

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

-----X
CHAD VIGNOLA, LOUIZA CHIRINIAN, BENJAMIN
DAVIS, COLLEEN TRIPP, VINEET DUTTA, and
CHRISTOPHER KANARICK on behalf of themselves
and all others similarly situated

Index No. 152025/2020

Plaintiffs,

**AMENDED ANSWER
AND COUNTERCLAIMS**

-against-

JDM WASHINGTON STREET LLC,

Defendant.
-----X

Defendant JDM Washington Street LLC (“Defendant”), by its attorneys, Kucker Marino Winiarsky & Bittens, LLP, for its answer to the amended complaint (“Complaint”) of Chad Vignola, Louiza Chirinian, Benjamin Davis, Colleen Tripp, Vineet Dutta, and Christopher Kanarick (collectively “Plaintiffs”), under the above referenced caption, states as follows:

AS TO THE INTRODUCTION

1. Defendant denies the allegations contained in paragraph 1 of the Complaint but admits that Defendant is the net lessee of the building located at and know as 90 Washington Street, New York, New York.
2. Defendant admits the allegations contained in paragraph 2 of the Complaint.
3. Defendant admits the allegations contained in paragraph 3 of the Complaint.
4. Defendant avers that the allegations contained in paragraph 4 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

5. Defendant avers that the allegations contained in paragraph 5 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

6. Defendant avers that the allegations contained in paragraph 6 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

7. Defendant avers that the allegations contained in paragraph 7 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

8. Defendant denies the allegations contained in paragraph 8 of the Complaint.

9. Defendant denies the allegations contained in paragraph 9 of the Complaint.

10. Defendant denies the allegations contained in paragraph 10 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

11. Defendant denies the allegations contained in paragraph 11 of the Complaint.

12. Defendant admits the allegations contained in paragraph 12 of the Complaint.

13. Defendant denies the allegations contained in paragraph 13 of the Complaint.

14. Defendant admits the allegations contained in paragraph 14 of the Complaint.

15. Defendant denies the allegations contained in paragraph 15 of the Complaint and instead refers the Court to the document referenced cited therein for the contents and meanings thereof.

16. Defendant denies the allegations contained in paragraph 16 of the Complaint.

17. Defendant denies the allegations contained in paragraph 17 of the Complaint.

18. Defendant denies the allegations contained in paragraph 18 of the Complaint.

19. Defendant denies the allegations contained in paragraph 19 of the Complaint.

AS TO THE PARTIES

As to the Plaintiffs

As to Chad Vignola

20. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 20 of the Complaint.

21. Defendant denies the allegations contained in paragraph 21 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

22. Defendant denies the allegations contained in paragraph 22 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

23. Defendant denies the allegations contained in paragraph 23 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

24. Defendant avers that the allegations contained in paragraph 24 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

25. Defendant denies the allegations contained in paragraph 25 of the Complaint.

26. Defendant denies the allegations contained in paragraph 26 of the Complaint.

As to Louiza Chrinaian

27. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 27 of the Complaint.

28. Defendant denies the allegations contained in paragraph 28 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

29. Defendant denies the allegations contained in paragraph 29 of the Complaint and instead refers the Court to the document referenced therein for the contents and meanings thereof.

30. Defendant denies the allegations contained in paragraph 30 of the Complaint.

31. Defendant admits so much of the allegations contained in paragraph 31 of the Complaint that infers that Plaintiff Chirinain transferred to Apartment 18D.

32. Defendant denies the allegations contained in paragraph 32 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

33. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 33 of the Complaint.

34. Defendant denies the allegations contained in paragraph 34 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

As to Benjamin Davis

35. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 35 of the Complaint.

36. Defendant denies the allegations contained in paragraph 36 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

37. Defendant denies the allegations contained in paragraph 37 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

38. Defendant denies the allegations contained in paragraph 38 of the Complaint and instead refers the Court to the document referenced therein for the contents and meanings thereof.

39. Defendant admits so much of the allegations contained in paragraph 39 of the

Complaint that infers that Defendant has not provided a lease to Davis since May 2020.

As to Colleen Tripp

40. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 40 of the Complaint.

41. Defendant denies the allegations contained in paragraph 41 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

42. Defendant denies the allegations contained in paragraph 42 of the Complaint and instead refers the Court to the document referenced therein for the contents and meanings thereof.

43. Defendant denies the allegations contained in paragraph 43 of the Complaint and instead refers the Court to the document referenced therein for the contents and meanings thereof.

44. Defendant admits so much of the allegations contained in paragraph 44 of the Complaint that infers that Defendant has not provided a lease to Tripp since May 2020.

As to Vineet Dutta

45. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 45 of the Complaint.

46. Defendant denies the allegations contained in paragraph 46 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

47. Defendant denies the allegations contained in paragraph 47 of the Complaint and instead refers the Court to the document referenced therein for the contents and meanings thereof.

48. Defendant denies the allegations contained in paragraph 48 of the Complaint.

49. Defendant admits so much of the allegations contained in paragraph 49 of the Complaint that infers that Plaintiff Dutta transferred to Apartment 24M.

50. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 50 of the Complaint.

As to Christopher Kanarick

51. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 51 of the Complaint.

52. Defendant denies the allegations contained in paragraph 52 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

53. Defendant denies the allegations contained in paragraph 53 of the Complaint and instead refers the Court to the document referenced therein for the contents and meanings thereof.

54. Defendant denies the allegations contained in paragraph 54 of the Complaint and instead refers the Court to the document referenced therein for the contents and meanings thereof.

55. Defendant denies the allegations contained in paragraph 55 of the Complaint.

56. Defendant admits the allegations contained in paragraph 56 of the Complaint.

57. Defendant denies the allegations contained in paragraph 57 of the Complaint and instead refers the Court to the document referenced therein for the contents and meanings thereof.

58. Defendant admits the allegations contained in paragraph 58 of the Complaint.

59. Defendant denies the allegations contained in paragraph 59 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

60. Defendant denies the allegations contained in paragraph 60 of the Complaint and instead refers the Court to the document cited therein for the contents and meanings thereof.

As to Defendant

61. Defendant denies the allegations contained in paragraph 61 of the Complaint to the extent that Defendant is not a corporation.

62. Defendant denies the allegations contained in paragraph 62 of the Complaint but admits that Defendant is the net lessee of the building located at and know as 90 Washington Street, New York, New York.

63. Defendant admits the allegations contained in paragraph 63 of the Complaint.

**AS TO THE APPLICABLE STATUTORY
AND REGULATORY ENVIRONMENT**

As to the Rent Stabilization Law and the Rent Stabilization Code

64. Defendant avers that the allegations contained in paragraph 64 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

65. Defendant avers that the allegations contained in paragraph 65 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

66. Defendant avers that the allegations contained in paragraph 66 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

67. Defendant avers that the allegations contained in paragraph 67 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

68. Defendant avers that the allegations contained in paragraph 68 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

69. Defendant avers that the allegations contained in paragraph 69 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

70. Defendant avers that the allegations contained in paragraph 70 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

As to the 412-g Program

71. Defendant avers that the allegations contained in paragraph 71 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

72. Defendant avers that the allegations contained in paragraph 72 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

73. Defendant avers that the allegations contained in paragraph 73 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

74. Defendant avers that the allegations contained in paragraph 74 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

75. Defendant avers that the allegations contained in paragraph 75 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

**AS TO DEFENDANT'S ALLEGED PRACTICES
TO DEPRIVE PLAINTIFFS, AND THE CLASS MEMBERS
OF THEIR RIGHTS UNDER THE RENT REGULATIONS**

76. Defendant avers that the allegations contained in paragraph 76 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

77. Defendant denies the allegations contained in paragraph 77 of the Complaint

78. Defendant avers that the allegations contained in paragraph 78 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

79. Defendant avers that the allegations contained in paragraph 79 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

AS TO THE CLASS ALLEGATIONS

As to the Class and Sub-Class

80. Defendant avers that the allegations contained in paragraph 80 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

81. Defendant avers that the allegations contained in paragraph 81 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

82. Defendant avers that the allegations contained in paragraph 82 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

83. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 83 of the Complaint.

84. Defendant denies the allegations contained in paragraph 84 of the Complaint and instead refers the Court to the Complaint for the contents and meanings thereof.

85. Defendant denies the allegations contained in paragraph 85 of the Complaint and instead refers the Court to the Complaint for the contents and meanings thereof.

As to whether the Class and Sub-Class Meet the Requirements for Certification

86. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 86 of the Complaint.

87. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 87 of the Complaint.

88. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 88 of the Complaint.

89. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 89 of the Complaint.

90. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 90 of the Complaint.

91. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 91 of the Complaint.

92. Defendant lacks knowledge to admit or deny the allegations contained in

paragraph 92 of the Complaint.

93. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 93 of the Complaint.

94. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 94 of the Complaint.

95. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 95 of the Complaint.

96. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 96 of the Complaint.

97. Defendant lacks knowledge to admit or deny the allegations contained in paragraph 97 of the Complaint.

AS TO COUNT ONE
VIOLATION OF RSL § 26-512
(on behalf of the Class)

98. Defendant repeats and realleges each of the allegations set forth in paragraphs 1-97 above as though fully set forth herein.

99. Defendant avers that the allegations contained in paragraph 99 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

100. Defendant denies the allegations contained in paragraph 100 of the Complaint.

101. Defendant avers that the allegations contained in paragraph 101 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

102. Defendant avers that the allegations contained in paragraph 102 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

103. Defendant avers that the allegations contained in paragraph 103 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

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

104. Defendant repeats and realleges each of the allegations set forth in paragraphs 1-103 above as though fully set forth herein.

105. Defendant avers that the allegations contained in paragraph 105 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

106. Defendant denies the allegations contained in paragraph 106 of the Complaint.

107. Defendant denies the allegations contained in paragraph 107 of the Complaint.

108. Defendant avers that the allegations contained in paragraph 108 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

109. Defendant avers that the allegations contained in paragraph 109 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

110. Defendant avers that the allegations contained in paragraph 110 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

111. Defendant avers that the allegations contained in paragraph 111 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

112. Defendant avers that the allegations contained in paragraph 112 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

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

113. Defendant repeats and realleges each of the allegations set forth in paragraphs 1-112 above as though fully set forth herein.

114. Defendant avers that the allegations contained in paragraph 114 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

115. Defendant avers that the allegations contained in paragraph 115 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

116. Defendant denies the allegations contained in paragraph 116 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

117. Defendant avers that the allegations contained in paragraph 117 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

118. Defendant avers that the allegations contained in paragraph 118 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

AS TO COUNT FOUR
ATTORNEYS' FEES
(on behalf of the Class)

119. Defendant repeats and realleges each of the allegations set forth in paragraphs 1-118 above as though fully set forth herein.

120. Defendant avers that the allegations contained in paragraph 120 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

121. Defendant avers that the allegations contained in paragraph 121 of the Complaint constitute legal conclusions to which no response is required (to the extent a response is required, Defendant denies).

FACTS APPLICABLE TO ALL AFFIRMATIVE DEFENSES

122. Pursuant to *In the Matter of Regina Metropolitan Co., LLC v. New York State Div. of Housing and Comm. Renewal, et al.*, 35 N.Y.3d 332 (2020) (“*Regina*”) the Court of Appeals held that the Housing Stability and Tenant Protection Act of 2019 (“HSTPA”) cannot be applied retroactively to any overcharge claims that occurred prior to the enactment of the HSTPA on June 14, 201 (“Effective Date”).

123. Therefore, for any alleged overcharges that occurred prior to the Effective Date, the pre-HSTPA law applies.

124. Pre-HSTPA, Section 2520.6(e) of the Rent Stabilization Code ("RSC") defined "legal regulated rent" as "[t]he rent charged on the base date set forth in subdivision (f) of this section, plus any subsequent lawful increases and adjustments."

125. Section 26-516(a)(2) of the Rent Stabilization Law ("RSL") states:

A complaint under this subdivision shall be filed . . . within four years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed . . . This paragraph shall preclude examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this subdivision.

126. RSC § 2526.1(a) (3) (i) addresses the determination of the legal regulated rent in a rent overcharge complaint, as follows:

The legal regulated rent for purposes of determining an overcharge shall be deemed to be the rent *charged on the base date*, plus in each case, any subsequent lawful increases or adjustments (Emphasis added)

127. CPLR § 213-a also addresses the time frame within which a rent overcharge claim can be asserted in court. Pre-HSTPA, CPLR § 213-a provided:

An action on a residential rent overcharge shall be commenced within four years of the first overcharge alleged and no determination of an overcharge and no award of calculation of an award of the amount of any overcharge may be based upon an overcharge having occurred more than four years before the action is commenced. *This section shall preclude examination of the rental history of the housing accommodation prior to the four-year period immediately preceding the commencement of the action.* (Emphasis added)

128. Section 2520.6(f) of the RSC defined "base date" as the date which is the most recent of:

- (1) the date four years prior to the date of the filing of a fair market rent appeal or rent overcharge complaint;
- (2) the date on which the housing accommodation first became subject to the RSL; or
- (3) April 1, 1984, for complaints filed on or before March 31, 1988 for housing accommodations for which initial registrations were required to be filed by June 30, 1984 and for which a timely challenge was not filed.

129. Pursuant to *Regina*, the Court of Appeals therefore found that the base date for rent overcharge complaints was the earlier of: (i) four years prior to interposing a rent overcharge complaint; or (ii) for years prior to the enactment of the HSTPA.

130. Thus, the base date for determining whether an overcharge occurred is four years prior to the filing of the overcharge action, or, at most four years prior to the Effective Date (the "Base Date").

131. Plaintiffs' Complaint is predicated upon the allegations that the rent for the Apartment was higher than the rent allowable under the RSL.

132. Plaintiffs incorrectly allege that the pre-Base Date rent should be reviewed. Pursuant to *Regina*, the proper look back must be limited to the Base Date.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

133. All rents which Plaintiffs were charged since the inception of their respective tenancies have been lawful.

134. As Plaintiffs were not overcharged, Plaintiffs' first, second, third, and fourth causes of action must be dismissed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

135. All lease and lease renewal offers provided to Plaintiffs provided for the payment of lawful rents.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

136. There has been no rent overcharge or any improper conduct by the Defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

137. Plaintiffs' claims are barred by the doctrine of estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

138. Plaintiffs waived any claim(s) they may have had to seek damages or other relief for their claims.

139. Plaintiffs waited many years before commencing this action seeking a declaration that Plaintiffs were overcharged.

140. By reason thereof, the claims for equitable relief are barred by the doctrine of laches.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

141. Plaintiffs' claims are time-barred as this action has been commenced after the expiration of the applicable statute of limitations.

142. Accordingly, the Complaint must be dismissed in its entirety.

AS AN FOR A SEVENTH AFFIRMATIVE DEFENSE

143. Defendant properly relied upon duly promulgated provisions, rules, guidelines, and/or opinions of the Rent Stabilization Code, DHCR and/or HPD in setting the rents for Plaintiffs' respective apartments.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

144. Plaintiffs are not entitled to retroactive remedies or relief.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

145. Any award of damages or other relief would cause Plaintiffs to receive a windfall.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

146. The Complaint fails to state a cause of action upon which relief may be granted.

147. Therefore, the Complaint should be dismissed in its entirety.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

148. There has been no rent overcharge or any improper conduct by the Defendants.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

149. Plaintiffs' claims are barred, in whole or in part, by documentary evidence, including but not limited to the leases (both current and historical) for their respective apartments, registrations filed with DHCR, and documents referenced in the Complaint.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

150. The Complaint, in whole or in part, is barred by the doctrine of unclean hands.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

151. The Defendant has appropriately, completely, and fully performed and discharged any and all obligations and legal duties arising out of the matters alleged in the Complaint.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

152. The equitable remedies sought by Plaintiffs including injunctive relief, specific performance and/or declaratory relief are improper, in that the Plaintiffs have the availability of full and adequate remedies at law.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

153. To the extent that any plaintiff has a claim for rent overcharge, that Plaintiffs' legal rent will be determined under that cause of action.

154. Plaintiffs' requests for a declaration of the amount of the legal rent for their apartments and for "reformation" of their leases seek no relief beyond what they could obtain on a valid legal claim for rent overcharge.

155. Plaintiffs' request for such relief should be dismissed, in whole or in part, by reason of the foregoing.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

156. Plaintiffs' claims are barred, in whole or in part, to the extent that any of them either (a) did not or does not occupy his or her apartment as a primary residence (within the meaning of Rent Stabilization Code § 2520.11(k)), or (b) has a named co-tenant who is a party to the subject lease but is not also named as a Plaintiff herein.

AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE

157. Joinder of all parties have claims is practicable.

158. Individual claims, questions of law and fact predominate over common claims and questions.

159. The claims of the purported representative party is not typical.

160. A class action is not superior to other available methods for adjudication of the controversy and parties' claims and defenses.

161. Plaintiffs are not entitled to have this action certified as a class action.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

162. Defendant reserves the right to rely on any and all other defenses available at law or equity that might be identified through investigation, the process of discovery or otherwise.

AS AND FOR THE FIRST COUNTERCLAIM

163. Pursuant to the Lease, Plaintiffs are obligated to pay Defendant rent and additional rent ("Rent") as defined in their respective leases.

164. Plaintiffs have failed to pay Rent to Defendant, as required by their respective leases, and presently owes Defendant rent through August 31, 2022, plus interest from the date on which each payment obligation accrued.

165. Based on the foregoing, and subject to Defendant's right to conform the pleadings to the proof, Defendant seeks a money judgment against Plaintiffs in the amount of all unpaid Rent due through August 31, 2022, plus interest from the date on which each payment obligation accrued.

AS AND FOR THE SECOND COUNTERCLAIM

166. Despite the Leases for certain of the Plaintiffs having expired, Plaintiffs remain in possession of their respective premises.

167. It is anticipated that Plaintiffs will continue to occupy the premises and that Plaintiffs will continue to fail to pay to Defendant use and occupancy while Plaintiffs occupy the premises.

168. Therefore, Plaintiffs' liability for use and occupancy will continue to increase each month since the use and occupancy due and owing will continue to accumulate.

169. Based on the foregoing and subject to Defendant's right to conform the pleadings to the proof, Defendant seek a money judgment against Plaintiffs in the amount to be determined by the Court for use and occupancy plus interest from the date on which each payment obligation accrued.

AS AND FOR THE THIRD COUNTERCLAIM

170. Upon information and belief, pursuant to the lease and New York Real Property Law §234, Defendant is entitled to recover its costs, expenses and attorneys' fees incurred herein, to the extent such fees are recoverable in this action.

WHEREFORE, the Defendants demands:

- a. judgment dismissing the Complaint;
- b. for the Defendant's first counterclaim: a money judgment against Plaintiffs in favor of the Defendant, representing all rent due and owing, plus interest from the date on which each payment obligation accrued and continuing month thereafter;
- c. for the Defendant's second counterclaim: a money judgment against Plaintiffs in favor of the Defendant, representing all use and occupancy due and owing, plus interest from the date on which each payment obligation accrued and continuing month thereafter;
- d. for the Defendant's third counterclaim: a money judgment against Plaintiff in favor of Defendant, representing attorneys' fees and costs, for damages in the amount of not less than \$15,000.00, plus interest thereon as allowable by law;
- e. On all causes of action, interest on any money judgments granted herein, plus costs, disbursements, and such other and further relief as this Court deems just and proper, including but not limited to an award of attorneys' fees; and
- f. for such other and further relief as the Court may deem just, proper, and equitable.

Dated: New York, New York
August 17, 2022

Kucker Marino Winiarsky & Bittens, LLP
Attorneys for the Defendant JDM WASHINGTON STREET LLC
747 Third Avenue 12th Floor
New York, New York 10017
(212) 869-5030

By: *Nativ Winiarsky*
Nativ Winiarsky

To: All NYSCEF Attorneys of Record