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

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STELLA QUINATOA and ANA CABRERA, on behalf of themselves and others similarly situated,

Plaintiffs,

-against-

HEWLETT ASSOCIATES, LP; KALED MANAGEMENT CORPORATION; CITY OF NEW YORK; MARIA TORRES SPRINGER; JACK JIHA,

Defendants.

Index No. _____

SUMMONS

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TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the accompanying complaint in this action and to serve a copy of your answer on the Plaintiff's undersigned attorneys within twenty (20) days after the service of this summons and complaint, exclusive of the date of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is the residence of Defendant City of New York, whose principal places of business is located in New York County.

Dated: February 6, 2018
New York, New York

LEGAL AID SOCIETY

/s/ Amee Master

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

STELLA QUINATOA and ANA CABRERA, on behalf of themselves and others similarly situated, Plaintiffs, -against- HEWLETT ASSOCIATES, LP; KALED MANAGEMENT CORPORATION; CITY OF NEW YORK; MARIA TORRES SPRINGER; JACK JIHA, Defendants.	Index No. _____ **CLASS ACTION COMPLAINT**

PRELIMINARY STATEMENT

1. This is an action to recover damages on behalf of a class of tenants who have been overcharged as a result of their landlord's decades-long flouting of New York's rent stabilization laws. As long ago as 1974 and continuing into 2017, the landlord of a residential building in Queens, Hewlett Associates, LP, acting on its own and through its management company, Kaled Management Corporation, has reaped the rewards of New York's 421-a and J-51 tax benefit programs, which are designed to incentivize the construction and renovation of affordable housing and to protect seniors living on fixed income against rent increases. For most of that time, beginning as early as 1984, the landlord has disregarded the legal obligations that come with the receipt of such tax benefits, failing to register the rents of the building; neglecting to provide notice of the building's rent-stabilized status and misleading tenants as to that status when asked; and most egregiously, overcharging the tenants of the rent-regulated units to the tune of hundreds of thousands of dollars.

2. The landlord's malfeasance has been enabled by the City of New York, acting through its commissioners of the Department of Housing Preservation and Development and the Department of Finance (the "City Defendants"). The City Defendants have long been aware of New York City landlords' non-compliance with the rent stabilization requirements that are a precondition to the receipt of tax benefits under the 421-a and J-51 programs. But landlords, including the landlord at issue in this case, have received at least ***$100 million*** in tax benefits while failing to meet basic rent stabilization requirements. By standing idly by in the face of such non-compliance, the City Defendants have conferred an impermissible gift in violation of the Gift Clause of Article VIII, Section 1 of the New York State Constitution—a gift that must be enjoined under Section 51 of New York's General Municipal Law.

JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in this Court.

4. This Court has jurisdiction over this action because the Defendants operate their business and/or reside in the State of New York.

5. This Court has subject matter jurisdiction because Plaintiffs' causes of action are based solely on and arise under New York law, and the events giving rise to this Complaint occurred in the State of New York.

6. Venue in this Court is proper under N.Y. C.P.L.R. Section 503(a) because the City Defendants exist within this County.

7. Venue in this Court is also proper under N.Y. C.P.L.R. Section 509 because Plaintiffs have selected the County of New York as the place of trial.

PARTIES

8. Plaintiff STELLA QUINATOA is the tenant of record in Apartment 110 at the Trafalgar Apartments. Plaintiff has resided in the Trafalgar Apartments since 1990.

9. Plaintiff ANA CABRERA[1] is the tenant of record in Apartment 608 at the Trafalgar Apartments. Plaintiff has resided in the Trafalgar Apartments since on or about 1993 and has been a tenant of record since 1996.

10. Defendant HEWLETT ASSOCIATES, LP ("Hewlett") is a New York Limited Partnership with its principal place of business in Nassau County. Hewlett has been the owner and landlord of the Trafalgar Apartments since they were built in 1973.

11. Defendant KALED MANAGEMENT CORPORATION ("Kaled") is a New York corporation with its principal place of business in Queens County. At all relevant times, Kaled has served as the manager of the Trafalgar Apartments pursuant to a management agreement with Hewlett.

12. Hewlett and Kaled are referred to herein as the "Landlord Defendants."

13. Defendant THE CITY OF NEW YORK ("New York City") was and is a domestic municipal corporation organized under the laws of the State of New York.

14. Defendant MARIA TORRES SPRINGER ("Springer") is the Commissioner of the New York City Department of Housing and Public Development ("HPD"), which is responsible for administering the housing and tax programs at issue in this lawsuit. Defendant Springer is sued in her official capacity.

15. Defendant JACK JIHA ("Jiha") is the Commissioner of the New York City Department of Finance ("DOF"), which is responsible for administering the housing and tax programs at issue in this lawsuit. Defendant Jiha is sued in his official capacity.

[1] Plaintiff Ana Cabrera was formerly Ana Lopez.

16. New York City, Springer, and Jiha are referred to herein as the "City Defendants."

BACKGROUND

I. The Governing Regulatory Scheme

A. Background on New York Rent Stabilization Laws

17. In 1974, citing a serious public emergency in housing and a continuing shortage of housing accommodations caused by high demand, the New York State Legislature enacted the Emergency Tenant Protection Act of 1974 ("ETPA"). N.Y. Unconsol. Law §§ 8621-34 (McKinney). ETPA authorized local legislative bodies to declare a housing emergency for any class of housing accommodations if the vacancy rate for any class fell below five percent. *See id.* §§ 8623(a), 8624. The regulatory scheme created by ETPA amended New York City's existing Rent Stabilization Law ("RSL"). *See id.* § 26-501.

18. New York State's Department of Housing and Community Renewal ("DHCR") is empowered to promulgate regulations in furtherance of the RSL and ETPA. In 1985, DHCR did so by establishing the Rent Stabilization Code ("RSC"). 9 N.Y.C.R.R. § 2520.1 et seq.

19. ETPA included within its purview buildings with six or more units constructed before January 1, 1974. See N.Y. Unconsol. Law §§ 8625(4)(a) & (5) (McKinney).

20. ETPA, RSL, and RSC (together, the "Rent Stabilization Laws") limit the rent that landlords can charge and circumscribe the manner in which landlords are able to raise rents.

21. Landlords of rent-stabilized apartments are entitled to increase rents at lease renewal only as approved by the Rent Guidelines Board ("RGB") or following the vacancy of an apartment, the implementation of DHCR-approved "Major Capital Improvements" (as defined by the RSC), or improvements to an individual apartment.

22. In New York City, the RGB sets the maximum rates for rent increases on rent-stabilized leases once a year. Those rates are effective commencing on or after October 1 of each year and through September 30 of the following year. *See* 9 N.Y.C.R.R. § 2522.4.

23. Landlords with units subject to the Rent Stabilization Laws are required to offer rent-stabilized initial leases and renewal leases. *See* 9 N.Y.C.R.R. § 2522.5(b) (1).

24. Landlords with units subject to the Rent Stabilization Laws are also required to register rents annually. *See* N.Y.C. Admin. Code § 26-517(f). Under the RSL, failure to file a timely initial or annual registration shall, until such registration is filed, bar an owner from applying for or collecting any rent in excess of the legal regulated rent in effect on the date of the last preceding registration statement. *See id.* § 26-517(e).

B. The 421-a Program

25. The 421-a program, named by reference to Section 421-a of the New York Real Property Tax Law ("RPTL"), was established by the New York State Legislature in 1971 with the intent of spurring the construction of new housing. Over time, the 421-a program has become a cornerstone of New York City's efforts to provide affordable housing. The 421-a program operates by lowering the billable assessed value of real property, thereby reducing, rather than offsetting, the owner's tax liability.

26. The 421-a program is administered by HPD and DOF. *See* RPTL § 421-a; N.Y.C. Admin. Code §§ 11-245, 11-245.1, and 11-245.1-b; R.N.C.Y. §§ 6-01 et seq.

27. Under the 421-a program, rents in a unit covered by the 421-a tax exemption are subject to rent stabilization for the entire period during which the property is receiving tax benefits. *See* RPTL § 421-a(2)(f).

28. Units subject to rent stabilization pursuant to the 421-a program may be deregulated no earlier than the expiration of the tax benefit period. In order to deregulate a unit prior to vacancy, owners are required to provide in every lease and lease renewal a notice informing the tenant that the apartment shall become deregulated upon the expiration of the last lease entered into during the tax benefit period. Failure to do so renders any deregulation of the subject unit unlawful.

C. The J-51 Program

29. In 1955, the New York State Legislature enacted Section 489 of the RPTL, which authorized cities to promulgate local laws that would provide multiple dwelling units with tax incentives to rehabilitate their properties.

30. After the enactment of Section 489, New York City adopted Section J51-2.5 (now Section 11-243) of the Administrative Code as an incentive to encourage the renovation of residential multifamily buildings. The J-51 program provides owners with real property tax exemption and abatement benefits to offset the cost of residential major capital improvements.

31. HPD determines eligibility to receive J-51 program benefits, and DOF administers those benefits. N.Y.C. Admin. Code §§ 11-243 (f), (h).

32. As a condition of receiving benefits pursuant to the J-51 program, a building owner must provide its tenants with the protections of the Rent Stabilization Laws. *See* N.Y.C. Admin. Code §§ 11-244, 26-504(c). Those protections include the right to a renewal lease of the same terms and conditions as the previous lease; limitations on rent increases; and access to programs that provide benefits to disabled and elderly families who are rent-burdened. Under the program, the abatement period lasts fourteen years. N.Y.C. Admin. Code § 11-243(b)(10).

33. Moreover, pursuant to amendments made to Section 489 in 1985, the protections of the Rent Stabilization Laws may remain in effect even after the expiration of J-51 program benefits so long as the apartment is not vacated.

34. Owners of buildings which became eligible for J-51 program benefits after 1974 are required to provide in every lease and lease renewal a notice informing the tenant that the apartment shall become deregulated upon the expiration of the last lease entered into during the tax benefit period. Failure to do so renders any deregulation of the subject unit unlawful.

D. The Senior Citizen's Rent Increase Exemption

35. Finally, in 1970, New York City adopted the SCRIE program to protect seniors living on fixed income from increases in their rents. *See* N.Y. Real Prop. Tax Law §§ 467-b, 467-c; N.Y. Admin. Code §§ 26-405, 26-509, and 26-601. The SCRIE program exempts households headed by persons over the age of 62 and with annual household income of $50,000 or less from paying any future rent increases. Owners of units subject to SCRIE receive tax credits for any rent increase. *See* N.Y.C. Admin. Code § 26-601 *et seq.*

II. The Trafalgar Apartments Receive Tax Benefits Under the 421-a and J-51 Programs

36. The Trafalgar Apartments are located at 42-52 Union Street in Flushing, Queens. A residential apartment building, the Trafalgar Apartments were constructed in 1973 and contain 113 units.

37. Defendant Hewlett is the owner of the Trafalgar Apartments pursuant to a Bargain and Sale Deed dated November 23, 1971.[2] Defendant Kaled is the manager. The Landlord

[2] This 1971 deed was to Hewlett Associates 2, an entity related to Hewlett. The deed was transferred from Hewlett Associates 2 to Hewlett on January 26, 1976.

Defendants are each responsible for ensuring the Trafalgar Apartments' compliance with the Rent Stabilization Laws.

38. According to the Landlord Defendants' DHCR filings, at some point prior to 2000, the Landlord Defendants applied for and began receiving certain tax benefits pursuant to the 421-a program. According to the rent registrations for the Trafalgar Apartments, the Landlord Defendants represented to DHCR that the units were exempt from regulation because the 421a benefits had expired.

39. Subsequently, the Landlord Defendants applied for and began receiving certain tax benefits pursuant to the J-51 program. DOF records reflect that, in each tax year since 2008, the Landlord Defendants have received J-51 tax benefits in varying amounts.

III. The Landlord Defendants Fail to Register the Trafalgar Apartments or Provide Notice of Rent Regulation While Overcharging Plaintiffs and Other Class Members

40. Over a period of many years, the Landlord Defendants have systematically violated their obligations under the Rent Stabilization Laws in connection with the Trafalgar Apartments, all while reaping substantial tax benefits under the 421-a and J-51 programs. They have done so in three respects: (i) by failing to register the rents charged and collected at the Trafalgar Apartments; (ii) by failing to provide tenants at the Trafalgar Apartments with notice in their leases and/or lease renewals that their units were subject to the Rent Stabilization Laws; and (iii) by charging tenants at the Trafalgar Apartments rents well in excess of lawfully permitted rents.

41. DHCR records indicate that, as early as 1984, when the Trafalgar Apartments were subject to the 421-a program, the Landlord Defendants failed to register rents for at least some of the subject units. The Landlord Defendants' failure to register continued with respect to other units over a period of decades.

42. According to DOF property tax records for the Trafalgar Apartments, as of November 2017, only 14 out of 113 units were registered as rent stabilized. Under the J-51 program, however, which has applied since the Landlord Defendants applied for J-51 benefits in 2008, ***all*** 113 units at the Trafalgar Apartments were and are required to be registered as rent stabilized. Thus, since 2008, the Landlord Defendants have failed to register in accordance with Rent Stabilization Laws ***nearly a hundred units*** at the Trafalgar Apartments.

43. During the same time period, the Landlord Tenants have failed to provide tenants with legally required notice, whether in the initial leases or in subsequent lease renewals, that the Trafalgar Apartments are subject to the Rent Stabilization Laws and that any deregulation is not permitted to occur until the expiration of the last lease entered into during the applicable tax benefit period.

44. Worse yet, the Landlord Defendants have affirmatively ***deceived*** tenants at the Trafalgar Apartments concerning the building's rent-regulated status. Class members and those inquiring on their behalf have expressly asked the Landlord Defendants, both via email and telephonically, whether the building is subject to rent stabilization. In response so such queries, the Landlord Defendants falsely stated that the Trafalgar Apartments were deregulated, an assertion they knew to be false.

45. In addition, this deception deprived Plaintiffs of the opportunity to obtain benefits under the SCRIE program. The SCRIE program, designed to protect New York City's most vulnerable citizens, is restricted to senior citizens who meet certain income requirements and who live in rent-stabilized apartments.

46. Plaintiffs, and others similarly situated, were deprived of the benefits of the SCRIE program as a result of the Landlord Defendants' illegal treatment of the Trafalgar Apartments as deregulated under the Rent Stabilization Laws.

47. Both the failure to register and to provide requisite notice of the Trafalgar Apartments' rent-regulated status has been aimed at a single outcome: the illegal overcharging of tenants and receipt of tax benefits relating to the Trafalgar Apartments. As a result of their failure to adhere to the requirements of the Rent Stabilization Laws, the Landlord Defendants have illegally overcharged tenants and received undeserved tax benefits ***for decades***.

48. As a result, the Landlord Defendants have received hundreds of thousands of dollars in rent income to which they were not lawfully entitled.

IV. The Landlord Defendants Acknowledge, But Fail to Remedy, Their Illegal Conduct

49. The Landlord Defendants have already admitted to their wrongdoing and to the essential facts in this litigation.

50. In an August 2017 letter sent to Plaintiffs and other tenants of the Trafalgar Apartments, the Landlord Defendants stated that the recipient's apartment was subject to rent stabilization, and admitted that the recipient's rights as occupants of rent stabilized units "were not memorialized" in previous leases. Therefore, the Landlord Defendants have acknowledged that they have failed to lawfully register apartments and failed to provide the required notice.

51. Moreover, the Landlord Defendants further admitted that they had "determined that the legal rent" of the tenant's apartment "must be lawfully adjusted." The Landlord Defendants have thereby admitted that they have been illegally overcharging their tenants, including Plaintiffs and other class members.

52. Finally, the Landlord Defendants enclosed with the August 2017 letter a check payable to each recipient, baselessly asserting that this check "reflect[s] the amount" of excess rent the Landlord Defendants illegally charged over the past four years. The letter did not purport to condition the acceptance of the check as an agreement that the payment would settle or discharge the recipients' claims arising from the Landlord Defendants' illegal conduct.

53. Plaintiffs and other class members are entitled to full, not partial, repayment of the amounts by which they were overcharged. That the Landlord Defendants have tendered some repayment to some individuals does not release their obligation to make full repayments to all harmed parties.

V. The City Defendants Systematically Fail to Enforce Landlords' Obligations Under the 421-a and J-51 Programs, Conferring an Unconstitutional Gift

54. The Landlord Defendants' decades-long flouting of their obligations under the Rent Stabilization Laws—all while enjoying the tax benefits of the 421-a and J-51 programs—has been enabled by the City Defendants' failure to enforce the obligations imposed by those programs.

55. In November 2015, an investigative report by *ProPublica* revealed that, as of 2013, New York City was providing ***$100 million*** in tax benefits under the 421-a and J-51 programs for buildings that were not registered as rent-stabilized. The net result was that ***50,000 units*** that should have been treated as rent stabilized were not. *See* Cezary Podkul and Marcelo Rochabrun, "Landlords Fail to List 50,000 N.Y.C. Apartments for Rent Limits," *ProPublica*, (Nov. 5, 2015), www.propublica.org/article/landlords-fail-to-list-fifty-thousand-nyc-apartments-for-rent-limits.

56. In 2017, the New York City Council enacted legislation authorizing HPD to audit buildings receiving benefits under the 421-a tax exemption program to ensure that such buildings are complying with the applicable affordability requirements.

57. At the hearing on the proposed legislation, HPD and DOF officials admitted to the existence of widespread non-compliance and detailed their efforts to reform their systems for oversight, including mailing revocation letters to landlords who were not in compliance.

58. As a result of this systematic failure to enforce the Rent Stabilization Laws, the City Defendants have effectively conferred benefits on New York City landlords, including the Landlord Defendants, totaling hundreds of millions of dollars without receiving any corresponding benefit in exchange.

VI. Plaintiffs and Other Class Members Are Injured by Defendants' Illegal Conduct

59. Plaintiff Quinatoa resides in Apartment 110 of the Trafalgar Apartments with her spouse and co-tenant, Francisco Quinatoa, and their adult daughter and grandson.

60. Plaintiff and Mr. Quinatoa are sixty-two and eighty-eight years old, respectively. Their household income is under the annual $50,000 limit governing eligibility for the SCRIE program.

61. In or about 1990, Quinatoa entered into possession of Apartment 110 pursuant to a written lease. Quinatoa subsequently entered into numerous lease renewals. Neither the initial lease nor any of the renewals through 2016 gave notice that the apartment was subject to the Rent Stabilization Laws.

62. None of the leases offered through 2016 gave Quinatoa the choice of a one or two-year lease term.

63. None of the leases offered through 2016 included a rent stabilization rider.

64. None of the leases offered through 2016 included the rider required by the J-51 tax program.

65. In 2014, Quinatoa entered into a one-year lease commencing October 1, 2014 with a monthly rent of $1,700. Francisco Quinatoa is a co-tenant and leaseholder.

66. In 2015, Quinatoa entered into a one-year lease commencing October 1, 2015 with a monthly rent of $1,750. Francisco Quinatoa is co-tenant and leaseholder.

67. In 2016, Quinatoa entered into a one-year lease commencing October 1, 2016 with the monthly rent of $1,850. Francisco Quinatoa is a co-tenant and leaseholder.

68. For each year, the increases exceeded the legally permissible rent increase for a one-year renewal lease pursuant to the orders issued by the Rent Guidelines Board.

69. Defendant impermissibly failed to register the subject apartment with the Division of Housing and Community Renewal for the years 2000 through 2016.

70. By a letter dated August 9, 2017, the Landlord Defendants stated that Quinatoa's apartment is subject to the Rent Stabilization Laws. The letter included a check for $13,572.88 purportedly for payments made in excess of the legal rent. The amount by which Quinatoa was overcharged exceeded the amount offered by the Landlord Defendants.

71. In the same August 9, 2017 letter, Defendant stated that the new rent for the subject apartment was $1,468.05.

72. Quinatoa entered into a one-year lease commencing December 1, 2017 with a monthly rent of $1,486.40.

73. Through August 2017, Quinatoa paid the rent charged under the relevant lease. From September 2017 through November 2017, pursuant to the letter dated August 9, 2017,

Quinatoa paid the new rent as set by the Landlord Defendants. From December 2017 to present, Quinatoa paid amount charged under the most recent lease renewal.

74. Plaintiff Cabrera resides in Apartment 608 of the Trafalgar Apartmetns with her adult daughter.

75. On or about 1993, Cabrera entered into the premises. In or about June 1, 1996, Cabrera became tenant of record of Apartment 608 pursuant to a written lease. Cabrera subsequently entered into numerous lease renewals. Neither the initial lease nor any of the renewals through 2017 gave notice that the apartment was subject to the Rent Stabilization Laws.

76. None of the leases offered through 2017 gave Cabrera the choice of a one or two-year lease term.

77. None of the leases offered through 2017 included a rent stabilization rider.

78. None of the leases offered through 2017 included the rider required by the J-51 tax program.

79. In 2013, Cabrera entered into a one-year lease commencing June 1, 2013 with a monthly rent of $1,175.

80. In 2014, Cabrera entered into a one-year lease commencing June 1, 2014 with a monthly rent of $1,225.

81. In 2015, Cabrera entered into a one-year lease commencing June 1, 2015 with a monthly rent of $1,300.

82. In 2016, Cabrera entered into a one-year lease commencing June 1, 2016 with a monthly rent of $1,400.

83. In 2017, Cabrera entered into a one-year lease commencing June 1, 2017 with a monthly rent of $1,450.

84. For each year, the increases exceeded the legally permissible rent increase for a one-year renewal lease pursuant to the orders issued by the Rent Guidelines Board.

85. Defendant impermissibly failed to register the subject apartment with the Division of Housing and Community Renewal for the years 2001 through 2016.

86. By a letter dated August 9, 2017, the Landlord Defendants stated that Cabrera's apartment is subject to the Rent Stabilization Laws. The letter included a check for $5,172.01 purportedly for payments made in excess of the legal rent. The amount by which Cabrera was overcharged exceeded the amount offered by the Landlord Defendants.

87. In the same August 9, 2017 letter, Defendant stated that the new rent for the subject apartment was $1,205.33. A new lease has not been offered to Cabrera.

88. Through August 2017, Cabrera paid the rent charged under the relevant lease. From September 2017 through present, pursuant to the letter dated August 9, 2017, Cabrera paid the new rent as set by the Landlord Defendants.

CLASS ALLEGATIONS

89. This action may be properly maintained as a class action under the provisions of Article 9 of the N.Y. C.P.L.R.

90. The proposed class is defined as:

> *All tenants at 42-52 Union Street living, or who had lived, in apartments that were deregulated during the period when J-51 tax benefits were being received by the owner of 42-52 Union Street (the "Class").*

91. Plaintiffs seek certification of the Class to pursue claims for damages and for declaratory and injunctive relief, as described more fully below.

92. The Class is so numerous that joinder of all members is impracticable.

93. Although the exact number and identities of the members of the Class are currently unknown to Plaintiffs, on information and belief, the practices complained of herein affect no less than 99 tenants of the Trafalgar Apartments, and likely scores more.

94. Nearly all factual, legal, and statutory relief issues that are raised in this Complaint are common to, and will apply uniformly to, each member of the Class.

95. Plaintiffs' claims are typical of the claims of each member of the Class. Plaintiffs, like all the other members of the Class, sustained damages arising from Landlord Defendants' illegal scheme to evade the rent stabilization laws and the Government Defendants' related failure to prevent that scheme, and is likewise entitled to declaratory and injunctive relief, as requested herein.

96. Plaintiffs and the members of the Class were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct.

97. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

98. There are no material conflicts between the claims of Plaintiffs and the members of the Class that would make class certification inappropriate.

99. The counsel selected to represent the Class will fairly and adequately protect the interests of the Class. They are lawyers who have experience in class and complex litigation and are competent counsel for this class action litigation.

100. Class counsel will vigorously assert the claims of all members of the Class.

101. This action is properly maintained as a class action in that common questions of law and fact exist as to the members of the Class and predominate over any questions affecting

only individual members. Further, a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

a. the interests of the members of the Class in individually controlling the prosecution or defense of separate actions;

b. the impracticability or inefficiency of prosecuting or defending separate actions;

c. the extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;

d. the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

e. the difficulties likely to be encountered in the management of a class action.

102. Among the numerous questions of law and fact common to the Class are:

a. whether the Landlord Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the Class;

b. whether the Landlord Defendants have established a pattern, practice, or policy of misrepresenting tenants' rent stabilization status or of failing to notify tenants that their apartments are, or should be, rent-stabilized;

c. whether the Landlord Defendants have established a pattern, practice, or policy of unlawfully deregulating apartments;

d. whether the Landlord Defendants have established a pattern, practice, or policy of misrepresenting legal regulated rents;

e. whether the Landlord Defendants have established a pattern, practice, or policy of failing to provide rent-stabilized leases to tenants in J-51 buildings;

f. whether the Landlord Defendants have established a pattern, practice, or policy of overcharging rent;

g. whether the Landlord Defendants' practices, acts, and conduct violate the Rent Stabilization Laws;

h. to what extent Plaintiffs and members of the Class are entitled to damages; and

i. to what extent Plaintiffs and members of the Class are entitled to declaratory and injunctive relief.

Count One

VIOLATION OF ETPA § 6

(*Overcharge Count Against Landlord Defendants*)

103. Plaintiffs re-alleges and incorporates by reference the allegations in ¶¶ 1 through 102 of this complaint.

104. At all times relevant hereto, the Trafalgar Apartments were subject to the provisions of the ETPA and RSL.

105. The Landlord Defendants entered into leases with Plaintiffs and other members of the Class that misrepresented the amount of rent the Landlord Defendants were legally entitled to collect and/or falsely represented that their apartments were not subject to rent stabilization.

106. The Landlord Defendants charged Plaintiffs and the Class rents in excess of the legal regulated rent for their apartments.

107. The Landlord Defendants overcharged Plaintiffs and the members of the Class an amount no less than the difference between their monthly rents and the appropriate legal regulated rent-stabilized rents.

108. Plaintiffs and members of the Class are entitled to recover monetary damages from Defendant based on the unlawful overcharges, as well as an award of interest thereon.

Count Two

VIOLATION OF ETPA § 6

(*Declaratory and Injunctive Relief against Landlord Defendants*)

109. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 through 108 of this complaint.

110. A justiciable controversy exists between the parties in that, among other things, Plaintiffs allege that their apartments, and the apartments of other members of the Class, are subject to rent stabilization pursuant to the ETPA.

111. Landlord Defendants entered into leases with Plaintiffs and the members of the Class that incorrectly, falsely, and illegally misrepresented the amount of rent the Landlord Defendants were legally entitled to collect and/or falsely represented that their apartments were not subject to rent stabilization.

112. As described above, and upon information and belief, the Landlord Defendants' conduct was designed to remove the apartments of Plaintiffs and members of the Class from the protections of rent stabilization.

113. Plaintiffs and members of the Class lack an adequate remedy at law.

114. By reason of the foregoing, Plaintiffs and members of the Class are entitled to a declaratory judgment adjudging and determining:

a. that the Trafalgar Apartments are each subject to the Rent Stabilization Laws;

b. that Plaintiffs and members of the Class are each entitled to a rent-stabilized lease in a form promulgated by the DHCR;

c. the amount of the legal regulated rent for the apartments of Plaintiffs and members of the Class;

d. that any leases offered by Landlord Defendants to Plaintiffs and members of the Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and

e. that Plaintiffs and members of the Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, Plaintiffs and members of the Class.

115. Plaintiffs and members of the Class are entitled to reformation of their leases to provide that their units were and are, in fact, subject to rent stabilization.

116. Plaintiffs and members of the Class are entitled to reformation of their leases to represent accurately the amount of rent Landlord Defendants are legally entitled to charge Plaintiffs and members of the Class.

117. Plaintiffs and members of the Class are further entitled to a permanent injunction against additional violations by the Landlord Defendants of the Rent Stabilization Laws and requiring all appropriate and corrective remedial measures, including, but not limited to, appointing an independent individual or entity to audit and undertake an accounting of every apartment at the Trafalgar Apartments and reforming leases to comply with the Rent Stabilization Laws, where necessary.

Count Three

ESTOPPEL

(Damages and Injunctive Relief Against Landlord Defendants)

118. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 through 117 of this complaint.

119. At all times relevant hereto, the Trafalgar Apartments were subject to the provisions of the RSL.

120. Had the Landlord Defendants complied with the provisions of the RSL, Plaintiffs and others similarly situated would have been entitled to benefit from a rent freeze pursuant to the Senior Citizen Rent Increase Exemption (SCRIE) program.

121. Plaintiffs seek an Order permanently estopping Landlord Defendants from charging any rent above the relevant SCRIE rent for units eligible for SCRIE and awarding damages in an amount no less than the difference between the rent paid by SCRIE-eligible tenants and the SCRIE rent for the entire period for which they would have been eligible for SCRIE.

Count Four

VIOLATION OF GENERAL MUNICIPAL LAW § 51

(*Against the City Defendants*)

122. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 through 121 of this complaint.

123. Because the Landlord Defendants failed to register the Trafalgar Apartments, failed to provide adequate notice, and failed to charge lawful rents, any benefits they received under the applicable laws were entirely illegal and were obtained by means of violations of

Section 489(7)(b)(2) of the RPTL and Section 26-504.2(a) of the RSL, which require that apartments be treated as rent stabilized when the owner is in receipt of a J-51 program benefit.

124. Moreover, because the Landlord Defendants sought and received unlawfully high rents, they destroyed the public benefits contemplated under the J-51 program.

125. The Gift Clause of the New York Constitution prohibits the government from giving or loaning funds to private individuals without an attendant public purpose, and gives rise to a claim under Section 51 of the General Municipal Law.

126. The benefits received by the Landlord Defendants based on their unlawful conduct constitute a prohibited gift from the City Defendants.

127. Therefore, Plaintiffs and the members of the Class are entitled to injunctive relief ordering the cessation of the entirely illegal payment of benefits to the Landlord Defendants.

PRAYER FOR RELIEF

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

A. Certification of the Class proposed by Plaintiffs, appointment of the Plaintiffs as representatives of the Class, and appointment of Plaintiffs' counsel as Class Counsel for the Class;

B. A declaratory judgment that the Trafalgar Apartments are subject to rent registration pursuant to the Rent Stabilization Laws;

C. A declaratory judgment that the Landlord Defendants have willfully failed to register the Trafalgar Apartments and have overcharged Plaintiffs and the other members of the Class, in violation the Rent Stabilization Laws;

D. Compensatory damages in the amount of the overcharge to the fullest extent permitted by law;

E. A permanent injunction against further violations by the Landlord Defendants of the Rent Stabilization Laws and requiring all appropriate and corrective remedial measures, including, but not limited to, appointment of an independent individual or entity to audit and undertake an accounting of every apartment at the Trafalgar Apartments and reforming leases to comply with the Rent Stabilization Laws, where necessary;

F. Plaintiffs' costs and expenses in an amount to be determined at a hearing or trial; and

G. Such other and further relief as this Court deems just and proper.

DATED: February 6, 2018
New York, New York

Respectfully submitted,

LEGAL AID SOCIETY

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