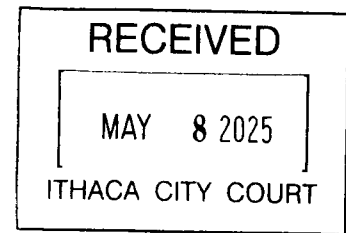


**STATE OF NEW YORK: COUNTY OF TOMPKINS
CITY COURT: CITY OF ITHACA**



**TRISTA COOPER,
WYThERIA HARRIETT,
TALEEK JEFFERY,
NILKA JOAQUIN-SANTALI,
ALEXIS JOHNSON,
DEREK NIXON,
CATHERINE STONE,
ANIVAL WALKER,
and KIM WALKER**

Petitioners/Tenants,

**AMENDED PETITION FOR
JUDGMENT PURSUANT TO
RPAPL § 797**

Index No.: LT-050521-25/IT

-v.-

**ASTERI ITHACA, LLC,
and VECINO GROUP NEW YORK, LLC**
Respondents/Landlord.

THE PETITION OF TRISTA COOPER, WYThERIA HARRIETT, TALEEK JEFFERY, NILKA JOAQUIN-SANTALI, ALEXIS JOHNSON, DEREK NIXON, CATHERINE STONE, ANIVAL WALKER, and KIM WALKER, tenants of the subject premises, shows that:

1. The premises for which repairs and other relief are sought is described as follows: 118 E. Green St., Ithaca, NY 14850, otherwise known as Asteri Ithaca Apartments (“Asteri”).
2. Said premises is situated within the territorial jurisdiction of this Court.
3. Upon information and belief, Respondent Asteri Ithaca, LLC is owner and landlord of the subject premises.
4. Upon information and belief, Respondent Vecino Group New York, LLC is a limited liability company that is “directly or indirectly in control” of the subject premises. *See* RPAPL § 797-b(3).

5. Asteri Ithaca, LLC and Vecino Group New York, LLC are hereafter referred to as “the Respondents.”
6. The undersigned are the Petitioners in this matter as follows:
7. Petitioner Trista Cooper entered into possession of the subject premises under an agreement between herself and Asteri’s property manager in December 2024. *See* Trista Cooper Affirmation of Truth of Statement (hereafter “Cooper Aff.”) at ¶¶ 11.
8. Trista Cooper is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 15.
9. Petitioner Wytheria Harriett entered into possession of the subject premises under an agreement between herself and Asteri’s property manager around June 2024. *See* Wytheria Harriett Affirmation of Truth of Statement (hereafter “Harriett Aff.”) at ¶ 10.
10. Wytheria Harriett is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 24.
11. Upon information and belief, Petitioner Taleek Jeffery entered into possession of the subject premises under an agreement between himself and Asteri’s property manager around July 2024.
12. Upon information and belief, Taleek Jeffery is now in possession of the subject premises and has resided there for at least 30 days.
13. Petitioner Nilka Joaquin-Santali entered into possession of the subject premises under an agreement between herself and Asteri’s property manager around late August 2024. *See* Nilka Joaquin-Santali Affirmation of Truth of Statement (hereafter “Nilka Aff.”) at ¶¶ 9-10.
14. Nilka Joaquin-Santali is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 31.

15. Petitioner Alexis Johnson entered into possession of the subject premises under a written rental agreement between herself and the landlord in November 2024 wherein Petitioner agreed to pay the landlord a rental portion of around \$261 per month under HUD's Housing Choice Voucher Section 8 Program administered by the Ithaca Housing Authority (IHA). *See* Alexis Johnson Affirmation of Truth of Statement (hereafter "Johnson Aff.") ¶¶ 10-11.
16. Alexis Johnson is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 12.
17. Petitioner Derek Nixon entered into possession of the subject premises under a rental agreement between himself and Asteri's property manager around November 2024. *See* Derek Nixon Affirmation of Truth of Statement (hereafter "Nixon Aff.") at ¶ 10.
18. Derek Nixon is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 12.
19. Upon information and belief, Petitioner Catherine Stone entered into possession of the subject premises under a rental agreement between herself and Asteri's property manager around August 2024.
20. Upon information and belief, Catherine Stone is now in possession of the subject premises and has resided there for at least 30 days.
21. Petitioner Anival Walker entered into possession of the subject premises under an agreement between himself and Asteri's property manager around June 2024. *See* Anival Walker Affirmation of Truth of Statement (hereafter "Anival Aff.") at ¶¶ 9-10.
22. Anival Walker is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 16.

23. Petitioner Kim Walker entered into possession of the subject premises under an agreement between herself and Asteri's property manager around June 2024. *See* Kim Walker Affirmation of Truth of Statement (hereafter "Kim Aff.") at ¶¶ 9-10.
24. Kim Walker is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 16.

I. RESIDENTIAL REAL PROPERTY VIOLATIONS

25. Where the conditions of a residential building violate state or local housing standards or the Warranty of Habitability, a special proceeding for a judgment directing repairs and other relief may be maintained pursuant to Real Property Actions and Proceedings Law (RPAPL) § 797 in a county court, justice court, district court, or city court.
26. According to Real Property Law (RPL) § 235-b, which provides the statutory basis for the claims based on the Warranty of Habitability, every landlord in New York State is required to provide housing that is "fit for human habitation" and ensure that the premises are not subjected to "any conditions which would be dangerous, hazardous, or detrimental to [the tenants'] life, health, or safety."
27. Specifically, RPL § 235-b(1) states:

In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that *the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety*. When any such condition has been caused by the misconduct of the tenant or lessee or persons under his direction or control, it shall not constitute a breach of such covenants and warranties. (emphasis added).

28. In the immediate action, Petitioners complain that the conditions within Asteri violate the Warranty of Habitability on several grounds, as follows:

I.A. General Uncleanliness and Maintenance Issues

29. Petitioners allege that the common spaces in Asteri—such as the hallways, elevators, stairwells, and laundry rooms—are not properly maintained. As a result, Petitioners allege that the common areas are unsanitary and thus violate the Warranty of Habitability.
30. Specifically, Petitioners claim to have continuously found feces, vomit, blood, and other kinds of bodily discharge in the common areas in Asteri since moving into the building. Petitioners allege that, despite notifying management of these issues on a regular basis, Asteri management either failed to respond, or took several days to do so. *See* Cooper Aff. at ¶¶ 21-23; Harriett Aff. at ¶¶ 31-32; Nilka Aff. at ¶¶ 17-20; Johnson Aff. at ¶¶ 21-22; Nixon Aff. at ¶¶ 19, 20-23; Anival Aff. at ¶¶ 25, 27; Kim Aff. at ¶¶ 25-26.
31. For instance, upon information and belief, Alexis Johnson found feces on the walls and floors of common spaces, as well as vomit and blood in the hallways and elevators, among other things. Alexis contacted management to notify them of these conditions several times, but received no response. *See* Johnson Aff. at ¶¶ 21-22.
32. Upon information and belief, Trista Cooper, Wytheria Harriett, Anival Walker, and Kim Walker have all also found feces on the walls and floors of common spaces, as well as vomit and other kinds of bodily discharge discharge in the hallways and elevators, resulting in a constant and noxious odor that permeates throughout the entire building. *See* Cooper Aff. at ¶¶ 21-23; Harriett Aff. at ¶¶ 31-32; Anival Aff. at ¶ 25; Kim Aff. at ¶ 25.
33. Petitioners further allege that they have observed trash and other debris pile-up in the hallways and stairwells of the building. For instance, upon information and belief, Alexis Johnson noticed an excessive amount of trash, broken bottles, and other debris accumulating in the

hallways and stairwells of Asteri. *See* Cooper Aff. at ¶ 21; Harriett Aff. at ¶ 31; Johnson Aff. at ¶ 21; Anival Aff. at ¶ 25; Kim Aff. at ¶ 25.

34. Petitioners complain that the continuous accumulation of trash both inside and outside of the building—as well as the almost constant presence of feces, vomit, blood, and other kinds of bodily discharge in the common areas of Asteri—has resulted in a constant and noxious odor that permeates throughout the entire building, including inside Petitioners’ individual apartments. *See* Cooper Aff. at ¶¶ 22-23; Harriett Aff. at ¶ 32; Johnson Aff. at ¶¶ 21-22; Anival Aff. at ¶ 25; Kim Aff. at ¶ 25.
35. Additionally, Petitioners allege that the laundry rooms in Asteri are not properly maintained by the Respondents and as a result are unsanitary. For instance, upon information and belief, Alexis Johnson found cans, stains, and other debris inside the laundry room and even inside the washers and dryers themselves. *See* Cooper Aff. at ¶ 17; Harriett Aff. at ¶ 26; Johnson Aff. at ¶ 14; Anival Aff. at ¶ 18; Kim Aff. at ¶ 18.
36. Petitioners also allege that they have seen needles on the stairwells and floors of the common spaces in the building. For instance, upon information and belief, Alexis Johnson has continuously seen needles on the floors of common areas. Furthermore, upon information and belief, Alexis’s 3-year-old daughter almost stepped on a needle one time while walking through Asteri’s common areas. *See* Johnson Aff. at ¶¶ 18-20.
37. Furthermore, upon information and belief, Kim Walker and Anival Walker have seen needles on Asteri’s stairwells. In fact, Anival alleges that his girlfriend, who was nine months pregnant at the time, stepped on a needle in the stairwell walking down to the ground floor, and has almost stepped on needles outside of his door several times. *See* Anival Aff. at ¶¶ 26, 30; Kim Aff. at ¶ 29.

38. Wytheria Harriett has also seen needles and other drug paraphernalia scattered throughout the hallways, stairwells, and common areas of Asteri. *See* Harriett Aff. at ¶ 30.
39. Trista Cooper also alleges seeing a large amount of drug activity in the hallways, stairwells, and common areas, including several needles on the floors of common spaces as well as people using drugs in the stairwells. *See* Cooper Aff. at ¶ 20.
40. Several Petitioners further allege that they notified the property managers directly about these conditions on multiple occasions. However, upon information and belief, when Petitioners did so, the property managers were often dismissive towards their complaints and appeared disinterested in addressing their issues. Furthermore, upon information and belief, the property managers at Asteri were fired and replaced frequently, making it difficult to maintain communications with specific property managers about long-term issues. *See* Johnson Aff. at ¶¶ 19, 22-23, 25-26; Anival Aff. at ¶¶ 27-28, 32; Kim Aff. at ¶¶ 26-27, 30.
41. For instance, upon information and belief, Alexis Johnson spoke with Asteri's new property manager at the time, Yussenia, about the conditions and safety concerns in the building. Upon information and belief, Yussenia told her that she would try to help, as she believed her and her daughter's safety was important. However, upon information and belief, Yussenia was fired the next day. *See* Johnson Aff. at ¶ 23.
42. Alexis Johnson alleges that shortly after Yussenia was fired, Asteri hired Tammy Baker to manage the building. Upon information and belief, when Alexis asked Ms. Baker why Yussenia was fired, she was told that Yussenia was under investigation for fraud. *See* Johnson Aff. at ¶ 25.
43. However, Alexis Johnson further alleges that throughout January and February, she repeatedly notified Tammy Baker about the conditions and lack of maintenance in the building. Alexis

Johnson alleges that she once asked Ms. Baker if she wanted to see pictures of the needles laying in the common areas. However, upon information and belief, Ms. Baker said that she “didn’t need to see” the photos because she had “seen them on Facebook,” and she did not give Alexis any more information about how Asteri planned to address the issues in the building. *See Johnson Aff. at ¶ 26.*

44. Anival Walker and Kim Walker also allege that throughout July and August they repeatedly notified Jennifer, a property manager of Asteri at the time, about the issues in the building, but nothing was ever done. Furthermore, they allege that when Jennifer was fired around August 2024, they tried to inform the new property manager about the conditions in the building, but there was barely anyone in the management office. *See Anival Aff. at ¶¶ 27-28; Kim Aff. at ¶¶ 26-27.*

45. In fact, Anival Walker and Kim Walker both allege that from Summer 2024 to the present, they have seen hardly any maintenance workers cleaning the common areas and hallways of the building, except for the fourth floor where the management office is located. As such, they allege that the unsanitary conditions in the upper floors of Asteri have not only persisted, but in many instances have gotten worse. *See Anival Aff. at ¶ 29; Kim Aff. at ¶ 28.*

46. Additionally, Alexis Johnson complains that they have been deprived of hot water in their apartments starting around March 6 2025. *See Johnson Aff. at ¶ 30.*

47. Wytheria Harriett also alleges having been deprived of hot water at least five times throughout her time living in Asteri. Upon information and belief, these outages would last for several hours, forcing Wytheria to use cold water or leave to take a shower at her family’s residences. *See Harriett Aff. at ¶ 35.*

48. Wytheria Harriett further alleges that her apartment has lost electricity on multiple instances for extended periods of time. For instance, upon information and belief, on March 10, 2025, the electricity in Wytheria's unit went out around 9:00pm, forcing her to leave the building and stay in her sister's house for the night. Upon information and belief, the electricity was not restored until around 12pm the following day. *See* Harriett Aff. at ¶ 34.
49. Trista Cooper similarly alleges that around March 9, 2025, the building lost power from 5am to noon. Upon information and belief, no explanation was ever provided to tenants regarding the loss of power, and Trista has experienced other power outages in the building since that time. *See* Cooper Aff. at ¶¶ 24-25.
50. Trista Cooper also alleges that on that same day she noticed that the elevator's interior smelled strongly of gasoline. *Id.*
51. Additionally, Trista Cooper alleges seeing cockroaches in the hallways of Asteri, making her fear that she will soon have an infestation in her own apartment despite her best efforts of keeping her apartment clean. *See* Cooper Aff. at ¶ 26.
52. Furthermore, Petitioners allege that there has been major flooding in the building. *See* Harriett Aff. at ¶ 33; Anival Aff. at ¶ 37; Kim Aff. at ¶ 35.
53. Upon information and belief, around February 22, 2024, there was major flooding on the first floor of the building, caused by someone unscrewing the water valves in the stairwell. *See* Anival Aff. at ¶ 37; Kim Aff. at ¶ 35.
54. Furthermore, around this same time, Wytheria Harriett alleges having observed major flooding on the fourth, fifth, and sixth floors of Asteri. *See* Harriett Aff. at ¶ 33.

55. Finally, Petitioners allege that the elevators in the building frequently break-down, requiring Petitioners to walk up and down the stairwell to navigate the building. *See* Anival Aff. at ¶ 20; Kim Aff. at ¶ 20.
56. In *Park West Management Corp. v. Mitchell*, the New York Court of Appeals held that a landlord's failure to provide adequate sanitation removal and janitorial and maintenance services constitutes a violation of the Warranty of Habitability. 47 N.Y.2d 316, 329 (1979).
57. There, the landlord's maintenance and janitorial staff went on strike and did not report to work for 17 days. *Id.* at 326. During that time, the court found that regular extermination services and routine maintenance services were not performed and that "common areas remained unclean and sporadic interruptions of other services plagued the development." *Id.* at 326-27. As a result, the court held that the landlord had breached the Warranty of Habitability, and the tenants were entitled to a rent abatement. *Id.* at 327; *see also Benitez v. Restifo*, 2d 967, 970 (City Ct., City of Yonkers, 1996) (holding that landlords are required under the Warranty of Habitability to provide tenants with apartments that are free from water intrusion).
58. Additionally, in *Tonetti v. Penati*, the Second Department held that the presence of a "terrible odor" within a residential building also violates the Warranty of Habitability. 48 A.D.2d 25, 27 (App. Div., 2d Dept., 1975).
59. In *Tonetti*, the tenant moved into an apartment that had a foul odor, but the landlord assured the tenant that the smell would be removed. *Id.* A few days after moving-in, the tenant reported that the smell was still present, but the landlord again assured the tenant that the smell "would be easy to fumigate." *Id.* However, the tenant "found that the odor persisted notwithstanding the efforts of a cleaning service" retained by the landlord, and the tenant subsequently vacated the apartment. *Id.* On appeal, the Second Department upheld the lower court's determination

that “the premises were not habitable for residential purposes” and that the tenant “had a right to move out[.]” *Id.*; see also *Kekllas v. Saddy*, 88 Misc.2d 1042, 1044 (Dist. Ct., Nassau County, 1976) (finding that the presence of cat urine which caused a particularly strong odor to emanate throughout the building violated RPL § 235-b, notwithstanding the landlord’s limited attempts to treat the smell).

60. Like the maintenance services in *Mitchell*, the Petitioners here allege that routine janitorial and maintenance services at Asteri are not being regularly performed by maintenance staff, thus allowing trash, vomit, feces, blood, and other detritus to accumulate in the common areas of the building. Moreover, the lack of routine maintenance at Asteri was not caused by a strike, but rather has been an ongoing issue since Asteri began operations. This lack of routine maintenance at Asteri has resulted in unsanitary conditions that are detrimental to the life, health, and safety of the Petitioners, and thus violates the Warranty of Habitability.
61. Finally, like the tenant in *Tonetti*, the Petitioners here affirm the presence of a constant and noxious odor at Asteri that permeates throughout the entire building, including the Petitioners’ individual apartments. Therefore, the noxious odor in Asteri likewise constitutes a violation of the Warranty of Habitability. But unlike the situation in *Tonetti*, however, there is no indication here that Asteri management has attempted to abate the foul odor in the building.

I.B. Failure to Protect Against the Actions of Third Persons

62. Petitioners allege that there is significant drug-use inside Asteri, thus resulting in a generally unsafe environment. Petitioners further claim that this drug-use has been caused by a lack of security, maintenance, and control of the building on the part of Asteri staff. See Cooper Aff. at ¶ 20; Harriett Aff. at ¶ 30; Johnson Aff. at ¶¶ 18-20; Nixon Aff. at ¶¶ 18; Anival Aff. at ¶¶ 26, 30-31, 33; Kim Aff. at ¶¶ 29, 31.

63. For instance, upon information and belief, Alexis Johnson has continuously seen drug-use in the hallways and stairwells of the building, as well as needles on the floors of common areas. Moreover, as mentioned above, Alexis alleges that her 3-year-old daughter almost stepped on a needle one time while walking through Asteri's common areas. *See* Johnson Aff. at ¶¶ 18-20.
64. Upon information and belief, Anival Walker has also continuously seen drug-use in the hallways and stairwells of the building, including, on several occasions, people walking through Asteri's hallways with needles while Anival was with his children. Anival also alleges that people have approached his children asking for drugs and trying to grab them. *See* Anival Aff. at ¶¶ 30-31.
65. Moreover, as mentioned above, Anival alleges that he has seen needles on the floors of common areas. Furthermore, upon information and belief, Anival's girlfriend, who was nine months pregnant at the time, stepped on a needle in the stairwell walking down to the ground floor, and has almost stepped on needles outside of his door several times. Anival further alleges that, because of these conditions, Anival's girlfriend refuses to stay in Asteri with him. *See* Anival Aff. at ¶ 26.
66. As mentioned above, Kim Walker also alleges seeing a large amount of drug activity in the hallways and stairwells of the building, including, on several occasions, people walking through Asteri's hallways with needles. *See* Kim Aff. at ¶ 29.
67. Furthermore, as mentioned above, Trista Cooper also alleges seeing a large amount of drug activity in the hallways, stairwells, and common areas, including several needles on the floors of the common spaces as well as people using drugs in the stairwells. *See* Cooper Aff. at ¶ 20.

68. Upon information and belief, Petitioners further complain that they frequently hear fighting and screaming in the hallways common areas of the building. For instance, upon information and belief, Alexis Johnson once got off the elevator and saw several law enforcement officers dealing with someone who was screaming uncontrollably in the lobby. *See* Cooper Aff. at ¶ 19; Harriett Aff. at ¶ 29; Johnson Aff. at ¶ 17; Anival Aff. at ¶ 21; Kim Aff. at ¶ 21.
69. Additionally, upon information and belief, Petitioners report that the entrances to the building are either broken or do not properly function, allowing non-residents to gain access to the building creating a generally unsafe environment. Moreover, Trista Cooper alleges that around early March, the glass doors around the entrance to Asteri were completely shattered. *See* Cooper Aff. at ¶¶ 28-29; Harriett Aff. at ¶ 36; Nilka Aff. at ¶ 28; Johnson Aff. at ¶ 27; Anival Aff. at ¶ 34; Kim Aff. at ¶ 32.
70. In fact, Wytheria Harriett alleges that she has found people sleeping in the Asteri common areas such as the laundry room. *See* Harriett Aff. at ¶ 29.
71. Furthermore, Trista Cooper alleges that there have been multiple instances where strangers have knocked incessantly on her door, making her feel unsafe when leaving her apartment. *See* Cooper Aff. at ¶ 29.
72. Trista Cooper further alleges that security guards are only present at Asteri from around 5pm to 5am each day, thus allowing non-residents to utilize the broken entrances to gain access to the building at all other hours of the day. Furthermore, Trista alleges that even when security is present in Asteri, they are ineffective at preventing non-residents' entry into Asteri. *See* Cooper Aff. at ¶ 30.
73. Finally, Trista Cooper alleges that the mailboxes at Asteri are broken, allowing people in the building to steal residents' packages and deliveries. *See* Cooper Aff. at ¶ 27.

74. In *Carp v. Marcus*, the Third Department held that the implied Warranty of Habitability protects tenants “from dangerous and unsafe conditions[,]” including a third-party’s foreseeable criminal conduct. 112 A.D.2d 546 (App. Div., 3d Dept., 1985).
75. There, the tenant’s lease agreement provided that the landlord “would use reasonable measures to maintain security on the premises to protect the occupants from crimes.” *Id.* During his tenancy, however, the tenant allegedly suffered physical and emotional damages “as a result of an assault and other conduct perpetrated by [the landlord’s] husband” while the tenant was on the leased premises. *Id.* The tenant then brought two causes of action premised on a breach of the lease agreement and a breach of the implied Warranty of Habitability, respectively. *Id.*
76. The Third Department held that the tenant had “sufficiently stated causes of action for a breach of *both* the express contractual provision and the statutorily implied warranty.” *Id.* (emphasis added). In doing so, the Third Department affirmed that the Warranty of Habitability protects tenants from certain third-party actions, even in the absence of an express contractual provision to that effect.
77. In other words, landlords have a general duty to protect tenants against a third-party’s foreseeable criminal conduct, regardless of whether a lease agreement expressly provides that the landlord will take measures to maintain security on the premises. *See also Raghu v. 24 Realty Co.*, 7 A.D.3d 455, 456 (App. Div., 1st Dept., 2004) (holding that landlords have a common-law duty to take minimal precautions to protect tenants from foreseeable harm, including a third-party’s foreseeable criminal conduct, but granting landlord’s motion for summary judgment due to uncontroverted testimony that the third-party assailant accessed the building with the tenant rather than gaining access because of an alleged broken lock on the front door of the building).

78. Here, Petitioners affirm upon information and belief that the illegal activities inside Asteri are conducted largely by non-residents, and Petitioners further affirm that non-residents are able to access Asteri because the entrances to the building are either broken or do not properly function.
79. Based on Petitioners' continued safety complaints and reports, it must have been reasonably foreseeable that suspect illegal activities and third parties' intrusion of Asteri would continue if the Asteri entrances were not properly repaired or security staff was hired to protect the premises, especially when considering the building's proximity to downtown Ithaca.
80. Therefore, to the extent that the Respondents' inaction has caused a generally unsafe environment in the building which has resulted in physical and emotional harm to the Petitioners, the Respondents have violated the Warranty of Habitability.

I.D. Excessive Noise

81. Petitioners allege that they have experienced frequent and excessive noise inside Asteri and that this noise has deprived Petitioners of the quiet enjoyment of their apartments.
82. For instance, upon information and belief, Petitioners have frequently heard fights and screaming in the hallways and common areas of the building during the late evening and early morning hours. Several Petitioners report that this noise often wakes them up in the middle of the night and causes them to lose a significant amount of sleep. *See* Cooper Aff. at ¶ 19; Harriett Aff. at ¶ 29; Johnson Aff. at ¶ 17; Nixon Aff. at ¶ 16; Anival Aff. at ¶¶ 21-24; Kim Aff. at ¶¶ 21-22, 24.
83. Kim Walker also alleges that around September 2024 she heard someone screaming and yelling uncontrollably in her hallway, and thus did not feel safe leaving her apartment. Then,

around December 2024, someone started incessantly knocking on her door and banging on the floors in the hallway at 3:00am in the morning. *See Kim Aff. at ¶¶ 22-23.*

84. Trista Cooper similarly alleges that there have been multiple instances of strangers knocking incessantly on her door, making her feel unsafe when leaving her apartment. *See Cooper Aff. at ¶ 29.*

85. Moreover, Petitioners claim upon information and belief that there are frequent fire alarms in the building that also occur during the late evening and early morning hours. *See Cooper Aff. at ¶ 18; Harriett Aff. at ¶¶ 27-28; Nilka Aff. at ¶ 24; Johnson Aff. at ¶¶ 15-16; Nixon Aff. at ¶ 15; Anival Aff. at ¶ 19; Kim Aff. at ¶ 19.*

86. For instance, Alexis Johnson alleges that since November 2024 there have been numerous fire alarms in the building, sometimes amounting to as many as three alarms in one week. Upon information and belief, these fire alarms have caused Alexis and her daughter to lose significant amount of sleep, and have caused her daughter significant anxiety and distress due to her age. *See Johnson Aff. at ¶ 15.*

87. Furthermore, upon information and belief, Alexis Johnson once asked one of the maintenance workers in the building about why there were so many fire alarms, to which the maintenance worker responded that Asteri was “testing” the fire alarms in the building. *See Johnson Aff. at ¶ 16.*

88. Anival Walker alleges that he has needed to evacuate Asteri due to fire alarms at least eight times. Upon information and belief, the frequency of the alarms has caused Anival and his children anxiety. *See Anival Aff. at ¶ 19.*

89. Kim Walker also alleges that she has needed to evacuate Asteri due to fire alarms at least eight times. Upon information and belief, these evacuations cause Kim pain due to her age and disability. *See* Kim Aff. at ¶ 19.
90. Wytheria Harriett and Trista Cooper similarly each allege that they have heard numerous fire alarms in the building, sometimes amounting to as many as three times in one week. In fact, Wytheria alleges that on March 22, 2025, the fire alarms went off four times *in one night*, starting around 12am. *See* Cooper Aff. at ¶ 18; Harriett Aff. at ¶¶ 27-28.
91. Petitioners allege that these noises have caused them to lose significant sleep, affecting their daily life. *See* Cooper Aff. at ¶ 18; Harriett Aff. at ¶ 27; Johnson Aff. at ¶ 15; Anival Aff. at ¶¶ 19, 23-24; Kim Aff. at ¶¶ 19, 24.
92. For instance, Anival Walker alleges that he has heard noises and other disturbances in the building almost every single night, causing his children significant sleep issues and anxiety. Upon information and belief, Anival's job at Ithaca College requires him to wake up almost every day around 6:00am. However, Anival alleges that his lack of sleep due to the excessive noise in the building has caused him to miss several days of work and has therefore affected his income. Specifically, Anival alleges that he has missed approximately one day of work for every two weeks since June 2024 due to the constant disturbances in the building. *See* Anival Aff. at ¶¶ 23-24.
93. In *Nostrand Gardens Co-Op v. Howard*, the Second Department held that a landlord's failure to abate excessive noise from neighboring apartments amounts to a breach of the Warranty of Habitability. 221 A.D.2d 637, 638 (App. Div., 2d Dept., 1995).
94. There, the landlord brought a nonpayment summary eviction proceeding against several tenants, and the tenants counterclaimed for the landlord's breach of the Warranty of

Habitability. *Id.* Specifically, the tenants claimed that “there was excessive noise emanating from an apartment that neighbored the [tenants’] apartment through the late night and early morning hours[.]” *Id.* The tenants further claimed that the landlord had “failed to take any effective steps to abate the nuisance” despite having “ample notice” of the excessive noise. *Id.* After reviewing the evidence, the lower court found in favor of the tenants and held that they were entitled to a 50% abatement of rent due to a breach of the Warranty of Habitability. *Id.*

95. On appeal, the Second Department affirmed the lower court’s ruling and held that there was sufficient evidence to sustain the lower court’s determination that the landlord had “breached the warranty of habitability by depriving the [tenants] of the quiet enjoyment of their apartment.” *Id.* The Second Department also affirmed the 50% rent abatement, finding that the tenants had produced sufficient evidence regarding the nature, scope, and duration of the breach, as well as “the effectiveness of measures that were taken by the landlord to abate the nuisance.” *Id.*

96. Here, Petitioners allege that they have heard excessive screaming, fighting, and yelling in the hallways and other apartments in Asteri since moving into the building. Petitioners also report hearing an excessive amount of fire alarms during the late night and early morning hours.

97. Upon information and belief, the constant fights and fire alarms in Asteri have not only caused Petitioners anxiety and stress, but have also caused them to lose significant amounts of sleep.

98. Moreover, Petitioners affirm upon information and belief that the landlord has failed to take any measures to abate this excessive noise such as investigating the fights and ensuring that non-residents cannot access the building.

99. Thus, to the extent that the excessive noise in the building has deprived Petitioners of the quiet enjoyment of their apartments, the landlord has violated the Warranty of Habitability.

II. THE RELIEF SOUGHT

100. RPAPL § 797-f(2)(d) states that the relief sought under the statute may include “an order to repair, a monetary judgment in favor of Petitioner for diminished value of real property, and an order reducing future rent until violations have been cured.”
101. RPAPL § 797-j(2)(b) further states that a judgment under the statute may include “[a]ny other relief that the court may deem just.”
102. In the immediate action, Petitioners seek the following relief:

II.A. Order Directing Repairs

103. First, Petitioners seek an order directing repairs to restore the property to a habitable condition.
104. Such actions include, but are not limited to, adequately cleaning and maintaining the common areas of the building, regularly clearing trash from the hallways and parking garage, clearing debris from the common areas, ensuring that the elevators are properly functioning, and fixing any structures subjected to water damage.
105. Additionally, landlords have a common law duty to take minimal precautions to protect tenants from foreseeable harm, including a third-party’s foreseeable criminal conduct. *See Raghu*, 7 A.D.3d at 456.
106. As noted above, the conditions in Asteri make it reasonably foreseeable that illegal activity inside the building will continue absent any preventative measures by the Respondents. Therefore, the order directing repairs should require the Respondents to take minimal precautions to protect the Petitioners from foreseeable harm and ensure that the premises are reasonably safe and secure.

II.B. Monetary Judgment for Diminished Value of the Property

107. Second, Petitioners seek a monetary judgment for the diminished value of the property.
108. In *Park West Management Corp. v. Mitchell*, the New York Court of Appeals held that a residential lease is “essentially a sale of shelter and necessarily encompasses those services which render the premises suitable for the purpose for which they are leased.” 47 N.Y.2d at 328.
109. Although the Court recognized that damages occasioned by a breach of the Warranty of Habitability “are not susceptible to precise determination[,]” this alone “does not insulate the landlord from liability.” *Id.* at 329. Thus, the Court held that “the proper measure of damages for breach of the warranty is the difference between the fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach.” *Id.* The Court further instructed that “[i]n ascertaining damages, the finder of fact must weigh the severity of the violation and duration of the conditions giving rise to the breach as well as the effectiveness of steps taken by the landlord to abate those conditions.” *Id.*
110. As explained above, Petitioners here affirm upon information and belief that they have experienced severe habitability conditions in the building since Summer 2024 to the present, including, *inter alia*, general uncleanliness in common areas, noxious odors throughout the building, safety concerns, and excessive noise. Additionally, upon information and belief, Petitioners often cannot bring family, friends, or other guests to Asteri because of these persistent uninhabitable conditions. *See Anival Aff.* at ¶¶ 26, 35; *Kim Aff.* at ¶¶ 33-34.
111. Finally, Petitioners affirm upon information and belief that management’s responses to the conditions in the building have been inadequate, unreliable, or otherwise non-existent.

112. Thus, the Respondents' failure to adequately address the conditions in Asteri has denied Petitioners the full use and enjoyment of the premises, and Petitioners are accordingly entitled to a monetary judgment reflecting the diminished value of the property as measured from the onset of these conditions.

II.C. Monetary Judgment for Damages and Expenses Incurred by Petitioners

113. Third, Petitioners seek a monetary judgment expenses incurred due to Asteri's breaches of the Warranty of Habitability.

114. For instance, upon information and belief, Anival Walker faced a loss of income due to missing approximately one day of work for every two weeks since June 2024 because of his lack of sleep due to the excessive noise in Asteri. *See* Anival Aff. at ¶ 24.

115. Additionally, Kim Walker alleges that the conditions in Asteri have interfered with her daycare work. Upon information and belief, prior to moving into Asteri, Kim Walker made approximately \$150 per week from watching her friend's child. Kim Walker alleges that when she first moved into the building, her friend would drop her child off at the building for Kim to watch over him. However, around late July 2024, upon information and belief, Kim's friend told her that she did not feel comfortable leaving her child at Asteri with her due to the general conditions in the building. *See* Kim Aff. at ¶ 34.

116. Alexis Johnson also alleges that, after she lost her key fob to the building, Yussenia, an Asteri property manager at the time, asked Alexis to write her a blank money order for \$75.00. However, upon information and belief, the replacement cost for a key fob was only \$25.00. Furthermore, Alexis Johnson alleges that Yussenia was fired shortly after and when Alexis asked Tammy Baker why Yussenia was fired, she told her that Yussenia was under investigation for fraud. *See* Johnson Aff. at ¶¶ 24-25.

117. In *Forest Hills No. 1 Co. v. Schimmel*, the court held that damages occasioned by a breach of the Warranty of Habitability may be measured by “the reduction in rental value of the apartments” or by “actual monetary damages suffered by [the tenants] or some other combination of elements.” 110 Misc.2d 429, 436 (Civ. Ct., Queen County, 1981).
118. Here, upon information and belief, Petitioners suffered actual monetary damages in the form of lost income caused by the uninhabitable conditions in Asteri, including, but not limited to, the instances alleged above. Thus, Petitioners are entitled to a monetary judgment for the value of their lost income as well as for other monetary expenses incurred by Petitioners resulting from the Respondents’ breach of the Warranty of Habitability.

II.D. Order Reducing Future Rent Until Violations Have Been Cured

119. Fourth, Petitioners seek an order reducing or abating their rent until the habitability violations have been adequately cured.
120. In *Mitchell*, the Court of Appeals unambiguously stated that “[t]he obligation of the tenant to pay rent is dependent upon the landlord’s satisfactory maintenance of the premises in habitable condition.” 47 N.Y.2d at 327.
121. As stated above, Petitioners have been denied the full use and enjoyment of the subject premises due to the persistence of numerous uninhabitable conditions since the building first opened. Moreover, Petitioners affirm upon information and belief that these conditions are currently ongoing and still have not been resolved.
122. Thus, Petitioners’ future rental obligations should be abated to reflect the diminished value of the property until Respondents adequately address the habitability issues in Asteri.

II.E. Punitive Damages

123. Finally, Petitioners seek punitive damages against the Respondents for the wanton disregard of numerous habitability violations in Asteri since it has begun operations.
124. In *Home Ins. Co. v. American Prods. Corp.*, the Court of Appeals held that punitive damages can be predicated on several kinds of conduct, including “intentional actions[,]” actions “which, while not intentional, amount to ‘gross negligence, recklessness, or wantonness[,]’” or actions which display a “conscious disregard of the rights of others or for conduct so reckless as to amount to such a disregard[.]” 75 N.Y.2d 196, 200 (1990), *citing Hartford Acc. & Indem. Co. v. Village of Hempstead*, 48 N.Y.2d 218, 227 (1979); *see also Rivera v. City of New York*, 40 A.D.3d 334, 344 (App. Div., 1st Dept., 2007) (holding that punitive damages are “awarded to punish a defendant for wanton and reckless or malicious acts and to protect society against similar acts”).
125. Moreover, New York State Courts have long recognized that landlords can be held liable to tenants for actual and punitive damages resulting from negligence and breaches of the Warranty of Habitability. *See Delulio v. 320-57 Corp.*, 99 A.D.2d 253, 255 (App. Div., 1st Dept., 1984); *Garza v. Nunz Realty, LLC*, 187 A.D.3d 467 (App. Div., 1st Dept., 2020).
126. In *111 East 88th Partners v. Simon*, the court held that punitive damages are appropriate where a landlord shows “wanton disregard of the health and safety” of their tenants. 106 Misc.2d 693, 696 (Civ Ct., New York County, 1980).
127. There, the court found that the tenants suffered a significant reduction of services, including inadequate cleaning and routine maintenance, removal of lobby furniture, abandonment of the broken front door lock (the first defense against intruders) after notice of disrepair, heat and hot water issues, and irregular garbage collection and disposal. *Id.* at 694.

128. The court held that “the pattern of lack of and inadequate essential services alone [was] a sufficient basis for the award of punitive damages.” *Id.* at 698. The court also noted that punitive damages were supported by the fact that “[t]he service staff was intentionally reduced and the front door was not repaired (allowing unauthorized access into the building for long periods of time).” *Id.*
129. Furthermore, the court in *Simon* clarified that “[t]o deny punitive damages in an appropriate case would encourage serious violations of the warranty of habitability by assuring landlords that the worst consequence of such violations would be an abatement of rent which would merely reduce the lease rent to the proper rental value for the level of services actually provided.” *Id.* at 697.
130. Here, upon information and belief, Respondents Asteri Ithaca, LLC and Vecino Group New York, LLC are large corporate landlords who derive a significant amount of income each month in the form of rent payments and federal subsidies through HUD’s Section 8 Program. Indeed, upon information and belief, the latter Respondent owns properties all throughout the country with the ostensible, self-proclaimed goal to “maximize social impact and respond to broader community needs” by providing affordable and supportive housing. *See Vecino Group*, “About,” subsection “Development,” available at <https://www.vecinogroup.com/about/> (accessed Mar. 21, 2025).
131. To accomplish this goal, Respondents, upon information and belief, secured significant state funding for Asteri’s development, including \$11 million in permanent tax-exempt bonds, Federal Low-Income Housing Tax Credits generating \$26.3 million in equity, and \$19.8 million in subsidy from New York State Homes and Community Renewal. *See Community celebrates opening of Asteri, new mixed use high rise in downtown Ithaca.*, Vecino Group

(August 14, 2024), available at <https://www.vecinogroup.com/uncategorized/community-celebrates-asteri-opening-in-ithaca-ny/> (accessed Mar. 21, 2025).

132. Upon information and belief, Respondents then proceeded to induce low-income tenants and at-risk youth in Ithaca to move into the building by coming “to various locations, including shelters and community centers, to complete lease applications and meet with prospective tenants.” See *Ithaca's Housing Surge Moves 39 Households from Homelessness to Housing*, Ithaca Times (last updated Jun. 19, 2024), available at https://www.ithaca.com/news/ithaca/ithacas-housing-surge-moves-39-households-from-homelessness-to-housing/article_9e5efe44-2432-11ef-902b-9f5c6f1fc061.html#:~:text=This%20initiative%20was%20designed%20to,Ithaca%20buildin g%20on%20the%20Commons (accessed Mar. 21, 2025).
133. Upon information and belief, Respondents promoted Asteri as “the pinnacle of urban living in the heart of downtown Ithaca, where each floor of [Asteri] unfolds a new chapter of elevated living” with apartments that “redefine sophistication and conveniences.” See *Asteri*, available at <https://www.asteriithaca.com/> (accessed Mar. 21, 2025).
134. Furthermore, upon information and belief, Asteri’s website boasts about Asteri’s features, including security cameras, on-site management and maintenance offices, and supportive services from TCAction. See *Asteri*, subsection “Features,” available at <https://www.asteriithaca.com/features> (accessed Mar. 21, 2025).
135. Upon information and belief, New York Governor Kathy Hochul said “Asteri Ithaca is a transformative development that combines quality affordable, sustainable and supportive apartments for those who need them most, with a state-of-the-art Conference Center that will energize and elevate the entire City” and “[t]his mixed-use development was carefully planned

as a live, work, play destination that promotes economic growth and addresses a critical need for housing. It is a shining example of our commitment to investing in projects that strengthen communities and change lives.” See *Governor Hochul Announces Completion of \$96 Million Housing and Conference Center Development in the City of Ithaca*, Homes and Community Renewal (Aug 13, 2024) available at <https://hcr.ny.gov/news/governor-hochul-announces-completion-96-million-housing-and-conference-center-development-city> (accessed Mar. 21, 2025).

136. However, upon information and belief, instead of *actually* providing affordable, sustainable, and supportive housing in Ithaca, Respondents have done almost the exact opposite. Almost *immediately* after building opened, trash and other debris began to accumulate in the common areas almost instantly. Fighting and drug-use in the hallways and stairwells were frequent. The hallways became progressively unsanitary. Non-residents broke into Asteri time and again. Management turnover was high, and maintenance was unresponsive.

137. But rather than investing their vast resources back into the community in order to address these issues, Respondents, upon information and belief, merely continued to enrich themselves by extracting rent and collecting more and more federal subsidies.

138. For the Respondents, then, Asteri represents nothing more than a guaranteed income—vouchsafed simply through legal title—whereas for the Petitioners, Asteri represents the indignity and powerlessness they face before a housing market governed by and for large corporate landlords and completely indifferent to people’s needs.

139. To be sure, developing affordable housing is a laudable goal. But, upon information and belief, it appears here that the Respondents used this motive as a mere pretense to secure

millions of dollars in state funding while ignoring the suffering of their tenants and allowing the conditions inside Asteri to deteriorate into a nightmare.

140. The clear pattern of egregiously inadequate services at Asteri thus warrant the award of punitive damages. To deny punitive damages here would assure the Respondents and other landlords that the consequences for wanton disregard of tenants' health and safety would amount to no more than "a mere slap on the wrist" which "would not accomplish the public purpose of discouraging repetition of the wrong." *Simon*, 106 Misc.2d at 698. Therefore, in the interests of the Petitioners, in the interests of justice, and in the interests of the Ithaca community as a whole, Respondents' actions must be discouraged in the strongest possible terms.

WHEREFORE, Petitioners request final judgment:

- (1) Ordering repairs to restore the subject premises to a habitable condition;
- (2) A monetary judgment for the diminished value of the property;
- (3) A monetary judgment for lost or damaged property and other expenses incurred resulting from breaches of the Warranty of Habitability;
- (4) An abatement of future rent until the building is restored to a habitable condition;
- (5) Punitive damages for the wanton disregard of persistent and prolonged uninhabitable conditions; and
- (6) Any other and further relief that the court deems just.

JURY DEMAND

Petitioners hereby demand a trial by jury on all issues of fact and damages stated herein pursuant to RPAPL §§ 745(1) and 797-i.

Dated: 05/08/2025
Ithaca, New York



Thomas E. Dolan Jr. Esq.
Legal Assistance of Western New York, Inc.
Attorneys for the Petitioners
902 Taber Street, Suite 1
Ithaca, New York 14850
Telephone: (607) 273-3667
Email: tdolan@lawny.org

STATE OF NEW YORK)
 ::SS::
COUNTY OF TOMPKINS)

I, Anival Walker, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this 8 day
of May, 20 25



Rene L. Plevyak
Notary Public

RENE LYN PLEVYAK
Notary Public, State of New York
NO. 01PL0024704
Qualified in Tompkins County
Commission Expires 05/15/2028

I, Taleek Jeffery, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this 8 day
of May, 2025

Taleek Jeffery

Rene L. Plevyak
Notary Public

RENE LYN PLEVYAK
Notary Public, State of New York
NO. 01PL0024704
Qualified in Tompkins County
Commission Expires 05/15/2028

I, Kim Walker, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this 8 day
of May, 2025

Kim Walker

Rene L. Plevyak
Notary Public

RENE LYN PLEVYAK
Notary Public, State of New York
NO. 01PL0024704
Qualified in Tompkins County
Commission Expires 05/15/2028

I, Derek Nixon, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this 8 day
of May, 2025



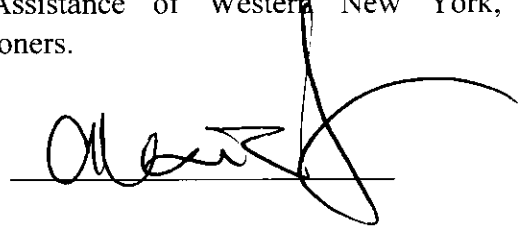
Rene L. Plevyak

Notary Public

RENE LYN PLEVYAK
Notary Public, State of New York
NO. 01PL0024704
Qualified in Tompkins County
Commission Expires 05/15/2028

I, Alexis Johnson, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this 8 day
of May, 2025



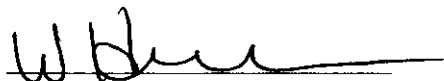
Rene L. Plevyak

Notary Public

RENE LYN PLEVYAK
Notary Public, State of New York
NO. 01PL0024704
Qualified in Tompkins County
Commission Expires 05/15/2028

I, Wytheria Harriett, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this 8 day
of May, 2025



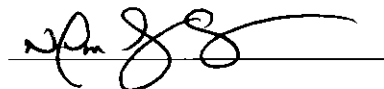
Rene L. Plevyak

Notary Public

RENE LYN PLEVYAK
Notary Public, State of New York
NO. 01PL0024704
Qualified in Tompkins County
Commission Expires 05/15/2028

I, Nilka Jaquin-Santali, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this 8 day
of May, 2025



Rene L. Plevyak

Notary Public

RENE LYN PLEVYAK
Notary Public, State of New York
NO. 01PL0024704
Qualified in Tompkins County
Commission Expires 05/15/2028

I, Catherine Stone, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this 8 day
of May, 2025

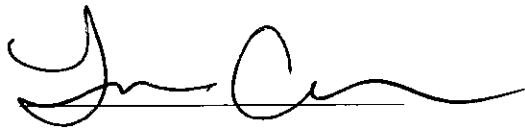


Rene L. Plevyak
Notary Public

RENE LYN PLEVYAK
Notary Public, State of New York
NO. 01PL0024704
Qualified in Tompkins County
Commission Expires 05/15/2028

I, Trista Cooper, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

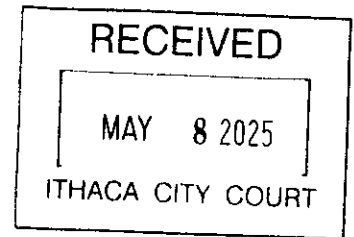
Sworn to before me on this 8 day
of May, 2025



Rene L. Plevyak
Notary Public

RENE LYN PLEVYAK
Notary Public, State of New York
NO. 01PL0024704
Qualified in Tompkins County
Commission Expires 05/15/2028

**STATE OF NEW YORK: COUNTY OF TOMPKINS
CITY COURT: CITY OF ITHACA**



**TRISTA COOPER,
WYTHERIA HARRIETT,
ALEXIS JOHNSON,
ANIVAL WALKER,
and KIM WALKER**
Petitioners/Tenants,

**AFFIRMATION IN SUPPORT
OF MOTION TO AMEND
PURSUANT TO CPLR § 401
AND CPLR § 405(a)**

Index No.:

-v.-

**ASTERI ITHACA, LLC,
and VECINO GROUP NEW YORK, LLC**
Respondents/Landlord.

THOMAS E. DOLAN JR., ESQ., an attorney duly admitted to practice before the courts of the State of New York and not a party to this action, hereby affirms the following under penalty of perjury:

1. I am a staff attorney at the firm Legal Assistance of Western New York, Inc., the attorneys for the Petitioners, Trista Cooper, Wytheria Harriett, Alexis Johnson, Anival Walker, and Kim Walker, in the above-captioned proceeding and as such am fully familiar with the facts and circumstances of this matter as set forth herein.
2. I submit this Affirmation in Support of the Petitioners' Motion to amend and supplement the pleadings pursuant to CPLR § 401 and CPLR § 405(a).

I. Motion to Amend and Supplement Pleadings

3. CPLR § 401 states that "[a]fter a [special] proceeding is commenced, no party shall be joined or interpleaded and no third-party practice or intervention shall be allowed, except by leave of court."

4. CPLR § 401 therefore gives the court in a special proceeding “the degree of control over parties necessary to preserve the summary nature of the proceeding, but it is still able to utilize [joinder devices] to prevent an undesirable multiplicity of suits.” *See* N.Y.Adv.Comm. on Prac. & Proc., Third Prelim.Rep., Legis.Doc.No.17, p.155 (1959); *see also* CPLR § 401 Practice Commentaries, C401:2.
5. Moreover, CPLR § 405(a) states that “Either party may move to cure a defect or omission in the record,” among other things.
6. Here, Petitioners request leave of court to amend and supplement the Petition as authorized under CPLR §§ 401 and 405(a) as follows:

I.A. Joinder of Additional Parties

7. First, Petitioners seek to join additional parties as petitioners to the action against Respondents Asteri Ithaca, LLC and Vecino Group New York, LLC.
8. Specifically, Petitioners seek to join the following parties to the instant proceeding: Taleek Jeffery, Nilka Joaquin-Santali, Derek Nixon, and Catherine Stone.
9. Upon information and belief, all the above-named parties are tenants/occupants of the subject premises underlying the instant proceeding, 118 E. Green St., Ithaca, NY 14850.
10. The court should grant Petitioners leave to join the above-named parties because (1) all four tenants raise the same or substantially similar claims to those made by the original Petitioners, (2) the additional parties are similarly situated to the original Petitioners in terms of their relationship to the Respondents and their experiences in the building, and (3) the additional parties are requesting the same relief as the original Petitioners.

11. As such, granting Petitioners leave to join additional parties to this case will not prejudice the Respondents insofar as these parties will *not* change the substance of the original Petition and in fact will only reinforce the claims already made therein.
12. On the other hand, if the court denies Petitioners' motion to join the additional parties, then these parties will effectively be forced to file a separate action with this court which would likely be heard during the same period of time as the instant action, despite having similar claims and requesting identical relief to the Petitioners (including a request for a jury trial).
13. Such a result would therefore invite "an undesirable multiplicity of suits" and would likely be an inefficient use of judicial resources; it would require the same number of petitioners, living in the same building, to file the same kind of case under RPAPL § 797, raising the same claims against the same Respondents, requesting the same kind of relief, and will likely be heard around the same time. Such a result clearly runs counter to principles of judicial economy.

I.B. Amending and Supplementing the Pleadings

14. Second, Petitioners seek to amend and supplement the pleadings merely in order to reflect the inclusion of additional parties.
15. According to CPLR § 3025(b), "[a]ny motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading." Here, the amendments to the pleadings are as follows:
 - a. Amending the caption-heading to include the proposed additional parties;
 - b. Amending paragraphs 7 through 16 to include details about the proposed additional parties;
 - c. Amending the verification statement in accordance with CPLR § 3020(d), so as to allow the Petitioners to re-verify the amended Petition.

16. Pursuant to CPLR § 3025(b), a copy of the pleadings showing all the proposed changes and additions to the Petition mentioned above is annexed to this affirmation as “Exhibit A.”
17. Petitioners also seek to supplement the pleadings with signed Affirmation Statements for Nilka Joaquin-Santalin and Derek Nixon.
18. For all the foregoing reasons, and in the interests of judicial efficiency and allocation of resources, the court should grant Petitioners’ motion to join the additional parties and amend the pleadings in the instant proceeding.

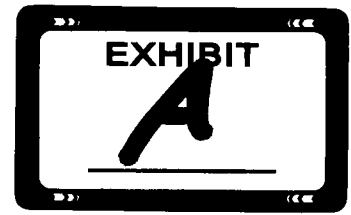
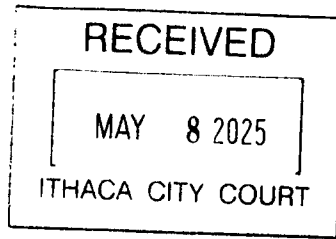
WHEREFORE, this affirmant respectfully request that this MOTION be granted, and the following relief be accorded:

- (1) Grant Petitioners leave pursuant to CPLR § 401 and CPLR § 405(a) to:
 - a. Amend and supplement the Petition to include Taleek Jeffery, Nilka Joaquin-Santali, Derek Nixon, and Catherine Stone as additional parties to the instant proceeding;
 - b. Amend the Petition to reference the proposed additional parties;
 - c. Supplement the pleadings with Affirmation Statements from the proposed additional parties; and
- (2) Any other and further relief that justice and equity demands.

Dated: May 8, 2025
Ithaca, New York



Thomas E. Dolan Jr., Esq.
Legal Assistance of Western New York, Inc.
Attorneys for the Petitioners
902 Taber Street, Suite 1
Ithaca, New York 14850
Telephone: (607) 273-3667 ext. 5024
Email: tdolan@lawny.org



STATE OF NEW YORK: COUNTY OF TOMPKINS
CITY COURT: CITY OF ITHACA

TRISTA COOPER, AMENDED PETITION FOR
WYThERIA HARRIETT, JUDGMENT PURSUANT TO
TALEEK JEFFERY, RPAPL § 797
NILKA JOAQUIN-SANTALI,
ALEXIS JOHNSON, Index No.: LT-050521-25/IT
DEREK NIXON,
CATHERINE STONE,
ANIVAL WALKER,
and KIM WALKER Index No.:
Petitioners/Tenants,

-v.-

ASTERI ITHACA, LLC,
and VECINO GROUP NEW YORK, LLC
Respondents/Landlord.

THE PETITION OF TRISTA COOPER, WYThERIA HARRIETT, TALEEK JEFFERY, NILKA
JOAQUIN-SANTALI, ALEXIS JOHNSON, -DEREK NIXON, CATHERINE STONE, ANIVAL
WALKER, and KIM WALKER, tenants of the subject premises, shows that:

Formatted: Justified

1. The premises for which repairs and other relief are sought is described as follows: 118 E. Green St., Ithaca, NY 14850, otherwise known as Asteri Ithaca Apartments ("Asteri").
2. Said premises is situated within the territorial jurisdiction of this Court.
3. Upon information and belief, Respondent Asteri Ithaca, LLC is owner and landlord of the subject premises.
4. Upon information and belief, Respondent Vecino Group New York, LLC is a limited liability company that is "directly or indirectly in control" of the subject premises. See RPAPL § 797-b(3).

5. Asteri Ithaca, LLC and Vecino Group New York, LLC are hereafter referred to as “the Respondents.”

6. The undersigned are the Petitioners in this matter as follows:

7. Petitioner Trista Cooper entered into possession of the subject premises under an agreement between herself and Asteri’s property manager in December 2024. *See* Trista Cooper Affirmation of Truth of Statement (hereafter “Cooper Aff.”) at ¶¶ 11.

8. Trista Cooper is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 15.

9. Petitioner Wytheria Harriett entered into possession of the subject premises under an agreement between herself and Asteri’s property manager around June 2024. *See* Wytheria Harriett Affirmation of Truth of Statement (hereafter “Harriett Aff.”) at ¶ 10.

10. Wytheria Harriett is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 24.

Formatted: Font color: Black

11. Upon information and belief, Petitioner Taleek Jeffery entered into possession of the subject premises under an agreement between himself and Asteri’s property manager around July 2024.

12. Upon information and belief, Taleek Jeffery is now in possession of the subject premises and has resided there for at least 30 days.

Formatted: Font color: Black

13. Petitioner Nilka Joaquin-Santali entered into possession of the subject premises under an agreement between herself and Asteri’s property manager around late August 2024. *See* Nilka Joaquin-Santali Affirmation of Truth of Statement (hereafter “Nilka Aff.”) at ¶¶ 9-10.

Formatted: Font: Italic

14. Nilka Joaquin-Santali is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 31.

Formatted: Font: Italic

~~14~~15. Petitioner Alexis Johnson entered into possession of the subject premises under a written rental agreement between herself and the landlord in November 2024 wherein Petitioner agreed to pay the landlord a rental portion of around \$261 per month under HUD's Housing Choice Voucher Section 8 Program administered by the Ithaca Housing Authority (IHA). *See* Alexis Johnson Affirmation of Truth of Statement (hereafter "Johnson Aff.") ¶¶ 10-11.

~~16~~. Alexis Johnson is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 12.

Formatted: Font color: Black

~~17~~. Petitioner Derek Nixon entered into possession of the subject premises under a rental agreement between himself and Asteri's property manager around November 2024. *See* Derek Nixon Affirmation of Truth of Statement (hereafter "Nixon Aff.") at ¶ 10.

Formatted: Font: Italic

~~18~~. Derek Nixon is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 12.

Formatted: Font: Italic

~~19~~. Upon information and belief, Petitioner Catherine Stone entered into possession of the subject premises under a rental agreement between herself and Asteri's property manager around August 2024.

~~12~~20. Upon information and belief, Catherine Stone is now in possession of the subject premises and has resided there for at least 30 days.

~~13~~21. Petitioner Anival Walker entered into possession of the subject premises under an agreement between himself and Asteri's property manager around June 2024. *See* Anival Walker Affirmation of Truth of Statement (hereafter "Anival Aff.") at ¶¶ 9-10.

~~14~~22. Anival Walker is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 16.

~~15-23.~~ Petitioner Kim Walker entered into possession of the subject premises under an agreement between herself and Asteri's property manager around June 2024. *See* Kim Walker Affirmation of Truth of Statement (hereafter "Kim Aff.") at ¶¶ 9-10.

~~16-24.~~ Kim Walker is now in possession of the subject premises and has resided there for at least 30 days. *Id.* at ¶ 16.

I. RESIDENTIAL REAL PROPERTY VIOLATIONS

~~17-25.~~ Where the conditions of a residential building violate state or local housing standards or the Warranty of Habitability, a special proceeding for a judgment directing repairs and other relief may be maintained pursuant to Real Property Actions and Proceedings Law (RPAPL) § 797 in a county court, justice court, district court, or city court.

~~18-26.~~ According to Real Property Law (RPL) § 235-b, which provides the statutory basis for the claims based on the Warranty of Habitability, every landlord in New York State is required to provide housing that is "fit for human habitation" and ensure that the premises are not subjected to "any conditions which would be dangerous, hazardous, or detrimental to [the tenants'] life, health, or safety."

~~19-27.~~ Specifically, RPL § 235-b(1) states:

In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that *the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety.* When any such condition has been caused by the misconduct of the tenant or lessee or persons under his direction or control, it shall not constitute a breach of such covenants and warranties. (emphasis added).

~~20-28.~~ In the immediate action, Petitioners complain that the conditions within Asteri violate the Warranty of Habitability on several grounds, as follows:

I.A. General Uncleanliness and Maintenance Issues

~~21-29.~~ Petitioners allege that the common spaces in Asteri—such as the hallways, elevators, stairwells, and laundry rooms—are not properly maintained. As a result, Petitioners allege that the common areas are unsanitary and thus violate the Warranty of Habitability.

~~22-30.~~ Specifically, Petitioners claim to have continuously found feces, vomit, blood, and other kinds of bodily discharge in the common areas in Asteri since moving into the building. Petitioners allege that, despite notifying management of these issues on a regular basis, Asteri management either failed to respond, or took several days to do so. *See* Cooper Aff. at ¶¶ 21-23; Harriett Aff. at ¶¶ 31-32; Nilka Aff. at ¶¶ 17-20; Johnson Aff. at ¶¶ 21-22; Nixon Aff. at ¶¶ 19, 20-23; Anival Aff. at ¶¶ 25, 27; Kim Aff. at ¶¶ 25-26.

~~23-31.~~ For instance, upon information and belief, Alexis Johnson found feces on the walls and floors of common spaces, as well as vomit and blood in the hallways and elevators, among other things. Alexis contacted management to notify them of these conditions several times, but received no response. *See* Johnson Aff. at ¶¶ 21-22.

~~24-32.~~ Upon information and belief, Trista Cooper, Wytheria Harriett, Anival Walker, and Kim Walker have all also found feces on the walls and floors of common spaces, as well as vomit and other kinds of bodily discharge in the hallways and elevators, resulting in a constant and noxious odor that permeates throughout the entire building. *See* Cooper Aff. at ¶¶ 21-23; Harriett Aff. at ¶¶ 31-32; Anival Aff. at ¶ 25; Kim Aff. at ¶ 25.

~~25-33.~~ Petitioners further allege that they have observed trash and other debris pile-up in the hallways and stairwells of the building. For instance, upon information and belief, Alexis Johnson noticed an excessive amount of trash, broken bottles, and other debris accumulating

in the hallways and stairwells of Asteri. *See* Cooper Aff. at ¶ 21; Harriett Aff. at ¶ 31; Johnson Aff. at ¶ 21; Anival Aff. at ¶ 25; Kim Aff. at ¶ 25.

~~26-34.~~ Petitioners complain that the continuous accumulation of trash both inside and outside of the building—as well as the almost constant presence of feces, vomit, blood, and other kinds of bodily discharge in the common areas of Asteri—has resulted in a constant and noxious odor that permeates throughout the entire building, including inside Petitioners’ individual apartments. *See* Cooper Aff. at ¶¶ 22-23; Harriett Aff. at ¶ 32; Johnson Aff. at ¶¶ 21-22; Anival Aff. at ¶ 25; Kim Aff. at ¶ 25.

~~27-35.~~ Additionally, Petitioners allege that the laundry rooms in Asteri are not properly maintained by the Respondents and as a result are unsanitary. For instance, upon information and belief, Alexis Johnson found cans, stains, and other debris inside the laundry room and even inside the washers and dryers themselves. *See* Cooper Aff. at ¶ 17; Harriett Aff. at ¶ 26; Johnson Aff. at ¶ 14; Anival Aff. at ¶ 18; Kim Aff. at ¶ 18.

~~28-36.~~ Petitioners also allege that they have seen needles on the stairwells and floors of the common spaces in the building. For instance, upon information and belief, Alexis Johnson has continuously seen needles on the floors of common areas. Furthermore, upon information and belief, Alexis’s 3-year-old daughter almost stepped on a needle one time while walking through Asteri’s common areas. *See* Johnson Aff. at ¶¶ 18-20.

~~29-37.~~ Furthermore, upon information and belief, Kim Walker and Anival Walker have seen needles on Asteri’s stairwells. In fact, Anival alleges that his girlfriend, who was nine months pregnant at the time, stepped on a needle in the stairwell walking down to the ground floor, and has almost stepped on needles outside of his door several times. *See* Anival Aff. at ¶¶ 26, 30; Kim Aff. at ¶ 29.

~~30-38.~~ Wytheria Harriett has also seen needles and other drug paraphernalia scattered throughout the hallways, stairwells, and common areas of Asteri. *See* Harriett Aff. at ¶ 30.

~~34-39.~~ Trista Cooper also alleges seeing a large amount of drug activity in the hallways, stairwells, and common areas, including several needles on the floors of common spaces as well as people using drugs in the stairwells. *See* Cooper Aff. at ¶ 20.

~~32-40.~~ Several Petitioners further allege that they notified the property managers directly about these conditions on multiple occasions. However, upon information and belief, when Petitioners did so, the property managers were often dismissive towards their complaints and appeared disinterested in addressing their issues. Furthermore, upon information and belief, the property managers at Asteri were fired and replaced frequently, making it difficult to maintain communications with specific property managers about long-term issues. *See* Johnson Aff. at ¶¶ 19, 22-23, 25-26; Anival Aff. at ¶¶ 27-28, 32; Kim Aff. at ¶¶ 26-27, 30.

~~33-41.~~ For instance, upon information and belief, Alexis Johnson spoke with Asteri's new property manager at the time, Yussenia, about the conditions and safety concerns in the building. Upon information and belief, Yussenia told her that she would try to help, as she believed her and her daughter's safety was important. However, upon information and belief, Yussenia was fired the next day. *See* Johnson Aff. at ¶ 23.

~~34-42.~~ Alexis Johnson alleges that shortly after Yussenia was fired, Asteri hired Tammy Baker to manage the building. Upon information and belief, when Alexis asked Ms. Baker why Yussenia was fired, she was told that Yussenia was under investigation for fraud. *See* Johnson Aff. at ¶ 25.

~~35-43.~~ However, Alexis Johnson further alleges that throughout January and February, she repeatedly notified Tammy Baker about the conditions and lack of maintenance in the building.

Alexis Johnson alleges that she once asked Ms. Baker if she wanted to see pictures of the needles laying in the common areas. However, upon information and belief, Ms. Baker said that she “didn’t need to see” the photos because she had “seen them on Facebook,” and she did not give Alexis any more information about how Asteri planned to address the issues in the building. *See* Johnson Aff. at ¶ 26.

~~36-44.~~ Anival Walker and Kim Walker also allege that throughout July and August they repeatedly notified Jennifer, a property manager of Asteri at the time, about the issues in the building, but nothing was ever done. Furthermore, they allege that when Jennifer was fired around August 2024, they tried to inform the new property manager about the conditions in the building, but there was barely anyone in the management office. *See* Anival Aff. at ¶¶ 27-28; Kim Aff. at ¶¶ 26-27.

~~37-45.~~ In fact, Anival Walker and Kim Walker both allege that from Summer 2024 to the present, they have seen hardly any maintenance workers cleaning the common areas and hallways of the building, except for the fourth floor where the management office is located. As such, they allege that the unsanitary conditions in the upper floors of Asteri have not only persisted, but in many instances have gotten worse. *See* Anival Aff. at ¶ 29; Kim Aff. at ¶ 28.

~~38-46.~~ Additionally, Alexis Johnson complains that they have been deprived of hot water in their apartments starting around March 6 2025. *See* Johnson Aff. at ¶ 30.

~~39-47.~~ Wytheria Harriett also alleges having been deprived of hot water at least five times throughout her time living in Asteri. Upon information and belief, these outages would last for several hours, forcing Wytheria to use cold water or leave to take a shower at her family’s residences. *See* Harriett Aff. at ¶ 35.

~~40-48.~~ Wytheria Harriett further alleges that her apartment has lost electricity on multiple instances for extended periods of time. For instance, upon information and belief, on March 10, 2025, the electricity in Wytheria's unit went out around 9:00pm, forcing her to leave the building and stay in her sister's house for the night. Upon information and belief, the electricity was not restored until around 12pm the following day. *See* Harriett Aff. at ¶ 34.

~~41-49.~~ Trista Cooper similarly alleges that around March 9, 2025, the building lost power from 5am to noon. Upon information and belief, no explanation was ever provided to tenants regarding the loss of power, and Trista has experienced other power outages in the building since that time. *See* Cooper Aff. at ¶¶ 24-25.

~~42-50.~~ Trista Cooper also alleges that on that same day she noticed that the elevator's interior smelled strongly of gasoline. *Id.*

~~43-51.~~ Additionally, Trista Cooper alleges seeing cockroaches in the hallways of Asteri, making her fear that she will soon have an infestation in her own apartment despite her best efforts of keeping her apartment clean. *See* Cooper Aff. at ¶ 26.

~~44-52.~~ Furthermore, Petitioners allege that there has been major flooding in the building. *See* Harriett Aff. at ¶ 33; Anival Aff. at ¶ 37; Kim Aff. at ¶ 35.

~~45-53.~~ Upon information and belief, around February 22, 2024, there was major flooding on the first floor of the building, caused by someone unscrewing the water valves in the stairwell. *See* Anival Aff. at ¶ 37; Kim Aff. at ¶ 35.

~~46-54.~~ Furthermore, around this same time, Wytheria Harriett alleges having observed major flooding on the fourth, fifth, and sixth floors of Asteri. *See* Harriett Aff. at ¶ 33.

~~47-55.~~ Finally, Petitioners allege that the elevators in the building frequently break-down, requiring Petitioners to walk up and down the stairwell to navigate the building. *See* Anival Aff. at ¶ 20; Kim Aff. at ¶ 20.

~~48-56.~~ In *Park West Management Corp. v. Mitchell*, the New York Court of Appeals held that a landlord's failure to provide adequate sanitation removal and janitorial and maintenance services constitutes a violation of the Warranty of Habitability. 47 N.Y.2d 316, 329 (1979).

~~49-57.~~ There, the landlord's maintenance and janitorial staff went on strike and did not report to work for 17 days. *Id.* at 326. During that time, the court found that regular extermination services and routine maintenance services were not performed and that "common areas remained unclean and sporadic interruptions of other services plagued the development." *Id.* at 326-27. As a result, the court held that the landlord had breached the Warranty of Habitability, and the tenants were entitled to a rent abatement. *Id.* at 327; *see also Benitez v. Restifo*, 2d 967, 970 (City Ct., City of Yonkers, 1996) (holding that landlords are required under the Warranty of Habitability to provide tenants with apartments that are free from water intrusion).

~~50-58.~~ Additionally, in *Tonetti v. Penati*, the Second Department held that the presence of a "terrible odor" within a residential building also violates the Warranty of Habitability. 48 A.D.2d 25, 27 (App. Div., 2d Dept., 1975).

~~51-59.~~ In *Tonetti*, the tenant moved into an apartment that had a foul odor, but the landlord assured the tenant that the smell would be removed. *Id.* A few days after moving-in, the tenant reported that the smell was still present, but the landlord again assured the tenant that the smell "would be easy to fumigate." *Id.* However, the tenant "found that the odor persisted notwithstanding the efforts of a cleaning service" retained by the landlord, and the tenant subsequently vacated

the apartment. *Id.* On appeal, the Second Department upheld the lower court's determination that "the premises were not habitable for residential purposes" and that the tenant "had a right to move out[.]" *Id.*; see also *Kekllas v. Saddy*, 88 Misc.2d 1042, 1044 (Dist. Ct., Nassau County, 1976) (finding that the presence of cat urine which caused a particularly strong odor to emanate throughout the building violated RPL § 235-b, notwithstanding the landlord's limited attempts to treat the smell).

~~52-60.~~ Like the maintenance services in *Mitchell*, the Petitioners here allege that routine janitorial and maintenance services at Asteri are not being regularly performed by maintenance staff, thus allowing trash, vomit, feces, blood, and other detritus to accumulate in the common areas of the building. Moreover, the lack of routine maintenance at Asteri was not caused by a strike, but rather has been an ongoing issue since Asteri began operations. This lack of routine maintenance at Asteri has resulted in unsanitary conditions that are detrimental to the life, health, and safety of the Petitioners, and thus violates the Warranty of Habitability.

~~53-61.~~ Finally, like the tenant in *Tonetti*, the Petitioners here affirm the presence of a constant and noxious odor at Asteri that permeates throughout the entire building, including the Petitioners' individual apartments. Therefore, the noxious odor in Asteri likewise constitutes a violation of the Warranty of Habitability. But unlike the situation in *Tonetti*, however, there is no indication here that Asteri management has attempted to abate the foul odor in the building.

I.B. Failure to Protect Against the Actions of Third Persons

~~54-62.~~ Petitioners allege that there is significant drug-use inside Asteri, thus resulting in a generally unsafe environment. Petitioners further claim that this drug-use has been caused by a lack of security, maintenance, and control of the building on the part of Asteri staff. See

Cooper Aff. at ¶ 20; Harriett Aff. at ¶ 30; Johnson Aff. at ¶¶ 18-20; Nixon Aff. at ¶¶ 18; Anival Aff. at ¶¶ 26, 30-31, 33; Kim Aff. at ¶¶ 29, 31.

~~55-63.~~ For instance, upon information and belief, Alexis Johnson has continuously seen drug-use in the hallways and stairwells of the building, as well as needles on the floors of common areas. Moreover, as mentioned above, Alexis alleges that her 3-year-old daughter almost stepped on a needle one time while walking through Asteri's common areas. *See* Johnson Aff. at ¶¶ 18-20.

~~56-64.~~ Upon information and belief, Anival Walker has also continuously seen drug-use in the hallways and stairwells of the building, including, on several occasions, people walking through Asteri's hallways with needles while Anival was with his children. Anival also alleges that people have approached his children asking for drugs and trying to grab them. *See* Anival Aff. at ¶¶ 30-31.

~~57-65.~~ Moreover, as mentioned above, Anival alleges that he has seen needles on the floors of common areas. Furthermore, upon information and belief, Anival's girlfriend, who was nine months pregnant at the time, stepped on a needle in the stairwell walking down to the ground floor, and has almost stepped on needles outside of his door several times. Anival further alleges that, because of these conditions, Anival's girlfriend refuses to stay in Asteri with him. *See* Anival Aff. at ¶ 26.

~~58-66.~~ As mentioned above, Kim Walker also alleges seeing a large amount of drug activity in the hallways and stairwells of the building, including, on several occasions, people walking through Asteri's hallways with needles. *See* Kim Aff. at ¶ 29.

Formatted: Font: Italic

~~59-67.~~ Furthermore, as mentioned above, Trista Cooper also alleges seeing a large amount of drug activity in the hallways, stairwells, and common areas, including several needles on the floors of the common spaces as well as people using drugs in the stairwells. *See* Cooper Aff. at ¶ 20.

~~60-68.~~ Upon information and belief, Petitioners further complain that they frequently hear fighting and screaming in the hallways common areas of the building. For instance, upon information and belief, Alexis Johnson once got off the elevator and saw several law enforcement officers dealing with someone who was screaming uncontrollably in the lobby. *See* Cooper Aff. at ¶ 19; Harriett Aff. at ¶ 29; Johnson Aff. at ¶ 17; Anival Aff. at ¶ 21; Kim Aff. at ¶ 21.

~~61-69.~~ Additionally, upon information and belief, Petitioners report that the entrances to the building are either broken or do not properly function, allowing non-residents to gain access to the building creating a generally unsafe environment. Moreover, Trista Cooper alleges that around early March, the glass doors around the entrance to Asteri were completely shattered. *See* Cooper Aff. at ¶¶ 28-29; Harriett Aff. at ¶ 36; Nilka Aff. at ¶ 28; Johnson Aff. at ¶ 27; Anival Aff. at ¶ 34; Kim Aff. at ¶ 32.

~~62-70.~~ In fact, Wytheria Harriett alleges that she has found people sleeping in the Asteri common areas such as the laundry room. *See* Harriett Aff. at ¶ 29.

~~63-71.~~ Furthermore, Trista Cooper alleges that there have been multiple instances where strangers have knocked incessantly on her door, making her feel unsafe when leaving her apartment. *See* Cooper Aff. at ¶ 29.

~~64-72.~~ Trista Cooper further alleges that security guards are only present at Asteri from around 5pm to 5am each day, thus allowing non-residents to utilize the broken entrances to gain access to the building at all other hours of the day. Furthermore, Trista alleges that even when security

is present in Asteri, they are ineffective at preventing non-residents' entry into Asteri. *See* Cooper Aff. at ¶ 30.

~~65~~73. Finally, Trista Cooper alleges that the mailboxes at Asteri are broken, allowing people in the building to steal residents' packages and deliveries. *See* Cooper Aff. at ¶ 27.

~~66~~74. In *Carp v. Marcus*, the Third Department held that the implied Warranty of Habitability protects tenants "from dangerous and unsafe conditions[.]" including a third-party's foreseeable criminal conduct. 112 A.D.2d 546 (App. Div., 3d Dept., 1985).

~~67~~75. There, the tenant's lease agreement provided that the landlord "would use reasonable measures to maintain security on the premises to protect the occupants from crimes." *Id.* During his tenancy, however, the tenant allegedly suffered physical and emotional damages "as a result of an assault and other conduct perpetrated by [the landlord's] husband" while the tenant was on the leased premises. *Id.* The tenant then brought two causes of action premised on a breach of the lease agreement and a breach of the implied Warranty of Habitability, respectively. *Id.*

~~68~~76. The Third Department held that the tenant had "sufficiently stated causes of action for a breach of *both* the express contractual provision and the statutorily implied warranty." *Id.* (emphasis added). In doing so, the Third Department affirmed that the Warranty of Habitability protects tenants from certain third-party actions, even in the absence of an express contractual provision to that effect.

~~69~~77. In other words, landlords have a general duty to protect tenants against a third-party's foreseeable criminal conduct, regardless of whether a lease agreement expressly provides that the landlord will take measures to maintain security on the premises. *See also Raghu v. 24 Realty Co.*, 7 A.D.3d 455, 456 (App. Div., 1st Dept., 2004) (holding that landlords have a

common-law duty to take minimal precautions to protect tenants from foreseeable harm, including a third-party's foreseeable criminal conduct, but granting landlord's motion for summary judgment due to uncontroverted testimony that the third-party assailant accessed the building with the tenant rather than gaining access because of an alleged broken lock on the front door of the building).

~~70-78.~~ Here, Petitioners affirm upon information and belief that the illegal activities inside Asteri are conducted largely by non-residents, and Petitioners further affirm that non-residents are able to access Asteri because the entrances to the building are either broken or do not properly function.

~~71-79.~~ Based on Petitioners' continued safety complaints and reports, it must have been reasonably foreseeable that suspect illegal activities and third parties' intrusion of Asteri would continue if the Asteri entrances were not properly repaired or security staff was hired to protect the premises, especially when considering the building's proximity to downtown Ithaca.

~~72-80.~~ Therefore, to the extent that the Respondents' inaction has caused a generally unsafe environment in the building which has resulted in physical and emotional harm to the Petitioners, the Respondents have violated the Warranty of Habitability.

I.D. Excessive Noise

~~73-81.~~ Petitioners allege that they have experienced frequent and excessive noise inside Asteri and that this noise has deprived Petitioners of the quiet enjoyment of their apartments.

~~74-82.~~ For instance, upon information and belief, Petitioners have frequently heard fights and screaming in the hallways and common areas of the building during the late evening and early morning hours. Several Petitioners report that this noise often wakes them up in the middle of the night and causes them to lose a significant amount of sleep. *See* Cooper Aff. at ¶ 19; Harriett

Aff. at ¶ 29; Johnson Aff. at ¶ 17; Nixon Aff. at ¶ 16; Anival Aff. at ¶¶ 21-24; Kim Aff. at ¶¶ 21-22, 24.

~~75-83.~~ Kim Walker also alleges that around September 2024 she heard someone screaming and yelling uncontrollably in her hallway, and thus did not feel safe leaving her apartment. Then, around December 2024, someone started incessantly knocking on her door and banging on the floors in the hallway at 3:00am in the morning. *See* Kim Aff. at ¶¶ 22-23.

~~76-84.~~ Trista Cooper similarly alleges that there have been multiple instances of strangers knocking incessantly on her door, making her feel unsafe when leaving her apartment. *See* Cooper Aff. at ¶ 29.

~~77-85.~~ Moreover, Petitioners claim upon information and belief that there are frequent fire alarms in the building that also occur during the late evening and early morning hours. *See* Cooper Aff. at ¶ 18; Harriett Aff. at ¶¶ 27-28; Nilka Aff. at ¶ 24; Johnson Aff. at ¶¶ 15-16; Nixon Aff. at ¶ 15; Anival Aff. at ¶ 19; Kim Aff. at ¶ 19.

~~78-86.~~ For instance, Alexis Johnson alleges that since November 2024 there have been numerous fire alarms in the building, sometimes amounting to as many as three alarms in one week. Upon information and belief, these fire alarms have caused Alexis and her daughter to lose significant amount of sleep, and have caused her daughter significant anxiety and distress due to her age. *See* Johnson Aff. at ¶ 15.

~~79-87.~~ Furthermore, upon information and belief, Alexis Johnson once asked one of the maintenance workers in the building about why there were so many fire alarms, to which the maintenance worker responded that Asteri was “testing” the fire alarms in the building. *See* Johnson Aff. at ¶ 16.

~~80-88.~~ Anival Walker alleges that he has needed to evacuate Asteri due to fire alarms at least eight times. Upon information and belief, the frequency of the alarms has caused Anival and his children anxiety. *See* Anival Aff. at ¶ 19.

~~84-89.~~ Kim Walker also alleges that she has needed to evacuate Asteri due to fire alarms at least eight times. Upon information and belief, these evacuations cause Kim pain due to her age and disability. *See* Kim Aff. at ¶ 19.

~~82-90.~~ Wytheria Harriett and Trista Cooper similarly each allege that they have heard numerous fire alarms in the building, sometimes amounting to as many as three times in one week. In fact, Wytheria alleges that on March 22, 2025, the fire alarms went off four times *in one night*, starting around 12am. *See* Cooper Aff. at ¶ 18; Harriett Aff. at ¶¶ 27-28.

~~83-91.~~ Petitioners allege that these noises have caused them to lose significant sleep, affecting their daily life. *See* Cooper Aff. at ¶ 18; Harriett Aff. at ¶ 27; Johnson Aff. at ¶ 15; Anival Aff. at ¶¶ 19, 23-24; Kim Aff. at ¶¶ 19, 24.

~~84-92.~~ For instance, Anival Walker alleges that he has heard noises and other disturbances in the building almost every single night, causing his children significant sleep issues and anxiety. Upon information and belief, Anival's job at Ithaca College requires him to wake up almost every day around 6:00am. However, Anival alleges that his lack of sleep due to the excessive noise in the building has caused him to miss several days of work and has therefore affected his income. Specifically, Anival alleges that he has missed approximately one day of work for every two weeks since June 2024 due to the constant disturbances in the building. *See* Anival Aff. at ¶¶ 23-24.

~~85-93.~~ In *Nostrand Gardens Co-Op v. Howard*, the Second Department held that a landlord's failure to abate excessive noise from neighboring apartments amounts to a breach of the Warranty of Habitability. 221 A.D.2d 637, 638 (App. Div., 2d Dept., 1995).

~~86-94.~~ There, the landlord brought a nonpayment summary eviction proceeding against several tenants, and the tenants counterclaimed for the landlord's breach of the Warranty of Habitability. *Id.* Specifically, the tenants claimed that "there was excessive noise emanating from an apartment that neighbored the [tenants'] apartment through the late night and early morning hours[.]" *Id.* The tenants further claimed that the landlord had "failed to take any effective steps to abate the nuisance" despite having "ample notice" of the excessive noise. *Id.* After reviewing the evidence, the lower court found in favor of the tenants and held that they were entitled to a 50% abatement of rent due to a breach of the Warranty of Habitability. *Id.*

~~87-95.~~ On appeal, the Second Department affirmed the lower court's ruling and held that there was sufficient evidence to sustain the lower court's determination that the landlord had "breached the warranty of habitability by depriving the [tenants] of the quiet enjoyment of their apartment." *Id.* The Second Department also affirmed the 50% rent abatement, finding that the tenants had produced sufficient evidence regarding the nature, scope, and duration of the breach, as well as "the effectiveness of measures that were taken by the landlord to abate the nuisance." *Id.*

~~88-96.~~ Here, Petitioners allege that they have heard excessive screaming, fighting, and yelling in the hallways and other apartments in Asteri since moving into the building. Petitioners also report hearing an excessive amount of fire alarms during the late night and early morning hours.

~~89~~97. Upon information and belief, the constant fights and fire alarms in Asteri have not only caused Petitioners anxiety and stress, but have also caused them to lose significant amounts of sleep.

~~90~~98. Moreover, Petitioners affirm upon information and belief that the landlord has failed to take any measures to abate this excessive noise such as investigating the fights and ensuring that non-residents cannot access the building.

~~91~~99. Thus, to the extent that the excessive noise in the building has deprived Petitioners of the quite enjoyment of their apartments, the landlord has violated the Warranty of Habitability.

II. THE RELIEF SOUGHT

~~92~~100. RPAPL § 797-f(2)(d) states that the relief sought under the statute may include “an order to repair, a monetary judgment in favor of Petitioner for diminished value of real property, and an order reducing future rent until violations have been cured.”

~~93~~101. RPAPL § 797-j(2)(b) further states that a judgment under the statute may include “[a]ny other relief that the court may deem just.”

~~94~~102. In the immediate action, Petitioners seek the following relief:

II.A. Order Directing Repairs

~~95~~103. First, Petitioners seek an order directing repairs to restore the property to a habitable condition.

~~96~~104. Such actions include, but are not limited to, adequately cleaning and maintaining the common areas of the building, regularly clearing trash from the hallways and parking

garage, clearing debris from the common areas, ensuring that the elevators are properly functioning, and fixing any structures subjected to water damage.

~~97.~~105. Additionally, landlords have a common law duty to take minimal precautions to protect tenants from foreseeable harm, including a third-party's foreseeable criminal conduct. *See Raghu*, 7 A.D.3d at 456.

~~98.~~106. As noted above, the conditions in Asteri make it reasonably foreseeable that illegal activity inside the building will continue absent any preventative measures by the Respondents. Therefore, the order directing repairs should require the Respondents to take minimal precautions to protect the Petitioners from foreseeable harm and ensure that the premises are reasonably safe and secure.

II.B. Monetary Judgment for Diminished Value of the Property

~~99.~~107. Second, Petitioners seek a monetary judgment for the diminished value of the property.

~~100.~~108. In *Park West Management Corp. v. Mitchell*, the New York Court of Appeals held that a residential lease is "essentially a sale of shelter and necessarily encompasses those services which render the premises suitable for the purpose for which they are leased." 47 N.Y.2d at 328.

~~101.~~109. Although the Court recognized that damages occasioned by a breach of the Warranty of Habitability "are not susceptible to precise determination[.]" this alone "does not insulate the landlord from liability." *Id.* at 329. Thus, the Court held that "the proper measure of damages for breach of the warranty is the difference between the fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach." *Id.* The Court further instructed that

“[i]n ascertaining damages, the finder of fact must weigh the severity of the violation and duration of the conditions giving rise to the breach as well as the effectiveness of steps taken by the landlord to abate those conditions.” *Id.*

~~402.~~110. As explained above, Petitioners here affirm upon information and belief that they have experienced severe habitability conditions in the building since Summer 2024 to the present, including, *inter alia*, general uncleanliness in common areas, noxious odors throughout the building, safety concerns, and excessive noise. Additionally, upon information and belief, Petitioners often cannot bring family, friends, or other guests to Asteri because of these persistent uninhabitable conditions. *See* Anival Aff. at ¶¶ 26, 35; Kim Aff. at ¶¶ 33-34.

~~403.~~111. Finally, Petitioners affirm upon information and belief that management’s responses to the conditions in the building have been inadequate, unreliable, or otherwise non-existent.

~~404.~~112. Thus, the Respondents’ failure to adequately address the conditions in Asteri has denied Petitioners the full use and enjoyment of the premises, and Petitioners are accordingly entitled to a monetary judgment reflecting the diminished value of the property as measured from the onset of these conditions.

II.C. Monetary Judgment for Damages and Expenses Incurred by Petitioners

~~405.~~113. Third, Petitioners seek a monetary judgment expenses incurred due to Asteri’s breaches of the Warranty of Habitability.

~~406.~~114. For instance, upon information and belief, Anival Walker faced a loss of income due to missing approximately one day of work for every two weeks since June 2024 because of his lack of sleep due to the excessive noise in Asteri. *See* Anival Aff. at ¶ 24.

~~407-115.~~____ Additionally, Kim Walker alleges that the conditions in Asteri have interfered with her daycare work. Upon information and belief, prior to moving into Asteri, Kim Walker made approximately \$150 per week from watching her friend's child. Kim Walker alleges that when she first moved into the building, her friend would drop her child off at the building for Kim to watch over him. However, around late July 2024, upon information and belief, Kim's friend told her that she did not feel comfortable leaving her child at Asteri with her due to the general conditions in the building. *See Kim Aff.* at ¶ 34.

~~408-116.~~____ Alexis Johnson also alleges that, after she lost her key fob to the building, Yussenia, an Asteri property manager at the time, asked Alexis to write her a blank money order for \$75.00. However, upon information and belief, the replacement cost for a key fob was only \$25.00. Furthermore, Alexis Johnson alleges that Yussenia was fired shortly after and when Alexis asked Tammy Baker why Yussenia was fired, she told her that Yussenia was under investigation for fraud. *See Johnson Aff.* at ¶¶ 24-25.

~~409-117.~~____ In *Forest Hills No. 1 Co. v. Schimmel*, the court held that damages occasioned by a breach of the Warranty of Habitability may be measured by "the reduction in rental value of the apartments" or by "actual monetary damages suffered by [the tenants] or some other combination of elements." 110 Misc.2d 429, 436 (Civ. Ct., Queen County, 1981).

~~410-118.~~____ Here, upon information and belief, Petitioners suffered actual monetary damages in the form of lost income caused by the uninhabitable conditions in Asteri, including, but not limited to, the instances alleged above. Thus, Petitioners are entitled to a monetary judgment for the value of their lost income as well as for other monetary expenses incurred by Petitioners resulting from the Respondents' breach of the Warranty of Habitability.

II.D. Order Reducing Future Rent Until Violations Have Been Cured

~~441~~.119.____ Fourth, Petitioners seek an order reducing or abating their rent until the habitability violations have been adequately cured.

~~442~~.120.____ In *Mitchell*, the Court of Appeals unambiguously stated that “[t]he obligation of the tenant to pay rent is dependent upon the landlord’s satisfactory maintenance of the premises in habitable condition.” 47 N.Y.2d at 327.

~~443~~.121.____ As stated above, Petitioners have been denied the full use and enjoyment of the subject premises due to the persistence of numerous uninhabitable conditions since the building first opened. Moreover, Petitioners affirm upon information and belief that these conditions are currently ongoing and still have not been resolved.

~~444~~.122.____ Thus, Petitioners’ future rental obligations should be abated to reflect the diminished value of the property until Respondents adequately address the habitability issues in Asteri.

II.E. Punitive Damages

~~445~~.123.____ Finally, Petitioners seek punitive damages against the Respondents for the wanton disregard of numerous habitability violations in Asteri since it has begun operations.

~~446~~.124.____ In *Home Ins. Co. v. American Prods. Corp.*, the Court of Appeals held that punitive damages can be predicated on several kinds of conduct, including “intentional actions[.]” actions “which, while not intentional, amount to ‘gross negligence, recklessness, or wantonness[.]’” or actions which display a “conscious disregard of the rights of others or for conduct so reckless as to amount to such a disregard[.]” 75 N.Y.2d 196, 200 (1990), *citing Hartford Acc. & Indem. Co. v. Village of Hempstead*, 48 N.Y.2d 218, 227 (1979); *see also Rivera v. City of New York*, 40 A.D.3d 334, 344 (App. Div., 1st Dept., 2007) (holding that

punitive damages are “awarded to punish a defendant for wanton and reckless or malicious acts and to protect society against similar acts”).

~~447~~.125. Moreover, New York State Courts have long recognized that landlords can be held liable to tenants for actual and punitive damages resulting from negligence and breaches of the Warranty of Habitability. *See Delulio v. 320-57 Corp.*, 99 A.D.2d 253, 255 (App. Div., 1st Dept., 1984); *Garza v. Nunz Realty, LLC*, 187 A.D.3d 467 (App. Div., 1st Dept., 2020).

~~448~~.126. In *111 East 88th Partners v. Simon*, the court held that punitive damages are appropriate where a landlord shows “wanton disregard of the health and safety” of their tenants. 106 Misc.2d 693, 696 (Civ Ct., New York County, 1980).

~~449~~.127. There, the court found that the tenants suffered a significant reduction of services, including inadequate cleaning and routine maintenance, removal of lobby furniture, abandonment of the broken front door lock (the first defense against intruders) after notice of disrepair, heat and hot water issues, and irregular garbage collection and disposal. *Id.* at 694.

~~420~~.128. The court held that “the pattern of lack of and inadequate essential services alone [was] a sufficient basis for the award of punitive damages.” *Id.* at 698. The court also noted that punitive damages were supported by the fact that “[t]he service staff was intentionally reduced and the front door was not repaired (allowing unauthorized access into the building for long periods of time).” *Id.*

~~424~~.129. Furthermore, the court in *Simon* clarified that “[t]o deny punitive damages in an appropriate case would encourage serious violations of the warranty of habitability by assuring landlords that the worst consequence of such violations would be an abatement of rent which would merely reduce the lease rent to the proper rental value for the level of services actually provided.” *Id.* at 697.

~~422-130.~~ Here, upon information and belief, Respondents Asteri Ithaca, LLC and Vecino Group New York, LLC are large corporate landlords who derive a significant amount of income each month in the form of rent payments and federal subsidies through HUD's Section 8 Program. Indeed, upon information and belief, the latter Respondent owns properties all throughout the country with the ostensible, self-proclaimed goal to "maximize social impact and respond to broader community needs" by providing affordable and supportive housing. See *Vecino Group*, "About," subsection "Development," available at <https://www.vecinogroup.com/about/> (accessed Mar. 21, 2025).

~~423-131.~~ To accomplish this goal, Respondents, upon information and belief, secured significant state funding for Asteri's development, including \$11 million in permanent tax-exempt bonds, Federal Low-Income Housing Tax Credits generating \$26.3 million in equity, and \$19.8 million in subsidy from New York State Homes and Community Renewal. See *Community celebrates opening of Asteri, new mixed use high rise in downtown Ithaca.*, Vecino Group (August 14, 2024), available at <https://www.vecinogroup.com/uncategorized/community-celebrates-asteri-opening-in-ithaca-ny/> (accessed Mar. 21, 2025).

~~424-132.~~ Upon information and belief, Respondents then proceeded to induce low-income tenants and at-risk youth in Ithaca to move into the building by coming "to various locations, including shelters and community centers, to complete lease applications and meet with prospective tenants." See *Ithaca's Housing Surge Moves 39 Households from Homelessness to Housing*, Ithaca Times (last updated Jun. 19, 2024), available at https://www.ithaca.com/news/ithaca/ithacas-housing-surge-moves-39-households-from-homelessness-to-housing/article_9e5efe44-2432-11ef-902b-

9f5c6f1fc061.html#:~:text=This%20initiative%20was%20designed%20to,Ithaca%20buildin
g%20on%20the%20Commons (accessed Mar. 21, 2025).

~~125~~.133. Upon information and belief, Respondents promoted Asteri as “the pinnacle of urban living in the heart of downtown Ithaca, where each floor of [Asteri] unfolds a new chapter of elevated living” with apartments that “redefine sophistication and conveniences.” See *Asteri*, available at <https://www.asteriithaca.com/> (accessed Mar. 21, 2025).

~~126~~.134. Furthermore, upon information and belief, Asteri’s website boasts about Asteri’s features, including security cameras, on-site management and maintenance offices, and supportive services from TCAction. See *Asteri*, subsection “Features,” available at <https://www.asteriithaca.com/features> (accessed Mar. 21, 2025).

~~127~~.135. Upon information and belief, New York Governor Kathy Hochul said “Asteri Ithaca is a transformative development that combines quality affordable, sustainable and supportive apartments for those who need them most, with a state-of-the-art Conference Center that will energize and elevate the entire City” and “[t]his mixed-use development was carefully planned as a live, work, play destination that promotes economic growth and addresses a critical need for housing. It is a shining example of our commitment to investing in projects that strengthen communities and change lives.” See *Governor Hochul Announces Completion of \$96 Million Housing and Conference Center Development in the City of Ithaca*, Homes and Community Renewal (Aug 13, 2024) available at <https://hcr.ny.gov/news/governor-hochul-announces-completion-96-million-housing-and-conference-center-development-city> (accessed Mar. 21, 2025).

~~128~~.136. However, upon information and belief, instead of *actually* providing affordable, sustainable, and supportive housing in Ithaca, Respondents have done almost the exact

opposite. Almost *immediately* after building opened, trash and other debris began to accumulate in the common areas almost instantly. Fighting and drug-use in the hallways and stairwells were frequent. The hallways became progressively unsanitary. Non-residents broke into Asteri time and again. Management turnover was high, and maintenance was unresponsive.

~~129~~137. But rather than investing their vast resources back into the community in order to address these issues, Respondents, upon information and belief, merely continued to enrich themselves by extracting rent and collecting more and more federal subsidies.

~~130~~138. For the Respondents, then, Asteri represents nothing more than a guaranteed income—vouchsafed simply through legal title—whereas for the Petitioners, Asteri represents the indignity and powerlessness they face before a housing market governed by and for large corporate landlords and completely indifferent to people's needs.

~~131~~139. To be sure, developing affordable housing is a laudable goal. But, upon information and belief, it appears here that the Respondents used this motive as a mere pretense to secure millions of dollars in state funding while ignoring the suffering of their tenants and allowing the conditions inside Asteri to deteriorate into a nightmare.

~~132~~140. The clear pattern of egregiously inadequate services at Asteri thus warrant the award of punitive damages. To deny punitive damages here would assure the Respondents and other landlords that the consequences for wanton disregard of tenants' health and safety would amount to no more than "a mere slap on the wrist" which "would not accomplish the public purpose of discouraging repetition of the wrong." *Simon*, 106 Misc.2d at 698. Therefore, in the interests of the Petitioners, in the interests of justice, and in the interests of the Ithaca

community as a whole, Respondents' actions must be discouraged in the strongest possible terms.

WHEREFORE, Petitioners request final judgment:

- (1) Ordering repairs to restore the subject premises to a habitable condition;
- (2) A monetary judgment for the diminished value of the property;
- (3) A monetary judgment for lost or damaged property and other expenses incurred resulting from breaches of the Warranty of Habitability;
- (4) An abatement of future rent until the building is restored to a habitable condition;
- (5) Punitive damages for the wanton disregard of persistent and prolonged uninhabitable conditions; and
- (6) Any other and further relief that the court deems just.

JURY DEMAND

Petitioners hereby demand a trial by jury on all issues of fact and damages stated herein pursuant to RPAPL §§ 745(1) and 797-i.

Dated: _____
Ithaca, New York

Thomas E. Dolan Jr. Esq.
Legal Assistance of Western New York, Inc.
Attorneys for the Petitioners
902 Taber Street, Suite 1
Ithaca, New York 14850
Telephone: (607) 273-3667

Email: tdolan@lawny.org

STATE OF NEW YORK)
 ::SS::
COUNTY OF TOMPKINS)

I, ALEXIS JOHNSON , being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this ____ day
of _____, 20 ____ Alexis Johnson

Notary Public

I, _____, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this ____ day
of _____, 20 ____

Notary Public

I, _____, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this _____ day
of _____, 20____

Notary Public

I, _____, being duly sworn, depose and say I am one of the Petitioners in this proceeding and have read the foregoing Petition and know the contents thereof; the allegations contained therein are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The basis of this belief is my own experience living in the subject premises, as well as conversations with the other Petitioners, documents provided by said Petitioners, and interview notes made by Thomas Dolan, a staff attorney at Legal Assistance of Western New York, Inc., contemporaneously with his interview of said Petitioners.

Sworn to before me on this _____ day
of _____, 20____

Notary Public