

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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LAWRENCE CHAIFETZ, JUAN ROSADO, KIDDY
MORALES, ROBBAN TOLENO, ASATO IKEDA,
CALPURNYIA ROBERTS and KEVIN ROBERTS, on
behalf of themselves and all others similarly situated,

Index No. 20844/2018E

(NYSCEF Case)

Plaintiffs,

-against-

**ANSWER TO PLAINTIFFS’
SECOND AMENDED
COMPLAINT**

WEINREB MANAGEMENT LLC, 3660 OXFORD
AVENUE ASSOCS. LLC, and 3950 BLACKSTONE
ASSOCIATES LLC,

Defendants.

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Defendants Weinreb Management, LLC (“Weinreb Management”), 3660 Oxford Avenue
Assocs., LLC (“3660 Oxford”), and 3950 Blackstone Associates LLC (“3950 Blackstone”;
together with Weinreb Management and 3660 Oxford, “defendants”), by their attorneys Katsky
Korins LLP, as and for their Answer to the Second Amended Complaint (“Second Amended
Complaint”) of plaintiffs Lawrence Chaifetz, Juan Rosado, Kiddy Morales, Robban Toleno,
Asato Ikeda, Calpurnyia Roberts, and Kevin Roberts (collectively, “plaintiffs”), allege as
follows:

FIRST DEFENSE

1. Defendants admit the allegations set forth in paragraph 1 of the Second Amended
Complaint.
2. Defendants admit the allegations set forth in paragraph 2 of the Second Amended
Complaint.

3. Defendants deny the allegations set forth in paragraph 3 of the Second Amended Complaint, except admit that Weinreb Management provides certain services for 3660 Oxford and 3950 Blackstone under the title “property manager.”

4. Defendants deny the allegations set forth in paragraph 4 of the Second Amended Complaint, except admit that 3660 Oxford received certain benefits under the J-51 Program and that it ceased receiving such benefits on June 30, 2019.

5. Defendants deny the allegations set forth in paragraph 5 of the Second Amended Complaint, except admit that 3950 Blackstone received certain benefits under the J-51 Program and that it ceased receiving such benefits on June 30, 2016.

6. Defendants deny the allegations set forth in paragraph 6 of the Second Amended Complaint as an incomplete statement of the law, and refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

7. Defendants deny the allegations set forth in paragraph 7 of the Second Amended Complaint as an incomplete statement of the law, and refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

8. Defendants deny the allegations set forth in paragraph 8 of the Second Amended Complaint as an incomplete statement of the law, and refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

9. Defendants deny the allegations set forth in paragraph 9 of the Second Amended Complaint, except admit that for some portion of their tenancy each named plaintiff had a non-rent-stabilized lease. To the extent any of the allegations set forth in paragraph 9 of the Second Amended Complaint may be interpreted as concerning any legal obligations of defendants,

defendants deny such allegations as an incomplete statement of the law, and refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

10. Defendants deny the allegations set forth in paragraph 10 of the Second Amended Complaint, except refer to the records of the New York State Division of Housing and Community Renewal (“DHCR”) for their contents.

11. Defendants deny the allegations set forth in paragraph 11 of the Second Amended Complaint, except refer to the documents referenced therein for their contents.

12. Defendants deny the allegations set forth in paragraph 12 of the Second Amended Complaint, except refer to the documents referenced therein for their contents.

13. Defendants deny the allegations set forth in paragraph 13 of the Second Amended Complaint, except refer to the documents referenced therein for their contents.

14. Defendants deny the allegations set forth in paragraph 14 of the Second Amended Complaint, except refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

15. Defendants deny the allegations set forth in paragraph 15 of the Second Amended Complaint.

16. Because plaintiffs’ use of the word “leased” is vague and they have not specifically identified the time period applicable to the allegations set forth in paragraph 16 of the Second Amended Complaint, defendants deny knowledge or information sufficient to form a belief as to the truth of those allegations, except admit that plaintiff Lawrence Chaifetz (“Chaifetz”) is a named tenant on the lease for Apartment 4G at the building located at 3660 Oxford Avenue, Bronx, NY 10463 (the “3660 Oxford Building”).

17. Defendants deny the allegations set forth in paragraph 17 of the Second Amended Complaint, except admit that the 3660 Oxford Building received certain J-51 benefits and refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

18. Defendants deny the allegations set forth in paragraph 18 of the Second Amended Complaint, except (a) admit that Chaifetz was provided with one or more lease documents not on rent-stabilized forms, (b) admit that Chaifetz was not provided with a rider respecting the J-51 program; (c) aver that no such rider was required; and (d) refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

19. Defendants deny the allegations set forth in paragraph 19 of the Second Amended Complaint, except admit that for some period of time Apartment 4G at the 3660 Oxford Building was not registered with DHCR and refer to the records of DHCR and the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

20. Defendants deny the allegations set forth in paragraph 20 of the Second Amended Complaint, except refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

21. Defendants deny the allegations set forth in paragraph 21 of the Second Amended Complaint, except admit that Chaifetz is entitled to a lease containing the correct legal regulated rent and aver that he has such a lease.

22. Defendants deny the allegations set forth in paragraph 22 of the Second Amended Complaint.

23. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of the Second Amended Complaint, except

admit that plaintiff Juan Rosado (“Rosado”) was a named tenant on the lease for Apartment 11D at the 3660 Oxford Building.

24. Defendants deny the allegations set forth in paragraph 24 of the Second Amended Complaint, except (a) admit that Rosado was provided with one or more lease documents not on rent-stabilized forms, (b) admit that Rosado was not provided with a rider respecting the J-51 program; (c) aver that no such rider was required; and (d) refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

25. Defendants deny the allegations set forth in paragraph 25 of the Second Amended Complaint, except admit that for some period of time Apartment 11D at the 3660 Oxford Building was not registered with DHCR and refer to the records of DHCR and the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

26. Defendants deny the allegations set forth in paragraph 26 of the Second Amended Complaint, except refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

27. Defendants deny the allegations set forth in paragraph 27 of the Second Amended Complaint.

28. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 of the Second Amended Complaint, except admit that plaintiff Kiddy Morales (“Morales”) was a named tenant on the lease for Apartment 11E at the 3660 Oxford Building.

29. Defendants deny the allegations set forth in paragraph 29 of the Second Amended Complaint, except (a) admit that Morales was provided with one or more lease documents not on rent-stabilized forms, (b) admit that Morales was not provided with a rider respecting the J-51

program; (c) aver that no such rider was required; and (d) refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

30. Defendants deny the allegations set forth in paragraph 30 of the Second Amended Complaint, except admit that for some period of time Apartment 11E at the 3660 Oxford Building was not registered with DHCR and refer to the records of DHCR and the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

31. Defendants deny the allegations set forth in paragraph 31 of the Second Amended Complaint, except refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

32. Defendants deny the allegations set forth in paragraph 32 of the Second Amended Complaint.

33. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33 of the Second Amended Complaint, except admit that for some period of time plaintiffs Robban Toleno (“Toleno”) and Asato Ikeda (“Ikeda”) were named tenants on the lease for Apartment 12G at the 3660 Oxford Building.

34. Defendants deny the allegations set forth in paragraph 34 of the Second Amended Complaint, except (a) admit that Toleno and Ikeda were provided with one or more lease documents not on rent-stabilized forms, (b) admit that Toleno and Ikeda were not provided with a rider respecting the J-51 program; (c) aver that no such rider was required; and (d) refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

35. Defendants deny the allegations set forth in paragraph 35 of the Second Amended Complaint, except admit that for some period of time Apartment 12G at the 3660 Oxford

Building was not registered with DHCR and refer to the records of DHCR and the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

36. Defendants deny the allegations set forth in paragraph 36 of the Second Amended Complaint, except refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

37. Defendants deny the allegations set forth in paragraph 37 of the Second Amended Complaint.

38. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 38 of the Second Amended Complaint, except admit that for some period of time plaintiffs Calpurnyia and Kevin Roberts (“Calpurnyia and Kevin Roberts”) were named tenants on the lease for Apartment 2V at the building located at 3950 Blackstone Avenue, Riverdale, NY 10471 (the “3950 Blackstone Building,” and together with the 3660 Oxford Building, the “Buildings”).

39. Defendants deny the allegations set forth in paragraph 39 of the Second Amended Complaint, except (a) admit that Calpurnyia and Kevin Roberts were provided with one or more lease documents not on rent-stabilized forms, (b) admit that Calpurnyia and Kevin Roberts were not provided with a rider respecting the J-51 program; (c) aver that no such rider was required; and (d) refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

40. Defendants deny the allegations set forth in paragraph 40 of the Second Amended Complaint, except admit that for some period of time Apartment 2V at the 3950 Blackstone Building was not registered with DHCR and refer to the records of DHCR and the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

41. Defendants deny the allegations set forth in paragraph 41 of the Second Amended Complaint, except refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

42. Defendants deny the allegations set forth in paragraph 42 of the Second Amended Complaint.

43. Defendants deny the allegations set forth in paragraph 43 of the Second Amended Complaint, except admit that Weinreb Management provides certain services to 3660 Oxford and 3950 Blackstone under the title “property manager.”

44. Defendants deny the allegations set forth in paragraph 44 of the Second Amended Complaint, except refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

45. Assuming that “this County” refers to Bronx County, defendants admit the allegations set forth in paragraph 45 of the Second Amended Complaint.

46. Defendants admit the allegations set forth in paragraph 46 of the Second Amended Complaint.

47. Defendants admit the allegations set forth in paragraph 47 of the Second Amended Complaint.

48. Defendants admit the allegations set forth in paragraph 48 of the Second Amended Complaint.

49. Defendants admit the allegations set forth in paragraph 49 of the Second Amended Complaint.

50. Inasmuch as paragraphs 50 through 66 of the Second Amended Complaint purport to summarize the applicable statutes and regulations and their history, defendants deny

the allegations set forth in each of the aforesaid paragraphs, except refer to the applicable statutes, regulations and caselaw (as well as the applicable legislative history and other material referenced in the aforesaid paragraphs) in their entirety for their contents.

51. Defendants deny the allegations set forth in paragraph 67 of the Second Amended Complaint as an incomplete statement of the law, and refer to the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents.

52. Defendants deny the allegations set forth in paragraph 68 of the Second Amended Complaint as an incomplete statement of the law, and refer to the records of DHCR and the applicable statutes, regulations, policies, guidance, bulletins and caselaw for their contents. Further, because plaintiffs have not specified in or before paragraph 68 of the Second Amended Complaint what they mean by “the Class,” defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 68 of the Second Amended Complaint inasmuch as they concern “the Class”.

53. Defendants deny the allegations set forth in paragraph 69 of the Second Amended Complaint.

54. Defendants deny the allegations set forth in paragraph 70 of the Second Amended Complaint. Further, because plaintiffs have not specified in or before paragraph 70 of the Second Amended Complaint what they mean by “the Class,” defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 70 of the Second Amended Complaint inasmuch as they concern “the Class”.

55. Defendants deny the allegations set forth in paragraph 71 of the Second Amended Complaint.

56. Defendants deny the allegations set forth in paragraph 72 of the Second Amended Complaint.

57. Defendants deny the allegations set forth in paragraph 73 of the Second Amended Complaint, except admit that plaintiffs propose a class defined as set forth in that paragraph and deny that such a class is appropriate.

58. Defendants deny the allegations set forth in paragraph 74 of the Second Amended Complaint, except admit that plaintiffs seek certification of claims for damages on behalf of a class and deny that they are entitled to such certification or damages.

59. Defendants deny the allegations set forth in paragraph 75 of the Second Amended Complaint, except admit that plaintiffs propose a sub-class as set forth in that paragraph and deny that such a sub-class is appropriate.

60. Defendants deny the allegations set forth in paragraph 76 of the Second Amended Complaint, except admit that plaintiffs seek certification of claims for declaratory and injunctive relief and deny that they are entitled to such certification or such relief.

61. Defendants deny the allegations set forth in paragraph 77 of the Second Amended Complaint.

62. Defendants deny the allegations set forth in paragraph 78 of the Second Amended Complaint.

63. Defendants deny the allegations set forth in paragraph 79 of the Second Amended Complaint.

64. Defendants deny the allegations set forth in paragraph 80 of the Second Amended Complaint.

65. Defendants deny the allegations set forth in paragraph 81 of the Second Amended Complaint.

66. Defendants deny the allegations set forth in paragraph 82 of the Second Amended Complaint.

67. Defendants deny the allegations set forth in paragraph 83 of the Second Amended Complaint.

68. Defendants deny the allegations set forth in paragraph 84 of the Second Amended Complaint.

69. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 85 of the Second Amended Complaint.

70. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 86 of the Second Amended Complaint.

71. Defendants deny the allegations set forth in paragraph 87 of the Second Amended Complaint.

72. Defendants deny the allegations set forth in paragraph 88 of the Second Amended Complaint.

73. In response to paragraph 89 of the Second Amended Complaint, defendants repeat and reallege the responses set forth in paragraphs 1 through 72, above, as though fully set forth herein.

74. Defendants deny the allegations set forth in paragraph 90 of the Second Amended Complaint, and specifically aver that at times that might be “relevant” hereto, apartments of plaintiffs and members of the putative class were not subject to the provisions of the Rent Stabilization Law (“RSL”).

75. Defendants deny the allegations set forth in paragraph 91 of the Second Amended Complaint.

76. Defendants deny the allegations set forth in paragraph 92 of the Second Amended Complaint.

77. Defendants deny the allegations set forth in paragraph 93 of the Second Amended Complaint.

78. Defendants deny the allegations set forth in paragraph 94 of the Second Amended Complaint.

79. In response to paragraph 95 of the Second Amended Complaint, defendants repeat and reallege the responses set forth in paragraphs 1 through 78, above, as though fully set forth herein.

80. Defendants deny the allegations set forth in paragraph 96 of the Second Amended Complaint, and specifically aver that no justiciable controversy exists because plaintiffs' apartments were registered as rent-stabilized before this action was commenced, plaintiffs were given rent-stabilized leases, and any plaintiff or member of the putative sub-class who currently lawfully resides in either of the Buildings occupies his or her apartment pursuant to such a rent-stabilized lease.

81. Defendants deny the allegations set forth in paragraph 97 of the Second Amended Complaint.

82. Defendants deny the allegations set forth in paragraph 98 of the Second Amended Complaint.

83. Defendants deny the allegations set forth in paragraph 99 of the Second Amended Complaint, and specifically aver that no justiciable controversy exists because plaintiffs'

apartments were registered as rent-stabilized before this action was commenced, and any plaintiff or member of the putative sub-class who currently resides in either of the Buildings has already been given a rent-stabilized lease.

84. Defendants deny the allegations set forth in paragraph 100 of the Second Amended Complaint.

85. Defendants deny the allegations set forth in paragraph 101 of the Second Amended Complaint.

86. Defendants deny the allegations set forth in paragraph 102 of the Second Amended Complaint.

87. Defendants deny the allegations set forth in paragraph 103 of the Second Amended Complaint.

88. In response to paragraph 104 of the Second Amended Complaint, defendants repeat and reallege the responses set forth in paragraphs 1 through 87, above, as though fully set forth herein.

89. Defendants deny the allegations set forth in paragraph 105 of the Second Amended Complaint, and specifically aver that no justiciable controversy exists because plaintiffs' apartments were registered as rent-stabilized before this action was commenced, and any plaintiff or member of the putative sub-class who currently lawfully resides in either of the Buildings has already been given a rent-stabilized lease.

90. Defendants deny the allegations set forth in paragraph 106 of the Second Amended Complaint, and specifically aver that plaintiffs' apartments were registered as rent-stabilized before this action was commenced and any plaintiff or member of the putative sub-

class who currently lawfully resides in either of the Buildings has already been given a rent-stabilized lease.

91. Defendants deny the allegations set forth in paragraph 107 of the Second Amended Complaint.

92. Defendants deny the allegations set forth in paragraph 108 of the Second Amended Complaint.

93. Defendants deny the allegations set forth in paragraph 109 of the Second Amended Complaint.

SECOND DEFENSE

94. The Second Amended Complaint fails, in whole or in part, to state a cause of action.

THIRD DEFENSE

95. The Second Amended Complaint does not give defendants or the Court sufficient notice of the basis for the claim that plaintiffs have been overcharged. Specifically, for each plaintiff, the Second Amended Complaint fails to set forth the formula or methodology that should be applied to determine if that plaintiff has been overcharged.

96. To the extent any of plaintiffs' claims of rent overcharge is based in whole or in part on applying a formula or methodology that requires DHCR action and/or is subject to DHCR's exclusive jurisdiction, this court lacks subject matter jurisdiction over such claims.

FOURTH DEFENSE

97. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations to the extent they purport to seek damages allegedly arising prior to January 23, 2014, and/or to the extent they purport to be asserted on behalf of any member of the putative class

whose claims were time-barred as of January 23, 2018 (the date the initial complaint was filed) under then-existing law.

FIFTH DEFENSE

98. 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, documents reflecting the J-51 benefits applied for and received by the owners of the Buildings, and documents referenced in the Second Amended Complaint.

SIXTH DEFENSE

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

100. 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.

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

SEVENTH DEFENSE

102. Prior to 2009, it was DHCR's policy to allow apartments in buildings that were receiving J-51 benefits to be removed from rent stabilization if they met the criteria for "luxury deregulation" (that is, rent above a certain level coupled with either a vacancy or a tenant whose income equals or exceeds a certain threshold).

103. The Court of Appeals held in *Roberts v. Tishman Speyer Properties, L.P.*, 13 N.Y.3d 270, 284 (2009), that any apartment within a building that was subject to a J-51 tax

abatement could not be deregulated while the abatement was in place. But until 2016, DHCR did not implement any guidance as to how apartments that had been incorrectly deregulated under its prior policy should be re-regulated.

104. To the extent that any defendant effectuated the deregulation of any apartment in which any plaintiff is or was a named tenant under circumstances in which applicable law did not permit such deregulation, such defendant acted in accordance with prevailing thought and guidance with respect to permitted conduct, and/or acted inadvertently and not with any intent to violate applicable law.

105. The foregoing precludes any finding of willfulness or fraud with respect to any such plaintiff.

EIGHTH DEFENSE

106. Defendants incorporate by reference the allegations set forth in paragraphs 102 through 105 hereof, as though fully set forth herein.

107. In or about February 2017, 3660 Oxford and 3950 Blackstone separately received letters from DHCR indicating that if all of the apartments in each of the Buildings were not registered as rent-stabilized by March 15, 2017, DHCR would take further action. In response to those letters, counsel for 3660 Oxford and 3950 Blackstone undertook to recalculate the rents for apartments in the Buildings to determine whether any of those rents exceeded the legal regulated rent. This analysis, which was conducted nearly a year before this action was commenced, included the apartments of each of the named plaintiffs.

108. Wherever that recalculation indicated that any existing tenant had been charged an amount in excess of the legal regulated rent at any time during the four years preceding the analysis, counsel for 3660 Oxford and 3950 Blackstone calculated the amount the tenant should

be refunded. Those tenants were then sent a letter explaining that the apartment is subject to the RSL, enclosing a check payable to the tenant in the amount of the refund, explaining the calculation and the refund, and advising the tenant of the legal regulated rent for the duration of his or her current lease. Plaintiffs Chaifetz and Calpurnyia and Kevin Roberts were among those who received such refunds.

109. Where that calculation indicated that the legal regulated rent was equal to or greater than what was currently being charged to the tenant, the tenant was sent a letter explaining that the apartment is subject to the RSL and explaining the calculation. Plaintiffs Rosado, Morales, and Ikeda and Toleno were among those who had not been charged an amount in excess of the legal regulated rent at any time during the four years preceding the analysis and thus received such letters.

110. At the same time, counsel for 3660 Oxford and 3950 Blackstone undertook the process of filing rent registrations for each of the affected apartments as far back as DHCR required. Following the filing of such registrations via DHCR's registration system, each of the tenants in those apartments was sent a letter enclosing the tenant's copy of that registration. Plaintiffs Chaifetz, Rosado, Morales, and Ikeda and Toleno were each sent such a letter in March 2017 and Calpurnyia and Kevin Roberts were sent such a letter in August 2017. Thus, each of the named plaintiffs received such a letter enclosing a copy of the registration for their respective apartments at least five months before this action was commenced.

111. As a result of the foregoing, each of the apartments occupied by the named plaintiffs in this action was registered as rent-stabilized no later than August 4, 2017 (again, more than five months before this action was commenced on January 23, 2018).

112. The recalculation analysis was performed using the actual rent that had been paid

four years previously as the “base date rent”, and then applying the increases that would have been permitted under the rules of the Rent Guidelines Board (“RGB”) in each year thereafter to arrive at the correct legal regulated rent for the current tenant. This was consistent with then-current law and practice, and it is consistent with the holding of the Court of Appeals in *Regina Metropolitan Co., LLC v. New York State Div. of Housing and Comm. Renewal*, 35 N.Y.3d 332 (2020).¹

113. For each of the apartments at issue in this action, the calculations made pursuant to the new statute do not yield a different result from the calculations performed by counsel for 3660 Oxford and 3950 Blackstone in 2017 upon the re-registration of those apartments. In each instance, the new RSL § 26-516 calculation yields a legal regulated rent that is the same as the rent that was actually registered.

114. Plaintiffs’ claims are barred, in whole or in part, by reason of the foregoing, and the foregoing precludes any finding of willfulness or fraud.

NINTH DEFENSE

115. Defendants incorporate by reference the allegations set forth in paragraphs 102 through 114 hereof, as though fully set forth herein.

116. The recalculation and registration process discussed above was not completed before the March 15 “deadline” set forth in DHCR’s February 2017 letters. As a result, DHCR issued notices (the “Notices”) indicating that it had opened proceedings with respect to the Buildings. With respect to the 3950 Blackstone Building, 3950 Blackstone requested and was

¹ For each of the apartments at issue in this action, the result would be the same if the legal regulated rent were calculated pursuant to the provisions of the Housing Stability and Tenant Protection Act of 2019 (L.2019 ch. 36). Under *Regina*, however, that statute does not apply here.

granted additional time to register its apartments; it then completed the process and DHCR issued a “Closing Memorandum” dated August 30, 2017 confirming – nearly five months before this action was commenced – that all of the apartments had been properly registered in accordance with DHCR’s directives.

117. With respect to the 3660 Oxford Building, by the time it received its Notice from DHCR, the registration process had been completed with respect to all but six of the apartments; as to those, 3660 Oxford took the position that registration was not necessary. DHCR rejected that position and, by Order dated July 21, 2017, directed that those six apartments be registered as well. Counsel for 3660 Oxford thereafter completed the registrations of those six apartments as well, and DHCR issued a Notice of Compliance confirming as much on December 28, 2017 – nearly four weeks before this action was commenced.

118. Each of the plaintiffs has received, signed and returned leases on rent-stabilized forms that confirm the status of their apartments as rent-stabilized.

119. Plaintiffs’ claims are barred, in whole or in part, by reason of the foregoing, and the foregoing precludes any finding of willfulness or fraud.

TENTH DEFENSE

120. The documentary evidence demonstrates that plaintiffs’ apartments were registered as rent-stabilized before this action was commenced, plaintiffs were given rent-stabilized leases, and any plaintiff who currently resides in either of the Buildings, together with all members of the putative sub-class, occupies his or her apartment pursuant to such rent-stabilized leases.

121. Based on the foregoing facts, plaintiffs' second and third causes of action (Counts Two and Three) should be dismissed for failure to set forth a justiciable controversy, and/or because they have already been adjudicated by DHCR and are therefore barred by *res judicata*.

ELEVENTH DEFENSE

122. Plaintiffs' second and third causes of action (Counts Two and Three) – which purport to be asserted only on behalf of current residents of the Buildings – should be dismissed as to each plaintiff who does not actually reside in either of the Buildings.

TWELFTH DEFENSE

123. Defendants incorporate by reference the allegations set forth in paragraphs 102 through 122, above, as though fully set forth herein.

124. Plaintiffs' second and third causes of action (Counts Two and Three) should be dismissed in their entirety.

THIRTEENTH DEFENSE

125. Pursuant to a lease dated July 15, 2016, plaintiff Morales and Aris Morales ("A. Morales," and collectively, the "Moraleses") – who is not a named plaintiff – became the tenants of record of Apartment 11E in the 3660 Oxford Building, and pursuant to that lease and renewal leases, the Moraleses remained the tenants of record of the apartment until on or about July 31, 2019 when they vacated.

126. Morales's claims are barred, in whole or in part, based on the fact that she had a named co-tenant (A. Morales) who was a party to subject leases (and/or, among other things, paid or contributed to the payment of rent) but is not also named as a plaintiff herein.

FOURTEENTH DEFENSE

127. Defendants incorporate by reference the allegations set forth in paragraphs 125 through 126 hereof, as though fully set forth herein.

128. 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.

FIFTEENTH DEFENSE

129. Defendants incorporate by reference the allegations set forth in paragraphs 102 through 121 hereof, as though fully set forth herein.

130. The Court of Appeals' holding in *Roberts v. Tishman Speyer Properties, L.P.*, 13 N.Y.3d 270 (2009) – where the Court held that buildings receiving J-51 benefits could not avail themselves of the procedures for deregulating apartments based on high rent or high income – should not be applied retroactively, or (in the alternative) should not be applied retroactively in every case.

131. On the facts here, *Roberts* should not apply to any of the plaintiffs' apartments.²

SIXTEENTH DEFENSE

132. To the extent that plaintiffs are seeking any kind of penalty – including but not limited to the disallowance of rent increases during any period when their apartments were not registered as rent-stabilized – this action may not be maintained as a class action.

² We recognize that the Appellate Division, First Department has already ruled that *Roberts* is retroactive. We assert this defense primarily to preserve it for appellate purposes.

SEVENTEENTH DEFENSE

133. The claims of any plaintiff whose initial lease began after the expiration of J-51 benefits for the Building in which that plaintiff is or was a tenant are barred, in whole or in part, for that reason.

EIGHTEENTH DEFENSE

134. Defendants incorporate by reference the allegations set forth in paragraphs 38 through 42 hereof, as though fully set forth herein.

135. To the extent that it is asserted on behalf of plaintiffs Calpurnyia and Kevin Roberts, the Second Amended Complaint's First Cause of Action ("Count One"), which asserts a claim for monetary damages based on alleged unlawful overcharges for rent, fails to state a cause of action against defendant 3660 Oxford on the ground that those plaintiffs have not alleged to have ever paid or been charged rent by defendant 3660 Oxford.

NINETEENTH DEFENSE

136. Defendants incorporate by reference the allegations set forth in paragraphs 134 through 135 hereof, as though fully set forth herein.

137. Plaintiffs Calpurnyia and Kevin Roberts have never paid or been charged rent by defendant 3660 Oxford.

138. As to those plaintiffs, the Second Amended Complaint's First Cause of Action ("Count One"), which asserts a claim for monetary damages based on alleged unlawful overcharges for rent, should be dismissed as against defendant 3660 Oxford on that basis.

TWENTIETH DEFENSE

139. Defendants incorporate by reference the allegations set forth in paragraphs 134 through 138 hereof, as though fully set forth herein.

140. Plaintiffs Calpurnya and Kevin Roberts do not have and never had a lease with defendant 3660 Oxford.

141. As to those plaintiffs, the Second Amended Complaint's Second Cause of Action ("Count Two"), which seeks declaratory relief with respect to their apartment and/or their lease and/or reformation of their lease, should be dismissed as against defendant 3660 Oxford on that basis.

TWENTY-FIRST DEFENSE

142. Defendants incorporate by reference the allegations set forth in paragraphs 134 through 141 hereof, as though fully set forth herein.

143. As to plaintiffs Calpurnya and Kevin Roberts, the Second Amended Complaint's Third Cause of Action ("Count Three"), which seeks declaratory relief with respect to their apartment and/or their lease, should be dismissed as against defendant 3660 Oxford on the ground that those plaintiffs do not have and never had a lease with defendant 3660 Oxford.

TWENTY- SECOND DEFENSE

144. Defendants incorporate by reference the allegations set forth in paragraphs 16 through 37 hereof, as though fully set forth herein.

145. To the extent that it is asserted on behalf of plaintiffs Chaifetz, Rosado, Morales, Toleno, and Ikeda, the Second Amended Complaint's First Cause of Action ("Count One"), which asserts a claim for monetary damages based on alleged unlawful overcharges for rent, fails to state a cause of action against defendant 3950 Blackstone on the ground that none of those plaintiffs is alleged to have ever paid or been charged rent by defendant 3950 Blackstone.

TWENTY- THIRD DEFENSE

146. Defendants incorporate by reference the allegations set forth in paragraphs 144 through 145 hereof, as though fully set forth herein.

147. None of plaintiffs Chaifetz, Rosado, Morales, Toleno, and Ikeda has ever paid or been charged rent by defendant 3950 Blackstone.

148. As to those plaintiffs, the Second Amended Complaint's First Cause of Action ("Count One"), which asserts a claim for monetary damages based on alleged unlawful overcharges for rent, should be dismissed as against defendant 3950 Blackstone on that basis.

TWENTY- FOURTH DEFENSE

149. Defendants incorporate by reference the allegations set forth in paragraphs 144 through 148 hereof, as though fully set forth herein.

150. None of plaintiffs Chaifetz, Rosado, Morales, Toleno, and Ikeda has ever had a lease with defendant 3950 Blackstone.

151. As to those plaintiffs, the Second Amended Complaint's Second Cause of Action ("Count Two"), which seeks declaratory relief with respect to their apartments and/or their leases and/or reformation of their leases, should be dismissed as against defendant 3950 Blackstone on that basis.

TWENTY- FIFTH DEFENSE

152. Defendants incorporate by reference the allegations set forth in paragraphs 144 through 151 hereof, as though fully set forth herein.

153. As to plaintiffs Chaifetz, Rosado, Morales, Toleno, and Ikeda, the Second Amended Complaint's Third Cause of Action ("Count Three"), which seeks declaratory relief with respect to their apartments and/or their leases, should be dismissed as against defendant

3950 Blackstone on the ground that none of those plaintiffs has or ever had a lease with defendant 3950 Blackstone.

TWENTY- SIXTH DEFENSE

154. The Second Amended Complaint should be dismissed, in whole or in part as against Weinreb Management on the ground that it acted at all times as an agent for disclosed principals.

TWENTY- SEVENTH DEFENSE

155. To the extent that any cause of action in the Second Amended Complaint is based on any allegation of misrepresentation, fraud, deceit, or willful conduct, the Second Amended Complaint fails to allege the circumstances constituting the alleged wrong in sufficient detail as required by CPLR 3016(b).

TWENTY- EIGHTH DEFENSE

156. Defendants incorporate by reference the allegations set forth in paragraphs 134 through 153 hereof, as though fully set forth herein.

157. Defendants 3660 Oxford and 3950 Blackstone are not properly joined as defendants in a single action.

TWENTY- NINTH DEFENSE

158. Defendants incorporate by reference the allegations set forth in paragraphs 134 through 153 hereof, as though fully set forth herein.

159. Plaintiffs are not properly joined as plaintiffs in a single action.

THIRTIETH DEFENSE

160. Defendants incorporate by reference the allegations set forth in paragraphs 156 through 159 hereof, as though fully set forth herein.

161. Defendants are, at a minimum, entitled to separate trials as to the claims of each plaintiff and/or the claims against each defendant.

THIRTY- FIRST DEFENSE

162. The relief plaintiffs seek in the “Wherefore” clause of the Second Amended Complaint would not be properly awardable in this action – or, at a minimum, would not be properly awardable against each defendant as to each plaintiff – even if plaintiffs otherwise prevailed on their claims.

THIRTY- SECOND DEFENSE

163. Defendants lack sufficient knowledge or information to form a belief as to the truth of certain allegations set forth in the Second Amended Complaint, and lack specific knowledge of actions by plaintiffs or others that may impact the claims and allegations set forth in the Second Amended Complaint.

164. Until defendants fully avail themselves of all appropriate disclosure mechanisms, they cannot determine whether or to what extent the above-listed defenses will be asserted at trial. They are included herein for the purpose of preserving them and giving plaintiffs notice of them.

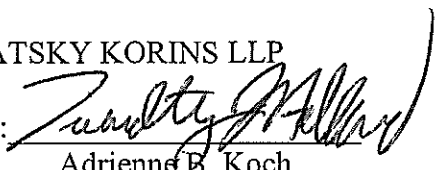
165. Defendants reserve their right to assert additional defenses, including affirmative defenses, as and to the extent that additional facts and/or additional defenses become known or apparent to them through the course of this action.

WHEREFORE, defendants demand judgment dismissing the Second Amended Complaint in its entirety and awarding defendants such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 1, 2020

KATSKY KORINS LLP

By:



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