

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 61**

<p>850 THIRD AVENUE OWNER, LLC,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>-against-</i></p> <p>DISCOVERY COMMUNICATIONS, LLC,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>Index No.: 654148/2020</p> <p>Hon. Barry R. Ostrager</p> <p style="text-align: center;"><b><u>VERIFIED REPLY TO COUNTERCLAIMS</u></b></p>
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Plaintiff 850 Third Avenue Owner, LLC, through its counsel, answers the separately numbered paragraphs in the Verified Answer With Affirmative Defenses and Counterclaims (Dkt. No. 22) (the “Verified Answer”) in this action and asserts affirmative and other defenses as follows:

**NATURE OF THE ACTION**

1. Refers to the Lease for its complete and accurate content; denies knowledge or information sufficient to form a belief concerning the truth of the allegations in the second and third sentences of paragraph 1 of the Verified Answer; and otherwise denies the allegations in paragraph 1 of the Verified Answer.
2. Admits that Defendant paid all rent due for March, April, and May 2020; denies knowledge or information sufficient to form a belief concerning the truth of the allegations in the first sentence of paragraph 2 of the Verified Answer; and otherwise denies the allegations in paragraph 2 of the Verified Answer.
3. Refers to the correspondence between the parties’ counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 3 of the Verified Answer.
4. Avers that paragraph 4 of the Verified Answer contains legal conclusions to which no response is required; refers to Governor Cuomo’s executive orders and accompanying

state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 4 of the Verified Answer.

5. Avers that paragraph 5 of the Verified Answer contains legal conclusions to which no response is required; refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 5 of the Verified Answer.

6. Denies the allegations in paragraph 6 of the Verified Answer.

7. Denies the allegations in paragraph 7 of the Verified Answer.

8. Refers to the Verified Complaint and its exhibits for their complete and accurate content; and otherwise denies the allegations in paragraph 8 of the Verified Answer.

9. Denies that Defendant is entitled to any of the relief it seeks; and otherwise denies the allegations in paragraph 9 of the Verified Answer.

**ANSWER**

10. Avers that this paragraph does not include any allegations to which Plaintiff is required to respond.

11. Avers that this paragraph does not include any allegations to which Plaintiff is required to respond.

12. Avers that this paragraph does not include any allegations to which Plaintiff is required to respond.

13. Avers that this paragraph does not include any allegations to which Plaintiff is required to respond.

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47. Avers that this paragraph does not include any allegations to which Plaintiff is required to respond.

48. Avers that this paragraph does not include any allegations to which Plaintiff is required to respond.

**FACTS APPLICABLE TO ALL COUNTERCLAIMS**

**PARTIES**

49. Admits that Defendant is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of New York; and otherwise denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 49 of the Verified Answer.

50. Admits the allegations in paragraph 50 of the Verified Answer.

**A. The Lease**

51. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 51 of the Verified Answer.

52. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 52 of the Verified Answer.

53. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 53 of the Verified Answer.

54. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 54 of the Verified Answer.

55. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 55 of the Verified Answer.

56. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 56 of the Verified Answer.

57. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 57 of the Verified Answer.

58. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 58 of the Verified Answer.

59. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 59 of the Verified Answer.

60. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 60 of the Verified Answer.

61. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 61 of the Verified Answer.

62. Admits the allegations in paragraph 62 of the Verified Answer.

63. Avers that paragraph 63 of the Verified Answer contains legal conclusions to which no response is required; and otherwise denies the allegations in paragraph 63 of the Verified Answer.

64. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 64 of the Verified Answer.

65. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 65 of the Verified Answer.

66. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 66 of the Verified Answer.

67. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 67 of the Verified Answer.

68. Admits the allegations in paragraph 68 of the Verified Answer.

69. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 69 of the Verified Answer.

70. Avers that paragraph 70 of the Verified Answer contains legal conclusions to which no response is required; and otherwise denies the allegations in paragraph 70 of the Verified Answer.

71. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 71 of the Verified Answer.

72. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 72 of the Verified Answer.

73. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 73 of the Verified Answer.

74. Denies the allegations in paragraph 74 of the Verified Answer.

75. Denies the allegations in paragraph 75 of the Verified Answer.

76. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 76 of the Verified Answer.

77. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 77 of the Verified Answer.

78. Denies the allegations in paragraph 78 of the Verified Answer.

79. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 79 of the Verified Answer.

80. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 80 of the Verified Answer.

81. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 81 of the Verified Answer.



82. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 82 of the Verified Answer.

83. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 83 of the Verified Answer.

84. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 84 of the Verified Answer.

85. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 85 of the Verified Answer.

86. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 86 of the Verified Answer.

**B. Tenant's Pre-Covid-19 Pandemic Plans to Consolidate its Offices Prior to the Expiration Date of the Lease on May 31, 2020**

87. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 87 of the Complaint.

88. Denies the allegations in paragraph 88 of the Verified Answer.

89. Refers to the referenced documents for their complete and accurate content; and otherwise denies the allegations in paragraph 89 of the Verified Answer.

90. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 90 of the Complaint.

91. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 91 of the Complaint.

92. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 92 of the Complaint.

93. Refers to the correspondence between the parties for its complete and accurate content; and otherwise denies the allegations in paragraph 93 of the Verified Answer.

94. Refers to the correspondence between the parties or their counsel and the referenced documents for their complete and accurate content; and otherwise denies the allegations in paragraph 94 of the Verified Answer.

95. Refers to the correspondence between the parties or their counsel and the referenced documents for their complete and accurate content; and otherwise denies the allegations in paragraph 95 of the Verified Answer.

96. Denies the allegations in paragraph 96 of the Verified Answer.

97. Refers to the correspondence between the parties or their counsel and the referenced documents for their complete and accurate content; and otherwise denies the allegations in paragraph 97 of the Verified Answer.

98. Refers to the correspondence between the parties or their counsel and the referenced documents for their complete and accurate content; and otherwise denies the allegations in paragraph 98 of the Verified Answer.

99. Refers to the correspondence between the parties or their counsel and the referenced documents for their complete and accurate content; and otherwise denies the allegations in paragraph 99 of the Verified Answer.

**C. Events Occur Beyond the Parties' Control and Commercial Moving Companies Are Prohibited From Operating (Labor Shortages): The Covid-19 Pandemic And Emergency Lockdown Orders**

100. Denies the allegations in paragraph 100 of the Verified Answer.

101. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 101 of the Complaint.

102. Refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 102 of the Verified Answer.

103. Refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 103 of the Verified Answer.

104. Refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 104 of the Verified Answer.

105. Refers to Mayor de Blasio's statements and declarations for their complete and accurate content; and otherwise denies the allegations in paragraph 105 of the Verified Answer.

106. Refers to President Trump's statements and declarations for their complete and accurate content; and otherwise denies the allegations in paragraph 106 of the Verified Answer.

107. Refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 107 of the Verified Answer.

108. Refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 108 of the Verified Answer.

109. Refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 108 of the Verified Answer.

110. Refers to Governor Cuomo’s executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 110 of the Verified Answer.

111. Refers to Governor Cuomo’s executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 111 of the Verified Answer.

112. Refers to Governor Cuomo’s executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 112 of the Verified Answer.

113. Refers to Governor Cuomo’s executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 113 of the Verified Answer.

**D. The Emergency Lockdown Orders Prevent Tenant From Removing its Property From the Premises Prior to the Lease Expiration Date**

114. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 114 of the Complaint.

115. Refers to Governor Cuomo’s executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 115 of the Verified Answer.

116. Refers to Governor Cuomo’s executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 116 of the Verified Answer.

117. Avers that paragraph 117 of the Verified Answer contains legal conclusions to which no response is required; and otherwise denies the allegations in paragraph 117 of the Verified Answer.

118. Avers that paragraph 118 of the Verified Answer contains legal conclusions to which no response is required; and otherwise denies the allegations in paragraph 118 of the Verified Answer.

119. Refers to the Verified Complaint for its complete and accurate content; and otherwise denies the allegations in paragraph 119 of the Verified Answer.

120. Denies the allegations in paragraph 120 of the Verified Answer.

121. Refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 121 of the Verified Answer.

122. Refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 122 of the Verified Answer.

123. Denies the allegations in paragraph 123 of the Verified Answer.

124. Denies the allegations in paragraph 124 of the Verified Answer.

125. Denies the allegations in paragraph 125 of the Verified Answer.

126. Denies the allegations in paragraph 123 of the Verified Answer.

127. Refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 127 of the Verified Answer.

**E. Tenant's Attempts to Negotiate a Short-Term Lease Extension During the Quarantine Period and 100% Workforce Reduction Requirement**

128. Denies the allegations in paragraph 128 of the Verified Answer.

129. Denies the allegations in paragraph 129 of the Verified Answer.

130. Admits that Defendant paid all rent due for March, April, and May 2020; refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 130 of the Verified Answer.

131. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 131 of the Verified Answer.

132. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 132 of the Verified Answer.

133. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 133 of the Verified Answer.

134. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 134 of the Verified Answer.

135. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 135 of the Verified Answer.

136. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 136 of the Verified Answer.

137. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 137 of the Verified Answer.

138. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 138 of the Verified Answer.

139. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 139 of the Verified Answer.

140. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 140 of the Verified Answer.

141. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 141 of the Verified Answer.

142. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 142 of the Verified Answer.

143. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 143 of the Verified Answer.

144. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 144 of the Verified Answer.

145. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 145 of the Verified Answer.

146. Denies the allegations in paragraph 146 of the Verified Answer.

**F. Tenant Legally and Safely Removes its Property From the Premises Once Permitted by Law, in Compliance With the Lease**

147. Refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 147 of the Verified Answer.

148. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 148 of the Verified Answer.

149. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 149 of the Verified Answer.

150. Refers to Governor Cuomo's executive orders and accompanying state guidance for their complete and accurate content; and otherwise denies the allegations in paragraph 150 of the Verified Answer.



151. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 151 of the Complaint.

152. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 152 of the Complaint.

153. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 153 of the Complaint.

154. Denies the allegations in paragraph 154 of the Verified Answer.

155. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 155 of the Complaint.

156. Refers to the referenced communications for their complete and accurate content; and otherwise denies the allegations in paragraph 156 of the Verified Answer.

157. Denies the allegations in paragraph 157 of the Verified Answer.

158. Denies the allegations in paragraph 158 of the Verified Answer.

159. Admits that Defendant vacated the Premises at the end of July 2020; and otherwise denies the allegations in paragraph 159 of the Verified Answer.

160. Denies the allegations in paragraph 160 of the Verified Answer.

**G. Tenant's Inadvertent Payment of June 2020 Rent, and Landlord's Breach of the Lease by Refusing to Refund Same, and its Unlawful Draw-Down on Tenant's Letter of Credit in the Absence of a Monetary Default**

161. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations in paragraph 161 of the Complaint.

162. Admits that Defendant paid base rent for June 2020; and otherwise denies the allegations in paragraph 162 of the Verified Answer.

163. Admits that Plaintiff accepted and retained this payment; and otherwise denies the allegations in paragraph 163 of the Verified Answer.

164. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 164 of the Verified Answer.

165. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 165 of the Verified Answer.

166. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 166 of the Verified Answer.

167. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 167 of the Verified Answer.

168. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 168 of the Verified Answer.

169. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 169 of the Verified Answer.

170. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 170 of the Verified Answer.

171. Admits that Plaintiff drew down the letter of credit; and otherwise denies the allegations in paragraph 171 of the Verified Answer.

172. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 172 of the Verified Answer.

**AS AND FOR A FIRST COUNTERCLAIM  
(For Declaratory Judgment)**

173. Repeats and realleges its responses to paragraphs 1 through 172 of the Verified Answer.

174. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 174 of the Verified Answer.

175. Denies the allegations in paragraph 175 of the Verified Answer.

176. Denies the allegations in paragraph 176 of the Verified Answer.

177. Admits that Defendant vacated the Premises at the end of July 2020; and otherwise denies the allegations in paragraph 177 of the Verified Answer.

178. Denies the allegations in paragraph 178 of the Verified Answer.

179. Denies the allegations in paragraph 179 of the Verified Answer.

180. Denies the allegations in paragraph 180 of the Verified Answer.

181. Refers to the Verified Complaint and the correspondence between the parties or their counsel for their complete and accurate content; and otherwise denies the allegations in paragraph 181 of the Verified Answer.

182. Denies the allegations in paragraph 182 of the Verified Answer.

183. Denies the allegations in paragraph 183 of the Verified Answer.

184. Denies the allegations in paragraph 184 of the Verified Answer.

**AS AND FOR A SECOND COUNTERCLAIM  
(Declaratory Judgment)**

185. Repeats and realleges its responses to paragraphs 1 through 184 of the Verified Answer.

186. Denies the allegations in paragraph 186 of the Verified Answer.

187. Denies the allegations in paragraph 187 of the Verified Answer.

188. Admits the allegations in paragraph 188 of the Verified Answer.

189. Denies the allegations in paragraph 189 of the Verified Answer.

190. Refers to the Verified Complaint and the correspondence between the parties or their counsel for their complete and accurate content; and otherwise denies the allegations in paragraph 190 of the Verified Answer.

191. Denies the allegations in paragraph 191 of the Verified Answer.

192. Denies the allegations in paragraph 192 of the Verified Answer.

193. Denies the allegations in paragraph 193 of the Verified Answer.

**AS AND FOR A THIRD COUNTERCLAIM  
(Declaratory Judgment)**

194. Repeats and realleges its responses to paragraphs 1 through 172 of the Verified Answer.

195. Admits that Defendant paid base rent for June 2020, and that Plaintiff accepted and retained this payment; and otherwise denies the allegations in paragraph 195 of the Verified Answer.

196. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 196 of the Verified Answer.

197. Admits that Plaintiff drew down the letter of credit; and otherwise denies the allegations in paragraph 197 of the Verified Answer.

198. Denies the allegations in paragraph 198 of the Verified Answer.

199. Denies the allegations in paragraph 199 of the Verified Answer.

200. Denies the allegations in paragraph 200 of the Verified Answer.

201. Refers to the Verified Complaint and the correspondence between the parties or their counsel for their complete and accurate content; and otherwise denies the allegations in paragraph 201 of the Verified Answer.

202. Denies the allegations in paragraph 202 of the Verified Answer.

203. Denies the allegations in paragraph 203 of the Verified Answer.

204. Denies the allegations in paragraph 204 of the Verified Answer.

**AS AND FOR A FOURTH COUNTERCLAIM**  
**(Breach of the Lease)**

205. Repeats and realleges its responses to paragraphs 1 through 193 of the Verified Answer.

206. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 206 of the Verified Answer.

207. Denies the allegations in paragraph 207 of the Verified Answer.

208. Admits that Defendant paid base rent for June 2020; and otherwise denies the allegations in paragraph 208 of the Verified Answer.

209. Denies the allegations in paragraph 209 of the Verified Answer.

210. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 210 of the Verified Answer.

211. Denies the allegations in paragraph 211 of the Verified Answer.

212. Denies the allegations in paragraph 212 of the Verified Answer.

213. Denies the allegations in paragraph 213 of the Verified Answer.

**AS AND FOR A FIFTH COUNTERCLAIM  
(Conversion)**

214. Repeats and realleges its responses to paragraphs 1 through 193 of the Verified Answer.

215. Denies the allegations in paragraph 215 of the Verified Answer.

216. Denies the allegations in paragraph 216 of the Verified Answer.

217. Refers to the correspondence between the parties or their counsel for its complete and accurate content; and otherwise denies the allegations in paragraph 217 of the Verified Answer.

218. Admits that Plaintiff has not returned Defendant's payment of base rent for June 2020; and otherwise denies the allegations in paragraph 218 of the Verified Answer.

219. Denies the allegations in paragraph 219 of the Verified Answer.

220. Denies the allegations in paragraph 220 of the Verified Answer.

221. Denies the allegations in paragraph 221 of the Verified Answer.

222. Denies the allegations in paragraph 222 of the Verified Answer.

**AS AND FOR A SIXTH COUNTERCLAIM  
(Money Had And Received)**

223. Repeats and realleges its responses to paragraphs 1 through 193 of the Verified Answer.

224. Denies the allegations in paragraph 224 of the Verified Answer.

225. Denies the allegations in paragraph 225 of the Verified Answer.

226. Denies the allegations in paragraph 226 of the Verified Answer.

227. Denies the allegations in paragraph 227 of the Verified Answer.

228. Denies the allegations in paragraph 228 of the Verified Answer.

**AS AND FOR A SEVENTH COUNTERCLAIM  
(Unjust Enrichment)**

229. Repeats and realleges its responses to paragraphs 1 through 193 of the Verified Answer.

230. Denies the allegations in paragraph 230 of the Verified Answer.

231. Denies the allegations in paragraph 231 of the Verified Answer.

232. Denies the allegations in paragraph 232 of the Verified Answer.

233. Denies the allegations in paragraph 233 of the Verified Answer.

**AS AND FOR AN EIGHTH COUNTERCLAIM  
(For Costs and Expenses, including Attorneys' Fees)**

234. Repeats and realleges its responses to paragraphs 1 through 193 and 205 through 213 of the Verified Answer.

235. Refers to the Lease for its complete and accurate content; and otherwise denies the allegations in paragraph 235 of the Verified Answer.

236. Admits that Plaintiff brought this action against Defendant; and otherwise and otherwise denies the allegations in paragraph 236 of the Verified Answer.

237. Denies the allegations in paragraph 232 of the Verified Answer.

**PRAYER FOR RELIEF**

Denies that Defendant is entitled to any of the relief it seeks in the Verified Answer.

**AFFIRMATIVE AND OTHER DEFENSES**

Plaintiff asserts the following affirmative and other defenses without assuming any burden of production or proof that it would not otherwise have.

**FIRST DEFENSE**

The Amended Answer fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

Defendant's counterclaims are barred by equitable principles, including, but not limited to, waiver, estoppel, laches, the after-acquired evidence doctrine, the unclean hands doctrine, and the election of remedies doctrine.

**THIRD DEFENSE**

Defendant's counterclaims are barred by the doctrines of setoff and recoupment.

**FOURTH DEFENSE**

Defendant's counterclaims are barred by the applicable statutes of limitations.

**FIFTH DEFENSE**

Defendant's counterclaims are barred because, at all relevant times, Plaintiff acted in good faith and has not violated any rights secured to Defendant under any federal, state, or local rules, regulations, or guidelines.

**SIXTH DEFENSE**

Defendant's counterclaims are barred to the extent that Defendant failed to mitigate or avoid the damages alleged in the Verified Answer.

**SEVENTH DEFENSE**

Defendant's counterclaims are barred because they are duplicative of each other.

**EIGHTH DEFENSE**

Defendant's counterclaims are barred because Defendant is not the prevailing party.

**NINTH DEFENSE**

Defendant's counterclaims are barred by the express provisions of the Lease.

**RESERVATION OF RIGHTS**

Plaintiff reserves the right to amend this Verified Reply, to add additional defenses, to withdraw defenses, and to add any claims as they may become necessary after a reasonable opportunity for appropriate discovery.



**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court grant the relief requested in the Verified Complaint (Dkt. No. 2), including that this Court enter judgment in Plaintiff's favor against Defendant on all Plaintiff's Causes of Action, awarding Plaintiff damages in an amount to be determined at trial, but no less than \$843,971.81, or alternatively, if Defendant is not deemed a holdover, \$8,164.87, plus any consequential damages, and pre- and post-judgment statutory interest, and reasonable attorneys' fees and expenses incurred in prosecuting this action; and enter a declaratory judgment that Plaintiff is entitled to the \$833,867.59 Defendant paid in June 2020 and the \$829,581.42 it drew down from the letter of credit, and that Defendant has no right to this money. Plaintiff also respectfully requests that this Court enter judgment in its favor dismissing Defendant's counterclaims in their entirety with prejudice, and grant such other and further relief as may be just and proper.

Dated: January 6, 2021  
New York, New York

**SCHLAM STONE & DOLAN LLP**

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**VERIFICATION**

STATE OF NEW YORK    }  
                                  }  
COUNTY OF NEW YORK }    ss:

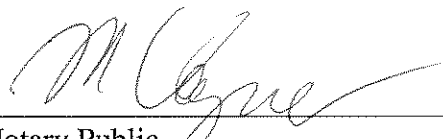
**MICHAEL CHETRIT**, being duly sworn, deposes and says:

I am an authorized represent of Plaintiff 850 Third Avenue Owner, LLC. I have read the attached Verified Reply, and it is true to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Michael Chetrit

Sworn to before me this

6th day of January 2021

  
\_\_\_\_\_  
Notary Public

**MARIANNA VAYNER**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
**No. 02VA6341063**  
**Qualified in New York County**  
**My Commission Expires 06-02-2024**