

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

-----X
E.A.T. IS OWNED BY ELI ZABAR, INC., :
 :
 Plaintiff, :
 :
 -against- :
 :
 B&J 609 LLC and WB 1064 MADISON LLC, :
 :
 Defendants. :
 :
-----X

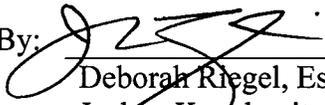
Index No. _____/18
SUMMONS
Plaintiff designates New York County as the place of trial.
The basis of venue is Plaintiff's principal office:
1064 Madison Avenue
New York, New York 10028

TO THE ABOVE NAMED DEFENDANTS:

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

Dated: New York, New York
February 5, 2018

ROSENBERG & ESTIS, P.C.
Attorneys for Plaintiff

By: 

Deborah Riegel, Esq.
Joshua Kopelowitz, Esq.
733 Third Avenue
New York, New York 10017
(212) 867-6000

TO DEFENDANTS:

B&J 609 LLC
c/o Goldberg Group Inc.
1 N Broadway
STE 400
White Plains, New York 10601

WB 1064 MADISON LLC
c/o Goldberg Group
1 N Broadway Suite 400
White Plains, New York 10601

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

-----X	:	Index No. _____/18
E.A.T. IS OWNED BY ELI ZABAR, INC.,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	<u>VERIFIED COMPLAINT</u>
	:	
B&J 609 LLC and WB 1064 MADISON LLC,	:	
	:	
Defendants.	:	
	:	
-----X	:	

Plaintiff, E.A.T. IS OWNED BY ELI ZABAR, INC. (“Zabar”), by its attorneys, Rosenberg & Estis, P.C., as and for its verified complaint, alleges as follows:

THE PARTIES

1. Plaintiff Zabar is a New York business corporation, duly organized pursuant to the laws of the State of New York with its principal place of business located at 1064 Madison Avenue, New York, New York (the “Building”).

2. Defendant B&J 609 LLC (“B&J 609”) is a New York limited liability company, duly organized pursuant to the laws of the State of New York with its principal place of business located at c/o Goldberg Group Inc., 1 N Broadway, Ste 400, White Plains, New York.

3. Defendant WB 1064 Madison LLC (“WB”) is a limited liability company, organized pursuant to the laws of the State of Delaware with its principal place of business located at c/o Goldberg Group Inc., 1 N Broadway, Ste 400, White Plains, New York. (B&J 609 and WB are collectively referred to herein as “Defendants” or “Landlord”).

THE LEASE

4. In 1973 Zabar opened its doors for business in the Building as a neighborhood café which showcases the owner’s, Eli Zabar (“Eli”), original ideas, attention to detail, and careful thinking about how to refine a recipe.

5. After nearly 45 years, Zabar has remained a quintessential New York eatery. Beloved for its overstuffed sandwiches on Eli's bread; the iconic "Tower of Bagel"; small batch salads, carefully-made several times a day; freshly roasted coffee, and flaky breakfast pastries.

6. As a result of Zabar's terrific quality, one can expect a polyglot mix of locals and tourists enjoying the various fares at Zabar's eatery.

7. Throughout Zabar's tenancy it was in constant communication with the prior owner's of the Building and their respective agents, working together with regard to both the Premises and the Building.

8. Most recently, Zabar entered into a written lease agreement for continued use of its eatery, dated June 1, 2002, by and between Cartis Corporation, as landlord, and Zabar, as tenant, as amended by the First Amendment of Lease, dated June 1, 2012, by and between Cartis Corporation, as landlord, and Zabar, as tenant (collectively the "Lease").

9. Defendants are the owners of the Building as tenants in common pursuant to a Bargain and Sale Deed with Covenant dated January 30, 2014.

10. By letter dated May 19, 2016, Zabar exercised its option to extend the term of the Lease for an additional five (5) years.

11. The expiration date of the Lease is May 31, 2022, subject to a further right of tenant to extend the Lease for an additional five (5) year term expiring May 31, 2027.

12. Pursuant to the provisions of the Lease, Zabar leased the basement, first floor and second floor in the Building (the "Premises").

LANDLORD'S BREACH OF THE LEASE AND LAW

13. Landlord purchased the Building for \$26,000,000 with the expectation that it would be able to develop the site and/or sell the Building for a substantial profit.

14. In order for Landlord to achieve its goal it believes it is necessary to clear the Building of all of its tenants.

15. In furtherance of Landlord's plan, it rid the Building of all residential tenants.

16. Zabar is the last tenant in the Building.

17. Landlord stopped with the upkeep of the Building in what is a total reversal of the care by which the prior owners treated both the Building and its tenants.

18. The Housing Preservation and Development website provides that there are four violations issued against the Building, including three "C" violations which were recently issued during Landlord's ownership of the Building.

19. Landlord has failed and/or refused to cure the foregoing violations and allowed the Building to fall into disrepair in furtherance of its plan to harass Zabar into vacating the Building.

20. In stark contrast to the prior owners, Landlord refuses to communicate reasonably with Zabar and instead is attempting to throw Zabar's out of its space without so much as a telephone call.

21. Indeed, Landlord is attempting to bully Zabar from the Building by, *inter alia*, refusing to negotiate in good faith the base rent for Zabar's first renewal term, making unauthorized entries into the Premises, and issuing repeated threats of litigation.

22. Landlord is in breach of Section 22 of the Lease which provides that Landlord will not interfere with Zabar's enjoyment of the Premises.

23. Landlord is in breach of the New York City Administrative Code §22-902 which provides that commercial tenant harassment is any act or omission by or on behalf of a landlord that is intended to cause a commercial tenant to vacate covered property, or to surrender or waive any rights under a lease or other rental agreement or under applicable law in relation to such

covered property by, *inter alia*, (a) causing an interruption or discontinuance of one or more essential services; (b) causing an interruption or discontinuance of an essential service for an extended period of time; (c) causing an interruption or discontinuance of an essential service where such interruption or discontinuance substantially interferes with a commercial tenant's business; (d) repeatedly commencing frivolous court proceedings against a commercial tenant; and (e) engaging in repeated or enduring acts or omissions that substantially interfere with the operation of a commercial tenant's business.

Landlord's Refusal to Negotiate the Base Rent for the First Renewal Term

24. Section 54 of the Lease provides the procedure by which Landlord and Zabar are to negotiate and resolve the base rent for the first renewal term for the Premises which expires May 31, 2022 and the second renewal term for the Premises which expires May 31, 2027.

25. Landlord has failed and refused to comply with Section 54 of the Lease in that, *inter alia*, Landlord has failed to comply with the timelines set forth therein and, instead, has purposely conducted the rent setting procedure in a haphazard manner designed to harass Zabar.

26. Moreover, Landlord has failed and refused to continue with the rent setting procedures set forth in Section 54 of the Lease such that the time frames for the setting of the new rent have expired.

27. Landlord's refusal to comply with Section 54 of the Lease substantially interferes with the operation of Zabar's business.

28. Upon information and belief, Landlord's refusal to comply with Section 54 of the Lease is designed to harass Zabar and prevent Zabar from having the certainty it needs to properly budget and operate its business.

29. At the prior owner's insistence, the square footage of the Premises was memorialized in the amendment to the Lease.

30. Notwithstanding the foregoing, Defendants seek to claim that such agreed to square footage for the Premises, which is memorialized in the Lease, not be used as per the Lease in calculating the new rental for the renewal period.

31. Defendants are refusing to comply with the square footage in the Lease to determine the new rental value and, instead, are seeking to assert a larger square footage than what is memorialized in the Lease. This is being done for the sole purpose of harassing Zabar.

Landlord's Unauthorized Entries to the Premises

32. Section 13 of the Lease provides that Landlord may enter the Premises at reasonable times for the sole purposes of examining the Premises in furtherance of repairs or to show the Premises to prospective tenants during the last six months of the Lease term.

33. Landlord has repeatedly made unauthorized entries into the Premises at times that are not reasonable and for purposes that are not provided for in the Lease.

34. On or about January 5, 2018, Landlord's agent, Haffey Architecture & Engineering PLLC ("Haffey"), entered the Premises and the third floor of the Building without permission from Zabar. Zabar had no knowledge that Haffey wanted access to the space that Haffey entered the Premises, or that Haffey inspected the Premises and the third floor.

35. Haffey's surreptitious entrance into the Premises and the third floor and inspection thereof was all done in secret and without Zabar's permission and/or knowledge.

36. The sole purpose of Haffey's trespass was to create a bogus report to be used as the basis for a notice to cure to be served upon Zabar in furtherance of Landlord's plan to harass Zabar into vacating the Building.

37. On or about January 28, 2018, Landlord's agent, the superintendent "George", entered the Premises without Zabar's permission.

38. During George's unauthorized entry he took pictures of both the Premises and Zabar's employees without permission. Further, George attempted to interrogate Zabar's employees about the Premises without permission and in a menacing and harassing manner.

39. The sole purpose for George's unauthorized entry and actions was to harass Zabar in furtherance of Landlord's plan to harass Zabar into vacating the Building.

40. On or about February 2, 2018, George again entered the Premises without Zabar's permission. Further, George again took pictures of both the Premises and Zabar's employees without permission. Moreover, George again attempted to interrogate Zabar's employees about the Premises without permission and in a menacing and harassing manner.

41. The sole purpose for George's unauthorized entry and actions was to harass Zabar in furtherance of Landlord's plan to harass Zabar into vacating the Building.

Landlord's Repeated Threats of Frivolous Litigation

42. Pursuant to an agreement with the prior owners of the Building, Zabar spent considerable money performing significant construction to the third floor and altered it from residential apartments to office space. In addition, pursuant to an agreement with the prior owners of the Building, Zabar spent considerable money legalizing the use of the third floor as an office space.

43. Thereafter, in or about 2002, Zabar began its occupancy of the third floor of the Building as a tenant and has used the third floor as its headquarters for Zabar's business and its related companies ever since.

44. Zabar does not occupy the third floor pursuant to the Lease.

45. On or about December 27, 2017, Landlord threatened to commence a summary proceeding against Zabar in event that Zabar did not vacate the third floor on or before January 31, 2018 pursuant to a thirty day notice of termination. This was done without any warning.

46. Upon information and belief, Landlord's termination of Zabar's tenancy of the third floor and threat of litigation is for the sole purpose of harassing Zabar to vacate the Premises.

47. Thereafter, on the evening of Friday, January 12, 2018, Defendants sent Zabar a letter advising of purported defaults under the Lease and stating that Zabar must cure same on or before January 17, 2018 or Defendants would serve a notice to cure.

48. Upon information and belief, Defendants sent this letter over a holiday weekend with the goal of creating a situation it thought would cause Zabar to fail for the sole purpose of harassing Zabar to vacate the Premises.

49. Notwithstanding the short notice, Zabar advised Defendants that it engaged the necessary contractors, architects and engineers to investigate the matters described in the letter, have determined that some of the information presented is not accurate, and will proceed to address or clarify these matters with Defendants in a reasonable and timely manner. Zabar further advised that any work that may have to be done will be done in a timely manner as well and that Zabar will continue to keep Defendants apprised.

50. On or about January 19, 2018, WB and an unknown entity named B&J LLC allegedly served Zabar with a Fifteen (15) Day Notice of Default and Opportunity to Cure expiring on February 9, 2018 (the "Notice"), which Notice was served as the predicate for termination of the Lease and frivolous litigation.

51. The Notice unabashedly relies and incorporates Haffey's inspection report which, in turn, was drafted based up on Haffey's trespass into the Premises and the third floor of the Building.

52. The Notice alleges, *inter alia*, that Zabar is in default of the Lease as follows: (a) there is currently a duct ventilation installed by Zabar for which no permit has been filed and/or has issued; (b) there is currently a Low Temperature Chimney outlet installed by Zabar that does not meet New York City Building Code (the "Code") requirements in that said chimney does not extend three feet above the highest construction within a ten foot radius; (c) there is currently no emergency egress ladder from the second floor roof to the neighboring adjacent property as required by the New York City Department of Buildings ("DOB") approved plans; (d) Zabar is currently occupying the third floor of the Building for storage purposes without Landlord's permission and in violation of the Code; (e) Zabar is currently occupying the second floor of the Premises as a place of Assembly Eating and Drinking Establishment without the required approvals; (f) there is currently mechanical equipment (involving fans, a cooling tower, and an air conditioner condenser) installed on the roof of the Building for which no mechanical permit or equipment use permit has been filed and/or issued; (g) there is currently a storage shed that has been erected on the second floor of the Premises for which no permit or equipment use permit has been filed and/or has issued; and (h) there is currently mechanical equipment in the form of a gas-fired hot water heater installed in the boiler room with no direct ventilations to the chimney, and without an engineer filing with the DOB showing the sources of additional combustion ventilation air for combustion and additional chimney capacity to exhaust the products of such combustion.

53. The Notice demands that Zabar cure the purported defaults on or before February 9, 2018, "and in the event Zabar fails to cure its defaults, Landlord will cancel the Lease and

terminate Zabar's tenancy pursuant to Paragraph 17 of the Lease and in accordance with all applicable provisions of the Lease and law."

54. As a threshold matter, the Notice was served by B&J LLC which is not an owner or landlord of the Premises and does not have authority to serve such a Notice pursuant to the Lease.

55. Upon information and belief, the allegation in the Notice regarding the installation of illegal ventilation ducts is without merit. Upon information and belief, the subject exhaust systems were filed, approved and inspected by the Fire Department of New York and the approvals for same may be found on the website of the DOB at the following links: (a) <http://a810bisweb.nyc.gov/bisweb/JobsQueryByNumberServlet?requestid=3&passjobnumber=100334381&passdocnumber=01;> and (b) [http://a810-bisweb.nyc.gov/bisweb/JobsQueryByNumberServlet?requestid=3&passjobnumber=100625021&passdocnumber=01.](http://a810-bisweb.nyc.gov/bisweb/JobsQueryByNumberServlet?requestid=3&passjobnumber=100625021&passdocnumber=01)

56. Upon information and belief, the allegation in the Notice that there is currently a Low Temperature Chimney outlet installed by Zabar that does not meet the Code requirements is also without merit.

57. Upon information and belief, the 1968 Code §27-859 cited in the Notice does not apply to the gas fired sealed combustion boilers installed on the second floor. The equipment installed does not require a chimney, but a vent which falls under a different set of requirements. Further, upon information and belief, according to Munchkin's installation manual the boilers installed on the second floor allow the use of PVC or CPVC for exhaust vent materials. Schedule 40 PVC has a melting point of 140 degrees and CPVC has a melting point of 200 degrees. The permitted vent material melting point temperatures are nowhere near 550 degrees or 480 degrees above room temperature cited in the 1968 Code for equipment that requires chimneys.

Therefore, the gas fired equipment does not require a chimney nor does it have to comply with clearance requirements associated with chimneys.

58. Upon information and belief, the allegation in the Notice that there is currently no emergency egress ladder from the second floor roof to the neighboring adjacent property as required by the Code does not apply to Zabar. As set forth on DOB's website, the prior owner of the Building filed plans to eliminate the subject easement as may be found on the following link:<http://a810bisweb.nyc.gov/bisweb/JobsQueryByNumberServlet?requestid=2&passjobnumber=104114897&passdocnumber=01>.

59. The Notice makes allegations regarding the third floor of the Building and states that Zabar's Lease will be terminated and Landlord will commence frivolous litigation against Zabar in the event Zabar does not cure the purported conditions alleged with respect to the third floor.

60. Zabar does not occupy the third floor pursuant to the Lease.

61. Zabar's actions with regard to the third floor of the Building may not serve as an allegation in the Notice as a predicate to any action against Zabar's tenancy in the Premises or pursuant to the Lease because the third floor is not governing by the Lease.

62. The Notice includes allegations regarding the third floor as a means to further harass Zabar into vacating the Premises.

63. In any event, upon information and belief, Zabar's use of the third floor is in compliance with the certificate of occupancy and the floors are in the same condition as when the space was leased.

64. The Notice also alleges that Zabar's use of the second floor of the Premises is without the required approvals. This allegation, upon information and belief, is without merit.

65. Upon information and belief, the second floor space is not a public assembly nor is it part of the first floor public assembly. There are fewer than 75 occupants and it has its own two pre-existing means of egress, one into the main public hall stair of the building and the other onto the existing fire escape with door access at the front of the Building.

66. Likewise, upon information and belief, the allegation in the Notice regarding the mechanical equipment is untrue. Upon information and belief, the rear roof setback is a concrete slab supported by steel beams which was designed for the subject loads and does not require dunnage. Additionally, the City of New York Zoning Resolution §33-301 confirms that no rear yard is required in buildings in C districts within 100 feet of the closest intersection.

67. Upon information and belief, the allegation in the Notice regarding the storage shed on the second floor is without merit because it is a temporary structure. Nevertheless, pursuant to Section 17 of the Lease, Zabar has diligently commenced curing this condition and removing the temporary shed.

68. Upon information and belief, the allegation in the Notice that there is mechanical equipment in the form of a gas-fired hot water heater installed in the boiler room with no direct ventilations to the chimney, and without the correct filing with DOB is incorrect.

69. Upon information and belief, the hot water heater that was installed in the boiler room has a direct vent connection to the boiler flue that goes to the high roof. Upon information and belief, pursuant to the Code §[1504.9] 27-887 Installation requirements, the foregoing installation is permitted as follows –

(c) Where two or more vent connectors enter a common vertical gas vent or chimney, the smaller connector shall enter at the highest level consistent with available headroom or clearance to combustible material. Two or more items of gas equipment may be vented through a common vent connector or manifold located at the highest level consistent with available headroom or clearance to combustible material. The manifold, all junction fittings, and the

common vent connector shall be of a size adequate for the combined volume of the vent gases.

70. Upon information, the “hot water heating” referred to in the Notice in the dish wash area is a storage tank and has no combustion element and therefore does not require any venting.

71. Accordingly, seven of the eight purported defaults listed in the Notice are erroneous and not defaults or have already been cured. The remaining default is accounted for and Zabar is working diligently to resolve the same.

72. Zabar is ready, willing and able to cure any defaults under the Lease as alleged in the Notice, if the Court ultimately determines that there is any default to be cured.

73. Zabar has commenced to cure the alleged defaults.

74. Further, the Notice relies on the Haffey report which bases its report, in part, upon a certificate of occupancy for the Building dated September 27, 2004.

75. The 2004 certificate of occupancy is no longer effective and has been replaced by the final certificate of occupancy issued by the New York City Department of Buildings with an effective date May 5, 2008.

76. The Notice further states that, pursuant to Section 19 of the Lease, “Tenant is responsible for legal fees incurred by the Landlord with regard to the preparation and service of this Notice and subsequent notices, as well as legal fees incurred in commencing any legal actions or proceedings.”

77. Section 19 of the Lease does not provide that Zabar is responsible for legal fees incurred by Landlord with regard to preparation of the bogus Notice but, instead, states that “reasonable attorney’s fees” may be recoverable in the event that Landlord has served a proper notice to cure, the applicable cure period has expired, Landlord has instituted a proceeding, prevailed in such proceeding and then served Zabar with a ten day demand for payment.

78. The Notice is defective as it was served by an entity that is not the owner and landlord of the Premises and is riddled with untrue statements.

79. It is manifest that the Notice was served for the sole purpose of harassing Zabar into vacating the Premises.

80. Upon information and belief, Defendants intend to terminate the Lease in the event that Zabar does not cure the alleged defaults set forth in the Notice.

81. A judicial determination of the rights and obligations of the parties is necessary in order that the rights and obligations of the parties may be adjudicated without Zabar risking the forfeiture of its valuable leasehold.

FIRST CAUSE OF ACTION

82. Zabar repeats, reiterates and realleges each and every allegation contained in Paragraphs “1” through “81”.

83. Zabar has no adequate remedy at law.

84. Zabar is entitled to a declaratory judgment that the Notice is legally insufficient to cause the commencement of a cure period under the Lease and is legally insufficient to serve as the predicate for termination of the Lease.

85. By reason of the foregoing, Zabar is entitled to a declaratory judgment that the Notice is void and of no force and effect.

SECOND CAUSE OF ACTION

86. Zabar repeats, reiterates and realleges each and every allegation contained in Paragraphs “1” through “85”.

87. Zabar has no adequate remedy at law.

88. As a result of Defendants rendering of a fatally defective Notice upon Zabar, Zabar is threatened with the imminent loss of its valuable leasehold interest in real property.

89. By reason of the foregoing, Zabar is entitled to a declaratory judgment that it is not in default of the Lease.

THIRD CAUSE OF ACTION

90. Zabar repeats, reiterates and realleges each and every allegation contained in Paragraphs “1” through “89”.

91. Zabar has no adequate remedy at law.

92. Zabar is entitled to a declaratory judgment and a permanent injunction, enjoining Defendants, their agents, servants and/or employees from terminating the Lease and/or interfering with its tenancy in any manner based upon the alleged defaults set forth in the Notice.

FOURTH CAUSE OF ACTION

93. Zabar repeats, reiterates and realleges each and every allegation contained in Paragraphs “1” through “92”.

94. Zabar has no adequate remedy at law.

95. Zabar is entitled to a declaratory judgment and a permanent injunction, enjoining Defendants, their agents, servants and/or employees from trespassing upon the Premises.

FIFTH CAUSE OF ACTION

96. Zabar repeats, reiterates and realleges each and every allegation contained in Paragraphs “1” through “95”.

97. Zabar has no adequate remedy at law.

98. Zabar is entitled to a declaratory judgment that the square footage of the Premises as set forth in the Lease, i.e., “that for purposes of the Lease, each of the first floor portion and the second floor portion of the Premises are deemed to contain 2,187 rental square feet,” is to be used in the calculation to determine the fair market value of the Premises in accordance with the Lease.

SIXTH CAUSE OF ACTION

99. Zabar repeats, reiterates and realleges each and every allegation contained in Paragraphs “1” through “98”.

100. Landlord has harassed Zabar in violation of New York City Administrative Code §22-902 as set forth above.

101. Zabar has no adequate remedy at law.

102. Zabar is entitled to a declaratory judgment from the court imposing a civil penalty upon Defendants in an amount of \$10,000 for each covered property.

SEVENTH CAUSE OF ACTION

103. Zabar repeats, reiterates and realleges each and every allegation contained in Paragraphs “1” through “102”.

104. Landlord has harassed Zabar in violation of New York City Administrative Code §22-902 as set forth above.

105. Zabar has no adequate remedy at law.

106. Zabar is entitled to a declaratory judgment and a permanent injunction, enjoining and restraining Defendants, their agents, servants and/or employees from engaging in commercial tenant harassment and directing Defendants to ensure that no further violation occurs.

EIGHTH CAUSE OF ACTION

107. Zabar repeats, reiterates and realleges each and every allegation contained in Paragraphs “1” through “106”.

108. Landlord has harassed Zabar in violation of New York City Administrative Code §22-902 as set forth above.

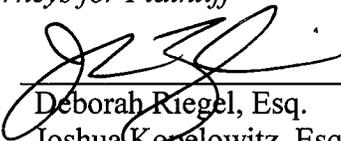
109. As a result of the foregoing, Zabar is entitled to an award of compensatory damages, punitive damages and reasonable attorneys' fees and court costs as against Defendants in an amount to be determined by the court but believed to be no less than \$5,000,000.

WHEREFORE, Zabar prays for judgment as follows: (a) First Cause of Action – declaratory judgment that the Notice is void and of no force and effect, (b) Second Cause of Action – declaratory judgment that Zabar is not in default of the Lease, (c) Third Cause of Action – declaratory judgment and a permanent injunction, enjoining Defendants, their agents, servants and/or employees from terminating the Lease and/or interfering with Zabar's tenancy in any manner based upon the alleged defaults set forth in the Notice, (d) Fourth Cause of Action – declaratory judgment and a permanent injunction, enjoining Defendants, their agents, servants and/or employees from trespassing upon the Premises, (e) Fifth Cause of Action – a declaratory judgment that the square footage of the Premises as set forth in the Lease, i.e., "that for purposes of the Lease, each of the first floor portion and the second floor portion of the Premises are deemed to contain 2,187 rental square feet," is to be used in the calculation to determine the fair market value of the Premises in accordance with the Lease, (f) Sixth Cause of Action – declaratory judgment from the court imposing a civil penalty upon Defendants in an amount of \$10,000 for each covered property, (g) Seventh Cause of Action – declaratory judgment and a permanent injunction, enjoining and restraining Defendants, their agents, servants and/or employees from engaging in commercial tenant harassment and directing Defendants to ensure that no further violation occurs, (h) Eighth Cause of Action – an award of compensatory damages, punitive damages and reasonable attorneys' fees and court costs as against Defendants

in an amount to be determined by the court but believed to be no less than \$5,000,000, and (i) further relief as to the Court seems just and proper.

Dated: New York, New York
February 5, 2018

ROSENBERG & ESTIS, P.C.
Attorneys for Plaintiff

By: 

Deborah Riegel, Esq.

Joshua Kopelowitz, Esq.

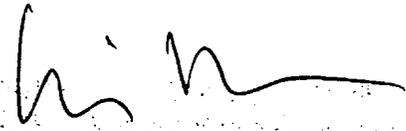
733 Third Avenue
New York, New York 10017
(212) 867-6000

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

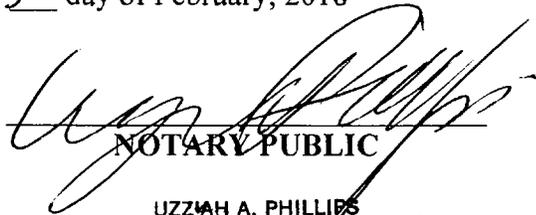
Eli Zabar, being duly sworn, deposes and says:

1. I am the President of E.A.T. Is Owned by Eli Zabar, Inc.
2. I have read the complaint and know the content thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The source of my information and belief is the books and records of plaintiff.
3. This Verification is made by deponent because deponent is the President of plaintiff.



ELI ZABAR

Sworn to before me this
5th day of February, 2018



NOTARY PUBLIC
UZZIAH A. PHILLIPS
Notary Public, State of New York
No. 24-4738059
Qualified in Kings County
Certificate filed in New York County
Commission Expires May 31, 2019