

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

-----X
DANIEL KRAMER,

Plaintiff,

-against-

**VERIFIED ANSWER
TO SECOND
AMENDED
COMPLAINT**

ARA HOVNANIAN, RACHEL LEE HOVNANIAN, AUTUN
CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS,
GILSANZ MURRAY STEFICEK LLP, PILLORI ASSOCIATES,
PA, SIGNATURE INTERIOR DEMOLITION, INC., JG
CONSTRUCTION OF QUEENS, INC., SUPER JC
CONSTRUCTION CORPORATION and
MITCHELL IRON WORKS,

Index No.: 157527/13

Defendants.
-----X

The defendant, **JG CONSTRUCTION OF QUEENS, INC.**, by their attorneys, FIXLER & LAGATTUTA, LLP, answering the verified complaint of the plaintiff herein, respectfully alleges upon information and belief:

1. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the verified complaint designated as follows:

“1”, “4”, “5”, “6”, “7”, “8”, “9”, “10”, “12”, “13”, “20”, “21”, “23”, “24”, “26”, “27”, “28”, “29”, “30”, “31”, “32”, “33”, “34”, “35”, “36”, “37”, “38”, “39”, “40”, “41”, “42”, “43”, “44”, “45”, “46”, “47”, “49”, “50”, “51”, “64”, “65”, “66”, “68”, “76”, “99”, “100” and “101”

2. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

“2”, “25”, “62”, “67”, “69”, “70”, “71”, “72”, “73”, “74”, “75”, “76”, “77”, “78”, “79”, “80”, “81”, “82”, “83”, “84”, “85”, “86”, “87”, “88”, “89”, “90”, “92”, “93”, “94”, “95”, “96”, “97”, “98”, “102”, “103”, “104”, “105” and “106”

3. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

**“3”, “14”, “15”, “16”, “17”, “18”, “19”, “22”,
“48”, “52”, “53”, “54”, “55”, “56”, “57”, “58”,
“59”, “60”, “61”, “63” and “91”**

and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

**AS AND FOR A RESPONSE TO THE
FIRST CAUSE OF ACTION**

4. In response to paragraph “107”, the defendant repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs designated “1” through “106” with the same force and effect as though fully set forth therein.

5. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

**“108”, “109”, “110”, “111”, “113”, “114”, “115”,
“116”, “117”, “118”, “119”, “120”, “121”,
“122”, “123”, “124”, “125”, “126”, “127”, “128”, “129”, “130”,
“131”, “132”, “133”, “134”, “135”, “136”, “137”,
“138”, “139”, “140”, “141”, “142” and “143”**

and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

6. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the verified complaint designated as follows:

“112”

7. Denies each and every allegation contained in the paragraphs of the verified

complaint designated as follows:

“144”

**AS AND FOR A RESPONSE TO THE
SECOND CAUSE OF ACTION**

8. In response to paragraph “145”, the defendant repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs designated “1” through “144” with the same force and effect as though fully set forth therein.

9. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

“146” and “147”

and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

10. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

**“148”, “149”, “150”, “151”, “152”,
“153”, “154” and “155”**

**AS AND FOR A RESPONSE TO THE
THIRD CAUSE OF ACTION**

11. In response to paragraph “156”, the defendant repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs designated “1” through “141” with the same force and effect as though fully set forth therein.

12. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

**“157”, “158”, “159”, “160”, “161”, “162”,
“163”, “164”, “165”, “166” and “167”**

and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

13. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

“168”

**AS AND FOR A RESPONSE TO THE
FOURTH CAUSE OF ACTION**

14. In response to paragraph “169”, the defendant repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs designated “1” through “168” with the same force and effect as though fully set forth therein.

15. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

“170”

and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

16. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

“171”, “172” and “173”

**AS AND FOR A RESPONSE TO THE
FIFTH CAUSE OF ACTION**

17. In response to paragraph “174”, the defendant repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs designated “1” through “173” with the same force and effect as though fully set forth therein.

18. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

“175”

and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

19. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

**“176”, “177”, “178”, “179”, “180”,
“181”, “182”, “183” and “184”**

**AS AND FOR A RESPONSE TO THE
SIXTH CAUSE OF ACTION**

20. In response to paragraph “185”, the defendant repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs designated “1” through “184” with the same force and effect as though fully set forth therein.

21. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

**“186”, “187”, “188”, “189”, “200”,
“201”, “202”, “203” and “204”**

and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

22. Denies each and every allegation contained in the paragraphs of the verified complaint designated as follows:

“205”

**AS AND FOR A FIRST SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

23. That any damages, injury and/or injuries sustained by plaintiff were caused in whole or part by the culpable conduct and fault attributable to the plaintiff, including, but not limited to, contributory negligence and/or want of care, and/or the plaintiff’s assumption of the risk, and the amount recovered, if any, should be diminished pursuant to CPLR §1412 by the proportion which the culpable conduct attributed to the plaintiff bear to the culpable conduct which caused the damages, if any.

**AS AND FOR A SECOND SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

24. If plaintiff suffered damages as alleged, then plaintiff failed to mitigate such damages.

25. Any award made to plaintiff for the alleged injuries must be reduced in such proportion that the alleged injuries were caused, aggravated and contributed to by plaintiff's failure to mitigate damages.

26. That the damages claimed to have been suffered, either in whole or in part, are greater than any damages that may have been actually suffered, and that plaintiff failed to mitigate the same.

**AS AND FOR A THIRD SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

27. Any injuries and/or damages allegedly sustained by plaintiff were the direct and proximate result of unforeseen and unforeseeable negligent, grossly negligent, wanton or reckless acts, omissions or conduct of intervening third parties or the direct and proximate result of superseding causes.

**AS AND FOR A FOURTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

28. If plaintiff received remuneration and/or compensation for some or all of his claimed economic loss, the answering defendant is entitled to have plaintiff's award, if any, reduced by the amount of that remuneration and/or compensation pursuant to CPLR §4545.

**AS AND FOR A FIFTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

29. If plaintiff was caused to sustain damages at the time and place set forth in the plaintiff's verified complaint, it was due to the culpable conduct of person or persons presently unknown.

**AS AND FOR A SIXTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

30. That if the plaintiff sustained the injuries complained of in the manner alleged, said injuries were caused by the negligence of parties over whom the answering defendant was not obligated to exercise supervision or control.

**AS AND FOR A SEVENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

31. The liability of the answering defendant is limited by law under the terms of Article Sixteen of the CPLR.

**AS AND FOR AN EIGHTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

32. Any award recovered by plaintiff from the answering defendants is subject to offset pursuant to General Obligations Law §15-108.

**AS AND FOR A NINTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

33. No acts or omissions of defendant proximately caused any injuries and/or damages sustained by plaintiff.

**AS AND FOR A TENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

34. Plaintiff's injuries and/or damages were caused directly, solely and proximately by sensitivities, idiosyncrasies, and other weaknesses peculiar to plaintiffs premises, of which the answering defendant neither knew, had reason to know, nor could have foreseen.

**AS AND FOR A ELEVENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

35. Plaintiff's complaint fails to state a cause of action as against the answering

defendant.

36. Plaintiff fails to state a claim against the answering defendant because the answering defendant did not owe a duty to plaintiff or any of its co-defendants.

37. The Complaint fails to state a cause of action against the answering defendant because plaintiff lacks contractual privity, or the functional equivalent thereof, with the answering defendant.

**AS AND FOR A TWELFTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

38. The injuries and/or damages alleged by plaintiff were the result of an independent supervening and/or intervening cause, and any act or omission of the answering defendant was not the proximate cause of the injuries or damages alleged.

**AS AND FOR A THIRTEENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

39. Plaintiff's alleged injuries or damages, were caused, if at all, by mechanical defects that did not result from any act or omission of the answering defendant.

**AS AND FOR A FOURTEENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

40. The claims against the answering defendant in plaintiff's Complaint are barred by the, doctrine of unclean hands, waiver, laches, estoppels res judicata and/or collateral estoppel.

**AS AND FOR A FIFTEENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

41. Plaintiff has failed to join as parties one or more persons or defendants needed for just and complete adjudication of the matters in controversy.

**AS AND FOR A SIXTEENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

42. Plaintiff lacks capacity, standing, or authority to bring this action, in whole or in part. Plaintiffs do not have standing to bring this action as they have either waived their right to bring this action, assigned their right to bring this accident and/or are collaterally estopped from bringing this action.

**AS AND FOR A SEVENTEENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

43. Plaintiff's speculative, uncertain and/or contingent damages have not accrued and are not recoverable.

**AS AND FOR AN EIGHTEENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

44. Plaintiff's cause of action is barred by all applicable Statutes of Limitations.

**AS AND FOR A NINETEENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

45. The answering defendant, as an individual is not a proper party to the within litigation and, as a legally recognized business entity within the state of New York, is immune from personal liability.

**AS AND FOR A TWENTIETH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

46. Defendant has defenses based on documentary evidence.

**AS AND FOR A TWENTY-FIRST SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE**

47. The answering defendant did not breach any agreement and performed all of its contractual obligations.

**AS AND FOR A TWENTY-SECOND SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE**

48. Each and every cause of action in the Complaint that purports to be pleaded against defendant is vague, ambiguous, uncertain and overly broad.

**AS AND FOR A TWENTY-THIRD SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

49. The answering defendant did not breach any agreement and performed all of its contractual obligations.

**AS AND FOR A TWENTY-FOURTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

50. The answering defendant will rely upon any and all further defenses which become available or appear during discovery in this action and hereby specifically reserves its right to amend its answer for the purpose of asserting any such additional defenses.

**AS AND FOR A CROSS-CLAIM AGAINST THE DEFENDANTS, ARA HOVNANIAN,
RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL
ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, PILLORI ASSOCIATES, PA,
SIGNATURE INTERIOR DEMOLITION, SUPER JC CONSTRUCTION
CORPORATION and MITCHELL IRON WORKS,
THE DEFENDANT, JG CONSTRUCTION OF QUEENS, INC., ALLEGES:**

51. That if the plaintiff was caused to sustain damages at the time and place set forth in the plaintiff's complaint through any carelessness, recklessness, negligence and/or breach of warranty other than the plaintiff's own carelessness, recklessness and negligence, said damages were sustained by reason of the carelessness, recklessness and negligence and/or acts of omission or commission and/or breach of contract by the defendants, **ARA HOVNANIAN, RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, PILLORI ASSOCIATES, PA, SIGNATURE INTERIOR DEMOLITION, SUPER JC CONSTRUCTION CORPORATION and MITCHELL IRON WORKS**, their agents, servants and/or employees; and if any judgment is recovered herein by the plaintiff against the answering defendant, **JG CONSTRUCTION OF**

QUEENS, INC., they will be damaged thereby, and the defendants, **ARA HOVNANIAN and RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, PILLORI ASSOCIATES, PA, SIGNATURE INTERIOR DEMOLITION, SUPER JC CONSTRUCTION CORPORATION and MITCHELL IRON WORKS** will be responsible therefor in whole or in part.

52. That by reason of the foregoing, the defendants, **ARA HOVNANIAN and RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, PILLORI ASSOCIATES, PA, SIGNATURE INTERIOR DEMOLITION, SUPER JC CONSTRUCTION CORPORATION and MITCHELL IRON WORKS**, in the event and in the full amount of a recovery herein by the plaintiff or alternatively, for that proportion thereof cause by the relative responsibility of the defendants, **ARA HOVNANIAN and RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, PILLORI ASSOCIATES, PA, SIGNATURE INTERIOR DEMOLITION, SUPER JC CONSTRUCTION CORPORATION and MITCHELL IRON WORKS** are bound to pay any and all expenses and attorneys' fees and the costs and disbursements thereof.

AS AND FOR A SECOND CROSS-CLAIM AGAINST THE DEFENDANTS, ARA HOVNANIAN, RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, PILLORI ASSOCIATES, PA, SIGNATURE INTERIOR DEMOLITION, SUPER JC CONSTRUCTION CORPORATION and MITCHELL IRON WORKS, THE DEFENDANT, JG CONSTRUCTION OF QUEENS, INC., ALLEGES:

53. That if the plaintiff was caused to sustain damages at the time and place set forth in the plaintiff's complaint and in the manner alleged therein through any carelessness, recklessness, acts, omissions, negligence and/or breach of duty, warranty and/or contract and/or strict tort liability other than of the plaintiff, then said injuries and damages arose out of the several and joint carelessness, recklessness, acts, omissions, negligence and/or breaches of duty and/or obligations, and/or statute and/or contract in fact or implied in law, upon the part of the

codefendants, with indemnification and save harmless agreement, and/or responsibility by them in fact, and/or implied in law, and without any breaches or any negligence of this pleading defendant contributing thereto, and if this pleading defendant is found negligent as to the plaintiff for injuries and damages as set forth in the plaintiff's Complaint, then and in that event, the relative responsibilities of all said defendants must be apportioned by separate determination, and the said defendants, **ARA HOVNANIAN, RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, PILLORI ASSOCIATES, PA, SIGNATURE INTERIOR DEMOLITION, SUPER JC CONSTRUCTION CORPORATION and MITCHELL IRON WORKS** herein will be liable over jointly and severally to the pleading defendant and bound to fully indemnify and hold this pleading defendants harmless for the full amount of any verdict or judgment that the plaintiff herein may recover against the pleading defendant in this action, together with legal fees, costs and disbursements.

54. That by reason of the foregoing, the defendants, **ARA HOVNANIAN and RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, PILLORI ASSOCIATES, PA, SIGNATURE INTERIOR DEMOLITION, SUPER JC CONSTRUCTION CORPORATION and MITCHELL IRON WORKS**, failed to purchase insurance for the benefit of answering defendant, **JG CONSTRUCTION OF QUEENS, INC.**, and is obligated to pay an costs, expenses and damages thereto, in addition to any other damages incurred herein.

WHEREFORE, defendant, **JG CONSTRUCTION OF QUEENS, INC.** demands judgment against the plaintiff as follows:

a) dismissing plaintiff's complaint, together with the costs and disbursements of this action;

b) defendant, **JG CONSTRUCTION OF QUEENS, INC.**, demands judgment on its cross-claims;

c) in the alternative, and in the event that plaintiff prevails, defendant, **JG CONSTRUCTION OF QUEENS, INC.**, demands judgment determining the respective percentages of fault on the part of the defendants and plaintiff, thereby reducing the amount of

damages as against the defendant by the respective percentage of fault of the plaintiff and defendant.

Dated: New York, New York
January 12, 2015



By: _____
PAUL F. LAGATTUTA, III
FIXLER & LAGATTUTA, LLP
Attorneys for Defendant
JG CONSTRUCTION OF QUEENS, INC.
120 Broadway – Suite 1350
New York, New York 10271
(212) 785-9800
File No. 3470.009

TO:

INGRAM YUZEK GAINEN CARROLL & BERTOLOTTI, LLP

Attorneys for Plaintiff

DANIEL KRAMER

250 Park Avenue

New York, New York 10177

(212) 907-9600

LESTER SCHWAB KATZ & DWYER, LLP

Attorneys for Defendants

ARA HOVNANIAN and RACHEL LEE HOVNANIAN

100 Wall Street, 27th Floor

New York, New York 10005

(212) 964-6611

LAW OFFICES OF CHENG & ASSOCIATES, PLLC

Attorneys for Defendant

AUTUN CONTRACTORS

27-28 Thomas Avenue, Suite 447

Long Island City, New York 11101

(718) 937-8480

MILBER MAKRIS PLOUSADIS & SEIDEN, LLP

Attorneys for Defendant

WILLIAM F. O'NEILL ARCHITECTS

3 Barker Avenue, 6th Floor

White Plains, New York 10601

(914) 681-8700

BABCHIK & YOUNG, LLP

Attorneys for Defendant

GILSANZ MURRAY STEFICEK, LLP

200 East Post Road

White Plains, New York 10601

(914) 470-0001

WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP

Attorneys for Defendant

PILLORI ASSOCIATES, PA

3 Gannett Drive

White Plains, New York 10604

(914) 323-7000

MIRANDA SAMBURSKY SLONE SKLARIN VERVENIOTIS LLP

Attorneys for Defendant

SIGNATURE INTERIOR DEMOLITION

240 Mineola Boulevard

Mineola, New York 11501

(516) 741-7676

SMITH MAZURE DIRECTOR WILKINS

YOUNG & YAGERMAN, P.C.

Attorneys for Defendant

MITCHELL IRON WORKS

111 John Street

New York, New York 10038

(212) 964-7400

SUPER JC CONSTRUCTION CORPORATION

420C East 111th Street

New York, New York 10029

Attorney Verification

The undersigned, under the penalties of perjury, affirms:

That he is PAUL F. LAGATTUTA, III, a member of the firm of FIXLER & LAGATTUTA, LLP, that he has read the foregoing papers and the same are true to his knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters, he believes them to be true; that the grounds and sources of such belief are matters contained in this firm's file, as well as conferences had between this affirmant and representatives of the within answering defendant; and that the reason this affirmation is not made by the party(ies) is that said parties reside in a different county than that which affirmant's office is located.

Dated: New York, New York
January 12, 2015



PAUL F. LAGATTUTA, III