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

KATHRYN CASEY, LAURIE CAGNASSOLA, GERALD COHEN, BETTY FURR, FRANCESCA GAGLIANO, CAROLYN KLEIN, JOSEPH MORGAN, RICHARD ROSE, JESSICA SAKS and KIRK SWANSON, on behalf of themselves and all others similarly situated,

Plaintiffs,

-and-

PAMELA RENA and VITINA DEGREZIA a/k/a VITINA LUPPINO,

Intervenor-Plaintiffs,

-against-

WHITEHOUSE ESTATES, INC., KOEPPEL & KOEPPEL, INC., DUELL 5 MANAGEMENT LLC d/b/a DUELL MANAGEMENT SYSTEMS, WILLIAM W. KOEPPEL, and EASTGATE WHITEHOUSE ESTATES, LLC

Defendants.

Index No. 111723/2011

SECOND AMENDED COMPLAINT

KATHRYN CASEY, LAURIE CAGNASSOLA, GERALD COHEN, BETTY FURR, FRANCESCA GAGLIANO, CAROLYN KLEIN, JOSEPH MORGAN, RICHARD ROSE, JESSICA SAKS and KIRK SWANSON (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated ("the Class"), by their undersigned attorneys, as and for their amended complaint, hereby assert the following:

A. Introduction

1. This is a class action brought by tenants of 350 East 52nd Street, a/k/a 939 First Avenue, New York, New York 10022, ("350 East 52nd Street" or "the building") against Defendants, owners of the building, on behalf of themselves and other similarly situated current and former tenants of 350 East 52nd Street who reside or have resided in

apartments that are subject to the Rent Stabilization Law ("RSL") or the Rent Control Law ("RCL") (collectively, the "rent regulations"). Defendants have wrongfully treated and continue to wrongfully treat plaintiffs and the putative class members as market rent tenants, denying them a variety of benefits to which they are legally entitled, as well as charging them amounts in excess of the legal rents for their units.

2. Defendants received J-51 tax benefits from July 1991 to June 2015. As a matter of law, they are thus prohibited from taking advantage of certain provisions of the rent regulations enacted in 1993 that allow apartments to be excluded from regulation when their rent reaches a certain level (referred to as "luxury decontrol").

3. Nonetheless, Defendants have wrongfully availed themselves of luxury decontrol and deregulated rent controlled apartments. They have charged and collected an increased rent without following the proper procedures set forth in the RCL in order to obtain an order permitting the rents to be increased. Defendants have also failed to file required registration documents with the State of New York Division of Housing and Community Renewal ("DHCR") for certain apartments, registering them as rent stabilized at a legally regulated rent.

4. In this action, Plaintiffs, for themselves and as representatives of the other members of the Class, seek a judicial declaration that every apartment at 350 East 52nd Street that was treated as a deregulated market rent apartment is subject to rent regulation, an order that current and future rents be established at the statutory amount permitted by the RSL and RCL, an award of monetary damages for rent overcharges imposed and collected by Defendants, reasonable attorneys' fees, costs and disbursements, and other injunctive relief further described in this Complaint.

B. The Parties

5. Plaintiff KATHRYN CASEY is a tenant of 350 East 52nd Street, Apt. 4K, New York, New York 10022, having moved into this apartment in June 2009 as a market rent tenant at a monthly rental amount of $2,600.00 per month.

6. Plaintiff LAURIE CAGNASSOLA is a tenant of 350 East 52nd Street, Apt. 12H, New York, New York 10022, having moved into this apartment in April 2011 as a market rent tenant at a monthly rental amount of $2,100.00 per month.

7. Plaintiff GERALD COHEN is a tenant of 350 East 52nd Street, Apt. 7F, New York, New York 10022, having moved into this apartment in November 2008 as a market rent tenant at a monthly rental amount of $2,100.00 per month.

8. Plaintiff BETTY FURR is a tenant of 350 East 52nd Street, Apt. 5J, New York, New York 10022, having moved into this apartment in January 2009 as a market rent tenant at a monthly rental amount of $2,000.00 per month.

9. Plaintiff FRANCESA GAGLIANO is a tenant of 350 East 52nd Street, Apt. 15G, New York, New York 10022, having moved into this apartment in October 2009 as a market rent tenant at a monthly rental amount of $3,950.00 per month.

10. Plaintiff CAROLYN KLEIN is a tenant of 350 East 52nd Street, Apt. 6H, New York, New York 10022, having moved into this apartment in January 2010 as a market rent tenant at a monthly rental amount of $1800.00 per month.

11. Plaintiff JOSEPH MORGAN is a tenant of 350 East 52nd Street, Apt. 11B, New York, New York 10022, having moved into this apartment in February 2011 as a market rent tenant at a month.

12. Plaintiff RICHARD ROSE is a tenant of 350 East 52nd Street, Apt. 12C, New York, New York 10022, having moved into this apartment in September 2008 as a

market rent tenant at a monthly rental amount of $2,700.00 per month. nthly rental amount of $2,050.00 per month.

13. Plaintiff JESSICA SAKS is a tenant of 350 East 52nd Street, Apt. 8E, New York, New York 10022, having moved into this apartment in September 2009 as a market rent tenant at a monthly rental amount of $2,000.00 per month.

14. Plaintiff KIRK SWANSON is a tenant of 350 East 52nd Street, New York, New York 10022, having moved into Apt. 12K in May 2002 as a market rent tenant at a monthly rental amount of $2,400.00 per month and subsequently moved into Apt. 6G in December 2010 as a market rate tenant at a monthly rental amount of $4,200.00 per month.

15. For all the above-described Plaintiffs, as well as all members of the proposed Class, the rents charged and collected were and have been in excess of that allowed under the RCL and the RSL.

16. Defendant WHITEHOUSE ESTATES, INC., a New York corporation with its principal place of business in the County, City and State of New York, was the landlord of the building pursuant to a ground lease dated June 28, 1956, which has been extended through and including the present date, and is an owner as that term is defined by the RSL and Rent Stabilization Code ("RSC") §2520.6(i).

17. Defendant KOEPPEL & KOEPPEL, INC., a New York Corporation with its principal place of business in the County, City and State of New York, is a current managing agent of the building, and is an owner as that term is defined by RSC §2520.6(i).

18. Defendant DUELL 5 MANAGEMENT LLC ("Duell"), a New York Limited Liability Company with its principal place of business in the County, City and

State of New York, and, upon information and belief, is a current managing agent of the building, and is an owner as that term is defined by RSC §2520.6(i). Upon information and belief Duell does business under the name DUELL MANAGEMENT SYSTEMS.

19. Defendant WILLIAM W. KOEPPEL, maintaining an office in the County, City and State of New York, is the current registered managing agent of the building, and a Principal of Defendant WHITEHOUSE ESTATES, INC., and is an owner as that term is defined by RSC §2520.6(i).

20. Defendant EASTGATE WHITEHOUSE LLC, a Delaware limited liability company with its place of business in the County, City and State of New York, is the current landlord pursuant to an Assignment of the ground lease dated September 4, 2014.

C. The Statutory and Regulatory Regime

21. In 1993, the RSL and the RCL were amended to provide that certain units could be deregulated if they became vacant and the legal regulated rent or the legal maximum rent exceeded $2,000.00 per month (referred to as "luxury decontrol"). L. 1993, Ch. 253, §§4, 6, effective July 7, 1993. Administrative Code of the City of New York §§26-403(k), 26-504.2(a). In 1997, these provisions were amended to provide that units may be excluded from regulation "where, subsequent to vacancy, such legal regulated rent, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law is two thousand dollars or more." L. 1997, ch. 116, §19; RSL §26-511(14). These provisions were further amended effective June 24, 2011, to increase the amount of legal rent where a unit could be deregulated upon vacancy from $2,000.00 to $2,500.00 per month. L. 2011, ch. 97.

22. The RSL and the RCL were also amended in 1993 to provide that existing rent stabilized and rent controlled tenants could be deregulated by order of the DHCR,

upon application of the owner, if the legal regulated rent or the legal maximum rent exceeded $2,000.00 per month and the household income exceeded $250,000.00 per year for two consecutive years. L. 1993, Ch. 253, §§4, 6, effective July 7, 1993. In 1997, the RSL and the RCL were further amended to lower the income level for high rent, high income deregulation from $250,000.00 per year to $175,000.00. L. 1997, Ch. 116, §§12, 14, effective January 1, 1998. Administrative Code of the City of New York §§26-403.1, 26-504.1. Effective July 1, 2011, these provisions were amended to increase the legal rent threshold to $2,500.00, and the household income threshold to $200,000.00 per year. L. 2011, ch. 97.

23. When a housing accommodation becomes legally deregulated under the provisions cited above, the owner is no longer bound by the provisions of the RCL and the RSL. For example, the owner may increase the rent to market rates; the owner is free to refuse to renew a tenant's lease; the owner may increase the rent upon vacancy of the unit by whatever amount the owner chooses; the owner may renew the lease upon different terms and conditions from the original lease; the owner can reduce the services that are provided to the tenant; and the owner is no longer covered by the prohibitions against harassment of tenants as set forth in the RCL and the RSL. In addition, tenants may not initiate proceedings at the DHCR for relief under the rent regulatory statutes.

24. The amendments to the RSL and the RCL specifically provide, though, that these deregulation provisions do not apply to owners who receive benefits pursuant to Real Property Tax Law ("RPTL") §489.

25. RPTL §489, enacted in 1955, is an enabling statute, authorizing cities to promulgate local laws that would provide multiple dwelling owners with tax incentives to rehabilitate their properties or convert them to residential use. The law further authorizes

cities to impose rent regulation on building owners as a *quid pro quo* for receiving tax benefits.

26. In 1960, pursuant to RPTL §489, New York City adopted the J-51 program, now codified at §11-243 of the Administrative Code of the City of New York. The enabling law specifically provides that J-51 benefits are only available to dwellings that are subject to rent control or rent stabilization. The J-51 program is administered by the New York City Department of Housing Preservation and Development ("HPD"). *See* 28 Rules of the City of New York ("RCNY") §§5-01 *et seq*. Pursuant to the J-51 program, eligible owners are granted abatements in their real estate taxes for a percentage of the "certified reasonable cost" of the rehabilitation, and/or exemptions from increases in real estate taxes resulting from an increase in the assessed value of the property due to the rehabilitation. HPD issues a "certificate of eligibility" for each J-51 benefit granted, which sets forth the amount of the tax abatement, if any, and the period of years that the abatement and/or exemption is in effect.

27. Notwithstanding the language of the RSL and the RCL, excluding units in all buildings receiving J-51 benefits from luxury deregulation, prior to 2009, DHCR had issued Policy Statements and regulations stating the contrary. But on March 5, 2009, the Appellate Division, First Department, issued a ruling in *Roberts v. Tishman Speyer Properties, L.P.*, 62 A.D.3d 71 (1st Dep't 2009), which rejected the DHCR's interpretation of these statutes and confirmed that, as a matter of plain statutory language, luxury decontrol does not apply to any units in buildings receiving J-51 benefits, regardless of whether the receipt of J-51 benefits was the sole reason that the units were subject to regulation. The Appellate Division's ruling in *Roberts* was affirmed by the Court of Appeals on October 13, 2009. 13 N.Y.3d 270.

28. The RSL and RCL, and the regulations promulgated thereunder, set forth the procedures for calculating the lawful rent, and for determining the amount by which a tenant has been overcharged, in cases where owners have illegally treated housing units as unregulated. Under these regulations, the failure to properly and timely comply with the annual registration requirements for rent stabilized units bars the owner from applying for or collecting any rent increase in excess of the base date rent, plus any lawful adjustments allowable prior to the failure to register. RSC §2528.4[a].

29. The regulations also bar an owner of a rent stabilized unit who fails to provide the tenant with a rent stabilization lease rider in the form prescribed by law upon the execution of a renewal lease from collecting any guidelines lease adjustment authorized for any current lease from the commencement date of such lease. RSC §2522.5[c].

30. For the purposes of determining an overcharge, the legal regulated rent of a stabilized unit is deemed to be the rent charged on the base date plus any subsequent lawful increases or adjustments RSC §2526.1[a][3]. In a case where the legal rent on the base date cannot be determined, either because records of the legal rent do not exist, were not provided, were inherently unreliable, or were created by fraud or the owner's violations of the law, the base date rent is calculated on the basis of what is known as the "default formula." The default formula is an agency-established procedure, approved by the appellate courts, by which the base rent is set by comparison with similar regulated units in the building or the neighborhood.

D. Statement of Facts

31. At all times relevant herein, the subject building has been a privately owned rental apartment building containing approximately 139 apartments. Up to and

until 1993, Defendants and/or their predecessors in interest treated virtually all apartments in the building as rent regulated.

32. Beginning in 1993, Defendants and/or their predecessors in interest began treating apartments as deregulated pursuant to luxury deregulation.

33. In 1991, 1996, 2000 and 2003, though, Defendants, and/or their predecessors in interest requested and were granted four separate J-51 property tax exemptions and abatements. Thus, at all times from 1993 through June 30, 2015, Defendants and/or their predecessors in interest have been in receipt of J-51 benefits for the building. Accordingly, the luxury deregulation provisions have never applied to the subject building.

34. Since Defendants and/or their predecessors in interest have been in receipt of J-51 tax benefits for as long as the deregulation provisions have been in affect, no apartments in the building should ever have been deregulated, including the apartments rented by Plaintiffs and members of the putative class. Every apartment that the Defendants and their predecessors in interest deregulated, and every tenant that was treated as a market tenant, was done so illegally.

35. As a result of the actions of Defendants and their predecessors in interest, Plaintiffs and members of the putative class have been denied, *inter alia*, their rights under the RSL and RCL to renewal leases under the same terms and conditions as the original lease, to choose a one or two year lease renewal at rent increases limited to the statutory amounts; to the statutory protections from removal and harassment; and to the same services as were provided on the base date.

36. Upon information and belief, approximately 83 apartments in the building have been wrongfully treated as deregulated apartments.

37. Upon information and belief, the base date rents for the 83 improperly deregulated apartments cannot be determined because of the lack of reliable records of the legal rent, fraud, and/or intentional violations of law on the part of Defendants and their predecessors in interest.

38. Even after the Appellate Division issued its ruling in *Roberts* on March 5, 2009, Defendants continued the practice of treating the apartments at issue as luxury deregulated, notwithstanding Defendants' receipt of J-51 benefits for the building. Thus, by continuing to treat approximately 72 units in the building as deregulated, Defendants have knowingly and intentionally acted in violation of controlling law.

39. On or about September 9, 2011, Defendant WHITEHOUSE ESTATES, INC. commenced an action in this Court against Plaintiff KIRK SWANSON, Index No. 652478/2011, alleging, *inter alia*, that Mr. Swanson "provides tenants with false information that they will be protected from eviction if their leases expire." On or about September 22, 2011, Defendant WHITEHOUSE ESTATES, INC. filed a Notice of Discontinuance of the above action. The commencement of that action demonstrates Defendants' refusal to acknowledge in any way that the tenants' apartments were covered by rent stabilization, and continued to maintain that said apartments were properly deregulated, as recently as three weeks ago.

40. A few days after terminating their retaliatory suit, Defendants issued and disseminated to the tenants of the building a notice, dated September 28, 2011, stating, *inter alia*, that "many units that were switched into market rates will now need to be converted back to stabilization rates." The notice further states that Defendants have hired an outside consultant "to pour through the lease records to determine the exact rental amount that may be legally charged for each apartment," that Defendants will

amend the registration statements and provide tenants with "a new rent stabilized lease with a J-51 rider," and that, for any tenants whose current rent is "below the newly configured stabilized amount," that amount will be treated as a "'preferential' rent number."

41. Pursuant to the September 28, 2011 notice, Defendants have begun issuing tenants new leases with J-51 riders, as well as taking other actions as described by the notice. Tenants are being required to respond immediately by signing the new leases and riders.

D. Class Action Allegations

42. This action is brought as and may properly be maintained as a class action under the provisions of Article 9 of the CPLR.

43. The Class, as defined above, is so numerous that separate actions or joinder of parties, whether required or permitted, is impracticable.

44. There are questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. A principal common question of law is whether Defendants and their predecessors in interest wrongfully deregulated apartments and charged market rents to tenants while at the same time taking advantage of and receiving J-51 tax benefits. In addition, all members of the Class have been deprived of the right to a renewal lease at a legal regulated rent.

45. Plaintiffs have no interests antagonistic to the interests of the other members of the Class. There is no conflict between Plaintiffs and any other members of the Class with respect to this action or the claims for relief herein.

46. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent legal counsel experienced in real estate, landlord tenant, and class action litigation matters for that purpose.

47. Plaintiffs are adequate representatives of the Class and, together with their attorneys, are able to, and will fairly and adequately, protect the interests of the Class and its members.

48. Plaintiffs are adequate representatives of the Class and, together with their attorneys, are able to, and will fairly and adequately, protect the interests of the Class and its members.

49. In addition, a Class action is superior to other available methods for the fair, just, and efficient adjudication of the claims asserted herein. Joinder of all members of the Class is impracticable and, for financial and other reasons, it would be impractical for individual members of the Class to pursue separate claims. Moreover, prosecution of separate actions by individual members of the Class would create the risk of varying and inconsistent adjudications affecting tenants in the same building or complex, and would unduly burden the courts.

50. Plaintiffs and their counsel anticipate no difficulty in the management of this litigation as a class action.

51. Plaintiffs have withdrawn all claims of treble damages in this action.

52. This action was certified as a class action by Decision and Order of this Court dated August 6, 2012.

FIRST CAUSE OF ACTION FOR A DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

53. Plaintiffs, on behalf of themselves and all others similarly situated, repeat and reallege each and every allegation contained in paragraphs 1 through 52 of this Complaint.

54. Defendants continue to deprive Plaintiffs and members of the Class of their rights afforded under the RSL and the RCL. Despite receipt of real estate tax benefits under the J-51program, the apartments of Plaintiffs and the other members of the Class continue to be treated by Defendants as if they are deregulated apartments. Plaintiffs and the other members of the Class are either entitled to renewal leases on forms approved by the DHCR and required by the RSL at legal regulated rents or they are entitled to the protections of the RCL with all attendant rights.

55. Justiciable and present controversies therefore exist between Plaintiffs and the other members of the Class, on the one hand, and Defendants on the other hand, concerning the apartments in which Plaintiffs and the other members of the Class reside or resided. The failure of the Defendants to offer rent stabilized leases at legal regulated rents, or to provide the protections of the RCL as required, places Plaintiffs and the other members of Class in jeopardy of being required to pay illegal market rents and or sign leases that do not comply with law or possibly be forced to defend eviction proceedings for refusing to sign illegal leases.

56. Plaintiffs and the other members of the Class have no adequate remedy at law sufficient to protect them from the threat of or the actuality of payment of unlawful rents or eviction.

57. Plaintiffs and the other members of the Class are therefore entitled to a Declaratory Judgment declaring that their apartments are subject to rent stabilization or rent control and that Defendants are required to offer renewal leases on forms approved by the DHCR and required by the RSL at legal regulated rents, or to continue their existing tenancy pursuant to the RCL with legal maximum rents as established by the RCL.

58. Defendants should be enjoined from issuing any new lease or lease renewal that does not comply fully with the provisions of the RSL and RSC, and they should be further enjoined from issuing a J-51 rider to any existing tenant who was not required to sign a J-51 rider at the inception of his/her tenancy; and they should be further enjoined from imposing any rent increases or other charges that do not comply fully with the provisions of the RSL and RSC.

SECOND CAUSE OF ACTION FOR MONETARY DAMAGES: RENT OVERCHARGE

59. Plaintiffs, on behalf of themselves and all others similarly situated, repeat and reallege each and every allegation contained in paragraphs 1 through 58 of this Complaint.

60. At all times relevant hereto the apartments of Plaintiffs and the other members of the Class were and continue to be subject to the provisions of the RSL or the RCL.

61. Defendants have nonetheless charged Plaintiffs and the other members of the Class market rate rents or rents at rates otherwise in excess of rent stabilization rent levels or the rent control rent levels for their apartments.

62. Defendants have thus overcharged Plaintiffs and the other members of the Class in an amount equal to the difference between their monthly rents and security deposits and the appropriate legal regulated rent stabilized rents or the appropriate legal maximum rent under rent control for their apartments.

63. At all relevant times the rent overcharges by Defendants were willful, thus entitling Plaintiffs and the other members of the Class to an award of treble damages. If this action is certified by the court as a class action, Plaintiffs will not pursue treble damages on behalf of the class.

64. As a result of Defendants' rent overcharges, Plaintiffs and the other members of the Class have been damaged, and are entitled to an award of money damages against defendant in an amount to be determined at trial.

65. In addition, Plaintiffs and the other members of the Class demand payment of rent overcharges and treble damages during the pendency of this action should Defendants not cease their demands for illegal market rents. If this action is certified by the court as a class action, Plaintiffs will not pursue treble damages on behalf of the class.

66. In addition, Plaintiffs and the other members of the Class are entitled to an award of interest on the rent overcharges.

THIRD CAUSE OF ACTION FOR ATTORNEYS' FEES

67. Plaintiffs, on behalf of themselves and all others similarly situated, repeat and reallege each and every allegation contained in paragraphs 1 through 66 of this Complaint.

68. Plaintiffs and the other members of the Class are entitled to recover their reasonable attorneys' fees, costs and disbursements herein from Defendants pursuant to the RSL and RSC §2526.1 (d) and/or Real Property Law §234 and/or CPLR §909.

WHEREFORE, Plaintiffs, on behalf of themselves and the other members of the Class, respectfully request Judgment against Defendants as follows:

(I) On the **FIRST** Cause of Action, declaring that the apartments of Plaintiffs at 350 East 52nd Street, New York, New York 10022, and the other members of the Class are subject to rent stabilization or rent control, and that Defendants are required to offer renewal leases on forms approved by the DHCR and required by the RSC at legal regulated rents.

(II) On the **SECOND** Cause of Action, awarding Plaintiffs and the other members of the Class monetary damages against Defendants, in an amount to be determined at trial.

(III) On the **THIRD** Cause of Action, awarding Plaintiffs and the other members of the Class attorneys' fees.

(IV) Awarding Plaintiffs and the other members of the Class such other and further relief as this Court finds just and proper.

Dated: New York, New York
April 10, 2016

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