

**EXHIBIT E**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
JACKELINE MONTOYA,

Plaintiff,

-against-

BAY PLAZA APPLE, LLC, BAY PLAZA COMMUNITY  
CENTRE, LLC AND SP CENTER, LLC, DAFFY'S, INC., and  
ACCOLADE BUILDING MAINTENANCE CORP.,

Defendants.  
-----X

Index No.: 21612/2011E

RESPONSE TO  
COURT ORDER OF  
NOVEMBER 24, 2015

**C O U N S E L O R S :**

**PLEASE TAKE NOTICE**, that the defendants, BAY PLAZA COMMUNITY CENTRE, LLC AND SP CENTER, LLC, by and through their attorneys, MALAPERO & PRISCO LLP, respond to the Court's Order of November 24, 2015 which directed that defendants respond to plaintiff's "combined demands of June 17, 2012." A review of defendants' file confirms that "plaintiff's combined demands of June 17, 2012" does not exist. However, in a good faith effort to respond to this Court's Order of November 24, 2015, defendants, BAY PLAZA COMMUNITY CENTRE, LLC AND SP CENTER, LLC, state upon information and belief as follows:

**RESERVATION OF RIGHTS:**

- A. To the extent that defendant produces documents in response to said demands, they do so without conceding the materiality, authenticity, admissibility or relevance of any such documents, or of any substantive responses to demands.
- B. Defendant reserves all objections to the use of these responses and if any documents produced in connection herewith. Such objections may be interposed by responding defendants at any time, including at the time of trial or as otherwise required by the rules and orders of this Court.

- C. Defendant reserves the right to amend, supplement, modify or correct these responses, objections and production of documents, if any, as additional information and/or documents are identified and/or become available.
- D. Insofar as the inadvertent production of any documents by the defendants pursuant to the demands may be deemed a waiver of any privilege or right, such waiver shall be deemed to be a limited waiver solely with respect to that particular document. The inadvertent production of any document shall not be deemed or construed to constitute a waiver of any privilege, right or obligation of defendants, and defendants reserve the right to demand that such document and all copies thereof be returned to defendants.
- E. Defendant reserves the right to redact non-responsive material from many otherwise responsive documents that may be produced as part of defendants' responses to the demands.

#### **GENERAL OBJECTIONS:**

- A. Defendant objects to the demands to the extent that they seek information, documents or other materials that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.
- B. Defendant objects to the demands to the extent that they purport to seek information, documents or other materials protected by the attorney-client privilege, the work product doctrine or any other applicable privilege or immunity.
- C. Defendant objects to the demands to the extent that they purport to seek documents generated by or at the direction of their counsel. In responding to the demands, defendants will construe the demands as not requesting production of such documents.
- D. Defendant objects to the demands to the extent that they purport to require defendants to produce or to provide information or documents not within responding defendants' possession, custody or control.
- E. Defendant objects to the demands to the extent that they do not incorporate time limitations.

- F. Defendant objects to the demands to the extent that they seek to impose obligations extended beyond those imposed or authorized by the CPLR of this Court.
- G. Defendant objects to the demands to the extent that they purport to demand information, documents or other materials created, dated or generated after the date of the complaint that this action was filed.
- H. These general objections are continuing and are incorporated by reference and response to each of the demands set forth below. Any objection or lack of objection to any portion of the demands is not to be deemed an admission. Subject to and without waiver of these general objections, defendants respond to the demands of co-defendant as follows:

### **RESPONSES**

#### **MAINTENANCE, REPAIR AND CONSTRUCTION RECORDS**

Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any records of maintenance, repair, construction, contractors, work records, permits, bids, applications, engineering plans, or surveys regarding the subject bathroom.

#### **STORE MONITORING VIDEO / DIGITAL FOOTAGE**

Upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any store monitoring video / digital footage of the subject bathroom, however, defendants are conducting a good faith search, and should same exist defendants reserve the right to supplement this response.

### **STATEMENTS**

Upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any statements issued by plaintiff.



### **INSURANCE**

Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC were issued a policy of insurance by Philadelphia Indemnity Insurance Company with policy number PHPK560471, with effective dates of April 25, 2010 to April 25, 2011, in the amount of Two Million (\$2,000,000.00) Dollars in the general aggregate limit; and One Million (\$1,000,000.00) Dollars per occurrence.

### **ACCIDENT / INCIDENT REPORTS**

Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any accident / incident reports, however, defendants are conducting a good faith search, and should same exist defendants reserve the right to supplement this response.

### **WITNESSES**

Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are unaware of any witnesses other than those disclosed by the plaintiff.

### **EXPERT WITNESSES**

Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, have exchanged Dr. Allen E. Rubenstein on October 29, 2015, and Dr. Benjamin E. Rosenstadt on October 29, 2015, pursuant to CPLR §3101(d).

### **PHOTOGRAPHS**

Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.