

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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THE PEOPLE OF THE STATE OF NEW YORK,	:	
by LETITIA JAMES, Attorney General of the	:	
State of New York,	:	Index No.:
	:	
Plaintiff,	:	
	:	
- against -	:	<b>SUMMONS (with attached</b>
	:	<b>Complaint)</b>
CHESTNUT HOLDINGS OF NEW YORK, INC,	:	
	:	
Defendant.	:	
	:	
	:	
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TO THE ABOVE NAMED DEFENDANT:

**YOU ARE HEREBY SUMMONED** to answer the attached complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Pursuant to New York CPLR § 503(c), the venue for this action is Bronx County because defendant has its principal office there.

Dated: New York, New York  
February 27, 2020

LETITIA JAMES  
Attorney General of the State of New York  
Attorney for Plaintiff

By: 

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Abigail Rosner  
Assistant Attorney General  
Environmental Protection Bureau  
28 Liberty Street  
New York, New York 10005

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CHESTNUT HOLDINGS OF NEW YORK, INC,	:	
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Defendant.	:	
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The People of the State of New York (the State), by their attorney, Letitia James, Attorney General of the State of New York, respectfully allege upon information and belief:

**PRELIMINARY STATEMENT**

1. Defendant Chestnut Holdings of New York, Inc. (“Chestnut Holdings”) manages more than 6000 apartments in approximately 134 buildings in New York City. Chestnut Holdings has engaged in repeated violations of the New York City Childhood Lead Poisoning Prevention Act, putting the health and well-being of the children who live in those apartments at risk.

2. Lead poisoning in New York City is highest among children of color and children living in high-poverty neighborhoods. Most of the apartment buildings managed by Chestnut Holdings are in low- and moderate-income neighborhoods in

the Bronx. As of January 2020, approximately 600 children who are under the age of six and receive Supplemental Nutrition Assistance Program benefits lived in buildings managed by Chestnut Holdings.

3. Lead is a toxic heavy metal that impairs neurological development and physical growth in children. Before 1960, paint with dangerous levels of lead was commonly used to paint the interiors and exteriors of buildings, including common spaces and apartment interiors in residential buildings in New York City. Limits on the level of lead in paint used in homes were imposed by New York City beginning in 1960, New York State beginning in 1970, and the federal Consumer Product Safety Commission beginning in 1978. However, paint with lead levels higher than those limits remains on the walls and other surfaces of many apartments and other homes built before those limits were imposed.

4. Even when painted over several times, lead from paint with high levels of lead is accessible to small children when paint peels, is on surfaces like window sills that small children put their hands on and may chew, or is on surfaces like doors and windows where friction or impacts expose the lead and generate lead dust. As a result, paint with high levels of lead remains a pervasive and serious health risk for children in New York City, particularly children under six.

5. In 2004, New York City enacted the New York City Childhood Lead Poisoning Prevention Act (“Lead Poisoning Prevention Act” or “Act”). New York City Housing Maintenance Code art. 14 (Administrative Code of City of NY, tit. 27, ch. 2) (“NYC Admin. Code”) §§ 27-2056.1–27-2056.18. The Act requires owners of

apartments and houses built before 1960 (and in some instances built after 1960 and before 1978) and their agents to take several critical measures to prevent children under six from being exposed to paint with dangerously high levels of lead.

6. Among those measures, the Act requires building owners to identify apartments where children under six live; conduct annual investigations of those apartments for hazards that are conducive to lead poisoning, including peeling paint, lead paint on chewable surfaces, impact surfaces, and friction surfaces; and remediate those conditions. *Id.* §§ 27-2056.3, 27-2056.4.

7. The Act also requires owners to take measures to prevent lead poisoning when tenants in an apartment turn over, *i.e.*, the tenants residing in an apartment move out and one or more other tenants move in. *Id.* § 27-2056.8. In addition to identifying and remediating lead-based paint hazards, those measures include removal or permanent covering of all lead-based paint on friction surfaces or, in the case of windows, replacement of the window hardware. *Id.* Owners must certify that they did those turnover measures in a notice provided to a new tenant upon signing a lease. 28 R.C.N.Y. § 11-05(d).

8. New York Executive Law § 63(12) authorizes the Attorney General to enjoin and seek other relief for “repeated fraudulent or illegal acts” in the transaction of business. “Illegal” acts under Executive Law § 63(12) include violations of local laws like the Lead Poisoning Prevention Act.

9. Chestnut Holdings manages apartment buildings on behalf of the owners of those apartment buildings, which are primarily limited liability companies, and is an “owner” of those buildings under the Act.

10. Chestnut Holdings has engaged in repeated illegal acts under Executive Law § 63(12) by repeatedly violating the Lead Poisoning Prevention Act. Those violations include failing to conduct annual investigations and any follow-up remediation of apartments even when tenants have notified Chestnut Holdings in their leases that a child under six lives in the apartment; failing to inspect for all conditions that put children at risk of lead poisoning when it conducts investigations; and failing to undertake all the measures required by the Act to prevent lead poisoning when the tenants in an apartment turn over.

11. Chestnut Holdings has also engaged in repeated fraudulent acts under Executive Law 63(12) by certifying in new leases that it has complied with the Lead Poisoning Prevention Act’s turnover requirements even though it has not done so.

12. The State seeks injunctive relief requiring Chestnut Holdings to comply with the Lead Poisoning Prevention Act, including bringing all apartments under its control into compliance with the Act’s requirements, penalties for its repeated violations of the Act, and disgorgement of the moneys it would have expended to comply with the Act.

### **PARTIES**

13. Plaintiff is the People of the State of New York, by their attorney, Letitia James, Attorney General of the State of New York.

14. Defendant Chestnut Holdings of New York, Inc. is a New York corporation, with its principal place of business in Bronx County.

### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this proceeding pursuant to Executive Law § 63(12), which authorizes the Attorney General to commence an action for injunctive relief and other relief, including statutory penalties, against any person or business entity that has engaged in repeated fraudulent or illegal acts in the conduct of business.

16. Venue is proper in Bronx County pursuant to CPLR § 503(c) because Chestnut Holdings has its principal office there.

### **STATUTORY BACKGROUND**

#### **The New York City Childhood Lead Poisoning Prevention Act**

17. In 2004, the New York City Council, finding that childhood lead poisoning from paint was a preventable public health crisis, enacted the New York City Childhood Lead Poisoning Prevention Act of 2003. NYC Admin. Code § 27-2056.1 *et seq.* The Act focuses on “primary prevention, which means eliminating lead hazards before children are exposed” because that is an “essential tool to combat childhood lead poisoning.” *Id.* § 27-2056.1.

18. The Act establishes a rebuttable presumption that the paint in apartments built prior to January 1, 1960 where a child under six resides is “lead-based paint.” *Id.* § 27-2056.5; 24 R.C.N.Y. § 173.14(b) (a “child of applicable age” is a child under six years of age). This presumption may be rebutted, or a building may

be exempted from some requirements of the Act, if the owner submits evidence to the New York City Department of Housing, Preservation and Development (“HPD”) that there is no lead-based paint in the building. NYC Admin. Code § 27-2056.5(a), (b).

19. As of January 1, 2020, “resides” means that a child routinely spends 10 or more hours per week in an apartment. *Id.* § 27-2056.2(12). *See also* 28 R.C.N.Y. § 11-01(bb).

20. “Lead-based paint” is “paint or other similar surface coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis, or by an x-ray fluorescence analyzer.” NYC Admin. Code § 27-2056.2(7)(a).

21. The Act requires owners of apartment buildings where children under six live “to prevent the reasonably foreseeable occurrence” of lead-based paint hazards and expeditiously remediate those hazards. *Id.* § 27-2056.3.

22. The term “owner” includes an “agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling.” *Id.* § 27-2004(45).

23. “Lead-based paint hazards” are lead dust, and lead-based paint that is peeling (*e.g.*, paint that is chipping, curling, or “not completely adhered to the underlying surface”) or is present on chewable surfaces (*e.g.*, interior window sills), deteriorated subsurfaces (*e.g.*, rotting or decayed wood), friction surfaces (*e.g.*, painted surfaces that touch other painted surfaces, such as doors, hinges, and



window frames), and impact surfaces (*e.g.*, any interior painted surface that show chipping, marking, or denting). *Id.* §§ 27-2056.2(1), (3), (4), (5), (6), (10).

#### Annual Investigations

24. The annual investigation requirements of the Lead Poisoning Prevention Act apply to apartment buildings with at least three apartments that were either (1) built before January 1, 1960, unless the presumption of lead-based paint has been rebutted or the building or apartment has been exempted by HPD, or (2) built between January 1, 1960 and January 1, 1978 if the owner has actual knowledge of the presence of lead paint (together, “regulated buildings”). *Id.* § 27-2056.4(a).

25. The Act directs owners to conduct investigations at least annually for “peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces” in apartments in regulated buildings where a child under six resides and to expeditiously remediate all lead-based paint hazards and underlying defects. *Id.* §§ 27-2056.3, 27-2056.4(a).<sup>1</sup>

26. Owners are required to provide the results of an annual investigation to the tenant in writing, provide a copy of any report “received or generated by an

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<sup>1</sup> The Lead Poisoning Prevention Act was recently amended to include a provision directing that one investigation for the presence of lead-based paint be completed by an EPA-certified inspector or assessor using an “x-ray fluorescence analyzer.” *Id.* § 27-2056.4(a-1). This provision becomes effective August 9, 2020, and owners are required to come into compliance within one year after a child under the age of six comes to reside in the apartment or within five years of the effective date, whichever is sooner.

investigation” to the tenant, and keep a copy of any such report for at least ten years. *Id.* § 27-2056.4(f). *See also* 28 R.C.N.Y. § 11-04(b) (the record of the investigation shall “include the location of such inspection and the results of such inspection for each surface”).

27. Owners are required to ascertain whether a child under six resides in an apartment by two means. First, owners are required to provide a notice (“child inquiry notice”) to tenants at the signing of a lease, including a renewal lease, inquiring as to whether a child under the age of six resides or will reside in the apartment. NYC Admin. Code § 27-2056.4(d)(1). *See also* 28 R.C.N.Y. § 11-03(a)(1).

28. Additionally, each year between January 1 and January 16, owners of apartment buildings constructed prior to January 1, 1960 must deliver a notice (“annual notice”) to all occupants inquiring as to whether a child under the age of six resides in the apartment. NYC Admin. Code § 27-2056.4(e)(1). *See generally* 28 R.C.N.Y. § 11-03(b).

29. The annual notice must be delivered to tenants by first class mail; by hand; enclosed with the January rent bill (if the bill is sent between December 15 and January 16); or in conjunction with an annual notice pertaining to window guards. NYC Admin. Code § 27-2056.4(e)(2).

30. If a tenant does not respond to the annual notice by February 15 and the owner does not “otherwise have actual knowledge” as to whether a child under the age of six resides therein, the owner must “at reasonable times and upon reasonable notice” inspect the tenant’s apartment to determine whether a child of

applicable age lives there and “when necessary, conduct an investigation in order to make that determination.” *Id.* § 27-2056.4(e)(3)(i).

31. If an owner, after having made “reasonable attempts” to obtain access to the apartment to determine if a child under the age of six resides there, is unable to do so by March 1, the owner must notify the New York City Department of Health and Mental Hygiene (“DOHMH”) that it could not gain access. *Id.* § 27-2056.4(e)(3)(ii).

32. Owners who violate any provision of this section are subject to a “civil penalty of not more than one thousand five hundred dollars per violation.” *Id.* § 27-2056.4(g).

#### Turnover Requirements

33. Upon turnover of the tenants in any apartment in an apartment building constructed prior to January 1, 1960, owners must:

- (1) remediate all lead-based paint hazards and any underlying defects, when such underlying defects exist;
- (2) make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable;
- (3) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all doors and door frames; and
- (4) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all windows, or provide for the installation of replacement window channels or slides on all lead-based painted friction surfaces on all windows.

*Id.* § 27-2056.8(a).

34. After an owner has completed work upon turnover, a lead-contaminated dust clearance test must be performed by a third party (neither the owner nor the individual or company that performed the turnover work). *Id.* §§ 27-2056.11(a)(3), 2056.11(b), 28 R.C.N.Y. §§ 11-06(b)(2)(iii), (3)(ii), (4), and (g)(3).

35. Owners must certify compliance with the turnover provisions in a notice provided to a new tenant upon signing a lease. 28 R.C.N.Y. § 11-05(d).

#### **New York Executive Law § 63(12)**

36. Executive Law § 63(12) authorizes the Attorney General to bring an action to enjoin “repeated fraudulent or illegal acts” and “persistent fraud or illegality” in “the carrying on, conducting or transaction of business.”

37. “Illegal” conduct under Executive Law § 63(12) includes the violation of any state, federal, or local law or regulation.

38. “Repeated” fraud or illegality under Executive Law § 63(12) includes the “repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person,” and “persistent” fraud or illegality includes “continuance or carrying on of any fraudulent or illegal act or conduct.”

39. In an action or proceeding pursuant to Executive Law § 63(12) to enjoin repeated or persistent illegality, the Attorney General may also seek penalties for underlying statutory violations and disgorgement of profits.

## FACTS

### **A. Lead-Based Paint Has Serious Health Effects on Children.**

40. Lead is a highly toxic metal that can cause serious and irreversible adverse health effects. Children who have been exposed to even very low levels of lead are at risk for neurological and physical problems during critical stages of early development.

41. Lead interferes with the development of a child's brain and central nervous system leading to learning disabilities, mental retardation, decreased intelligence, limited attention span, impaired growth, hearing loss, and behavior problems. These impairments can in turn lower a child's potential learning ability and academic performance. The injuries to young children from lead ingestion have been found at very low blood lead levels, as low as two micrograms per deciliter (mcg/dL).

42. Children are at risk of lead poisoning particularly from birth until at least age seven because in their early developmental stages children's brains and nervous systems are more vulnerable to lead-induced injury. In addition, children's normal behaviors—crawling, hand-to-mouth activity, and teething—puts them at higher risk of exposure to lead dust and paint. Lastly, young children can absorb and retain lead at a higher rate than do older children and adults.

43. Lead paint in homes is a pervasive problem. For much of the 20th century, paint with dangerously high levels of lead was used on both exterior and interior surfaces of housing in the United States. In 1960, New York City prohibited

the sale of paint with high levels of lead for residential use. In 1970, New York State imposed a state-wide ban and in 1978 the federal Consumer Product Safety Commission imposed a federal ban. The vast majority of older painted structures contain some paint with lead levels higher than these bans.

**B. Lead-Based Paint Is Pervasive in New York State and New York City.**

44. Lead poisoning in New York State is a serious and pervasive problem. New York State has the highest percentage of buildings built before 1950 in the nation.

45. The federal Centers for Disease Control and Prevention (CDC) has found that even low levels of lead in blood affect children's IQ, ability to pay attention, and academic achievement. It has also found that damage caused by lead exposure cannot be reversed.

46. The CDC recommends that children with blood lead levels higher than five mcg/dL undergo case management to ensure that their exposure to lead does not continue and reach a level that requires medical intervention.

47. In 2018, 3,866 New York City children under six had blood lead levels of five mcg/dL or greater.

48. Lead poisoning in New York City is highest among children of color and children living in high-poverty neighborhoods. 66% of children under six with blood lead levels of five mcg/dL or greater were from high-poverty neighborhoods, and Asian, Black, and Latinx children represented 84% of children under age six with blood lead levels of 15 mcg/dL or greater.

**B. Chestnut Holdings Manages Over 125 Apartment Buildings that Were Constructed Before Lead Paint Bans Were Established.**

49. Chestnut Holdings is a property management corporation. It manages approximately 134 residential apartment buildings, including a few mixed-use buildings that contain commercial and residential units. It also manages a few commercial-use only buildings.

50. Approximately 129 of Chestnut Holdings' apartment buildings were built before January 1, 1960.

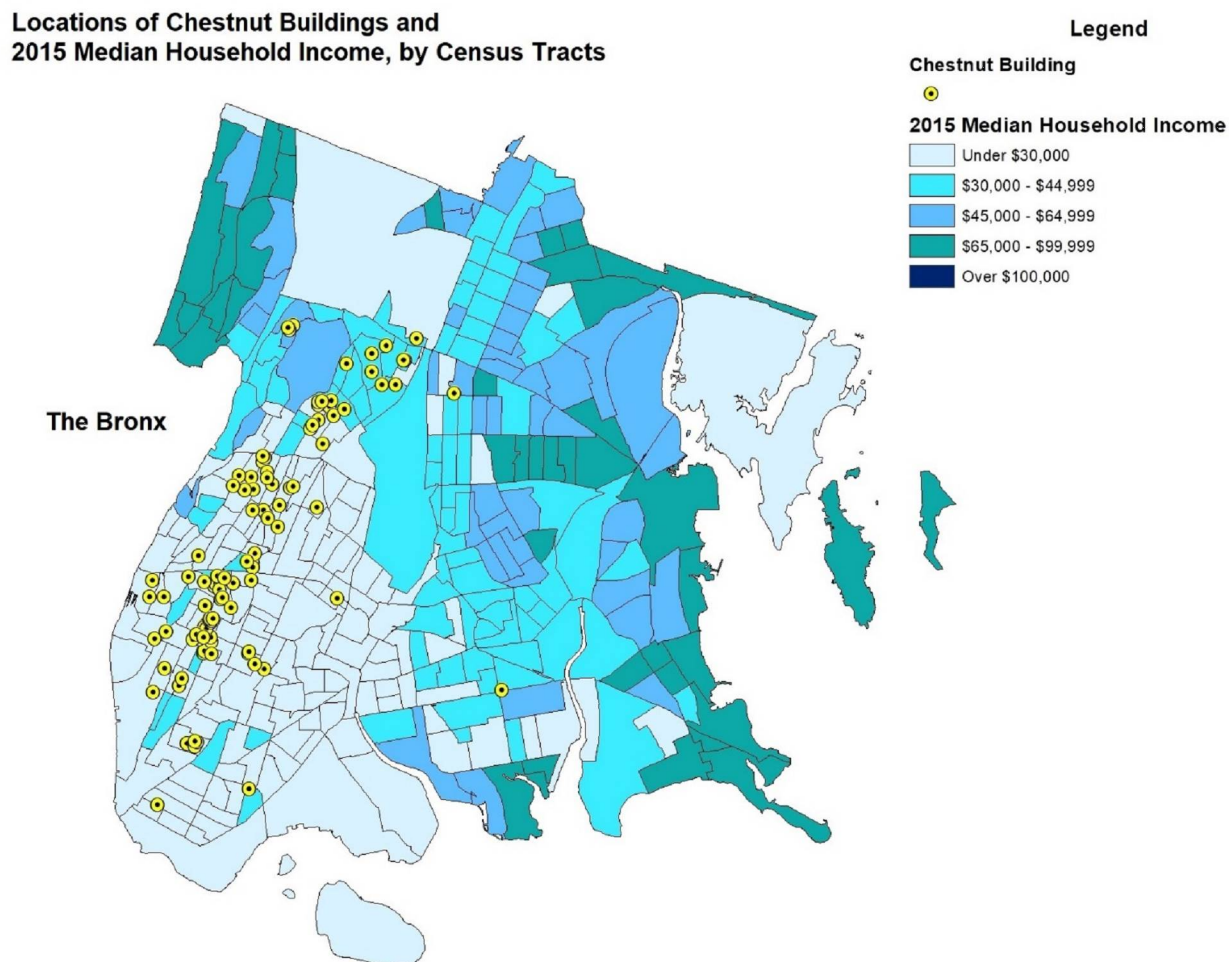
51. Approximately four of Chestnut Holdings' apartment buildings were built between January 1, 1960 and January 1, 1978. Chestnut Holdings has actual knowledge of the presence of lead-based paint in at least one of those buildings.

52. Except for a few buildings owned by co-operative corporations, the residential apartment building that Chestnut Holdings manages are owned by limited liability corporations. Jonathan Wiener, who owns Chestnut Holdings with his wife Ayelet Weiner, is a member of all of those LLCs.

53. Chestnut Holdings is an agent for the properties it manages and controls all aspects of residential real estate management, including reviewing rental applications, running credit checks, preparing original and renewal leases, overseeing and performing apartment inspections, repairs and renovations, and correcting violations issued by DOHMH and HPD.

54. The majority of apartment buildings managed by Chestnut Holdings are in the Bronx. Most of those buildings are in areas where the 2015 median

household income was under \$45,000 and many are in areas where the 2015 median income was under \$30,000, as shown by this map:



55. Chestnut Holdings has been engaged for years in the practices regarding leases, investigations, and turnovers in its buildings described below.

**C. Chestnut Holdings' Leases Include Child Inquiry Notices.**

56. Chestnut Holdings' new and renewal leases include the child inquiry notice, attached as riders to the leases, which asks the prospective or current tenants if a child under the age of six resides or will reside in the apartment.



57. The child inquiry notice informs tenants that if a child under the age of six resides or will reside in the apartment, the owner of the building must perform an annual investigation of the apartment to determine whether there is a lead-based paint hazard.

58. The child inquiry notice requires tenants to check the applicable box: either “A child under six years of age resides in the unit” or “A child under six years of age does not reside in the unit.”

59. When a tenant indicates on the child inquiry notice in a new lease that a child under the age of six will reside in the apartment, Chestnut Holdings does not record that information in the database that it maintains for apartments.

60. Approximately 80% of renewal leases are returned to Chestnut Holdings without a completed child inquiry notice.

61. If a tenant returns a renewal lease to Chestnut Holdings without a completed child inquiry notice, Chestnut Holdings does not take any action to ensure that the tenant completes and returns the child inquiry notice.

**D. When Tenants Do Not Return Annual Notices, Chestnut Holdings Does Not Routinely Follow Up to Determine If a Child Under Six Lives in the Apartment.**

62. Each December, Chestnut Holdings delivers an annual notice to its tenants inquiring whether a child under the age of six resides in the apartment by enclosing the notice with the January rent bill.

63. If a tenant does not return the completed notice to Chestnut Holdings, Chestnut Holdings includes reminders with the February and March rent bills.

64. Approximately 80% of the annual notices are not completed and returned to Chestnut Holdings.

65. When Chestnut Holdings has not received a completed annual notice from a tenant, Chestnut Holdings does not routinely go to the tenant's apartment to determine whether a child under the age of six lives there or do any further investigation to make that determination.

**E. Chestnut Holdings Does Not Conduct Annual Investigations and Follow-Up Remediation of All Apartments Where Children Under Six Live.**

66. Chestnut Holdings does not conduct annual investigations and remediation of lead-based paint hazards in all apartments where children under six live, including apartments for which tenants notify Chestnut Holdings in child inquiry notices in their leases that a child lives in the apartment.

67. Chestnut Holdings inspects apartments for peeling paint in limited circumstances, which may include where the tenant has returned an annual notice stating that a child under six lives in the apartment, where the tenant has complained about peeling paint, where the building superintendent becomes aware of a child under six living in an apartment, or when an employee of Chestnut Holdings is in an apartment for another reason, such as an order from HPD requiring it to remediate violations or a court order requiring it to do repairs.

68. In the limited circumstances when Chestnut Holdings inspects apartments for peeling paint and addresses that peeling paint, it does not inspect

for and remediate paint on chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces.

69. Chestnut Holdings would have incurred additional expenses if it had inspected all apartments where children under six live for peeling paint and paint on chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces and remediated those conditions.

70. When annual investigations are conducted, Chestnut Holdings does not inform tenants in writing of the results.

**F. Chestnut Holdings Fails to Take All Required Remedial Measures When Tenants Turn Over.**

71. Hundreds of tenants turn over annually in apartments in buildings that are managed by Chestnut Holdings and constructed before January 1, 1960.

72. When a tenant vacates an apartment, Chestnut Holdings inspects for and remediates only peeling paint. Chestnut Holdings does not inspect for or remediate other lead-based paint hazards, including paint on chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces.

73. When a tenant vacates an apartment, Chestnut Holdings also does not make all bare floors, window sills, and window wells in the apartment smooth and cleanable; remove or permanently cover lead-based paint on all friction surfaces on doors and door frames; or remove or permanently cover lead-based

paint on all friction surfaces on windows or alternatively install replacement window channels or slides on those surfaces.

74. Chestnut Holdings would have incurred additional expenses if upon turnover it had inspected all apartments for and remediated lead-based paint hazards; made all bare floors, window sills, and window wells in the apartments smooth and cleanable; removed or permanently covered lead-based paint on all friction surfaces on doors and door frames in the apartments; and removed or permanently covered lead-based paint on all friction surfaces on windows or alternatively installed replacement window channels or slides on those surfaces in the apartments.

75. In addition to inquiring as to whether a child under six years of age resides in the apartment, each child inquiry notice attached to Chestnut Holdings' new leases contains a signed certification that the owner has complied with the Lead Poisoning Prevention Act's turnover requirements even though it has not.

76. Those certifications would lead a reasonable tenant to believe that Chestnut Holdings had complied with the Act's turnover requirements.

### **FIRST CAUSE OF ACTION**

#### **REPEATED ILLEGALITY UNDER EXECUTIVE LAW § 63(12) Lead Poisoning Prevention Act, NYC Admin. Code § 27-2056.4(e)(3)(i) (Annual Notices)**

77. The State repeats and realleges each of the foregoing paragraphs.

78. Chestnut Holdings is a person engaged in carrying on, conducting, or transaction of business for purposes of Executive Law § 63(12).

79. Chestnut Holdings is an “owner” of the residential buildings and apartments that it manages because it is an “agent” and a “corporation” that is “directly or indirectly in control” of those buildings and apartments. *See* NYC Admin. Code § 27-2004(45).

80. When a tenant does not return an annual notice inquiring whether a child under six lives in the apartment, the Lead Paint Poisoning Prevention Act provides that “the owner shall at reasonable times and upon reasonable notice, inspect that occupant’s dwelling unit to ascertain” whether a child under six lives there and “if necessary conduct an investigation to make that determination.” *Id.* § 27-2056.4(e)(3)(i).

81. Chestnut Holdings has not inspected all apartments whose tenants have not returned annual notices to determine whether a child under six lives there or conducted any investigation to make that determination.

82. As a result, Chestnut Holdings has repeatedly violated the Lead Paint Poisoning Act by not inspecting apartments and/or doing further investigation when tenants have not returned the annual notice.

83. Chestnut Holdings has engaged in repeated illegality under Executive Law § 63(12).

84. Chestnut Holdings is liable for injunctive relief, a civil penalty of not more than \$1500 for each violation, and disgorgement of the moneys it would have expended to inspect all apartments and do further investigations when tenants did not return the annual notice.

**SECOND CAUSE OF ACTION**

**REPEATED ILLEGALITY UNDER EXECUTIVE LAW § 63(12)  
Lead Poisoning Prevention Act, NYC Admin. Code § 27-2056.4(a), (f)  
(Annual Investigations)**

85. The State repeats and realleges each of the foregoing paragraphs.

86. The Lead Poisoning Prevention Act requires owners to investigate for peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces at least annually in apartments in regulated buildings where a child under six years lives and to expeditiously remediate all lead-based paint hazards and underlying defects identified through the investigations. NYC Admin. Code §§ 27-2056.3, 27-2056.4(a). The Act also requires owners to notify tenants in writing of the results of those investigations. *Id.* § 27-2056.4(f).

87. Chestnut Holdings does not do annual investigations of all apartments where children under six live, including apartments for which tenants notify Chestnut Holdings in child inquiry notices in their leases that a child under six lives in the apartment. As a result, any lead-based paint hazard remediations that would have been required by law if the investigations had been performed are not done.

88. In the event that Chestnut Holdings investigates an apartment, it inspects the apartment for peeling paint but not chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces.

89. When Chestnut Holdings conducts these investigations, it does not notify tenants in writing of the results of the investigations.

90. As a result, Chestnut Holdings has repeatedly violated the Lead Paint Poisoning Act by not doing annual investigations of all apartments where children under six live, not doing complete investigations of apartments that it investigates, and not notifying tenants of the results of the investigations.

91. Chestnut Holdings has engaged in repeated illegality under Executive Law § 63(12).

92. Chestnut Holdings is liable for injunctive relief, a civil penalty of not more than \$1500 for each violation, and disgorgement of the moneys it would have expended to do complete annual investigations of all apartments where children under six live.

### **THIRD CAUSE OF ACTION**

#### **REPEATED ILLEGALITY UNDER EXECUTIVE LAW § 63(12) Lead Poisoning Prevention Act, NYC Admin. Code § 27-2056.8 (Turnover Requirements)**

93. The State repeats and realleges each of the foregoing paragraphs.

94. The Lead Paint Poisoning Prevention Act requires owners to take remedial measures on the turnover of the tenants in an apartment in a building constructed prior to 1960. NYC Admin. Code § 27-2056.8(a).

95. Except for peeling paint, Chestnut Holdings does not inspect and remediate lead-based paint hazards upon turnovers, as required by the Act, *id.* § 27-2056.8(a)(1).

96. Chestnut Holdings does not “make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable” upon turnovers, as required by the Act, *id.* § 27-2056.8(a)(2).

97. Chestnut does not provide for the removal or permanent covering of lead-based paint on all friction surfaces on doors and door frames upon turnovers, as required by the Act, *id.* § 27-2056.8(a)(3).

98. Chestnut Holdings does not provide for the removal or permanent covering of lead-based paint on all friction surfaces on windows or, alternatively, install replacement window channels or slides on lead-based paint friction surfaces on windows upon turnovers, as required by the Act, *id.* § 27-2056.8(a)(4).

99. Chestnut Holdings has engaged in repeated illegality under Executive Law § 63(12).

100. Chestnut Holdings is liable for injunctive relief and disgorgement of the moneys it would have expended to take the required remedial measures in all apartments upon tenant turnover.

**FOURTH CAUSE OF ACTION**

**REPEATED FRAUD UNDER EXECUTIVE LAW § 63(12)**

**False Certifications of Compliance with  
the Turnover Requirements  
of the Lead Paint Poisoning Prevention Act**

101. The State repeats and realleges each of the foregoing paragraphs.

102. When Chestnut Holdings enters into lease agreements with new tenants, Chestnut Holdings annexes a child inquiry notice to each lease that falsely



certifies that the owner has complied with the turnover requirements of the Lead Poisoning Prevention Act.

103. That false certification would mislead a reasonable tenant into believing that Chestnut Holdings has complied with the turnover requirements of the Lead Poisoning Prevention Act.

104. Chestnut Holdings has engaged in repeated fraud under Executive Law § 63(12).

105. Chestnut Holdings is liable for injunctive relief.

**PRAYER FOR RELIEF**

**WHEREFORE**, the State respectfully requests that a judgment be entered:

1. Permanently enjoining Chestnut Holdings from violating the Lead Poisoning Prevention Act, NYC Admin. Code §§ 27-2056.1–27-2056.18;
2. Ordering Chestnut Holdings to do the following with respect to all apartments in buildings (1) built before January 1, 1960, unless the presumption of lead-based paint has been rebutted or the building or apartment has been exempted by HPD, or (2) built between January 1, 1960 and January 1, 1978 if Chestnut Holdings has actual knowledge of the presence of lead paint:

- a. Identify all apartments where children under six reside within 30 days of the judgment;
- b. If a child under six lives in an apartment, identify and remediate all lead-based paint hazards and underlying defects and take all other turnover measures required by the Lead

Paint Poisoning Prevention Act, *id.* § 27-2056.8, within 60 days of the judgment;

- c. If a child under six does not live in an apartment, identify and remediate all lead-based paint hazards and underlying defects and take all other turnover measures required by the Act, *id.* § 27-2056.8, within 180 days of the judgment;
- d. Notify all tenants of the results of and any reports regarding the investigation and if remediation was done, any reports regarding the remediation within 30 days after each investigation and remediation is done;

3. Ordering Chestnut Holdings to file reports with the Office of the Attorney General and with a monitor, appointed at Chestnut Holdings' expense, who may seek additional information at the monitor's discretion:

- a. Regarding its compliance with paragraph 2(a) and (b) above within 90 days of the judgment;
- b. Regarding its compliance with paragraphs 2(c) and 2(d) above within 210 days of the judgment;
- c. Regarding its compliance with the annual notice, annual investigation, remediation, and turnover requirements of the Lead Poisoning Prevention Act, *id.* §§ 27-2056.3, 27-2056.4, 27-2056.8, within one year, two years, and three years of the judgment;

4. Ordering Chestnut Holdings to pay a civil penalty of up to \$1500 for each violation of the annual notice and annual investigation requirements of the Lead Poisoning Prevention Act, *id.* § 27-2056.4;

5. Ordering Chestnut Holdings to disgorge the moneys it would have expended to do complete annual investigations of all apartments where children under six live and to comply with all turnover requirements upon turnovers;

6. Awarding the State costs; and

7. Granting such other relief as is just and proper.

Dated: February 27, 2020  
New York, New York

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