

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

-----X
ABRAHAM LEE, CHEE KHEONG SAM and ALDOUS
WONG, individually and on behalf of all other
similarly situated Plaintiffs,

INDEX NO. _____

Plaintiffs,

SUMMONS

v.

CHERRY STREET, LLC,
PARK-IT MANAGEMENT, and CENTRAL PARKING
SYSTEM OF NEW YORK, INC.,

Defendants.

-----X
TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a notice of appearance, on the plaintiff's attorney within 20 days after service of this Summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint. The basis of the venue is the Defendants' principal places of business and the location in which this cause of action arose.

Dated: December 14, 2012
New York, New York

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Defendants Addresses:

Cherry Street, LLC
405 Lexington Avenue
New York, New York 10174

Park-It Management
250 West 26th Street, 4th Floor
New York, New York 10001

Central Parking System of New York, Inc.
c/o Corporation Service Company
80 State Street
Albany, New York, 12207-2543

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

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ABRAHAM LEE, CHEE KHEONG SAM and ALDOUS
WONG, individually and on behalf of all other
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INDEX NO. _____

Plaintiffs,

CLASS ACTION COMPLAINT

v.

CHERRY STREET, LLC,
PARK-IT MANAGEMENT, and CENTRAL PARKING
SYSTEM OF NEW YORK, INC.,

Defendants.

-----X

Plaintiffs Abraham Lee, Chee Kheong Sam and Aldous Wong, individually and on behalf of all other similarly situated Plaintiffs (collectively “Plaintiffs”), by and through their attorneys, Napoli Bern Ripka Shkolnik, LLP, and Imbesi Christensen, bring this class action Complaint (“Complaint”) against Defendants Cherry Street, LLC, (“227 Cherry Street”), Park-It Management, (“Park-It”) and Central Parking System of New York, Inc. (“Central Parking”), (collectively “Defendants”), on behalf of themselves and all other similarly situated individuals that paid a monthly fee in consideration for the right to park their vehicles (the “Class” or “Monthly Parking Customers”) at the parking garage located at 227 Cherry Street, New York, New York 10002 (“227 Cherry Street Parking Garage”), on October 28, 2012, and allege upon information and belief as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action as a class action on behalf of all Monthly Parking Customers against Defendants seeking damages and other appropriate relief for their claims

arising out of Defendants' negligence and gross negligence relating to their: (1) misleading and false representations made to Monthly Parking Customers that the 227 Cherry Street Parking Garage would remain open during Hurricane Sandy a/k/a "Superstorm" Sandy; (2) Defendants failure to notify Monthly Parking Customers that their vehicles must be removed from the 227 Cherry Street Parking Garage by 4:00 p.m. on Sunday, October 28, 2012; and (3) Defendants failure to respond to multiple requests by Monthly Parking Customers after 4:00 p.m. on Sunday, October 28, 2012, to open the gate to the 227 Cherry Street Parking Garage for the purpose of removing their vehicles, obtaining personal property and evacuating "Zone A" in lower Manhattan.

2. This action also seeks damages and other appropriate relief for Defendants' failure to exercise due care to adequately secure the 227 Cherry Street Parking Garage premises subsequent to the multiple warnings issued by the National Hurricane Center and by New York City government officials for Zone A prior to Superstorm Sandy, and for their negligence and conduct relating to mitigation of damages following the storm.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over Defendants pursuant to C.P.L.R. §301 because the Defendants are New York corporations and foreign corporations licensed to do business in New York State and regularly conduct business in New York County.

4. Venue is proper in the Supreme Court of the State of New York, New York County, pursuant to C.P.L.R. §503 because Plaintiffs are residents of New York County and the causes of action arose in New York County.

PARTIES

A. Plaintiffs

5. Plaintiff Abraham Lee is a citizen of the State of New York and resides in New York County and is an individual who was a Monthly Parking Customer on October 28, 2012, at the parking garage located at 227 Cherry Street, New York, New York 10002.

6. Plaintiff Chee Kheong Sam is a citizen of the State of New York and resides in New York County and is an individual who was a Monthly Parking Customer on October 28, 2012, at the parking garage located at 227 Cherry Street, New York, New York 10002.

7. Plaintiff Aldous Wong is a citizen of the State of New York and resides in New York County and is an individual who was a Monthly Parking Customer on October 28, 2012, at the parking garage located at 227 Cherry Street, New York, New York 10002.

8. The putative Class consists of all individuals who paid a monthly fee in consideration for the right to park their vehicles at the parking garage located at 227 Cherry Street, New York, New York 10002, on October 28, 2012, and who suffered damages not covered under the individual's insurance policy.

B. Defendants

9. Defendant Cherry Street, LLC, is a limited liability corporation incorporated and existing under the laws of the State of New York, with its address of authorized service located at 405 Lexington Avenue, New York, New York 10174.

10. On or about October 28, 2012, and prior thereto and subsequent thereto, Defendant 227 Cherry Street owned 227 Cherry Street Parking Garage.

11. Defendant Park-It Management, upon information and belief, is a New York company, with its principal place of business located at 250 West 26th Street, 4th Floor, New York, New York 10001.

12. On or about October 28, 2012, and prior thereto and subsequent thereto, Defendant Park-It, by itself, its agents, and/or employees managed, maintained, operated, supervised, controlled and staffed 227 Cherry Street Parking Garage.

13. Defendant Central Parking System of New York, Inc. is a Tennessee corporation, licensed to conduct business in the State of New York, with numerous offices located throughout New York City.

14. On or about October 28, 2012, and prior thereto and subsequent thereto, Defendant Central Parking, by itself, its agents, and/or employees managed, maintained, operated, supervised, controlled and staffed 227 Cherry Street Parking Garage.

STATEMENT OF FACTS

A. Superstorm Sandy

15. On October 22, 2012, the National Hurricane Center (“NHC”), issued its first forecast and public advisories regarding Superstorm Sandy. Thereafter, NHC issued multiple advisories on a daily basis regarding the Superstorm Sandy’s strength and its predicted path. By Thursday, October 25, 2012, the NHC warned that the entire eastern coast of the United States should be closely monitoring the progress of Superstorm Sandy.

16. On Saturday, October 27, 2012, the NHC and National Weather Service (“NWS”) began predicting levels of storm surges along New Jersey and Long Island Sound as high as eleven (11) feet. National weather forecasters were repeatedly warning New York and New

Jersey coastline state and local governments and residents that maximum precautionary measures should be taken.

17. On Sunday, October 28, 2012, on or about 11:00 a.m., Residents of Zone A were ordered to evacuate by Mayor Bloomberg. Zone A is an area designated by New York City (“NYC”) officials as low lying areas that are prone to flooding within the five boroughs of NYC.

18. At the mandatory evacuation press conference, Mayor Bloomberg warned Zone A property owners, businesses and residents that “tides overnight tonight will lead to coastal flooding in Zone A ...We anticipate the surge will hit a lot of low lying areas, and the possibility of flooding will continue into Tuesday afternoon.”

19. At this time, NYC residents were also told that subways, buses and trains would be shut down at 7:00 p.m. on October 28, 2012.

20. Superstorm Sandy made landfall in lower Manhattan late Monday evening, October 29, 2012.

B. The 227 Cherry Street Parking Garage

21. 227 Cherry Street Parking Garage is also known as the real property located at 250 South Street and 71-85 Pike Street, New York, New York. Specifically, the property is located at Block 248, Lot 1, New York, New York, 10002.

22. 227 Cherry Street Parking Garage has space for approximately ninety (90) vehicles.

23. Prior to Superstorm Sandy, 227 Cherry Street Parking Garage remained open twenty-four hours (24) hours a day, seven days a week. A parking garage attendant was on duty at all times.

24. Although a metal grated door existed that could be pulled down from the top of the garage entrance to prevent entry or exit, this was never done because the garage remained open twenty-four hours (24) hours a day, seven days a week.

25. On Saturday, October 27th, 2012, numerous Monthly Parking Customers travelled to the garage to specifically ask the Defendants' employee/attendant working at the garage whether the garage would remain open during the storm. In response, said individuals were told that the garage would remain open. The subject employee also told some Monthly Parking Customers that access to the garage would "be the same as Hurricane Irene." The metal door located at the garage was not closed or locked during Hurricane Irene.

26. Following Mayor Bloomberg's order of evacuation issued at approximately 11:00 a.m. on Sunday, October 28th, 2012, more Monthly Parking Customers, including many who went on Saturday, personally went to the garage to ask the attendant on duty whether the garage would be closed off to the Monthly Parking Customers.

27. Again, these individuals were told that the garage would remain open.

28. Other Monthly Parking Customers called the main office number for Defendant Central Parking on Saturday and Sunday to ask whether the garage would be closed. These individuals were also told that it would remain open.

29. Several Monthly Parking Customers called the attendant on duty at 227 Cherry Street on or about 1:00 p.m. on Sunday, October 28th, 2012, to ask whether the garage would close. These individuals were told, "we are not closing."

30. As late as 3:30 p.m. and 3:45 p.m. on Sunday, October 28th, 2012, some Monthly Parking Customers were at the garage. These individuals were told that the garage would not close.

31. When Monthly Parking Customers completed the required online application to park their vehicles at 227 Cherry Street, they were required to provide their street address, telephone number, including cellular number, and email address. Most Monthly Parking Customers received their monthly invoices via email.

32. Although the Defendants possessed all relevant contact information for the Monthly Parking Customers, at no time prior to or after Mayor Bloomberg's evacuation order on Sunday, October 28, 2012, did Defendants attempt to contact the Monthly Parking Customers.

C. The 227 Cherry Street Parking Garage Closed Suddenly and Without Warning

33. On Sunday, October 28, 2012, at approximately 4:00 p.m., the metal door affixed to the garage entrance was shut and secured by a lock.

34. Numerous Monthly Parking Customers travelled to the garage on Sunday, October 28, 2012, between 4:00 p.m. and 7:00 p.m. for the purpose of removing their vehicles and/or evacuating by 7:00 p.m. Many of these individuals were Monthly Parking Customers who called Defendants' central office or asked the attendant in person to confirm that the garage would not be locked.

35. On Sunday, October 28, 2012, Monthly Parking Customers repeatedly called and emailed Defendant beginning at 4:00 p.m., to explain that many individuals were at the garage and needed to remove their vehicles immediately. Defendants refused to send an employee to 227 Cherry Street to open the garage door temporarily for this purpose.

36. Despite the repeated calls and emails, Defendants did not attempt to contact Monthly Parking Customers regarding the closing of the garage.

37. The Monthly Parking Customers that travelled to the garage from 4:00 p.m. Sunday, October 28, 2012, through the following day, observed that Defendants had failed to

properly secure the perimeter of 227 Cherry Street Parking Garage, including the entrance, in preparation for Superstorm Sandy.

38. 227 Cherry Street Parking Garage's entrance had a metal door which controlled the ingress and egress of vehicles. The subject garage door was not solid. Rather, the door was grated, with multiple openings throughout and enabled water to flow through it and into the garage.

39. The Monthly Parking Customers observed that no boards or additional flood barriers were erected in front of the garage door. The only observed preparation was the placement of approximately four (4) sandbags on one side of the garage door. The subject sandbags were approximately three (3) inches in height and covered a nominal portion of the garage door. Water permeated the garage by flowing through the openings in the gate.

40. On the morning of October 29, 2012, approximately 18 hours after 227 Cherry Street Parking Garage had initially closed; Monthly Parking Customers again went to the garage and were desperate to remove their vehicles. More calls and emails were sent to the Defendants but they failed to respond or to send an employee to the garage to temporarily open the garage door.

41. Defendant Central Parking has approximately 167 parking garages in New York City, many of which are not located in Zone A.

42. A Monthly Parking Customer made multiple calls to Defendant Central Parking on Sunday evening, October 28, 2012, because he needed to evacuate his daughter who is confined to a wheelchair. As a result of the unannounced locking of the garage door and the Defendants repeated refusal to send an employee to temporarily open the garage door before

Superstorm Sandy made landfall on Monday, October 29, 2012, the customer was unable to evacuate with his daughter. Defendant Central Parking did not return one of his telephone calls.

43. In addition to this customer and his disabled daughter, many other Monthly Parking Customers were left with no means to evacuate as they could not access their vehicles.

D. The 227 Cherry Street Parking Garage after Superstorm Sandy

44. Sometime after the storm surges caused water to overflow onto the streets of lower Manhattan late Monday night, October 29, 2012, water entered the garage through the entrance, a span of approximately twelve (12) feet.

45. Defendants failed to take any effective precautions to prevent water from penetrating the garage through the metal grated garage door.

46. As a consequence, water flowed into the garage and flooded the entire premises. Vehicles were floating in the garage and oil and gasoline from the vehicles permeated the flood water. All vehicles were rendered unsalvageable.

47. On Tuesday, October 30, 2012, Defendants failed to send an employee to 227 Cherry Street to assess the damage or to mitigate the damage. The garage remained locked and vehicles submerged.

48. At approximately 2:00 a.m. on Wednesday, October 31, 2012, a report was made to the New York City Police Department (“NYPD”) that a person was believed to have drowned in 227 Cherry Street Parking Garage. That night, scuba divers for the NYPD and the New York City Fire Department (“FDNY”) searched the entire garage. The metal garage door was removed by the NYFD. No bodies were recovered as a result of the search.

49. Although the NYPD and FDNY contacted Defendants, Defendants failed to send a representative to 227 Cherry Street during the search.

50. On Wednesday, October 31, 2012, the NYPD began pumping flood water out of the garage. As of late afternoon on Wednesday, Defendants still had not sent an employee to 227 Cherry Street to assess the damage or to mitigate the damage. Finally, Central Parking employees Juan Acevedo, an Operations Manager, and Patris Freycinet, a Regional Manager, arrived at 227 Cherry Street late in the afternoon on October 31, 2012.

51. When the employees arrived, Monthly Parking Customers were already present at the garage. In response to their questions regarding the locking of the garage door without warning at 4:00 p.m., on October 28, 2012, Mr. Acevedo and Mr. Freycinet told the Monthly Parking Customers that it was the vehicle owners' fault that their vehicles were flooded.

52. Mr. Acevedo and Mr. Freycinet told Monthly Parking Customers that they "should have moved their vehicles ...days before." Mr. Acevedo and Mr. Freycinet allegedly stated that New York City forced them to lock the garage door at 4:00 p.m.

53. On Thursday, November 1, 2012, the Defendants completely covered the garage entrance with a wood barrier and refused to allow access to the garage.

54. Defendants also blocked the entrance gates with wooden panels, further preventing access to the garage.

55. On Friday, November 2, 2012, Defendants told Monthly Parking Customers that they could retrieve their license plate and personal items from their vehicles. Despite said representations, no representative from Central Parking, or the other Defendants, travelled to 227 Cherry Street that day and the Monthly Parking Customers, after waiting hours, were unable to access their vehicles. Subsequently, Defendants told Monthly Parking Customers that the toxic fumes in the garage were so strong that it created an unsafe environment, preventing the owners from accessing their vehicles.

56. Finally, on Wednesday, November 7, 2012, Defendants told Monthly Parking Customers that they would be permitted to enter the garage on Friday, November 9, 2012, between the hours of 10:00 a.m. to 4:00 p.m.

57. The Monthly Parking Customers that travelled to 227 Cherry Street that day were required to sign waivers of liability before they were permitted to enter the garage.

58. The following day, insurers began towing vehicles from the garage. Defendants also towed some vehicles and thereafter charged owners for towing and storage fees.

59. To date, the garage located at 227 Cherry Street remains closed.

60. Although Monthly Parking Customers were wrongfully denied access to their vehicles and all suffered complete losses of their vehicles, Defendants have continued to bill the Monthly Parking Customers for each day since Superstorm Sandy.

61. Defendants have charged Monthly Parking Customers late fees for failure to pay their November 1, 2012, payment before November 15, 2012.

62. For those Monthly Parking Customers who agreed to have the monthly fees automatically debited from their bank accounts, Defendants requested and received payments for November and December.

63. Defendants have refused to terminate Monthly Parking Customers' agreements, even though many do not have a vehicle and 227 Cherry Street remains closed.

CLASS ALLEGATIONS

64. Plaintiffs bring this Class action pursuant to CPLR §901, on behalf of themselves and all other similarly situated individuals who paid a monthly fee in consideration for the right to park their vehicles at the parking garage located at 227 Cherry Street, New York, New York

10002, on October 28, 2012, and who suffered damages not covered under the individual's insurance policy.

65. Excluded from the Class are those individuals whose vehicles were in 227 Cherry Street Parking Garage on or about 4:00 p.m. on October 28, 2012, as non-monthly parking customers.

66. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Also excluded from the Class are Defendants and its affiliates, parents, subsidiaries, employees, officers, agents, and directors; government entities or agencies, its affiliates, employees, officers, agents, and directors in their governmental capacities; any judicial officer presiding over this matter and the members of their immediate families and judicial staff; and class counsel.

67. This action is properly maintainable as a class action. As provided in CPLR §901(a)(1), the proposed Class "is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable." As provided in CPLR §901(a)(2), "there are questions of law or fact common to the Class which predominate over any questions affecting only individual members." Specifically, the common questions of fact or law include whether Defendants were:

- a. negligent with respect to its duty to maintain the parking garage in a reasonably safe condition given Defendants' actual and/or constructive notice of the potential flooding from Superstorm Sandy;
- b. negligent in their evaluation and assessment of potential flood damage exposure given the historical information on the location of the parking garage, including

past use, zoning designation, flood plain designation and events of past flooding, including but not limited to Hurricane Irene;

- c. negligent in their implementation, if any, of flood preventive measures throughout the premises prior to Superstorm Sandy on October 29, 2012;
- d. negligent with respect to measures taken, if any, to adequately secure the parking garage during the four-to-five days of actual and/or constructive notice of the impending storm from the National Hurricane Center and NYC officials, and following the approximate thirty-six (36) hour period subsequent to the Zone A mandatory evacuation order;
- e. negligent in their failure to use sandbags, wood or metal barriers or other flooding barriers across the entrance of the parking garage;
- f. negligent in their failure to create an effective hurricane preparedness plan, and/or revise said plan subsequent to Hurricane Irene or in the four to five days following official warnings;
- g. negligent in their failure to follow their hurricane preparedness plan following the thirty-six (36) hour period subsequent to the Zone A mandatory evacuation order;
- h. negligent in their failure to allow parking garage attendants to communicate to Monthly Parking Customers at any time prior to 4:00 p.m. on Sunday, October 28, 2012, that 227 Cherry Street would be closed at 4:00 p.m. on Sunday, October 28, 2012;
- i. negligent in their failure to telephone, email or otherwise communicate with Monthly Parking Customers about their intended storm protocol, at any time in

the four to five days prior to the storm, including the decision to lock the garage at 4:00 p.m. on Sunday, October 28, 2012;

- j. negligent in their failure to telephone, email or otherwise communicate with Monthly Parking Customers that their vehicles must be removed from the garage at 4:00 p.m. on Sunday, October 28, 2012;
- k. negligent in their failure to prepare an emergency contact list for all Monthly Parking Customers in order to telephone, email or otherwise communicate with Monthly Parking Customers regarding Superstorm Sandy, especially given that Defendants have all email and telephone numbers of Monthly Parking Customers because they must sign up for the parking agreement online and provide email addresses and telephone numbers;
- l. negligent in their failure to reasonably foresee that Monthly Parking Customers would need their vehicles for purposes of evacuating Zone A, and negligent in their failure to reasonably foresee that individuals would leave Zone A, up and through 7:00 p.m., Sunday, October 28, 2012;
- m. negligent in their failure to telephone, email or otherwise communicate with Monthly Parking Customers that no Central Parking employees would be permitted to return to the garage to unlock the door at any time subsequent to 4:00 p.m. on Sunday, October 28, 2012;
- n. negligent in their failure to respond to the multiple requests by Monthly Parking Customers for a Central Parking employee to return briefly at any time either Sunday evening or the morning of October 29, 2012, for the purpose of allowing vehicles to be removed and individuals to evacuate;

- o. negligent in their failure to telephone, email or otherwise communicate with Monthly Parking Customers that no Central Parking employees would be permitted to return to the garage to unlock the door at any time subsequent to 4:00 p.m. on Sunday, October 28, 2012; and
- p. negligent in their failure to mitigate damages immediately after the storm.

68. As provided in CPLR §901(a)(3), the proposed lead Plaintiffs' representative claims are typical of those of the proposed Class because the proposed lead Plaintiffs' claims are based upon the same legal theories. The proposed representative party's grievances, like the proposed Class grievances, all arise out of the same business practices and course of conduct of Defendants. Further, the Plaintiffs' damages arise out of a pattern of nearly identical and repetitive business practices conducted by the Defendants.

69. As provided by CPLR §901(a)(4), the representative Plaintiffs can adequately represent the Class. No conflict of interest exists between the representatives and the Class members or with respect to the claims for relief requested.

70. The representatives and their chosen attorneys are familiar with the subject matter of the lawsuit and have full knowledge of the allegations contained in this complaint so as to be able to assist in its prosecution. In addition, the representative's attorneys are competent in the relevant areas of the law and have sufficient experience to vigorously represent the Class. Furthermore, the resources available to counsel ensure that the litigation will not be hampered by a lack of financial capacity. Plaintiffs' attorneys have sufficient financial resources and are willing to absorb the costs of the litigation.

71. As provided by CPLR § 901(a)(5), a class action is superior to any other available methods for adjudicating this controversy. The proposed class action is the surest way to fairly

and expeditiously compensate so large a number of injured persons; to keep the courts from becoming paralyzed by a significant number of repetitive cases, and to reduce transaction costs so that the injured Class can obtain the most compensation possible, class treatment presents a superior mechanism for fairly resolving similar issues and claims without repetitious and wasteful litigation.

COUNT I

Negligence Prior to Superstorm Sandy's Landfall

72. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint, as if fully set forth herein.

73. At all relevant times herein, as set forth *supra* at ¶ 67(a)-(p), Defendants, their agents and employees, owed a duty of care to the Monthly Parking Customers, including the duty to maintain the property in a reasonably safe condition. The owners of 227 Cherry Street, their agents and employees, owed a duty of care to the Monthly Parking Customers to reasonably and adequately secure the premises from damaging flooding.

74. At all relevant times herein, as set forth *supra* at ¶ 67(a)-(p), Defendants, their agents and employees, owed a duty to the Monthly Parking Customers to inform them that Defendant Central Parking would lock the door and prohibit entry, effective at 4:00 p.m., October 28, 2012.

75. Defendants, their agents and employees, were on actual and/or constructive notice of the severity of Superstorm Sandy at least four (4) days before the storm surges and subsequent flood impacted Zone A.

76. Because of said notice, Defendants, their agents and employees, had the opportunity to inspect existing flood safeguards, obtain additional methods to adequately secure

the garage entrance, and/or take reasonable precautions and/or exercise reasonable care such that the excessive damage from Superstorm Sandy at 227 Cherry Street could have been avoided.

77. Because of said notice, Defendants, their agents and employees, had the opportunity to contact all of the Monthly Parking Customers in advance of the decision to prohibit entry to the garage at 4:00 p.m., October 28, 2012.

78. Through the fault and the negligence of Defendants, their agents and employees, Defendants breached their duty to maintain the property in a reasonably safe condition. Through the fault and negligence of the owners, their agents and employees, storm surge water flowed unhindered into 227 Cherry Street, causing extensive damage.

79. Through the fault and the negligence of Defendants, their agents and employees, Defendants denied Class members the ability to safely evacuate.

80. As a direct and proximate result of the owners' negligence, gross negligence and/or failures to act, the Class members suffered personal property damages and other special damages including, but not limited to, the following: (1) the failure of the ability to safely evacuate, including failure to safely evacuate family members; (2) loss of personal property; (3) diminution of personal property value; (4) loss of business opportunities and business interruption; (5) costs of alternative means to evacuate; (6) costs of obtaining new transportation; (7) monthly parking fees since October 29, 2012, including late fees, and (8) insurance deductible costs.

COUNT II

Gross Negligence and Reckless Indifference Prior to Superstorm Sandy's Landfall

81. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint, as if fully set forth herein.

82. At all relevant times herein, Defendants, their agents and employees, owed a duty of care to the Monthly Parking Customers as set forth *supra* at ¶¶ 67(a)-(p), and to maintain the property in a reasonably safe condition.

83. From on or about Saturday, October 27, 2012, and continuing through the onset of Superstorm Sandy, Defendants were repeatedly questioned by Monthly Parking Customers regarding the closing of 227 Cherry Street. Defendants owed Plaintiffs and Class members the duty to reasonably inform them and provide warning that the garage would be closed before the 7:00 p.m. evacuation deadline.

84. Defendants breached this duty by repeatedly providing false information, intentionally or recklessly, to Monthly Parking Customers. Defendants further breached this duty by failing to provide notice or warning of any type prior to 4:00 p.m., October 28, 2012.

85. Defendants displayed reckless indifference to Class members by their repeated failures to respond to the multitude of telephone calls, emails and pleas for a Central Parking representative to temporarily open the garage door at any time from 4:00 p.m. October 28th and continuing until the early afternoon on Monday, October 29, 2012, despite the hundreds of Central Parking employees located in New York City.

86. As a direct and proximate result of the owners' negligence, gross negligence and/or failures to act, the Class members suffered personal property damages and other special damages including, but not limited to, the following: (1) the failure of the ability to safely evacuate, including failure to safely evacuate family members; (2) loss of personal property; (3) diminution of personal property value; (4) loss of business opportunities and business interruption; (5) costs of alternative means to evacuate; (6) costs of obtaining new

transportation; (7) monthly parking fees since October 29, 2012, including late fees, and (8) insurance deductible costs.

COUNT III

Negligence Prior to Superstorm Sandy's Landfall

87. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint, as if fully set forth herein.

88. At all relevant times herein, Defendants, their agents and employees, owed a duty of care to the Monthly Parking Customers to maintain the property in a reasonably safe condition. Defendants owed a duty of care to the Monthly Parking Customers to reasonably and adequately mitigate the damages caused by Sandy and properly repair said damages. Through the fault and the negligence of the Defendants, their agents and employees, Defendants breached their duty to mitigate the damages caused by flooding and restore the real property to a reasonably safe condition.

89. As a direct and proximate result of the owners' negligence, gross negligence and/or failures to act, the Class members suffered personal property damages and other special damages including, but not limited to, the following: (1) the failure of the ability to safely evacuate, including failure to safely evacuate family members; (2) loss of personal property; (3) diminution of personal property value; (4) loss of business opportunities and business interruption; (5) costs of alternative means to evacuate; (6) costs of obtaining new transportation; (7) monthly parking fees since October 29, 2012, including late fees, and (8) insurance deductible costs.

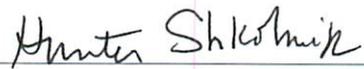
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and members of the Class, respectfully pray for relief against Defendants as follows:

- a. An award of damages in an amount to be determined at trial;
- b. Notice to the Classes of the action and relief resulting therefrom;
- c. The costs and disbursements incurred by Plaintiffs in connection with this action, including reasonable attorneys' fees; and
- d. Such other and further relief as this Court deems just and proper.

Dated: December 14, 2012
New York, New York

Respectfully submitted,
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Attorneys for Plaintiffs

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Defendants.
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COMPLAINT

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Attorneys for Plaintiffs

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: December 14, 2012

Signature: _____

Print Signer's Name: Jeanne Christensen, Esq.