

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

STUART DAVIDSON TRIBBS, on behalf of  
himself and all others similarly situated,

Index No.:

Plaintiff,

-v-

**PLAINTIFF'S CLASS ACTION  
COMPLAINT**

326-338 E 100TH LLC, and STEVE CROMAN

Defendants.

Plaintiff Stuart Davidson Tribbs ("Plaintiff"), individually, and on behalf of all others similarly situated, by and through his attorneys, brings this class action complaint against Defendants 326-338 E 100th LLC and Steve Croman ("Defendants").

**INTRODUCTION**

1. 326-338 E 100th LLC is the owner in fee of the apartment buildings located at 326-338 East 100<sup>th</sup> Street (the "Buildings") in Manhattan.

2. Steve Croman ("Croman") is the managing member of 326-338 E 100th LLC.

3. The Buildings received certain tax abatements and/or exemptions pursuant to the J-51 tax benefits program (the "J-51 Program").

4. Landlords of buildings in the J-51 Program are required to provide their tenants with rent-stabilized leases as a condition of receiving the tax benefits.

5. Plaintiff did not receive a rent-stabilized lease at the time he moved into the Buildings, and have been provided non-rent stabilized lease renewals. In fact, Plaintiff was specifically provided a rider which noted as follows:

45. **Exemption From Rent Regulation.** Tenant acknowledges that neither this agreement nor any of the terms and conditions hereof, including without limitation the amount of rent and other charges and the term hereof is subject to any law, rule, regulation or ordinance or any other prohibition of any nature or kind, including without limitation any and all laws, rules, regulations or ordinances commonly known by and referred to as rent control, rent stabilization, or the emergency tenant protection act.

6. Landlords of buildings receiving J-51 tax benefits are legally required to provide their tenants with appropriate riders (the "J-51 Rider") detailing the tax credit, and disclosing when it expires. NYC Adm. Code § 26-504(c).

7. Failure to provide tenants with the J-51 Rider, entitles those tenants to rent-stabilized leases for as long as they remain in their apartment.

8. Because they did not receive J-51 Rider, Plaintiff and the members of the putative class are entitled to rent-stabilized leases for as long as they occupy their apartments.

9. Landlords of buildings in the J-51 Program are required to register the apartments in their buildings with the Division of Housing and Community Renewal ("DHCR").

10. Plaintiff's apartment was not registered with DHCR and was, in fact, listed as exempt from rent stabilization.

11. The DHCR rent history for Plaintiff's apartment in the Buildings states:

2012	RS	07/16/2012	1211.67
TENANT: TOTA KHAN			
2013	VA	08/08/2013	1211.67
2014	VA	07/28/2014	1211.67
2015	PE	07/22/2015	EXEMPT
HIGH RENT VACANCY			
2016	EXEMPT APARTMENT - REG NOY		

12. Rent Stabilization Code ("RSC") § 2522.6 states that when "a full rental history from the base date is not provided," a default formula, codified in at RSC § 2522.6(b) (3) is to be utilized to determine the legal regulated rent.

13. The base date is four years before the filing of this complaint.

14. Due to the lack of rent history for Plaintiff's apartment, the "full rental history from the base date is not provided," for Plaintiff's apartment. The same is true for each of the apartments of the members of the putative class, as defined below.

15. Accordingly, the RSC §2522.6(b)(3) default formula is required to be used to calculate the legal regulated rent for Plaintiff's apartment, and for each of the apartments occupied by similarly situated members of the putative class.

16. Upon information and belief, the use of the RSC §2522.6(b)(3) default formula will result in a rent lower than the legal regulated rent being charged for Plaintiff's apartment and for each of the apartments occupied by similarly situated members of the putative class.

17. Accordingly, Plaintiff and the putative class have suffered damages in the form of rent overcharges.

18. Defendants' tax filings for the Buildings demonstrate that there are other tenants who are similarly situated to Plaintiff.

19. According to Defendants' June 2015 property tax statements for the Buildings, only 36 out of 92 units were listed as rent-stabilized.

20. This is in violation of the rent-stabilization laws and the J-51 Program's rules, which rules require that all 92 units, including the unit occupied by Plaintiff, be rent-stabilized.

21. The aforementioned conduct demonstrates an attempt by Defendants to circumvent the requirements of New York City's rent regulations, all at the expense of the tenants residing at the Buildings.

### **PARTIES**

#### **Plaintiff**

22. Plaintiff Stuart Davidson Tribbs resides in Apartment 6A at 326 E. 100<sup>th</sup> Street in Manhattan.

23. Like all the Buildings, 326 E. 100<sup>th</sup> Street receives J-51 tax benefits from New York City, entitling the tenants of that building to rent-stabilized leases.

24. Upon moving into his apartment in May of 2015, Plaintiff was impermissibly provided with a purported “free market” lease.

25. Defendants impermissibly failed to file with the Division of Housing and Community Renewal (“DHCR”) the legally required registrations for Plaintiff’s apartment, and his apartment is listed as “EXEMPT” in its DHCR rent history.

26. Plaintiff Davidson Tribbs has never received any of the riders required by the J-51 Program for his apartment.

27. Plaintiff Davidson Tribbs is entitled to a rent stabilized lease with a monthly rent amount calculated utilizing the RSC § 2522.6 default formula.

28. Plaintiff Davidson Tribbs is entitled to a refund of any rent paid over and above his properly calculated monthly rent amount.

### **Defendants**

29. Defendant 326-338 E 100th LLC is a corporation with its principal place of business in New York City.

30. 326-338 E 100th LLC is the registered owner of the Buildings.

31. Upon information and belief, 326-338 E 100th LLC conducts and transacts business in the City, County, and State of New York.

32. Defendant Steve Croman is the managing member of 326-338 E 100th LLC.

33. Upon information and belief, Steve Croman directed all aspects of leasing for the Buildings, including the failures to register the apartments with DHCR, as required.

34. Upon information and belief, Steve Croman conducts and transacts business in the City, County, and State of New York.

### **THE APPLICABLE STATUTORY AND REGULATORY ENVIRONMENT**

#### **The Rent Stabilization Law and the Rent Stabilization Code**

35. In 1969, citing a continuing shortage of residential rental housing, the New York City Council enacted its rent stabilization statute, the Rent Stabilization Law (“RSL”), N.Y. Unconsol. Law § 26-501 (McKinney).

36. Thereafter, the New York City Council gave DHCR authority to promulgate regulations in furtherance of the RSL. DHCR did so by establishing the Rent Stabilization Code (“RSC”), N.Y. Comp. Codes R. & Regs. Tit. 9, § 2520.1, *et seq.*

37. The RSL and RSC limit the rent that landlords can charge and circumscribe the manner in which landlords are able to raise rents, cover the cost of improvements, and deregulate apartments.

38. The rent that a landlord may charge for a regulated unit is based on an initial legal rent.

39. The initial legal rent is based, in part, on the rent the previous tenant paid.

40. Landlords of rent-stabilized apartments may be entitled to increase rents:

- a. when permitted by the RGB;
- b. following a DHCR approved Major Capital Improvement;
- c. an increase following a vacancy; and/or
- d. following Individual Apartment Improvements that are properly supported by documentation, and made either during the vacancy of an apartment or agreed upon by the tenant.

41. In New York City, the RGB sets the maximum rates for rent increases once a year that are effective for rent stabilized leases commencing on or after October 1<sup>st</sup> of each year through September 30<sup>th</sup> of the following year. RSC § 2522.4.

### **The J-51 Program**

42. In 1955, the New York State Legislature enacted Real Property Tax Law (“RPTL”) § 489, which authorized cities to promulgate local laws that would provide multiple dwelling owners with tax incentives to rehabilitate their properties or convert them to residential use.

43. After the enactment of RPTL § 489, the City of New York adopted Administrative Code § J51-2.5<sup>1</sup> (now Administrative Code § 11-243) as an incentive to reward residential major capital improvement, moderate rehabilitation and conversion projects with real property tax exemption and abatement benefits for certain enumerated projects.

44. Pursuant to the 1955 Legislative Annual, the purpose of the J-51 Program was to “provide decent safe and sanitary homes for lower income families.” NY Legis. Ann., 1955, at 267-268.

45. While the J-51 Program has been expanded over the years to cover various types of rehabilitations and conversions, its focus has essentially remained to “increase the supply of moderate rental housing that meets satisfactory standards.”<sup>2</sup>

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<sup>1</sup> The J-51 Program is the successor to former J-41-2.4 of the Administrative Code. Thereafter, it was renumbered as § J51-2.5.

<sup>2</sup> See note, McKinney’s Session Laws (1960), ch. 968, p. 1550

46. The J-51 Program has been repeatedly amended to impose additional requirements concerning, *inter alia*, the use of the buildings and apartments that are eligible for J-51 treatment.

47. In furtherance of its original purpose, to strike a balance between creating affordable and safe housing, the City of New York adopted Administrative Code § 11-244, which provides in relevant part as follows:

During the period of tax exemption or abatement pursuant to this section, each of the following shall be a condition precedent to the continuation of the exemption and/or abatement:

\* \* \*

(ii) all dwelling units, except owner occupied units, shall be subject to the emergency housing rent control law or the local housing rent control act or the tenant protection act of nineteen hundred seventy-four, or any local laws enacted pursuant thereto or the rent stabilization law of nineteen hundred sixty-nine;

48. In other words, as a condition to receiving benefits pursuant to the J-51 Program, a building owner must provide its tenants with the protections of the rent stabilization laws.

49. Indeed, the apartments in a building receiving benefits pursuant to the J-51 Program must be subject to the rent stabilization laws while the building is receiving those benefits, even if those apartments would otherwise be exempt.

50. In 1985, the Legislature amended Real Property Tax Law § 489 so as to allow rent regulation to continue after the expiration of the J-51 Benefits until the first vacancy thereafter, unless each and every lease and renewal issued during the period during which the Building is receiving benefits contains a prominent notice informing the tenant that rent regulation will expire when the tax benefits expire, and the approximate date thereof. RPTL § 489(7) (b) (2).

51. To that end, the City of New York adopted Administrative Code § 26-504(c) which provides, in relevant part, that:

...Upon the expiration or termination for any reason of the benefits of section 11-243 or section 11-244 of the code or article eighteen of the private housing finance law any such dwelling unit shall be subject to this chapter until the occurrence of the first vacancy of such unit after such benefits are no longer being received or if each lease and renewal thereof for such unit for the tenant in residence at the time of the expiration of the tax benefit period has included a notice in at least twelve point type informing such tenant that the unit shall become subject to deregulation upon the expiration of such tax benefit period and states the approximate date on which such tax benefit period is scheduled to expire, such dwelling unit shall be deregulated as of the end of the tax benefit period; provided however, that if such dwelling unit would have been subject to this chapter or the emergency tenant protection act of nineteen seventy-four to the same extent and in the same manner as if this subdivision had never applied thereto.

**DEFENDANTS' FRAUDULENT SCHEME  
TO EVADE THE RENT STABILIZATION LAWS**

52. Upon information and belief, certain units in the Buildings are subject to the RSL by virtue of the fact that the Buildings received benefits under the J-51 Program.

53. Upon information and belief, the apartments of Plaintiff and the Class were all subject to rent control and/or rent stabilization and previously registered as such with DHCR.

54. Upon information and belief, Defendants knowingly and willfully failed to comply with the requirements of the RSL by, among other things, failing to provide tenants in the Buildings with rent-stabilized leases, failing to properly register the apartments with DHCR, and increasing rents beyond the limits set forth by the RGB.

55. Defendants, either directly or indirectly, charged Plaintiff and the Class members market rate rents or rents otherwise in excess of the legal regulated rent for their apartments.



56. Defendants, either directly or indirectly overcharged Plaintiff and the Class an amount equal to the difference between their monthly rents and the appropriate legal regulated rent-stabilized rents.

### CLASS ALLEGATIONS

#### The Class and Sub-Class

57. This action may be properly maintained as a class action under the provisions of Article 9 of the CPLR.

58. The proposed Class is defined as:

all tenants at 326-338 East 100<sup>th</sup> Street living, or who had lived, in apartments that were deregulated during the period when J-51 tax benefits were being received by the owner of at 326-338 East 100<sup>th</sup> Street, except that the class shall not include any tenants who vacated before January 8, 2014 (the "Class").

59. The Class seeks certification of claims for damages.

60. In addition, Plaintiff proposes a Sub-Class consisting of all current tenants at 326-338 East 100<sup>th</sup> Street, who currently reside in an unlawfully deregulated apartment (the "Sub-Class").

61. The Sub-Class seeks certification of claims for declaratory and injunctive relief as described more fully below.

#### Class and Sub-Class Meet Requirements for Certification

62. The Class and Sub-Class are so numerous that joinder of all members is impracticable.

63. Although the exact number and identities of the members of the Class and Sub-Class are currently unknown to Plaintiff, it is reasonable to conclude that the practices complained of herein affect more than one hundred current and former tenants in the Buildings.

64. Nearly all factual, legal, and statutory relief issues that are raised in this Complaint are common to each of the members of the Class and Sub-Class and will apply uniformly to every member of the Class and Sub-Class.

65. The claims of the representative Plaintiff are typical of the claims of each member of the Class. He, like all other members of the Class, sustained damages arising from Defendants' fraudulent scheme to evade the rent stabilization laws.

66. The representative Plaintiff and the members of the Class were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct.

67. The claims of the representative Plaintiff are typical of the claims of each member of the Sub-Class. Plaintiff, like all other members of the Sub-Class, is entitled to the same declaratory and injunctive relief as the members of the Sub-Class.

68. The representative Plaintiff will fairly and adequately represent and protect the interests of the Class and Sub-Class.

69. There are no material conflicts between the claims of the representative Plaintiff and the members of the Class and Sub-Class that would make class certification inappropriate.

70. The counsel selected to represent the Class and Sub-Class will fairly and adequately protect the interest of the Class and Sub-Class, and they are lawyers who have experience in class and complex litigation and are competent counsel for this class action litigation.

71. Counsel for the Class and Sub-Class will vigorously assert the claims of all members of the Class and Sub-Class.

72. This action is properly maintained as a class action in that common questions of law and fact exist as to the members of the Class and Sub-Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- a. the interests of the members of the Class and Sub-Class in individually controlling the prosecution or defense of separate actions;
- b. the impracticability or inefficiency of prosecuting or defending separate actions;
- c. the extent and nature of any litigation concerning the controversy already commenced by or against members of the Class and Sub-Class;
- d. the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- e. the difficulties likely to be encountered in the management of a class action.

73. Among the numerous questions of law and fact common to the Class and Sub-Class are:

- a. whether the Defendants act or refuse to act on grounds generally applicable to the Plaintiff, the Class, and the Sub-Class;
- b. whether the Defendants have established a pattern, practice, or policy of misrepresenting tenants' rent stabilization status or of failing to notify tenants that their apartments are, or should be, rent-stabilized;
- c. whether the Defendants have established a pattern, practice, or policy of unlawfully deregulating apartments;
- d. whether the Defendants have established a pattern, practice, or policy of misrepresenting legal regulated rents;
- e. whether the Defendants have established a pattern, practice, or policy of failing to provide rent-stabilized leases to tenants in J-51 buildings;
- f. whether Defendants have established a pattern, practice, or policy of overcharging rent;

- g. whether Defendants' practices, acts, and conduct violate the RSL and RSC;
- h. to what extent Plaintiff and members of the Class are entitled to damages; and
- i. to what extent Plaintiff and members of the Sub-Class are entitled to declaratory and injunctive relief.

**COUNT ONE**  
**VIOLATION OF RSL § 26-512**  
*(on behalf of the Class)*

74. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 73 of this complaint.

75. At all times relevant hereto, apartments of Plaintiff and the Class were subject to the provision of the RSL.

76. Defendants entered into leases with Plaintiff and the Class, which misrepresented the amount of rent Defendants were legally entitled to collect and/or falsely represented that their apartments were not subject to rent stabilization.

77. Defendants charged Plaintiff and the Class rents in excess of the legal regulated rent for their apartments.

78. Defendants overcharged Plaintiff and the members of the Class an amount equal to the difference between their monthly rents and the appropriate legal regulated rent-stabilized rents.

79. Plaintiff and members of the Class are entitled to recover monetary damages from Defendants based on the unlawful overcharges, as well as an award of interest thereon.

**COUNT TWO**  
**VIOLATION OF RSL § 26-512**  
***(on behalf of the Sub-Class)***

80. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 73 of this complaint.

81. A justiciable controversy exists between the parties in that, among other things, Plaintiff and the members of the Sub-Class allege that their respective apartments are subject to rent stabilization coverage, pursuant to the RSL.

82. Defendants entered into leases with Plaintiff and the members of the Sub-Class, which incorrectly, falsely, and illegally misrepresented the amount of rent Defendants were legally entitled to collect and/or falsely represented that their apartments were not subject to rent stabilization.

83. As described above, and upon information and belief, Defendants' conduct was designed to remove the apartments of Plaintiff and members of the Sub-Class from the protections of rent stabilization.

84. A justiciable controversy exists in that, upon information and belief, Defendants dispute that the apartments of Plaintiff and members of the Sub-Class are subject to rent stabilization under the RSL and RSC.

85. Plaintiff and members of the Sub-Class lack an adequate remedy at law.

86. By reason of the foregoing, Plaintiff and members of the Sub-Class are entitled to a declaratory judgment adjudging and determining:

- a. the apartments of Plaintiff and members of the Sub-Class are each subject to the RSL and RSC;
- b. Plaintiff and members of the Sub-Class are each entitled to a rent-stabilized lease in a form promulgated by DHCR;

- c. the amount of the legal regulated rent for the apartments of Plaintiff and members of the Sub-Class;
- d. any leases offered by Defendants to Plaintiff and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and
- e. Plaintiff and members of the Sub-Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, Plaintiff and members of the Sub-Class.

87. Plaintiff and members of the Sub-Class are entitled to reformation of their leases to provide that their units were and are, in fact, subject to rent stabilization.

88. Plaintiff and members of the Sub-Class are entitled to reformation of their leases to represent accurately the amount of rent Defendants are legally entitled to charge Plaintiff and members of the Sub-Class.

**COUNT THREE**  
**DECLARATORY RELIEF**  
*(on behalf of the Sub-Class)*

89. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 73 of this complaint.

90. A justiciable controversy exists between the parties in that, among other things, Plaintiff and members of the Sub-Class allege that their respective apartments are subject to rent stabilization coverage.

91. Notwithstanding the clear requirements of the RSL and RSC, Defendants have not provided Plaintiff and members of the Sub-Class with rent-stabilized leases and/or rent-stabilized leases in the correct amount, as required by law.

92. Moreover, as set forth in more detail above, and upon information and belief, Defendants' conduct was willful and designed to remove the apartments of Plaintiff and members of the Sub-Class from the protections of rent stabilization.

93. Plaintiff and members of the Sub-Class lack an adequate remedy at law.

94. By reason of the foregoing, Plaintiff and members of the Sub-Class are entitled to a declaratory judgment adjudging and determining:

- a. the apartments of Plaintiff and members of the Sub-Class members are subject to the RSL and RSC and any purported deregulation by Defendants was invalid as a matter of law;
- b. Plaintiff and members of the Sub-Class are each entitled to a rent-stabilized lease in a lease form promulgated by DHCR;
- c. the amount of the legal regulated rent for the apartments of Plaintiff and members of the Sub-Class;
- d. any leases offered by Defendants to Plaintiff and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and
- e. Plaintiff and members of the Sub-Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, said Plaintiff and members of the Sub-Class.

#### **PRAYER FOR RELIEF**

WHEREFORE, and for the foregoing reasons, Plaintiff prays to this Court for the following relief:

- A. Certifying the Class and Sub-Class proposed by Plaintiff, appointing the Plaintiff as representatives of the Class and Sub-Class; and appointing Plaintiff's counsel as Class Counsel for the Class and Sub-Class;
- B. Appropriate money damages against Defendants resulting from their violation of the RSL and RSC;
- C. Because Plaintiff and members of the Sub-Class have no adequate remedy at law for Defendants' ongoing violations of the RSL and RSC, against Defendants for injunctive relief to undertake all appropriate and corrective remedial measures,

including, but not limited to, appointing an independent individual or entity to audit and undertake an accounting of every rent-stabilized and deregulated apartment at 326-338 East 100<sup>th</sup> Street and reforming leases to comply with the RSL and RSC where necessary;

- D. Temporarily, preliminarily, and permanently enjoining Defendants from continuing to violate the RSL and RSC;
- E. Against Defendants for disgorgement of profits from fees earned as a direct and proximate result of rent overcharges;
- F. Against Defendants for judgment in the amount of Plaintiff's attorneys' fees, costs and disbursements in an amount to be determined at a hearing or trial; and
- G. Granting such other and further relief as this Court deems just and proper.

DATED: New York, New York  
January 8, 2018

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