

*United States District Court  
Southern District of New York*

ANNALISA RIVERA-FRANZ,	}	
	}	Civil Action
Plaintiff,	}	No. 1:24-cv-00836-JLR
- against -	}	
DAVID 441 LLC, 441 EAST 12 RICATTO LLC	}	ANSWER and CROSS-
AND BORIS & HORTON EAST VILLAGE LLC,	}	CLAIM WITH JURY
Defendants.	}	DEMAND
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	}	

Pursuant to Federal Rule of Civil Procedure 15(a)(1)(A), Defendants DAVID 441 LLC, 441 EAST 12 RICATTO LLC, (“Defendant”), by its attorneys FISCHMAN & FISCHMAN, files this Answer to ANNALISA RIVERA-FRANZ’s Complaint (“Complaint”):

ANSWER

Defendant specifically denies any and all allegations contained in headings, or unnumbered paragraphs in the Complaint to the extent that any allegations exist therein:

1. Paragraph 1 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of the statutes and/or regulations alluded to therein.
2. Defendant denies each and every allegation contained in ¶2 of the Complaint.

AS TO JURISDICTION AND VENUE

3. Defendant consents to jurisdiction as indicated in ¶3 of the Complaint.

4. Defendant consents to jurisdiction as indicated in ¶4 of the Complaint.

AS TO PARTIES

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶5 of the Complaint.

6. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶6 of the Complaint.

7. Defendant admits the allegations contained in ¶7 of the Complaint.

8. Defendant admist the allegations contained in Paragraph. 8 of the Complaint.

9. Defendant admits the allegations contained in ¶9 of the Complaint.

10. Defendant admits the allegations contained in Paragraph 10 of the complaint.

11. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 11 of the Complaint except that Boris & Horton operates a café in the East Village.

12. Defendant admits the allegations contained in paragraph 12 of the Complaint.

13. Defendant admits the allegations contained in Paragraph 13 of the Complaint.

14. Defendant admits the allegations contained in Paragraph 14 of the

Complaint.

15. Defendant denies knowledge and information sufficient to form a belief as to each and every allegation contained in paragraph 15 of the complaint except admits that David 441 LLC and 441 East 12 Ricatto LLC are licensed to do business in New York State.

16. Defendant admits the allegations contained in ¶16 of the Complaint.

17. Defendant denies each and every allegation set forth in paragraph 17 of the Complaint.

#### AS TO COMMON ALLEGATIONS

18. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶18 of the Complaint as to Plaintiff's disabilities and denies each and every other allegation contained in said Paragraph.

19. Paragraph 19 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of the statutes and/or regulations alluded to therein.

20. Paragraph 20 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of the statutes and/or regulations alluded to therein.

21. Defendant denies each and every allegation contained in ¶21 of the Complaint.

22. Paragraph 22 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of any “alterations” or ownership thereof alluded to therein.

23. Paragraph 23 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of any “alterations” or ownership thereof alluded to therein.

24. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶24.

25. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶25.

26. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶26.

27. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶27.

28. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶28 of the Complaint as to Plaintiff’s desire to patronize Defendant’s location, and denies each and every other allegation contained in said Paragraph.

29. Defendant denies each and every allegation contained in ¶29 of the Complaint.

30. Paragraph 30 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of any references to statutes or codes or the Congressional Record alluded to therein.

31. Defendant denies each and every allegation contained in ¶31 of the Complaint.

32. Defendant denies each and every allegation contained in ¶32 of the Complaint.

33. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶33 of the Complaint as to Plaintiff's "low vision". Defendant denies each and every allegation contained in ¶33 of the Complaint.

34. Defendant denies each and every allegation contained in ¶34 of the Complaint.

35. Defendant denies each and every allegation contained in ¶35 of the Complaint.

36. Defendant denies each and every allegation contained in ¶36 of the Complaint.

37. Defendant denies each and every allegation contained in ¶37 of the Complaint, and include the sub-paragraphs thereunder.

38. Defendant denies each and every allegation contained in ¶38 of the Complaint.

39. Defendant denies each and every allegation contained in ¶39 of the Complaint.

40. Paragraph 40 does not contain and facts which can be admitted or denied.

41. Defendant denies each and every allegation contained in ¶42 of the Complaint.

42. Defendant denies each and every allegation contained in ¶42 of the Complaint.

43. Defendant denies each and every allegation contained in ¶43 of the Complaint.

44. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶44 of the Complaint.

45. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶45 of the Complaint.

46. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶46 of the Complaint as to Plaintiff's intention to patronize Defendant's premises, and denies any other allegation contained in said Paragraph.

**AS TO FIRST CAUSE OF ACTION  
(VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT)**

47. Defendant realleges and incorporates by reference all allegations set forth

in this Answer as if fully set forth herein.

48. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶46 of the Complaint.

49. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶49 of the Complaint.

50. Paragraph 50 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of any references to statutes or codes alluded to therein.

51. Paragraph 51 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of any references to statutes or codes alluded to therein.

52. Defendant denies each and every allegation contained in ¶52 of the Complaint.

53. Defendant denies each and every allegation contained in ¶53 of the Complaint.

54. Defendant denies each and every allegation contained in ¶54 of the Complaint.

55. Defendant denies each and every allegation contained in ¶55 of the Complaint.

56. Defendant denies each and every allegation contained in ¶56 of the

Complaint.

57. Defendant denies each and every allegation contained in ¶57 of the Complaint.

58. Defendant denies each and every allegation contained in ¶58 of the Complaint.

59. Defendant denies each and every allegation contained in ¶59 of the Complaint.

60. Paragraph 60 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of any references to statutes or codes alluded to therein.

61. Paragraph 61 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of any references to statutes or codes alluded to therein.

62. Defendant denies each and every allegation contained in ¶62 of the Complaint.

AS TO SECOND CAUSE OF ACTION  
(VIOLATIONS OF THE NEW YORK STATE HUMAN RIGHTS LAW)

63. Defendant realleges and incorporates by reference all allegations set forth in this Answer as if fully set forth herein.

64. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶64 of the Complaint as to Plaintiff's "medical conditions", and denies any other allegation contained in said Paragraph.

65. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶65 of the Complaint.

66. Paragraph 66 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of the statutes and the legislative history alluded to therein. Defendant avers the statute, rules, or regulations referenced by said Paragraph is the best proof of its contents.

67. Paragraph 67 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of the statutes and the legislative history alluded to therein.

68. Defendant denies each and every allegation contained in ¶68 of the Complaint.

69. Defendant denies each and every allegation contained in ¶69 of the Complaint.

70. Defendant denies each and every allegation contained in ¶70 of the Complaint.

71. Defendant denies each and every allegation contained in ¶71 of the Complaint.

72. Defendant cannot admit or deny the allegations contained in Paragraph 72 because said allegations falsely state that Defendant's place of public accommodation is not fully accessible.

73. Defendant cannot admit or deny the allegations contained in Paragraph 73 because said allegations falsely state that Defendant's place of public accommodation is not fully accessible.

74. Defendant denies each and every allegation contained in ¶74 of the Complaint.

75. Defendant denies each and every allegation contained in ¶75 of the Complaint.

AS TO THIRD CAUSE OF ACTION  
(VIOLATIONS OF THE NEW YORK CITY HUMAN RIGHTS LAW)

76. Defendant realleges and incorporates by reference all allegations set forth in this Answer as if fully set forth herein.

77. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in ¶77 of the Complaint as to "life activity of Plaintiff both walking and body motion range" and denies each and every other allegation contained in said Paragraph.

78. Defendant denies each and every allegation contained in ¶78 of the

Complaint.

79. Defendant denies each and every allegation contained in ¶79 of the Complaint.

80. Defendant denies each and every allegation contained in ¶80 of the Complaint.

81. Defendant denies each and every allegation contained in ¶81 of the Complaint.

82. Defendant denies each and every allegation contained in ¶82 of the Complaint.

83. Defendant denies each and every allegation contained in ¶83 of the Complaint.

84. Defendant denies each and every allegation contained in ¶84 of the Complaint.

85. Paragraph 85 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of the statutes and/or regulations alluded to therein.

86. Paragraph 86 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law and falsely state that the entrance from the public sidewalk was not constructed, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of the statutes and/or regulations alluded to therein.

87. Defendant denies each and every allegation contained in ¶87 of the Complaint.

88. Defendant denies each and every allegation contained in ¶88 of the Complaint.

89. Defendant denies each and every allegation contained in ¶89 of the Complaint.

90. Defendant denies each and every allegation contained in ¶90 of the Complaint.

91. Defendant denies each and every allegation contained in ¶91 of the Complaint.

92. Defendant denies each and every allegation contained in ¶92 of the Complaint.

93. Defendant denies each and every allegation contained in ¶93 of the Complaint.

94. Defendant denies each and every allegation contained in ¶94 of the Complaint.

95. Defendant denies each and every allegation contained in ¶95 of the Complaint.

**AS TO FOURTH CAUSE OF ACTION  
(VIOLATIONS OF THE NEW YORK STATE CIVIL RIGHTS LAW)**

96. Defendant realleges and incorporates by reference all allegations set forth

in this Answer as if fully set forth herein.

97. Defendant denies each and every allegation contained in ¶97 of the Complaint.

98. Paragraph 98 of the Complaint does not contain any factual allegations which can be admitted or denied, and contains allegations which calls for conclusions of law, and Defendant respectfully refers to the Court all questions concerning the interpretation and legal effect of the statutes and/or regulations alluded to therein.

99. Defendant does not admit or deny the allegations contained in ¶99 of the Complaint, and refer to the Court the Records and documents filed on NYSCEF or with the County Clerk concerning service of process.

#### AS TO INJUNCTIVE RELIEF

100. Defendant denies each and every allegation contained in ¶100 of the Complaint, and refers to the Court any conclusions relating to said Paragraph.

101. Paragraph 101 does not contain any facts which can be admitted or denied, and contains a false claim that the premises are not readily accessible to and usable by Plaintiff.

102. Defendant denies each and every allegation contained in ¶102 of the Complaint, and refers to the Court any conclusions relating to said Paragraph.

### **AFFIRMATIVE DEFENSES**

103. The Complaint fails to state a cause of action since the date of the alleged visit by the Plaintiff to the Defendant's real property is omitted.

104. The Complaint should be dismissed in its entirety.

105. Should the Court grant Plaintiff permission to amend the Complaint, then Defendant reserves its rights to amend this answer with appropriate defenses which could include but are not limited to a more specific statute of limitations defense or other defense(s) based upon the date of the alleged visit by Plaintiff.

106. Without admitting or acknowledging that Defendant bears any burden of proof as to any of them, Defendant asserts the following affirmative defenses. Defendant intends and specifically reserves the right to rely upon any additional defenses that become available or apparent while this action is pending and reserves the right to amend this answer in order to otherwise assert any such further defense(s).

### **FIRST DEFENSE**

107. The allegations in the Complaint fail to state a claim for which relief may be had, in addition to the facts stated above.

### **SECOND DEFENSE**

108. Plaintiff's claims, are or may be barred, in whole or in part, by the applicable statute of limitations including the New York Executive Law § 297(5) and the New York City Administrative Code Chapter 5 § 8-502.

### **THIRD DEFENSE**

109. The allegations in the Complaint must be dismissed by reason of

Plaintiff's failure to comply with one or more conditions precedent to filing the within lawsuit.

#### **FOURTH DEFENSE**

110. Plaintiff's claims, are barred in whole or part because any modifications do not trigger the "alteration" legal standard.

111. Plaintiff's claims, are barred because, to the extent architectural barriers alleged by the Plaintiff exist (which supposition is explicitly denied and merely stated for the purpose of this additional defense) the removal of such barriers is virtually impossible.

#### **FIFTH DEFENSE**

112. Plaintiff's claims, are barred because any alterations made to the Premises are sufficient in that they satisfy the "to the maximum extent feasible" standard to the extent applicable.

#### **SIXTH DEFENSE**

113. Plaintiff's claims, are barred because, to the extent architectural barriers alleged by Plaintiff exist (which supposition is explicitly denied and merely stated for the purpose of this additional defense) the modification of such barriers is not readily achievable.

### **SEVENTH DEFENSE**

114. Plaintiff's claims, are barred in whole or part because architectural barriers in the Premises have been removed sufficient to satisfy the "readily achievable" standard to the extent applicable.

### **EIGHTH DEFENSE**

115. The applicable statutory ceilings on recoverable damages must limit any damages recovered by Plaintiff from Defendant.

### **NINTH DEFENSE**

116. To the extent Defendant is determined to be liable, it is, or may be, entitled to contribution from Defendant BORIS & HORTON EAST VILLAGE LLC based on its actions, inactions, negligence, recklessness and/or other conduct, including but not limited to its actions alleged in Plaintiff's Complaint.

### **TENTH DEFENSE**

117. Plaintiff's claims, are barred because, to the extent architectural barriers alleged by Plaintiff exist (which supposition is explicitly denied and merely stated for the purpose of this additional defense) the barriers are de minimis and/or are within conventional building industry tolerances.

### **ELEVENTH DEFENSE**

118. Any services alleged to be required would constitute an undue burden as defined in the Treasury Regulations as "significant difficulty or expense" and is not

required.

### **TWELFTH DEFENSE**

119. The applicable statutory ceilings on recoverable damages must limit any damages recovered by Plaintiff from Defendant.

### **THIRTEENTH DEFENSE**

120. Plaintiff's claims against Defendant, are barred because Defendant has complied with all applicable regulations of the federal, state and city governments.

### **FOURTEENTH DEFENSE**

121. Plaintiff fails to allege facts or a cause of action against Defendant sufficient to support a claim for attorneys' fees.

122. Plaintiff is not entitled to damages or attorney's fees because Plaintiff acted in bad faith by failing to give Defendant notice of alleged violations prior to filing lawsuit, when alleged violations could have been handled in a cost-efficient manner, in a transparent attempt to extract a settlement.

### **FIFTEENTH DEFENSE**

123. Plaintiff's claims, are barred in whole or part pursuant to 28 C.F.R. § 36.403(f) in that any alleged alteration required to conform is disproportionate to the overall alteration, if any.

### **SIXTEENTH DEFENSE**

124. The Complaint was not initiated in good faith and is barred by the

doctrine of unclean hands.

### **SEVENTEENTH DEFENSE**

125. Plaintiff is not entitled to injunctive relief because Plaintiff has failed to show an injury-in-fact or a threat of real and immediate harm.

### **EIGHTEENTH DEFENSE**

126. The Defendant has been adversely impacted economically by Covid-19.

127. As a result of the devastating economic drain on the Defendant, the Defendant is incapable of effectuating any remedial actions due to the economic effects of Covid -19.

128. By reason of the foregoing the complaint should be dismissed.

### **NINETEENTH DEFENSE**

129. Should the designation of the subject building be changed to an Historic District, then Defendant reserves its rights to amend its Answer accordingly, or as described in this paragraph.

130. Plaintiff's claims are barred in whole or in part because the Premises and/or the neighborhood in which subject premises are located have/has been designated as a landmark pursuant to the New York City Landmarks Law.

### **CROSS-CLAIM AGAINST THE TENANT**

131. Defendant Tenant was responsible for insuring that the Premises

complied with certain specified legal requirements, including, inter alia, those required under the Americans with Disabilities Act, if applicable.

132. In accordance with the Lease, Defendant Tenant agreed to indemnify and hold Landlord harmless from and against claims arising out of certain acts and omissions by the Defendant Tenant.

133. Pursuant to 28 CFR § 36.201 (b) and the Lease Tenant has responsibility for complying with the obligations hereunder.

134. That if the Plaintiff recovers herein against Defendant, such recovery will have been caused and brought about by reason of the negligence or culpable conduct or actions encompassed by contractual obligations of said Tenant, and Defendant will be entitled to judgment against Tenant in the amount of any recovery herein against Defendant and for all damages flowing from Tenant's breach of contract, together with attorneys' fees, or in the alternative, to a determination of the comparative degrees of negligence of all parties and to a judgment over in accordance with such determination by virtue of either common law or contractual indemnity through contribution.

135. By reason of the foregoing, if it is found that the answering Defendant is liable, in whole or in part, to the Plaintiff herein, which liability is expressly denied, then the Defendant is entitled to indemnification from and against the Defendant Tenant (BORIS AND HORTON), for any judgment or other relief that the Plaintiff may recover against the answering Defendant, in addition to reasonable attorneys fees and disbursements incurred in defense of this action.

136. Paragraph 124 of the Lease Rider states in pertinent part:

Tenant's Obligation to Comply with Laws. Tenant shall as its sole responsibility, and at Tenant's sole cost and expense, take all action, including making any required alterations necessary to comply with all requirements (including, without limitation, the Tenant's use of the elevator used by the residential occupants of the subject building, and including, but not limited to, applicable terms of the Americans with Disabilities Act of 1990 (the "ADA"), as modified and supplemented from time to time) which shall impose any violation, order or duty upon Landlord or Tenant arising from, or in connection with, the demised premises, Tenant's occupancy, use or manner of use of the demised premises (including, without limitation, any occupancy, use or manner of use that constitutes a "place of public accommodation" under the ADA), or any installations in the demised premises, or required by reason of a breach of any of Tenant's covenants or agreements under this lease, whether or not such requirements shall now be in effect or hereafter enacted or issued, and whether or not any work required shall be ordinary or extraordinary or foreseen or unforeseen at the date hereof.

## RESERVATION OF ADDITIONAL DEFENSES

137. Defendant reserves the right to allege additional defenses as they become known during discovery and to amend its answer accordingly.

## DEMAND FOR TRIAL BY JURY

WHEREFORE, Defendant demands a trial by jury for all claims and issues in this action for which defendant is or may be entitled to a jury trial.

WHEREFORE, Defendant respectfully requests that the Court enter judgment in favor of Defendant:

A. Dismissing the Complaint in its entirety, and granting the costs and

disbursements of this action; and

B. That the Court issue an award of counsel fees, costs, and disbursements in favor of DAVID 441 LLC, and 441 EAST 12 RICATTO LLC and against the Plaintiff ANNALISA RIVERA-FRANZ,; and

C. That the Court issue an award of damages, counsel fees, costs, and disbursements against the Defendant Tenant BORIS & HORTON EAST VILLAGE LLC in favor of the Defendants DAVID 441 LLC, and 441 EAST 12 RICATTO LLC. by reason of its breach of its duty to be in compliance with the ADA if such is found to be true by this Court; and

D. That the Court award the Defendants DAVID 441 LLC, and 441 EAST 12 RICATTO LLC a judgment pursuant to its cross-claim against Defendant Tenant BORIS & HORTON EAST VILLAGE LLC awarding damages to the said Defendants, along with attorneys fees; and

E. That the Court award the Defendants DAVID 441 LLC, and 441 EAST 12 RICATTO LLC such other relief as the Court may deem appropriate and just.

Dated: April 15, 2024  
New York NY

/s/ Doreen J. Fischman  
Respectfully submitted  
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