

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
THE CITY OF NEW YORK,

Plaintiff,

-against-

133-24 REALTY INC., 86-55 GRAND REALTY INC.,  
MASTER WORKS CONTRACTOR INC., YAN  
ARCHITECT & PLANNER PLLC, and ALL STATE 12  
GENERAL CONTRACTING CORP.,

Defendants.  
-----X

**SUMMONS**

Index No.

Filed:

**TO THE ABOVE-NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** and required to serve upon plaintiffs' attorney an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint. Plaintiff designates Queens County as the place of trial.

Dated: New York, New York  
May 6, 2022

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By: \_\_\_\_\_

  
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Assistant Corporation Counsel

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**VERIFIED COMPLAINT**

Index No.

JURY TRIAL DEMANDED

Plaintiff Designates Queens  
County As The Place Of Trial

Plaintiff, City of New York (the "City"), by its attorney, Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, alleges upon personal knowledge as to itself and upon information and belief as to all other matters:

**INTRODUCTION**

1. This is an action to recover damages for breach of contract, for violation of Section 3309.4 of the Building Code of the City of New York, for negligence, and to abate the nuisance created by such violation in connection with structural damage to Plaintiff's working firehouse (the "Firehouse"), operated by the Fire Department of the City of New York ("FDNY") and located at 86-53 Grand Avenue Queens, New York (the "FDNY Property"), which damage, on information and belief, was caused by Defendants' negligent excavation and construction during the construction of two proposed buildings on sites located at 84-14 Queens Boulevard Queens, New York, Block 2477 Lot 5 (the "84-14 Property") and 84-18 Queens Boulevard Queens, New York, Block 2477 Lot 23 (the "84-18 Property"), immediately abutting the FDNY Property. Damages to Plaintiff's property are sought to remediate the damage to the Firehouse, in

an amount to be determined at trial, but not less than \$23,550,978.65 (Twenty Three Million, Five Hundred and Fifty Thousand, Nine Hundred and Seventy Eight Dollars and Sixty Five Cents).

### **THE PARTIES**

2. The City of New York is a municipal corporation organized and existing under and by virtue of the laws of the State of New York.

3. Defendant 133-24 Realty, Inc. (“133-24 Realty”) is a business corporation organized and existing under and by virtue of the laws of the State of New York with a principal place of business located at 511 126<sup>th</sup> St. College Point, New York 11356.

4. Defendant 86-55 Grand Realty, Inc. (“86-55 Grand Realty”) is a business corporation organized and existing under and by virtue of the laws of the State of New York with a principal place of business located at 86-22 Broadway, Fl 2, Elmhurst, New York 11373.

5. Defendant Master Works Contractor Inc. (“Master Works Contractor”) is a business corporation organized and existing under and by virtue of the laws of the State of New York with a principal place of business located at 757 48<sup>th</sup> St. Brooklyn, NY 11220.

6. Defendant Yan Architect & Planner PLLC (“Yan Architect & Planner”) is a professional service limited liability company organized and existing under and by virtue of the laws of the State of New York with a principal place of business located at 58-08 188<sup>th</sup> St. Fresh Meadow, New York 11365.

7. Defendant All State 12 General Contracting Corp. (“All State 12”) is a business corporation organized and existing under and by virtue of the laws of the State of New York with a principal place of business located at 37-17 111<sup>th</sup> St., Suite 1F, Corona, New York 11368.

## JURISDICTION AND VENUE

8. This Court has jurisdiction over Defendants pursuant to CPLR 301 and 302.
9. Venue in Queens County is proper pursuant to CPLR 503(a).

## FACTS

### **The Firehouse**

10. The Firehouse is home to two companies and a battalion, Engine 287, Ladder 136, and Battalion 46, and serves the surrounding community of Elmhurst, Queens.

11. The companies and battalion housed at the Firehouse responded to over 10,500 emergency calls in 2021 alone.

12. The Firehouse is a vital part of the community it serves and is centrally located within its territory to provide rapid emergency services throughout the area.

### **Contracts and Construction Work**

13. On information and belief, at some time prior to January 31, 2018, 133-24 Realty acquired the 84-14 Property.

14. On information and belief, at some time prior to June 27, 2019, 86-55 Grand Realty acquired the 84-18 Property.

15. The same person, Tu Kang Yang, is listed as the Chief Executive Officer of both 133-24 Realty and 86-55 Grand Realty on corporate registrations filed with the New York Department of State.

16. On information and belief, at some point prior to March 6, 2020, 133-24 Realty retained Master Works Contractor as general contractor to perform excavation and foundation work at the 84-14 Property.

17. On information and belief, at some point prior to March 6, 2020, 133-24 Realty retained Yan Architect & Planner as an architect/engineer to oversee construction at the 84-14 Property.

18. On March 6, 2020 Yuen Yueng Wong, an employee of Master Works Contractor, obtained a permit to construct a foundation for a new building at the 84-14 Property, listing Wenkang Yan, an employee of Yan Architect & Planner, as Superintendent of Construction.

19. On information and belief, at some point prior to August 8, 2019, 86-55 Grand Realty retained All State 12 as general contractor to perform excavation and foundation work at the 84-18 Property.

20. On August 8, 2019 Rosalio Ojo, an employee of All State 12, obtained a permit to construct a foundation for a new building at the 84-18 Property, listing Guillermo Rojo Garcia, an employee of All State 12, as Superintendent of Construction

21. The construction work at the 84-14 Property required 133-24 Realty, Master Works Contractor, and/or Yan Architect & Planner to request permission from FDNY to enter upon the FDNY Property to inspect and perform certain work in order to protect the FDNY Property during construction.

22. The construction work at the 84-18 Property required 86-55 Grand Realty and/or All State 12 to request permission from FDNY to enter upon the FDNY Property to inspect and perform certain work in order to protect the FDNY Property during construction.

23. By agreement dated December 30, 2019, FDNY granted to 133-24 Realty a license to enter onto the FDNY property to facilitate the excavation and foundation work at the 84-14 Property and to protect the FDNY property from damage during such work (the "84-14 Access Agreement").

24. By agreement dated August 12, 2019, FDNY granted to 86-55 Grand Realty a license to enter onto the FDNY property to facilitate the excavation and foundation work at the 84-18 Property and to protect the FDNY property from damage during such work (the “84-18 Access Agreement”).

25. Both the 84-14 Access Agreement and the 84-18 Access Agreement (collectively, the “Access Agreements”) specified that “[a]ny damage to the FDNY Property resulting from the performance of the Project Work, including the Protection Work, shall be repaired to the satisfaction of the FDNY Project Manager at Owner’s sole expense.”

26. The definition of “Project Work” in the Access Agreements encompasses all work necessary for the construction of new buildings on the 84-14 and 84-18 Properties, any work necessary to protect the FDNY Property, and any work necessary to repair damage to the FDNY Property.

27. On or before July 15, 2020, defendants 133-24 Realty, Master Works Contractor, and/or Yan Architect & Planner began excavation work at the 84-14 Property.

28. On or before July 15, 2020, defendants 86-55 Grand Realty and/or All State 12 began excavation work at the 84-18 Property.

29. On or about August 17, 2020, while an initial foundation was being poured at the 84-18 Property and excavation work was occurring at the 84-14 Property, FDNY discovered damage to the Firehouse, including cracks on interior and exterior walls.

#### **Notification and Stop Work Orders**

30. By letter dated August 19, 2020, FDNY notified 133-24 Realty, via Mr. Tu Kang Yang, of the damage to the Firehouse and requested that they immediately cease all work affecting the FDNY Property.

31. The August 19 letter further advised 133-24 Realty that it is responsible for all damage caused to the FDNY Property.

32. On or about August 20, 2020, the New York City Department of Buildings (“DOB”) issued stop work orders on both the 84-18 and 84-14 Properties.

33. DOB subsequently partially lifted the stop work orders to allow for backfilling on the 84-14 property and for a foundation to be poured at the 84-18 property.

34. DOB further required defendants to submit plans for stabilization of the FDNY Property.

### **The First Cameron Report**

35. Following the discovery of damage to the Firehouse, FDNY retained Cameron Engineering & Associates, LLP (“Cameron Engineering”) to perform a structural assessment of the Firehouse and the FDNY Property.

36. Cameron Engineering issued a report in November 2020 (the “First Cameron Report”) that assesses the extent of damage to the Firehouse and the FDNY Property at that time, finds that the damage was caused by the construction activities at the 84-18 and 84-14 Properties, and issues recommendations for stabilization and repair work that would be necessary to secure the Firehouse.

37. The First Cameron Report finds various structural concerns throughout the FDNY Property that are linked to construction activities at the 84-18 and 84-14 Properties, including:

- a. several locations on the façade and interior of the building experienced localized shear stresses;

- b. concrete slab-on-grade patios and alley pavements along the North, East, and West of the FDNY Property had settled between 1-3 inches;
- c. exterior multi-wythe brick loadbearing walls on the North, East, and West elevations had been disturbed by the excavation of subgrade construction that caused cracks throughout the façade, interior slab, and partition walls, with several cracks penetrating through the thickness of the wall.

38. The First Cameron Report recommends that certain repairs be conducted as soon as possible to avoid further deterioration of the Firehouse's structural system, including:

- a. cracks throughout the exterior multi-wythe brick loadbearing wall on the North East and West elevations of the building;
- b. cracks in the slab-on-grade in the kitchen, cellar, and apparatus floor;
- c. cracks in the cellar wall at the North elevation; and
- d. cracks in the cellar slab-on-grade.

39. The First Cameron Report concludes that the damage documented in paragraph 37 was caused by excavation activities on the 84-18 and/or 84-14 Properties.

40. The First Cameron Report recommends that the Firehouse was fit for continued operation at that time, but with vigilant monitoring for signs of damages and cracks throughout the building.

41. The First Cameron Report also recommends that construction activities at the 84-18 and 84-14 Properties should be halted until the necessary repairs and stabilization could be made for the Firehouse and the FDNY Property.



## The PWGC Report

42. Cameron Engineering retained P. W. Grosser Consulting Engineer & Hydrogeologist, Inc. (“PWGC”) to perform an assessment of the soil conditions under the FDNY Property.

43. PWGC issued a report that assessed the soil conditions beneath the FDNY Property (the “PWGC Report”) which confirms that excavation at the 84-18 and 84-14 Properties caused disturbances in the soil underneath the FDNY Property, which in turn caused the damage to the Firehouse.

44. In preparing the PWGC Report, PWGC performed geophysical surveys of the subsurface soil, drilled geotechnical soil borings, and reviewed available design documents.

45. The PWGC Report states that the geophysical surveys found soil disturbances in the East rear yard, West rear yard, cellar, kitchen, bathroom/storage closet, and sitting room. Exterior scans found minor disturbances from seven to fifteen feet below grade surface (the limit of the scan). Interior scans in the cellar of the Firehouse revealed small disturbances up to seven feet below grade surface, and more prominent disturbances between seven to fifteen feet below grade surface. In short, PWGC found disturbances to the soil throughout the FDNY Property.

46. The PWGC Report further states that the geotechnical soil borings revealed that areas with looser subsurface fill material – i.e. areas with lower load bearing capacities – corresponded to areas with the most prevalent damage to the Firehouse.

47. The PWGC Report also notes that although the original design documents for the 84-14 Property included underpinning for the north side of the FDNY Property with cast-in-place concrete, defendants instead opted not to follow the original specifications, but to use as

underpinning a less supportive tangent pile wall system, supported with structural steel wales and rakers. The PWGC Report further notes that the tangent pile wall system was poorly constructed, such that gaps formed throughout the wall system.

48. The PWGC Report concludes that the subsurface material under the FDNY Property apparently slipped through the tangent pile wall system by passing through gaps between the tangent piles, leading to loose subsurface conditions beneath the FDNY Property.

49. The PWGC Report recommends that preventing additional damage to the FDNY Property would require underpinning or stabilization of the subsurface soils through proper techniques.

#### **FDNY's Engagement with the Owners**

50. FDNY has made good faith attempts to engage with the Owners throughout the construction process, and has attempted to negotiate on efforts to remedy the damage to the FDNY Property since it was first discovered.

51. Following the August 19 letter, FDNY made regular attempts to contact 133-24 Realty and 86-55 Grand Realty throughout the remainder of 2020 and the spring of 2021 to discuss monitoring of cracks, among other issues, with limited success.

52. On November 18, 2020, FDNY notified Mr. Tu Kang Yang, CEO of 133-24 Realty and 86-55 Grand Realty, that the plans defendants had previously submitted for repair of the Firehouse and the FDNY Property were insufficient and that new plans must be submitted.

53. FDNY received no response to this communication, and no new plans were submitted in response to this request.

54. In or about January 2021, 133-24 Realty and/or 86-55 Grand Realty retained a new engineer of record, Jackman Prescod of 5D Architecture and Engineering, PLLC ("5D").

55. 5D assumed responsibility for regular monitoring of cracks and vibrations, providing weekly updates to FDNY.

56. On or about April 12, 2021, FDNY entered into an agreement with 86-55 Grand Realty to permit 86-55 Grand Realty to conduct soil testing on the FDNY Property.

57. Though 86-55 Grand Realty began this soil testing and dug a number of test holes on the FDNY Property in the first week of May, 2021, they never completed the testing. On September 17, 2021, FDNY advised 86-55 Grand Realty that it was no longer authorized to conduct testing and ordered them to fill any remaining test holes, because it was not clear that any testing was still ongoing, FDNY received no response to its inquiries about the timing of filling the holes, and the continued presence of open test holes on the FDNY Property presented a tripping hazard for FDNY personnel.

58. On or about April 16, 2021, 5D advised FDNY that it was unsafe to continue parking firetrucks inside the Firehouse due to the extent of damage.

59. The firetrucks that were previously housed inside the Firehouse have been parked on the street since 5D's April 16 recommendation

60. Parking the firetrucks outside the Firehouse for an extended period of time has required FDNY to engineer and construct, at its own expense, cages to properly secure the trucks to prevent theft or damage.

61. On or about April 26, 2021, FDNY submitted a written demand to 133-24 Realty and 86-55 Grand Realty for \$78,705.61 for structural engineering fees.

62. FDNY did not receive any response to the April 26 demand letter.

63. On or about June 22, 2021, 5D and/or 86-55 Grand Realty ceased providing weekly crack monitoring.

64. Since June 22, 2021, FDNY has been forced to conduct regular monitoring itself as a result of 86-55 Grand Realty's and/or 133-24 Realty's failure to conduct required monitoring.

65. On or about September 1, 2021, DOB informed 86-55 Grand Realty that the 84-18 Property must be backfilled pursuant to Section 3303.13 of the Building Code, which addresses sites where work has been abandoned.

66. Both the 84-14 Property and the 84-18 Property have now been backfilled.

67. FDNY has continued to monitor the cracks in the Firehouse and has noted movement after the lots were backfilled, indicating continuing and ongoing disruption to the integrity of the soil on the FDNY Property.

#### **The Second Cameron Report**

68. In July 2021, as damage to the Firehouse was becoming more severe and communications to 133-24 Realty and 86-55 Grand Realty continued to be met with silence and delay, FDNY again retained Cameron Engineering to perform a second analysis of the structural damage to the FDNY property and provide recommendations for remedying the damage (the "Second Cameron Report").

69. The Second Cameron Report builds on the findings of the First Cameron Report, and notes that while the FDNY Property had mostly ceased major movement by this time, gauges have indicated slight movement and some cracks continued to grow.

70. The Second Cameron Report finds that the Firehouse would require significant structural and architectural remediation in order to be maintained and continue in full service. Cameron Engineering estimates that remediation would cost between \$20-23 million and would take approximate two to three years. This would allow FDNY to continue limited operations

out of the Firehouse during construction, but would only extend the life of the building by only 20-25 years due to the age of the building and the damage it has sustained.

71. Alternatively, the Second Cameron Report estimates that a new building would cost approximately \$26 million and would take approximately seven to eight years to complete. This would include an entirely new foundation and would be built to contemporary building code requirements, and is estimated to last for over 100 years. However, FDNY would have to relocate the companies currently housed at the Firehouse for the duration of the construction.

### **Plaintiff's Damages**

72. To date, the City has incurred damages in excess of \$550,978.65 (Five Hundred and Fifty Thousand, Nine Hundred and Seventy Eight Dollars and Sixty Five Cents) in mitigating and protecting against further damage, and in attempting to ensure that vital public safety activities are not interrupted.

73. The City has spent in excess of \$120,087.68 (One Hundred and Twenty Thousand, Eighty Seven Dollars and Sixty Eight Cents) in structural engineering fees and subcontracting fees for the preparation of the reports discussed herein as well as required regular monitoring of the FDNY property.

74. The City was also required to spend \$430,890.97 (Four Hundred and Thirty Thousand, Eight Hundred and Ninety Dollars and Ninety Seven Cents) to engineer and construct temporary cages to store its firetrucks since April 2021, since they could not be stored in the Firehouse at the recommendation of 5D.

75. The City will incur additional damages in excess of \$26,000,000 (Twenty Six Million Dollars) to mitigate and repair the damage caused by defendants' actions by constructing a new firehouse on the FDNY Property.

76. Alternatively, The City will incur additional damages of approximately \$23,000,000 (Twenty Three Million Dollars) to mitigate and repair the damage caused by defendants' actions by repairing the Firehouse.

77. Plaintiff reserves the right to assert and seek recovery of additional damages as they may arise.

**AS AND FOR A FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT  
AGAINST 133-24 REALTY AND 86-55 GRAND REALTY**

78. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-77 as if fully set forth herein.

79. The 84-14 Access Agreement constitutes a valid and fully enforceable agreement between FDNY and 133-24 Realty.

80. The 84-18 Access Agreement constitutes a valid and fully enforceable agreement between FDNY and 86-55 Grand Realty.

81. FDNY fulfilled all its obligations to 133-24 Realty and 86-55 Grand Realty under the Access Agreements.

82. 133-24 Realty and 86-55 Grand Realty have each breached the Access Agreements by failing to repair damage caused by their construction activities to FDNY's satisfaction as required by the explicit terms of the Access Agreements.

83. As a direct and foreseeable result of 133-24 Realty's and 86-55 Grand Realty's breach of the Access Agreements, FDNY has incurred damages in an amount to be determined at trial, but not less than \$23,550,978.65 (Twenty Three Million, Five Hundred and

Fifty Thousand, Nine Hundred and Seventy Eight Dollars and Sixty Five Cents), for which Defendants 133-24 Realty and 86-55 Grand Realty are liable.

**AS AND FOR A SECOND CAUSE OF ACTION FOR STRICT LIABILITY AGAINST  
ALL DEFENDANTS**

84. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-77 as if fully set forth herein.

85. Pursuant to the New York City Building Code, owners, general contractors, subcontractors, architects, and engineers are strictly liable for damage to adjoining property owners for excavation work. The relevant provision of the Building Code provides, as follows:

**Soil or foundation work affecting adjoining property.** Whenever soil or foundation work occurs, regardless of the depth of such, the person who causes such to be made shall, at all times during the course of such work and at his or her own expense, preserve and protect from damage any adjoining structures, including but not limited to footings and foundations, provided such person is afforded a license in accordance with the requirements of Section 3309.2 to enter and inspect the adjoining buildings and property, and to perform such work thereon as may be necessary for such purpose.

Building Code § 3309.4, New York City Administrative Code.

86. FDNY, pursuant to the Access Agreements and in conformity with the requirements of Section 3309.4 of the Building Code, granted a license to Defendants to enable to construction at the 84-18 and 84-14 Properties, while ensuring that the FDNY Property was protected from damage caused by such construction.

87. Defendants, through their acts and/or omissions in excavation and construction activities at the 84-18 and 84-14 Properties, including underpinning of the FDNY Property, violated Section 3309.4 of the Building Code.

88. Defendants' violation of the Building Code caused or contributed to damage to the FDNY Property.

89. As a direct and foreseeable result of Defendants' violation of the Building Code, FDNY suffered injury to its property and incurred damages in an amount to be determined at trial, but not less than \$23,550,978.65 (Twenty Three Million, Five Hundred and Fifty Thousand, Nine Hundred and Seventy Eight Dollars and Sixty Five Cents), for which Defendants are liable.

**AS AND FOR A THIRD CAUSE OF ACTION FOR NEGLIGENCE AGAINST ALL  
DEFENDANTS**

90. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-77 as if fully set forth herein.

91. Defendants owed the City a duty of reasonable care in excavating for the construction activities at the 84-14 and 84-18 Properties, including underpinning of the FDNY Property. Defendants were obligated to perform work on the 84-14 and 84-18 Properties in a safe manner, use caution in performing such work so as to not undermine the lateral support of the neighboring FDNY Property, and/or generally to exercise due care in connection with any work near the property lines separating the various properties.

92. Defendants' duties are defined by standards of conduct specified in Section 3309.4 of the Building Code.

93. As part of and/or in addition to the duties identified herein, Defendants owed FDNY a common law duty of lateral support to ensure that no loss of lateral support occurred to the FDNY Property.

94. Defendants, through their acts and/or omissions in excavating for the construction activities at the 84-14 and 84-18 Properties breached the aforementioned duties to FDNY as the adjacent landowner.



95. Defendants' breach of their duties owed to FDNY in excavating for the construction activities at the 84-14 and 84-18 Properties caused or contributed to the damage to the FDNY Property.

96. As a direct and foreseeable result of the Defendants' breach of their duties owed to FDNY in excavating for the construction activities at the 84-14 and 84-18 Properties, FDNY suffered injury to its property, and incurred damages in an amount to be determined at trial, but not less than \$23,550,978.65 (Twenty Three Million, Five Hundred and Fifty Thousand, Nine Hundred and Seventy Eight Dollars and Sixty Five Cents), for which Defendants are liable.

**AS AND FOR A FORTH CAUSE OF ACTION FOR PRIVATE NUISANCE AGAINST  
133-24 REALTY AND 86-55 GRAND REALTY**

97. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-77 as if fully set forth herein.

98. The continued presence under the FDNY Property of voids in the soil caused in excavating for the construction activities at the 84-14 and 84-18 Properties, which have undermined the lateral support of the FDNY Property and has caused structural damage to the Firehouse, amounts to a substantial interference with FDNY's property rights of use and enjoyment of the land and constitutes a private nuisance.

99. Despite repeated and ongoing attempts to negotiate a resolution with the Owners, they have to date failed to take adequate steps to remedy the soil conditions causing such private nuisance.

100. As a direct result of the Owners' maintenance of a private nuisance, FDNY suffered injury to its property, and incurred damages in an amount to be determined at trial, for which defendants 133-24 Realty and 86-55 Grand Realty are liable.


**WHEREFORE**, Plaintiff City of New York demands judgment against defendants, ordering as follows:

- (a) On the First Cause of Action, determining that defendants 133-24 Realty and 86-55 Grand Realty, each breached the Access Agreements by failing to remedy damage to the FDNY Property;
- (b) On the Second Cause of Action, determining that all defendants are strictly liable for violation of Building Code § 3309.4;
- (c) On the Third Cause of Action, determining that all defendants negligently harmed plaintiff;
- (d) On the Fourth Cause of Action ordering defendants to abate the private nuisance;
- (e) Awarding damages in the amount of:
  - a. \$26,000,000 (Twenty Six Million Dollars) to mitigate and repair the damage caused by defendants' actions by constructing a new firehouse on the FDNY Property;
  - b. Alternatively, \$23,000,000 (Twenty Three Million Dollars) to mitigate and repair the damage caused by defendants' actions by repairing the Firehouse;
  - c. \$120,087.68 (One Hundred and Twenty Thousand, Eighty Seven Dollars and Sixty Eight Cents) for structural engineering fees;
  - d. \$430,890.97 (Four Hundred and Thirty Thousand, Eight Hundred and Ninety Dollars and Ninety Seven Cents) to construct temporary cages to store firetrucks;

- (f) Awarding pre-judgment interest;
- (g) Awarding the costs and disbursements of this action; and
- (h) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
May 6, 2022

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