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

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DANIEL MARTINEZ and VITORIA CANELA, on behalf of themselves and others similarly situated,

Plaintiffs,

-against-

ALFONSO DEJESUS; RUBY ECHEVARRIA; LOT 74 REALTY LLC,

Defendants.

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Index No. 651436/2020

**FIRST AMENDED CLASS ACTION COMPLAINT**

## PRELIMINARY STATEMENT

1. This is an action for damages and injunctive relief on behalf of a class of tenants who have been overcharged as a result of their landlord's decades-long violation of New York's Rent Stabilization Laws (as defined below).

2. Lot 74 Realty, the landlord of residential building 2523-2525 Aqueduct Avenue, Bronx New York 10468, acting on its own and through its agents, Alfonso DeJesus and Ruby Echevarria (together, "Defendants"), has for decades evaded Rent Stabilization Laws and reaped the rewards of tax benefits available through New York's J-51 exemption programs ("J-51"). J-51 provides a tax exemption for certain qualifying properties to (i) encourage constructing, renovating, and maintaining affordable housing and (ii) protect senior citizens living on fixed incomes against rent increases. As early as 2000 and continuing into the present, Defendants have disregarded the legal obligations that come with both the Rent Stabilization Laws and the receipt of the J-51 tax benefits, including by failing to register the rents of the building; permanently removing apartments from the rent stabilized stock; neglecting to provide notice of the building's rent-stabilized status; and, most egregiously, overcharging the tenants of the rent-regulated units hundreds of thousands of dollars.

## JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in this Court.

4. This Court has jurisdiction over this action because 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 Defendants exist within this County and have their places of business 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 DANIEL MARTINEZ is the tenant of record in Apartment E1 at the subject building. Plaintiff has resided at 2525 Aqueduct Avenue, Bronx NY 10468 since on or about December 1, 2014.

9. Plaintiff VITORIA CANELA is the tenant of record in Apartment D2 at the subject building. Plaintiff has resided at 2525 Aqueduct Avenue, Bronx NY 10468 since 2011.

10. Defendant LOT 74 REALTY LLC ("Lot 74") is a New York Limited Partnership with its principal place of business in New York County. Lot 74 has been the owner and landlord of 2523-2525 Aqueduct Avenue since August 20, 1999.

11. Defendant ALFONSO DEJESUS ("DeJesus") is an agent of the corporation in control of the subject building, and has his principal place of business in New York County. At all relevant times, DeJesus has served as the agent of 2523-2525 Aqueduct Avenue.

12. Defendant RUBY ECHEVARRIA ("Echevarria") is an agent of the corporation in control of the subject building and has her principal place of business in New York County. At all relevant times, Echevarria has served as the agent of 2523-2525 Aqueduct Avenue.

13. Lot 74, DeJesus and Echevarria are referred to herein as Defendants.

## BACKGROUND

### I. The Governing Regulatory Scheme

#### A. Background on New York Rent Stabilization Laws

14. 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). The regulatory scheme created by the ETPA amended New York City's existing Rent Stabilization Law ("RSL"). *See id.* § 26-501.

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

16. The 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).

17. ETPA, RSL, RSC, and the Housing Stability and Tenant Protect Act ("HSTPA"), passed in 2019, (together, the "Rent Stabilization Laws") limit the rent that landlords can charge and circumscribe the manner in which landlords may raise rents.

18. Under the Rent Stabilization Laws, landlords of rent-stabilized apartments are entitled to increase rents at lease renewal as approved by the Rent Guidelines Board ("RGB").

19. The RGB in New York City sets the maximum rates for rent increases on rent stabilized leases once a year. *See* 9 N.Y.C.R.R. § 2522.4.

20. In addition to RGB increases, landlords of rent-stabilized apartments are allowed to take major capital improvement ("MCI") rent increases, to reflect the costs of new installations that relate to the operation, preservation, and maintenance of the entire building. If a landlord receives a tax abatement under J-51 for new installations, the rent increase for the MCI is reduced by a portion of the value of the tax abatement for those installations.

21. Before the HSTPA's passage in June 2019, landlords of rent-stabilized apartments were also allowed to raise rents following the vacancy of an apartment and through individual apartment improvements ("IAI"). The HSTPA disallows vacancy increases and limits the extent of IAI increases.

22. Landlords with units subject to the Rent Stabilization Laws are required to offer rent-stabilized initial leases and mandatory renewal leases, with riders that inform tenants that their apartments are subject to rent stabilization. *See* 9 N.Y.C.R.R. § 2522.5(b) (1); 9 N.Y.C.R.R. § 2522.5(c) (2).

23. Landlords with units subject to the Rent Stabilization Laws are also required to register rents annually with the DHCR Office of Rent Administration ("ORA"). Owners are

further required to send a copy of the registration to each rent stabilized tenant. *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. J-51**

24. In 1955, the New York State Legislature enacted Section 489 of the Real Property Tax Law ("RPTL"), which authorized cities to promulgate local laws that would provide multiple dwelling units with tax incentives to rehabilitate their properties.

25. 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.

26. The New York City Department of Housing and Public Development ("HPD") determines eligibility to receive J-51 program benefits, and the New York City Department of Finance ("DOF") administers those benefits. N.Y.C. Admin. Code §§ 11-243 (f), (h).

27. As a condition of receiving benefits under J-51, 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).

28. Under the program, the abatement period lasts fourteen years. N.Y.C. Admin. Code § 11-243(b)(10). Each apartment subject to the Rent Stabilization Laws before the J-51 tax benefit remains rent stabilized after the abatement period expires, unless the apartment was otherwise properly deregulated during that time.

29. During the tax abatement period, landlords are required to provide notice informing tenants that their apartment shall become deregulated on the expiration of the lease. Failure to do so renders any deregulation of the subject unit unlawful. N.Y. Real Prop. Tax Law § 489(7)(b)(2) (McKinney).

**C. The Senior Citizen Rent Increase Exemption**

30. Finally, in 1970, New York City adopted the Senior Citizen Rent Increase Exemption ("SCRIE") program to protect senior citizens 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 Aqueduct Avenue Building Received Tax Benefits Under J-51**

31. The residential apartments at issue in this case were constructed in 1923 and consist of 51 units located at 2523-2525 Aqueduct Avenue in the Bronx (the "Aqueduct Avenue Building").

32. The Aqueduct Avenue Building was rent stabilized even before its placement in the J-51 program. In buildings such as this, that were already rent stabilized before placement into the J-51 program, the tax benefit period's expiration does not affect the apartments' status; they remain under rent regulation at the end of the tax benefit period and thereafter.

33. Defendant Lot 74 Realty is the owner of the Aqueduct Avenue Building under an August 20, 1999 Bargain and Sale Deed.

34. Defendant Alfonso DeJesus is the head officer of Lot 74 Realty. Defendant Ruby Echevarria is the managing agent. Defendants are each responsible for ensuring the Aqueduct Avenue Building's compliance with the Rent Stabilization Laws.

35. According to public filings, Defendants represented to the DOF that each of the Aqueduct Avenue Building's 51 units were subject to rent stabilization as of September 13, 2000.

36. Subsequently, Defendants applied for and began receiving certain tax benefits under J-51. DOF records reflect that, in each tax year from 2001 through 2015, Defendants received J-51 tax benefits in varying amounts. Yet according to DHCR records, since 2001 Defendants have failed to register many units at the Aqueduct Avenue Building in accordance with the Rent Stabilization Laws.

37. According to DHCR records and on information and belief, Defendants took an MCI increase for many apartments in or about 2002. They should not have been able to collect a full MCI rent increase while also receiving a J-51 tax abatement for the work performed.

## III. Defendants Fail to Register the Aqueduct Avenue Building, or Provide Notice of Rent Regulation While Overcharging Plaintiffs and Other Class Members

38. Over a period of two decades, Defendants have systematically violated their Rent Stabilization Law obligations for the Aqueduct Avenue Building, all while reaping substantial tax benefits under J-51.

39. They have done so in three respects—by (i) failing to register the rents charged and collected at the Aqueduct Avenue Building with ORA; (ii) failing to provide tenants at the Aqueduct Avenue Building with notice in their leases and/or lease renewals that their

units were subject to the Rent Stabilization Laws; and (iii) charging tenants at the Aqueduct Avenue Building rents well in excess of lawfully permitted rents.

40. DHCR records indicate that, as early as 2001, when the Aqueduct Avenue Building was subject to the J-51 program, Defendants failed to register rents for at least some of the subject units.

41. During the same time period, Defendants have failed to provide tenants with legally required notice, whether in the initial leases or in subsequent lease renewals, that the Aqueduct Avenue Building was 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.

42. Worse yet, Defendants have affirmatively deceived tenants at the Aqueduct Avenue Building concerning the building's rent-regulated status. Class members received leases claiming the building was not subject to rent stabilization.

43. This deception also deprived certain class members 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.

44. Certain class members were deprived of the benefits of the SCRIE program as a result of Defendants' illegal treatment of the Aqueduct Avenue Building as deregulated under the Rent Stabilization Laws.

45. Both the failure to register and to provide requisite notice of the Aqueduct Avenue Building's rent-regulated status has sought a single outcome—illegally overcharging tenants while receiving tax benefits. As a result of their failure to adhere to the requirements

of the Rent Stabilization Laws, Defendants have illegally overcharged tenants and received undeserved tax benefits for decades.

46. Defendants have received hundreds of thousands of dollars or more in rent income to which they were not lawfully entitled.

## IV. Plaintiffs' and Other Class Members' Injuries due to Defendants' Illegal Conduct

47. Plaintiff Vitoria Canela resides in Apartment D2 of the Aqueduct Avenue Building with her daughter and grandson. She is 62 years old.

48. Canela's household would qualify for the SCRIE program, as her income is under the annual $50,000 limit governing eligibility.

49. In or about 2011, Canela entered into possession of Apartment D2 under a written lease with a monthly rent of $1,250.

50. At that time, while the apartment was subject to rent stabilization under the J-51 program, Defendants registered it as exempt from stabilization with DHCR.

51. Canela subsequently entered into numerous lease renewals. Neither the initial lease nor any of the renewals through 2019 gave notice that the apartment was subject to the Rent Stabilization Laws.

52. None of the leases offered through 2019 included a rent stabilization rider.

53. Since then, the increases exceeded the legally permissible rent increase for a one-year renewal lease pursuant to the orders issued by the RGB.

54. According to DHCR records, Defendants impermissibly failed to register the subject apartment with DHCR for the years 2009 through 2019.

55. Plaintiff Daniel Martinez resides in Apartment E1 of the Aqueduct Avenue Building with his wife and his two adult children.

56. On or about December 2014, Martinez took possession of Apartment E1, and became the tenant of record pursuant to a written lease with a monthly rent of approximately $1,400. He subsequently entered into several lease renewals. Neither the initial lease nor any of the renewals through 2019 gave notice that the apartment was subject to the Rent Stabilization Laws.

57. For each year thereafter, the increases exceeded the legally permissible rent increase for a one-year renewal lease pursuant to the orders issued by the RGB.

58. None of the leases offered through 2019 gave Martinez the choice of a one or two year lease term.

59. None of the leases offered through 2019 included a rent stabilization rider.

60. None of the leases offered through 2019 included the rider required by the J-51 tax program.

61. Defendants impermissibly failed to register the subject apartment with DHCR for the years 2014 through 2019.

## CLASS ALLEGATIONS

### I. The Class and Sub-Class

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

63. The proposed class is defined as:

> All tenants at 2523-2525 Aqueduct Avenue 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 2523-2525 Aqueduct Avenue, except that the class shall not include (i) any tenants who vacated before March 3, 2014, or (ii) any tenants whose occupancy in any such apartment commenced after such J-51 tax benefits to 2523-2525 Aqueduct Avenue ended (the "Class").

64. The Class seeks certification for damages.

65. Plaintiffs, and the members of the Class, will not seek any penalties if the Class is certified.

66. In addition, Plaintiffs propose a Sub-Class consisting of all current tenants at the building who currently reside in an apartment that was deregulated during the pendency of 2523-2525 Aqueduct Avenue's participation in the J-51 Program (the "Sub-Class").

67. The Sub-Class seeks certification to pursue claims for declaratory and injunctive relief separate from the damages sought on behalf of the Class, as described more fully below.

## II. The Class and Sub-Class Meet the Requirements for Certification

68. The Class and Sub-Class are so numerous that joinder of all members is impracticable.

69. 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 fewer than forty five prior and current tenants of the Aqueduct Avenue Building, and likely scores more.

70. 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 and Sub-Class.

71. Plaintiffs' claims are typical of the claims of each Class member. Plaintiffs, like all the other Class members, sustained damages arising from Defendants' illegal scheme to evade the rent stabilization laws, and are likewise entitled to the same declaratory and injunctive relief as Sub-Class members, as requested herein.

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

73. Plaintiffs will fairly and adequately represent and protect the interests of the Class and Sub-Class.

74. There are no material conflicts between the Plaintiffs' claims and those of the Class and Sub-Class members that would make class certification inappropriate.

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

76. Counsel for the Class and Sub-Class will vigorously assert the claims of all members of the Class and Sub-Class.

77. Upon the Class's certification, Plaintiffs and any Class Members who do not elect to opt out will forgo any claim to any penalty or treble damages.

78. 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 Sub-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 and Sub-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 or Sub-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.

79. Among the numerous questions of law and fact common to the Class and Sub-Class are:

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

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

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

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

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

g. whether 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 Sub-Class are entitled to declaratory and injunctive relief.

**Cause of Action One**

**VIOLATION OF ETPA § 6**

***(Declaratory and Injunctive Relief on behalf of the Sub-Class against Defendants)***

80. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 through 79 of this Complaint.

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

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

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

84. Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

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

a. that the apartments of Plaintiffs and the Sub-Class at the Aqueduct Avenue Building are each subject to the Rent Stabilization Laws;

b. that Plaintiffs and members of the Sub-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 Sub-Class;

d. that any leases offered by Defendants to Plaintiffs and members of the Sub-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 Sub-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 Sub-Class.

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

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

88. Plaintiffs and members of the Sub-Class are further entitled to a permanent injunction against additional violations by 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 2523-2525 Aqueduct Avenue and reforming leases to comply with the Rent Stabilization Laws, where necessary.

**Cause of Action Two**

**VIOLATION OF ETPA § 6**

***(Overcharge Count on behalf of the Class against Defendants)***

89. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 through 88 of this complaint.

90. At all times relevant hereto, the Aqueduct Avenue Building was subject to the provisions of the ETPA and RSL.

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

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

93. 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.

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

**Cause of Action Three**

**ATTORNEYS' FEES AND COSTS**

95. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 through 94 of this complaint.

96. Based on the foregoing, Plaintiffs and members of the Class are entitled to recover reasonable attorneys' fees and costs incurred as a result of this litigation.

**PRAYER FOR RELIEF**

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

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

B. A declaratory judgment that the Aqueduct Avenue Building is subject to rent registration pursuant to the Rent Stabilization Laws;

C. A declaratory judgment that Defendants have willfully failed to register the Aqueduct Avenue Building 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. Because Plaintiffs and members of the Sub-Class have no adequate remedy at law for Defendants' ongoing violations of the Rent Stabilization Laws, a permanent injunction against further violations by 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 Aqueduct Avenue Building, registering rent stabilized apartments with ORA, and reforming leases to comply with the Rent Stabilization Laws, where necessary;

F. Plaintiffs' costs and expenses, including attorneys' fees, 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: November 5, 2020
New York, New York

Respectfully submitted,

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