SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL BRANCH

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THE CITY OF NEW YORK,

Plaintiff,

-against-

HANK FREID; IMPULSIVE GROUP LLC; BRANIC INTERNATIONAL REALTY CORP; TERRILEE 97TH ST. LLC.; HELMS REALTY CORP.; THE LAND AND BUILDING KNOWN AS 2686 BROADWAY BLOCK 1874, LOT 45, County, City and State of New York; THE LAND AND BUILDING KNOWN AS 2688 BROADWAY BLOCK 1874, LOT 44, County, City and State of New York; THE LAND AND BUILDING KNOWN AS 2690 BROADWAY BLOCK 1874, LOT 43, County, City and State of New York; THE LAND AND BUILDING KNOWN AS 256-258 WEST 97TH ST., BLOCK 1868, LOT 59, County, City and State of New York; THE LAND AND BUILDING KNOWN AS 230 WEST 101ST ST. Block 1872, Lot 54, County, City and State of New York; JOHN AND JANE DOE NUMBERS 1 THROUGH 20, fictitiously named parties, true names unknown, the parties intended being the managers or operators of the business being carried on by Defendants 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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Index No.:

VERIFIED COMPLAINT

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

1. 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 Consumer Protection Law, in order to enforce the Consumer Protection Law of 1969, Title 20, Chapter 5, Subchapter 1, Section 20-700 et seq., of the Administrative Code of the City of New

York (the "Consumer Protection Law"); section 306 of the New York Multiple Dwelling Law; Sections 28-205.1, 7-704, and 7-706 of the Administrative Code of the City of New York (the "Administrative Code"); and pursuant to the common law doctrine of public nuisance.

2. This action is also brought to enjoin the defendants' provision of illegal and unsafe transient accommodations to visitors and tourists in New York City, to enjoin the public nuisances created by such illegal short-term rentals, to enjoin them from committing further deceptive trade practices in the marketing of such short-term rentals, and to obtain civil penalties and compensatory and punitive damages.

3. This action involves three hotels—doing business as Marrakech Hotel, Royal Park Hotel, and Broadway Hotel—in five multiple dwelling buildings located at the Upper Westside neighborhood of Manhattan (hereinafter referred to collectively as the "Five Subject Buildings"), which have been and are continuing to be, illegally advertised, managed, operated, allowed or permitted by the defendants as hotels providing transient occupancy (less than 30 days).

4. The first *in rem* defendant building is known as 2686 Broadway, Block 1874, Lot 45, County, City and State of New York (the "Branic 1 Building"), a five-story class A permanent residence multiple dwelling containing 39 Single Room Occupancy ("SRO") Units from the 2nd to 5th floors. Upon information and belief, at least one SRO unit within the Branic 1 Building is being illegally operated and made available for short-term transient stays of less than 30 days.

5. The second *in rem* defendant building is known as 2688 Broadway, Block 1874, Lot 44, County, City, and State of New York (the "Branic 2 Building"), a five-story class A permanent residence multiple dwelling containing 42 SRO Units from 2nd to 5th floors. Upon

information and belief, at least one SRO unit within the Branic 2 Building is being illegally operated and made available for short-term transient stays of less than 30 days.

6. The third *in rem* defendant building is known as 2690 Broadway, Block 1874, Lot 43, County, City, and State of New York (the "Branic 3 Building"), a five-story class A permanent residence multiple dwelling containing nine apartments. Upon information and belief, at least one apartment in the Branic 3 Building is being illegally operated and made available for short-term transient stays of less than 30 days.

7. The fourth *in rem* defendant building is known as 256-258 WEST 97TH ST., Block 1868, Lot 59, County, City, and State of New York ("the Terrilee Building"), a seven-story class A permanent residence multiple dwelling containing 93 SRO units from 1st to 7th floors. Upon information and belief, at least one SRO unit in the Terrilee Building is being illegally operated and made available for short-term transient stays of less than 30 days.

8. The fifth *in rem* defendant building is known as 230 WEST 101ST ST. Block 1872, Lot 54, County, City and State of New York ("the Helms Building"), a seven-story Class A permanent residence multiple dwelling containing 126 SRO units from 2nd to 7th floors. Upon information and belief, at least one SRO unit in the Helms Building is being illegally operated and made available for short-term transient stays of less than 30 days.

9. Defendants have and are continuing to illegally advertise, manage, operate, allow or permit transient occupancy of permanent housing units in the Branic 1 Building, the Branic 2 Building, and the Branic 3 Building as the Marrakech Hotel.[1] (referred to in conjunction as "the Branic Buildings")

[1] Defendants have conducted construction work without permit to combine 2686 Broadway, 2688 Broadway and 2690 Broadway, and have operated them as one hotel – Marrakech Hotel – by creating an opening on the 2nd floor of each building.

10. Defendants have and are continuing to illegally advertise, manage, operate, allow or permit transient occupancy of permanent housing units in the Terrilee Building as the Royal Park Hotel.

11. Defendants have and are continuing to illegally advertise, manage, operate, allow or permit transient occupancy of permanent housing units in the Helms Building as the Broadway Hotel and Hostel.

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

13. Second, the City brings this action because the defendants have committed and are 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 Five Subject Buildings, properties in which transient, short-term occupancies of less than thirty days are prohibited by New York State and City laws.

14. The illegal conduct perpetrated by the defendants continues notwithstanding the issuance by the CITY of dozens and dozens of notices of violations ("NOVs") and commissioner's orders to certify correction of violating conditions to the owners of the Five Subject Buildings by the New York City Fire Department ("FDNY") and Department of Buildings ("DOB"). The defendants also continue their illegal conduct notwithstanding the results of "in violation" adjudications of NOVs already conducted by the Environmental Control Board ("ECB") and upheld by the ECB appeals board. Furthermore, the defendants persist their illegal conduct irrespective of the pending prosecutions of the FDNY Criminal Court Summonses.

15. 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 Five Subject Buildings, and against the Five Subject Buildings themselves, for violations of the Multiple Dwelling Law, the Consumer Protection Law, the New York City Building Code ("Building Code"), and the New York City Zoning Resolution ("Zoning Resolution"), for creating nuisances as defined in the New York City Nuisance Abatement Law, and for creating common law public nuisances.

BACKGROUND

16. 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 joint inspections with various City agencies to bring unsafe conditions into compliance with the law. When the property owners fail to remedy the violating conditions for an extended period of time through administrative enforcement mechanisms, the CITY seeks remedies in courts through 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.

17. Visitors and other tourists to New York City have been enticed by misleading advertisements for short-term "hotel" or "apartment" accommodations located within buildings designed and constructed only for permanent residency, being offered on numerous internet websites. 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* NYC Admin. Code §§ 20-700 to 20-706.

18. Moreover, advertising, booking, and permitting transient accommodations in buildings where such accommodations are illegal creates a public nuisance under both New York City's Nuisance Abatement Law [NYC Admin. Code §§ 7-701 to 7-721] and the common law. The Nuisance Abatement Law and the common law have 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 lawfully reside in residential units in the Five Subject Buildings, as well as emergency personnel who would respond to any situation at the buildings.

19. City government 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, elevators damaged by constant suitcase traffic, and the like.

20. Notwithstanding 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 short-term occupants 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 available housing accommodations for the residents of New York City remain at historically low levels.

21. The spread of illegal transient occupancies, which some elected officials from New York City have termed an "epidemic," 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 apartment buildings parading as "hotels" 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 overcrowding;

(3) a burgeoning number of transient occupants, inter-mixed with permanent residents, 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;

(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 stock sector.[2]

22. Due to those deleterious effects on the housing market, and the safety concerns posed against residents, tourists, 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.

23. 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 New York Multiple Dwelling Law ("MDL")[3] and the New York City Housing Maintenance Code ("HMC"), for less than thirty days.

[2] 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. 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").

[3] 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. Multiple dwellings constructed before 1901 are referred to as "Old Law Tenements" Meanwhile those multiple dwellings constructed after 1901 but before 1929 came to be known as "New Law."
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 purpose, 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 purpose, such as "hotels, lodging houses, rooming houses, [and] boarding houses," as Class B. *See* MDL § 4(4) (now, § 4(9)(a)).

24. Prior to 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), NYC Admin. Code § 27-2004.a.8.(a). 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" SRO buildings[4] could rent a significant portion of their rooms for "nonpermanent or transient occupancy," so long as the majority of the rooms were used for permanent occupancy. *City of N.Y. v. 330 Continental LLC*, 60 A.D.3d 226, 230-31, 873 N.Y.S.2d 9, 12-13 (1st Dep't 2009).[5]

25. The Legislature enacted Chapter 225 in response to the *330 Continental* Court's decision, thereby amending the MDL and other related laws to make clear, among other things, that the rental of any unit, including SRO units, in a Class "A" building for less than thirty days is prohibited. Chapter 225 became effective May 1, 2011. The legislative justification for Chapter 225 was explained by the law's sponsor in this manner:

[4] The 330 Continental buildings were among a group of buildings known as "Pack Law" SROs. During the Great Depression, the economic instability led building owners to illegally convert Class A tenements (now termed apartments) into smaller, single room units: Single Room Occupancies ("SRO"), which presented a serious safety hazard. *See* Gov's Bill Jacket, Ch. 769 of the Laws of 1939, Mayor's Request for Approval, dated May 31, 1939. In 1939, the Legislature passed the "Pack Law," giving owners the chance to legalize their illegally converted SROs. To do so, owners were required to obtain new certificates of occupancy, and comply with additional safety requirements and standards established by the Legislature in the Pack Law, including direct means of egress from each unit and a fire alarm system. *See* MDL § 248.

The Legislature made clear that only buildings that had already been converted to SROs prior to passage of the Pack Law would qualify for legalization under the law. *See* MDL § 248(1) (referring to "existing" class A buildings that had SRO occupancy before 1939). The Pack Law was thus intended solely to address a Depression-related housing crisis and motivate owners to make their SROs safe to inhabit. *See* MDL § 4(16) ("When a class A multiple dwelling used wholly or in part for single room occupancy, it remains a class A multiple dwelling."). The Pack Law was never intended to transform Class A SROs into Class B – transient occupancy.

Specifically, the Pack Law required Class A buildings operating as SROs to comply with all other requirements applicable to Class A buildings. *See* Ch. 769 of the Laws of 1939, at § 5 (Class A building converting to SROs must comply with "the provisions of the [MDL] as were applicable to such building prior to its conversion for single room occupancy"). Simply put, being an SRO does not alter a Class A building's occupancy classification.

[5] After the enactment of Chapter 225, *330 Continental* was settled, with the defendants agreeing to a permanent injunction against managing their properties as "illegal hotels," and to pay the City of New York $600,000.

> 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 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).

26. In addition, Chapter 225 specifically amended MDL § 248(1), governing Pack Law SROs, to provide that such buildings must be occupied for permanent residency purposes, as now defined. *See* Ch. 225 of the Laws of 2010, at § 4. It also repealed a provision in the same MDL section, dating from the passage of the Pack Law, providing that it was unlawful for Class A SROs to rent for less than one week. *Id*. 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.[6]

27. The legislative history for Chapter 225, which specifically references *330 Continental*, demonstrates that the MDL's clear mandate – all units in Class A buildings must be used for permanent residence purposes – encompasses all Pack Law SROs buildings, including the Subject Buildings. *See Id.*, Memorandum in Support by State Senator Liz Krueger, at 11.

28. Following the Legislature's clear intent in Chapter 225, the First Department unequivocally held that the Chapter 225 provisions applied to all buildings, including SRO buildings, in existence on the date of its enactment. *Matter of Grand Imperial, LLC v. New York City Bd. of Stds. & Appeals*, 137 A.D.3d 579 (1st Dep't 2016), *lv. Denied*, 28 N.Y.3d 907 (2016) ("in 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).

29. The advertising, maintenance and operation of permanent residential properties for short-term transient use 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.

[6] The Legislature did, however, carefully delineate two accommodations: First, the Legislature gave some buildings classified as Class "A" apartment hotels a window of time in which to convert to Class B. (Such buildings did not encompass the SROs subject to the present action.) Second, by enactment of a chapter amendment that accompanied Chapter 225, the Legislature imposed a short delay in the law's effective date to May 1, 2011, in order to give building owners who had a "good -faith basis to believe their uses were legal prior to the bill's passage" reasonable "time to adjust" to the clarified law. *See* Gov's Bill Jacket, Ch. 225 of the Laws of 2010, Governor's Approval Memorandum, at 5.

30. Most recently, as a further step to address this issue, the Legislature amended the MDL and Administrative 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). The new law's sponsor explained the justification for adding a new Section 121 to the Multiple Dwelling Law 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.
>
> <u>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</u>. 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, 239th Leg. (N.Y. 2016 (Sponsor's Memo)) Bill No. S6340A) (emphasis added).

PARTIES

31. Plaintiff the CITY is a municipal corporation incorporated under the laws of the State of New York.

32. Defendant HANK FREID ("Freid") is the CEO and founder of defendant IMPULSIVE GROUP LLC, operator of the Marrakech Hotel, the Royal Park Hotel, and Broadway Hotel and Hostel. Freid is also the president of defendant BRANIC

INTERNATIONAL REALTY CORP., owner of record for the Branic Buildings. Furthermore, Freid holds the title of "Manager" for defendant TERRILEE 97TH ST. LLC, owner of record the Terrilee Building. Finally, Freid is the CEO of defendant HELMS REALTY CORP., owner of record for the Helms Building.

33. Defendant IMPULSIVE GROUP LLC ("IMPULSIVE GROUP") is a limited liability company, organized under the laws of the State of New York, and operator of Marrakech Hotel, the Royal Park Hotel, and Broadway Hotel and Hostel. According to the corporate filing with the New York State Department of State, IMPULSIVE GROUP has its process serving address at 2688 Broadway, New York, NY.

34. Defendant BRANIC INTERNATIONAL REALTY CORP. ("BRANIC") is a business corporation organized under the laws of the State of New York, and at all times relevant has been the owner of record of the Branic Buildings. According to the corporate filing with the New York State Department of State, Freid is the CEO of BRANIC, and BRANIC's process serving address is also 2688 Broadway, New York, NY.

35. Defendant TERRILEE 97TH ST. LLC ("TERRILEE") is a business corporation organized under the laws of the State of New York, and at all times relevant has been the owner of record of the Terrilee Building. According to the corporate filing with the New York State Department of State, TERRILEE's process serving address is also 2688 Broadway, New York, NY.

36. Defendant HELMS REALTY CORP ("HELMS REALTY") is a business corporation organized under the laws of the State of New York, and at all times relevant has been the owner of record of the Helms Building. According to the corporate filing with the New York

State Department of State, HELMS REALTY's process serving address is also 2688 Broadway, New York, NY.

37. Defendant THE LAND AND BUILDING KNOWN AS 2686 BROADWAY BLOCK 1874, LOT 45, County, City and State of New York (the "BRANIC 1" Building), is the first of five real properties whereupon the activities complained of have taken place and continue to take place.

38. Defendant THE LAND AND BUILDING KNOWN AS 2688 BROADWAY BLOCK 1874, LOT 44, County, City and State of New York (the "BRANIC 2 Building"), is the second of five real properties whereupon the activities complained of have taken place and continue to take place.

39. Defendant THE LAND AND BUILDING KNOWN AS 2690 BROADWAY BLOCK 1874, LOT 43, County, City and State of New York (the "BRANIC 3 Building"), is the third of five real properties whereupon the activities complained of have taken place and continue to take place.

40. Defendant THE LAND AND BUILDING KNOWN AS 256-258 WEST 97TH ST., BLOCK 1868, LOT 59, County, City and State of New York ("the Terrilee Building"), is the fourth of five real properties whereupon the activities complained of have taken place and continue to take place.

41. Defendant THE LAND AND BUILDING KNOWN AS 230 WEST 101ST ST. BLOCK 1872, LOT 54, County, City and State of New York ("the Helms Building"), is the fifth of five real properties whereupon the activities complained of have taken place and continue to take place.

42. Defendants "JOHN DOE" and "JANE DOE" numbers 1 through 20 are fictitiously named parties, true names unknown, the parties intended being the owners, managers or operators of the business being carried on by the defendants at the Five Subject Buildings, and any person claiming any right, title or interest in the real property which is the subject of this action.

STATEMENT OF FACTS

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

43. Prior to the filing of this action, City DOB Building Inspectors and FDNY Fire Protection Inspectors assigned to OSE ("the OSE Inspection Team") performed a total of 19 administrative code inspections at the Five Subject Buildings, and issued 159 DOB ECB violations, 67 advertising summonses, two vacate orders, six stop work orders, one DOB criminal summons for violating a vacate order, 19 FDNY violation orders, four FDNY ECB violations, and 18 FDNY criminal summonses.

i. The Terrilee Building – 256-258 WEST 97TH ST.

44. The legal occupancy of a building is determined based on records maintained by the 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.[7] New York City Charter § 645(e).

[7] 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."

45. According to C/O No. 59417, the occupancy classification for 256-258 WEST 97TH ST. ("the Terrilee Building") is "Old Law Tenement Class "A" Mult. Dwelling & S.R.O." with 93 units designated as single room occupancy from 1st to 7th floors. Since MDL § 4(8)(a) has defined "tenements" as Class A, the housing units in the Terrilee Building should be occupied on a permanent basis (stays of 30 days or more).

46. As a result of numerous community complaints of illegal hotel activities, the OSE Inspection Team inspected the Terrilee Building on July 5, 2012, April 3, 2013, May 29, 2014, February 11, 2015, October 23, 2015, and February 10, 2017. The purpose of each inspection was to determine whether that building was being operated in compliance with applicable law and, if it was not, then 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.

47. During each one of their inspection, OSE personnel found, among other building violations, that Class "A" multiple dwelling units within the Terrilee Building had been illegally converted and were being rented and occupied on a transient basis for less than thirty-day stays, contrary to C/O No. 59417, and in violation of the Multiple Dwelling Law and the New York City Building Code and Fire Code.

48. In addition, serious immediately hazardous fire and safety violations were observed during each one of the inspections – including violations involving the more stringent requirements for transient occupancy and use. The presence of transient occupancy triggers heightened fire safety requirements needed to ensure the safety of tourists and other visitors unfamiliar with a building's layout and emergency exits and/or a City's fire safety protocols.

49. On October 23, 2015, DOB issued a partial vacate order for units 73C and 73D of the Terrilee Building on the 7th floor for "exceed[ing] the permitted occupant load."

50. As a result of their observations of hazardous violating conditions, the OSE Inspection Team issued a series of ECB Notices of Violation ("NOVs"), FDNY Violation Orders, and FDNY Criminal Court Summonses to defendant TERRILEE. Most of the violation notices also directed the defendant property owner to immediately discontinue the illegal short-term use and occupancy within the building.

51. Each NOV issued by the City included an administrative order from the DOB Commissioner expressly directing the property owner to timely remediate the particular violating condition and to then timely certify such correction with DOB. Defendant TERRILEE has failed to file valid certificates of compliance for each one of the seventy-one open NOVs as directed. Those violations are still listed in DOB records as being "OPEN – NO COMPLIANCE RECORDED."

52. In all, since July 2012, the OSE Inspection Team has issued eighty-seven NOVs to defendant TERRILEE, with the owner already held "in violation" of seven so far with monetary penalties of $5,300 imposed so far.[8]

53. Since July 2012 the OSE Inspection Team has also issued nine FDNY Violation Orders, one FDNY ECB violation, and ten FDNY Criminal Court Summonses to defendant TERRILEE. The FDNY Criminal Summonses are open and pending for prosecution against the building owner.

54. In its most recent decision concerning the occupancy of the Terrilee Building, the First Department reviewed the C/O No. 59417, which designates the occupancy classification as "Old Law Tenement Class "A" Mult. Dwelling & S.R.O." and found that "[u]nder the Multiple

[8] Although six out of the eighty-seven NOVs issued by OSE Inspection Team since July 2012 have been dismissed, the ECB has consistently held that transient occupancy is prohibited in 256-258 WEST 97TH ST. Seventy-one NOVs are currently pending.

Dwelling Law, as amended effective May 1, 2011, **none of the [93 SRO] units in petitioner's Class A multiple dwelling may be used for occupancy periods shorter than 30 days**." *Matter of Terrilee 97th St. LLC v. N.Y.C. Envtl. Control Bd.*, 146 A.D.3d 716 (1st Dep't 2017). (emphasis added) (internal citation omitted).[9]

55. The occupancy description in C/O No. 59417 for the Terrilee Building is exactly the same as in C/O No. 59889 for the Branic 1 Building and C/O No. 59890 for the Branic 2 Building, in which all three buildings' occupancy classification is "Old Law Tenement Class 'A' Mult. Dwelling & SRO."

56. The MDL defines "tenements" as Class A for permanent use. *See* MDL § 4(8)(a). Furthermore, MDL § 4(16) has specified that "[w]hen a class A multiple dwelling used wholly or in part for single room occupancy, it remains a class A multiple dwelling." Therefore, none of the SRO units in these three Subject Buildings "may be used for occupancy periods shorter than 30 days." *Matter of Terrilee 97th St. LLC v. N.Y.C. Envtl. Control Bd.*, 146 A.D.3d 716 (1st Dep't 2017).

57. The City has since determined that the defendant TERRILEE d/b/a/ Royal Park Hotel continue to advertise illegal short-terms transient use and occupancy of the Terrilee Building online. As a result, on February 8, 2017, the OSE Inspection Team issued sixteen advertising summonses to defendant TERRILEE d/b/a/ Royal Park Hotel for its illegal advertising of permanent dwelling units within the Terrilee Building for transient stays.

58. To date, the defendants have still failed to comply with the terms of the administrative orders set forth within the ECB NOVs and the FDNY Violation Orders. The building continues to be deceptively advertised and booked, and hazardously and unlawfully

[9] Although defendant TERRILEE has filed motion to reargue and leave for appeal, it has not sought a stay of the First Department's decision.

used and occupied for short-term transient occupancy purposes, in violation of the Multiple Dwelling Law, and the Building Code and Fire Code.

ii. The Branic Buildings – 2686 BROADWAY, 2688 BROADWAY, 2690 BROADWAY

59. According to C/O No. 59889, the applicable C/O for the Branic 1 Building, the occupancy classification of the Branic 1 Building is "Old Law Tenement Class 'A' Mult. Dwelling & SRO" with 39 units designated as single room occupancy ("SRO") from the 2nd to 5th floors. Since MDL § 4(8)(a) includes "tenements" within the enumeration of Class A—i.e. permanent—Multiple Dwellings, the housing units in the Branic 1 Building should be occupied on a permanent basis (stays of 30 days or more).

60. According to C/O No. 59890, the applicable C/O for for the Branic 2 Building, the occupancy classification of the Branic 2 Building is "Old Law Tenement Class 'A' Mult. Dwelling & SRO" with 42 units designated as SRO from the 2nd to 5th floors. Since MDL § 4(8)(a) includes "tenements" within the enumeration of Class A—i.e. permanent—Multiple Dwellings, the housing units in the Branic 2 Building should be occupied on a permanent basis (stays of 30 days or more).

61. According to the "I-Card"[10] bearing registration no. 114843, the Branic 3 Building's classification is "Heretofore Erected O. L.", which corresponds to "Heretofore Erected"—meaning before 1901—"Old Law Tenement"—a type of permanent multiple dwelling—and the building holds nine "A units." According to New York City Housing and

[10] An I -Card, or "improvement" card, is an index -sized card that documents observations from the City's Tenement House Department inspectors and which indicated structural improvements made to meet the standards of the Tenement House Act of 1901. http://chpcny.org/2010/01/i-card-mystery-solved/ Before 1938,buildings were not required to have a certificate of occupancy. Many buildings constructed after 1938 have been assigned a Certificate of Occupancy as part of a conversion or other work for which DOB has issued a permit. For buildings constructed before 1938 without a later-issued Certificate of Occupancy, I -Cards often provide information about historical uses in the building which indicate a building's legal occupancy.

Preservation Department's ("HPD") glossary, an "A unit"[11] means "apartment"—which according to the MDL is permanent residence suitable only for stays of 30 days or more. *See* MDL § 4(8)(a).

62. As a result of numerous community complaints of illegal hotel activities, the OSE Inspection Team inspected the Branic Buildings on January 12, 2012, September 6, 2016, and February 3, 2017. The purpose of each inspection was to determine whether that building was being operated in compliance with applicable law and, if it was not, then 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.

63. During each one of their inspections, OSE personnel found, among other building violations, that Class "A" multiple dwelling units within the Branic Buildings, had been illegally converted and were being rented and occupied on a transient basis for less than thirty-day stays, contrary to C/O No. 59889, C/O No. 59890, and the I-Card" bearing registration no. 114843, and in violation of the Multiple Dwelling Law and the New York City Building Code and Fire Code.

64. Besides illegally converting nine permanent residential apartments in the Branic 3 Building into transient occupancy, defendant BRANIC conducted work without the required permit to illegally subdivide the apartments in that building to create multiple furnished rooms for unlawful transient occupancy.

65. In addition, serious immediately hazardous fire and safety violations were observed during each one of the inspections – including violations involving the more stringent requirements for transient occupancy and use. The presence of transient occupancy triggers

[11] According to HPD Glossary, "[a]n 'A unit' is an apartment, which includes one or more living rooms occupied as a unit separate from all other rooms within a dwelling, with lawful sanitary facilities and a lawful kitchen or kitchenette for the exclusive use of the family residing in such unit." http://gv-iis-pd10.hpd.nycnet:8888/hpdonline/help_glossary.aspx

heightened fire safety requirements needed to ensure the safety of tourists and other visitors unfamiliar with a building's layout and emergency exits and/or a City's fire safety protocols.

66. As a result of their observations of hazardous violating conditions, the OSE Inspection Team issued a series of ECB Notices of Violation ("NOVs"), FDNY Violation Orders, and FDNY Criminal Court Summonses to defendant BRANIC. Most of the violation notices also directed the defendant BRANIC to immediately discontinue the illegal short-term use and occupancy within the building.

67. Each NOV issued by the City included an administrative order from the DOB Commissioner expressly directing the property owner to timely remediate the particular violating condition and to then timely certify such correction with DOB. Defendant BRANIC has failed to file valid certificates of compliance for each one of the thirty-seven open NOVs as directed. Those violations are still listed in DOB records as being "OPEN – NO COMPLIANCE RECORDED."

68. In all, since January 2012, the OSE Inspection Team has issued fifty-two NOVs to defendant BRANIC, with the owner already held "in violation" of ten so far with monetary penalties of $60,800 imposed so far.[12]

[12] Without finding transient occupancy to be permissible in 2686 Broadway, 2688 Broadway, and 2690 Broadway, in an Article 78 action the First Department found that DOB's transient occupancy violation issued in 2012 for these three buildings "is not supported by substantial evidence," because DOB inspector admitted treating "three adjoining buildings … as one, and was unable to identify any apartments he visited at 2690 Broadway or any occupants he spoke with in that building." *Matter of Branic Intl. Realty Corp. v. City of N.Y. Envtl. Control Bd*., 2017 N.Y. App. Div. LEXIS 570 (1st Dept. 2017). It is important to note that the First Department at no time considered transient occupancy to be legal in any of the Branic Buildings, and simply rejected the violation based on not supported by substantial evidence. As a matter of fact, the First Department reviewed the C/O language as it appears on the C/O for the Branic 1 and Branic 2 Buildings when it considered *Matter of Terrilee*, (all three buildings' C/Os state that they are Old Law Tenement Class A Multiple Dwellings and Single Room Occupancy) at which time the First Department found that the Terrilee Building must be occupied only for periods of 30 days or longer.

69. Since January 2012, the OSE Inspection Team has also issued four FDNY Violation Orders, and two FDNY Criminal Court Summonses to defendant BRANIC. The FDNY Criminal Summonses are open and pending for prosecution.

70. The City has since determined that the defendant BRANIC d/b/a/ Marrakech Hotel continue to advertise illegal short-terms transient use and occupancy of the Branic Buildings online. As a result, on February 2, 2017, the OSE Inspection Team issued twelve advertising summonses to defendant BRANIC d/b/a/ Marrakech Hotel for its illegal advertisement of dwelling units within the Branic Buildings for transient stays (less than thirty days).

71. Furthermore, on March 27, 2017, the OSE Inspection Team issued twelve advertising summonses to defendant BRANIC d/b/a/ Marrakech Hotel for its continued illegal advertisement of dwelling units within the Branic Buildings for transient stays (less than thirty days).

72. To date, the defendants have still failed to comply with the terms of the administrative orders set forth within the ECB NOVs and the FDNY Violation Orders. The building continues to be deceptively advertised and booked, and hazardously and unlawfully used and occupied for short-term transient occupancy purposes, in violation of the Multiple Dwelling Law, and the Building Code and Fire Code.

iii. The Helms Building – 230 WEST 101ST ST.

73. According to C/O No. 29327, the occupancy classification for 230 WEST 101ST ST. ("the Helms Building") is "Old Law Tenement Single Room Occupancy," with one apartment on the first floor and 126 units designated as single room occupancy from 2nd to 7th

floors. Since MDL § 4(8)(a) has defined "tenements" as Class A, the housing units in the Helms Building should be occupied on a permanent basis (stays of 30 days or more).

74. As a result of numerous community complaints of illegal hotel activities, the OSE Inspection Team inspected the Helms Building on December 6, 2011, December 30, 2014, April 12, 2016, and February 14, 2017. The purpose of each inspection was to determine whether that building was being operated in compliance with applicable law and, if it was not, then 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.

75. During each one of their inspection, OSE personnel found, among other building violations, that Class "A" multiple dwelling units within the Helms Building had been illegally converted and were being rented and occupied on a transient basis for less than thirty-day stays, contrary to C/O No. 29327, and in violation of the Multiple Dwelling Law and the New York City Building Code and Fire Code.

76. In addition, serious immediately hazardous fire and safety violations were observed during each one of the inspections – including violations involving the more stringent requirements for transient occupancy and use. The presence of transient occupancy triggers heightened fire safety requirements needed to ensure the safety of tourists and other visitors unfamiliar with a building's layout and emergency exits and/or a City's fire safety protocols.

77. As a result of their observations of hazardous violating conditions, the OSE Inspection Team issued a series of ECB Notices of Violation ("NOVs"), FDNY Violation Orders, and FDNY Criminal Court Summonses to defendant HELMS REALTY. Most of the violation notices also directed the defendant property owner to immediately discontinue the illegal short-term use and occupancy within the building.

78. Each NOV issued by the City included an administrative order from the DOB Commissioner expressly directing the property owner to timely remediate the particular violating condition and to then timely certify such correction with DOB. Defendant HELMS REALTY has failed to file valid certificates of compliance for each one of the twelve open NOVs as directed. Those violations are still listed in DOB records as being "OPEN – NO COMPLIANCE RECORDED."

79. In all, since December 2011, the OSE Inspection Team has issued twenty-one NOVs to defendant HELMS REALTY, with the owner already held "in violation" of four so far with monetary penalties of $4,050 imposed so far.[13]

80. Since December 2011the OSE Inspection Team has also issued six FDNY Violation Orders, three FDNY ECB violations, and six FDNY Criminal Court Summonses to defendant HELMS REALTY, as owner of 230 WEST 101ST ST. The FDNY Criminal Summonses are open and pending for prosecution against the building owner.

81. The City has since determined that the defendant HELMS REALTY d/b/a/ Broadway Hotel and Hostel continue to advertise illegal short-terms transient use and occupancy of the Helms Building online. As a result, on February 10, 2017, the OSE Inspection Team issued seventeen advertising summonses to defendant HELMS REALTY d/b/a/ Broadway Hotel and Hostel for its illegal advertising of permanent dwelling units within the Helms Building for transient stays. Furthermore, on April 12, 2017, the OSE Inspection Team issued ten additional advertising summonses to defendant HELMS REALTY d/b/a/ Broadway Hotel and Hostel for

[13] Eight out of the twenty-one NOVs issued by OSE Inspection Team since December 2011 have been dismissed. On February 2, 2017, the ECB Appeals Board ("the Board") reviewed the issue of the legal occupancy of the Helms Building, and found that "the CO for the cited premises authorizes Class 'B' SROs, a transient use." *NYC v. Helms Realty Corp.* ECB Appeal No. 1601233 (February 2, 2017). However, such finding is directly contradicted by MDL § 248, which states "dwelling units occupied pursuant to this section [Single Room Occupancy] shall be occupied **for permanent residence purposes**, as defined in paragraph a of subdivision eight of section four of this chapter." (emphasis added).

continued illegal advertising of permanent dwelling units within the Helms Building for transient stays.

82. To date, the defendants have still failed to comply with the terms of the administrative orders set forth within the ECB NOVs and the FDNY Violation Orders. The building continues to be deceptively advertised and booked, and hazardously and unlawfully used and occupied for short-term transient occupancy purposes, in violation of the Multiple Dwelling Law, and the Building Code and Fire Code.

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

83. Plaintiff repeats and realleges paragraphs "1" through "82" as if contained herein.

84. 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.

85. 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.

86. 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."

87. As summarized above, the CITY has determined that the Defendants have converted permanent residential dwelling units in the Five Subject Buildings for another use, specifically, for illegal hotel use.

88. Notwithstanding the issuance of the notices of violations issued to defendants providing it with notice of the illegality of the transient occupancies, as well as decisions and orders sustaining and imposing civil penalties, the defendants continue to illegally operate and manage the Five Subject Buildings for such unlawful occupancies

89. 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.

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

91. Pursuant to Admin. Code § 7-706(h), 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 enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Five Subject Buildings for transient use and occupancy, and further ordering that they pay a separate penalty of $1,000 for each day that such defendant 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

92. Plaintiff repeats and realleges paragraphs "1" through "91" as if contained herein.

93. 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.

94. 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.

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

96. 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.

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

98. Pursuant to Admin. Code § 7-706(h), 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 enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Five Subject Buildings for transient use and occupancy, and further ordering that they pay a separate penalty of $1,000 for each day that such Defendant 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

99. Plaintiff repeats and realleges paragraphs "1" through "98" as if contained herein.

100. Under Admin. Code § 7-703(d), any premises which is in violation of Admin. Code § 28-105.1 deemed to be a public nuisance.

101. 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." (emphasis added)

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

103. 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.

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

105. Pursuant to Admin. Code § 7-706(h), 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 enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Five Subject Buildings for transient use and occupancy, and further ordering that they pay a separate penalty of $1,000

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

FOURTH CAUSE OF ACTION
STATUTORY BUILDING NUISANCE – VIOLATION OF THE ZONING RESOLUTION

106. Plaintiff repeats and realleges paragraphs "1" through "105" as if contained herein.

107. Pursuant to Admin. Code § 7-703(k), any building, erection or place wherein there exists or is occurring a violation of the NYC Zoning Resolution ["ZR"] is deemed to be a public nuisance.

108. The Zoning Resolution, enacted in 1961, provides that the J-1 group (i.e., transient-use buildings) are not permitted in the City's residential districts, such as the Upper West Side.

109. The operation of a transient hotel within New York City may only be done within certain zoning districts, such as C-5, C-6, and C-8. *See* Z.R. 32-14 ("Use Group 5 consists of hotels used primarily for transient occupancy."). Furthermore, not all commercial zoning district allows transient hotels, and transient hotels is prohibited in most of the residential zoning district besides R10-H.[14] *See* Z.R. 32-00.

110. The Marrakech Hotel – 2686 BROADWAY, 2688 BROADWAY, AND 2690 BROADWAY – are located within a R8B/R9A residential zoning district with a C1-5 commercial overlay.[15] The Royal Park Hotel – 256-258 WEST 97TH ST. – is located within a

[14] Transient hotels are not permitted in residential districts other than R10-H, and in that case, only with special approval from the City Planning Commission. *See* Z.R. 22-22.

[15] C1-1 through C1-5 and C2-1 through C2-5 districts are commercial overlays mapped within residence districts. Mapped along streets that serve local retail needs, they are found extensively throughout the city's lower- and medium-density areas and occasionally in higher-density districts. When commercial overlays are mapped in R1

R10-A residential zoning district. The Broadway Hotel – 230 WEST 101ST ST. – is located within a R9A residential zoning district with a C1-5 commercial overlay.

111. Under Z.R. 32-00, all C-1 and C2 use group in R9A districts must comply with R9 regulations. Similarly, all and C-1 and C-2 use group in R10A districts must comply with R10 regulations. *Id*. Therefore, none of Subject Buildings are in zoning districts approved for transient hotel use. As a result, the illegal transient hotel use of the Subject Buildings violates the Z.R. and constitutes public nuisance.

112. As a result of the foregoing, there exists a public nuisance at the Five Subject Buildings for operating hotels in residential zoning district.

113. 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.

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

115. Pursuant to Admin. Code § 7-706(h), 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 enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Five Subject Buildings for transient use and occupancy, and further ordering that they pay a separate penalty of $1,000 for each day that such Defendant intentionally conducted, maintained or permitted the public nuisances alleged in this cause of action.

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through R5 districts, the maximum commercial floor area ratio ("FAR") is 1.0; when mapped in R6 through R10 districts, the maximum commercial FAR is 2.0.
https://www1.nyc.gov/site/planning/zoning/districts-tools/c1-c2-overlays.page

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

116. Plaintiff repeats and realleges paragraphs "1" through "115" as if contained herein.

117. Under the Nuisance Abatement Law, N.Y.C. Admin. Code § 7-703(d), any premises in violation of Admin. Code § 28-301.1 is deemed to be a public nuisance.

118. 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."

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

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

121. 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.

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

123. Pursuant to Admin. Code § 7-706(h), 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 enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Five 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
STATUTORY PUBLIC NUISANCE – CRIMINAL NUISANCE

124. Plaintiff repeats and realleges paragraphs "1" through "123" as if contained herein.

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

126. 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."

127. 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 Five Subject Buildings, in violation of their legal and permissible use and occupancy, violations which were found to be Class 1 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.

128. The hazardous conditions at the Five Subject Buildings have continued uncorrected over a substantial period of time, notwithstanding findings by the ECB, orders from the DOB Commissioner, and controlling decisions by the First Department.

129. Defendants' conduct has endangered the safety of a considerable number of persons, doing so intentionally and knowingly.

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

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

132. 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 nuisance.

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

134. Pursuant to Admin. Code § 7-706(h), 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 enjoining them from using or occupying, or maintaining, managing, operating, or permitting the use or occupancy of any of the units in the Five Subject Buildings for transient use and occupancy, and further ordering that they pay a separate penalty of $1,000 for each day that such Defendants intentionally conducted, maintained or permitted the public nuisances alleged in this cause of action.

SEVENTH CAUSE OF ACTION
VIOLATION OF THE MULTIPLE DWELLING LAW

135. Plaintiff repeats and realleges paragraphs "1" through "134" as if fully set forth herein.

136. Multiple Dwelling Law § (4)(8)(a) prohibits renting any unit in Class "A" multiple dwellings for less than thirty 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…."

137. Notwithstanding the requirements of the Multiple Dwelling Law, defendants have advertised, permitted, maintained and used, continue to advertise, permit, maintain, and use dwelling units at the Five Subject Buildings for transient occupancies of less than thirty days, in violation of the Multiple Dwelling Law. Based on the OSE's inspections of the Five Subject Buildings on multiple separate occasions from 2011 to 2017, multiple units are being so illegally used and occupied, and have been so used since at least December of 2011.

138. Pursuant to Multiple Dwelling Law § 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 Five Subject Buildings for transient use and occupancy as prohibited by the Multiple Dwelling Law, and further directing them to restore the Five Subject Buildings to use and occupancy as permanent residences, as required by the Multiple Dwelling Law for Class A multiple dwellings.

EIGHTH CAUSE OF ACTION
BUILDING CODE VIOLATIONS – ILLEGAL CHANGE OF OCCUPANCY

139. Plaintiff repeats and realleges paragraphs "1" through "139" as if fully set forth herein.

140. 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.

141. Admin. Code § 28-101.5 defines "alteration" to be "Any construction, addition, change of use or occupancy, or renovation to a building or structure in existence."

142. 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.

143. 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.

144. Admin. Code § 28-118.3 provides that N.Y.C. Admin. Code §§ 28-118.3.1 through 28-118.3.4 apply to all completed buildings.

145. The legally permissible residential use and occupancy of the Five Subject Buildings is for permanent residential occupancy.

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

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

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

149. By reason of the foregoing, pursuant to Admin. Code § 28-205.1, the CITY is entitled to judgment against the 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 Five Subject Buildings for short-term, transient use or occupancy of less than thirty days, and further directing them to restore the Five Subject Buildings to the arrangement and occupancy permitted for it, and to comply with all other sections of the Building Code.

150. 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.

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

152. Therefore, the CITY is entitled to a separate judgment against the 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.

NINTH CAUSE OF ACTION
DECEPTIVE TRADE PRACTICES

153. Plaintiff repeats and realleges paragraphs “1” through “152” as if contained herein.

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

155. Moreover, 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." Admin. Code § 20-700.

156. 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.

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

158. 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 thirty 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.

TENTH CAUSE OF ACTION
COMMON LAW NUISANCE

159. Plaintiff repeats and realleges paragraphs "1" through "158" as if contained herein.

160. Defendants have advertised, operated, and maintained permanent residential units for short-term stays of less than thirty 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, created by noise, filth, and the excessive traffic of unknown and constantly changing individuals entering their places of abode.

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

162. 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.

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

164. Unless restrained by order of this court, the 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.

165. The CITY therefore, has no adequate remedy at law.

166. As a result of the foregoing, 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 the above described common law public nuisance going on unabated within the Five Subject Buildings.

167. Defendants have acted willfully, wantonly, and with a recklessness betokening 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 Five Subject Buildings.

168. Defendants have continued to engage in their illegal business, unabated. They actively advertise and seek to rent numerous permanent residence units to tourist and visitors to New York City for stays of less than thirty 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.

169. The CITY is thus entitled to compensatory and punitive damages because of the knowing and ongoing common law nuisance created, maintained, and continued by the defendants.

WHEREFORE, the Plaintiff CITY demands judgment against the defendants as follows:

1. Declaring that the 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 the defendants and each of them have managed, used, advertised, booked, and operated numerous dwelling units at the Five 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 Five Subject Buildings in a manner as to constitute deceptive trade practices and a public nuisance;

3. With respect to the FIRST, SECOND, THIRD, FOURTH, FIFTH and SIXTH CAUSES OF ACTION, pursuant to N.Y.C. Admin. Code §§ 7-706(a) and 7-714,

a. Directing that the Five 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 the defendants and by any other person or persons.

b. Permanently restraining the 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 Five Subject Buildings to be used, advertised, or occupied in any manner which violates the legally permitted use and occupancy for the premises. Pursuant to N.Y.C. Admin. Code § 7-706(h), directing the 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, and for each day that each of the defendants intentionally conducted, maintained or permitted each public nuisance complained of in the SIXTH CAUSE OF ACTION.

4. With respect to the SEVENTH CAUSE OF ACTION, pursuant to Multiple Dwelling Law § 306,

a. Permanently restraining the 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 Five Subject Buildings to be used, advertised, or occupied in any manner which violates the legal use and occupancy for the premises, as permitted by Multiple Dwelling Law §§ 4, 248 or other State and City laws.

5. With respect to the EIGHTH CAUSE OF ACTION, pursuant to N.Y.C. Admin. Code §§ 28-205.1 and 28-202.1,

a. Permanently restraining the 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 Five 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 Multiple Dwelling Law 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.

b. Directing that the defendants and each of them pay to the CITY the maximum penalty set forth in N.Y.C. Admin. Code §§ 28-202.1 and 28-202.2 for each violation of the provisions of the building laws.

6. With respect to the NINTH CAUSE OF ACTION, pursuant to N.Y.C. 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.

b. Imposing upon the 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 TENTH CAUSE OF ACTION, pursuant to the common law doctrine of public nuisance,

a. Permanently enjoining the 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.

b. Awarding the CITY compensatory damages in an amount to be set by the court, and punitive damages in the amount of $5,000,000 for the willful and wanton perpetuation of a common law public nuisance by the defendants.

8. Pursuant to N.Y.C. 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.

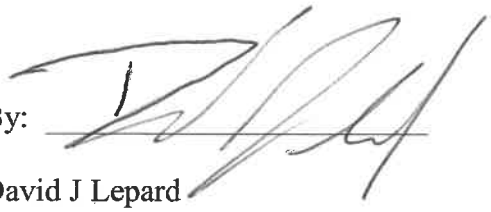
9. Taxing and allowing the costs and disbursements against the Defendants and directing that the CITY have execution therefor.

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 27, 2017

ZACHARY W. CARTER
Corporation Counsel of the City of New York
Attorney for Plaintiffs
100 Church Street
New York, New York 10007

By: 

David J Lepard
Special Assistant Corporation Counsel
Mayor's Office of Special Enforcement
1 Centre Street, Room 1012N
New York, NY 10007
Tel.: (646) 576-3514

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 alleged on information and belief, which matters I believe 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
June 27, 2017

SHERYL NEUFELD

City v. Freid