

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

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MICHAEL CASHWELL and DAVID BARKER  
individually and on behalf of all others similarly  
situated,

Index No.

Plaintiffs,

**SUMMONS**

v.

2 GOLD, LLC, 201 PEARL, LLC, TF  
CORNERSTONE, INC., GOLD/PEARL PARKING  
CORP, IMPERIAL PARKING SYSTEMS, INC.,  
FRANK D. VASTA, and KEVIN P. SINGLETON,

Defendants.

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**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: November 19, 2012  
New York, New York

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*Attorneys for Plaintiffs*

**Defendants Addresses:**

2 Gold, LLC  
2 Gold Street, New York, New York 10038

201 Pearl, LLC  
2 Gold Street, New York, New York 10038

TF Cornerstone, Inc.  
387 Park Avenue South, 7<sup>th</sup> Floor, New York, New York 10016

Gold/Pearl Parking Corp.  
107 West 13<sup>th</sup> Street, New York, New York 10011

Imperial Parking Systems  
107 West 13<sup>th</sup> Street, New York, New York 10011

Frank D. Vasta  
c/o TF Cornerstone, Inc.  
387 Park Avenue South, 7<sup>th</sup> Floor, New York, New York 10016

Kevin P. Singleton  
c/o TF Cornerstone, Inc.  
387 Park Avenue South, 7<sup>th</sup> Floor, New York, New York 10016

SUPREME COURT OF THE STATE OF NEW YORK  
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MICHAEL CASHWELL and DAVID BARKER  
individually and on behalf of all others similarly situated  
Plaintiffs,

INDEX NO. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

Plaintiffs,

v.

2 GOLD, LLC, 201 PEARL, LLC, TF CORNERSTONE,  
INC., GOLD/PEARL PARKING CORP., IMPERIAL  
PARKING SYSTEMS, INC., FRANK D. VASTA, and  
KEVIN P. SINGLETON,

Defendants.

-----X

Plaintiffs Michael Cashwell and David Barker (collectively “Plaintiffs”), by and through their attorneys, Napoli, Bern, Ripka & Shkolnik, LLP, and Imbesi Christensen, bring this Class Action Complaint (“Complaint”) against the corporate Defendants 2 Gold, LLC, (“2 Gold”), 201 Pearl, LLC, (“201 Pearl”), TF Cornerstone, Inc., (“TF Cornerstone”); Gold/Pearl Parking Corp., (“Gold/Pearl”), and Imperial Parking Systems, Inc., (“Imperial”), (collectively “Corporate Defendants”), Frank D. Vasta and Kevin P. Singleton (collectively “Individual Defendants”), and on behalf of themselves and all other similarly situated residents of 2 Gold Street, New York, New York 10038, and 201 Pearl Street, New York, New York 10038, (the “Class”), and allege upon information and belief as follows:

**NATURE OF THE ACTION**

1. Plaintiffs bring this action against Defendants seeking damages and other appropriate relief for their claims arising out of Defendants’ negligence relating to their failure to adequately secure the premises subsequent to the multiple warnings issued by the National

Hurricane Center and by New York City government officials before Hurricane Sandy, and for their negligence relating to their failure to mitigate damages following the storm.

### **JURISDICTION AND VENUE**

2. This Court has personal jurisdiction over the corporate Defendants 2 Gold, LLC, 201 Pearl, LLC, TF Cornerstone, Inc., Gold/Pearl Parking Corp, and Imperial Parking, pursuant to C.P.L.R. §301 because the corporate Defendants are New York corporations that conduct business in New York County.

3. Venue is proper in the Supreme Court of the State of New York, New York County pursuant to C.P.L.R. §503 as the corporate Defendants have their principal office of business located in New York County and the causes of action arose in New York County.

### **PARTIES**

4. Plaintiff Michael Cashwell is a citizen of the State of New York and resides in New York County and is an individual residing in the building located at 2 Gold Street, New York, New York 10038.

5. Plaintiff David Barker is a citizen of the State of New York and resides in New York County and is an individual residing in the building located at 201 Pearl Street, New York, New York 10038.

6. Defendant 2 Gold, LLC, is a domestic professional corporation incorporated and existing under the laws of the State of New York, with its principal place of business located at 2 Gold Street, New York, New York 10038.

7. Defendant 201 Pearl, LLC, is a domestic professional corporation incorporated and existing under the laws of the State of New York, with its principal place of business located at 201 Pearl Street, New York, New York 10038.

8. Defendant TF Cornerstone, Inc., (“TF Cornerstone”), is a domestic professional corporation incorporated and existing under the laws of the State of New York, with its principal place of business located at 387 Park Avenue South, 7<sup>th</sup> Floor, New York, New York 10016.

9. Defendant Gold/Pearl Parking Corp, (“Gold/Pearl”), is a domestic professional corporation incorporated and existing under the laws of the State of New York, with its principal place of business located at 107 West 13<sup>th</sup> Street, New York, New York 10011.

10. Defendant Imperial Parking Systems, Inc., (“Imperial”), is a domestic professional corporation incorporated and existing under the laws of the State of New York, with its principal place of business located at 107 West 13<sup>th</sup> Street, New York, New York 10011.

11. Defendant Frank D. Vasta is employed by Defendant TF Cornerstone as the executive Vice President of Construction, and was one of the individuals responsible for securing 2 Gold and 201 Pearl.

12. Defendant Kevin P. Singleton is employed by Defendant TF Cornerstone as an executive Vice President, and was one of the individuals responsible for the security of 2 Gold and 201 Pearl after Hurricane Sandy.

### **CLASS ALLEGATIONS**

13. Plaintiffs bring this Class action pursuant to CPLR §901, on behalf of themselves and all other similarly situated individuals who resided at 2 Gold Street or 201 Pearl Street on October 29, 2012.

14. 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. 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.

15. 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 property in a reasonably safe condition given Defendants’ actual and/or constructive notice of the potential flooding from Hurricane Sandy;
- b. negligent in their evaluation and assessment of potential flood damage exposure given the historical information on the location, including past use, zoning designation, flood plain designation and events of past flooding, including but not limited to Hurricane Irene;
- c. negligent with respect to the design and construction of the premises based upon the assessment of potential flood exposure;
- d. negligent in their implementation, if any, of flood preventive measures throughout the premises prior to Hurricane Sandy on October 29, 2012;
- e. negligent with respect to measures taken, if any, to adequately secure the premises during the four to five days of actual and/or constructive notice of the impending storm from the National Hurricane Center and city officials, and following the approximate thirty-six (36) hour period subsequent to the Zone A mandatory evacuation order;
- f. negligent in their failure to use sandbags or other flooding barriers across the entrance of the parking garage attached to the properties;
- g. 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;
- h. 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, including reports that management employees “abandoned” the building and permitted looting and stealing in apartments and storage units during this time period;
- i. negligent in their failure to properly secure the operational, mechanical and electrical equipment located on the premises; and

j. negligent in their failure to mitigate damages immediately after the storm.

16. 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 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.

17. 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.

18. 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.

19. 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 hundreds, perhaps thousands 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.

## **STATEMENT OF FACTS**

### **A. Hurricane Sandy**

20. Hurricane Sandy is one of the most devastating storms ever to strike the New York City metropolitan area and New Jersey, the most densely populated region in the United States.

21. On October 22, 2012, the National Hurricane Center (“NHC”), issued its first forecast and public advisories regarding Hurricane Sandy. Thereafter, NHC issued multiple advisories on a daily basis regarding the storm’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 Hurricane Sandy.

22. 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.

23. 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. In Manhattan, Zone A includes Battery Park City and stretches of the West Side waterfront and of the Lower East Side and East Village in Manhattan.

24. 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."

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

26. Hurricane Sandy made landfall in lower Manhattan late Monday evening, October 29, 2012.

**B. Real property Located at 201 Pearl Street and 2 Gold Street**

27. The real property located at 201 Pearl Street and 2 Gold Street is located in lower Manhattan, in an area commonly referred to as the Financial District. 2 Gold and 201 Pearl are situated within Zone A.

28. There are approximately 660 residential apartments in 2 Gold and 189 apartments in 201 Pearl. A residential parking garage is also located at the property.

29. At all relevant times, the managing agent for 2 Gold and 201 Pearl was TF Cornerstone.

30. Defendant Frank D. Vasta, the executive Vice President of Construction for Defendant TF Cornerstone, was one of the individuals responsible for preparing 2 Gold and 201 Pearl for Hurricane Sandy.

31. Defendant Kevin P. Singleton, an executive Vice President of Defendant TF Cornerstone, was also one of the individuals responsible for preparing the buildings prior to the storm and further responsible for responding to any damages at the buildings caused by Hurricane Sandy and protecting the 2 Gold and 201 Pearl from looting and potential theft.

32. Derrick Komorowski was the building manager for 2 Gold and 201 Pearl. In this capacity, Mr. Komorowski was responsible for assisting in the preparation of the property before the storm and the maintenance and security of the building after the storm.

33. Because the properties were located in Zone A, the mandatory evacuation order issued on Sunday, October 28, 2010, applied to the residents and commercial business located in the two buildings.

34. Residents of 2 Gold and 201 Pearl received their first communication from TF Cornerstone regarding Hurricane Sandy on or about October 26, 2012. This memorandum addressed to all residents stated in its entirety, the following: “Please be advised that the National Weather Service forecast that Hurricane Sandy may reach the New York metropolitan area early next week, bringing tropical storm or hurricane force conditions which can include heavy rain and strong winds. Please take all necessary precautions, including: remove or secure items on private terraces, close and lock all windows and terrace doors, and keep blinds or other window coverings closed. We will provide further information on Monday as new information becomes available.”

35. Residents did not receive any other instructions, information or notice from Defendants until after Hurricane Sandy had moved out of the area late Tuesday, October 30, 2012.

36. Sometime after the storm surges caused water to overflow onto the streets of lower Manhattan late Monday night, October 29, 2012, water entered 2 Gold and 201 Pearl through the entrance of the parking garage, a span of approximately ten (10) to fifteen (15) feet. Through this garage entrance, water poured into the buildings and flooded the basements.

37. No sandbags were placed in front of the entrance to the parking garage, nor were any other effective precautions taken with respect to the garage entrance and the perimeter of the property.

38. Thereafter, the basement in 2 Gold rapidly filled with salt water which crystallized, causing significant damage to the boiler and electrical switchboards which were not protected or isolated in any way from the water.

39. The water further reached the 20,000 gallon oil tank, purportedly situated thirty (30) feet below ground, causing it to rupture and release oil into the flood waters. The oil spill was significant and had to be reported to government officials by Defendants thereby placing increased restrictions upon the removal of the water.

40. As a result of the compromised oil tank, the water containing oil created diesel fuel fumes throughout the buildings. The smell of diesel fuel has reached Plaintiff Cashwell's apartment, located on the highest floor of 2 Gold.

41. Said fumes have affected the air quality and permeated the entire building, including apartment floors, walls, ceilings, furniture and clothing located in the apartments.

42. Workers in the buildings have been observed wearing hazmat suits and gas masks although tenants have been permitted to enter the buildings to retrieve personal items that can be carried by hand in the stairwells.

43. When tenants returned to retrieve personal items, many observed apartment doors unlocked and wide open with numerous personal property items missing.

#### **C. Defendants Meet with Tenants**

44. Following the storm, on November 13, 2012, Defendant TF Management held a town hall meeting for the tenants of 2 Gold and 201 Pearl.

45. At the meeting, one tenant asked what precautions had the owners and management taken to prevent the flooding. In response, Defendant Vasta, an Executive Vice President at Defendant TF Cornerstone, replied that the building was designed to withstand the 100 years storm level of flooding, but the flood gates were breached by the storm surge. Other

than referring to the design of the building and the elevation of sidewalks, Defendant Vasta failed to reference any preventative actions that were taken immediately prior to the storm with respect to securing the perimeter of the building, including the parking garage entrance.

**D. Defendant Vasta: Parking Garage Ramp Acted as a Giant Toilet Bowl**

46. In fact, Defendant Vasta told residents that the “parking garage ramp acted as a giant toilet bowl,” with water rushing in at such speed that “within twenty (20) minutes the two basements [were] filled with water.” Defendant Vasta told residents that the basements were flooded as a direct result of the water that entered through the parking garage entrance.

Defendant Vasta failed to detail any precautions that were taken to prevent water from entering through the parking garage entrance.

47. Defendant Vasta admitted that he thought it would have been “impossible to stop a river.”

48. Sofia Estevez, an Executive Vice President at TF Cornerstone, admitted to residents that the building “did not anticipate a crisis of this magnitude.”

49. Defendant Vasta admitted to residents that there are ways to protect mechanical and electrical systems from flooding and that the company is now investigating sealing critical rooms with submarine style doors or seals to keep critical equipment dry in the event of future flooding.

50. When residents questioned management about the diesel fuel smell that is permeating throughout the apartment building, Mr. Vasta admitted that “the smells are there” and that his wife makes him undress upon entering their home because the smell of gasoline has permeated his clothing.

51. Further, Mr. Vasta admitted to wearing a gas mask when in the buildings for the first several days after the hurricane because of the oil spill and suffering from headaches after working in the basement of 2 Gold.

52. Despite these statements, Defendant Vasta told residents that safety and health concerns with respect to the oil spill are not warranted because petroleum dissipates into the air and therefore, over time, the smell will go away.

53. Because of the damages to operational systems, all of which were below grade, including heat, hot water, electric, ventilation, water filtration and sprinkler systems, Defendant TF Cornerstone has informed residents that the earliest date for reoccupancy is March 1, 2013.

**COUNT I**  
**Negligence Prior to Hurricane Sandy's Landfall**  
**(As against all Defendants)**

54. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

55. At all relevant times herein, the owners of 2 Gold and 201 Pearl, their agents and employees, owed a duty of care to the residents of 2 Gold and 201 Pearl to maintain the property in a reasonably safe condition. The owners of 2 Gold and 201 Pearl, their agents and employees, owed a duty of care to the residents of 2 Gold and 201 Pearl to reasonably and adequately secure the premises from damaging flooding.

56. The owners of 2 Gold and 201 Pearl, their agents and employees, were on actual and/or constructive notice of the severity of Hurricane Sandy four to five days before the storm surges began impacting Zone A.

57. Because of said notice, the owners of 2 Gold and 201 Pearl, their agents and employees, had the opportunity to inspect existing flood safeguards, obtain additional methods to

adequately secure the perimeter of 2 Gold and 201 Pearl, and/or take reasonable precautions and/or exercise reasonable care such that the excessive damage from Hurricane Sandy at 2 Gold and 201 Pearl could have been avoided.

58. Through the fault and the negligence of the owners of 2 Gold and 201 Pearl, 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, storm surge water flowed unhindered into 2 Gold and 201 Pearl, and into the connecting parking garage, causing extensive damage.

59. As a direct and proximate result of the owners' negligence, gross negligence and/or failures to act, the class and subclass members suffered personal property damages and other special damages including, but not limited to, the following: (1) loss of personal property; (2) diminution of personal property value; (3) loss of income; (4) costs of relocation; (5) loss of business opportunities and business interruption; (6) evacuation expenses; (7) costs of maintaining monthly utilities for a minimum of four months without use, including but not limited to electricity, cable and telephone.

**COUNT II**  
**Negligence after Hurricane Sandy's Landfall**  
**(As against all Defendants)**

60. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

61. At all relevant times herein, the owners of 2 Gold and 201 Pearl, their agents and employees, owed a duty of care to the residents of 2 Gold and 201 Pearl to maintain the property in a reasonably safe condition. The owners of 2 Gold and 201 Pearl, their agents and employees, owed a duty of care to the residents of 2 Gold and 201 Pearl to reasonably and adequately mitigate the damages caused by Hurricane Sandy and properly repair said damages.

62. Through the fault and the negligence of the owners of 2 Gold and 201 Pearl, 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.

63. As a direct and proximate result of the owners' negligence, gross negligence and/or failures to act, the class and subclass members suffered personal property damages and other special damages including, but not limited to, the following: (1) loss of personal property; (2) diminution of personal property value; (3) loss of income; (4) costs of relocation; (5) loss of business opportunities and business interruption; (6) evacuation expenses; (7) costs of maintaining monthly utilities for a minimum of four months without use, including but not limited to electricity, cable and telephone.

**COUNT III**  
**Breach of Warranty of Habitability, RPL §235-b**  
**(As against Defendants 2 Gold and 201 Pearl)**

64. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

65. Defendants 2 Gold and 201 Pearl impliedly warranted to the Class that the buildings were fit for human habitation and further that the residents were not subject to any conditions endangering or detrimental to their life, health or safety.

66. The Class members were and continue to be prevented from living in their apartments.

67. Moreover, the toxic fumes from the gasoline spill into the flood waters is so extensive and has permeated the flooring, walls, ceilings and furniture in the Class members' apartments to such a degree that the residences are not tenantable and create safety and health dangers for Class members.

68. Defendants 2 Gold and 201 Pearl breached the implied warranty of habitability by negligently preparing for the storm surge by Hurricane Sandy, despite adequate notice, actual

and/or constructive, and by failing to mitigate damages thereafter, such that gasoline from oil tanks and submerged vehicles entered flood waters causing extensive damage to mechanical and electrical systems, creating toxic water and conditions so severe that 2 Gold and 201 Pearl are not habitable.

69. As a direct and proximate result of Defendants 2 Gold and 201 Pearl's actions, Class members have suffered and continue to suffer damages.

**COUNT IV**  
**Gross Negligence after Hurricane Sandy's Landfall**  
**(As against all Defendants)**

70. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

71. At all relevant times herein, the owners of 2 Gold and 201 Pearl, their agents and employees, owed a duty of care to the residents of 2 Gold and 201 Pearl to maintain the property in a reasonably safe condition. The owners of 2 Gold and 201 Pearl, their agents and employees, owed a duty of care to the residents of 2 Gold and 201 Pearl to reasonably and adequately mitigate the damages caused by Hurricane Sandy and properly repair said damages.

72. Through the fault and the gross negligence of the owners of 2 Gold and 201 Pearl, 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.

73. Through the fault and the gross negligence of Defendants Frank D. Vasta, Kevin P. Singleton, and Derrick Komorowski, non-residents were allowed to unlawfully enter 2 Gold and 201 Pearl after Hurricane Sandy and thereafter steal and/or cause damage to Class members' personal property.

74. 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.

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: New York, New York  
November 19, 2012

Respectfully submitted,  
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**CLASS ACTION COMPLAINT**

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*Attorneys for Plaintiffs*

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*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: November 19, 2012

Signature:   
Print Signer's Name: Jeanne Christensen, Esq.