| **City of New York v NYC Midtown LLC** |
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| 2017 NY Slip Op 31596(U) |
| July 31, 2017 |
| Supreme Court, New York County |
| Docket Number: 450151/2015 |
| Judge: James E. d'Auguste |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** HON. JAMES E. d'AUGUSTE **PART** 55

*Justice*

Index Number : 450151/2015
CITY OF NEW YORK
vs.
NYC MIDTOWN LLC
SEQUENCE NUMBER : 005
DISMISS ACTION

**INDEX NO.** _____

**MOTION DATE** _____

**MOTION SEQ. NO.** _____

**The following papers, numbered 1 to _____ , were read on this motion to/for** _____

**Notice of Motion/Order to Show Cause — Affidavits — Exhibits** _____ **No(s).** _____

**Answering Affidavits — Exhibits** _____ **No(s).** _____

**Replying Affidavits** _____ **No(s).** _____

**Upon the foregoing papers, it is ordered that this motion is**

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER

**MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):**

**Dated:** 7/31/17

_____, J.S.C.
HON. JAMES E. d'AUGUSTE

1. CHECK ONE: ..... [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: [ ] GRANTED [ ] DENIED [ ] GRANTED IN PART [X] OTHER
3. CHECK IF APPROPRIATE: ..... [ ] SETTLE ORDER [ ] SUBMIT ORDER
[ ] DO NOT POST [ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

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

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THE CITY OF NEW YORK,

Plaintiff,

-against-

NYC MIDTOWN LLC, d/b/a "5th Avenue Suites" and "WEST 46TH STREET APARTMENTS," et al.,

Defendants.

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**DECISION AND ORDER**
Index No. 450151/2015
Mot. Seq. Nos. 005-009

**Hon. James E. d'Auguste**

The within decision consolidates Motion Sequence Nos. 005, 006, 007, 008, and 009 for disposition. In Motion Sequence No. 005, defendants Eran Suki ("Suki") and Benzion Suky ("Suky"), members and officers of NYC Midtown LLC d/b/a "5th Avenue Suites" and "West 46th Street Apartments" ("NYC Midtown") and NY City Stay LLC (collectively, the "Operator Defendants"), who, along with defendant Direct Realty, LLC ("Direct Realty"),[1] have allegedly engaged in illegal transient use in the subject buildings as defined below, move for an order, pursuant to CPLR 3211(a)(7), dismissing the complaint as against them. Plaintiff, The City of New York ("City") cross-moves for an order sanctioning the Operator Defendants for their failure to comply with discovery obligations by striking their answer, pursuant to CPLR 3126, unless they comply with the outstanding discovery by a date certain, or, in the alternative, pursuant to CPLR 3124, compelling the Operator Defendants to comply with its first set of interrogatories and

[1] Direct Reality, which formerly owned one set of *in rem* buildings in which illegal transient use is allegedly occurring, appears to have not answered the complaint. Suky was the equity owner of Direct Realty, which sold it properties to defendant West 46th Street Investors LLC ("West 46th LLC"). Suky's wife has as much as a 49% ownership interest in West 46th LLC. *See Lavi v. Assa et al.*, Index No. 651982/2016 (Sup. Ct. N.Y. County) (the "*Lavi* Action").

demand for discovery and inspection. In Motion Sequence No. 006, the City moves by order to show cause, dated October 31, 2016, for an order, pursuant to New York Judiciary Law ("Judiciary Law") Sections 750 and 753, punishing defendants West 46th LLC and 15 West 55th St. Property LLC ("15 West 55th LLC") for criminal and civil contempt of court for violating a stipulated preliminary injunction order made in open court on March 11, 2016 (the "Preliminary Injunction Order"); and, pursuant to CPLR 2221 and 6313, modifying the Preliminary Injunction Order such that West 46th LLC, 15 West 55th LLC, and defendant Salim Assa ("Assa"), and any of defendants West 46th LLC, 15 West 55th LLC, 19 West 55th St. Property LLC (collectively, the "Owner Defendants")[2] together with their agents, employees, representatives, and all persons acting individually or in concert with them, are restrained from allowing any persons to use or occupy or permit the use or occupancy of any of the dwelling units at 334 West 46th Street and 15 West 55th Street, both in the County, City, and State of New York (collectively, the "properties"), or any of the within subject buildings for less than thirty consecutive days. In Motion Sequence No. 007,[3] the City moves by order to show cause, dated December 22, 2016, for an order, pursuant to New York City Administrative Code ("Admin. Code" or "Administrative Code") Section 7-713, appointing a temporary receiver to manage the properties during the pendency of this action.[4] In

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[2] While the "Owner Defendants" include multiple entities, the only two defendants accused of committing contempt are West 46th LLC and 15 West 55th LLC. The term "Owner Defendants," as used to discuss the allegations of contempt, *infra*, refers to only these two entities.

[3] The signed order to show cause is filed on NYSCEF as Doc. No. 397, which appears to have been mistakenly labeled by the Clerk as Motion Sequence No. 008. All responsive papers are filed under Motion Sequence No. 007.

[4] In the *Lavi* Action, see n. 1 *supra*, a motion for a preliminary injunction and appointment of a temporary receiver for 334-336 West 46th Street was recently granted. *Lavi v. Assa*, 2017 WL 2494802, 2017 N.Y. Slip Op. 31241(U) (Sup. Ct. N.Y. County June 9, 2017) (d'Auguste, J.). This action has since settled.

Motion Sequence No. 008, the City moves by order to show cause, dated December 22, 2016, for an order, pursuant to CPLR 2304, 2307, and 3103, quashing the subpoenas *duces tecum* and *ad testificandum* seeking testimony and documents from Krzysztof Parczewski of the New York City Department of Buildings ("DOB") and Ervin Santiago of the Fire Department of the City of New York ("FDNY") with respect to the buildings located at 15 West 55th Street and 334 West 46th Street on January 5, 2017.[5] In Motion Sequence No. 009, the Owner Defendants and Assa move by order to show cause, dated December 23, 2016, for an order enjoining the contempt hearing in relation to Motion Sequence No. 006 from proceeding and staying the proceeding, pursuant to CPLR 2201, or, alternatively, bifurcating the hearing such that the criminal contempt proceeding would occur before the civil contempt proceeding.[6]

For the reasons stated herein, the motion to dismiss in Motion Sequence No. 005 is denied and the City's cross-motion is granted to the extent that the Operator Defendants are ordered to comply with the City's first set of interrogatories and demand for discovery and inspection, but is

[5] The signed order to show cause is filed on NYSCEF as Doc. No. 408, which appears to have been mistakenly labeled by the Clerk as Motion Sequence No. 007. All responsive papers are filed under Motion Sequence No. 008. While this Court previously decided this motion on the record on January 5, 2017 with respect to that branch of the City's motion to quash the Owner Defendants' subpoenas to secure testimony from certain City employees (NYSCEF Doc. No. 443, Tr. 3:3–6:22) and, later on, City attorneys (NYSCEF Doc. No. 446, Tr. 3:24–30:23), this Court provides its reasoning here. As the witnesses' testimony that the Owner Defendants sought would either be privileged or irrelevant to the issue of contempt, the Court granted the City's application. Notably, the City produced the employees whose inspections determined that illegal short-term tenancies occurred in violation of the preliminary injunction order as witnesses at the contempt hearing.

[6] In Motion Sequence No. 009, the City cross-moved for an order, pursuant to CPLR 3108 and Judiciary Law Section 2-b(3), issuing an open commission and letter rogatory facilitating the testimony of George Grund. The City's cross-motion was granted on the record on January 5, 2017. NYSCEF Doc. No. 443, Tr. 5:19–6:22.

otherwise denied without prejudice. Having conducted a multi-day contempt proceeding,[7] the City's motions in Motion Sequence Nos. 006 and 007 are granted to the extent of finding West 46th LLC and 15 West 55th LLC in civil contempt, appointing a temporary receiver to manage and operate both of the properties during the pendency of this action and modify the Preliminary Injunction Order. That branch of the City's motion in Motion Sequence No. 006 seeking to hold West 46th LLC and 15 West 55th LLC in criminal contempt is denied. As this Court granted the City's application for the appointment of a temporary receiver, the Owner Defendants' civil contempt is deemed purged upon payment of a $250 fine. Motion Sequence No. 009 seeking to enjoin the contempt hearing or, in the alternative, bifurcate the contempt hearing is denied.

**Factual and Procedural History**

As alleged in the complaint, during the period from October 2013 to February 2015, the DOB issued approximately one hundred notices of violations to the Owner Defendants due to their violations of applicable building and fire code provisions resulting from the illegal use of the properties as short-term hotels. NYSCEF Doc. No. 303, ¶ 4. The City exercised repeated administrative enforcement efforts, including issuing numerous administrative orders directing the Owner Defendants to terminate this transient use; however, the properties allegedly continued to be used unlawfully and outstanding penalties remained unpaid. By February 2015, the City believed it was necessary to commence a nuisance abatement proceeding in order to ensure that the Owner Defendants would maintain the subject buildings in a reasonably safe and code-compliant condition in accordance with their common law and statutory duties.

[7] Testimony was taken in the contempt hearing on January 5-6, January 26, January 31, February 3, and February 7, 2017 (the "contempt hearing").

On February 5, 2015, the City commenced the instant nuisance abatement proceeding by filing a summons and verified complaint seeking to halt the alleged illegal use and occupancy of the following four multiple dwelling buildings in Manhattan as short-term hotels for stays of less than thirty consecutive days: (1) 15 West 55th Street;[8] (2) 19 West 55th Street; (3) 334 West 46th Street;[9] and (4) 336 West 46th Street (collectively, the "subject buildings"). Each of the four buildings is a multiple dwelling under Class "A," J-2, and R-2 occupancy groups, which permit permanent residence by the same person or family for thirty consecutive days or more, colloquially known as "apartment houses," pursuant to New York State Multiple Dwelling Law ("Multiple Dwelling Law" or "MDL") Section 4.8 and New York City Housing Maintenance Code Section 27-2004(8)(a). The complaint alleges that Assa is the owner and principal officer of the Owner Defendant entities and is actively engaged in the daily management and control of the subject buildings. Further, the complaint alleges that the subject buildings have been unlawfully advertised, managed, and operated by defendants as illegal short-term hotels. According to the complaint, under both statutory and common law, a public nuisance occurred and was maintained at the subject buildings by all defendants during the relevant time period.[10]

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[8] 15 West 55th Street has a total of thirty-five apartments. NYSCEF Doc. No. 26 (Certificate of Occupancy). The certificate of occupancy, also referred to as a "C/O", states that for this Class "A" multiple dwelling, the permissible use and occupancy for the first through eighth floors of the building is only "[f]our (4) [a]partments on each story," with three apartments on the ninth floor and one apartment in the basement. *Id.*

[9] 334 West 46th Street is a three-story building with only one apartment permitted on each floor, from the first to third floors. NYSCEF Doc. No. 61 (Certificate of Occupancy). Additionally, the only authorized type of occupancy, pursuant to the certificate of occupancy, is for "permanent residence," which corresponds to an R-2/J-2 classification. *See id.*

[10] The City alleges that the Owner Defendants' and Assa's tortious misconduct, committed either together or individually, resulted in both civil and criminal violations of the Multiple Dwelling Law and additional violations of the Administrative Code, including the New York City Consumer Protection Law ("Consumer Protection Law"), the New York City Building Code ("Building

The City alleges that the public nuisance stems from the following factors: (1) the use of permanent residential dwelling units as short-term hotels results in buildings that lack the more stringent fire and safety features required for short-term occupants; (2) similarly, the existence of significant security risks in residential buildings not created for transient use; (3) the disruption of the quiet enjoyment, safety, and comfort of the permanent residents in the building due to filth, noise, and excessive traffic of transient occupants; and (4) the reduction of permanent housing available to City residents during a time at which there is a legislatively declared housing emergency. All the above factors caused by defendants alleged illegal conduct negatively affect the health, safety, security, and general welfare of the City's residents and visitors.

In Motion Sequence No. 001, filed as a component of the commencement of the instant proceeding, the City sought via order to show cause a temporary restraining order ("TRO") and a preliminary injunction to enjoin the alleged illegal activity of transient occupancy at each of the subject buildings, as well as the appointment of a temporary receiver for each one of the subject buildings. More specifically, in that motion, the City sought, in relevant part, to enjoin "the defendants and each of them, their agents, employees, representatives and all persons acting individually or in concert with them during the pendency of this action" from, *inter alia*, "using or occupying, or permitting the use or occupancy of any of the units in the [subject buildings] for transient occupancy and/or as a transient hotel, hostel, or apartment hotel." NYSCEF Doc. No. 3; *see also* NYSCEF Doc. Nos. 4-112 (Mot. Seq. No. 001). On February 6, 2015, this Court (Huff, J.) granted the City's request for a TRO, causing the Owner Defendants, as well as the Operator Defendants, to be temporarily restrained from using the subject buildings as illegal short-term

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Code"), the New York City Fire Code ("Fire Code"), and the New York City Nuisance Abatement Law ("Nuisance Abatement Law" or "NAL"). NYSCEF Doc. No. 303, ¶ 7 n.2.

hotels, or booking the same for such activity, as well as from interfering with the City's access to inspect the subject buildings. NYSCEF Doc. No. 113.

On March 11, 2016, the parties appeared before the Court for a conference related to the City's motion for a preliminary injunction (Mot. Seq. No. 001). The parties agreed during this appearance that in exchange for the City withdrawing both its request for the preliminary injunction against Assa and that branch of its application for a temporary receiver for the subject buildings, the Owner Defendants consented to the City's proposed preliminary injunction terms on the record in open court:

> THE COURT: Okay. So, we have a resolution of the preliminary, a partial resolution of the preliminary injunction motion?
>
> MR. NAGEL: Yes, your Honor.
>
> Pursuant to the City's discussion with counsel for the Defendants, who the City has alleged are the owners of the subject properties of the buildings, it's been agreed among counsel for our parties that the City's motion for a preliminary injunction will be granted as against the four in rem Defendant buildings, and against the owner entities, 15 West 55th Street Property LLC, 19 West 55th Street Property LLC, and West 46th Street Investors LLC, and the City will withdraw its request for a preliminary injunction as to the individual Defendant Salim Assa.
>
> In addition, the City will withdraw its application for the appointment of a Temporary Receiver without prejudice to be renewed upon evidence if it becomes necessary, to seek a Temporary Receiver once again.
>
> THE COURT: With regards to the, I will call them the tenant Defendants, we are going to adjourn this, as it relates to them, until the date of, at 10:30, April 14th, correct, and hopefully, that will work out as well.
>
> Then, I am certainly encouraged by the fact that we were able to deal with the preliminary injunction. Hopefully, that will result in us breaching any[ ] gaps that exist with regard to the permanent injunction application, which is the application that forms the central component of the case.

NYSCEF Doc. No. 304, Tr. 3:18-4:20 (emphasis added).[11] As a result of this agreement on the record, a stipulation, dated April 6, 2016 and filed on April 8, 2016, to resolve the City's motion for a preliminary injunction as against defendants NYC Midtown LLC, d/b/a "5th Avenue Suites" and "West 46th Street Apartments;" NY City Stay LLC; Eran Suki; and Ben Zion Suky was filed on April 8, 2016. NYSCEF Doc. No. 192. The April 8, 2016 stipulation was memorialized in writing in the Preliminary Injunction Order:

> WHEREAS, on March 11, 2016, counsel for plaintiff/movant CITY entered into a stipulation with counsel for defendants SALIM ASSA, 15 WEST 55TH ST. PROPERTY LLC, 19 WEST 55TH ST. PROPERTY LLC, and WEST 46TH STREET INVESTORS LLC ["Owner Defendants"], wherein it was agreed that the CITY's motion would be granted as against the four *in rem* defendant Buildings, and against the owner entities, 15 WEST 55TH ST. PROPERTY LLC, 19 WEST 55TH ST. PROPERTY LLC, and WEST 46TH STREET INVESTORS LLC, and furthermore, that the CITY would withdraw its request for a preliminary injunction as to the individual defendant SALIM ASSA, as well as the CITY's application for the appointment of a temporary receiver.

*Id.* The stipulation was so-ordered by the Court on April 11, 2016. NYSCEF Doc. No. 197.[12]

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[11] Prior to the parties agreeing to enter into the preliminary injunction against the *in rem* buildings and the Owner Defendants alone, the Court had issued an order on February 11, 2016, noting that, based upon the eviction of the Operator Defendants, "it appear[ed] that the alleged illegal conduct that formed the basis of the pending motion may have been abated long ago." NYSCEF Doc. No. 184. However, it seems that, contrary to the Court's original understanding, Suky, an owner of the Operator Defendant entities, may have continued to possess an equity interest in one of the Owner Defendants. Indeed, the City has pointed out that Suky was a contact person for the Owner Defendants for transient tenancy violations. *See* NYSCEF Doc. Nos. 281 (e-mail correspondence with Suky regarding violations); 286 (DOB notices of violations and hearings addressed to Suky). This creates issues regarding the potential direct participation of building ownership in the transient rentals as opposed to mere passively permitting illegal transient use. This issue will need to be addressed at a trial on the permanent injunction and, if warranted, the imposition of statutory penalties.

[12] Due to an errant marking on a gray sheet attached to the so-ordered stipulation, present counsel for the Owner Defendants disputes whether the preliminary injunction was in fact granted as against the *in rem* properties and the Owner Defendants. The gray sheet reads the following: "Upon the foregoing papers, it is ordered that this motion is denied as moot in light of the attached Stipulation to Resolve dated April 6, 2016 and so ordered April 11, 2016." NYSCEF Doc. No. 197. The so-ordered stipulation, which is attached to the gray sheet, actually indicates that the

In October 2016, seven months after the preliminary injunction was agreed to in open court, the City received a complaint that an illegal hotel was being operated at 334 West 46th Street.[13] Upon receipt of this complaint, the Mayor's Office of Special Enforcement Inspection Team (the "Inspection Team") inspected the building located at 334 West 46th Street on October 14, 2016, finding multiple violations of the Preliminary Injunction Order. DOB Inspector Valeri Filatov and other individuals interviewed an Asian female tourist named Yi Shi in apartment 3F, who stated that she, along with two other adults and a child, had rented the unit from October 13, 2016 to October 15, 2016 in exchange for a payment of $727. NYSCEF Doc. No. 314, ¶¶ 7-8 (Filatov Aff.). Ms. Shi stated that she reserved her stay with a host named "Tony" online through Airbnb.com ("Airbnb"), which would be a violation of the certificate of occupancy for the apartment. *Id.*, ¶ 8; *see* NYSCEF Doc. No. 306 (screenshot of Airbnb booking from Ms. Shi's cellphone). The Airbnb online profile for "Tony" was actually a profile for Juan Estela, a tenant living on the first floor of the building, which contained at least thirty reviews posted by tourists staying less than thirty consecutive days at apartment 3F, from June 2016 to October 2016, including at least three reviews for the first two weeks of October 2016. NYSCEF Doc. Nos. 307 (Estela's Airbnb profile);[14] 314, ¶ 9. The City asserts that Mr. Estela's Airbnb profile appears to

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preliminary injunction motion was granted against the *in rem* properties and the Owner Defendants, but was withdrawn as against Assa.

[13] The City represents to the Court that various complaints have been filed in relation to the property located at 334 West 46th Street, including violations of the certificate of occupancy and use of the property as an illegal hotel. Pl.'s Ex. 4 from the contempt hearing; *see* NYSCEF Doc. No. 305. Any reference to exhibits contained herein refer to exhibits marked during the contempt hearing pertaining to the within matter, see n. 7, *supra*.

[14] The Inspection Team previously found another illegal transient occupancy offered by Mr. Estela through Airbnb at a different location for December 27, 2015 through January 3, 2016, and issued violations on December 31, 2015. NYSCEF Doc. No. 314, ¶ 14.

have been created in June 2016, three months after the preliminary injunction was agreed upon in March 2016. NYSCEF Doc. No. 314, ¶ 9. It appears that Mr. Estela and Michelle Miller, the leasehold tenant of apartment 3F at the time, sublet apartment 3F for illegal transient use for time periods of less than thirty days. The Airbnb listing that Mr. Estela allegedly posted for apartment 3F specifically states the following: "Do not mention Airbnb to anyone including neighbors, anyone who knocks at the door or anyone else in the vicinity. Any mention of Airbnb or violation of this discretion clause will result in a refund at your expense." NYSCEF Doc. No. 307.

The inspection of 334 West 46th Street also revealed combination lock boxes, or key lockboxes, on the individual doors for the retrieval of keys to apartments on the second and third floors of the premises, including outside of the door to apartment 3F. NYSCEF Doc. Nos. 308; 314, ¶ 10. The inspection also revealed full partition walls had been erected inside apartment 3F to create additional rooms, construction work that was allegedly performed without the required DOB permits. NYSCEF Doc. No. 314, ¶ 11. On October 14, 2016, four DOB notices of violation and an FDNY violation were issued for the premises as a result of the building being used as an illegal short-term hotel. *See* NYSCEF Doc. Nos. 309 (Notices of Violations); 310 (FDNY violation); 314, ¶ 12. The following four DOB Environmental Control Board Notices of Violations were issued to West 46th LLC for the building located at 334 West 46th Street:

(1) Violation No. 35203209Z: "Illegally converting apartment 3F, a permanent dwelling – Class A under the Multiple Dwelling Law – into transient use, in violation of the Admin. Code § 28-210.3." NYSCEF Doc. No. 314, ¶ 12.

(2) Violation No. 35203210X: "Failure to provide number of required means of egress for every floor of the [p]remises for illegal transient use. *See* 2014 Building Code §1015.2.1, Exception 3." *Id.*

(3) Violation No. 35203211H: "Failure to provide fire alarm system based for illegal transient use. *See* 2008 and 2014 Building Code § 907.2.8." *Id.*

(4) Violation No. 35203214N: "Work without DOB permit for constructing full partition walls in apartment 3F of the [p]remises." *Id.*

FDNY Inspector Taiwo Adebo issued a violation on October 14, 2016 to West 46th LLC for failure to "provide an approved fire alarm for transient use occupancy" and for failure to "provide adequate emergency light for transient use" at 334 West 46th Street. NYSCEF Doc. No. 310.

The City asserts that even after a preliminary injunction was imposed, West 46th LLC did not take any steps to prevent continued illegal short-term transient occupancies at the premises.[15] In support of this assertion, the City points to the affidavit of Sol Chakalo, the Owner Defendants' property manager, submitted in opposition to the contempt motion, wherein he admits that he only visited the subject buildings "approximately once a month, on average" and that when he visited, he would "generally stay on the first floor" of both properties as opposed to actively inspecting the premises. NYSCEF Doc. No. 332, ¶ 5. Mr. Chakalo affirmed that the key lockbox outside of apartment 3F allegedly pre-existed West 46th LLC's purchase of the property. *Id.*, ¶ 8. Further, Mr. Chakalo claims he did not install any key lockboxes outside of any of the apartments in the premises and did not permit their installation by any tenants. While perhaps tardy, the Owner Defendants nonetheless claim that immediately upon learning of the illegal use of the premises located at 334 West 46th Street, as disclosed by the October 14, 2016 inspection, the Owner

[15] The City further contends that any remedial action taken by the Owner Defendants to prevent the illegal use of 334 West 46th Street as a short-term hotel took place only after the City issued violations in October 2016 and filed its pending motion for contempt (Mot. Seq. No. 006). However, the City asserts that no remedial action was taken with respect to the building located at 15 West 55th Street.

Defendants took remedial action beginning in November 2016, which included terminating both Mr. Estela's and Ms. Miller's leases, as well as having Mr. Chakalo remove the combination key lockbox outside of the entrance to apartment 3F. *See id.*, ¶¶ 7-9; NYSCEF Doc. Nos. 330, ¶ 16; 333; 334. Further, Assa states in his affidavit that he had to pay Ms. Miller $3,000 to obtain the immediate surrender of apartment 3F. NYSCEF Doc. Nos. 330, ¶ 17; 338.[16]

Similarly, on October 18, 2016, the Inspection Team received a complaint from David Schneiderman, a permanent resident of the building located at 15 West 55th Street, who stated that an unlawful short-term transient occupancy was occurring in apartment 8C of that building.[17] Specifically, Mr. Schneiderman stated that he noticed a stranger in his building, who said he was a tourist from London, England and was only staying in the building for a week. NYSCEF Doc. No. 315, ¶ 6 (Pugach Aff.). Upon receipt of this complaint, the Inspection Team, including DOB Inspector Vladimir Pugach, went to 15 West 55th Street on October 19, 2016 to investigate the complaint. After having conducted an inspection on October 19, 2016 of the building located at 15 West 55th Street due to a complaint from a permanent resident of the building that there was an unlawful transient occupancy in apartment 8C, a man by the name of George Grund, who stated

[16] The Court is in receipt of a letter dated July 10, 2017 from Martin I. Nagel, Esq., on behalf of the City, indicating additional complaints of alleged ongoing illegal transient use at the premises at 334 West 46th Street. NYSCEF Doc. No. 490. The City states that an inspection conducted on July 6, 2017 revealed illegal occupancy in violation of the building's certificate of occupancy. *Id.* at 4. An additional notice of violation (number 35258035X) was apparently issued. The Court received a responsive letter dated July 12, 2017 from Anthony J. Genovesi, Esq., challenging the procedural appropriateness of the City's submission. NYSCEF Doc. No. 492. The Court has not used these additional alleged violations as a basis for its finding of civil contempt.

[17] Additionally, the City submitted a print out from the DOB intranet showing 145 complaints relating to the property located at 15 West 55th Street since the Owner Defendants acquired the property for, *inter alia*, illegal occupancy in violation of the certificate of occupancy, illegal rentals of apartments for a stay of less than thirty days, construction without a permit, and failures to provide emergency and safety equipment. NYSCEF Doc. Nos. 384, 385.

that he was a tourist from London, England and only staying in the building for a week on business, having arrived at the subject premises on October 15, 2016. *Id.*, ¶ 8. Mr. Grund did not have a written confirmation with him regarding his stay, but he did show the Inspection Team an envelope that he received upon checking in on October 15, 2016, which had his name and a check in date and time. NYSCEF Doc. No. 315, ¶ 10. The envelope also contained two letters on Nectar letterhead, including a "Digital Services Information" sheet with wireless internet access information and a "Welcome" letter with arrival and departure information. *Id.*; NYSCEF Doc. No. 312. No violation was apparently issued on that date because written documentation setting forth the terms of the observed unlawful occupancy was unavailable at the time. As part of the DOB's inspection process, Mr. Grund's employer, ITV Studios ("ITV"), was contacted to request confirmation of Mr. Grund's reservation and payment information. The apartment had been advertised on a website known as Nectar Furnished Apartments ("Nectar"), which ITV frequently used to lodge film crews during shoots for television programs. One of the members of the Inspection Team spoke to Christopher Silvestri, General Counsel for ITV America, Inc. ("ITV America"), who would provide reservation and payment information for Mr. Grund's stay subject to a subpoena. As a result, the City served a subpoena *deuces tecum* on ITV America (the "ITV Subpoena"), a subsidiary of ITV that booked the occupancy of apartment 8C for Mr. Grund. NYSCEF Doc. Nos. 326, ¶ 5; 273.

On November 7, 2016, the City received a response to the ITV Subpoena. NYSCEF Doc. Nos. 326, ¶ 6; 327. Included in the response was an invoice on Nectar letterhead, dated September 16, 2016, which stated that the charges were invoiced to "ITV Studios – George Grund." NYSCEF Doc. Nos. 326, ¶ 7; 327. The invoice (number 3864) noted that the amount being charged to ITV Studios was "Rent from 10/12/2016 to 10/22/2016 for 11 day(s) at [$]195.00, Room Tax at

$2.00/room per day, Occupancy Tax at 5.875%, Payment AMEX/1244 x4003 on 09/30/2016." NYSCEF Doc. Nos. 327, 326, ¶ 7; Pl.'s Ex. 31 (NYSCEF Doc. No. 341). The "Welcome" letter that Mr. Grund showed the Inspection Team was also included in the ITV Subpoena response. NYSCEF Doc. Nos. 327; 326, ¶ 8. As a result of DOB Inspector Pugach's personal observations and interview on October 19, 2016 inspection of 15 West 55th Street, and his review of the ITV Subpoena response, he issued the following three DOB Environmental Control Board Notices of Violations for that building:

(1) Violation No. 35203396N: "Permanent dwelling used/converted for other than permanent residential purposes. C/O # 62106 indicates that Building to be legally approved as a class 'A' Multiple Dwelling. Now Apt # 8C illegally used/converted to transient use." NYSCEF Doc. No. 328. Additionally, this violation notes the following previous violations: # 35096389Y, 35096120L, 35034473N, 35151475J. *Id.* The remedy noted was to "[d]iscontinue illegal occupancy." *Id.* The violation further states that this was an "ILLEGAL CONVERSION – CLASS 1. Per 28-202.1 & 1 RCNY 102-01, additional daily penalties for continued violation of Article 210 of Title 28 also applicable" and that it was an "Aggravated II Condition per 1RCNY 102-01(f)." *Id.*

(2) Violation No. 35203397P: "Failure to maintain Building in code compliant manner. Lack of a system of automatic sprinklers where required per BC 903.2 & 27-954 for transient use." *Id.* Additionally, this violation notes the following previous violations: # 35096121N, 35151476L, 35096390L, 35034474P. *Id.* The remedy noted was to "[d]iscontinue illegal occupancy." *Id.* The violation further states that this was an "Aggravated II Condition per 1RCNY 102-01(f)." *Id.*

(3) Violation No. 35203398R: "Failure to provide alarm system for transient use." *Id.* Additionally, this violation notes the following previous violations: # 35151477N, 35096391N,

35096390L, 35096122P, 35034500J. *Id.* The violation further states that this was an "Aggravated II Condition per 1RCNY 102-01(f)." *Id.*

In opposition to the contempt motion, the Owner Defendants maintain that the sublease was for thirty days, non-transient, and perfectly permissible under applicable laws and regulations. To demonstrate this assertion, the Owner Defendants submitted the affidavit of Kenneth Flornes, the Chief Executive Officer of Nectar. Mr. Flornes stated that Nectar is the tenant of record for apartment 8C at 15 West 55th Street for a term commencing May 1, 2016 and ending April 30, 2017. NYSCEF Doc. No. 331, ¶¶ 1-3. He affirmed that "Nectar fully complies with all New York City laws relating to transient use of residential apartments," that "Nectar provides rentals for stays for a term of thirty (30) days or more," and that "Nectar's New York City clients have an average length of stay of sixty-three (63) days." *Id.*, ¶ 4. He addressed the violations issued by the City due to an invoice from Nectar, invoice number 3864 dated September 16, 2016, which he states is unrelated to apartment 8C at 15 West 55th Street and instead pertains to an apartment at 50 Murray Street, claiming that his office mistakenly issued the invoice. *Id.*, ¶¶ 5-7. Mr. Flornes then states that Nectar entered into an agreement with Mr. Grund for him to stay at apartment 8C at 15 West 55th Street from October 15, 2016 through November 13, 2016. *Id.*, ¶ 8. Mr. Flornes' affidavit states that Nectar billed ITV Studios for Mr. Grund's stay at 15 West 55th Street and gave him a credit for the amount paid on invoice 3864. *Id.*, ¶ 9. He further stated that Nectar complied with the "Additional Rider" to the Lease that prohibits rentals for a time period less than thirty days. *Id.*, ¶¶ 10-12. Finally, Mr. Flornes attests that "Nectar received a total of $6,422.69 for Mr. Grund's stay in Apartment 8C, which amount represents a daily rate of $195 for thirty (30) days and room and occupancy tax" and that "Apartment 8C was not rented by Nectar to Mr. Grund, or

anyone else, for a period of less than thirty (30) days." *Id.*, ¶ 13.[18]

As there were several factual disputes raised in opposition to the motion for contempt (Mot. Seq. No. 006), the Court directed that a hearing on the allegedly contemptuous conduct take place. The Court conducted a multi-day evidentiary hearing, see n. 7, *supra*, wherein the following individuals testified: DOB Inspector Vladimir Pugach, DOB Inspector Valeri Filatov, George Grund, Kenneth Flornes, and Sol Chakalo. While the Court will discuss relevant testimony in detail below in the discussion section, a summary of each witness' respective testimony follows.

DOB Inspector Vladimir Pugach was the first witness produced by the City. He testified that he is a Supervising Inspector to the DOB and to his job duties. As relevant in this proceeding, he testified that in October 2016, he visited 334 West 46th Street based upon a complaint from the DOB Building Information System claiming that an illegal hotel was being operated at the above address. Inspector Pugach testified that any occupancy of an apartment at that location for less than thirty days would be in violation of the building's certificate of occupancy. He testified that he knocked on every door in the building trying to talk to the tenants and, at apartment 3F, met an occupant who was staying at the apartment from October 13, 2016 to October 15, 2016. The occupant, identified as Ms. Yi Shi, showed Inspector Pugach an e-mail confirmation from Airbnb that she received for the above itinerary. Inspector Pugach testified that she paid approximately $700 for her stay in apartment 3F with her family, a child and two adults. She further stated that there was no permanent occupant in that apartment during their stay and he also testified that, based upon his investigations, there did not appear to be any relationship between Ms. Yi and the permanent renter of that apartment. He also testified that he noticed there were key lockboxes next

[18] As discussed, *infra*, Mr. Flornes paid $4,118.67 on his personal credit card for the remainder of the thirty days, which was later refunded to him by Nectar. *See* NYSCEF Doc. No. 447, Tr. 34:5–35:5.

to the door of each apartment and that this was indicative of use as an illegal hotel. Inspector Pugach testified to the various notices of violations that were issued to West 46th LLC, as the owner of the building, the basis for each violation, why it was issued, and whether any corrective action was taken, as well as the level of hazard of each violation and whether it was a recurring instance.

Inspector Pugach also testified that he visited the building located at 15 West 55th Street in his capacity as a DOB Inspector in October 2016 in response to a complaint that apartment 8C was being rented out as a short stay, meaning for less than thirty days, which would violate the building's certificate of occupancy. When he conducted the inspection at 15 West 55th Street, he was accompanied by DOB Inspector Valerie Filatov, New York Police Department ("NYPD") Officer Joseph Giglio, and FDNY Inspector Taiwo Adebo. Upon arriving at the subject building, he interviewed the occupant at 8C asking how long he stayed there, where he is from, what is his name, how he booked the stay, and how much he paid to stay at apartment 8C. Mr. George Grund, the occupant of apartment 8C, whose testimony is below, told Inspector Pugach that he was staying for approximately one week and that his employer, ITV, booked and paid for his accommodations for his business trip. Mr. Grund showed him an envelope with his name on it and a letter indicating his arrival date, but no departure date. Inspector Pugach testified that he left 15 West 55th Street without issuing any violations as he needed more proof to substantiate the allegation that the apartment was being operated as an illegal short-term hotel. Inspector Pugach attested that upon obtaining additional information, including the invoice for an eleven day stay (Pl.'s Ex. 31; NYSCEF Doc. No. 341), he testified to the various notices of violations that were issued to 15 West 55th LLC, as the owner of the building, the basis for each violation, why it was issued, and whether any corrective action was taken, as well as the level of hazard of each violation and

whether it was a recurring instance. He further testified that he had never seen any additional invoices from Nectar for Mr. Grund's stay, such as the alleged sham invoice discussed herein (Pl.'s Ex. 33; NYSCEF Doc. No. 343). He further testified that he had not previously seen the purported lease for Mr. Grund's stay at apartment 8C (Defs.' Ex. B; NYSCEF Doc. No. 416). Inspector Pugach also testified that he did not give ITV a summons despite having rented the apartment at issue for eleven days because ITV does not own the building and it is DOB policy that the owner of the building is responsible. Moreover, he testified that no one at the Mayor's Office of Special Enforcement directed him not to issue violations to anyone other than landlords for illegal short-term use. Inspector Pugach also testified that he did not speak to the complainants in either apartment building at issue and typically does not because he is not provided with the complainant's contact information. He further testified about the specific steps he used to conduct his investigation.

DOB Inspector Valeri Filatov similarly testified that he visited the building located at 334 West 46th Street in his capacity as a DOB Inspector on October 14, 2016 in order to conduct an inspection, which was triggered by a complaint that there was an illegal hotel occurring in an unspecified part of the building. Inspector Filatov testified that, during his inspection of this building, he was accompanied by his supervisor, DOB Inspector Pugach, due to his recent transfer to the Mayor's Office of Special Enforcement. He further testified that in connection with his inspection of the above complaint, he reviewed DOB records to determine what the legal occupancies of the building were and found that any short-term rental of less than thirty days would violate the building's certificate of occupancy. The legal use of the building was one apartment on each of the first through third floors, but upon visiting the building, he noticed two different apartment doors on the second and third floor, marked 2F and 2R and 3F and 3R, respectively.

When he knocked on the door for apartment 3F, he found that Ms. Shi was illegally occupying the apartment, and testified to the same details regarding her stay as Inspector Pugach, above: that she paid $727 for four guests to stay for three nights in the subject apartment. He also testified that he observed partitions had been erected to convert the one legal apartment into two apartments, and after finding no permit for this work, issued a violation of the Building Code. He also took photographs of Ms. Shi's Airbnb reservation. He further observed lockboxes located at the entrance door to each apartment. Inspector Filatov, based upon his inspection of the building, testified to the various notices of violations that were issued to West 46th LLC, as the owner of the building, the basis for each violation, why it was issued, and whether any corrective action was taken, as well as the level of hazard of each violation and whether it was a recurring instance.

Inspector Filatov testified, in detail, about the specific steps he used to conduct his investigation. He also attested to the fact that he did not see the written complaint alleging the use of the subject building as an illegal hotel that served as the basis for his investigation on October 14, 2016, but did see the document some time thereafter. He further testified that the complaint indicated the whole building was being used as an illegal hotel and that he performed research on the building as part of his investigation. Inspector Filatov indicated that the existence of key lockboxes, from his experience, is indicative of unlawful transient occupancy. He also testified that he had discretion within his investigations as to what type of information to obtain based upon the particular situation and alleged violation at issue. Inspector Filatov admitted that he had never seen a lease for Ms. Shi's stay in apartment 3F, which was booked by an Airbnb host named Tony, later determined to be Juan Estela. Inspector Filatov testified that, while he did not specifically speak with Mr. Estela, his investigation team had a brief conversation with Mr. Estela in order to determine whether he was the owner of the building. At that time, Inspector Filatov had attended

the inspection as part of his training, as he had only been hired to that position several weeks before.

George Grund, who is a resident of London, England, without plans to travel to New York during the contempt hearing, testified via videoconference with permission of the Court. He credibly testified about his use of Nectar's services to book and pay for his accommodations in the United States. Mr. Grund testified that he planned to arrive in New York on October 12, 2017, where he planned to stay for eleven days, and then continue his business travel to Los Angeles, California, where he planned to stay for the immediately following fourteen days. For Mr. Grund's New York stay, he was invoiced $2,145 ($195 per night) plus tax for his accommodations, which was charged to his personal American Express credit card on September 30, 2016. When Mr. Grund arrived in New York, he stayed at one location for two days prior to being relocated to apartment 8C at 15 West 55th Street. Upon his arrival at 15 West 55th Street, the doorman telephoned the cleaning person, who had apparently not finished cleaning the apartment from the prior guest. Once the apartment had finished being cleaned, Mr. Grund met with the cleaning person who gave him the keys to the apartment and a welcome packet.

Mr. Grund further testified that NYPD officers and other DOB personnel, which apparently included Inspector Pugach who also testified at the hearing, arrived at his apartment. Mr. Grund answered various questions posed by Inspector Pugach about his stay, such as the fact that he would only be staying in apartment 8C for ten days, and allowed Inspector Pugach to take pictures of the welcome letter he received upon arrival. Thereafter, Mr. Grund spoke to Mr. Flornes on the telephone regarding his interactions with the NYPD officers and DOB investigators. Mr. Grund testified that after he spoke to Mr. Flornes, he was asked to electronically sign a new thirty-day lease for apartment 8C, even though he was departing New York for California, where Nectar had

also booked his accommodations. Mr. Grund also testified that an invoice submitted by the City as an exhibit during the contempt hearing (Pl.'s Ex. 33), and as an exhibit submitted in opposition to the instant motion for contempt (NYSCEF Doc. No. 343), was a sham in that the invoice showed payments for the remainder of the thirty-day lease period that were not made by either himself or his company, ITV.[19] Additionally, Mr. Grund attested that Mr. Flornes' affidavit submitted in opposition to the contempt motion (NYSCEF Doc. No. 331) contained multiple false statements, including, *inter alia*, that he never asked Nectar to change his stay in New York City and that he never stayed at or visited 50 Murray Street because he was told via e-mail to ignore the address since Nectar would not know where his accommodations would be at the time he received the invoice for his stay in New York.

Mr. Grund testified that the exhibits that were used during his testimony were his own e-mails that he turned over to ITV's legal counsel and that was how he was originally asked to testify in this proceeding. Mr. Grund, when asked about the thirty-day lease provision, stated that he was not even sure he thought anything of it at the time and if so, he did not recall. He explained that he was only making a reservation for accommodations in New York for one week and that was what was relevant to him at the time. He testified that while he typically books accommodations for film crew as part of his job, he did not read the entirety of the second electronic lease he was asked to sign that had the arrival date as September 23, 2016 and the departure date as October 22, 2016, and that this was the only lease he signed without reading.

[19] Mr. Grund testified that the credit card number ending in 1032 that appeared on invoice number 4182 (Pl.'s Ex. 33; NYSCEF Doc. No. 343), another American Express card, is neither his credit card nor a credit card belonging to ITV because, for the company, there is "only one credit card product in the U.K. It's [the] Royal Bank of Scotland Visa card. In the U.S., it's a Wells Fargo [Visa] credit card. [Those are] the only cards." NYSCEF Doc. No. 444, Tr. 249:6–251:19.

However, this was not his standard business practice. Mr. Grund further testified that while he has read leases with Nectar, he did not read the leases used for his own personal travel. He attested that he trusted Nectar and they knew that he was only staying in New York for a week because they had also booked his subsequent stay in Los Angeles. When challenged, he reaffirmed his prior testimony that he never paid an invoice for the remainder of his thirty-day stay and that the American Express card ending in 1032, which was used to pay the bill, neither belonged to him nor to ITV, discussed *infra*. He stated that because he had paid the initial invoice (Pl.'s Ex. 31, NYSCEF Doc. No. 341), he had never looked at the second invoice (Pl.'s Ex. 33, NYSCEF Doc. No. 343). Mr. Grund also testified that he never asked to stay in New York for thirty days, that he was unfamiliar with New York law regarding minimum stays at the time he visited New York in 2016, and testified to the events that occurred when the NYPD and DOB inspectors appeared at his apartment. He was further asked about the process through which he signed the original lease and stated that he no longer had the original e-mail from the online company Rightsignature.com through which he signed the lease.

Sol Chakalo, the first witness produced by Owner Defendants, testified that he had never worked as a building manager prior to his job at 334 West 46th Street starting in 2013, and while he was training to be the property manager, he only became the property manager in 2015. He also testified that he is the property manager of 15 West 55th Street. He further testified to the fact that he sets his own schedule as a building manager for Assa Properties and if he does not have to be at work, he does not go to the office. Mr. Chakalo testified that he never checks 311 calls for any of the buildings he manages, but he is aware that such calls are publicly available. Moreover, he testified he has never received complaints from tenants of transient use and only reports to Assa

if there is a major problem. However, he also testified that he lacked knowledge of legal proceedings against the respondents herein.

Mr. Chakalo affirmed that he was hired by Assa, his brother-in-law, as the building manager of 334 West 46th Street and that he became aware of alleged transient use of apartment 3F in October 2016. Mr. Chakalo testified that he became aware of the City's allegation of said transient use when he spoke to the tenant, Michelle Miller, who denied any transient use of the subject apartment. Nonetheless, her lease was terminated to avoid any issue with transient use and surrendered possession in exchange for the return of her $3,000 security deposit. He also testified that in late December 2016, when he visited the subject building, he saw the lock on apartment 3F was broken and, when he knocked, Mr. Estela opened the door, at which time he called the NYPD, which resulted in Mr. Estela's arrest. Mr. Chakalo testified that Mr. Estela's lease for apartment 1 was terminated because he stated to Mr. Chakalo that he was involved with transient use of apartment 3F and, as a result, eviction proceedings were commenced. Mr. Chakalo further stated that the apartment on the second floor and each of the two apartments on the third floor had key lockboxes on the door that were there when 334 West 46th LLC first purchased the building, however, he never asked any of the tenants of those apartments about the lockboxes outside their respective doors. Mr. Chakalo did not remember if there was a key lockbox outside of the apartment on the first floor, but stated that there probably was a lockbox there. Mr. Chakalo affirmed that he supervised a locksmith who removed the key lockboxes from the doors on the second and third floors, some time in November 2016, after Ms. Miller surrendered her apartment, and that it cost $200 to remove each lockbox, for a total of $800. However, Mr. Chakalo testified that when he discovers an apartment is being rented for transient use, the only thing he can do is evict the tenant. He testified that he signed up for Subletalert.com to monitor Airbnb listings for

both properties in December 2016, when he first learned of the website. He further testified that he learned of Mr. Estela's Airbnb listing from a Subletalert.com e-mail notification and recognized the photographs as being of Mr. Estela's apartment.

With respect to 15 West 55th Street, Mr. Chakalo testified that the building has a twenty-four-hour doorman, seven days a week, as well as an intercom system to buzz visitors into the building. Mr. Chakalo stated that after notice of the City's transient use violations and the City's motion for contempt, he created a visitor log book and required visitors to sign in and present identification, and sign out when they left. He further testified that he trained the doormen to require any new tenants to show a lease for a minimum of thirty days in order to enter the building to prevent transient use, the doorman would then call him and ask if the individual should be allowed upstairs. Mr. Chakalo also testified that Nectar rented apartment 8C in that building and that the doorman was instructed to follow the same policy with respect to Nectar clients. In addition, Mr. Chakalo stated that he does not keep records when a doorman calls him to get authorization for a new tenant to enter the building. Although he is the building manager, Mr. Chakalo admitted that he was never informed by Assa of the injunction put in place by this Court or the City's contempt motion, and that he has neither seen the complaint in this action nor is he aware that the City is alleging nuisances existed at buildings where he is the manager. Mr. Chakalo also conceded that he was not aware of any lawsuits filed to enforce paragraph 3 of the additional rider to the lease for apartment 8C, which allows the landlord to seek immediate injunctive relief, but that Nectar was permitted to sublease apartments pursuant to this provision for more than thirty days.

Kenneth Flornes, the Chief Executive Officer of Nectar, also testified for the Owner Defendants. As Mr. Grund's testimony, to the extent credited by the Court, essentially meant that

Mr. Flornes' affidavit may have contained false statements of fact, Mr. Flornes was given an opportunity to consult with his own attorney as to whether he should testify. He agreed to testify and testified about the booking and payment process used for Mr. Grund's United States travel. Mr. Flornes testified that Mr. Grund was looking to stay in New York for approximately eleven days and then would be proceeding to Los Angeles for fourteen days. He admitted that a thirty-day lease for his stay at 15 West 55th Street was not signed until on or about October 21, 2016, which was after the inspection unearthed the alleged transient tenancy. Mr. Flornes further testified that after the inspection, he paid $4,118.67 on his personal American Express credit card to cover a thirty-day stay, which was later reimbursed by Nectar. Mr. Flornes addressed the conflicting invoices by asserting that Nectar mistakenly issued the first invoice (invoice number 3864), which Mr. Ground had already paid. Mr. Flornes testified that instead, Mr. Grund was provided with a credit for the $2,315.02 he already paid, and the second invoice in the amount of $6,422.69 (at the rate of $195.00/day) for a thirty-day stay at 15 West 55th Street was the correct invoice (invoice number 4182). He admitted that these events took place after NYPD officers and DOB inspectors showed up at apartment 8C on October 19, 2016. Mr. Flornes testified that he had Mr. Grund sign a new lease as a means of correcting protocol because the lease Mr. Grund had previously signed was for a different building and he needed to have a lease for the correct building. Mr. Flornes attempted to explain the second invoice (number 4182) as a detailed invoice, stating that Mr. Grund had only been sent a general invoice with the agreement that he had signed. Mr. Flornes testified that Nectar did not rent out the apartment in which Mr. Grund stayed until after the expiration of the thirty-day term set forth in the lease period.

Upon the conclusion of testimony, the parties were permitted submit written post-hearing merit submissions on the law and facts, and they were also permitted to respond to their

adversaries' merit submission.

During the time the contempt motion was being litigated, the City also filed a new application for the appointment of a temporary receiver, which is addressed below. In addition, the Owner Defendants sought a Writ of Prohibition against the undersigned in the Appellate Division, First Department seeking to stay the contempt hearing. In the proceedings before the First Department, the Owner Defendants advanced several of the same legal assertions that were raised before this Court. The initial application by the Owner Defendants for interim relief from the First Department, which sought a stay of the contempt hearing pending determination of the Writ, was denied on January 4, 2017 by Justice John W. Sweeney. NYSCEF Doc. No. 455. On March 21, 2017, a panel of the First Department denied the Owner Defendants' motion for a stay. *City of New York v. NYC Midtown LLC*, 2017 N.Y. Slip Op. 67806(U) (1st Dep't Mar. 21, 2017). On the same date, the First Department, after due deliberation, denied the application for a Writ of Prohibition and dismissed the petition, without costs. *In re 15 W. 55th St. Prop. LLC*, 148 A.D.3d 561 (1st Dep't 2017). Thereafter, the City's motion for sanctions filed before the First Department was denied without prejudice to seek the same relief in this proceeding. NYSCEF Doc. No. 488, 2017 N.Y. Slip Op. 69668(U) (1st Dep't Apr. 6, 2017).

**Discussion**

**I. Application for Appointment of a Temporary Receiver**

The City brought a new application for the appointment of a temporary receiver almost a year after the preliminary injunction was granted and nearly two years after the City commenced the instant nuisance abatement action based upon the Owner Defendants failure to comply with their statutory duty to maintain the properties in a manner that is safe and compliant with New

York City codes.[20]

"A landowner has a duty to exercise reasonable care under the circumstances in maintaining its property in a safe condition." *Kush v. City of Buffalo*, 59 N.Y.2d 26, 29 (1983) (citing *Basso v. Miller*, 40 N.Y.2d 233, 241 (1976)). "While this legal duty does not require the landlord to become an insurer of its tenants' and invitees' safety, it imposes a minimum level of care on landlords and managing agents who know or have reason to know that there is a likelihood that third parties may endanger the safety of those lawfully on the premises." *Wayburn v. Madison Land Ltd. P'ship*, 282 A.D.2d 301, 303 (1st Dep't 2001) (citations omitted); *see also Tindorovich v. Columbia Univ.*, 245 A.D.2d 45, 46 (1st Dep't 1997). Pursuant to Multiple Dwelling Law Section 4.8(a), Class "A" multiple dwellings may not be used for occupancies of less than thirty days. A violation of this prohibition is a misdemeanor pursuant to Section 304 of the Multiple Dwelling Law, and is thus a "crime" pursuant to New York State Penal Law Section 10.00(6).

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[20] As noted below, the Suky-owned entities are accused of operating illegal hotels in the properties at issue in this action. Additionally, as stated in *Lavi*, Suky is currently, or has been, a defendant in the following actions: *City of New York v. US Suite Management LLC et al.*, Index No. 450084/2015 (Sup. Ct. N.Y. County) (Ramos, J.) (operation of illegal short-term hotels constituting public nuisances), and *U-Trend New York Investments L.P. v. US Suite LLC et al.*, Index No. 652082/2014 (Sup. Ct. N.Y. County) (Ramos, J.) (where a temporary receiver was appointed to manage a property allegedly used as an extended-stay hotel), the latter of which contains facts similar to those alleged in the *Lavi* Action, such that a property managed by Suky was subject to related bankruptcy proceedings and eventual default under the terms of the mortgage; *Board of Members of Cielo Condominium v. Suky et ano.*, Index No. 154206/2013 (Sup. Ct. N.Y. County) (judgment by confession of $56,478.71 entered May 7, 2013); *Segev v. Cohen et al.*, Index No. 850039/2014 (Sup. Ct. N.Y. County) (Mendez, J.) (residential mortgage foreclosure action); *122 East 58th Funding LLC v. Israel et al.*, Index No. 650973/2014 (Sup. Ct. N.Y. County) (Scarpulla, J.) (commercial mortgage foreclosure action). Suky is also involved in two real property bankruptcies: *In re Madison Hotel, LLC*, Case No. 11-1256 (Bankr. S.D.N.Y.), in which Assa purchased the property out of bankruptcy, as he did with two of the subject buildings in this action, and *In re East 81st, LLC*, Case No. 13-13685 (Bankr. S.D.N.Y.).

Thus, irrespective of allegations of contempt of court, which are addressed below, Section 7-713 of the Administrative Code, containing the Nuisance Abatement Law, permits a court to appoint a temporary receiver to manage and operate property during the pendency of any action in which the complaint alleges that a public nuisance "is being conducted or maintained" in the residential portions of any building or structure or portion thereof which are occupied in whole or in part as the home, residence, or sleeping place of one or more human beings. Nuisance Abatement Law Section 7-713 specifically states that:

> In any action wherein the complaint alleges that the nuisance is being conducted or maintained in the residential portions of any building or structure . . . the court may . . . appoint a temporary receiver to manage and operate the property during the pendency of the action in lieu of a temporary closing order.

New York courts have appointed a temporary receiver, pursuant to Nuisance Abatement Law Section 7-713, to prevent a public nuisance from occurring after a preliminary injunction has been issued. *City of New York v. Taliaferrow*, 158 A.D.2d 445, 446 (2d Dep't 1990) (affirming the Supreme Court's order that issued a preliminary injunction "barring the use of the premises for prostitution or any other nuisance, enjoining the defendants Taliaferrow and Mayes from entering the premises, and appointing a temporary receiver to operate and manage the premises pending final determination of the action"). Moreover, the Nuisance Abatement Law, with respect to enforce compliance with City laws, explicitly provides that "the existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief." NAL § 7-706.

Additionally, Multiple Dwelling Law Section 309 permits the appointment of a receiver to remedy unsafe conditions as a valid exercise of police power. *In re Dep't of Bldgs. of City of N.Y.*, 14 N.Y.2d 291 (1964) ("Section 309 of the Multiple Dwelling Law was amended in 1962, as the Legislature itself declared (L.1962, ch. 492, s 1), to afford 'additional enforcement powers' (1) to compel the correction of conditions it found existed in deteriorated or deteriorating dwellings

which 'may cause irreparable damage . . . or endanger the life, health or safety of (their) occupants, or the occupants of adjacent properties or the general public' and (2) 'to increase the supply of adequate, safe and standard dwelling units, the shortage of which constitutes a public emergency and is contrary to the public welfare.'" (alteration in original)); *In re 714 E. 9th St.*, 37 Misc. 2d 130, 130 (Sup. Ct. N.Y. County 1962) (Tilzer, J.) ("The purpose of the bill [amending MDL § 309], as expressed in its section on legislative findings and intent, is to provide to municipalities additional enforcement powers necessary for the removal and remedying of conditions in multiple dwellings constituting a serious fire hazard or threat to life, health or safety.").

The Owner Defendants have not taken preventative measures to safeguard the properties against the nuisances alleged herein prior to the City's motion for contempt. NYSCEF Doc. No. 332, ¶ 9. Moreover, it appears that despite receiving over one hundred building and fire violations, criminal court summonses regarding the illegal use and occupancy of the properties, being sued by the City in the instant action, and being enjoined from using the properties as illegal short-term hotels pursuant to the preliminary injunction in place, the Owner Defendants have taken minimal steps to remedy the alleged illegal use and occupancy that is the subject of the instant action. Further, the allegations of work conducted without appropriate permits in the properties constitutes a separate public nuisance pursuant to Nuisance Abatement Law Section 7-703(d). *See City of New York v. Bilynn Realty Corp.*, 118 A.D.2d 511 (1st Dep't 1986). The presence of this type of nuisance in a building is a statutory public nuisance pursuant to the Nuisance Abatement Law. *City of New York v. Untitled LLC*, 51 A.D.3d 509 (1st Dep't 2008).

Based upon the foregoing, the City has demonstrated that the Owner Defendants have failed to properly manage and maintain the properties in a safe and code-compliant manner. Accordingly, the appointment of a temporary receiver, pursuant to Nuisance Abatement Law

Section 7-713, to manage and operate the properties at issue is necessary in order to prevent the same illegal activity from continuing.

## II. Application for Civil Contempt[21]

Judiciary Law Section 753 permits a court "to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced." *Id.*, § 753(A). In order to establish a finding of civil contempt, a party must establish the following factors by clear and convincing evidence: (1) "a lawful order of the court, clearly expressing an unequivocal mandate, was in effect," (2) "the order has been disobeyed," (3) by a party with "knowledge of the court's order, although it is not necessary that the order actually have been served upon the party," and (4) as a result, the rights of a party to the litigation have been prejudiced. *El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 29 (2015) (quoting *McCormick v. Axelrod*, 59 N.Y.2d 574, 583 (1983)). "[C]ivil contempt seeks 'the vindication of a private right of a party to litigation and any penalty imposed upon the contemnor is designed to compensate the injured private party for the loss or interference with that right.'" *Id.* at 34 (quoting *McCormick*, 59 N.Y.2d at 583). Contrary to criminal contempt, discussed *infra*, there is no willfulness requirement for

[21] In Motion Sequence No. 009, the Owner Defendants moved to bifurcate the civil and contempt proceedings. This application, which is addressed to the Court's discretion, was denied on the record. NYSCEF Doc. No. 443, Tr. 2:16–6:22. The First Department also declined to grant a stay of proceedings premised on the same arguments advanced by the Owner Defendants to this Court. As companies, the Owner Defendants do not enjoy Fifth Amendment protections. Moreover, to the extent such a protection existed regarding the company's ultimate owner, Assa, it was affirmatively waived when he submitted an affidavit addressing the factual issues underlying the alleged contempt. In addition, the Court provided the Owners Defendants with an opportunity to have Assa testify with the proviso that the Court would "not consider any testimony that he provides in conjunction with the criminal contempt aspect of their application, only [with respect to] civil contempt." NYSCEF Doc. No. 448, Tr. 92:24–93:6. Finally, the Court exercised its discretion not to take a negative inference because Assa did not testify because the Owner Defendants instead produced Mr. Chakalo, their building manager.

civil contempt. *McCormick*, 59 N.Y.2d at 583. However, to be held in contempt, the offense must amount to more than an "honest mistake." *Sentry Armored Courier Corp. v. N.Y.C. Off-Track Betting Corp.*, 75 A.D.2d 344, 344 (1st Dep't 1980). Here, the City has demonstrated, by clear and convincing evidence, the presence of all four factors in order to find West 46th LLC and 15 West 55th LLC in civil contempt.

**A. The Existence of a Lawful Order of the Court**

With respect to the first factor for a finding of civil contempt, the City has met its burden of establishing that a lawful order of this Court, which clearly expressed an unequivocal mandate, was in effect at the time of the alleged illegal transient use of units in the properties. The order to show cause seeking the granting of a preliminary injunction requested, as relevant to this motion, sought:

> [A]n order . . . pursuant to: Section 306 of the New York Multiple Dwelling Law; Sections 7-707, 20-703(d), 20-2122, and 28-205.1 of the New York City Administrative Code ["Admin. Code"], and Sections 6301 and 6311 of the Civil Practice Law and Rules, enjoining the defendants and each of them, their agents, employees, representatives and all persons acting individually or in concert with them during the pendency of this action:
>
> 1. From using or occupying, or permitting the use or occupancy of, any of the units in the buildings located: 13 - 17 West 55th Street, New York, NY ["15 WEST 55th ST."]; 19 – 21 West 55th Street, New York, NY ["19 WEST 55th ST."]; 334 West 46th Street, New York, NY ["334 WEST 46th ST."]; and 336 West 46th Street, New York, NY ["336 WEST 46th ST."] (hereafter, collectively referred to as the "Subject Premises" or the "Buildings") for transient occupancy and/or as a transient hotel, hostel, or apartment hotel.

NYSCEF Doc. No. 113, at 3 (emphasis added) (order to show cause dated February 6, 2015). The TRO signed by this Court (Huff, J.) essentially tracked the language in the order to show cause by prohibiting the Owner Defendants "[f]rom using or occupying, or permitting the use or occupancy of any residential units in the Subject Premises for transient use and/or as transient hotel rooms,

hostels, or apartment hotels." *Id.* at 5. On March 11, 2016, the Owner Defendants consented to a preliminary injunction, which essentially was a continuation of the TRO that had, at that juncture, been in effect for a little over a year. Having resolved the preliminary injunction via an on-the-record stipulation, the Court later so-ordered a written stipulation that documented the existence of the Preliminary Injunction Order. NYSCEF Doc. No. 192.

When the contempt motion was filed, the Owner Defendants conceded to the existence of a lawful court order on multiple occasions in their submission opposing the City's motion:

(1) "There is simply no legal or factual basis for an order of contempt, civil or criminal, against Owner Defendants because Owner Defendants have complied with each and every obligation under the Preliminary Injunction Order." NYSCEF Doc. No. 329, ¶ 9 (emphasis omitted).

(2) "In lieu of facts which would establish a breach of the Preliminary Injunction Order (because there simply are none) . . . ." *Id.*, ¶ 15.

(3) Additionally, the opposition papers include a section with the following heading: "The Preliminary Injunction Order." *Id.* at 7. That section of the opposition papers states, in pertinent part, the following:

> In consideration for the City's withdrawal of the portions of its order to show cause seeking the appointment of a temporary receiver for the subject buildings, and seeking injunctive relief against Assa personally, Owner Defendants stipulated to the preliminary injunction by stipulation entered on the Court record on March 11, 2016 (the "Preliminary Injunction Order"). (A copy of the Preliminary Injunction Order is annexed as Exhibit C).

*Id.*, ¶ 15 (emphasis added) (referring to NYSCEF Doc. No. 335, which is a transcript of the March 11, 2016 proceedings before this Court).

(4) "It is undisputed that the Preliminary Injunction Order was in effect at the time of the violations were issued, but the City has failed to establish the second through fourth prongs of the civil contempt threshold entirely." *Id.*, ¶ 29.

Further, Assa, in his own affidavit, acknowledges the existence of the Preliminary Injunction Order multiple times:

(1) "Because Owner Defendants agreed and stipulated to the terms of the Preliminary Injunction Order, my office included express language prohibiting transient use in the Apartment 8C lease." NYSCEF Doc. No. 330, ¶ 19.

(2) "Owner Defendants have not received any complaints of transient use at 15 West 55th Street since I consented to the Preliminary Injunction Order, nor have Owner Defendants received any legitimate violations for transient use in Apartment 8C – or any apartments at 15 West 55th Street – since I consented to the Preliminary Injunction Order." *Id.*, ¶ 20 (emphasis omitted).

(3) "Neither I nor Owner Defendants have, either before consenting to the Preliminary Injunction Order or after, permitted, consented to, allowed, marketed, rented, advertised, registered, booked or used any apartments at the West 55th Street Building or the West 46th Street Buildings for occupancies of less than thirty (30) days." *Id.*, ¶ 21.

(4) "The City's [order to show cause] fail[s] to demonstrate a basis for contempt against Owner Defendants, but it also entirely fails to provide any basis to modify and extend the Preliminary Injunction Order to include me personally." *Id.*, ¶ 24.

After the written motion papers were fully submitted, new counsel for the Owner Defendants[22] asserted that the agreed to on-the-record preliminary injunction did not constitute an

[22] A "Consent to Change Attorney" stipulation, dated December 2, 2016, was filed with this Court on or about December 7, 2016. NYSCEF Doc. No. 370.

order of this Court because it was not reduced to a writing, signed, or so-ordered by the Court. However, "[t]he fact that an oral direction was given in open court has been held to be just as binding upon those who heard it as if it were written." CPLR 2104;[23] *In re Ithaca Journal News, Inc.*, 57 Misc. 2d 356, 363 (Ithaca City Ct. 1968); *see Silverman v. Seneca Realty Co.*, 154 Misc. 35, 36 (Sup. Ct. N.Y. County 1934) (Lauer, J.) ("The word 'mandate' as defined, does not preclude an oral command, order or injunction, and, under section 28-a of the General Construction Law, a mandate is not necessarily a formal written order of the court."); *Kalomiris v. County of Nassau*, 121 A.D.2d 367, 368 (2d Dep't 1986); *King v. King*, 124 Misc. 2d 946, 947 (Sup. Ct. N.Y. County 1984) (Shea, J.); *White v. Mazzella-White*, 6 Misc. 3d 1041(A), at *4 (Sup. Ct. Westchester County 2005); *Town Bd. of Southampton v. R.K.B. Realty, LLC*, 91 A.D.3d 628, 629 (2d Dep't 2012) (finding that a stipulation "negotiated between the parties, read into the record in open court, and accepted by the court as a 'supplemental order' without objection" was "considered a court order" for the purposes of holding the defendants in contempt); *Fuerst v. Fuerst*, 131 A.D.2d 426, 426-27 (2d Dep't 1987) (finding no merit to claim that a "stipulation of the parties read into the record in open court cannot provide the basis for her adjudication of contempt"); *Gumbs v. Martinis*, 40 A.D.2d 194, 203 (1st Dep't 1972) (Stevens, J., dissenting). The fact that "[t]he direction of the

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[23] CPLR 2104 states that:

> An agreement between parties or their attorneys relating to any matter in an action, other than one made between counsel in open court, is not binding upon a party unless it is in a writing subscribed by him or his attorney or reduced to the form of an order and entered. With respect to stipulations of settlement and notwithstanding the form of the stipulation of settlement, the terms of such stipulation shall be filed by the defendant with the county clerk.

(emphasis added).

Court was set down by the stenographer verbatim in her minutes" is sufficient such that "no written order [is] required." *In re Ithaca Journal News, Inc.*, 57 Misc. 2d at 363; *see Silverman*, 154 Misc. at 35 (holding that a grant of a stay premised upon an "oral understanding that defendants would do nothing to prejudice plaintiff during continuance of stay is 'lawful mandate' of court within Judiciary Law, § 753" even though the grant "was made a part of the minutes taken by the court stenographer, . . . the violation of which is punishable as a contempt"); *Betancourt v. Boughton*, 204 A.D.2d 804, 808 (3d Dep't 1994) ("[A]n oral 'order' or directive, issued in the contemnor's presence, placed upon the record and transcribed into the minutes of the proceeding, may be deemed a 'mandate' within the meaning of General Construction Law § 28-a and, hence, may form the basis for contempt under Judiciary Law § 753(A)(3).") (citing cases); *Leibovitz v. City of New York*, 2016 WL 3671232, at *5 n.4 (S.D.N.Y. Mar. 17, 2016) (citing *Betancourt* and *Silverman*, *supra*); *Rudnick v. Jacobson*, 284 A.D. 1064 (2d Dep't 1954) ("From an early date persons who heard or were apprised of oral decisions and violated their provisions have been held liable to contempt proceedings.") (citing cases). Further, while there is no indication that the stipulation made in open court would be transcribed into a writing, a written stipulation was in fact so-ordered by the Court on April 11, 2016, thus making it a signed, written court order. *See Town Bd. of Southampton*, 91 A.D.3d at 629 (holding that "the provisions of a stipulation [can] provide the basis of an adjudication of contempt" and any contention to the contrary is without merit). *Contra White*, 6 Misc. 3d 1041(A), at *4-5.

Accordingly, the Preliminary Injunction Order constitutes a clear, valid mandate of this Court, the violation of which could constitute contempt of court.

**B. The Owner Defendants Failed to Comply with this Court's Order**

The Owner Defendants failed to comply with the Preliminary Injunction Order. This legal conclusion is premised upon two factual findings: (1) transient tenancies were taking place at the properties after the Preliminary Injunction Order was entered, and (2) the Owner Defendants permitted this prohibited activity to occur. The first factual finding, that transient tenancies were taking place at the properties, is well supported by the evidence. For instance, Inspectors Filatov and Pugash credibly testified that they encountered the actual transient tenants during their inspections in October 2016. Moreover, there is additional evidence in the form of Airbnb guest reviews[24] for 334 West 46th Street demonstrating that approximately thirty illegal short-term stays occurred at the properties after the Owner Defendants stipulated to the Preliminary Injunction Order. Indeed, the Owner Defendants essentially admitted to the existence of transient tenancies at 334 West 46th Street after entering into the Preliminary Injunction Order, while denying the existence of transient tenancies at 15 West 55th Street.

[24] While the Owner Defendants contest the validity of this evidence, the Appellate Division has held that hearsay evidence could be properly considered in a contempt proceeding without violating a defendant's Sixth Amendment right to confrontation. *See State of New York v. Rosse*, 18 A.D.3d 982, 984 (3d Dep't 2005) (holding that it was proper for the "Supreme Court [to consider] plaintiffs' supplemental submission of affidavits and other hearsay evidence on the motion for contempt"). Moreover, the evidence against the Owner Defendants does not consist of merely hearsay, but a combination of various items that are reliable under the circumstances. For instance, DOB Inspectors Filatov's and Pugach's respective testimony was based upon more than merely hearsay declarations. *Contra Heights Democratic Club, Inc. v. Brewer*, 272 A.D. 1008 (1st Dep't 1947) (reversing a finding of contempt solely based upon hearsay declarations in affidavits of persons having no personal knowledge of the facts, source of the information, nor grounds for such belief); *In re Melissa M.*, 151 A.D.2d 1037, 1037-38 (4th Dep't 1989). Documentary evidence in admissible form was admitted into evidence through the testimony of these witnesses and, as discussed below, additional credible testimony and evidence was produced by the City.

With respect to the building located at 15 West 55th Street, the credible evidence supports the existence of transient use. In this regard, the Court finds Mr. Grund credibly accounted of his transient stay at apartment 8C of 15 West 55th Street in New York. He booked his stay through Nectar Furnished Apartments, with a consecutive stay thereafter in Los Angeles. Mr. Grund testified that he spoke to Nectar employee Alexa Muccio and told her that he would be staying in New York for eleven days, but later had to reduce his stay to ten days, and that at no point did he communicate to Nectar that he would be staying in New York for thirty days. NYSCEF Doc. No. 444, Tr. 214:26–215:19, 217:12-15; Pl.'s Ex. 29. Specifically, Mr. Grund told Ms. Muccio via e-mail that he would be staying in New York from October 13, 2016 through October 22, 2016. NYSCEF Doc. No. 444, Tr. 217:3-11; Pl.'s Ex. 29. Mr. Grund testified that he originally signed a lease dated September 5, 2016 for 515 9th Avenue, New York, New York with an arrival date of September 23, 2016, which he later realized that he should not have signed because he did not intend to arrive in New York on that date, but stated that he was told to ignore various aspects of the document, such as the address. NYSCEF Doc. No. 444, Tr. 219:6-21. He also testified that he paid a total of $2,315.02 for his original eleven day stay in New York and that he was not charged for $6,420.69 on invoice number 4182 (Pl.'s Ex. 33; NYSCEF Doc. No. 343). *Id.*, Tr. 222:9-24, 223:10-24; Pl.'s Ex. 31 (NYSCEF Doc. No. 341). In fact, Mr. Grund testified that he did not understand why he would need to be credited, as indicated on invoice number 4182, and charged again after he had already paid for his stay. NYSCEF Doc. No. 444, Tr. 233:4-17. Essentially, it appears from Mr. Grund's testimony that his credit card was not charged a second time. Rather, Nectar created a new invoice (number 4182) that contained incorrect data with respect to the timing of Mr. Grund's payment and an additional sham payment designed to comply with New York City codes. The original invoice (number 3864) provides an address for Mr. Grund

as staying at 50 Murray Street, however Mr. Grund never stayed at this location, nor did he request to change the location of his stay. NYSCEF Doc. No. 444, Tr. 223:25–224:10, 238:4-9; Pl.'s Ex. 31 (NYSCEF Doc. No. 341). Further, Mr. Grund testified that he never received invoice number 4182 and the American Express card that was charged on that invoice was neither his credit card nor ITV's credit card. NYSCEF Doc. No. 444, Tr. 205:8-22. Mr. Grund testified that he never planned on returning to New York during his business trip after he completed his work in Los Angeles. *Id.*, Tr. 252:17–253:11.

With respect to Mr. Grund's stay at 15 West 55th Street, the building at which Nectar arranged his stay, he credibly testified that when he arrived at the premises and introduced himself to the doorman, he said he "was staying there for a few days, it was booked with Nectar," the doorman then "called people who were cleaning the room," and told him that his room "would be ready in a few minutes." *Id.*, Tr. 228:12–229:3. This is contrary to the Owner Defendants' assertion that upon any Nectar lessee's arrival at 15 West 55th Street, said lessee is required to present a lease to the doorman that indicated a minimum stay of thirty days, and the doorman was then required to call Mr. Chakalo to obtain permission to provide access to the apartment in the lease. NYSCEF Doc. No. 446, Tr. 162:19–163:18. Additionally, in the welcome letter to Mr. Grund, the "building doorman phone number" is the same as Nectar's "Client Services" phone number. NYSCEF Doc. No. 443, Tr. 133:8-22; Pl.'s Ex. 18. Mr. Grund further testified that he was asked to sign a new lease for a thirty day stay at 15 West 55th Street around the time of his departure for Los Angeles, after he had informed Nectar that he received a visit from NYPD officers and DOB inspectors at apartment 8C of 15 West 55th Street. NYSCEF Doc. No. 444, Tr. 230:23–231:11, 231:22–232:4, 234:20–235:10. Mr. Grund specifically testified that he "received a call asking [him] to sign a new lease with the correct address [for] that visit due to the inspectors.

They wanted me to sign a new lease with the right address." *Id.*, Tr. 231:25–232:4. In fact, Mr. Grund testified that the individual who asked him to sign a new lease was Mr. Flornes. *Id.*, Tr. 232:20–233:3.

The Court finds that Mr. Flornes' testimony, which is contrary to that provided by Mr. Grund, and his previously submitted affidavit lack credibility. As the Court noted when the Owner Defendants' counsel challenged Mr. Grund on the veracity of his testimony with respect to any alleged payment beyond his payment for an eleven day stay: "Counsel, so it is on the record, we have testimony from a Mr. Grund, and Mr. Grund has testified, essentially, that the affidavit submitted by your client is perjurious . . . and the testimony is quite clear that he did not pay; and it's not very difficult to figure out if that is Mr. Grund's credit card or not, for that second payment." NYSCEF Doc. No. 447, Tr. 3:5–5:4. This Court finds that the statement contained in Mr. Flornes' affidavit indicating that Nectar was paid for a thirty-day stay, contrary to Mr. Grund's testimony, is not only false, but carefully worded to mislead the Court. NYSCEF Doc. Nos. 331, ¶¶ 4, 8; 447, Tr. 39:24–42:10, 52:13–55:7. Mr. Flornes stated in his affidavit that ITV was incorrectly billed for Mr. Grund's actual stay, such that "invoice 3864 is unrelated to Apartment 8C at the West 55th Street Building." NYSCEF Doc. No. 331, ¶ 6 (emphasis added). Instead, he states that Nectar "mistakenly issued invoice 3864" and that Mr. Grund was provided with a credit, but also stated that Nectar received a total of $6,422.69 for Mr. Grund's thirty day stay at 15 West 55th Street, in unit 8C, at "a daily rate of $195.00 for thirty (30) days." *Id.*, ¶¶ 4, 7, 13. However, Mr. Flornes excluded from his affidavit that Mr. Grund was only staying in New York for, at most, eleven days and that Nectar booked lodging for him in Los Angeles immediately after his stay in New York. NYSCEF Doc. No. 447, Tr. 30:8–34:3, 51:24–52:3. Mr. Flornes also omitted from his affidavit that, despite knowing that Mr. Grund was flying to Los Angeles immediately after his

departure from New York, he still had Mr. Grund sign a new sham lease for a thirty-day stay at 15 West 55th Street. NYSCEF Doc. No. 447, Tr. 36:19–37:3, 37:6–39:6, 47:3-15. As noted above, Mr. Flornes knew that Mr. Grund did not plan to return to New York because Nectar also booked Mr. Grund's subsequent stay in Los Angeles. *Id.*, Tr. 32:22–33:8, 36:19–37:2; NYSCEF Doc. No. 444, Tr. 211:3-15, 248:24–249:4. Mr. Flornes further omitted the fact that he personally paid $4,118.67 on his personal American Express credit card to cover the remainder of the new thirty-day lease signed by Mr. Grund (NYSCEF Doc. No. 447, Tr. 34:5-21) and then was immediately reimbursed by nectar for his entire payment. *Id.*, Tr. 34:22–35:5, 41:19–42:10, 50:8-10, 52:4-7. His affidavit in no way indicates that all of the documents and payment beyond the transient ten-day stay were an after-the-fact attempt to paper over Nectar's failure to comply with City transient tenancy laws. *Id.*, Tr. 35:6–36:8, 50:22-24, 52:4-7, 52:13–53:5, 53:24–54:16.

The Court finds no merit in Mr. Flornes' attempt to explain the reason he created a sham lease when he stated that "[Grund] came back the following week" or that "[h]e was coming back to New York the following week" and that "he could have used it if he wanted it, because he had it for 30 days." *Id.*, Tr. 37:6–39:17. The veracity of these statements fail as Nectar booked Mr. Grund for a continuous two week stay in Los Angeles after departing from New York and no documentation, such as e-mail exchanges regarding Mr. Grund's United States travel (*see* NYSCEF Doc. No. 444, Tr. 193:5-20, 210:12–211:15, 217:12-15), provides any support for Mr. Flornes' inherently incredible assertions. Similarly, the Court finds no credibility in Mr. Flornes' assertion that he had Mr. Grund sign a thirty-day lease for 15 West 55th Street because "the lease agreement that he had previously signed was for a different building and he had to have the correct lease for the correct building." NYSCEF Doc. No. 447, Tr. 47:3-10. In the same vein, while it may be true that Nectar handled a lot of business for Mr. Grund's company (*id.*, Tr. 50:8-21, 51:17-

21), this is not an excuse for breaking the law and, when caught, engaging in a poorly designed cover-up that included the submission of a perjuriously false affidavit. Accordingly, the Court finds, by clear and convincing evidence, that the City has demonstrated the existence of illegal tenancies that are prohibited by the Preliminary Injunction Order.

Turning to the second factual issue in determining whether the Preliminary Injunction Order was violated, the Court finds that the City has demonstrated that the Owner Defendants permitted the illegal transient tenancies to occur. The City has demonstrated, again by clear and convincing evidence, that the Owner Defendants essentially exercised no oversight of the properties, a contention that is supported by the evidence adduced during the contempt hearing. *See People ex rel. McGoldrick v. Douglas*, 286 A.D.807 (1st Dep't 1955) ("It is apparent that the defendants exercised no diligence and made no earnest effort to comply with the order of the court and carry out its mandate."); *Ingraham v. Maurer*, 74 Misc. 2d 893, 894-95 (Sup. Ct. Albany County 1973) ("It is apparent the defendants exercised no diligence and made no serious effort to comply with the [order]."). The Owner Defendants use of Assa's brother-in-law, Mr. Chakalo, to serve as manager of the properties (NYSCEF Doc. No. 446, Tr. 124:8-26) shows that they did not seriously attempt to comply with the Preliminary Injunction Order. Mr. Chakalo, ran a women's clothing line prior to being hired by Assa and had no experience in property management whatsoever prior to that point in time. *Id.*, Tr. 143:25–145:7.[25] Mr. Chakalo's self-determined working hours, and scarce presence in the office and the properties, which are only a short walk from his office, indicates the lack of supervision that the Owner Defendants implemented.

[25] Mr. Chakalo's affidavit in opposition to the City's contempt motion is inconsistent with his testimony at the contempt hearing. Mr. Chakalo averred in his affidavit that he had been a building manager since 2013, however, he testified that he was only an assistant in training through 2015, at which time he became the manager of the properties. *Compare* NYSCEF Doc. No. 332, ¶ 2, *with* NYSCEF Doc. No. 446, Tr. 125:2–127:9.

NYSCEF Doc. No. 446, Tr. 133:17–134:12, 135:10–136:14, 138:6-26. This is especially true where Mr. Chakalo himself admits that he is the one who instructs the doormen at 15 West 55th Street with respect to the above discussed procedure to avoid illegal transient stays in that building. *Id.*, Tr. 152:16–153:17. The Court informed the Owner Defendants' counsel during the contempt hearing that it would favorably consider the hiring of professional building management with experience in addressing issues of transient tenancies (NYSCEF Doc. No. 446, Tr. 24:24–28:9), but no action was taken to secure competent building management.

The Owner Defendants claimed ignorance of illegal transient tenancies must be viewed though the well-established standard that "[a] party subject to an injunction is required to take such reasonable measures as would render the decree effective." *Ellenberg v. Brach*, 88 A.D.2d 899, 901 (2d Dep't 1982). As an initial matter, it is difficult to imagine any real attempt to comply with an order when Mr. Chakalo was unaware of the existence of this multi-year nuisance abatement action or of any orders pertaining to this action that were issued by this Court. NYSCEF Doc. No. 448, Tr. 81:20–84:18. Indeed, Mr. Chakalo was not even aware of the various violations issued to the properties he managed. *Id.*, Tr. 79:11–80:8. Yet, even with Mr. Chakalo ignorant of the responsibilities imposed by law and court order, the Court objectively considers any reasonable measures existing at the properties he managed. One purported measure of safeguarding the building located at 15 West 55th Street was staffing the premises with a doorman who was purportedly instructed to check for a valid lease of thirty or more days and to call Mr. Chakalo to confirm permission for the lessee to enter the building. *Id.*, Tr. 50:11–51:19. There is no evidence, other than Mr. Chakalo's testimony, that such a directive existed. In fact, Mr. Grund checked into apartment 8C at 15 West 55th Street without a lease for the subject apartment and without Mr. Chakalo's permission. Moreover, Mr. Chakalo permitted Nectar to rent approximately half of the

non-rent regulated apartments in the building as short term furnished apartments without any real oversight. Indeed, these apparently are some of the same apartments surrendered by NYC Midtown, which has allegedly engaged in illegal transient rentals when this nuisance abatement action was commenced.

Likewise, Mr. Chakalo failed to proactively comply with the Preliminary Injunction Order as it relates to the building owned by West 46th LLC. Again putting aside the failure of the Owner Defendants to notify their building manager, Mr. Chakalo, of the existence of the instant litigation, and the subsequent issuance of a TRO and Preliminary Injunction Order, there are no objectively reasonable efforts made to curtail illegal short term transient tenancies. Indeed, the limited efforts to curtail the alleged short term transient use only commenced after the contempt motion was filed, such that Mr. Chakalo removed key lockboxes located on apartment doors and began using a monitoring service that searches websites which advertise short term tenancies. Moreover, it was only after the contempt motion was filed that Mr. Chakalo made a greater effort to monitor the building located at 334 West 46th Street.

Having considered the totality of the credible evidence, the Court finds that, by clear and convincing evidence, the City has demonstrated that the Owner Defendants permitted illegal transient tenancies to take place in violation of the Preliminary Injunction Order.

**C. The Owner Defendants had Knowledge of this Court's Order**

An additional element in finding a party in contempt of court is knowledge of its existence. As stated previously, "the part[ies] to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party." *McCormick*, 59 N.Y.2d at 583. While the Owner Defendants apparently failed to notify its building manager, Mr. Chakalo, of the existence of the Preliminary Injunction Order (or the

existence of this action and the TRO), the Owner Defendants knew of its existence. The Owner Defendants were aware of the contents of the Preliminary Injunction Order as the application was contained within the papers that were served at the commencement of the action, the terms essentially mirrored the TRO that had existed for over a year, they were represented by sophisticated real estate litigation counsel, and, as noted above, they admitted to its existence in their opposition papers. Accordingly, the Court finds, by clear and convincing evidence, that the Owner Defendants had knowledge of the lawful mandate contained in the Preliminary Injunction Order. *See id.* at 585 ("We also conclude that all parties or their counsel, had sufficient knowledge, actual or imputed, of the terms of the [injunction], to render their conduct in disregard of the [injunction] contumacious.").

**D. The City's Rights Have Been Prejudiced**

The City has demonstrated that its rights have been prejudiced as a result of the ongoing public nuisance. The City has an interest in the enforcement of public safety laws. *People v. Lafaro*, 250 N.Y. 336, 340-41 (1929) ("[O]ffenses against the peace of community or realm are regarded as offenses against the [government]."). The City has been prejudiced based upon the detriment to the public safety of tourists and other individuals who rented the apartments for short-term transient use that were subjected to unsafe lodging arrangements on the basis that the properties were not compliant with New York City codes in place for buildings purposed for such short-term use. The state and local legislatures have made it clear that owners of multiple dwellings within the City are responsible for the safe operation and maintenance of their buildings, even if other individuals may also be responsible for maintaining safe building conditions as well. Admin. Code § 27-2006(c) ("The fact that a tenant is or may be liable for a violation of [the Housing Maintenance Code] or any other law or is found liable for civil or criminal penalties does

not relieve the owner of his or her obligation to keep the premises, and every part thereof, in good repair."); MDL § 78 (requiring that every part of a multiple dwelling "and the lot upon which it is situated, shall be kept in good repair" and that "[t]he owner shall be responsible for compliance with the provisions of this section; but the tenant also shall be liable if a violation is caused by his own willful act, assistance or negligence or that of any member of his family or household or his guest"); *Barkley v. Plaza Realty Inv'rs Inc.*, 149 A.D.3d 74, 76, 79 (1st Dep't 2017) (stating that an owner of a building has a nondelegable duty under Multiple Dwelling Law Section 78 "to maintain the premises in safe condition); *see also* Admin. Code §§ 27-2005 (detailing duties of owners of multiple dwellings), 28-301.1 ("The owner shall be responsible at all times to maintain the building and its facilities and all other structures regulated by [the Construction Codes] in a safe and code compliant manner."); General City Law § 20(13) ("[E]very city is empowered: . . . To maintain order, enforce the laws, protect property and preserve and care for the safety, health, comfort and general welfare of the inhabitants of the city and visitors thereto; and for any of said purposes to regulate and license occupations and businesses."). The City has long recognized the need for such administrative codes to protect the public safety. *See* NYSCEF Doc. No. 473 (noting the establishment of fire, building, and zoning codes in the City since the colonial period). As such, the individuals subletting apartments in multiple dwellings for short-term stays have been deprived of substantial safety rights by the conduct of the Owner Defendants. *See McCormick*, 59 N.Y.2d at 587.

The City commenced this proceeding to initially abate the public nuisances that were occurring in the properties. Public nuisances negatively impact permanent residents that have had their rights imposed upon by the illegal transient use, as well as the overall harm to the welfare of the public at large. The injunction was designed to prevent any illegal transient use of apartments

at the properties to avoid such harm and public endangerment so as to maintain the status quo and not render academic any relief that the City is entitled to based upon the Owner Defendants' alleged illegal conduct. By violating the Preliminary Injunction Order, the Owner Defendants deprived the City of the right to require transient tenants to stay in a building that is properly fitted for short-term stays in order to avoid endangering their personal welfare, especially in circumstances where an emergency may occur in a building not properly compliant with City codes for short-term use. Further, the Owner Defendants have committed irreparable injury "based upon the harm to the general public if the nuisance is not immediately abated." *City of New York v. Love Shack*, 286 A.D.2d 240, 242 (1st Dep't 2001). As such, the contemptuous conduct clearly prejudiced the City through the peace of the residents of the properties and the public welfare that is endangered by the Owner Defendants' actions. Additionally, the use of the properties for illegal transient occupancy deprives residents of the City of permanent housing, which has additional repercussions in the real estate market.

Accordingly, as the City has proven, by clear and convincing evidence, all of the elements required to hold the Owner Defendants in contempt of violating the Preliminary Injunction Order, the Owner Defendants are found to be in civil contempt. As the aim of civil contempt is "the vindication of a private right of a party to [the] litigation and any penalty imposed upon the contemnor is designed to compensate the injured private party for the loss of or interference with that right" (*McCormick*, 59 N.Y.2d at 583), the City is entitled to the appointment of a receiver for the properties to avoid any further mismanagement of said properties and any future illegal transient use. Additionally, the City's motion to modify the Preliminary Injunction Order to enjoin "the defendants and each of them, their agents, employees, representatives and all persons acting individually or in concert with them during the pendency of this action" from, *inter alia*, "using or

occupying, or permitting the use or occupancy of any of the units in the [subject buildings] for transient occupancy and/or as a transient hotel, hostel, or apartment hotel" is similarly granted. NYSCEF Doc. No. 3

## III. Application for Criminal Contempt

The Court finds that the City has not demonstrated, beyond a reasonable doubt, that the Owner Defendants committed criminal contempt. A court is permitted "to punish for a criminal contempt, a person guilty of any of the following acts, and no others: . . . [w]ilful disobedience to its lawful mandate [or] [r]esistance willfully offered to its lawful mandate." Judiciary Law §§ 750(A)(3)-(4); *El-Dehdan*, 26 N.Y.3d at 34. While the Owner Defendants' willful blindness to its legal obligations merits a finding of civil contempt, this Court concludes that a finding of criminal contempt is unwarranted.[26] Accordingly, that branch of the City's application seeking to hold the Owner Defendants in criminal contempt is denied.

## IV. Motion to Dismiss

Suki and Suky seek dismissal of the complaint, pursuant to CPLR 3211(a)(7), as asserted against them in their individual capacities. They claim that they cannot be found personally liable on the grounds that they never acted in any other capacity than that of a member or officer of the Operator Defendant entities. New York courts have consistently held, however, that a member or officer of a corporation is not shielded from personal liability if they either participated in or had

[26] As this Court is only appointing a temporary receiver over the two properties in which recent transient tenancies have been demonstrated to exist, it is possible that additional violations may occur due to the Owner Defendants' use of an incompetent part-time building manager. The Owner Defendants may wish to reconsider their refusal to retain professional property management to handle the affairs of the subject buildings remaining outside receivership. A demonstration of commitment by the Owner Defendants in complying with their legal obligations would not only avoid the potential of engaging in future contemptuous conduct, but would be a factor for consideration in deciding any future applications seeking to remove the properties from the temporary receivership in which they are being placed pursuant to this decision and order.

knowledge of a fraudulent scheme or tortious act committed by the corporate entity. *Peguero v. 601 Realty Corp.*, 58 A.D.3d 556, 558 (1st Dep't 2009); *see also Espinosa v. Rand*, 24 A.D.3d 102, 102 (1st Dep't 2005). Thus, as it relates to the instant motion, the issue is not whether these two defendants were acting in their capacity as members or officers of the Operator Defendant entities, but whether they participated in the tortious conduct of permitting illegal transient tenancies in the subject buildings. *Retropolis, Inc. v. 14th St. Dev. LLC*, 17 A.D.3d 209, 211 (1st Dep't 2005) ("[A] corporate officer who participates in the commission of a tort can be held personally liable even if the participation is for the corporation's benefit."). If so, then Suki and Suky may still be found individually liable.

The complaint makes clear that the City is seeking to impose liability on the part of Suki and Suky for their own alleged misconduct that gave rise to the rise to the alleged public nuisances at the subject buildings. In this regard, the City has adequately pled the active participation of these individuals in the Operator Defendants' widespread scheme to run illegal hotels for transient tenants. *See State of New York v. Shore Realty Corp.*, 759 F.2d 1032, 1050-53 (2d Cir. 1985) (holding that officers who actively control a business' conduct may be liable for a public nuisance). Moreover, to the extent that the allegations in the complaint are true, the Court finds that the limited liability companies, as corporate forms, will not protect Suki and Suky from liability merely because they closed those entities with the prospect that they could simply create a new entity to continue engaging in the very same alleged misconduct. In the end, the Court finds that the various causes of action asserted against Suki and Suky have been properly plead. Thus, for instance, the Court finds that the City properly pled its first cause of action based on deceptive trade practices in violation of the Consumer Protection Law. New York courts have held that it is a violation of the Consumer Protection Law to market residential properties for short-term rentals, which

includes the advertising and booking of such properties for illegal transient use as those defendants have done here. *See* Admin. Code § 20-700, *et seq.*; *City of New York v. Smart Apts. LLC*, 39 Misc. 3d 221, 225, 227-28 (Sup. Ct. N.Y. County 2013) (Engoron, J.) (citing *Realty Assocs. v. Teigman*, 213 A.D.2d 306, 308 (1st Dep't 1995)); *City of New York v. City Oases, LLC*, 49 Misc. 3d 1205(A) (Sup. Ct. N.Y. County Oct. 2, 2015) (d'Auguste, J.). The City's remaining causes of action, enumerated as two through eight, are also properly pled. As discussed, *supra*, it is a violation of Multiple Dwelling Law Section 4.8(a) to permit short-term occupancies in Class "A" multiple dwellings, such as the subject buildings in this proceeding. Additionally, the City's Fire and Building Codes require higher safety standards that are intended to protect the public as a whole, especially if an emergency were to occur. While this Court is not making a finding with respect to whether these defendants have committed violations of the above statutory provisions, Multiple Dwelling Law Section 304 specifically provides that every person who violates or assists in violating provisions of the Multiple Dwelling Law, with certain inapplicable exceptions, shall be guilty of a misdemeanor. While not all violations of the Multiple Dwelling Law involve criminal penalties, the purpose of such a penalty is indicative of the "tremendous duty [that] is placed upon the owners and those in charge of property under the applicable section of the Multiple Dwelling Law" and the Legislature's intention to impress upon the owners "the consequences flowing from violation of the statute, which . . . could so readily endanger human life." *People v. Nelson*, 309 N.Y. 231, 236 (1955). Accordingly, based upon the facts contained in the City's pleadings and the limited discovery in this litigation relating to the Operator Defendants' maintenance of illegal transient hotels, this Court denies their motion to dismiss.

With respect to the City's cross-motion to strike the Operator Defendants' answer, pursuant to CPLR 3126, or, in the alternative, to compel discovery, pursuant to CPLR 3124, the Court grants

that branch of the City's motion seeking to compel discovery, but denies without prejudice that branch of the motion seeking to strike the Operator Defendants' answer. The discovery being sought by the City is material and relevant to the litigation of the within action as it seeks information relating to Suki and Suky's personal involvement, participation, and knowledge of the Operator Defendant entities' business practices as related to the public nuisances alleged in the complaint. The documents demanded include, *inter alia*, documents relating to the Operator Defendants' control over the subject buildings; leases and subleases of units at the subject buildings; occupancy, use, and payment for units at the subject buildings, including logs; and any documentation relating to their advertising, marketing, and promoting of short-term stays at the subject buildings. *See* NYSCEF Doc. No. 190. The sought-after discovery is relevant to the determination of statutory penalties and other damages caused by the Operator Defendants' failure to timely abate the public nuisances occurring at the subject buildings for over a year after the City first issued violations for the above public nuisances up until the time that this Court issued a TRO. The Operator Defendants have had the City's discovery demands since March 2016, more than seven months at the time the instant cross-motion was filed, and now approximately a year and five months later. Notably, these defendants have failed to produce any documents. *See* NYSCEF Doc. No. 289, ¶ 18. Indeed, by e-mail correspondence dated September 26, 2016, Operator Defendants' and counsel essentially told the City to file a motion to secure the requested discovery. *See* NYSCEF Doc. No. 293. Given the foregoing, the Court finds that it is a close call on whether to strike these defendants' pleadings, but, in its discretion, the Court will permit them to have an additional opportunity to provide the outstanding discovery. Accordingly, the Operator Defendants shall properly respond to the City's first set of interrogatories and demand for discovery and inspection with a production of the requested information and documentation. If

they fail to provide a proper production of information and documentation, the City may file a new motion seeking to strike their pleadings. In issuing this directive, the Court has considered the assertion that a protective order should be entered and finds the request to be without merit.

In accordance with the foregoing, it is hereby

ORDERED that Motion Sequence No. 005 wherein defendants Eran Suki and Benzion Suky move to dismiss the action against them in their individual capacities, pursuant to CPLR 3211(a)(7), is denied; and it is further,

ORDERED that the branch of the cross-motion in Motion Sequence No. 005 wherein plaintiff The City of New York moved to compel discovery, pursuant to CPLR 3124, is granted; and it is further,

ORDERED that the branch of the cross-motion in Motion Sequence No. 005 wherein plaintiff The City of New York moved to strike the Operator Defendants' answer, pursuant to CPLR 3126, is denied; and it is further,

ORDERED that the branch of Motion Sequence No. 006 wherein plaintiff The City of New York seeks to punish defendants West 46th Street Investors LLC and 15 West 55th St. Property LLC for criminal contempt of Court, pursuant to Judiciary Law Section 750, is denied; and it is further,

ORDERED that the branch of Motion Sequence No. 006 wherein plaintiff The City of New York seeks to punish defendants West 46th Street Investors LLC and 15 West 55th St. Property LLC for civil contempt of Court, pursuant to Judiciary Law Section 753, is granted; and it is further,

ORDERED that defendants West 46th Street Investors LLC and 15 West 55th St. Property LLC may purge the civil contempt by paying the City of New York a statutory penalty in the

amount of $250.00 within thirty (30) days of service of a copy of this order with notice of entry; and it is further,

ORDERED that the branch of Motion Sequence No. 006 wherein plaintiff The City of New York seeks, pursuant to CPLR 2221 and 6313, to modify the Preliminary Injunction Order such that defendants West 46th Street Investors LLC, 15 West 55th St. Property LLC, Salim Assa, and any of defendants West 46th Street Investors LLC, 15 West 55th St. Property LLC, 19 West 55th St. Property LLC, together with their agents, employees, representatives, and all persons acting individually or in concert with them, are restrained from allowing any persons to use or occupy or permit the use or occupancy of any of the dwelling units at 334 West 46th Street and 15 West 55th Street, both in the County, City, and State of New York, or any of the within subject buildings for less than thirty consecutive days is granted; and it is further,

ORDERED that Motion Sequence No. 007 seeking the appointment of a temporary receiver, pursuant to Administrative Code Section 7-713 to manage the premises located at 334 West 46th Street and 15 West 55th Street during the pendency of this action is granted; and it is further,

ORDERED that Darren R. Marks, Esq., Partner at Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., is hereby appointed as Receiver; and it is further,

ORDERED that the Receiver is authorized to take charge and enter into possession of the properties; and it is further,

ORDERED that any assets being held in the accounts of the Board(s), Corporations, counsel for the Corporations, or managing agent of the Corporations are to be turned over to the Receiver, except for any funds held by either the managing agent or counsel for services rendered up to the date of this Order; and it is further,

ORDERED that said Receiver be and is hereby directed to demand, collect, and receive from the occupants, tenants, and licensees in possession of said premises, or other persons liable therefore, all the rents now due and unpaid or hereafter to become due, and that Receiver is hereby authorized to institute and carry on all legal proceedings necessary for the protection of the property or to recover possession of the whole, or any part thereof, and/or apply to the Court to fix reasonable rental value and license fee value and to compel the tenants and occupants to attorn to the Receiver; and it is further,

ORDERED that said Receiver, or any party hereto, may at any time, on proper notice to all parties who may have appeared in this action, apply to this Court for further or other instructions or powers necessary to enable said Receiver to properly fulfill his duties; and it is further,

ORDERED that before entering upon his duties, said Receiver shall be sworn to fairly and faithfully discharge the duties committed to him and shall execute to the People of the State of New York and file with the Clerk of this Court an undertaking in the penal sum of $100,000.00, conditioned for the faithful discharge of his duties as such Receiver; and it is further,

ORDERED that plaintiff The City of New York is to advance to the Receiver the cost of securing the aforementioned undertaking; and it is further,

ORDERED that, pursuant to the provisions of the General Obligations Law Section 7-105, anybody holding any deposits or advances of rental as security under any lease or license agreement affecting space in the premises affected by this action shall turn over the same to said Receiver within five (5) days after said Receiver shall have qualified; and thereupon the Receiver shall hold such security subject to such disposition thereof as shall be provided in an order of this Court to be made and entered in this action; and it is further,

ORDERED that anybody in possession of the same shall turn over to the Receiver all rent lists, orders, unexpired and expired leases, agreements, correspondence, notices and registration statements relating to rental space or facilities in the premises; and it is further,

ORDERED that the Receiver be and is authorized to rent or lease any part of the premises for terms not exceeding one (1) year or such longer terms as may be required by the City and State of New York; to keep said premises insured against loss by damage or fire; to pay the taxes, assessments, water rates, sewer rents, vault rents, salaries of employees, supplies and other charges; to comply with all the lawful requirements of any municipal department or other authority of the municipality in which the mortgaged premises are situated; and to procure such fire, plate glass, liability and other insurance as may be reasonably necessary; and it is further,

ORDERED that the tenants, licensees, or other persons in possession of said premises attorn to the Receiver and pay over to the Receiver all rents, license fees, and other charges of such premises now due and unpaid or that may hereafter become due; and that respondents be enjoined and restrained from collecting the rents, license fees, and other charges of said premises and from interfering in any manner with the property or its possession; and from transferring, removing or in any way disturbing any of the occupants or employees; and that all tenants, occupants, employees and licensees of the premises, and other persons liable for the rents be and hereby are enjoined and restrained from paying any rent, license fees, or other charges for such premises to the defendants, their agents, servants, or attorneys; and it is further,

ORDERED that the Receiver is prohibited from incurring obligations in excess of the monies in his hands without further order of this Court or written consent of plaintiff's counsel; and it is further,

ORDERED that West 46th Street Investors LLC, 15 West 55th St. Property LLC, and Salim Assa turn over to the Receiver all rents collected from and after the date of this Order; and it is further,

ORDERED that the Receiver named herein shall comply with Section 35-a of the Judiciary Law, Sections 6401-6404 of the CPLR, Section 1325 of the RPAPL, and Rule 36 of the Chief Judge; and it is further,

ORDERED that any proposed settlement of this matter be subject to approval by the Receiver and presented to the Court for review; and it is further,

ORDERED that the Receiver may enter into, adjust, and make payments on any payment or installment agreements with the City of New York in order to keep the premises from entering default; and it is further,

ORDERED that Motion Sequence No. 008 wherein plaintiff The City of New York moved, pursuant to CPLR 2304, 2307, and 3103, quashing the subpoenas *duces tecum* and *ad testificandum* seeking testimony and documents from Krzysztof Parczewski of the DOB and Ervin Santiago of the FDNY with respect to the buildings located at 15 West 55th Street and 334 West 46th Street on January 5, 2017 is granted as per the transcript dated January 5, 2017; and it is further,

ORDERED that Motion Sequence No. 009 wherein the Owner Defendants moved to enjoin the contempt hearing in relation to Motion Sequence No. 006 from proceeding and staying the proceeding, pursuant to CPLR 2201, or, in the alternative, to bifurcate the hearing is denied as per the transcript dated January 5, 2017; and it is further,

ORDERED that the cross-motion in Motion Sequence No. 009 wherein plaintiff The City of New York moved for an order, pursuant to CPLR 3108 and Judiciary Law Section 2-b(3), to

issue an open commission and letter rogatory facilitating the testimony of George Grund is granted as per the transcript dated January 5, 2017; and it is further,

ORDERED that movants shall serve a copy of this order with notice of entry upon all parties, and the County Clerk's Office (Room 141B) and the Clerk of the Trial Support Office (Room 158) in accordance with e-filing protocol, within thirty (30) days.

This constitutes the decision and order of this Court.

Dated: July 31, 2017

Hon. James E. d'Auguste, J.S.C.