

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

JUSTIN THEROUX,

Plaintiff,

-against-

NORMAN J. RESNICOW and BARBARA  
RESNICOW,

Defendants

-and-

71 WASHINGTON PLACE OWNERS, INC.  
and BOARD OF DIRECTORS OF 71  
WASHINGTON PLACE OWNERS, INC.,

Nominal Defendants.

Index No.

**SUMMONS**

**To the above-named Defendants:**

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your answer, or, if the Verified Complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within (20) days after the service of this summons, exclusive of the day of service; or within thirty (30) days after completion of service made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: New York, New York  
May 18, 2017

PRYOR CASHMAN LLP  
By: 

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To: Norman J. Resnicow  
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Barbara Resnicow  
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71 Washington Place Owners, Inc.  
71 Washington Place  
New York, NY 10011

Board of Directors of 71 Washington Place Owners, Inc.  
71 Washington Place  
New York, NY 10011

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**VERIFIED COMPLAINT**

Plaintiff Justin Theroux, as and for his Verified Complaint against defendants Norman J. Resnicow (“Attorney Resnicow”) and Barbara Resnicow (collectively, the “Resnicows”), and against nominal defendants 71 Washington Place Owners, Inc. (the “Corporation”), and Board of Directors of 71 Washington Place Owners, Inc. (the “Board of Directors”) (collectively, the “Nominal Defendants”), alleges as follows:

**NATURE OF ACTION**

1. Justin Theroux, the long-time owner/cooperative shareholder of an apartment at 71 Washington Place in New York City’s Greenwich Village, brings this action in response to the targeted and malicious years-long harassment campaign by his downstairs neighbor, lawyer Norman Resnicow. Seizing upon his legal training, and repeatedly seeking to leverage Mr. Theroux’s standing as a public figure, Attorney Resnicow has made it his twisted sport to bully and intimidate Mr. Theroux, depriving Mr. Theroux of his right to use and enjoy his property.

2. Attorney Resnicow's petty and disruptive conduct includes:

- Shutting off Mr. Theroux's access to a water line servicing his outdoor terrace;
- Shutting off Mr. Theroux's access to electricity servicing his outdoor terrace;
- Killing the ivy growing between Mr. Theroux's and the Resnicows' portions of the roof deck because he knew that Mr. Theroux enjoyed the aesthetic provided by the ivy;
- Demanding that Mr. Theroux replace the original, century-old radiators in Mr. Theroux's apartment;
- Interfering with and substantially delaying Mr. Theroux's renovation of his apartment by (i) demanding that Mr. Theroux install costly soundproofing materials that would substantially delay construction and damage the original flooring; (ii) over the objections of the Board, withdrawing permission for Mr. Theroux's contractor to begin protective set-up work at 8:30 a.m., rather than 9:00 a.m., substantially delaying completion of the renovation; and (iii) baselessly accusing Mr. Theroux's contractors of damaging the marble in the Building's entranceway, and demanding that Mr. Theroux's contractor make repairs;
- Demanding that Mr. Theroux personally pay to replace his balcony, when that is the Corporation's obligation; and
- Most recently, fabricating a dispute over the proper boundary line between his and Mr. Theroux's property on their shared roof deck, a boundary line which has been in place (without complaint by the Resnicows) for over a decade, depriving Mr. Theroux of the use of any portion of his roof deck.

3. These demands, filled with legal jargon, bearing his law firm email address, and often stretching for pages, contained threats of litigation and public disclosure meant to bully Mr. Theroux into acquiescence. Indeed, in furtherance of this scheme to intimidate Mr. Theroux with threats to bring the matter public, Attorney Resnicow even went so far as to repeatedly refer to the "owner/couple" of 2A/B, even though Mr. Theroux is the sole shareholder, a fact that Attorney Resnicow almost certainly knows as a former member of the Board of Directors. As is now self-evident by virtue of the filing of this lawsuit, Attorney Resnicow's efforts have failed.

4. Attorney Resnicow has made no secret of his motivations driving this tyrannical conduct. After Mr. Theroux declined Attorney Resnicow's demand that Mr. Theroux rip up his original hardwood floorboards to install Attorney Resnicow's preferred soundproofing between the respective apartments—instead voluntarily installing less invasive soundproofing to address Attorney Resnicow's complaints—Attorney Resnicow wrote to one of Mr. Theroux's representatives making his intentions clear:

When Justin calculates the totals of all the costs to him of the refused soundproofing -- both out-of-pocket hard costs (water and electrical installations, paying professionals, buying rugs, etc.), plus the value of all the soft costs (terrace square footage lost, ivy pruned, SilverLining's lost half hour early start each morning, loss of enjoying wood floors not covered by rugs, etc.) -- it will be realized that simply installing the reasonably requested soundproofing may well have been the less costly choice. And this does not even take into account the losses on the human relations and adjoining neighbor cooperation factors.

5. Attorney Resnicow's excessive and unreasonable demands and threats have left Mr. Theroux unable to use or enjoy his own home, forcing Mr. Theroux to bring this suit for nuisance and related relief. Defendants Corporation and Board of Directors are named as nominal defendants to the extent that they are necessary parties to effectuate any judgment.

#### THE PARTIES

6. Plaintiff Mr. Theroux is a natural person residing at 71 Washington Place, Apartment 2A/B in New York County, New York.

7. Defendant Norman Resnicow is a natural person residing at 71 Washington Place, Apartment 1A in New York County, New York. Attorney Resnicow is a partner at the law firm Fox Horan & Camerini LLP, which has offices in New York County, New York.

8. Upon information and belief, Barbara Resnicow is a natural person residing at 71 Washington Place, Apartment 1A in New York County, New York. Mrs. Resnicow sits on the Board of Directors.

9. Nominal defendant Corporation is the cooperative corporation that owns the building at 71 Washington Place in New York County, New York. Corporation was incorporated under the laws of the State of New York on July 7, 1981.

10. Nominal defendant Board of Directors is the board of directors for Corporation, located in New York County, New York.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

#### **A. Background**

11. In November 2001, Mr. Theroux acquired shares appurtenant to a proprietary lease for Apartment 2B at 71 Washington Place, New York, New York 10011 (the "Building"). In July 2003, Mr. Theroux also acquired shares appurtenant to a proprietary lease for Apartment 2A at the Building.

12. Upon information and belief, in 2004, the Resnicows acquired shares appurtenant to a proprietary lease for Apartment 1A at the Building. Apartment 1A is directly below Mr. Theroux's apartment and the roof deck shared by Apartments 1A and 2B.

#### **B. Mr. Theroux Renovates His Apartment**

13. In 2015, Mr. Theroux obtained the approval of both the Board of Directors and the NYC Department of Buildings to renovate Apartment 2A/B.

14. During the renovation, on September 1, 2015, Attorney Resnicow interjected to demand that Mr. Theroux pay for the installation of expensive sound insulation, including both batting and underlayment to protect against impact and airborne sounds, on the entire floor of his apartment.

15. When Mr. Theroux's representatives did not immediately confirm that both types of sound insulation would be installed, which was not required by the Board of Directors or the

NYC Department of Buildings, Attorney Resnicow became combative and demanded a supervisory role over Mr. Theroux's project.

16. In an email sent on September 2, 2015, Attorney Resnicow wrote:

Also, given the delay on confirming the proper and full sound proofing, all of the soundproofing should be done now for the 3 bedrooms – with Barbara and me being able to view all the installed soundproofing (possibly with professional assistance) before the floors are closed up. Accordingly, in your email also kindly confirm your scheduling for completion of the full floor batting and underlayment sound proofing (without skipping a beat or any interruptions for other work) from the work above the master bedroom. We do not want to have to deal with a piecemealing timing situation as to the sound proofing work.

17. Mr. Theroux's contractor estimated that the soundproofing requested by Attorney Resnicow would cost an additional \$25,000–\$30,000. Furthermore, while Mr. Theroux had a strong interest in preserving aspects of the original flooring for aesthetic purposes, installing the sound insulation demanded by Attorney Resnicow would make such preservation virtually impossible.

18. Moreover, the installation of all of the soundproofing demanded by Attorney Resnicow would have considerably increased the height of the floors in Mr. Theroux's apartment, thus reducing the overall space available to Mr. Theroux.

19. Attorney Resnicow repeatedly dismissed Mr. Theroux's budgetary and timeliness constraints and his concerns regarding the preservation of the building in an attempt to bully and harass Mr. Theroux into installing the requested soundproofing.

20. In an email dated September 2, 2015, Attorney Resnicow wrote: "You are doing an extensive and expensive first class major renovation and, under the circumstances, there is no justification for not doing the described full floor soundproofing at the same level – end of story."

21. Attorney Resnicow ratcheted up his dismissive rhetoric in an email one week later: "As explained in our call, the 3 excuses given in your email – budget constraints, completion



timing, and temporary original floor board removal and re-installation – do not even pass the straight-face test under the reality circumstances of the situation.”

22. On September 16, 2015, Attorney Resnicow again demonstrated his hostility toward Mr. Theroux: “What you are telling us in your email is to believe that Justin is spending half a million to gut-rehab (and will spend \$3,000 monthly for co-op maintenance for) an apartment he will use only a few weeks a year at most – but that Justin can’t see his way financially to install reasonable soundproofing. Surely you jest.”

23. Additionally, upon information and belief, Attorney Resnicow subjected Mr. Theroux’s foreman to several angry, hour-long rants that took place while the foreman should have been attending to Mr. Theroux’s renovation.

24. Attorney Resnicow expressed no willingness to compromise on any of his demands, which were arbitrary and unreasonable in the first instance. In the same email dated September 9, 2015, he wrote: “we are not amenable to any cutting of babies in half (‘we’ll do this, but not that’), since what we expect is the least to be expected under the circumstances and as a matter of fundamental neighborly decency.”

25. Despite Attorney Resnicow’s refusal to compromise and in an attempt to accommodate his neighbor (though he was in no way required to do so), Mr. Theroux ultimately installed batting in the floors of Apartment 2B over Attorney Resnicow’s apartment, although Mr. Theroux was unable to install batting in the floors of Apartment 2A because the floorboards were too fragile to do so without destroying their integrity.

**B. Attorney Resnicow Persecutes and Harasses Mr. Theroux for Failing To Submit to His Soundproofing Demands**

26. When Attorney Resnicow did not succeed in forcing Mr. Theroux to submit to his random demand, he began a campaign of reprisal against Mr. Theroux.



27. **Interfering with the construction schedule over the Board of Director's wishes:**

First, on September 12, 2015, Attorney Resnicow withdrew his permission for Mr. Theroux's contractor to begin protective setup work at 8:30 a.m. rather than at 9:00 a.m., even though this early start had also been approved by the president of the Board of Directors.

28. Attorney Resnicow wrote in an email that "[a]ny violation of the 9am work start rule, whether by starting any setup protections or any other setup or other work in or in front of the building (i.e., on the sidewalk outside our bedroom window) will be reported and pursued fully."

29. Attorney Resnicow's requirement that Mr. Theroux not begin protective setup work until 9:00 a.m. was directly contrary to the wishes of the Board of Directors, with its President, David McCorkle, expressing displeasure that the building would have to endure construction for a longer period due to Attorney Resnicow's demands.

30. **Threatening to cut off Mr. Theroux's access to water:** Second, on September 15, 2015, Attorney Resnicow emailed Mr. Theroux's representatives to inform them that he was going to cut off Mr. Theroux's access on his roof deck to water provided by the Building. Attorney Resnicow wrote that he was "no longer 'in a position' to continue 'to accommodate' them concerning the water line" that runs through the Resnicows' apartment to Mr. Theroux's roof deck because "accommodating the legitimate and normal concerns of adjoining neighbors seems not to be the order of the day for them."

31. Attorney Resnicow added that "we will very soon consult a plumber to determine whether the better option for us is simply to block the valve permanently so that no water can flow upward from our patio. Accordingly, time is of the essence on this item."

32. Attorney Resnicow offered Mr. Theroux an alternative to having the water line turned off: Mr. Theroux would have to install, at his expense, “a new spigot on the water line to extend just across the border to [the Resnicows’] terrace.” If he did not do so in a timely enough manner, as determined exclusively by Attorney Resnicow, Attorney Resnicow would simply turn off the valve without warning, thus depriving Mr. Theroux of water provided by the Building.

33. In response to Attorney Resnicow’s threat, Mr. Theroux was forced to install his own water faucet that could be used on his portion of the roof deck.

34. **Threatening to cut off Mr. Theroux’s access to electricity:** Third, on September 29, 2015, Attorney Resnicow stated that “[a]t a time soon at our convenience, we will have an electrician terminate the electrical service running from and/or through our apartment and/or our terrace to the 2A/B terrace.”

35. In order to limit Mr. Theroux’s ability to mitigate his threat by installing a separate electricity source to the roof deck, Attorney Resnicow pointed out that “running an electrical line across a conductive solid metal balcony, and then down along a very lengthy conductive solid metal staircase, creates apparent electrical hazards. We will be monitoring DOB compliance on that and many other aspects. This is easy for us since dealing with DOB matters is a major part of Barbara’s job, and she appears frequently at DOB’s Manhattan office.”

36. Attorney Resnicow betrayed his own bad-faith motivations in cutting off electricity to Mr. Theroux’s roof deck in the same September 29, 2015 email:

As with the terraces’ correct boundary dividing line, and the source of the water service to the 2A/B terrace, Barbara and I would never have thought to check the sources of the electrical service to the 2A/B terrace – absent the misguided advice given to the 2A/B owner couple in response to our reasonably requested soundproofing installation while the current gut-rehab of 2A/B is in progress.

. . . What a shame. This was all easily avoidable with the normal exercise of neighborly consideration – which was and continues to be blocked by a flurry of

bad advice to Justin from the misguided advisors. When Justin calculates the totals of all the costs to him of the refused soundproofing -- both out-of-pocket hard costs (water and electrical installations, paying professionals, buying rugs, etc.), plus the value of all the soft costs (terrace square footage lost, ivy pruned, SilverLining's lost half hour early start each morning, loss of enjoying wood floors not covered by rugs, etc.) -- it will be realized that simply installing the reasonably requested soundproofing may well have been the less costly choice. And this does not even take into account the losses on the human relations and adjoining neighbor cooperation factors.

37. **Threatening to invoke floor covering House Rule:** Fourth, on September 16, 2015, Attorney Resnicow threatened to invoke the Corporation's House Rule requiring shareholders to cover 80% of floor area with carpeting, rugs, or noise-reducing material to browbeat Mr. Theroux into installing the demanded soundproofing.

38. In the same email, Attorney Resnicow added that, "in light of the complete lack of confidence created by this cavalier, un-neighborly refusal of the owner couple, the strict, full and continuing compliance by them with this 80% Rule will need to be periodically monitored by scheduled as well as other visual inspections by authorized persons."

39. Attorney Resnicow's own statements make it clear that his invocation of this rule was an attempt to force Mr. Theroux to acquiesce to Attorney Resnicow's own unreasonable demands: "By not installing the soundproofing, the owner couple will have to live with the 80% rug and carpet coverage. It's their choice brought upon themselves by their own un-neighborly decision making. If they wish to reconsider their thinking on this, it will be most cost and time effective to do so now rather than to wait."

40. **Baselessly blaming Building damage on Mr. Theroux's construction:** Fifth, on September 16, 2015, Attorney Resnicow sought to hold Mr. Theroux's contractors, Silver Lining Interiors, Inc., responsible for cracked marble at the Building's front entrance.

41. Attorney Resnicow persisted with this unfounded accusation, despite being informed by Mr. Theroux's representatives that Mr. Theroux's contractor had pictures demonstrating that the cracks existed before any work on Mr. Theroux's apartment began.

42. In a September 25, 2015 email, Attorney Resnicow escalated the situation regarding the cracked marble, despite no actual evidence that Mr. Theroux's contractors had caused the damage. Attorney Resnicow wrote: "Regarding the photo, it is now put-up-or-shut-up time. Absent the photo, kindly confirm that SilverLining now assumes full responsibility for repairs/replacements of the cracked marble."

43. During this period, Attorney Resnicow imposed himself into Mr. Theroux's construction project and repeatedly distracted Mr. Theroux's contractors with his accusations and demands, rather than taking the issue to the Board of Directors and permitting them to handle it, as he should have done.

44. At no time did Attorney Resnicow produce evidence that Mr. Theroux's contractors had caused the marble to crack.

45. **Removing the ivy from the roof deck:** Sixth, and in perhaps his most petty attempt at retribution, on September 25, 2015 Attorney Resnicow threatened to prune the ivy growing on the patio simply because he knew that Mr. Theroux had a "strong interest in preserving the ivy in and about his terrace."

46. Attorney Resnicow continued: "But we cannot continue with considerate neighborly behavior when Justin's advisors would have him stick his fingers in our eyes on a single matter of fundamental necessity to our well-being [i.e., installing \$30,000 worth of soundproofing], to our enjoyment of our home and our lives generally, and to the value of our apartment. Justin can no more claim any right regarding the ivy growing from our patio garden

than he can to the hosta and coleus plants growing from the same place. . . . The pruning could commence at any time when I feel like hauling our high extension ladder to the patio.”

47. Attorney Resnicow then proceeded to follow through with his threat, which killed the ivy on Mr. Theroux’s side of the roof deck.

48. **Demanding that Mr. Theroux replace original radiators:** Seventh, on September 28, 2015, Attorney Resnicow demanded that the vintage radiators in Mr. Theroux’s apartment be replaced due to a claimed “history of leaks” into Apartment 1A. Attorney Resnicow, exercising his knowledge of legalese, said that if Mr. Theroux did not comply with this demand:

this email will serve to document and demonstrate -- for future insurance claims and coverage determination purposes -- that the 2A/B owner couple went forward to act in deliberate, wanton, intentional, and reckless disregard of, and against specific written warnings of, the likelihood of further leaks into our apartment from those unreliable radiators.

Accordingly, upon a future 2A/B-sourced leak claim by us to our insurance carrier, that carrier will in turn claim against the 2A/B owners -- who will then look to their own insurer for coverage. As this email will then be put by us into the hands of those insurers, coverage is reasonably expected to be denied to the 2A/B owners. The 2A/B owners will then have to pay for all the damages uninsured and out of their own pockets.

49. Although Mr. Theroux’s renovation process included addressing any alleged leakage issues regarding the radiators as part of the construction, Mr. Theroux preferred to keep the existing radiators to reduce cost and maintain the character of the Building.

50. **Manufacturing an issue with Mr. Theroux’s balcony:** Eighth, Attorney Resnicow manufactured a dispute with Mr. Theroux over Apartment 2B’s balcony and stairs as part of his ongoing efforts to harass Mr. Theroux.

51. Upon information and belief, Attorney Resnicow manufactured a crisis regarding the stability of Apartment 2B’s balcony during a periodic inspection of Mr. Theroux’s renovation in February 2016.

52. As a result, Mr. Theroux, at his own expense, hired an engineer to inspect the balcony and stairs in March 2016.

53. The engineer determined that although the balcony and stairs had deficiencies, they were in no “immediate danger of collapse and do not require temporary shoring so long as the below repairs are performed this year, access to the rear is limited to inspections only and no materials are stored on the rear terrace/stair.”

54. Although the engineer concluded that no shoring was required, upon information and belief, Attorney Resnicow bullied Mr. Theroux’s project manager into erecting temporary wooden shores to support the balcony and stair from underneath. This shoring was installed at Mr. Theroux’s expense, though it should have been paid for by the Corporation, and still remains, over Mr. Theroux’s objections.

55. Attorney Resnicow made these demands of Mr. Theroux even though, under Section 2 of the Corporation’s Proprietary Lease, the Corporation, not Mr. Theroux, is responsible for repairs on the exterior of the building, including the balcony and stairs at issue.

56. Though Mr. Theroux is not responsible for arranging or paying for the repair of his balcony or stairs, Attorney Resnicow, since at least September 2016, has been in his own words “pressing 2B (through SilverLining) to bring in an engineer to do an inspection report; to give that report to the co-op; and to submit a replacement/repair proposal taking that Report into account.”

57. Attorney Resnicow persisted with these unreasonable demands over the next seven months. Just days ago, on May 10, 2017, Mr. Theroux received a letter from Attorney Resnicow’s attorney that again attempted to force Mr. Theroux to assume responsibility for repairs that he is under no obligation to make. The letter stated: “Therefore, formal demand is hereby made on



behalf of the Resnicows that Theroux install, without further delay, adequate shoring under both balcony and staircase.”

**C. Attorney Resnicow Fabricates a Dispute Over the Division of the Roof Deck**

58. Not content with the already excessive retaliatory actions he had taken against Mr. Theroux, most recently Attorney Resnicow has sought to exact additional retribution by fabricating a dispute over the legal property line of division of their shared roof deck.

59. In July 2015, at Attorney Resnicow’s insistence, Mr. Theroux voluntarily removed the decking and fencing on his portion of the roof deck so that Attorney Resnicow could check a leak in his apartment.

60. However, as part of his petty vendetta, Attorney Resnicow then objected to Mr. Theroux’s proposed plan to replace the decking and fencing.

61. On September 21, 2015, Attorney Resnicow informed Mr. Theroux that his “terrace and fence had been encroaching by approximately 24 inches onto 1A’s portion of the roof terrace” and that Mr. Theroux was not permitted to build “any new terrace deck structure, fence, etc.” that could “go even the slightest distance south past the east/west dividing line measured from that end of stairs point.”

62. Due to Attorney Resnicow’s persistent vendetta against Mr. Theroux, Mr. Theroux has been unable to renovate any of the roof deck, including the section that incontrovertibly belongs to him, and has thus been deprived of the benefit of its use.

63. In a September 21, 2015 email, Attorney Resnicow betrayed his motivations in raising this issue for the first time more than a decade after moving into the Building:

Absent the dismissively un-neighborly way that Barbara and I have been treated (through you) by the 2A/B owner couple on the reasonably requested soundproofing, we would never have thought to look into the location of the exact legal dividing line between the respective roof terraces. Now that we have been



motivated by this mistreatment to bother to check this, the results are not happy for the 2A/B owner couple.

64. Consistent with this admitted lack of a genuine basis for his attempted land grab, Attorney Resnicow's claim to this additional portion of the roof deck is unsupported by either the governing documents of the Corporation or the parties' practices for over a decade, and is also contrary to common sense.

**1. The Corporation's Offering Plan**

65. The Offering Plan for 71 Washington Place clearly divides the roof deck into distinct sections for Apartments 1A and 2B, respectively.

66. The Offering Plan permits the owner of Apartment 1A the right to use "that portion of the roof terrace over the basement extension running the full width of the Building, from a line extending from the rear wall of the Building mezzanine northward approximately thirteen feet to the bottom edge of, but not including the use of, the steel stairs."

67. In turn, the Offering Plan permits the owner of Apartment 2B the right to use "that portion of the roof terrace over the basement extension running from the bottom edge of, and including the use of, the steel stairs approximately eleven feet to the north parapet."

68. Mr. Theroux's purchase of Apartment 2B in November 2001 was contingent upon the Board of Directors providing a written statement that "The Board of 71 Washington Place Owners, Inc. has approved the building of an exterior deck adjacent to Apartment 2B."

69. In Mr. Theroux's contract purchasing Apartment 2B, the seller represented that she made no alterations which were not legal and in accordance with the Building's documents. Thus, the installation of the original decking in or around 2000 was done with approval of the Board of Directors.

70. Since 2001, when Mr. Theroux purchased his apartment, the roof deck has been divided by a straight east-west line beginning at the point at which the final stair meets the roof deck. The metal stringer acting as a handrail for the stairs extended further into and rested upon Mr. Theroux's portion of the roof deck.

71. The approximate measurements of each apartment's roof deck provided in the Offering Plan further corroborate this distribution of area on the roof deck.

72. The Offering Plan allocates thirteen feet of depth to Apartment 1A and eleven feet of depth to Apartment 2B. However, the roof deck is actually a total of 25 feet, nine inches, which is one foot, nine inches more than specifically allocated in the Offering Plan. With the dividing line emanating from the point where the bottom stair meets the roof deck, the actual measurements of each apartment's roof deck fits the mathematical allocation provided for in the Offering Plan.

73. Based on the language of the Offering Plan and the initial arrangement of the roof deck, which was completed in accordance with the building's governing documents, the "bottom edge of the stairs" refers to the point at which the bottom stair hits the roof and the dividing line must be drawn as such.

74. Attorney Resnicow's purported interpretation of the Offering Plan is significantly undermined by his repeated statements that Attorney Resnicow's pursuing the two feet of disputed roof deck arose out of a need for retribution against Mr. Theroux for refusing to buckle under Attorney Resnicow's demands.

75. In a September 21, 2015 email, Attorney Resnicow explained to Mr. Theroux's representative that "the un-cooperative stonewalling treatment (though [*sic*] you) of Barbara and me by the 2A/B owner couple regarding soundproofing and privacy has in effect caused their co-

op apartment to lose, permanently, approximately 40 square feet of what Justin mistakenly thought was his terrace space.”

76. He added later in the email to Mr. Theroux’s representative: “Congratulations on the results for your client that have now left him, permanently, with a significantly shrunken terrace. These results were completely avoidable with the exercise of sensible advising and basic advisory decency. It didn’t have to be that way.”

77. Nearly a year later, on August 5, 2016, Attorney Resnicow repeated his motivations for raising the roof deck issue:

Justin should have thought a bit last year – before responding to us as if we were peon supplicants – when we reasonably requested him to put in floor soundproofing with his extensive and expensive gut renovation. We have done some neighborly good deeds for Justin over the years. . . . You can understand why we felt gobsmacked when Justin told use (through his agent) to stuff it on soundproofing.

. . . Justin will now have to live with the consequences of his imperious, damaging actions which led us to look into the legal realities of the boundary line separating our respective roof terraces. Justin assumed he had us over a barrel on the soundproofing – which he did. His mistake was to assume there was only one barrel.

## 2. Mr. Theroux and Attorney Resnicow’s Course of Conduct

78. Mr. Theroux and Attorney Resnicow’s course of conduct regarding the division of the roof deck reinforces the proper property line.

79. Attorney Resnicow did not object to the dimensions or placement of Mr. Theroux’s roof deck at any time between 2004, when Attorney Resnicow first purchased his apartment, and September 2015, when Mr. Theroux refused to comply with Attorney Resnicow’s demands regarding soundproofing.

80. Mr. Theroux first removed and replaced the roof deck years earlier at the request of Attorney Resnicow, who wanted to investigate the source of a leak. The dimensions and area

covered by Mr. Theroux's renovated roof deck exactly matched the prior owner's roof deck, and Attorney Resnicow did not object to its placement.

81. Mr. Theroux's proposed plan to refinish the same roof deck in September 2015 contained the same dimensions and covered the same area as the prior roof deck that had been ripped up, again at Attorney Resnicow's request. Attorney Resnicow acknowledges this in an August 3, 2016 email to the Board of Directors.

82. In September 2015, Attorney Resnicow for the first time claimed that in fact the bottom edge of the stringer, not the stair, demarcated the start of Mr. Theroux's property.

83. In an attempt to explain away the fatal fact that Attorney Resnicow had acknowledged the correct borders for the prior eleven years, Attorney Resnicow wrote in an email dated July 26, 2016 that "it is clear as a matter of law that the 2A/B's owner's previous placement of decking beyond the boundary line specified in the Offering Plan does not give the 2A/B owner any legal right to continued future use of the encroached-upon 1/A terrace space – and thus does not give the 2A/B owner any legal right to restore the removed decking onto the encroached-upon 1A terrace space."

84. Attorney Resnicow proceeded to repeat this legal argument in an August 3, 2016 email to the Board of Directors that also instructed the Board of Directors to reject Mr. Theroux's proposed renovation plan.

85. In late 2015, for the first time, Attorney Resnicow laid out bricks on what he incorrectly asserts is the proper boundary line, emanating from the bottom of the steel stringer. Each time another party removed the bricks, Attorney Resnicow replaced them in the same location.

3. **Attorney Resnicow's Proposed Property Line Would Mean That Mr. Theroux Is Trespassing Every Time He Accesses His Roof Deck**

86. Attorney Resnicow's new, retaliatory interpretation of the Offering Plan also is irrational as a practical matter, as it would require Mr. Theroux to leap off of the final step of the stairs approximately ten inches past the end of the metal stringer to reach his roof deck, all the while trespassing through Attorney Resnicow's property.

87. Such an interpretation would create a trip hazard at the base of the stairs, which necessarily would create a liability issue for the Corporation. Not only would the Corporation seek to avoid exposing itself to unnecessary liability, it is patently absurd that an Offering Plan would require a shareholder to either leap over or repeatedly trespass on another's property to reach their own roof deck.

88. Attorney Resnicow attempted to justify his interpretation in a September 14, 2016 email by claiming that Mr. Theroux could simply construct a new landing to cover the two feet between the bottom step and the metal stringer. However, if Mr. Theroux were to "extend[] the last step into a small platform to reach the boundary line," the platform would necessarily still be a trespass onto Attorney Resnicow's roof deck under Attorney Resnicow's interpretation.

4. **Mr. Theroux and Attorney Resnicow's Correspondence Regarding the Roof Deck**

89. Attorney Resnicow has repeatedly used his position and knowledge as a lawyer to bully Mr. Theroux into relinquishing the right to use the disputed two feet of the roof deck that are rightfully Mr. Theroux's.

90. Attorney Resnicow sent emails from his professional, rather than personal, email address that contain the standard confidentiality notice at the bottom. He signed these emails with his name, and then added in parentheses: "On behalf of IA owners."

91. Attorney Resnicow stated that “the applicable documents and law are clear and straightforward” and put forth numerous other conclusions of law without providing any support or citing to actual statutes or case law in his email demanding that the Board of Directors reject Mr. Theroux’s proposed deck plan in August 2016. The next day, he repeated this demand: “[T]he Board is legally compelled to reject the deck/fence plan in its entirety, because it includes decking that goes across the terrace boundary line between 2A/B’s terrace and 1A’s terrace – to the extent of almost 40 square feet.”

92. On September 16, 2016 Attorney Resnicow described Mr. Theroux’s interpretation of the Offering Plan as “bizarrely invented and completely unsupported” and “nutty.”

93. He followed this disrespectful language with additional legal jargon and dismissive characterizations of Mr. Theroux’s reasonable position on September 20, 2016:

Your arguments are plainly ‘specious.’ Your supposed ‘practical considerations’ are irrelevant. I only threw in countervailing practical (safety, etc.) considerations and solutions to show that your arguments of that kind cannot stand even if they were relevant to where the terrace boundary is located (which they are not).

It is touching that your wealthy client is concerned about my and my wife’s costs and time involved in litigating this matter. We have already done all the pertinent legal research and document review, and have chosen our designated trial lawyers. As a result, a quite large part of our litigation costs is already spent. The same can be said as to our investment of time.”

**D. Attorney Resnicow Alternately Threatens Mr. Theroux With Public Exposure, And Admonishes Mr. Theroux Not To Bring His Own Suit, Bizarrely Implicating Oscar Wilde**

94. Throughout the course of his email correspondence with Mr. Theroux, Attorney Resnicow repeatedly attempted to use Mr. Theroux’s status as a public figure to threaten and bully Mr. Theroux into caving to Attorney Resnicow’s demands.

95. On September 1, 2015, in an email demanding that Mr. Theroux soundproof his floors, Attorney Resnicow wrote, “But now that a renovation is in progress, and since we think



Justin has concerns about privacy, it would also be to his advantage to have the proper and full sound baffling installed as per above.”

96. After receiving an email from Mr. Theroux’s transactional attorney that responded to some of Attorney Resnicow’s prior threats of reprisal, on September 25, 2015, Attorney Resnicow warned Mr. Theroux off commencing litigation against Attorney Resnicow, even though Mr. Theroux had never made such a threat:

We observe that for Justin as a ‘public figure’ (in legal parlance) to carry out this lawsuit – based on the expanding bad advice from misguided advisors – would be a grossly foolish strategic blunder that would blow up in his face along the lines of Oscar Wilde’s famous lawsuit. (Fortunately society has radically changed regarding the matter of Wilde’s lawsuit.) If Justin’s misguided advisors lead him to court, Justin would be ‘opening the door’ (as the lawyers say) to a broad range of allegations that would become publicly available, and which would not please Justin or his wife or their respective publicists.”

97. In the same email, Attorney Resnicow explicitly threatened Mr. Theroux’s quality of life based on his status as a public figure:

The bottom line on the attempt to bully via litigation threat is that, just as the un-neighborly stance and dismissive stonewalling pushed by Justin’s advisors have penetrated into our family, our quality of life and our apartment use and value, so will this matter further penetrate into his family, his quality of life with his wife, and his apartment value and whatever use they make of their apartment. All that it would take to start this self-damaging escalation is Justin’s advisors misguiding him yet again by advising him to push the lawsuit detonation button.

98. Attorney Resnicow continued to use Mr. Theroux’s status as a public figure as a bargaining tool in a series of emails beginning in September 2016.

99. In an email from September 14, 2016, Attorney Resnicow wrote to one of Mr. Theroux’s representatives: “I trust you know that such litigation is not a private or confidential matter, but rather a matter of public record. The 2B owner would certainly be a named party to the litigation, not merely a witness. If that is his choice, so be it.”



100. In an email from September 16, 2016, Attorney Resnicow reiterated his threat: "If the Board purports to permit this re-seizure, we will for sure be entitled to have, and will have, our day in court; your client will be a publically named party; and we will win hands down. . . . Your client's grip on an untenable position will only cause harm and unnecessary expense to the co-op and public embarrassment to himself."

101. In a September 20, 2016 email, Attorney Resnicow stated explicitly how he would attempt to characterize the dispute to win public favor: "That all makes this, as they say, a very interesting case from the non-legal aspect. If your client wants to advertise in litigation his aggressive terrace overreach, it is his choice."

**FIRST CAUSE OF ACTION**  
**(Private Nuisance Against Norman Resnicow)**

102. Mr. Theroux repeats and realleges paragraphs 1 through 101 of the Verified Complaint as if fully set forth herein.

103. Attorney Resnicow has, since September 2015, engaged in a pattern of retaliation and retributive behavior against Mr. Theroux originating from Mr. Theroux's initial failure to submit to Attorney Resnicow's demands regarding soundproofing.

104. Over the period of just three weeks in or about September 2015, Attorney Resnicow (i) cut off the flow of electricity and water to the shared roof deck; (ii) interfered with Mr. Theroux's construction by distracting Mr. Theroux's contractor with angry rants and withdrawing permission for the workers to begin protective set-up work at 8:30 a.m.; (iii) killed Mr. Theroux's ivy plants; (iv) threatened to report Mr. Theroux for not complying with a waived Corporation House Rule requiring 80% of the floors to be covered; (v) meritlessly accused Mr. Theroux's contractors of damaging the Building's marble entrance; (vi) demanded that Mr. Theroux replace his radiators or be held responsible for future leak damage in Apartment 1A; (vii) halted Mr.

Theroux's renovation of his roof deck by disputing the proper boundary line between their respective portions of the roof deck; and (viii) repeatedly threatened to bring any and all of these matters public in an attempt to bully Mr. Theroux into compliance.

105. In the ensuing twenty months, Attorney Resnicow has continued to threaten Mr. Theroux with public exposure should he not capitulate to Attorney Resnicow's demands, sent long, combative emails regarding the division of the roof deck, and insisted that the Board of Directors reject Mr. Theroux's plan to renovate his portion of the roof deck based on his new interpretation of the Offering Plan.

106. Due to Attorney Resnicow's insistence that the boundary line dividing the roof deck was misplaced by up to two feet, Mr. Theroux has been deprived of the use of any portion of the roof deck.

107. Given the foregoing, since September 2015, and continuing to date, Attorney Resnicow's behavior has substantially interfered with Mr. Theroux's quiet enjoyment and use of his apartment.

108. Given the foregoing, since September 2015, and continuing to date, Attorney Resnicow's interference with Mr. Theroux's quiet enjoyment and use of his apartment is substantial in nature.

109. Attorney Resnicow's interference with Mr. Theroux's quiet enjoyment and use of his apartment is unreasonable in character.

110. Attorney Resnicow's interference with Mr. Theroux's quiet enjoyment and use of his apartment has been intentional, as demonstrated by explicit statements in his correspondence with Mr. Theroux and Mr. Theroux's representatives.

111. Attorney Resnicow's actions constituting the tort of nuisance were done so willfully, intentionally, recklessly, and with such disregard of any lawful justification or concern for the harm and injury said conduct would cause Mr. Theroux as to constitute malicious action.

112. Attorney Resnicow knew or should have known that his retaliatory and retributive behavior would interfere with and preclude Mr. Theroux from the quiet enjoyment and use of his apartment.

113. By reason of Attorney Resnicow's acts of nuisance, Mr. Theroux has suffered substantial injury, including, but not limited to (i) the substantial interference with the quiet enjoyment and use of his apartment; (ii) the constant threat of harm to his public reputation; (iii) the harm of his reputation among and relationship with the other shareholders at the Corporation; (iv) the substantial cost associated with remedying the punishments exacted by Attorney Resnicow; (v) the substantial cost attributable to the countless hours spent by Mr. Theroux's professional representatives in responding to Attorney Resnicow's threats and accusations; and (vi) the substantial delays in construction incurred by Attorney Resnicow's unreasonable demands.

114. Mr. Theroux therefore seeks a judgment against Attorney Resnicow for monetary damages sufficient to compensate Mr. Theroux for, among other things, the loss of the use of his roof deck, the cost of installing a new water and electricity line to replace the ones withheld by Attorney Resnicow, the cost incurred by Mr. Theroux for delays in construction caused by Attorney Resnicow's actions, the costs incurred by Mr. Theroux arising from the time spent by his professional representatives in responding to and handling Attorney Resnicow's demands, and Mr. Theroux's other out of pocket expenses arising from Attorney Resnicow's intentional conduct, in an amount to be determined at trial, but in no event less than \$250,000, plus interest.

115. The foregoing actions of Attorney Resnicow were wanton, willful, and malicious. Mr. Theroux is therefore entitled to an award of punitive damages in the amount of at least three times the amount of compensatory damages.

**SECOND CAUSE OF ACTION**  
**(Trespass Against Norman Resnicow)**

116. Mr. Theroux repeats and realleges paragraphs 1 through 115 of the Verified Complaint as if fully set forth herein.

117. At all relevant times, Mr. Theroux has had exclusive rights to and has been in possession of the portion of the roof deck beginning from the bottom edge of the final step in the steel stairs and extending to the north parapet.

118. In late 2015, Attorney Resnicow intentionally placed a row of bricks across Mr. Theroux's property on the roof deck in a line emanating from the point where the metal stringer meets the roof deck, approximately ten inches into Mr. Theroux's portion of the roof deck.

119. Attorney Resnicow has maintained this row of bricks without Mr. Theroux's permission or authority and replaces the bricks if they are moved by any other party.

120. The bricks have continuously encroached upon Mr. Theroux's property since they were first laid down by Attorney Resnicow and continue to encroach upon Mr. Theroux's property as of the date of this Verified Complaint.

121. Attorney Resnicow has at all relevant times been responsible for the placement of the bricks.

122. The above acts were performed with actual malice, or alternatively amounted to a wanton, willful, or reckless disregard of Mr. Theroux's rights, as demonstrated by his correspondence with Mr. Theroux and Mr. Theroux's representatives.

123. The above acts have damaged, directly and proximately, Mr. Theroux and Mr. Theroux's property.

124. The above acts constitute an encroachment and continuing trespass upon Mr. Theroux's property, and have disturbed and interfered with Mr. Theroux's quiet enjoyment thereof.

125. As a result of the foregoing, Mr. Theroux has been damaged, and is entitled to receive compensation for its damages in an amount to be determined at trial but in no event less than \$100,000, plus interest.

126. Mr. Theroux is also entitled to punitive damages, in an amount to be determined at trial, for Attorney Resnicow's knowing, continued and repeated trespass onto Mr. Theroux's property, made with actual malice or with a wanton, willful or reckless disregard of Mr. Theroux's rights.

### **THIRD CAUSE OF ACTION**

#### **(Declaratory Judgment Against Norman Resnicow and Barbara Resnicow)**

127. Mr. Theroux repeats and realleges paragraphs 1 through 126 of the Verified Complaint as if fully set forth herein.

128. The Offering Plan permits the owner of Apartment 1A the right to use: "that portion of the roof terrace over the basement extension running the full width of the Building, from a line extending from the rear wall of the Building mezzanine northward approximately thirteen feet to the bottom edge of, but not including the use of, the steel stairs."

129. The Offering Plan permits the owner of Apartment 2B the right to use: "that portion of the roof terrace over the basement extension running from the bottom edge of, and including the use of, the steel stairs approximately eleven feet to the north parapet."

130. The descriptions in the Offering Plan, combined with the approximate measurements of the respective portions of the shared roof deck, make clear that the roof deck was to be divided at the point where the bottom step met the roof deck in a straight, east-west line.

131. The previous owner of Apartment 2B renovated her portion of the roof deck in accordance with the Building's governing documents and with the approval of the Board of Directors, according to this understanding.

132. The Resnicows now claim that the dividing line should emanate from the point at which the metal stringers meet the roof deck, approximately ten inches further north.

133. Accordingly, a definite, concrete, substantial and justiciable controversy exists with respect to the parties' respective interests in and to the proper division of the roof deck.

134. Mr. Theroux has no adequate remedy at law, as monetary damages are inadequate to resolve the dispute regarding the proper division of the roof deck such that Mr. Theroux may move forward with his plans to renovate his portion of the roof deck.

135. Mr. Theroux seeks a declaratory judgment that the Offering Plan for 71 Washington Place divides the roof deck that is shared between Apartments 1A and 2B by a straight east-west line emanating from the point at which the bottom step of the steel stairs—and not the metal stringer—meets the roof deck, and that as a result, Mr. Theroux has the exclusive right to the immediate use, possession, and enjoyment of the portion of the roof deck beginning at the bottom edge of the final steel stair and continuing until the northernmost end of the roof.

**FOURTH CAUSE OF ACTION**  
**(Alternative -- Reformation of the Offering Plan)**

136. Mr. Theroux repeats and realleges paragraphs 1 through 135 of the Verified Complaint as if fully set forth herein.

137. At the time the Offering Plan was drafted, the Corporation delineated a boundary between the portions of the shared roof deck included in Apartment 1A and those included in Apartment 2B.

138. The boundary was determined in relation to the bottom edge of the steel stairs descending from Apartment 2B, as well as approximate measurements of each respective portion of the roof deck.

139. The Corporation did not intend for the Offering Plan to be ambiguous as to the boundary between the portion of the roof deck connected to Apartment 1A and the portion connected to Apartment 2B.

140. To the extent the court determines that the Offering Plan was ambiguous, extrinsic evidence demonstrates the intent of the Corporation.

141. The long time custom and practice of the prior owners of Apartment 1A and 2B establishes that they believed the boundary line emanated from the point at which the bottom stair met the roof deck.

142. Mr. Theroux purchased the shares to Apartment 2B due to the seller's explicit representations as to the dimensions and boundary line of the roof deck.

143. Upon information and belief, the Resnicows purchased the shares to Apartment 1A after viewing the shared roof deck and observing the placement of the property line as it existed at the time.

144. For nearly fifteen years, Mr. Theroux and the Resnicows continued the practice of the prior owners of their respective apartments.



145. Attorney Resnicow now attempts to advance his own interpretation of the Offering Plan, which creates confusion as to where the boundary between Apartment 1A and 2B's respective portions of the roof deck lies.

146. If the boundary between the properties is defined, as Attorney Resnicow argues, at the point at which the metal stringer meets the roof deck, the owner of Apartment 2B would be forced to jump approximately ten inches to reach his own roof deck, or else trespass on the owner of Apartment 1A's property.

147. To the extent that the court determines that the Offering Plan is not clear on its face, the Offering Plan should be reformed to conform to the longstanding practice of all parties and the intent of the Corporation, and should therefore define the portion of the roof deck available to Apartment 1A as "northward approximately thirteen feet, nine inches to the bottom edge of, but not including the use of, the final step in the steel stairs," and define the portion of the roof deck available to Apartment 2B as "running from the bottom edge of, and including the use of, the final step in the steel stairs approximately twelve feet to the north parapet."

**WHEREFORE**, Plaintiff requests that a judgment be issued and entered against all defendants as follows:

1. On the first cause of action, damages against Attorney Resnicow in an amount to be proven at trial, but in no event less than \$250,000, plus punitive damages and interest.

2. On the second cause of action, damages against Attorney Resnicow in an amount to be proven at trial, but in no event less than \$100,000, plus punitive damages and interest.

3. On the third cause of action, a declaration that the Offering Plan for 71 Washington Place divides the roof deck that is shared between Apartments 1A and 2B by a straight east-west line emanating from the point at which the bottom step of the steel stairs meets the roof deck, and

that as a result, Mr. Theroux has the exclusive right to the immediate use, possession, and enjoyment of the portion of the roof deck beginning at the bottom edge of the final steel stair and continuing until the northernmost end of the roof.

4. On the fourth cause of action, in the alternative, for a reformation of the Corporation's Offering Plan as follows: (i) define the portion of the roof deck available to Apartment 1A as "northward approximately thirteen feet to the bottom edge of, but not including the use of, the final step in the steel stairs," and (ii) define the portion of the roof deck available to Apartment 2B as "running from the bottom edge of, and including the use of, the final step in the steel stairs approximately eleven feet to the north parapet."

5. Plaintiffs' reasonable attorneys' fees, costs and expenses in an amount to be determined at trial, plus interest.

6. In all events, such other and further relief as this Court deems just and proper.

Dated: New York, New York  
May 18, 2017

PRYOR CASHMAN LLP

By: 

Eric D. Sherman, Esq.

Bryan T. Mohler, Esq.

Rebecca L. Matte, Esq.

7 Times Square  
New York, New York 10036  
(212) 421-4100  
*Attorneys for Plaintiff*

VERIFICATION

STATE OF CALIFORNIA            )  
  ) ss.:  
COUNTY OF LOS ANGELES        )

JUSTIN THEROUX, being duly sworn, deposes and says:

I am the Plaintiff in this action. I have read the annexed verified complaint, know the contents thereof and the same are true to my knowledge, except those matters which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. This verification is made under the penalties of perjury.

 X

Justin Theroux

Sworn to before me this  
\_\_\_\_\_ day of May, 2017

*See attached*

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

3447017 v2  
00000001222

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer(s), not Notary)

\_\_\_\_\_  
 \_\_\_\_\_

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
 County of Los Angeles

Subscribed and sworn to (or affirmed) before me  
 on this 18<sup>th</sup> day of May, 2017  
 by Date Month Year

(1) Justin Theroux

(and (2) \_\_\_\_\_),  
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature Michele Morgen  
 Signature of Notary Public



Seal  
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_