> “Hey, Wanna Rent My Couch; Short-term rentals have officially become illegal – and sneaking around the law has officially become epidemic,” by S. Jhoanna Robeldo, *New York*, November 27, 2011.

<sup>8</sup> 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 identical legislative findings in establishing successor rent stabilization systems); and *Bucho Holding Co. v.*

26. Due to these deleterious effects on the housing market and the safety concerns for residents, tourists, the general public and emergency response personnel, illegal hotel operations are a point of particular concern to the City and State governments in protecting New Yorkers' quality of life.

27. To begin to address the illegal transient occupancy situation, the Legislature enacted Chapter 225 of the Laws of New York State of 2010 ("Chapter 225"). Chapter 225, which went into effect on May 1, 2011, prohibits renting units in Class "A" multiple dwellings, as defined under the MDL<sup>9</sup> and the New York City Housing Maintenance Code ("HMC"), for less than 30 days.

28. The Legislature enacted Chapter 225 in response to the First Department's 2009 *City of New York v. 330 Continental LLC* decision (60 A.D.3d 226), amending the MDL and other related laws to make clear, among other things, that the rental of any unit, including Class "B" units, in a Class "A" building for less than 30 days is prohibited. The legislative justification for Chapter 225 was explained by the law's sponsor in this manner:

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) 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

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*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 [be]*, and indeed is not, denied.").

<sup>9</sup> In 1929, the Legislature enacted MDL to "ensure the establishment and maintenance of proper housing standards requiring sufficient light, air, sanitation and protection from fire hazards." See MDL § 2. The 1929 MDL created two distinct and mutually exclusive classifications of buildings that continue in the law today: "Class A" buildings used for permanent residence use, and "Class B" housing intended for short-term transient use. The MDL defines buildings used for permanent residence purposes, such as "tenements, flat houses, maisonette apartments, [and] apartment houses," as Class A. See MDL § 4(4) (now, § 4(8)(a)). Similarly, the MDL defines buildings typically used for transient purposes, such as "hotels, lodging houses, rooming houses, [and] boarding houses," as Class B. See MDL § 4(4) (now, § 4(9)(a)).

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.

New York State Assembly Memorandum in Support of Legislation (S. 6873-B, 233rd Leg. (N.Y. 2010 (Sponsor’s Memo)) Bill No. A10008).

29. The plain language of the law, supported by its legislative history, makes clear that the Legislature intended to eliminate all transient use in “all Class A buildings in existence” as of the bill’s enactment and all those constructed thereafter. *See* Ch. 225 of the Laws of 2010, at § 8; Governor’s Bill Jacket, Ch. 225 of the Laws of 2010, at 6 -17. No Class A building was exempted from its coverage.

30. Following the Legislature’s clear intent in Chapter 225, the First Department unequivocally held that the Chapter 225 provisions applied to all buildings in existence on the date of its enactment, and no dwelling unit in a Class A multiple dwelling can be used transiently. *Matter of Grand Imperial, LLC v. New York City Bd. of Stds. & Appeals*, 137 A.D.3d 579 (1st Dep’t), *lv. denied*, 28 N.Y.3d 907 (2016) (“[I]n enacting the amendments, the legislature’s intent that a 30-day minimum occupancy requirement would apply to all, with only narrow, specified exceptions, was sufficiently clear that petitioner’s saving clause right to continue renting for the shorter period was extinguished.”) (internal citation omitted); *Matter of*

*Terrilee 97<sup>th</sup> Street LLC v. N.Y.C. Envtl. Control Bd.*, 146 A.D.3d 716 (1st Dep't 2017), *lv. to reargue or appeal denied*, 2017 N.Y. Slip. Op. 86314(U) (Sept. 19, 2017) (“Under the Multiple Dwelling Law, as amended effective May 1, 2011, none of the units in petitioner’s Class A multiple dwelling may be used for occupancy periods shorter than 30 days.”) (citations omitted).

31. The advertising, maintenance and operation of permanent residential properties for transient occupancy where such use is prohibited and unsafe deceives consumers and creates a public nuisance endangering or injuring the property, health, safety and comfort of residents in those buildings, residents in surrounding areas, and tourists and visitors to New York City.

32. Most recently in 2016, as a further step to address this issue, the Legislature amended the MDL and Administrative Code 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 30 days). 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 27 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.



New York State Senate Memorandum in Support of Legislation (A. 8704 C, 239<sup>th</sup> Leg. (N.Y. 2016 (Sponsor's Memo)) Bill No. S6340A) (emphasis added).

**PARTIES**

33. Plaintiff the City is a municipal corporation incorporated under the laws of the State of New York.

34. Defendant BIG APPLE MANAGEMENT, LLC ("Big Apple"), a limited liability company, organized under the laws of the State of New York is, and at all times relevant has been, the managing agent of record of the Subject Buildings. Big Apple is, upon information and belief, actively engaged in the management and control of the Subject Buildings, and has been so engaged at all times relevant.

35. Defendant 321-3 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., a New York County domestic limited partnership is, and at all times relevant has been, the owner of record of 321 West 47<sup>th</sup> St. and 323 West 47<sup>th</sup> St. The New York State Department of State Division of Corporations Entity Information page lists the process service address for 321-3 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P. as "C/O BIG APPLE MGMT., P.O. BOX 20213, GREELEY SQ. STATION, NEW YORK, NEW YORK 10001."

36. Defendant THE LAND AND BUILDING KNOWN AS 321 WEST 47<sup>TH</sup> STREET, BLOCK 1038, LOT 21, County, City and State of New York, is the real property where the activities complained of have taken place and continue to take place.

37. Defendant THE LAND AND BUILDING KNOWN AS 323 WEST 47<sup>TH</sup> STREET, BLOCK 1038, LOT 20, County, City and State of New York, is the real property where the activities complained of have taken place and continue to take place.

38. Defendant 328-30 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., a New York County domestic limited partnership is, and at all times relevant has been, the owner of record of 328 West 47<sup>th</sup> St. The New York State Department of State Division of Corporations Entity Information page lists the process service address for 328-30 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P. as “C/O BIG APPLE MGMT., P.O. BOX 20213, GREELEY SQ. STATION, NEW YORK, NEW YORK 10001.”

39. Defendant THE LAND AND BUILDING KNOWN AS 328 WEST 47<sup>TH</sup> STREET, BLOCK 1037, LOT 49, County, City and State of New York, is the real property where the activities complained of have taken place and continue to take place.

40. Defendant 332-4 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., a New York County domestic limited partnership is, and at all times relevant has been, the owner of record of 332 West 47<sup>th</sup> St. and 334 West 47<sup>th</sup> St. The New York State Department of State Division of Corporations Entity Information page lists the process service address for 332-4 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P. as “C/O BIG APPLE MGMT., P.O. BOX 20213, GREELEY SQ. STATION, NEW YORK, NEW YORK 10001.”

41. Defendant THE LAND AND BUILDING KNOWN AS 332 WEST 47<sup>TH</sup> STREET, BLOCK 1037, LOT 51, County, City and State of New York, is the real property where the activities complained of have taken place and continue to take place.

42. Defendant THE LAND AND BUILDING KNOWN AS 334 WEST 47<sup>TH</sup> STREET, BLOCK 1037, LOT 52, County, City and State of New York, is the real property where the activities complained of have taken place and continue to take place.

43. Defendant 348-58 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., a New York County domestic limited partnership is, and at all times relevant has been, the owner of record of

348 West 47<sup>th</sup> St. The New York State Department of State Division of Corporations Entity Information page lists the process service address for 348-58 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P. as “C/O BIG APPLE MGMT., P.O. BOX 20213, GREELEY SQ. STATION, NEW YORK, NEW YORK 10001.”

44. Defendant THE LAND AND BUILDING KNOWN AS 348 WEST 47<sup>TH</sup> STREET, BLOCK 1037, LOT 59, County, City and State of New York, is the real property where the activities complained of have taken place and continue to take place.

45. Defendant THE LAND AND BUILDING KNOWN AS 350 WEST 47<sup>TH</sup> STREET, BLOCK 1037, LOT 59, County, City and State of New York, is the real property where the activities complained of have taken place and continue to take place

46. Defendant FLAVIO RAUSEI (“Rausei”), a natural person, is, upon information and belief, actively engaged in the illegal hotel operation of multiple dwelling units within 332 West 47<sup>th</sup> St. and 334 West 47<sup>th</sup> St. and, as a “superhost” on Airbnb, has been advertising and offering the unlawful short-term occupancies at these Subject Buildings at all times relevant.

47. Defendants “JOHN DOE” and “JANE DOE,” numbers 1 through 10, are fictitiously named parties, true names unknown, the parties intended being the owners, managers or operators of the business being carried on by Defendants at the Subject Buildings, and any person claiming any right, title or interest in the real properties which are the subject of this action.

## STATEMENT OF FACTS

### **I. The Subject Buildings Where Defendants Illegally Advertise and Operate Hazardous Transient Accommodations, and the Violating Conditions Repeatedly Found during OSE's Inspections**

48. Prior to filing this action, DOB Building Inspectors and FDNY Fire Protection Inspectors assigned to OSE (the "OSE Inspection Team") performed a total of thirty administrative code inspections at the Subject Buildings to determine whether each building was being operated in compliance with applicable law and, if it was not, whether the unlawful use, occupancy and arrangement of the building posed a danger to the health, welfare and safety of the occupants or of the public generally.

49. In light of the illegal short-term rentals repeatedly found in the Subject Buildings since 2011, the OSE Inspection Team issued Owner Defendants a total of one hundred fifty-four NOVs/Summonses and five OSE advertising summonses, eight FDNY violation orders, two FDNY criminal summonses, one DOB vacate order due to imminently hazardous conditions, and two DOB criminal summonses for subsequent violations of that vacate order.

#### **A. 321 WEST 47<sup>TH</sup> ST.**

50. The legal occupancy of a building is determined based on records maintained by DOB. For buildings constructed after 1938, the applicable record is called the certificate of occupancy ("C/O"). Once a C/O is issued for a given building, it becomes the governing document for the use and occupancy of that building. New York City Charter § 645(e).<sup>10</sup>

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<sup>10</sup> New York City Charter § 645(e) provides that "every certificate of occupancy shall, unless and until set aside, vacated or modified by the board of standards and appeals or a court of competent jurisdiction, be and remain binding and conclusive upon all agencies and officers of the city ... and no order, direction or requirement affecting or at variance with any matter set forth in any certificate of occupancy shall be made or issued by any agency or officer of the city ... unless and until the certificate is set aside, vacated or modified by the board of standards and appeals or a court of competent jurisdiction upon application of the agency, department, commission, officer or member thereof seeking to make or issue such order, direction or requirement."

51. The applicable DOB record, C/O No. 80903, governs the legal use and occupancy of “321-323 West 47<sup>th</sup> Street,” meaning that it applies to both 321 West 47<sup>th</sup> St. and 323 West 47<sup>th</sup> St., even though they are separate buildings with separate entrances. According to C/O No. 80903, “321-323 West 47<sup>th</sup> Street” is a five-story, Class “A” Multiple Dwelling, with a permissible use and occupancy of twenty-two total Class “A” apartments between the two buildings, all of which may only be occupied on a permanent basis (stays of 30 days or more).

52. As a result of numerous complaints of illegal hotel activities and ongoing investigations stemming therefrom, the OSE Inspection Team inspected 321 West 47<sup>th</sup> St. on February 15, 2018, March 15, 2018, March 20, 2018, April 2, 2018, April 10, 2018, and April 30, 2018, to determine whether this building was being operated in compliance with applicable law, or whether it posed a danger to the health, welfare and safety of the occupants or of the public generally.

53. During each of the six inspections, the OSE Inspection Team found, among other building violations, that at least three Class “A” multiple dwelling units within 321 West 47<sup>th</sup> St. were being rented and occupied on a transient basis for less than 30-day stays, contrary to the C/O, and in violation of the MDL, the Building Code, and the New York City Fire Code (the “Fire Code”).

54. In addition, serious immediately hazardous violations were observed at 321 West 47<sup>th</sup> St. during each of the six inspections – including violations involving the more stringent fire safety requirements for transient occupancy. There were failures to provide a fire alarm system, an automatic sprinkler system, and sufficient means of egress for each floor, as required by the Building Code for transient use to ensure the safety of tourists and other visitors unfamiliar with a building’s layout and emergency exits and/or the City’s fire safety protocols.

55. On April 2, 2018, DOB issued a partial vacate order for Apartment 1A of 321 West 47<sup>th</sup> St. for converting that apartment to transient use, “having created 5 furnished rooms, 4 in the first floor and 1 in the cellar, without providing means of egress, automatic sprinkler system, and fire alarm system, creating a hazardous condition to occupy.”

56. Despite the vacate order clearly stating on its face “Do Not Remove,” the OSE Inspection Team inspected 321 West 47<sup>th</sup> St. Apartment 1A on two subsequent occasions on April 9 and April 30, 2018, and found the vacate order to have been removed both times.

57. As a result of their observations of hazardous violating conditions, the OSE Inspection Team issued a series of ECB NOVs/Summonses, two FDNY Violation Orders, one FDNY Criminal Court Summons, and two DOB Criminal Court Summonses to Defendant 321-3 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of the building.

58. In all, since February 2018, the OSE Inspection Team has issued thirty-eight DOB NOVs/Summonses to Defendant 321-3 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of 321 West 47<sup>th</sup> St.

59. Each NOV/Summons issued by the City directed the defendant property owner to immediately remediate the particular violating condition and to then timely certify such correction with DOB.

60. The City also issued one advertising summons to Mateo Arbelaez on March 15, 2018, for his illegal advertisement of Apartment 1B of 321 West 47<sup>th</sup> St. for transient stays on Airbnb.

61. To date, 321 West 47<sup>th</sup> St. continues to be deceptively advertised and booked, and hazardously and unlawfully used and occupied for short-term transient occupancy purposes, in violation of the MDL, the Building Code, and the Fire Code.

62. Nowhere in any of the aforesaid advertising do Defendants inform consumers that the accommodations are illegal and do not meet fire safety standards.

**B. 323 WEST 47<sup>TH</sup> ST.**

63. The applicable DOB record setting forth the legal use and occupancy of 323 West 47<sup>th</sup> St. as permanent basis only (stays of 30 days or more) is C/O No. 80903, discussed above in connection with 321 West 47<sup>th</sup> St.

64. As a result of numerous complaints of illegal transient occupancy and ongoing investigations stemming therefrom, after having previously inspected and found illegal short-term rentals in 323 West 47<sup>th</sup> St. on two occasions in 2011, the OSE Inspection Team returned to inspect 323 West 47<sup>th</sup> St. on June 16, 2017.

65. During each inspection, the OSE Inspection Team found, among other building violations, that at least five Class “A” multiple dwelling units within 323 West 47<sup>th</sup> St. were being rented and occupied on a transient basis for less than 30-day stays, contrary to the C/O, and in violation of the MDL, the Building Code, and the Fire Code.

66. In addition, serious immediately hazardous violations were observed during each of the inspections, including violations involving the more stringent fire safety requirements under the Building Code for transient occupancy and use: failures to provide a fire alarm system, an automatic sprinkler system, and sufficient means of egress for each floor.

67. As a result of their observations of hazardous violating conditions, the OSE Inspection Team issued a series of ECB NOVs/Summonses to Defendant 321-3 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of the building.

68. Each NOV/Summons issued by the City directed the defendant property owner to immediately remediate the particular violating condition and to then timely certify such correction with DOB.

69. Defendant 321-3 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P. has failed to file valid certificates of compliance for each one of the eight open NOVs/Summonses concerning illegal transient occupancy as directed.

70. In addition, Defendant 321-3 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P. failed to timely certify correction of seven immediately hazardous Class 1 violations previously issued in 2011, and is therefore subject to an additional and separate civil penalty of \$1,500 for each one of those violations. To date, the building owner has failed to pay any one of those civil penalties imposed.

71. In all, since 2011, the OSE Inspection Team has issued twenty DOB NOVs/Summonses to Defendant 321-3 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of 323 West 47<sup>th</sup> St.

72. Upon information and belief, 323 West 47<sup>th</sup> St. continues to be deceptively advertised and booked, and hazardously and unlawfully used and occupied for short-term transient occupancy purposes, in violation of the MDL, the Building Code, and the Fire Code.

73. Nowhere in any of the aforesaid advertising do Defendants inform consumers that the accommodations are illegal and do not meet fire safety standards.

**C. 328 WEST 47<sup>TH</sup> ST.**

74. The applicable DOB record, C/O No. 81824, governs the legal use and occupancy of “328-334 West 47<sup>th</sup> Street,” meaning that it applies to 328 West 47<sup>th</sup> St., 332 West 47<sup>th</sup> St., and 334 West 47<sup>th</sup> St., even though they are currently constructed as four separate buildings with



four separate entrances.<sup>11</sup> According to C/O No. 81824, “328-334 West 47<sup>th</sup> Street” is a five-story, Class “A” Multiple Dwelling, with a permissible use and occupancy of forty-nine total Class “A” apartments between the four buildings, all of which may only be occupied on a permanent basis (stays of 30 days or more).

75. Based on numerous complaints of illegal hotel activities, the OSE Inspection Team previously inspected 328 West 47<sup>th</sup> St. on two occasions in 2014 and 2015, and on both occasions found illegal transient use and issued violations.

76. Defendant 328-30 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P. submitted to DOB a “monthly sublease agreement” as part of its “certificate of correction” for illegal short-term rental violations issued against 328 West 47<sup>th</sup> St. on November 16, 2014. In it, Big Apple acknowledged the existence of unlawful transient use because “USA Stay LLC” as “sublandlord” had rented apartment 2B to “Marco Cseko” as “subtenant” for the “daily rate” of “\$233.60” plus “NYC Occupancy/Room Tax” and “5.875% NYC Occupancy Tax.”<sup>12</sup>

77. As a result of continuing complaints of illegal hotel activities and ongoing investigations stemming therefrom, the OSE Inspection Team returned to inspect 328 West 47<sup>th</sup> St. on December 21, 2016, and February 10, 2018, and found that units within the multiple dwelling were being rented out as illegal short-term rentals.

78. During each inspection, the OSE Inspection Team found, among other building violations, that at least four Class “A” multiple dwelling units within 328 West 47<sup>th</sup> St. were

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<sup>11</sup> C/O No. 81824 also governs the legal use and occupancy of 330 West 47<sup>th</sup> Street, which is not an *in rem* defendant in this action.

<sup>12</sup> According to New York City Department of Finance (“DOF”), “The Hotel Room Occupancy Tax must be paid on the occupancy, or the right of occupancy of a room or rooms in a hotel. A ‘hotel’ includes an apartment, hotel, motel, boarding house, bed-and-breakfast, bungalow, or club, whether or not meals are served. The occupant of any room or rooms in a hotel must pay the tax. Hotel operators and remarketers (when a room has been purchased through a re-seller) collect the tax from the occupant.”  
<http://www1.nyc.gov/site/finance/taxes/business-hotel-room-occupancy-tax.page>.

being rented and occupied on a transient basis for less than 30-day stays, contrary to the C/O, and in violation of the MDL, the Building Code, and the Fire Code.

79. In addition, serious immediately hazardous violations were observed during each one of the inspections, including violations involving the more stringent fire safety requirements under the Building Code for transient occupancy and use: failures to provide a fire alarm system, an automatic sprinkler system, and sufficient means of egress for each floor.

80. As a result of their observations of hazardous violating conditions, the OSE Inspection Team issued a series of ECB NOV/Summons and one FDNY Violation Order to Defendant 328-30 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of the building.

81. In all, since 2014, the OSE Inspection Team has issued sixteen DOB NOV/Summons to Defendant 328-30 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of 328 West 47<sup>th</sup> St.

82. The OSE Inspection Team has also issued one FDNY Violation Order.

83. The City also issued two advertising summonses to Jung Eun Min on May 11, 2018, for her illegal advertisement of Apartment 2A of 328 West 47<sup>th</sup> St. for transient stays on Airbnb.

84. Upon information and belief, 328 West 47<sup>th</sup> St. continues to be deceptively advertised and booked, and hazardously and unlawfully used and occupied for short-term transient occupancy purposes, in violation of the MDL, the Building Code, and the Fire Code.

85. Nowhere in any of the aforesaid advertising do Defendants inform consumers that the accommodations are illegal and do not meet fire safety standards.

**D. 332 WEST 47<sup>TH</sup> ST.**

86. The applicable DOB record setting forth the legal use and occupancy of 332 West 47<sup>th</sup> St. as permanent basis only (stays of 30 days or more) is C/O No. 81824, discussed above in connection with 328 West 47<sup>th</sup> St.

87. As a result of numerous complaints of illegal hotel activities and ongoing investigations stemming therefrom, after having previously inspected 332 West 47<sup>th</sup> St. on two occasions in 2013 and 2014, and on both occasions finding transient use and issuing violations, the OSE Inspection Team returned to inspect 332 West 47<sup>th</sup> St. on January 17, 2018 and April 10, 2018.

88. During each inspection, the OSE Inspection Team found, among other building violations, that Class “A” multiple dwelling units within 332 West 47<sup>th</sup> St. were being rented and occupied on a transient basis for less than 30-day stays, contrary to the C/O, and in violation of the MDL, the Building Code, and the Fire Code.

89. In addition, serious immediately hazardous violations were observed during each one of the inspections, including violations involving the more stringent fire safety requirements under the Building Code for transient occupancy and use: failures to provide a fire alarm system, an automatic sprinkler system, and sufficient means of egress for each floor.

90. As a result of their observations of hazardous violating conditions, the OSE Inspection Team issued a series of ECB NOV/Summons and one FDNY Violation Order to Defendant 332-4 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of the building.

91. Each NOV issued by the City directed the defendant property owner to immediately remediate the particular violating condition and to then timely certify such correction with DOB. Defendant 332-4 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P. has failed to

file valid certificates of compliance for each one of the open NOV's as directed. In fact, the building owner filed four certificates of correction which were subsequently disapproved by DOB.

92. In addition, Defendant 332-4 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P. failed to timely certify correction of four immediately hazardous Class 1 violations previously issued in 2014, and is therefore subject to an additional and separate civil penalty of \$1,500 for each one of those violations. To date, the building owner has failed to pay any one of those civil penalties imposed.

93. In all, since 2014, the OSE Inspection Team has issued twenty-one DOB NOV's/Summonses to Defendant 332-4 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of 332 West 47<sup>th</sup> St.

94. The OSE Inspection Team has also issued one FDNY Violation Order.

95. During the inspections of 332 West 47<sup>th</sup> St. on January 17, 2018 and April 10, 2018, transient guests informed the OSE Inspection Team that the name of the Airbnb listing they booked for their stay was "Modern, Cozy! TimeSq/ Hell's Kitchen," and that the host was Rausei a/k/a "Hector" a/k/a "Jaime," with the same phone number: 917-843-2912.

96. Accordingly, the City issued one advertising summons to Defendant RAUSEI on April 10, 2018, for his illegal advertisement of Apartment 1C of 332 West 47<sup>th</sup> St. for transient stays on Airbnb.

97. To date, 332 West 47<sup>th</sup> St. continues to be deceptively advertised and booked, and hazardedly and unlawfully used and occupied for short-term transient occupancy purposes, in violation of the MDL, the Building Code, and the Fire Code.

98. Nowhere in any of the aforesaid advertising do Defendants inform consumers that the accommodations are illegal and do not meet fire safety standards.

**E. 334 WEST 47<sup>TH</sup> ST.**

99. The applicable DOB record setting forth the legal use and occupancy of 334 West 47<sup>th</sup> St. as permanent basis only (stays of 30 days or more) is C/O No. 81824, discussed above in connection with 328 West 47<sup>th</sup> St.

100. As a result of numerous complaints of illegal hotel activities and ongoing investigations stemming therefrom, after having previously inspected 334 West 47<sup>th</sup> St. on two occasions in 2011 and 2014, and on both occasions finding transient use and issuing violations, the OSE Inspection Team returned to inspect 334 West 47<sup>th</sup> St. on January 15, 2018, April 30, 2018, and May 5, 2018.

101. During each inspection, the OSE Inspection Team found, among other building violations, that at least five Class “A” multiple dwelling units within 334 West 47<sup>th</sup> St. were being rented and occupied on a transient basis for less than 30-day stays, contrary to the C/O, and in violation of the MDL, the Building Code, and the Fire Code.

102. In addition, serious immediately hazardous violations were observed during each one of the inspections, including violations involving the more stringent fire safety requirements under the Building Code for transient occupancy and use: failures to provide a fire alarm system, an automatic sprinkler system, and sufficient means of egress for each floor.

103. As a result of their observations of hazardous violating conditions, the OSE Inspection Team issued a series of ECB NOVs/Summonses and one FDNY Violation Order to Defendant 332-34 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of the building.

104. In all, since 2011, the OSE Inspection Team has issued twenty-two DOB NOVs/Summonses to Defendant 332-34 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of 334 West 47<sup>th</sup> St.

105. The OSE Inspection Team has also issued one FDNY Violation Order.

106. After the inspection of 334 West 47<sup>th</sup> St. on April 30, 2018, the OSE Inspection Team found online advertisements on Airbnb with pictures that matched 334 West 47<sup>th</sup> St. named “Cozy, Modern! TimeSq/ Hell’s Kitchen” by host Rausei a/k/a “Angel,” and “Modern, Cozy! TimeSq/ Hell’s Kitchen” by host Rausei a/k/a “Jaime.”

107. Accordingly, the City issued an additional advertising summons to Defendant RAUSEI on April 30, 2018, for his illegal advertisement of Apartment 1C of 334 West 47<sup>th</sup> St. for transient stays on Airbnb.

108. To date, 334 West 47<sup>th</sup> St. continues to be deceptively advertised and booked, and hazardously and unlawfully used and occupied for short-term transient occupancy purposes, in violation of the MDL, the Building Code, and the Fire Code.

109. Nowhere in any of the aforesaid advertising do Defendants inform consumers that the accommodations are illegal and do not meet fire safety standards.

#### **F. 348 WEST 47<sup>TH</sup> ST.**

110. The applicable DOB record, C/O No. 79133, governs the legal use and occupancy of “348-358 West 47<sup>th</sup> Street,” although that span of the block as currently constructed encompasses three separate buildings with three separate entrances.<sup>13</sup> According to C/O No. 79133, “348-58 West 47<sup>th</sup> Street” is a five-story, Class “A” Multiple Dwelling, with a

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<sup>13</sup> One of the other buildings with legal use and occupancies governed by C/O No. 79133, 356 West 47<sup>th</sup> Street, is not an *in rem* defendant in this action.

permissible use and occupancy of thirty-seven total Class “A” apartments between the buildings, all of which may only be occupied on a permanent basis (stays of 30 days or more).

111. As a result of numerous complaints of illegal hotel activities and ongoing investigations stemming therefrom, after having previously inspected 348 West 47<sup>th</sup> St. on two occasions in 2011 and 2015, and on both occasions finding transient use and issuing violations, the OSE Inspection Team returned to inspect 348 West 47<sup>th</sup> St. on May 31, 2016, March 9, 2017, and April 10, 2018.

112. During each inspection, the OSE Inspection Team found, among other building violations, that at least five Class “A” multiple dwelling units within 348 West 47<sup>th</sup> St. were being rented and occupied on a transient basis for less than 30-day stays, contrary to the C/O, and in violation of the MDL, the Building Code, and the Fire Code.

113. In addition, serious immediately hazardous violations were observed during each one of the inspections, including violations involving the more stringent fire safety requirements under the Building Code for transient occupancy and use: failures to provide a fire alarm system, an automatic sprinkler system, and sufficient means of egress for each floor.

114. As a result of their observations of hazardous violating conditions, the OSE Inspection Team issued a series of ECB NOV/Summons and FDNY Violation Orders to Defendant 348-58 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of the building.

115. In all, since 2011, the OSE Inspection Team has issued twenty-four DOB NOV/Summons to Defendant 348-58 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of 348 West 47<sup>th</sup> St.

116. The OSE Inspection Team has also issued two FDNY Violation Orders and one FDNY Criminal Court Summons.

117. Upon information and belief, 348 West 47<sup>th</sup> St. continues to be deceptively advertised and booked, and hazardously and unlawfully used and occupied for short-term transient occupancy purposes, in violation of the MDL, the Building Code, and the Fire Code.

118. Nowhere in any of the aforesaid advertising do Defendants inform consumers that the accommodations are illegal and do not meet fire safety standards.

**G. 350 WEST 47<sup>TH</sup> ST.**

119. The applicable DOB record setting forth the legal use and occupancy of 350 West 47<sup>th</sup> St. as permanent basis only (stays of 30 days or more) is C/O No. 79133, discussed above in connection with 348 West 47<sup>th</sup> St.

120. As a result of numerous complaints of illegal hotel activities and ongoing investigations stemming therefrom, after having previously inspected 350 West 47<sup>th</sup> St. in 2015 and finding transient use and issuing violations, the OSE Inspection Team returned to inspect 350 West 47<sup>th</sup> St. on March 25, 2016, and March 30, 2018.

121. During each inspection, the OSE Inspection Team found, among other building violations, that at least three Class “A” multiple dwelling units within 350 West 47<sup>th</sup> St. were being rented and occupied on a transient basis for less than 30-day stays, contrary to the C/O, and in violation of the MDL, the Building Code, and the Fire Code.

122. In addition, serious immediately hazardous violations were observed during each one of the inspections, including violations involving the more stringent fire safety requirements under the Building Code for transient occupancy and use: failures to provide a fire alarm system, an automatic sprinkler system, and sufficient means of egress for each floor.



123. As a result of their observations of hazardous violating conditions, the OSE Inspection Team issued a series of ECB NOVs/Summonses and FDNY Violation Orders to Defendant 348-58 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of the building.

124. In all, since 2015, the OSE Inspection Team has issued twelve DOB NOVs/Summonses to Defendant 348-58 WEST 47<sup>TH</sup> STREET ASSOCIATES, L.P., as owner of 350 West 47<sup>th</sup> St.

125. The OSE Inspection Team has also issued one FDNY Violation Order.

126. Upon information and belief, 350 West 47<sup>th</sup> St. continues to be deceptively advertised and booked, and hazardously and unlawfully used and occupied for short-term transient occupancy purposes, in violation of the MDL, the Building Code, and the Fire Code.

127. Nowhere in any of the aforesaid advertising do Defendants inform consumers that the accommodations are illegal and do not meet fire safety standards.

**FIRST CAUSE OF ACTION**  
**STATUTORY PUBLIC NUISANCE – BUILDING CODE VIOLATIONS**  
**ILLEGAL CONVERSION FROM RESIDENTIAL USE TO TRANSIENT OCCUPANCY**

128. Plaintiff repeats and realleges paragraphs “1” through “127” as if contained herein.

129. In 1977, the City Council enacted the Nuisance Abatement Law (codified as amended as Admin. Code § 7-701 et seq.), finding that:

Public nuisances exist in the City of New York in the operation of certain commercial establishments and the use or alteration of property in flagrant violation of the building code, zoning resolution, ... multiple dwelling law ... all of which interfere with the interest of the public in the quality of life and total community environment, the tone of commerce in the city, property values and the public health, safety, and welfare; the council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety, and welfare of the people of the city of New York ...

Admin. Code § 7-701.

130. Under Admin. Code § 7-703(d), any premises which is in violation of Admin. Code § 28-210.3 is deemed to be a public nuisance. Admin. Code § 28-210.3 states that:

It shall be unlawful for any person or entity who owns or occupies a multiple dwelling or dwelling unit classified for permanent residence purposes to use or occupy, offer or permit the use or occupancy or to convert for use or occupancy such multiple dwelling or dwelling unit for other than permanent residence purposes. For the purposes of this section a conversion in use of a dwelling unit may occur irrespective of whether any physical changes have been made to such dwelling unit.

131. As summarized above, the City has determined that Defendants have converted permanent residential dwelling units in the Subject Buildings for another use, specifically, for illegal transient use – less than 30-day occupancy.

132. Notwithstanding the NOV's/Summonses issued to Defendants providing them with notice of the illegality of the transient occupancies, as well as decisions and orders sustaining and imposing civil penalties, Defendants continue to illegally operate and manage the Subject Buildings for such unlawful occupancies.

133. Pursuant to Admin. Code §§ 7-706(a) and 7-714, the City is entitled to a judgment against the defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently restraining such public nuisances.

134. Defendants have intentionally conducted, maintained or permitted the public nuisance alleged in this cause of action.

135. Pursuant to Admin. Code § 7-706(h), the City is entitled to a judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Subject Buildings for transient use and occupancy, and further ordering that they pay a separate penalty of \$1,000 for

each day that Defendants intentionally conducted, maintained or permitted the public nuisances alleged in this cause of action.

**SECOND CAUSE OF ACTION**  
**STATUTORY PUBLIC NUISANCE – BUILDING CODE VIOLATIONS**  
**ILLEGAL OCCUPANCY**

136. Plaintiff repeats and realleges paragraphs “1” through “135” as if contained herein.

137. Under Admin. Code § 7-703(d), any premises which is in violation of Admin. Code § 28-118.3.2 is deemed to be a public nuisance. Admin. Code § 28-118.3.2 provides that no change in use or occupancy which is inconsistent with the last issued certificate of occupancy shall be made unless and until a new certificate of occupancy is first obtained from DOB authorizing such change.

138. As summarized above, the City has determined that there has been a change in use or occupancy at the Subject Buildings which is inconsistent with the last issued certificate of occupancy or otherwise applicable DOB record, and that Defendants have altered such use and occupancy in the Subject Buildings without first obtaining a permit or new certificate of occupancy from DOB authorizing such change.

139. Pursuant to Admin. Code §§ 7-706(a) and 7-714, the City is entitled to a judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently restraining such public nuisances.

140. Defendants have intentionally conducted, maintained or permitted the public nuisances alleged in this cause of action.

141. Pursuant to Admin. Code § 7-706(h), the City is entitled to a judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert

with them, permanently enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Subject Buildings for transient use and occupancy, and further ordering that they pay a separate penalty of \$1,000 for each day that Defendants intentionally conducted, maintained or permitted the public nuisances alleged in this cause of action.

**THIRD CAUSE OF ACTION**  
**STATUTORY PUBLIC NUISANCE – BUILDING CODE VIOLATIONS**  
**WORK WITHOUT PERMIT**

142. Plaintiff repeats and realleges paragraphs “1” through “141” as if contained herein.

143. Under Admin. Code § 7-703(d), any premises which is in violation of Admin. Code § 28-105.1 is deemed to be a public nuisance. Admin. Code § 28-105.1 states that “[i]t shall be unlawful to construct, enlarge, alter ... or change the use or occupancy of any building ... unless and until a written permit therefore shall have been issued by the commissioner in accordance with the requirements of this code.”

144. Defendants altered the use and occupancy of the Subject Buildings from Class A permanent occupancy to Class B transient use, and did so without approval or permit from DOB.

145. Pursuant to Admin. Code §§ 7-706(a) and 7-714, the City is entitled to a judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently restraining such public nuisances.

146. Defendants have intentionally conducted, maintained or permitted the public nuisances alleged in this cause of action.

147. Pursuant to Admin. Code § 7-706(h), the City is entitled to a judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert

with them, permanently enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Subject Buildings for transient use and occupancy, and further ordering that they pay a separate penalty of \$1,000 for each day that Defendants intentionally conducted, maintained or permitted the public nuisances alleged in this cause of action.

**FOURTH CAUSE OF ACTION**  
**STATUTORY PUBLIC NUISANCE – FAILURE TO MAINTAIN BUILDING IN CODE COMPLIANCE**

148. Plaintiff repeats and realleges paragraphs “1” through “147” as if contained herein.

149. Under the Nuisance Abatement Law, Admin. Code § 7-703(d), any premises in violation of Admin. Code § 28-301.1 is deemed to be a public nuisance. Admin. Code § 28-301.1 requires that all buildings and all parts thereof be “maintained in a safe condition,” and that “[a]ll service equipment, means of egress, materials, devices, and safeguards that are required in a building by the provisions of this code, the 1968 building code or other applicable laws or rules, or that were required by law when the building was erected, altered, or repaired, shall be maintained in good working condition.”

150. At all relevant times of the inspections, OSE Inspection Team observed conditions constituting a failure to maintain the Subject Buildings in a code-compliant condition. Upon information and belief, those conditions continue unabated to date.

151. As a result of the foregoing, there exist public nuisances at the Subject Buildings.

152. Pursuant to Admin. Code §§ 7-706(a) and 7-714, the City is entitled to a judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently restraining such public nuisances.

153. Defendants have intentionally conducted, maintained or permitted the public nuisances alleged in this cause of action.

154. Pursuant to Admin. Code § 7-706(h), the City is entitled to a judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Subject Buildings for transient use and occupancy, and further ordering that they pay a separate penalty of \$1,000 for each day that Defendants intentionally conducted, maintained or permitted the public nuisances alleged in this cause of action.

**FIFTH CAUSE OF ACTION**  
**STATUTORY PUBLIC NUISANCE – CRIMINAL NUISANCE**

155. Plaintiff repeats and realleges paragraphs “1” through “154” as if contained herein.

156. Under Admin. Code § 7-703(l), any building, erection or place wherein there is occurring a criminal nuisance as defined in Penal Law § 240.45 is a public nuisance.

157. Pursuant to Penal Law § 240.45(1), a person has committed a criminal nuisance when, “[b]y conduct either unlawful in itself or unreasonable under all the circumstances, he knowingly or recklessly creates or maintains a condition which endangers the safety or health of a considerable number of persons.”

158. Defendants have unreasonably and unlawfully created and maintained conditions which seriously endanger the life and safety of numerous persons who book transient accommodations at the Subject Buildings, in violation of their legal and permissible use and occupancy, violations which were found to be Class 1 (Immediately Hazardous) violations by the ECB. These violations included a lack of fire safety measures required to be provided for

transient occupancies. Additional fire safety violations led to the issuance of FDNY Violation Orders and FDNY Criminal Court Summonses.

159. The hazardous conditions at the Subject Buildings have continued uncorrected over a substantial period of time, notwithstanding NOV's and orders from the DOB Commissioner, and findings by the ECB.

160. Defendants have intentionally and knowingly endangered the safety of a considerable number of persons.

161. As a result of the foregoing, there exists a public nuisance at the Subject Buildings.

162. Pursuant to Admin. Code §§ 7-706(a) and 7-714, the City is entitled to a judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently restraining such public nuisance.

163. Pursuant to Admin. Code § 7-706(h), the City is entitled to a judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Subject Buildings for transient use and occupancy, and further ordering that they pay a separate penalty of \$1,000 for each day that Defendants intentionally conducted, maintained or permitted the public nuisances alleged in this cause of action.

**SIXTH CAUSE OF ACTION**  
**VIOLATION OF THE MULTIPLE DWELLING LAW**

164. Plaintiff repeats and realleges paragraphs "1" through "163" as if contained herein.

165. MDL § (4)(8)(a) prohibits renting any unit in Class “A” multiple dwellings for less than 30 days. The law 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 ...”

166. Notwithstanding the requirements of the MDL, Defendants have advertised, permitted, maintained and used, continue to advertise, permit, maintain, and use dwelling units at the Subject Buildings for transient occupancies of less than 30 days, in violation of the MDL. Based on the OSE’s inspections of the Subject Buildings on thirty separate occasions from 2011 to 2018, multiple units are being so illegally used and occupied, and have been so used since at least 2011.

167. Pursuant to MDL § 306, the City is entitled to judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Subject Buildings for transient use and occupancy as prohibited by the MDL, and further directing them to restore the Subject Buildings to use and occupancy as permanent residences, as required by the MDL for Class A multiple dwellings.

**SEVENTH CAUSE OF ACTION**  
**BUILDING CODE VIOLATIONS – ILLEGAL CHANGE OF OCCUPANCY**

168. Plaintiff repeats and realleges paragraphs “1” through “167” as if contained herein.

169. Admin. Code § 28-118.3.1 prohibits an alteration or change in the use or occupancy of any building unless and until a written permit has been issued by DOB in



accordance with the requirements of the Building Code, and a certificate of occupancy issued for the new use or occupancy.

170. Admin. Code § 28-101.5 defines “alteration” to be “[a]ny construction, addition, change of use or occupancy, or renovation to a building or structure in existence.”

171. Admin. Code § 28-118.3.2 provides that no change may be made in the occupancy or use of an existing building which is inconsistent with the last issued certificate of occupancy of such building or which would bring it under some special provision of the code or other applicable law or regulation.

172. Admin. Code § 28-118.3.4 provides that a building in existence prior to January 1, 1938, and legally used or occupied without a certificate of occupancy may continue to be so used only so long as there is no change in the existing use or occupancy.

173. Admin. Code § 28-118.3 provides that Admin. Code §§ 28-118.3.1 through 28-118.3.4 apply to all completed buildings.

174. The legally permissible residential use and occupancy of all of the Subject Buildings is for permanent residential occupancy.

175. Defendants have changed, or permitted to be changed, the use and occupancy of the Subject Buildings contrary to their legally permissible use and occupancy, having done so without first obtaining a certificate of occupancy for such changed use.

176. Thus, Defendants have permitted, directed and maintained the arrangement, use, and occupancy of the Subject Buildings in violation of their legally permissible use and occupancy.

177. Defendants are, therefore, in violation of Admin Code §§ 28-105.1, and 28-118.3.1 through 28-118.3.4.

178. Admin. Code §§ 28-205.1 and 28-202.1 provide that any person who shall violate any provision of the building laws, rules or regulations enforceable by DOB shall be subject to the payment of a civil penalty, to be recovered in a civil action brought in the name of the City in any court of record.

179. By reason of the foregoing, pursuant to Admin. Code § 28-205.1, the City is entitled to judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently enjoining them from using or occupying or permitting the use or occupancy of any of the units in the Subject Buildings for short-term, transient use or occupancy of less than thirty days, and further directing them to restore the Subject Buildings to the arrangement and occupancy permitted for it, and to comply with all other sections of the Building Code.

180. Defendants have violated Admin. Code §§ 28-105.1 and 28-118.3.1 through 28-118.3.4 at the Subject Buildings, all of which are enforceable by DOB.

181. Therefore, the City is entitled to a separate judgment against Defendants in the amount set forth in Admin. Code § 28-202.1 for each violation of the laws referenced above, which laws are enforceable by DOB.

**EIGHTH CAUSE OF ACTION**  
**DECEPTIVE TRADE PRACTICES**

182. Plaintiff repeats and realleges paragraphs “1” through “181” as if contained herein.

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

184. Moreover, the Consumer Protection Law (“CPL”) 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.” Admin. Code § 20-700.

185. 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.

186. Defendants have breached their implied warranty and committed deceptive trade practices by offering and advertising illegal transient occupancy in permanent residential buildings.

187. Defendants’ written statements and advertisements inducing tourists and other visitors to New York City to book accommodations in Class A multiple dwellings for stays of less than 30 days, such rentals being illegal and unsafe, have by false representations and omissions of material fact misled or deceived or tended to mislead and deceive consumers as to the use of those accommodations. Defendants have thereby committed deceptive trade practices in violation of § 20-700 of the Consumer Protection Law.

**NINTH CAUSE OF ACTION**  
**COMMON LAW NUISANCE**

188. Plaintiff repeats and realleges paragraphs “1” through “187” as if contained herein.

189. Defendants have advertised, operated, and maintained permanent residential units for short-term stays of less than 30 days, creating serious safety risks for the transient occupants of those units, 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 and neighbors, created by noise, filth, and the excessive traffic of unknown and constantly changing individuals entering their places of abode.

190. The unlawful activities committed by Defendants and the unsafe building conditions allowed by Defendants are detrimental to the welfare, property, and safety of the citizens of the City of New York and the public at large.

191. They offend, interfere with and cause damage to the public in the exercise of rights common to all, in a manner which endangers the property, safety and well-being of a considerable number of persons.

192. Defendants are therefore maintaining a public nuisance as known at common law and in equity jurisprudence.

193. Unless restrained by order of this Court, Defendants will continue their illegal activities and will absorb the costs of any fines and penalties imposed upon them as routine operating expenses. Meanwhile, the City will be forced to continue expending its limited resources in continued attempts to abate this harmful nuisance through administrative inspections, summonses, and violation orders.

194. The City, therefore, has no adequate remedy at law.

195. As a result of the foregoing, the City is entitled to a judgment against Defendants, their agents, assigns, employees and all persons acting individually or in concert with them, permanently restraining the above described common law public nuisance going on unabated within the Subject Buildings.

196. Defendants have acted willfully, wantonly, and with a recklessness indicating an improper motive, and have 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 within the Subject Buildings.

197. Defendants have continued to engage in their illegal business, unabated. They actively advertise and seek to rent permanent residence units to tourist and visitors to New York City for stays of less than 30 days, knowing that this constitutes an illegal occupancy. Defendants have maintained this activity despite being put on notice by the City through the issuance of repeated violations by DOB and FDNY, ordering that they immediately cease the transient occupancy violations, and despite the OSE Inspection Team's issuance of advertising summonses based on Defendants' continuing advertisements.

198. The City is thus entitled to compensatory and punitive damages because of the knowing and ongoing common law nuisance created, maintained, and continued by Defendants.

**WHEREFORE**, Plaintiff the City demands judgment against Defendants as follows:

1. Declaring that Defendants and each of them had knowledge of the existence of the unlawful acts complained of herein, and failed to take reasonable measures to abate such unlawful activity;
2. Declaring that Defendants and each of them have managed, used, advertised, booked, and operated numerous dwelling units at the Subject Buildings for illegal transient use and occupancy though prohibited by State and local laws, and continue to manage, use, advertise, book, and operate the Subject Buildings in a manner as to constitute deceptive trade practices and a public nuisance;
3. With respect to the FIRST, SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, pursuant to Admin. Code §§ 7-706(a), 7-714, and 7-706(h):

- a. Directing that each of the Subject Buildings shall be permanently and perpetually enjoined and restrained as a place in or upon which to conduct, maintain, advertise, or continue the public nuisances complained of herein by Defendants and by any other person or persons;
- b. Permanently restraining Defendants, their agents, assigns, employees or representatives, and every person or entity acting individually or in concert with them from in any way permitting the Subject Buildings to be used, advertised, or occupied in any manner which violates the legally permitted use and occupancy for the premises; and
- c. Directing Defendants and each of them to pay to the City a separate penalty of \$1,000 for each day that each of the Defendants intentionally conducted, maintained or permitted each public nuisance complained of in the FIRST CAUSE OF ACTION, and for each day that each of the Defendants intentionally conducted, maintained or permitted each public nuisance complained of in the SECOND CAUSE OF ACTION, and for each day that each of the Defendants intentionally conducted, maintained or permitted each public nuisance complained of in the THIRD CAUSE OF ACTION, and for each day that each of the Defendants intentionally conducted, maintained or permitted each public nuisance complained of in the FOURTH CAUSE OF ACTION, and for each day that each of the Defendants intentionally conducted, maintained or permitted each public nuisance complained of in the FIFTH CAUSE OF ACTION;
4. With respect to the SIXTH CAUSE OF ACTION, pursuant to Multiple Dwelling

Law § 306:

- a. Permanently restraining Defendants, their agents, assigns, employees or representatives, and every person or entity acting individually or in concert with them from in any way permitting the Subject Buildings to be used, advertised, or occupied in any manner which violates the legal use and occupancy for the premises, as permitted by MDL § 4 or other State and City laws;
5. With respect to the SEVENTH CAUSE OF ACTION, pursuant to Admin. Code §§ 28-205.1 and 28-202.1:
- a. Permanently restraining Defendants, their agents, assigns, employees or representatives, and every person or entity acting individually or in concert with them from in any way permitting the Subject Buildings to be used, advertised, or occupied in any manner which violates the legal use and occupancy for the premises, as permitted by the MDL and the Building Code, or which violates the provisions of the Building Code, which prohibit a change in the use or occupancy of a building without first having obtained a written permit from DOB and a certificate of occupancy authorizing a change in occupancy; and
  - b. Directing that Defendants and each of them pay to the City the maximum penalty set forth in Admin. Code §§ 28-202.1 and 28-202.2 for each violation of the provisions of the building laws;
6. With respect to the EIGHTH CAUSE OF ACTION, pursuant to Admin. Code § 20-703, 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; and

- b. Imposing upon Defendants fines in the amount of Five Hundred Dollars (\$500) for each and every knowing violation of the Consumer Protection Law, and Three Hundred Fifty Dollars (\$350) for each and every unknowing violation of the Consumer Protection Law;

7. With respect to the NINTH CAUSE OF ACTION, pursuant to the common law doctrine of public nuisance:

- a. Permanently 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 City compensatory damages in an amount to be set by the court, and punitive damages in the amount of \$1,000,000 for the willful and wanton perpetuation of a common law public nuisance by Defendants;

8. Pursuant to Admin. Code § 7-714(g), allowing, in addition to the costs and disbursements allowed by the CPLR, the actual costs, expenses and disbursements of the City in investigating, bringing and maintaining this action, and directing that the City have execution therefor;

9. Taxing and allowing the costs and disbursements against Defendants and directing that the City have execution therefor; and

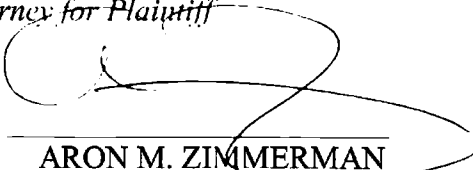
10. Granting to the City such other and further relief as the Court may deem just, proper and equitable.



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

Dated: New York, New York  
June 4, 2018

ZACHARY W. CARTER  
Corporation Counsel of the City of New York  
*Attorney for Plaintiff*

By:   
ARON M. ZIMMERMAN

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Mayor's Office of Special Enforcement  
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New York, NY 10007  
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Of counsel  
Hsiao-Hsiang (Catherine) Wan  
*Deputy Director*

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 C.P.L.R. 2106:

I have been duly designated as Acting Corporation Counsel of the City of New York and, as such, I am an officer of the City of New York, a petitioner in the within proceeding. I have read the foregoing petition and know the contents thereof; the same are true to my knowledge except as to those matters therein alleged upon information and belief, and as to those matters I believe them to be true.

The reason why 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 governments, from statements made to me by certain officers or agents of the City of New York, and from statements, affidavits or affirmations of other persons.

DATED: New York, New York  
June 4, 2018

  
\_\_\_\_\_  
SHERYL NEUFELD, ESQ.

City v. Big Apple Management