No. _____

IN THE

Supreme Court of the United States

50 MURRAY STREET ACQUISITION LLC,
Petitioner,

v.

JOHN KUZMICH, ET AL.,
Respondents.

On Petition for a Writ of Certiorari
to the New York Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Jonathan M. Sperling
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 100018

Jack Boeglin
COVINGTON & BURLING LLP
265 Strand
London WC2R 1BH

Mark W. Mosier
Counsel of Record
Kevin F. King
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
mmosier@cov.com
(202) 662-6000

Counsel for Petitioner

QUESTIONS PRESENTED

In *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, 560 U.S. 702 (2010), the Court granted certiorari to settle a question that had divided lower courts: Can a judicial decision constitute a taking under the Fifth and Fourteenth Amendments? The eight-justice Court that decided *Stop the Beach* was unable to resolve the question. A four-justice plurality concluded that the Takings Clause applies equally to the judicial branch as to the legislative and executive branches. But the remaining justices declined to resolve the issue. Far from clarifying the law, the Court's fractured decision has only exacerbated the confusion in the lower courts. Some courts now follow the *Stop the Beach* plurality opinion and recognize judicial-takings claims. Others deny that judicial-takings claims are cognizable. This case presents an opportunity to resolve the question left open in *Stop the Beach*.

The questions presented are:

1. Whether the Fifth and Fourteenth Amendments prohibit courts, like other branches of government, from eliminating established property rights without just compensation.

2. Whether the New York Court of Appeals effected an unconstitutional taking by holding, contrary to decades of settled law and practice, that properties receiving benefits under Section 421-g of the New York Real Property Tax Law are ineligible for deregulation under New York's rent-stabilization laws.

PARTIES TO THE PROCEEDING BELOW AND RULE 29.6 STATEMENT

Petitioner is 50 Murray Street Acquisition LLC. Petitioner certifies that its parents are 50 Murray Mezz One LLC, 50 Murray Mezz Two LLC, 50/53 JV LLC, Clipper Realty LP, and Clipper Realty Inc.

Respondents are John Kuzmich, Sandra May, Joshua Socolow, Ignatius Navascues, Kendrick Croasmun, Rishi Khanna, Caitlan Senske, Jamie Axford, Jonathan Gazdak, Suzy Heimann, Michael Gorzynski, Nikesh Desai, Heidi Burkhart, Ben Drylie-Perkins, Keiron McCammon, Lisa Atwan, Jennifer Senske Ryan, Brad Langston, Alejandra Garcia, Lisa Chu, Scott Reale, Dan Slivjanovski, Shiva Pejman, Laurie Karr, Adam Seifer, Anand Subramanian, Darcy Jensen, Elin Thomasian, Hazel Lyons, David Drucker, Howard Pulchin, Jin Sup Lee, Jenn Wood, Nicholas Apostolatos, Alex Kelleher, Brian Knapp, Jeff Rives, Jason Lewis, Laura Fieseler Hickman, Franklin Yap, and Steven Greenes.

DIRECTLY RELATED PROCEEDINGS

- *Kuzmich v. 50 Murray St. Acquisition LLC*, Nos. 50 & 51 (N.Y.) (opinion issued and judgment entered June 25, 2019; reargument denied Sept. 12, 2019);

- *West v. B.C.R.E-90 W. St., LLC*, Nos. 6589 & 6590 (N.Y. App. Div., First Dep't) (opinion issued and judgment entered May 17, 2018);

- *Kuzmich v. 50 Murray St. Acquisition LLC*, No. 5479 (N.Y. App. Div., First Dep't) (opinion issued and judgment entered Jan. 18, 2018);

- *West v. B.C.R.E.-90 W. St., LLC*, No. 157031/15 (N.Y. Sup. Ct.) (opinion issued and judgment entered July 19, 2017; superseding opinion issued and judgment entered Jan. 31, 2018); and

- *Kuzmich v. 50 Murray Street Acquisition LLC*, No. 155266/16 (N.Y. Sup. Ct.) (opinion issued and judgment entered July 3, 2017).

There are no other proceedings in any court that are directly related to this case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTION, STATUTES & REGULATIONS

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner 50 Murray Street Acquisition LLC respectfully petitions for a writ of certiorari to review the judgment of the New York Court of Appeals.

OPINIONS BELOW

The opinion of the Supreme Court of New York (App. 37a-46a) is unreported. The opinion of the New York Appellate Division, First Department, is reported at 157 A.D.3d 556 (2018) (App. 33a-37a). The opinion of the New York Court of Appeals (App. 1a-32a) is reported at 34 N.Y.3d 84 (2019). The New York Court of Appeals' order denying the petition for reargument (App. 47a) is unreported.

JURISDICTION

The New York Court of Appeals issued its decision on June 25, 2019, and denied a timely petition for reargument on September 12, 2019. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The pertinent constitutional, statutory, and regulatory provisions are reproduced in the appendix to this petition. App. 72a-91a.

INTRODUCTION

This case presents an opportunity to resolve the question left unanswered in *Stop the Beach*: whether judicial action can amount to a taking of private property under the Fifth and Fourteenth Amendments. The separate opinions in *Stop the Beach*, none of which commanded a majority, have sown confusion in the lower courts, leading to conflicting approaches in the adjudication of judicial-takings claims. Some courts have followed the *Stop the Beach* plurality's rule, under which a court effects a judicial taking when it eliminates an established property right. Other courts have denied that judicial-takings claims are cognizable. Still others have adopted hybrid rules combining elements of the *Stop the Beach* plurality and concurring opinions.

This issue is tremendously important. Because judicial takings of established property rights are accompanied by the force of precedent, they have sweeping effects beyond the immediate parties. And judicial-takings claims are frequently high-stakes for the parties involved, as illustrated by this case, which affects hundreds of millions of dollars in investments. There is thus special and urgent need for a clear rule to determine when and under what circumstances judicial takings occur. The Court should grant certiorari to establish that rule and complete the work left unfinished in *Stop the Beach*.

The judicial taking at issue here arises from a New York economic-development program. In 1995, the New York Legislature lured real-estate developers and investors to Lower Manhattan with a package of

incentives, including tax benefits, to convert commercial properties to new apartment housing. This program, codified as Section 421-g of the New York Real Property Tax Law, directed that newly converted apartment buildings were "fully subject to" New York's Rent Stabilization Law, which imposed stringent limits on rents, but also contained "luxury decontrol" provisions that exempted high-end apartments from rent regulation.

For decades, New York agencies interpreted "fully subject" to mean that Section 421-g properties were subject to the full Rent Stabilization Law, including both its rent regulating and rent *de*-regulating provisions. Agencies enshrined this interpretation in regulations and guidance letters, thereby allowing owners of Section 421-g buildings to deregulate luxury apartments and lease them at market rates, rather than the much lower rates permitted under the Rent Stabilization Law.

In 2014, Petitioner purchased two Section 421-g apartment buildings for more than $540 million. Relying on agency guidance that the luxury-decontrol provisions applied to these properties, Petitioner leased the apartments at market rates. Respondents—tenants in Petitioner's Section 421-g buildings who signed market leases—then sued, asserting that their apartments are not subject to decontrol, and that their rents must be reduced to considerably lower, stabilized rates. In addition, Respondents claimed entitlement to retroactive refunds, totaling millions of dollars, for rent overcharges dating back to Petitioner's purchase of the buildings.

In a divided opinion, the New York Court of Appeals ruled for Respondents. Reversing the unanimous judgment of the state's intermediate appellate court and overriding decades of consistent enforcement by regulators, the Court of Appeals held that Section 421-g properties are *not* subject to the Rent Stabilization Law's luxury-decontrol provisions. The ruling strips Petitioner and other investors of their previously established right to charge market rents for Section 421-g apartments, "dramatically chang[ing] the terms of the bargain long after the Legislature's goals [were] achieved." App. 31a (DiFiore, C.J., dissenting). And because the Rent Stabilization Law grants tenants nearly unlimited lease-renewal and transfer rights—all without the property owner's consent—the ruling likewise subjects Petitioner to a permanent physical occupation of its property.

By "declar[ing] that what was once an established right of private property no longer exists," *Stop the Beach*, 560 U.S. at 717 (plurality opinion) (quotations marks omitted), the Court of Appeals' ruling squarely presents the question that has divided lower courts since *Stop the Beach* was decided nearly a decade ago. The Court should grant the petition to clarify the law governing judicial takings and to hold that the Court of Appeals' ruling was an uncompensated taking of Petitioner's property.

STATEMENT OF THE CASE

A. Statutory Background

1. The Lower Manhattan Revitalization Plan

In the early 1990s, Lower Manhattan was an economically depressed area. Businesses were fleeing at "an alarming rate," vacancy rates were at a post-World War II high, and tax-assessment values were "in a downward spiral." N.Y. S. Res. 5320, 218th Gen. Assemb., Reg. Sess. § 8028, at 5 (1995). To "reverse the decline in the economy of Lower Manhattan," the State of New York in 1995 implemented the Lower Manhattan Revitalization Plan. *Id*. at 18.

As part of this Plan, the New York State Legislature enacted Section 421-g of New York's Real Property Tax Law, which "provided tax incentives designed to encourage private sector investment … in lower Manhattan," including "encourag[ing] the conversion and/or renovation of obsolete commercial buildings into viable residential housing." *Id*. Such conversions were doubly beneficial: They eliminated aging and increasingly vacant commercial building stock while at the same time expanding the limited supply of housing. *See id*.

Under the Real Property Tax Law, Section 421-g buildings are "fully subject to control" under New York's Rent Stabilization Law during the period tax benefits are received. N.Y. Real Property Tax Law § 421-g(6). When a tenant rents a Section 421-g apartment subject to the Rent Stabilization Law, the Law's restrictions remain in effect for the life of the

tenancy, including after the expiration of tax benefits, unless the tenant's lease expressly states that the apartment would no longer be rent-stabilized following the expiration of Section 421-g benefits. *See id.*

2. New York's Rent Stabilization Law

The Rent Stabilization Law is a collection of intertwined state and local laws that together limit rents for apartment housing. *See* N.Y.C. Admin. Code §§ 26-501 *et seq.*; N.Y. Emergency Tenant Protection Act of 1974, §§ 8621–8634. In addition to governing apartment buildings with six or more units built before January 1, 1974, the Rent Stabilization Law also applies to apartment buildings constructed after that date for which the owner is receiving (or, in some instances, has received) tax breaks, government loans, or other similar assistance—including tax benefits under Section 421-g.

The Rent Stabilization Law is designed to serve a dual purpose: manage the affordability of rents and "encourage future housing construction by allowing landlords reasonable rent increases so that they could profit from the operation of their properties." *Ansonia Residents Ass'n v. New York State Div. of Hous. & Cmty. Renewal*, 75 N.Y.2d 206, 216 (1989). The law was intended to be "less onerous" than its predecessor rent-control regime, *id.*, and to facilitate a "transition from regulation to a normal market of free bargaining between landlord and tenant," N.Y. Unconsol. Law § 8622.

The system of rent stabilization created by the law regulates the rents that can be charged to new tenants signing leases for existing apartments and

also the amount of any subsequent rent increases. *See generally* Andrew Scherer & Hon. Fern Fisher, Residential Landlord Tenant L. in N.Y. § 4:99. Every year, the Rent Guidelines Board sets maximum increases owners of rent-stabilized properties can charge for these vacancy and renewal leases. *See id.* In some years, no annual rent increases are authorized; even when increases are authorized, they are often modest, typically ranging between 1% to 4% for one-year lease renewals and 2% to 7% for two-year renewals.[1] The Rent Stabilization Law also permits increases based on capital improvements, although the extent and duration of these increases is highly circumscribed. As a result of these restrictions, rents for stabilized apartments are generally significantly lower than rents for comparable market-rate apartments.[2]

In addition to regulating rents, the Rent Stabilization Law also grants tenants the equivalent of a transferrable life estate. Subject only to narrow limitations, the Rent Stabilization Law permits an incumbent tenant to renew a rent-stabilized lease in perpetuity without the property owner's consent. *See* N.Y. Unconsol. Law § 8623; 9 NYCRR § 2522.5(b). The Law also grants tenants the right to transfer the

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[1] *See Rent Guidelines Board Apartment Orders #1 through #49 (1968 to 2018)*, The City of New York Rent Guidelines Board, https://www1.nyc.gov/assets/rentguidelinesboard/pdf/guidelines/aptorders2018.pdf.

[2] *See Rent Stabilization in New York City*, New York University Furman Center for Real Estate & Urban Policy at 4 (Apr. 2012), https://furmancenter.org/files/publications/HVS_Rent_Stabilization_fact_sheet_FINAL_4.pdf (By 2011, "stabilized rents [were on average] about $1,245 per month lower than market-rate rents in core Manhattan.").

tenancy to family members or "[a]ny other person" who uses the apartment as a primary residence and "can prove emotional and financial commitment, and interdependence between such person and the tenant." 9 NYCRR § 2520.6(*o*); App. 87a. As a result of these provisions, tenancies governed by the Rent Stabilization often extend for decades and across generations, and can continue in perpetuity—effectively depriving owners of the rights to exclude and to use their property.

In 1993, two years before enactment of Section 421-g, the New York State Legislature amended the Rent Stabilization Law by adding "luxury decontrol" provisions. *See* New York Rent Regulation Reform Act of 1993 § 6 (amending N.Y.C. Admin. Code § 26-504). These provisions permitted deregulation of rent-stabilized apartments when two criteria were met. *First*, the initial rent for a new apartment or the maximum stabilized monthly rent for an existing apartment had to exceed $2,000 per month. *Second*, the apartment had to become vacant, or its incumbent tenant(s) must have earned more than $250,000 in consecutive years. *See, e.g.*, N.Y.C. Admin. Code §§ 26-504.1, 26-504.2, and 26-504.3 (repealed June 14, 2019).[3]

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[3] Later amendments increased the monthly-rent decontrol threshold to $2,500 and reduced the income-based decontrol threshold to $175,000. *See Dworman v. New York State Div. of Hous. & Cmty. Renewal*, 94 N.Y.2d 359, 366 n.1 (1999). Legislation enacted in 2019 repealed the decontrol provisions altogether. That repeal does not affect this case, because the initial rents for all apartments in the buildings at issue exceeded the luxury-decontrol threshold then in effect. *See infra* at 12.

Apartments that met these decontrol criteria were permanently exempted from the Rent Stabilization Law and could be rented at market rates, without regard to the Rent Stabilization Law's restrictions on base rents, annual rent increases, or increases based on capital improvements. Decontrolled units are likewise permanently exempted from the Rent Stabilization Law's lease-renewal and succession rights, such that the duration and terms of a tenancy are a matter of contract rather than government fiat.

3. Established Interpretation of Section 421-g

Both before and after Section 421-g's adoption, New York state and local agencies consistently took the position that Section 421-g properties being "fully subject to control" under the Rent Stabilization Law meant just that: The properties were subject to the *entirety* of that law, including its luxury-decontrol provisions.

For instance, in 1997 the New York City Department of Housing Preservation and Development issued regulations clarifying that Section 421-g properties are eligible for luxury decontrol. These regulations, which were adopted through notice-and-comment rulemaking, expressly removed apartments in Section 421-g buildings from the Rent Stabilization Law's requirements if the apartments were "exempt from rent regulation" under the luxury-decontrol provisions. 28 R.C.N.Y. §§ 32-02, 32-05 (1997).

The Department also implemented this understanding in reports required of owners of Section 421-g property. One form required owners to affirm that

they would file a rent-stabilization registration for each apartment "other than exempt dwelling units." App. 152a. Another form required owners to submit copies of rent registrations *or* documentation showing the monthly rent for each "luxury unit['s] … exempt lease." App. 155a. Owners were likewise required to make annual filings confirming that "[a]ll dwelling units are in compliance with Rent Stabilization *or are Exempt Dwelling Units*." App. 158a (emphasis added).

Guidance issued by the New York State Division of Housing and Community Renewal, the state agency responsible for administering the Rent Stabilization Law, consistently embraced the same understanding. A guidance letter issued by the Division in 1997 explained that "high-rent deregulation is available with respect to [Section] 421-g units." App. 28a. The Division reaffirmed this position in 2000, indicating that "where there are Sec. 421-g benefits being used and where the first tenant of a newly created apartment is actually charged and actually pays $2,000 per month or more, the apartment is exempt from rent regulation from the inception of occupancy." App. 150a. In 2002, the Division issued yet another letter "reiterat[ing] the position taken in [its 2000] letter." App. 150a.

This regulatory guidance was consistent with the legislative record surrounding Section 421-g's enactment. A letter from then-Mayor of New York City Rudolph Giuliani to then-New York State Senate Majority Leader Joseph Bruno confirms this understanding. App. 137a–138a. The letter stated that Section 421-g buildings "would be subject to rent

stabilization to the same extent as, *but to no greater extent than*, other rent regulation property." *Id.* (emphasis added). As a result, Mayor Giuliani concluded, luxury decontrol "would apply to property receiving [Section 421-g] benefits." *Id.* This letter from Mayor Giuliani was read into the legislative record and included in the official bill jacket accompanying Assembly Bill 8028, which enacted Section 421-g. Writing in reply, Senator Bruno explained that Section 421-g buildings would be "fully subject to the deregulation provisions" enacted in 1993, and that Mayor Giuliani's understanding "comport[ed] with this Senate's own reading of this legislation." App. 139a–140a.

This established interpretation of Section 421-g was further cemented by repeated legislative ratification. When the luxury-decontrol provisions were enacted in 1993, the New York State Legislature specified by statute those categories of properties ineligible for luxury decontrol. Included in this list were "Affordable New York Housing Program" buildings under Section 421-a of the Real Property Tax Law, which like Section 421-g properties are eligible for tax benefits. *See* New York Rent Regulation Reform Act of 1993 § 6 (amending N.Y.C. Admin. Code § 26-504). But when Section 421-g was enacted just two years later, the legislature did *not* add Section 421-g properties to the list of those ineligible for luxury decontrol. Indeed, despite repeatedly amending the Rent Stabilization Law in the years following Section 421-g's enactment, the legislature never exempted Section 421-g properties from the luxury-decontrol provisions.

B. Facts and Procedural History

In 2014, Petitioner purchased the buildings located at 50 Murray Street and 53 Park Place in Lower Manhattan for $540 million. App. 17a.

The prior owner had converted the properties from commercial to residential use, and had initially rented the apartments in both buildings at monthly rents in excess of the luxury-decontrol threshold. App. 17a–18a. Accordingly, the prior owner applied for Section 421-g tax benefits and received a Certificate of Eligibility from the New York City Department of Housing Preservation and Development, with a benefits period commencing July 1, 2003. App. 134a. The prior owner also filed annual certificates with the Department stating that all of the apartments were "Exempt Dwelling Units" due to luxury decontrol. App. 133a.

Before purchasing the properties, Petitioner confirmed that the properties had been receiving Section 421-g benefits *and* had been exempted from the Rent Stabilization Law under the luxury-decontrol provisions. App. 17a. Petitioner also sought and obtained repeated assurances—including past advisory opinion letters from the New York State Division of Housing and Community Renewal and further confirmation from the New York City Department of Housing Preservation and Development—that the luxury-decontrol provisions applied to these specific properties and would continue to apply after the sale. App. 17a. After purchasing the properties, Petitioner

continued to file mandatory annual certificates stating that the apartments were exempt from rent stabilization due to luxury decontrol. App. 134a-35a.

Respondents rented apartments at 50 Murray Street and 53 Park Place at market rents. App. 17a. Their leases accordingly stated that the apartments were not rent-stabilized. App. 17a. The rents for the relevant apartments ranged from $3,295 to $10,295 per month, well in excess of the luxury-decontrol threshold. App. 18a.

In June 2016, Respondents—roughly forty tenants at the two buildings—sued Petitioner in state court seeking a declaration that their apartments were not subject to the luxury-decontrol provisions. App. 94a. Respondents claimed to be "entitled to reimbursement of the excess rent amounts which they ha[d] paid"—i.e., any rent above the considerably lower rent-stabilized rate. App. 96a. Respondents further alleged that they are "entitled to all the rights of rent stabilized tenants, including but not limited to regulated rents going forward and the rights of renewal and succession." App. 96a.

The parties filed cross-motions for summary judgment. App. 38a. In July 2017, the trial court awarded summary judgment to Respondents, determining that they were "entitled to [a] declaration" that the luxury-decontrol provisions do not apply to their Section 421-g apartments. App. 42a.

The Appellate Division unanimously reversed. App. 34a. The court criticized the trial court for overlooking basic principles of statutory construction, and further explained that "the legislature was aware"

that "most, if not all, apartments in buildings receiving 421-g benefits would, in fact, never be rent-stabilized, because the initial monthly rents of virtually all such apartments were set, as here, at or above the deregulation threshold." App. 35a.

On June 25, 2019, in a divided opinion, the New York Court of Appeals reversed, holding that Section 421-g properties are not eligible for luxury decontrol. App. 1a. In an opinion authored by Judge Stein, the majority afforded no weight to the decades-long interpretations of Section 421-g implemented by New York's regulatory agencies, App. 7a, gave only a passing mention to the legislative record, App. 11a-12a, and dismissed evidence of advisory opinions regarding the applicability of luxury decontrol as "[v]ague claims of contrary 'government assurances,'" App. 12a.

Chief Judge DiFiore, in a vigorous dissent, explained that there is no "evidence that anyone ever construed section 421-g[] as precluding application of luxury decontrol to section 421-g buildings." App. 29a. "To the contrary, it is clear … that the agencies most closely involved in the implementation of the section 421–g program and the property owners subject to that program (not to mention the tenants that agreed to market-rate rents) shared a common understanding—that the entirety of the RSL applied to section 421-g buildings, including its luxury decontrol provisions." *Id.*

Chief Judge DiFiore concluded that investors "rel[ied] on a common sense reading of legislation, clear legislative history and the representations of implementing agencies," but none of that "protected

them … from the majority's retroactive reading of statutory text that dramatically change[d] the terms of the bargain long after the Legislature's goals [were] achieved." App. 31a.

On July 25, 2019, Petitioner moved for reargument. Citing this Court's decision in *Stop the Beach*, Petitioner argued that the Court of Appeals' ruling violated the Takings Clause "because it vitiate[d] what were … established rights of property owners who invested significant sums developing apartments under § 421-g." App. 69a. "By deeming the luxury decontrol provisions inapplicable to § 421-g properties," Petitioner argued, the Court of Appeals had "declare[d] that what was once an established right of private property no longer exists." App. 69a (citing *Stop the Beach*, 560 U.S. at 715 (plurality opinion)). In doing so, Petitioner raised the judicial-takings issue at the same stage, and through the same mechanism, as the petitioners in *Stop the Beach*. *See* 560 U.S. at 712 n.4, 727-28.

On September 12, 2019, the Court of Appeals denied Petitioner's motion for reargument in a summary order that did not address Petitioner's arguments. App. 47a.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD RESOLVE THE QUESTION WHETHER JUDICIAL ACTION CAN CONSTITUTE A TAKING.

For well over a century, this Court has signaled that courts, no less than executives or legislatures, can effect unconstitutional takings. But a majority of

the Court has never clearly and unequivocally held as much. As a result, confusion abounds in the lower courts. Those courts disagree not only on the threshold question whether the judiciary can engage in a taking, but also on the test for determining whether a taking has occurred. The Court should grant certiorari to resolve these important, recurring questions.

A. The Fractured Decision in *Stop the Beach* Has Increased the Confusion Regarding Judicial Takings.

Recognizing the longstanding disagreement among lower courts regarding the viability of judicial-takings claims, this Court granted certiorari to settle the issue in *Stop the Beach*. But an eight-member Court could not bring clarity to a muddled judicial-takings framework. Although six justices agreed that the Constitution imposes limits on the judiciary's ability to eliminate established property rights without compensation, no rule of decision commanded a majority. The Court's fractured decision left unresolved fundamental questions about the judicial-takings doctrine's governing standards and constitutional grounding, and has exacerbated the confusion in the lower courts.

1. Courts Have Long Been Divided on Whether Judicial Action Can Be a Taking.

Even before *Stop the Beach*, the Court had occasionally addressed whether a court decision that changes the law in a way that eliminates established property rights may violate the Constitution. But those decisions sent conflicting messages to lower

courts. While the Court's earliest and most recent decisions seem to recognize the viability of judicial-takings claims, New Deal-era decisions appeared to foreclose such claims. These seemingly conflicting decisions made it unclear whether judicial-takings claims are cognizable.

In two decisions issued more than a century ago, the Court appeared to accept the view that judicial action could constitute a taking. *See Chicago, B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226 (1897); *Muhlker v. New York & Harlem R.R. Co.*, 197 U.S. 544 (1905). In reviewing a state court's confirmation of a jury award compensating a railroad with nominal damages for the loss of its right of way, the *Chicago* Court observed that "a judgment of a state court, even if it be authorized by statute, whereby private property is taken for the state or under its direction for public use, without compensation made or secured to the owner, is … wanting in the due process of law." 166 U.S. at 241. And in *Muhlker*, the Court reversed a New York Court of Appeals ruling that holders of property adjacent to recently constructed elevated railway tracks were not due any compensation because—contrary to an earlier state precedent—the owners held no inconsistent easements. *See* 197 U.S. at 570. In so doing, a four-justice plurality reasoned that "[w]hen the plaintiff acquired his title … the law of New York … assured to him that his easements of light and air were secured by contract as expressed in [earlier] cases, and could not be taken from him without payment of compensation." *Id.* at 570.

Following *Muhlker*, "the Court proceeded to waffle on the issue [of judicial takings] for several decades." Barton H. Thompson, Jr., *Judicial Takings*, 76 Va. L. Rev. 1449, 1465 (1990). On one hand, the Court continued to acknowledge its authority under the Due Process Clause to review state court decisions declaring the non-existence of allegedly "taken" property rights and to invalidate those decisions if they rested on no "fair or substantial basis." *Demorest v. City Bank Farmers Trust Co.*, 321 U.S. 36, 42 (1944); *Broad River Power Co. v. South Carolina*, 281 U.S. 537, 540, *aff'd on rehearing*, 282 U.S. 187, 191 (1930); *see Fox River Paper Co. v. Railroad Comm'n*, 274 U.S. 651, 654-57 (1927).[4] On the other hand, New Deal-era decisions rejected the argument that a state court ruling that changes the law violates the Constitution. *See, e.g.*, *Brinkerhoff-Faris Tr. & Sav. Co. v. Hill*, 281 U.S. 673, 681 n.8 (1930). In these cases, the Court indicated that state courts could "ordinarily overrule their own decisions without offending constitutional guaranties, even though parties may have acted to their prejudice on the faith of the earlier decisions." *Id.*; *see also Great N. Ry. Co. v. Sunburst Oil & Ref. Co.*, 287 U.S. 358, 364 (1932).

More recently, the Court applied its takings jurisprudence to judicial action, but without grappling

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[4] *See also Hughes v. Washington*, 389 U.S. 290, 296-97 (1967) (Stewart, J., concurring) (state court decision violates Takings Clause where it "constitutes a sudden change in state law, unpredictable in terms of the relevant precedents," because "a State cannot be permitted to defeat the constitutional prohibition against taking property without due process of law by the simple device of asserting retroactively that the property it has taken never existed at all").

with whether such action should be subject to a takings analysis in the first place. For example, in *Webb's Fabulous Pharmacies*, the Court applied regulatory-takings doctrine—including *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978)—to evaluate whether the Florida Supreme Court's construction of a state statute regarding interest on interpleader accounts was a taking. *See Webb's Fabulous Pharmacies, Inc. v. Beckwith,* 449 U.S. 155, 156–158, 160–164 (1980). Because the state court's decision contravened "[t]he usual and general rule" regarding interest, such that it violated "more than a unilateral expectation" on the part of creditors, the Court found a taking. *Id.* at 161–62; *see also id.* at 163–64 ("Neither the Florida Legislature by statute, nor the Florida courts by judicial decree, may accomplish the result the county seeks simply by recharacterizing the principal as 'public money' because it is held temporarily by the court.").

Likewise, in *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), the Court cited regulatory-takings law when evaluating the California Supreme Court's interpretation of a state constitutional provision. *See id.* at 78–79. Applying the *Penn Central* framework, the Court asked whether the state court's decision violated "reasonable investment backed expectations." *Id.* at 82–84 & n.7. The Court also considered a related due-process argument. *See id.* at 84–85.

In the absence of consistent guidance on judicial-takings doctrine from this Court, lower courts divided on the subject. Some courts—including the

D.C. and Fourth Circuits—questioned whether judicial-takings claims are cognizable at all. *See, e.g., Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Hodel*, 830 F.2d 374, 381 (D.C. Cir. 1987) ("The question of whether courts, as opposed to legislative bodies, can ever 'take' property in violation of the Fifth Amendment is an interesting and by no means a settled issue of law."); *Carolina-Virginia Racing Ass'n v. Cahoon*, 214 F.2d 830, 832 (4th Cir. 1954) ("[T]he mere fact that the state court reversed a former decision to the prejudice of one party does not take away his property without due process of law[.]" (cleaned up)); *Brace v. U.S.*, 72 Fed. Cl. 337, 358-59 (Ct. Fed. Cl. 2006) ("Generally speaking, court orders have never been viewed themselves as independently giving rise to a taking.").[5]

Conversely, some federal courts—including the Ninth Circuit—invalidated state court decisions on the ground that they violated the Takings Clause. For example, in *Robinson v. Ariyoshi*, 753 F.2d 1468 (9th Cir. 1985), the Ninth Circuit held that the Hawaii Supreme Court had effected a judicial taking "when it overruled earlier cases and [adopted] for the first time, after more than a century of a different law, … the common law doctrine of riparian ownership," effectively stripping property owners of vested water rights. *Id.* at 1474; *see also Sotomura v. County of Hawaii*, 460 F. Supp. 473 (D. Haw. 1978) (separate

[5] Some commentators similarly interpreted this Court's decisions as foreclosing judicial-takings claims. *See, e.g.*, Louis Kaplow, *An Economic Analysis of Legal Transitions*, 99 Harv. L. Rev. 509, 517 n.10 (1986) (characterizing it as "well accepted that no right to compensation exists" when changes in common law caused adverse "economic impacts").

Hawaii Supreme Court decision altering dividing line between public and private beach was judicial taking).

In short, before *Stop the Beach*, the Court's decisions did not provide clear guidance on whether judicial action could constitute a taking. This lack of guidance led to widespread confusion in the lower courts, including a circuit split, on whether judicial-takings claims are viable.

2. The *Stop the Beach* Court Did Not Resolve the Disagreement on Judicial Takings.

In *Stop the Beach*, the Court granted certiorari to resolve the question whether judicial action can constitute a taking. The Florida Supreme Court had determined that a statute aimed at restoring and preserving beachfront did not unconstitutionally deprive beachfront owners of certain littoral property rights because, in essence, those rights did not previously exist under state law. *See Stop the Beach*, 560 U.S. at 712. Following this ruling, the property owner petitioned for certiorari, urging the Court to answer a constitutional question of "ever-increasing" import by defining clear standards for judicial takings. *See Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, Petition for a Writ of Certiorari, No. 08-1151, 2009 WL 698518 (filed Mar. 13, 2009). The Court granted the petition, but its fractured decision left unresolved the judicial-takings doctrine's governing standards and constitutional grounding.

In the plurality opinion, Justice Scalia (joined by three justices) recognized that the Takings Clause—unlike many constitutional provisions—"is

not addressed to the action of a specific branch or branches," but is instead "concerned simply with the act" of taking private property without just compensation. *Stop the Beach*, 560 U.S. at 713–14; *see* U.S. Const. amend. V ("[N]or shall any person … be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."). Based on the plain constitutional text, the plurality concluded that "the Takings Clause bars *the State* from taking private property without paying for it, no matter which branch is the instrument of the taking." *Stop the Beach*, 560 U.S. at 715. Under the plurality's test, "[i]f a legislature or a court declares that what was once an established right of private property no longer exists, it has taken that property[.]" *Id.* at 715, 717.

Justice Kennedy, joined by Justice Sotomayor, concurred in part and concurred in the judgment. Justice Kennedy declined to accept the plurality's analysis, but posited instead that "[i]f a judicial decision, as opposed to an act of the executive or the legislature, eliminates an established property right, the judgment could be set aside as a deprivation of property without due process of law." *Id.* at 735. Given longstanding precedent holding that property regulations may be invalidated on due process grounds, it was "natural to read the Due Process Clause as limiting the power of courts to eliminate or change established property rights." *Id.* at 736. More specifically, in Justice Kennedy's view, "[t]he Court would be on strong footing in ruling that a judicial decision that eliminates or substantially changes

established property rights, which are a legitimate expectation of the owner, is 'arbitrary or irrational' under the Due Process Clause." *Id.* at 737.

Finally, Justice Breyer, joined by Justice Ginsburg, concurred in the judgment and declined to resolve whether judicial-takings claims are cognizable. *See id.* at 742–45 (Breyer, J., concurring). Though in agreement that the Florida Supreme Court's decision did not constitute a judicial taking, Justice Breyer found it unnecessary to "specify[] the precise standard" for such a claim (or even to recognize the existence of such a doctrine). *Id.* at 744. Rather, those "questions of constitutional law [were] better left for another day." *Id.* at 742.

3. The Confusion Around Judicial Takings Has Only Increased Since *Stop the Beach*.

Stop the Beach has sown confusion among the lower courts. Without a governing majority opinion—or a clear rule of decision—courts have struggled to address the most basic questions surrounding judicial takings. Indeed, courts are split regarding whether judicial-takings claims are cognizable

Some courts, including multiple federal courts of appeals, have adopted the *Stop the Beach* plurality's test as the governing standard. For example, in *Vandevere v. Lloyd*, 644 F.3d 957 (9th Cir. 2011), the Ninth Circuit "observe[d] that any branch of state government could … effect a taking," and that any "federal court remains free to conclude that a state supreme court's purported definition of a property right

really amounts to a subterfuge for removing a pre-existing, state-recognized property right." *Id.* at 963 n.4. The Third and Eighth Circuits have similarly applied the judicial-takings test endorsed by the *Stop the Beach* plurality. *See PPW Royalty Tr. by & through Petrie v. Barton*, 841 F.3d 746, 756 (8th Cir. 2016) (judicial-takings claim turned on whether court decision at issue "eliminate[d] an established property right"); *In re Lazy Days' RV Ctr. Inc.*, 724 F.3d 418, 425 (3d Cir. 2013) (judicial-takings doctrine "'protects property rights as they are established'" (quoting *Stop the Beach*, 560 U.S. at 732)).[6]

But other federal courts have questioned, and in some cases outright rejected, the notion that any authoritative judicial-takings doctrine exists. For example, the Seventh Circuit has rejected a judicial-takings claim on the ground that "no binding precedent" would support it. *Gibson v. Am. Cyanamid Co.*, 760 F.3d 600, 626 (7th Cir. 2014); *see also id.* at n.10 (noting that "only four Justices" had endorsed a judicial takings theory in *Stop the Beach*). While the Federal Circuit initially saw *Stop the Beach* as "recogniz[ing] that a takings claim can be based on the action of a court," *Smith v. United States*, 709 F.3d 1114, 1116 (Fed. Cir. 2013), it has since backtracked, casting doubt on "the general viability of a judicial

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[6] Several federal district courts have followed suit. *See, e.g.*, *Stuart v. Ryan*, No. 18-14244-CIV, 2018 WL 3453970, at *1 (S.D. Fla. June 26, 2018) (judicial takings occur where "court effectively changed the law so as to contravene [a] clearly established right"); *Nevada Gen. Ins. Co. v. Encee*, No. CV 11-183 JCH/CG, 2012 WL 13081199, at *7 (D.N.M. Jan. 6, 2012) (judicial takings occur where "decision stripped away a previously established private property [right] that had not been in doubt").

takings claim," and reasoning that because *Stop the Beach* was "a plurality decision," it is "not a binding judgment," *Petro-Hunt, L.L.C. v. United States*, 862 F.3d 1370, 1386 & n.6 (Fed. Cir. 2017). Some federal district courts have taken a similar tack. *See, e.g.*, *Burton v. Am. Cyanamid Co.*, 775 F. Supp. 2d 1093, 1098–99 (E.D. Wis. 2011) (Because *Stop the Beach* plurality is not "binding," there is "no authority for the proposition that there can be a judicial taking.").

State appellate courts have also responded divergently to *Stop the Beach*. Some have treated the decision as precedential. *See, e.g.*, *Town of Ellettsville v. DeSpirito*, 111 N.E.3d 987, 995–96 (Ind. 2018) (retaining common-law state property rule in part to avoid effecting a judicial taking under *Stop the Beach*). Other state courts have effectively dismissed *Stop the Beach* altogether. *See, e.g.*, *N. Nat. Gas Co. v. ONEOK Field Servs. Co.*, 296 Kan. 906, 939–40 (2013) (characterizing *Stop the Beach* as "a plurality opinion with no precedential value"); *Matter of Domestic P'ship of Walsh & Reynolds*, No. 51125-8-II, 2019 WL 2597785, at *13 (Wash. Ct. App. June 25, 2019) (rejecting judicial-takings claim because there is "no federally recognized judicial takings doctrine").

Where courts have reached the merits of judicial-takings claims, they have disagreed on the test to apply. As mentioned above, numerous courts—including the Third, Eighth, and Ninth Circuits—have recognized a version of the judicial-takings rule adopted by the *Stop the Beach* plurality. *See PPW Royalty*, 841 F.3d at 756; *In re Lazy Days' RV Ctr. Inc.*, 724 F.3d at 425; *Vandevere*, 644 F.3d at 963 n.4. Under that approach, a judicial taking occurs when "a

court declares that what was once an established right of private property no longer exists." *Stop the Beach*, 650 U.S. at 716.

But other courts have applied more expansive approaches—for example by *combining* the plurality's framework with Justice Kennedy's due-process analysis. *See, e.g.*, *Surfrider Found. v. Martins Beach 1, LLC*, 14 Cal. App. 5th 238, 258 (Ct. App. 2017) (finding it "clear" that a "judicial action that would be a taking if it were a legislative or executive act is unconstitutional, under either the takings clause or the due process clause").

Still other courts have taken the position that conventional, regulatory takings analysis applies to judicial takings no less than to executive or legislative takings. *See, e.g.*, *PPW Royalty Tr. v. Barton*, No. 14-00513-CV-W-BP, 2015 WL 13263507, at *11 (W.D. Mo. Jan. 30, 2015) (under *Stop the Beach*, "a judicial takings claim would be analyzed in the same way as any other alleged violation of the Takings Clause"); *Surfrider*, 14 Cal. App. 5th at 259 (suggesting that *Penn Central* regulatory-takings factors apply to judicial takings).

And at least one court—the Third Circuit—has layered additional conditions atop the *Stop the Beach* test, declaring that the "adjudication of disputed and competing claims cannot be a [judicial] taking." *In re Lazy Days' RV Ctr. Inc.*, 724 F.3d at 425.

The lack of consensus regarding a clear rule of decision may arise in part because *Stop the Beach* does not lend itself naturally to a *Marks* analysis. *See*

Marks v. United States, 430 U.S. 188, 193 (1977). Rather, because "the approaches taken by the plurality opinion and by Justice Kennedy's concurrence are logically distinct," "rely upon two separate constitutional provisions," and are not easily compared to determine which is "narrower," applying *Marks* analysis to *Stop the Beach* "is not a straightforward task." Josh Patashnik, Note, *Bringing a Judicial Takings Claim*, 64 Stan. L. Rev. 255, 262 (2012).

As these decisions illustrate, courts agree on only one point: The fractured set of opinions in *Stop the Beach* has left the state of judicial takings doctrine unclear. *See, e.g.*, *Jonna Corp. v. City of Sunnyvale, Ca*, No. 17-CV-00956-LHK, 2017 WL 2617983, at *6 (N.D. Cal. June 16, 2017) ("contours" of the judicial takings doctrine "are unclear") (quotation marks and citation omitted); *Petro-Hunt, L.L.C. v. United States*, 126 Fed. Cl. 367, 378 (2016) ("The contours—and even the existence—of a judicial takings doctrine has been debated in federal courts and in legal scholarship."); *Republic of Argentina v. BG Grp. PLC*, 764 F. Supp. 2d 21, 38–39 (D.D.C. 2011) (under *Stop the Beach*, "no clear standard exists for what constitutes" a judicial taking).

B. Judicial Takings Are a Significant Problem Deserving this Court's Attention and a Settled Rule of Decision.

Judicial takings are costly, and not just for the parties involved. Not only do judicial takings frequently cause major losses of property (and property values), they inherently involve the elimination of property *rules*, with effects that sweep well beyond the

parties to any particular case. In short, the harms that flow from judicial takings are both concentrated and diffuse. The lack of a clear governing standard for rectifying these harms is a problem in need of this Court's attention.

This case illustrates the severe economic harms that can result from the elimination of well-established property rules. Petitioner purchased 50 Murray Street and 53 Park Place in 2014 for more than $540 million, on the express understanding—confirmed by government officials including the New York City Department of Housing Preservation and Development—that the apartments in these buildings could be rented at market rates. App. 17a. Following the New York Court of Appeals' decision, however, not only must rents "be rolled back to levels which [are] insufficient to cover mortgage costs and other expenses," but Respondents are seeking millions of dollars in supposed "overcharges" for past rent and to obtain effective life estates in Petitioner's apartments by virtue of the Rent Stabilization Law's renewal and succession rights. App. 132a; *see* p. 7-8, *supra*. Petitioner would not have invested in these properties if it expected to be stripped by judicial fiat of the right to charge market rates or terminate a tenancy at the end of a lease term. It simply "would not have made economic sense" to do so. App. 30a.

The additional costs that judicial takings impose on non-parties by dint of eliminating established property *rules* were a concern Justice Scalia voiced in his dissent from the denial of certiorari in *Stevens v. City of Cannon Beach*, 510 U.S. 1207 (1994) (Scalia,

J., dissenting). In *Cannon Beach*, the Oregon Supreme Court affirmed an order blocking petitioners from building a seawall on their beachfront property, on the ground that the Oregon public supposedly had a longstanding common-law right to use the dry-sand area of the state's beaches. *See id.* at 1332–33. Justice Scalia, joined by Justice O'Connor, questioned the state court's decision and noted that its effects would likely extend far beyond the circumstances of the particular case: "[T]he landgrab (if there is one) may run the entire length of the Oregon coast." *Id.* at 1335. While "the Supreme Court of Oregon's vacillations on the scope of the doctrine of custom make it difficult to say how much of the coast is covered," *id.* at 1335 n.4, the judicial taking in *Cannon Beach* potentially implicated upwards of 300 miles of beachfront property. There are numerous similar examples. *See, e.g.*, *Nextel Communications of the Mid-Atlantic, Inc. v. Commonwealth of Pennsylvania*, No. 17-1506, 2018 WL 2080201, Petition for a Writ of Certiorari *7 (filed May 3, 2018) (noting that compensation for all those similarly situated as petitioner would "exceed[] $500 million").

Finally, judicial-takings claims are common, with the uncertainty surrounding judicial-takings doctrine having led to a significant increase in the number of judicial-takings-based petitions for a writ of certiorari filed in this Court. A steady trickle of such petitions followed this Court's *Webb's Fabulous*

Pharmacies decision in 1980.[7] But the filing of such petitions has accelerated markedly in the wake of *Stop the Beach*.[8] The volume of these claims is particularly troubling given that judicial-takings claims often implicate severe economic consequences for parties and non-parties alike.

II. THE DECISION BELOW CONSTITUTES A JUDICIAL TAKING.

If this Court holds that a judicial decision eliminating established property rights constitutes an unconstitutional taking, the decision below cannot stand.

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[7] *See, e.g.*, *Kimco of Evansville, Inc. v. State of Indiana*, No. 09-197, 2009 WL 2509225, Petition for Writ of Certiorari (filed August 6, 2009); *Goeckel v. Glass*, No. 05-764, 2005 WL 3438569, Petition for Writ of Certiorari (filed December 12, 2005); *Phelps Dodge Corp. and Arizona Pub. Serv. Co. v. The United States et al.*, No. 00-1464, 2001 WL 34125404, Petition for Writ of Certiorari (filed Mar. 19, 2001).

[8] At least seven petitions have been filed in the last two Terms. *See Hogen v. Hogen*, No. 18-1440, 2019 WL 2153335, Petition for Writ of Certiorari (filed May 13, 2019); *Wallace v. Wallace*, No. 18-1404, 2019 WL 2053640, Petition for Writ of Certiorari (filed May 6, 2019); *Stuart v. Ryan*, No. 18-85, 2018 WL 3520855, Petition for Writ of Certiorari (filed July 9, 2018); *Nextel Commc'ns of the Mid-Atlantic, Inc. v. Commonwealth of Pennsylvania*, No. 17-1506, 2018 WL 2080201, Petition for a Writ of Certiorari (filed May 3, 2018); *Petro-Hunt L.L.C. v. United States of America*, No. 17-1090, 2018 WL 704347, Petition for a Writ of Certiorari (filed Feb. 1, 2018); *Stanford v. United States of America*, No. 17-809, 2017 WL 6034219 (filed Dec. 1, 2017); *L.D. Drilling, Inc. v. Northern Natural Gas Co.*, No. 17-786, 2017 WL 5952672, Petition for a Writ of Certiorari (filed Nov. 20, 2017). Many of these petitions suffered from vehicle problems not present here. *See* Part III, *infra.*

Under the standard articulated by the *Stop the Beach* plurality, the New York Court of Appeals' decision constituted a taking because that decision extinguished Petitioner's well-established right to charge market rates for the apartments in the buildings at issue here, and to exclude from the property those unwilling to pay market rents.

Section 421-g provides that properties receiving benefits under the provision are "fully subject to control under" the Rent Stabilization Law. N.Y. Real Prop. Tax Law § 421-g(6). Since its enactment in 1995, regulators have consistently taken the view that the luxury-decontrol provisions in New York's Rent Stabilization Law applied to apartments governed by Section 421-g. In 1997, for instance, New York City's Department of Housing Preservation and Development issued regulations recognizing that luxury decontrol applies to Section 421-g properties. *See* 28 RCNY §§ 32-02, 32-05 (effective Aug. 1, 1997). The Department has administered the Section 421-g program consistent with those regulations ever since—for example, by acknowledging dwelling units subject to luxury decontrol as a specific exemption both on the reports required of Section 421-g property owners upon initial registration and annual re-certification. *See Henry 85 LLC v. Roodman*, No. 154499/2015, 2017 WL 3401332, at *9 (N.Y. Sup. Ct. May 02, 2017); App. 152a-59a.

The New York State Division of Housing and Community Renewal has interpreted Section 421-g in the same way. In 1997, the Division issued a guidance letter confirming that "high-rent deregulation is available with respect to [Section] 421-g units." App. 28a.

The Division has not wavered on that position since, having issued guidance letters in both 2000 and 2002 affirming the interpretation in its 1997 letter. App. 148a-151a.

These settled agency policies were consistent with the plain meaning of the statute and the underlying legislative record. For example, as noted above, Section 421-g specifies that properties receiving benefits under the provision are "fully"—not partially or selectively—"subject to control under" the Rent Stabilization Law. And Section 26-504.2(a), which lists the types of properties ineligible for luxury decontrol, conspicuously omits any mention of Section 421-g properties. *See supra* p. 11-12. The legislative history further supports this view. *See supra* p. 11.

Put simply, both before Section 421-g's enactment and in the years leading up to the Court of Appeals' ruling, New York law and practice were clear that Section 421-g properties were eligible for luxury decontrol. Indeed, before purchasing the 50 Murray Street and 53 Park Place properties, Petitioner sought and received confirmation from New York government agencies, including the Department of Housing Preservation and Development, that luxury decontrol would apply to those *specific* properties. App. 17a. Petitioner's significant investment was thus made with much "more than a unilateral expectation," *Webb's Fabulous Pharmacies*, 449 U.S. at 451, regarding the applicability of luxury decontrol.

As Chief Judge DiFiore explained in dissent, investors "rel[ied] on a common sense reading of

legislation … and the representations of implementing agencies," but none of that "protected them … from the majority's retroactive reading of statutory text that dramatically change[d] the terms of the bargain long after the Legislature's goals [were] achieved." App. 31a.

By deeming the luxury-decontrol provisions inapplicable to Section 421-g properties, the New York Court of Appeals therefore "declare[d] that what was once an established right of private property no longer exists." *Stop the Beach*, 560 U.S. at 715 (plurality opinion). If left undisturbed, this decision will severely infringe Petitioner's property rights.[9]

Among other things, the decision substantially diminishes the value of Section 421-g properties, in violation of Petitioner's (and all other Section 421-g property owners') reasonable investment-backed expectations. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538–39 (2005); *see also* App. 132a (affidavit of building owner declaring that the purchase was made in reliance on luxury decontrol and that it

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[9] The decision below also violated Petitioner's due-process rights because it "eliminates or substantially changes established property rights, which are a legitimate expectation of the owner." *Stop the Beach*, 560 U.S. at 737 (Kennedy, J., concurring). Regulators assured owners that their apartments would be unregulated, and those assurances played an essential role in attracting the capital necessary for Section 421-g to serve its purpose. Petitioner invested in the properties at issue in reliance on the availability of luxury decontrol, and would not have done so without that safety valve. App. 132a. Exempting the apartments from luxury decontrol now, long after the fact, "substantially changes" the rights "legitimate[ly] expect[ed]" by Petitioners. *Stop the Beach*, 560 U.S. at 737 (Kennedy, J., concurring).

"would have not made economic sense" without it). Moreover, by calling into question the lawfulness of the market rents Petitioner charged in the past, the decision threatens Petitioner's entitlement to retain past rent collected (which Respondents are suing to have returned with treble damages).

The Court of Appeals' ruling also subjects Petitioner to indefinite—potentially permanent—physical occupation of its property. By retroactively declaring that Petitioner's apartments are governed by the Rent Stabilization Law, the decision below grants Respondents nearly unlimited renewal and succession rights that together amount to transferrable, rent-stabilized life estates.[10] Specifically, Respondents have invoked the rights of an incumbent tenant to renew a rent-stabilized lease in perpetuity without the property owner's consent, *see* N.Y. Unconsol. Law § 8623; 9 NYCRR § 2522.5(b); App. 127a, and to transfer the tenancy to family members or "[a]ny other person" who uses the apartment as a primary residence and "can prove emotional and financial commitment, and

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[10] Section 421-g provides for rent stabilization to end once its tax benefits have expired, *if* the property owner includes a lease rider explaining that a unit will become decontrolled upon expiration of benefits. N.Y. Real Property Tax Law § 421-g(6). Petitioner (and likely many other Section 421-g property owners) did not include such a rider in its leases because it would have been nonsensical to do so: its apartments were registered with regulators as *not* rent-stabilized, and the leases expressly indicated as much. Although Respondents were aware that their apartments were not rent stabilized (because their leases said so), under the Court of Appeals' ruling the absence of this rider means that the apartments remain rent stabilized for as long as Respondents and their successors choose to live there. App. 127a.

interdependence between such person and the tenant," 9 NYCRR § 2520.6(*o*). As a result of these provisions, which are subject only to narrow exceptions, rent-stabilized tenancies often extend for decades and across generations—during which time the owner is deprived of core property rights, including the ability to use the apartment and exclude others from entering it. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435-36 (1982). Accordingly, the decision below authorizes a nonconsensual physical occupation of Petitioner's apartments that constitutes a taking in its own right. *See id.* at 438-39.

The Court of Appeals' interpretation of Section 421-g, by departing from the established interpretation of that provision, thus violates Petitioner's rights under the Fifth and Fourteenth Amendments.

III. THIS CASE IS A GOOD VEHICLE TO DECIDE WHETHER JUDICIAL ACTION CAN CONSTITUTE A TAKING.

A. This case presents no impediments to the Court clarifying the contours of judicial-takings doctrine. Unlike many cases, the takings analysis does not turn on disputed factual issues. It was settled as a matter of New York law and practice prior to the Court of Appeals decision that Section 421-g property was eligible for luxury decontrol; the sole question is whether the court's holding to the contrary amounts to an unconstitutional taking.

That the petition presents only legal questions separates it from recent petitions the Court has denied. Those petitions frequently required highly fact-

bound inquiries to decide whether a judicial taking occurred. *See, e.g.*, *Hogen*, 2019 WL 2153335, at *8 (judicial-takings claim requiring "not only an understanding of the background relating to the quiet title action below, but also, the background of the settled law denied the Petitioners concerning their title to the farmlands conveyed to them"); *Wallace*, 2019 WL 2053640, at *4 (judicial-takings claim arising out of a suit by a minority shareholder in a small, family-owned corporation, against his brothers for breach of fiduciary duty); *Stuart*, 2018 WL 3520855, at *i, *16 (judicial-taking claim alleging "many factual errors" in relation to "Petitioner's established property rights under Florida law in her permanent residence in Florida (a homestead protected from forced sale by the Florida Constitution), her one-third interest in her father's homestead which she acquired by inheritance, and a one-third interest in the personal property belonging to her deceased parents"). Particularly where the factual record was not adequately developed below, these kind of fact-intensive merits questions can be an "obstacle to [this Court's] review." *Stevens v. City of Cannon Beach*, 510 U.S. 1207, 1213 (1994) (Scalia, J., dissenting from denial of certiorari).

B. The New York Court of Appeals' failure to address whether its ruling constituted a taking poses no obstacle to this Court's review. To the contrary, the posture of this case mirrors that of *Stop the Beach*—namely, a petition for a writ of certiorari seeking direct review of a judicial taking by a state high court. *See* 560 U.S. at 712 & n.4.

In *Stop the Beach*, this Court made clear that "where the state-court decision itself is claimed to constitute a violation of federal law, the state court's refusal to address that claim put forward in a petition for rehearing will not bar our review." 560 U.S. at 712 & n.4. That is what happened here. The judicial taking occurred as a result of the New York Court of Appeals' decision, *see* App. 1a–32a, which reversed the intermediate appellate court's decision upholding Petitioner's right to deregulate the 50 Murray Street and 53 Park Place properties, *see* App. 33a–36a. Petitioner thus raised its judicial-takings claim at the first logical opportunity by asserting it in its motion for reargument in the Court of Appeals. *See* App. 67a ("The Court's ruling eliminates property rights of apartment owners long recognized by state and local regulators, and thus implicates the federal Constitution's Takings Clause and due process limitations prescribed in [*Stop the Beach*].").

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant this petition.

Respectfully submitted,

Jonathan M. Sperling
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 100018

Jack Boeglin
COVINGTON & BURLING LLP
265 Strand
London WC2R 1BH

Mark W. Mosier
Counsel of Record
Kevin F. King
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
mmosier@cov.com
(202) 662-6000

Counsel for Petitioner

October 24, 2019

APPENDIX

APPENDIX A

COURT OF APPEALS OF NEW YORK

No. 50, No. 51

JOHN KUZMICH, *et al*.,

Appellants,

v.

50 MURRAY STREET ACQUISITION LLC,

Respondent.

WILLIAM T. WEST, *et al*.,

Appellants,

v.

B.C.R.E.—90 WEST STREET, LLC,

Respondent,

Argued June 4, 2019
Decided June 25, 2019

Attorneys and Law Firms

Case No. 50:

Friedman Kaplan Seiler & Adelman LLP, New York City (*Robert S. Smith* of counsel) and *Himmelstein, McConnell, Gribben, Donoghue & Joseph LLP*, New York City for appellants in the first above-entitled action.

Holwell Shuster & Goldberg LLP, New York City (*James M. McGuire* and *Gregory Dubinsky* of counsel), *Latham & Watkins LLP*, New York City (*Jonathan Lippman* of counsel) and Washington, D.C. (*Michael E. Bern* of the District of Columbia bar, admitted pro hac vice, of counsel), and *Belkin Burden Wenig & Goldman, LLP*, New York City (*Sherwin Belkin* and *Magda L. Cruz* of counsel), for respondent in the first above-entitled action.

Collins, Dobkin & Miller, LLP, New York City, for Metropolitan Council on Housing, amicus curiae in the first above-entitled case.

Rosenberg & Estis, P.C., New York City (*Alexander Lycoyannis*, *Luise A. Barrack* and *Nicholas Kamillatos* of counsel), for The Real Estate Board of New York, amicus curiae in the first above-entitled action.

Case No. 51:

Friedman Kaplan Seiler & Adelman LLP, New York City (*Robert S. Smith*, *Christopher M. Colorado* and *Anil K. Vassanji* of counsel), and *Himmelstein, McConnell, Gribben, Donoghue & Joseph LLP*, New York City (*Serge Joseph* of counsel), for appellants in the second above-entitled action.

Belkin Burden Wenig & Goldman, LLP, New York City (*Magda L. Cruz*, *Sherwin Belkin*, *Joseph Burden* and *William Baney* of counsel), for respondent in the second above-entitled action.

OPINION OF THE COURT

STEIN, J.:

The question presented on these appeals is whether plaintiffs' apartments, which are located in buildings receiving tax benefits pursuant to Real Property Tax

Law (RPTL) § 421–g, are subject to the luxury deregulation provisions of the Rent Stabilization Law (RSL) (*see generally* Rent Stabilization Law of 1969 [Administrative Code of City of New York § 26–504.1]). We conclude that they are not and, therefore, reverse.

I

In each of these cases, plaintiffs are individual tenants of rented apartments located in lower Manhattan, which are owned by defendants, 50 Murray Street Acquisition LLC or B.C.R.E. – 90 West Street, LLC.[1] Defendants have received certain tax benefits pursuant to section 421–g of the RPTL in connection with the conversion of their buildings from office space to residential use. In these actions, plaintiffs seek, among other things, a declaration that their apartments are subject to rent stabilization. Plaintiffs allege that defendants failed to treat the apartments as rent stabilized even though the receipt of benefits under RPTL 421–g is expressly conditioned upon the regulation of rents in the subject buildings. Defendants maintain that plaintiffs' apartments are exempt from rent regulation under the luxury deregulation provisions added to the RSL as part of the Rent Regulation Reform Act of 1993.[2]

Supreme Court, in separate orders penned by two different Justices, denied defendants' motions for summary judgment and granted plaintiffs' cross-

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[1] For ease of discussion, we refer to plaintiffs and defendants in each of these cases collectively.

[2] The luxury deregulation provisions permit the elimination of rent stabilization protections for certain high-rent housing accommodations upon vacancy or occupation by a high-income household when the rent has lawfully exceeded the statutory threshold (*see* RSL § 26–504.1, *et seq*.).

motions declaring that the apartments are subject to rent stabilization. (*Kuzmich v 50 Murray St. Acquisition LLC,* 2017 NY Slip Op 31416[U] [Sup Ct, NY County 2017]; West v. B.C.R.E.-90 W. St., LLC, 65 Misc 3d 349 [Sup Ct, NY County 2018]). Both Justices reasoned that RPTL 421–g (6) unambiguously states that, with only one express exception not applicable here, any provisions of the RSL that limit the applicability of rent stabilization—including the luxury deregulation provisions—do not apply to buildings receiving section 421–g tax benefits.

The Appellate Division separately reversed both orders and granted defendants' motions for summary judgment to the extent of declaring that plaintiffs' apartments were properly deregulated and are not subject to rent stabilization (157 A.D.3d 556 [1st Dept. 2018]; 161 A.D. 3d 566, [1st Dept. 2018]). The Appellate Division held that the luxury deregulation provisions of the RSL apply to apartments in buildings receiving tax benefits under RPTL 421-g because, in the Court's view, section 421-g did "not create another exemption" to luxury deregulation (157 A.D 3d at 556). The Court noted that, under its holding that "421-g buildings are subject to luxury . . . decontrol, . . . most, if not all, apartments in buildings receiving 421-g benefits would, in fact, never be rent-stabilized, because the initial monthly rents of virtually all such apartments were set, as here, at or above the deregulation threshold" (157 A.D 3d at 557). Although the Court acknowledged that "courts should construe statutes to avoid objectionable, unreasonable or absurd consequences," it nevertheless concluded that the legislature intended for RPTL 421-g (6) to essentially nullify itself (*id.* [internal quotation marks and citation omitted]).

The Appellate Division granted plaintiffs leave to appeal to this Court, certifying the question of whether the orders of reversal were properly made.

II

Plaintiffs argue that the plain language of RPTL 421-g (6) makes clear that any provisions of the RSL that would otherwise operate to exempt apartments from rent regulation, apart from those provisions exempting cooperatives and condominiums, do not apply to buildings receiving section 421-g tax benefits. Under plaintiffs' reading of the statute, luxury deregulation does not apply to apartments in such buildings during the time period in which section 421-g tax benefits are extended. For their part, defendants maintain that section 421-g renders the relevant dwelling units subject to the entire scheme of the RSL, including the luxury deregulation provisions which do not include a carve-out for buildings receiving section 421-g benefits.

In 1995, the legislature enacted section 421-g of the RPTL as part of a broad effort to revitalize lower Manhattan by providing financial incentives to convert commercial office buildings to residential and mixed-use buildings (*see* L 1995, ch 4). To that end, the statute provides real property tax exemption and abatement benefits when a nonresidential building is converted to residential use. RPTL 421-g (6) states, in pertinent part that,

> "[n]otwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the emergency tenant protection act of [1974], the rents of each dwelling unit in an eligible multiple dwelling shall be fully subject to control under such local law, unless

> exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit, for the entire period for which the eligible multiple dwelling is receiving benefits pursuant to this section."[3]

That subdivision further directs that, after section 421–g benefits terminate,

> "such rents shall continue to be subject to such control, except that such rents that would not have been subject to such control but for this subdivision, shall be decontrolled if the landlord has included in each lease and renewal thereof for such unit for the tenant in residence at the time of such decontrol a notice in at least twelve point type informing such tenant that the unit shall become subject to such decontrol upon the expiration of benefits pursuant to this section" (RPTL 421-g [6]).
>
> "[W]hen presented with a quest of statutory interpretation, our primary consideration is to ascertain and give effect to the intention of the [l]egislature" (*Samiento v. World Yacht Inc.*, 10 N.Y. 3d 70, 77–78 [2008], quoting *Matter of DaimlerChrysler Corp. v. Spitzer*, 7 N.Y. 3d 653, 660 [2006]). Inasmuch as "the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (*Majewski v. Broadalbin–*

[3] We hereinafter refer to the first clause of this sentence as the "notwithstanding clause."

> *Perth Cent. School Dist.*, 91 N.Y. 2d 577, 583, [1998]; *see Matter of Avella v. City of New York*, 29 N.Y. 3d 425, 434 [2017]). As we have repeatedly explained, "courts should construe unambiguous language to give effect to its plain meaning" (*Matter of DaimlerChrysler Corp.*, 7 N.Y. 3d at 660. "Absent ambiguity the courts may not resort to rules of construction to [alter] the scope and application of a statute" because no such rule "gives the court discretion to declare the intent of the law when the words are unequivocal" (*Bender v. Jamaica Hosp.*, 40 N.Y. 2d 560, 562, [1976]; *see also* McKinney's Cons Laws of NY, Statutes § 94, Comment ["(t)he (l)egislature is presumed to mean what it says"]).[4]

The legislature's intention, as reflected in the language of the statute at issue here, is clear and

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[4] When, as here, the "question is one of pure statutory reading and analysis, dependent only upon accurate apprehension of legislative intent, we need not and do not defer to [an] agency in construing [a] statute'" (*Matter of Ansonia Residents Assn. v. New York State Div. of Hous. & Community Renewal*, 75 N.Y. 2d 206, 214 [1989] [internal quotation marks and citation omitted]). Thus, we decline to defer to a private advisory letter issued by the New York State Division of Housing and Community Renewal that defendants advance in support of their proffered reading. Nor do we defer to the regulations promulgated by the New York City Department of Housing Preservation and Development upon which defendants rely (*see* 28 RCNY 32–02, 32–05[a]), which add an exception for luxury deregulation that is not found in section 421-g (*see Roberts v. Tishman Speyer Props., L.P.*, 13 N. Y. 3d 270, 285, [2009]; *compare* Assessor's Manual, Exemption Administration, New York State Department of Taxation and Finance [listing only one exception for cooperatives and condominiums consistent with the language of the statute]).

inescapable. During "the entire period for which the eligible multiple dwelling is receiving" RPTL 421–g benefits, it "shall be fully subject to *control*" under the RSL, "*notwithstanding* the provisions of" that regime or any other "local law" that would remove those dwelling units from such control, "unless exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit" (RPTL 421–g [6] [emphasis added]).[5] The statute does not say that eligible units shall be fully subject to "*the provisions of*" any local law for the stabilization of rents. Put differently, the notwithstanding clause of the statute evinces the legislature's intent that any "local law for the stabilization of rents" that would exempt the unit from "control under such local law" does not apply to buildings receiving RPTL 421–g benefits, with the sole exception being for cooperatives and condominiums (*see People v. Mitchell*, 15 N.Y. 3d 93, 97 [2010] [describing a notwithstanding clause as "the verbal formulation frequently employed for legislative directives intended to preempt any other potentially conflicting statute"]).

Defendants' contention, adopted by the dissent, that the notwithstanding clause was intended to import into RPTL 421–g (6) the entire RSL, including those provisions that would remove the units from control, cannot be squared with the statutory language. Indeed, if accepted, defendants' proffered construction would simultaneously render superfluous both the entire notwithstanding clause and the exception for cooperatives and condominiums. We reject defendants'

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[5] Contrary to the dissent's assertion, the word "control," as used in this context, does not somehow encompass the antithetical concept of decontrol or, put differently, the absence of regulation (*see* dissenting op, at 100).

suggestion that we read those provisions out of the statute (*see Matter of Mestecky v. City of New York*, 30 N.Y. 3d 239, 243 [2017] ["meaning and effect should be given to every word of a statute and . . . an interpretation that renders words or clauses superfluous should be rejected" (internal quotation marks and citation omitted)]). If the legislature intended to import the deregulation provisions of the RSL, it easily could have so stated (*see Majewski*, 91 N.Y. 2d at 583).

Moreover, defendants' reading of the statute fails to give effect to the language in RPTL 421–g (6) that provides a mechanism for a landlord to "decontrol" units that "would not have been subject to such control but for [that] subdivision," after section 421–g benefits have terminated. That language clearly contemplates the suspension of decontrol provisions during the benefit period, further reaffirming what is unmistakably conveyed in the notwithstanding clause. If defendants were correct that such units were already subject to decontrol under the RSL during the receipt of RPTL 421–g benefits, there would be no need to provide a mechanism to preserve the ability to implement decontrol after those benefits terminate. Defendants and the dissent also fail to reconcile how, under their reading of the statute, some of the statutory exemptions from rent stabilization apply—such as those that exempt buildings renovated after 1974 (*see* RSL 26–504[a][1])—whereas others, including luxury deregulation, do not.[6]

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[6] Defendants contend that plaintiffs' interpretation of RPTL 421–g would sweep away too much, including section 2524.4(c) of the Rent Stabilization Code (9 NYCRR), which provides that rent stabilization does not apply to a housing accommodation that is not occupied as a "primary residence." However, as plaintiffs

We further reject the reliance by defendants and the dissent on the luxury deregulation provisions themselves. Defendants and the dissent emphasize that, when the legislature enacted the luxury deregulation provisions in the RSL, it enumerated certain exceptions to such deregulation, including for buildings receiving benefits under RPTL 421–a and RPTL 489—both statutes with similar language to that included in section 421–g—yet, when the legislature enacted section 421–g two years later, it did not insert an additional exception in RSL § 26–504.2. Invoking the canon of statutory construction that enumerated exceptions are generally considered exclusive, they contend that the legislature's decision not to add section 421–g to the list of exceptions to luxury deregulation in the RSL is dispositive. We disagree.

RSL § 26–504.2 provides that the high rent accommodations exclusion "shall not apply to housing accommodations which became or become subject to this law (a) by virtue of receiving tax benefits pursuant to [RPTL 421–a] or [RPTL 489] . . . or (b) by virtue of article seven-C of the multiple dwelling law [the 1982 Loft Law]." Significantly, however, each of those programs was already in place when the RSL was amended to add the luxury deregulation provisions. Section 421–g, on the other hand, was enacted after RSL § 26–504.2 and, by its clear terms, unquestionably subjects apartments in buildings receiving section 421–g tax benefits to rent stabilization under the RSL regardless of any contrary provisions of the RSL that would otherwise result in deregulation. Because

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point out, that regulation provides grounds for an owner to evict a tenant who does not satisfy the primary residency requirement; it does not provide a mechanism for changing the status of a rent-stabilized apartment.

section 421–g itself excepted from luxury deregulation buildings receiving its benefits, the legislature did not also need to amend the RSL. The language of RPTL 421–g (6) made the legislature's intent clear. We decline defendants' invitation to construe the legislature's silence in one statutory scheme to override its clear intent, as plainly expressed, in another (*see Matter of New York State Assn. of Life Underwriters v. New York State Banking Dept*., 83 N.Y. 2d 353, 363 [1994] ["(i)t is settled that inaction by the (l)egislature is inconclusive in determining legislative intent"]; *People v. Ocasio*, 28 N.Y. 3d 178, 183 n 2 [2016] ["such inaction is susceptible to varying interpretations"]).

The statutory language unambiguously establishes the legislature's intent in this case, and the legislative history is not the to the contrary. In that regard, we reject the attempt by defendants and the dissent to a contextually use legislative history to "muddy clear statutory language" (*Milner v. Department of Navy*, 562 U.S. 562, 572 [2011]); *see Wallace v. New York*, 40 F. Supp. 3d 278, 314 n 34 [E.D. N.Y. 2014] ["the isolated statements of . . . individual legislators—and more so, nonlegislators—contained within the legislative history cannot establish legislative intent"]; *see also Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 569 [2005]; *Doe v. Pataki*, 120 F.3d 1263, 1277 [2d Cir.1997], *cert denied* 522 U.S. 1122 [1998]). The letter from the Mayor to the Senate Majority Leader that is relied upon by the dissent begins by stating, "you asked that the legislation [which had already passed in the Assembly] be amended to ensure that any residential units created as a result of the legislation are subject to the most current Rent Stabilization Laws of the State [i.e., luxury decontrol]" (Mayor Letter, Bill Jacket, L 1995 ch 4 at 51). However, the language of the bill—which the Senator

apparently found objectionable—was never amended and the Mayor's letter does not serve to alter the language of the statute. Moreover, as the dissent acknowledges, other aspects of the legislative history can be read to demonstrate a contrary intention, including a memorandum in support of the bill from the Mayor's Director of State Legislative Affairs that predated the bill's passage in the Assembly (Mem in Support, Bill Jacket, L 1995 ch 4 at 45). Additionally, contrary to defendants' argument, embraced by the dissent, the broad statutory purpose underlying section 421–g—to revitalize lower Manhattan—is not inconsistent with the stabilization of rents, which was plainly contemplated under the subdivision that we are called upon to interpret in these appeals. The goals of revitalization and increasing affordable housing stock are not mutually exclusive, and the language of subdivision (6) confirms that the legislature intended to further both aims when enacting section 421–g. Vague claims of contrary "government assurances" allegedly relied upon by developers receiving generous tax benefits (dissenting op, at 6) simply do not serve to alter the statutory text.

For all of these reasons, we conclude that apartments in buildings receiving tax benefits pursuant to RPTL 421–g are *not* subject to luxury deregulation. Plaintiffs' remaining contentions are rendered academic.

Accordingly, in *Kuzmich v 50 Murray St. Acquisition LLC*, the order of the Appellate Division should be reversed, with costs, defendant 50 Murray Street Acquisition LLC's motion for summary judgment denied, plaintiffs' motion for partial summary judgment seeking a declaration in their favor granted, the case remitted to Supreme Court for further

proceedings in accordance with this opinion, and the certified question answered in the negative. In *West v. B.C.R.E. 90-W. St., LLC* the order of the Appellate Division should be reversed, with costs, defendant B.C.R.E. 90—West Street, LLC's motion for summary judgment denied, plaintiffs' motion insofar as it sought summary judgment seeking a declaration in their favor granted, the case remitted to Supreme Court for further proceedings in accordance with this opinion, and the certified question answered in the negative.

DiFIORE, Chief Judge (dissenting):

Rent stabilization is a critical government initiative designed to foster socioeconomic diversity and make New York City affordable for non-wealthy families. There is no dispute in this case that "rent stabilization" applies to buildings receiving Real Property Tax Law (RPTL) § 421–g benefits. Although the Rent Stabilization Law was recently amended, during the time period relevant to these appeals an owner's ability to collect a market-based rent on luxury apartments leased to tenants with the means to afford them was an integral component of the rent stabilization scheme pursuant to the 1993 Rent Regulation Reform Act (RRRA). The question presented here is whether, when it adopted the Lower Manhattan Revitalization Plan (LMRP) in 1995, the Legislature intended to subject section 421–g buildings to an enhanced form of rent stabilization that precluded application of luxury decontrol to individual apartments. The Legislature determined that luxury decontrol was unavailable only with respect to three classes of buildings expressly identified by statute but not section 421–g buildings. Nevertheless–based on a purported plain text analysis of language that makes no mention of luxury decontrol–the majority retroactively confers

this heightened form of rent stabilization on buildings receiving RPTL 421–g tax benefits. Because I agree with the unanimous decision of the Appellate Division that this approach misinterprets the statutory text, disregarding the broader regulatory scheme and legislative purpose of the relevant statutes, I respectfully dissent.

The majority glosses over the context in which the New York City government spearheaded the comprehensive legislation containing RPTL 421–g, despite its prominence in the legislative history. Unlike today, in the early 1990s Lower Manhattan was a depressed area. Businesses were fleeing at "an alarming rate" due in part to high taxes, economic development packages offered by neighboring regions, and the "antiquated" nature of Wall Street office space (Governor's Approval Mem, Bill Jacket L 1995, ch 4 at 5–6, 1995 NY Legis Ann at 46-47). Aging skyscrapers increasingly stood empty–vacancy was at a post-World War II high, tax assessment values were "in a downward spiral," and decreasing tax revenues were causing multi-million-dollar losses for the City (N.Y.C Office of the Mayor, Director of State Legislative Affairs Mem in Support, Bill Jacket, L 1995 ch 4 at 44–46). The City government determined that Lower Manhattan "demand[ed] . . . special attention," as worsening of this "deterioration" would "have damaging impacts on the economic well-being of the entire City" (*id.*). In response to this crisis, the Mayor of New York City supervised the crafting of the Lower Manhattan Revitalization Plan, a multi-faceted benefits package designed to entice businesses and the real estate industry to re-invest in Downtown and thus "reverse the decline in [its] economy" (*id.*). More specifically, it "addresse[d] the twin problems" manifested by the downturn–"an aging commercial

building stock . . . and a high vacancy rate in those buildings" (*id.*). The drafters "carefully formulated" a set of tax benefits to implement two overarching strategies: "to stem the flow of businesses out of Manhattan . . . and to encourage alternative uses for obsolete commercial office buildings" (*id.*).

To achieve the first of these strategies, the plan sought to "stimulate office and retail leasing activity" in Lower Manhattan by "provid[ing] significantly lower occupancy costs for commercial tenants" in the form of commercial rent tax reductions, electricity cost rebates for commercial tenants, and a real property tax abatement for buildings that executed new commercial leases (*id.*). By reducing occupancy costs, the City intended to "place [the neighborhood] in an excellent position to retain existing businesses and attract new ones," which it believed would, in turn, result in "retention of thousands of jobs and heightened economic activity" (*id.*).

To achieve the other major goal of the legislation—finding alternative uses for obsolete office towers—the plan encouraged the conversion of vacant commercial buildings to residential use (*id.*). The conversions were intended to "decrease the commercial vacancy rate" and "help create a 24–hour community, spurring the development of retail and entertainment uses that will be a new source of revenue for the City" (*id.*). To incentivize the developers in the private sector to make "major investments" in Lower Manhattan's building stock, the plan included two tax benefit programs. First, the program at issue here—enacted at RPTL 421–g—granted a 12–year property tax exemption and 14–year property tax abatement for commercial buildings converted to at least 75% residential use. Second, a 12-year property tax exemption

was granted to buildings whose configuration made them suitable only for mixed commercial and residential use. Importantly, the City indicated that buildings receiving benefits under both programs "would be subject to rent stabilization during the benefit period" (*id.*). The regulatory scheme for rent stabilization as it stood then—contained largely in the Rent Stabilization Law of 1969(RSL)—prescribed detailed rules limiting the types of buildings covered and provided a system of government oversight regarding both the rents that may be charged during rent stabilization and circumstances in which apartments could be transitioned to market rents under luxury decontrol. The fact that "rent stabilization" encompassed the entire regime in existence at that time, including its luxury decontrol provisions adopted only two years before, was made clear when the LMRP legislation was before the Legislature. The measure was adopted in 1995.

In reliance on this statute, the property owners here—respondents in these actions or their predecessors in interest—purchased the subject buildings and applied for RPTL 421–g benefits. In December 2002, the *West* respondent purchased 90 West Street, a historic and architecturally significant building whose exterior is a designated landmark. Fifteen months prior to the purchase, the building suffered extensive damage in the September 11, 2001 terrorist attacks. At 90 West Street, debris from the South Tower of the World Trade Center located 100 yards away ruined the copper mansard roof and ornamented granite façade, and a fire that burned inside the building for over a week destroyed eight of its twenty-four floors. To purchase and renovate the building, the owner secured a roughly $ 100 million low-interest mortgage loan from the New York City Housing Development

Corporation (HDC), a loan which it later refinanced. Before investing in the property, the new owner of 90 West Street received assurances from the New York City government that the entire rent stabilization regime—including its luxury decontrol provisions—would apply during the entire period that the owner received section 421–g benefits. An intensive renovation ensued, including the closely regulated repair of the historic exterior, which resulted in the creation of 410 new apartments from previously burned-out office space. 140 of those apartments—roughly one third—were leased below the rent threshold at which luxury decontrol could be applied and were thus treated as rent-regulated.

The property owner in *Kuzmich* purchased the subject buildings—50 Murray Street and 53 Park Place—in 2014 for $ 540,000,000. By the time the current owner purchased the property, its predecessor had been receiving section 421–g tax benefits for ten years based on the earlier conversion of the building to residential use. All of the apartments had been initially leased at rents over the luxury decontrol threshold and, thus, consistent with the RSL, the rents for these apartments were not restricted. Like the property owner in *West*, the owner in *Kuzmich* sought and received government assurances that the luxury decontrol provisions of the rent stabilization scheme were both applicable and carried over from the prior owner's non-rent-regulated treatment of those apartments.

Appellant tenants rented apartments in 90 West Street, 50 Murray Street, and 53 Park Place at market rents, a status that was reflected in leases stating that the apartments were not rent-stabilized. Based on the most recent lease renewals, the rents for the relevant

apartments ranged from $ 2,000 to $ 5,300 per month for the 90 West Street building and from $3,295 to $10,295 per month for the Murray Street and Park Place properties.

Construing RPTL 421–g(6) and the Rent Stabilization Law of 1969, incorporated therein, I disagree with the majority's conclusion that the luxury decontrol provisions of the RSL were inapplicable to section 421–g buildings. We all agree that, by virtue of the property owners' receipt of tax benefits under RPTL 421–g, subsection (6) of that statute conferred rent stabilization on the buildings—which otherwise would not have been subject to that regulatory scheme—while they received benefits. Subsection (6) states, in relevant part,

> "*Notwithstanding the provisions of any local law for the stabilization of rents* in multiple dwellings or the emergency tenant protection act of nineteen seventy-four [EPTA] *the rents of each dwelling unit in an eligible multiple dwelling shall be fully subject to control under such local law*, unless exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit, for the entire period for which the eligible multiple dwelling is receiving benefits pursuant to this section . . . ." (emphasis added).

In New York City, the primary "local law" governing rent stabilization is the Rent Stabilization Law. The prefatory phrase "notwithstanding other provisions of law" is generally used by the Legislature to preempt other conflicting statutes (*see People v. Mitchell*, 15 N.Y.3d 93, 97 [2010]). The only provisions of the RSL that would conflict with the imposition of that

body of law to these newly renovated and converted buildings are the temporal limitations narrowing its reach to buildings completed or substantially rehabilitated between February 1, 1947 and January 1, 1974 (RSL [Administrative Code of City of NY] § 26–504; EPTA § 5[a] [5]) {McKinney's Uncons Laws of NY § 8625 (a) (5) (L 1974, ch 576, sec. 4 § 5, as amended)]).[7] On its face, therefore, subsection (6) extends "full[ ] . . . control" under the RSL to the apartments in 421–g buildings for the duration that the owner receives the tax benefits by using the "notwithstanding" prefatory phrase to supersede the RSL's temporal provisions.[8] Had the Legislature omitted the "notwithstanding" clause, the bare incorporation of the Rent Stabilization Law would have had no practical effect because, by its terms, that law would not have reached LMRP buildings. The word "control" is defined as "the power or authority to guide or manage" or "the regulation of economic activity especially by government directive" (Merriam-Webster Online Dictionary, control, [https://www.merriamwebster.com/dictionary/control]). This plain text provides that apartments in section 421–g buildings fall within the governing or regulating power of the RSL, *i.e.*, that they are subject to the rent stabilization scheme. There is no language in section 421–g(6) indicating that the Legislature intended to impose only a portion of the rent

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[7] Rent control generally applies to units in buildings completed prior to February 1, 1947 in which the tenant has resided continuously since 1971 (N.Y.C Admin Code § 26–403[e][2]).

[8] The statute also supersedes contradictory provisions of the Emergency Tenant Protection Act (ETPA), which, broadly speaking, authorized New York City to extend the RSL's rent stabilization regime to additional buildings not encompassed by the original RSL. The RSL now incorporates the ETPA by reference (*see* RSL § 26–504[b]).

stabilization scheme – much less that it intended to exclude the critical luxury decontrol provisions in place at that time.

Passed as part of the 1993 RRRA, the luxury decontrol provisions in the RSL governing the tenancies at issue in these cases permitted deregulation of vacant apartments when rent reached a certain threshold (as relevant here, $ 2,000 per month) and occupied apartments when both the rent and the tenants' combined annual income exceeded certain threshold amounts (RSL §§ 26–504.1, 26.504.2, 26.504.3). The RSL contained provisions that specifically precluded the application of luxury decontrol to buildings "subject to the [RSL] (a) by virtue of receiving tax benefits pursuant to section [421–a] or [489] of the [RPTL] . . . , or (b) by virtue of article seven-C of the multiple dwelling law" (RSL §§ 26–504.1, 26–504.2[a]).[9] There was no similar exception for the RPTL 421–g program. None was added to the luxury decontrol provisions when the Legislature enacted the RPTL 421–g program in 1995, two years after adopting luxury decontrol, nor had section 421–g buildings been exempted from luxury decontrol, despite subsequent amendments in 1997, 2000, 2003, 2011, and 2015. While we do not necessarily derive meaning from legislative "inaction," we place considerable significance on what the Legislature chooses to omit when it does act. Although the majority

[9] RPTL 421–a provides tax benefits to owners that build new-construction, multi-unit residential buildings on vacant land in certain areas of the City. RPTL 489 governs the "J–51" tax exemption program for building owners that complete certain projects, such as major capital improvements; and article 7–C of the Multiple Dwelling Law protects residents of converted loft buildings.

departs from this rule today, when a statute includes a list of exemptions we typically construe it as "evincing an intent to exclude any others not mentioned" (*Walker v. Town of Hempstead*, 84 N.Y.2d 360, 367, [1994]; *Jericho Water Dist. v. One Call Users Council, Inc.*, 10 N.Y.3d 385, 391 [2008] ["exceptions to generally applicable statutory provisions should be strictly construed"]). Thus, in light of the Legislature's clear exemption of three other categories of building from luxury decontrol, the decision not to include section 421–g buildings in that list reflects an intent that they be fully subject to the entirety of the rent stabilization regulatory scheme, including its decontrol provisions. Had the Legislature intended to take the substantial policy step of exempting luxury decontrol, thereby imposing a specialized form of rent stabilization on section 421–g buildings, it could have—and would have—said so, as it did with respect to RPTL 421–a and 489 and Multiple Dwelling Law article 7–C buildings.

Notably, section 421–g(6) contains language substantively identical to the language in RPTL 421–a(2)(f)—and was obviously modeled after that provision.[10] If, as the majority contends, the "control" language common to both sections 421–a(2)(f) and 421–g(6) unambiguously excludes the application of the luxury decontrol provisions on eligible buildings, then why did the Legislature expressly exempt RPTL 421–a buildings from luxury decontrol in a separate

[10] Section 421–a(2)(f) provides: "Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the [EPTA], the rents of a unit shall be fully subject to control under such local law or such act, unless exempt under such local law or such act from control by reason of the cooperative or condominium status of the unit . . . "

statute? The fact that the Legislature considered it necessary to create a statutory exemption to luxury decontrol for section 421–a apartments demonstrates that it understood that, absent such exemption, the entirety of the RSL—including luxury decontrol—would apply to them. Its decision not to include section 421–g buildings in the exemption should be given that effect. But, today, the majority adopts a construction that either reads the essentially identical statements in sections 421–a and 421–g to mean two different things or renders the language specifically exempting section 421–a apartments from luxury decontrol superfluous. This strongly suggests that its purported plain language analysis misses the mark.

The majority asserts that the specific exemptions for RPTL 421–a and other buildings is a product of timing, *i.e.*, that they reflect legislative concern that the provisions conferring rent stabilization on those buildings would fail to preclude luxury decontrol—not because of their language—but merely because they were enacted before luxury decontrol existed. But, when subsequent legislation impacts the operation of an existing statute, we presume the Legislature was aware of this effect and we interpret the statute according to its plain language, notwithstanding the timing of its enactment (*see Matter of Mancini v. Office of Children & Family Servs.*, 32 N.Y.3d 521, 530, [2018] [although Worker's Compensation Law § 15(3)(v), a preexisting statute, expressly incorporated section 15(3)(w), which was later amended, "the Legislature necessarily altered the operation of paragraph (v) . . . there was simply no need for the Legislature to add language to paragraph (v) to reflect changes in paragraph (w) because paragraph (v) already wholly incorporated paragraph (w)'s . . . regime"]). The more compelling explanation for the

Legislature's failure to expressly exempt section 421–g buildings from luxury decontrol is the obvious one – luxury decontrol was intended to apply to these properties.[11]

Moreover, the majority is incorrect that the "decontrol" provisions of subsection (6) "clearly contemplate[ ] the suspension of decontrol provisions during the benefit period" (majority op at 7) Because subsection (6) subjects some apartments (those with rents below the decontrol threshold) to rent stabilization but provides

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[11] The same is true under Public Housing Finance Law § 654–d(18). Although the majority ignores this issue, I agree with the Appellate Division that, in *West*, the building owner was entitled to a declaration that it was not precluded from utilizing luxury decontrol based on its receipt of low-interest mortgages from HDC pursuant to the Public Housing Finance Law. Public Housing Finance Law § 654–d(18) states, in relevant part:

> "Notwithstanding the provisions of . . . the emergency housing rent control law, the local emergency housing rent control act, or local law enacted pursuant thereto, *all dwelling units in a multiple dwelling . . . which is financed by a mortgage loan . . . except for [cooperative and condominium units], shall be subject to the [RSL]*" (emphasis added).

The statute unqualifiedly subjects the apartments in eligible buildings "to the rent stabilization law." Thus, Private Housing Finance Law § 654–d(18)—like RPTL 421–g(6)—confers the entirety of the RSL, including its luxury decontrol provisions, on buildings subject to its terms. Further, it is not listed among the statutory exceptions to luxury decontrol and, here, the majority cannot rely on the timing of the statute's enactment in an attempt to explain the omission. Private Housing Finance Law § 654–d was enacted in 1992, one year *before* the 1993 RRRA (L 1992, ch 702). Thus, when the Legislature amended the RSL to include the luxury decontrol regime, it was fully aware of the Private Housing Finance Law's imposition of rent stabilization on eligible buildings, yet it did not include PHFL buildings among those expressly exempted from luxury decontrol.

that this rent stabilization ends at the close of the benefit period, the Legislature mandated that notice procedures be followed prior to this type of decontrol. Indeed, all apartments that are stabilized pursuant to a tax benefit statute are eligible for decontrol at the conclusion of the benefit period, regardless of whether they meet other decontrol criteria in the RSL. But this avenue for decontrol in no way forecloses other avenues—*i.e.*, luxury decontrol—prior to the close of the benefit period, unless luxury decontrol provisions have been expressly exempted, which did not occur here.

The majority also cites language in subsection (6) indicating that rent stabilization does not apply to units in section 421–g buildings "exempt . . . from control by reason of . . . cooperative or condominium status," asserting that this represents the sole exception to rent limitations intended by the Legislature. The majority affords too much weight to this language which, if anything, supports my interpretation outlined above. Again, RPTL 421–g(6) largely tracks RPTL 421–a(2)(f). The condominium/cooperative clause in section 421–a(2)(f), added in 1981, has long been interpreted to "constitute a mere clarification of the pre-existing law that rent stabilization laws do not apply [to cooperatives and condominiums]" (*Fasa Props. v. Freidus*, 103 A.D.2d 729, 730 [1st Dept. 1984]), indicating that the language making units "fully subject to control" under the RSL—the same language the Legislature later used in section 421–g(6)—imported preexisting exceptions to rent regulation.

Because the Legislature is "presumed to be familiar" with existing case law, "where a statute has been interpreted by the courts, the continued use of the

same language by the Legislature subsequent to the judicial interpretation is indicative that the legislative intent [was] correctly ascertained" (*Matter of Knight–Rider Broadcasting v. Greenberg*, 70 N.Y.2d 151, 157 [1987]). When, after the *Fasa* decision, the Legislature enacted section 421–g using substantively identical language as in section 421–a, it signaled approval of that court's conclusion that the condominium/ cooperative clause was merely explanatory, rather than a separate substantive exemption. The condominium/ cooperative language is not relevant to this case. It adds nothing to any party's position.

Far more significant is the legislative history of the LMRP, which the majority largely ignores. The bill jacket contains a letter from the Mayor of New York City, the proponent of the legislation, to the Senate Majority Leader, clarifying:

> "In our discussion you asked that the legislation be amended to ensure that any residential units created as a result of the legislation are subject to the most current Rent Stabilization Laws of the State. I have discussed this matter with the drafters of the legislation and with the Commissioner of the Department of Housing Preservation and Development (HPD), the City agency responsible for implementing the residential conversion program proposed in the legislation. The City's intention has always been that dwelling units in property receiving benefits under the residential conversion program . . . would be subject to rent stabilization to the same extent as, but to no greater extent than, other rent regulated property . . . Thus, the provisions of the [RRRA] of 1993 that provide for

> the exclusion of high rent accommodation and for high income rent decontrol would apply to property receiving benefits under the programs created by the Lower Manhattan legislation" (Letter from Rudolph W. Giuliani to Joseph Bruno, Aug. 16, 1995, Bill Jacket, L 1995 ch 4 at 51–52).

During the Senate debate, this letter was read into the legislative record, and comments made on the floor reflect an understanding that the entirety of rent stabilization, including luxury decontrol, would apply to section 421–g buildings. In fact, the only Senator to vote against the bill opposed the legislation partly on those grounds, noting it would "subsidize the conversion of commercial space . . . which is going to be luxury housing." Letters from associations representing buildings and property owners submitted to the Governor in support of the legislation likewise note that the 1993 RRRA would apply to residential units created under the program (Letter from Robert A Wieboldt, Executive Vice-President, NY St Builders Assn, to Michael Finnegan, Esq., Counsel to Governor, Oct. 27, 1995, Bill Jacket, L 1995 ch 4 at 20, 49–50). Nothing in the bill jacket supports the contrary interpretation now adopted by the majority.[12] We routinely cite materials of this type as evidence of legislative intent and have decided cases on legislative history far less elucidating than these statements (*see e.g. Matter of Diegelman v. City of Buffalo*, 28 N.Y.3d

[12] The lone statement in the memorandum submitted to the Assembly and Senate by the Mayor's office that "rent stabilization" would apply to section 421–g buildings is not to the contrary. As explained, rent stabilization *did* and does apply to these buildings. Nothing in that statement suggests that the luxury decontrol provisions of the scheme would be excluded.

231, 240 [2016]; *Matter of Manouel v. Board of Assessors*, 25 N.Y.3d 46, 52 [2015]; *People v. Mills*, 11 N.Y.3d 527, 534–35 [2008]; *Council of City of N.Y. v. Giuliani*, 93 N.Y.2d 60, 70 [1999]; *Nowlin v. City of New York*, 81 N.Y.2d 81, 87 [1993]). But, today, these statements are disregarded by the majority, which dismisses them with a reference to inapposite federal precedent.

Even viewed more broadly, the legislative history of the Lower Manhattan Revitalization Plan offers a simple explanation for why the Legislature treated section 421–g buildings differently than some other buildings subjected to rent stabilization by receipt of tax benefits. The aim of this legislation was not the creation of affordable housing. Rather, section 421–g was enacted to address an economic crisis in the City: the real estate depression in Lower Manhattan. The legislative history materials emphasize—for both the broader revitalization plan and for section 421–g—the economic recovery of the neighborhood. Indeed, a significant portion of the revitalization plan was intended to incentivize commercial, not residential, leasing. Further, the conversion of old office space to apartments was specifically designed to decrease building vacancy by finding a new use for obsolete buildings, re-build the City's tax base, and promote growth in retail and entertainment spaces to generate revenue.

To be sure, requiring property owners granted tax benefits to comply with the RSL—from which they would have otherwise been entirely exempt based on the post–1974 renovation dates—reflects the legislative extraction of a benefit from the real estate industry on behalf of tenants. Indeed, the record reflects that, between 1994 and 2012, almost 2,500 rent stabilized units were added to the housing stock

by virtue of the section 421–g program.[13] But the critical compromise reflected in the legislative history materials was the provision of tax benefits in order to incentivize developers to undertake "major investments" (*i.e.*, substantial conversions and renovation projects) in a risky neighborhood.

Consistent with the statute's plain language and clear legislative history, HPD promulgated regulations providing that luxury decontrol applied to section 421–g buildings while they receive benefits (*see* Rules of City of New York Housing Preservation and Development § 32–05 ["Exempt Dwelling Units"—defined in section 32–02 as including units exempt under the 1993 RRRA—are not rent stabilized under the section 421–g program]). Likewise, the New York State Division of Housing and Community Renewal (DHCR) (responsible for administering rent stabilization) has repeatedly issued informal guidance consistent with HPD's interpretation, stating that "high-rent deregulation is available with respect to Sec. 421–g units" and that, further, "high-rent deregulation is available from the inception of the first residential tenancy" such that property owners need not wait until the vacancy of the first tenant to treat a converted unit as deregulated (see Letter from Charles Goldstein, Associate Counsel, DHCR, to Sherwin

[13] Although I agree with its holding, the Appellate Division's statement in the *Kuzmich* decision that "most, *if not all*, apartments in these buildings would, in fact, never be rent stabilized" (*Kuzmich v. 50 Murray Street Acquisition LLC*, 157 A.D.3d 556, 557, 69 N.Y.S.3d 627 [1st Dept. 2018] [emphasis added]) is puzzling. It is clear from the record that apartments were subjected to restricted rents as a result of this program – in fact, in the *West* building alone, nearly one-third of the apartments had regulated rents because they did not meet the criteria for luxury decontrol.

Belkin, Esq., Jan. 30, 1997 at 1–2; *see also* Letter from Charles Goldstein, Associate Counsel, DHCR, Aug. 22, 2000 at 1; Letter from Charles Goldstein, Associate Counsel, DHCR, Sept. 26, 2002 at 1).

While, as the majority correctly notes, agency rules and guidance are not entitled to deference in this pure statutory interpretation case, they cannot be dismissed as irrelevant. HPD promulgates regulations pursuant to a traditional notice-and-comment procedure, but neither plaintiffs nor the majority have provided any evidence that anyone ever construed section 421–g(6) as precluding application of luxury decontrol to section 421–g buildings during receipt of tax benefits. To the contrary, it is clear from HPD's promulgated rules and forms, as well as DHCR's informal guidance, that the agencies most closely involved in the implementation of the section 421–g program and the property owners subject to that program (not to mention the tenants that agreed to market-rate rents) shared a common understanding—that the entirety of the RSL applied to section 421–g buildings, including its luxury decontrol provisions.

Property developers were induced by a legislative benefits package to purchase and convert obsolete, empty office buildings into apartments, in a depressed and empty neighborhood that had no residential community to speak of. Both property owners here submitted sworn affidavits stating that they consulted government agencies (including HPD) as to whether luxury decontrol would apply as part of their due diligence process and were "consistently advised" that it would. They relied on these representations, in addition to the DHCR guidance and legislative history, in purchasing and financing the properties. Indeed, they averred that the availability of luxury

decontrol was a "key component" in their decisions as, without it, their investments in the buildings would not have made "economic sense."

In 1995, there was no guarantee that renters could be drawn to Lower Manhattan, and the developers bore that risk. But to the benefit of the City and State, the section 421–g program worked. There is now a robust 24–hour community in Lower Manhattan, as hoped. The program succeeded in part because property owners believed—consistent with the text of the statute, its legislative history and government guidance—that the rent stabilization law would function as it did almost everywhere else in the City and, thus, would include luxury decontrol. It is worth noting that the majority's decision today may unfairly subject these property owners to substantial liability for rent overcharges in direct contravention of the representations that mobilized the real estate industry to transform Lower Manhattan in the first place.

The majority's holding will lead to results antithetical to the Legislature's aims in enacting both New York City's rent stabilization scheme and the 1995 Lower Manhattan Revitalization Plan. Soon, tenants of Lower Manhattan buildings who agreed to lease luxury apartments at market rates (in this case, at up to $ 10,000 per month; and in the cases that will inevitably follow, at potentially higher rents) will converge on DHCR in an attempt to collect refunds, based on the majority's conclusion that their apartments should have been rent-stabilized for years. Those "overcharge" refunds will be assessed against property owners (or their successors in interest) promised by government that they could lease the tenants' luxury apartments at market rents after purchasing and developing previously-empty build-

ings in exchange for section 421–g tax benefits. This destabilization of the decades-old RPTL 421–g and Private Housing Finance Law § 654–d programs does nothing to further the worthy policies of rent stabilization and is unlikely to result in the inclusion of any additional apartments in the rent stabilization program. Even worse, the next time government looks to the private sector and asks developers to take risk and finance a revitalization program, potential investors will think twice about relying on a common sense reading of legislation, clear legislative history and the representations of implementing agencies—none of which protected them here from the majority's retroactive reading of statutory text that dramatically changes the terms of the bargain long after the Legislature's goals have been achieved. For all of these reasons, I respectfully dissent.

In *Kuzmich v. 50 Murray St. Acquisition LLC:* Order reversed, with costs, defendant's motion for summary judgment denied, plaintiffs' motion for partial summary judgment seeking a declaration in their favor granted, case remitted to Supreme Court, New York County, for further proceedings in accordance with the opinion herein and certified question answered in the negative.

Opinion by Judge Stein. Judges Rivera, Fahey, Garcia, Wilson and Feinman concur. Chief Judge DiFiore dissents and votes to affirm in an opinion.

In *West v. B.C.R.E—90 W. St., LLC:* Order reversed, with costs, defendant B.C.R.E. 90—West Street, LLC's motion for summary judgment denied, plaintiffs' motion insofar as it sought summary judgment seeking a declaration in their favor granted, case remitted to Supreme Court, New York County, for further proceedings in accordance with the opinion

herein and certified question answered in the negative.

Opinion by Judge Stein. Judges Rivera, Fahey, Garcia, Wilson and Feinman concur. Chief Judge DiFiore dissents and votes to affirm in an opinion.

APPENDIX B

157 A.D.3d 556

SUPREME COURT, APPELLATE DIVISION,
FIRST DEPARTMENT, NEW YORK

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5479

Index 155266/16

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JOHN KUZMICH, *et al.*,

Plaintiffs-Respondents,

v.

50 MURRAY STREET ACQUISITION LLC,

Defendant-Appellant.

THE REAL ESTATE BOARD OF NEW YORK AND THE PUBLIC ADVOCATE FOR THE CITY OF NEW YORK,

Amici Curiae.

———

Entered: January 18, 2018

———

Attorneys and Law Firms

Holwell Shuster & Goldberg, LLP, New York (James M. McGuire of counsel), for appellant.

Himmelstein, McConnell, Gribben, Donoghue & Joseph LLP, New York (Serge Joseph of counsel), for respondents.

Rosenberg & Estis, P.C., New York (Alexander Lycoyannis of counsel), for the Real Estate Board of New York, amicus curiae.

Letitia James, Public Advocate for the City of New York, New York (Molly Thomas–Jensen of counsel), for the Public Advocate for the City of New York, amicus curiae.

Acosta, P.J., Sweeny, Gische, Andrias, JJ.

OPINION

Order, Supreme Court, New York County (Carol R. Edmead, J.), entered July 3, 2017, which, among other things, denied defendant's motion for summary judgment, granted plaintiffs' cross motion for partial summary judgment, declared that plaintiffs' apartments are subject to rent stabilization, and ordered that a special referee be designated to hear and determine the amount of overcharges and the amount of attorneys' fees and costs incurred by plaintiffs in litigating this action, unanimously reversed, on the law, without costs, plaintiffs' cross motion denied, defendant's motion for summary judgment granted to the extent of declaring that plaintiffs' apartments were properly deregulated and are not subject to rent stabilization, the orders regarding the special referee vacated, and the matter remanded for further proceedings.

Except for condominiums and cooperatives, dwellings in buildings that receive tax benefits pursuant to Real Property Tax Law § 421–g are subject to rent stabilization for the entire period the building is receiving 421–g benefits (Real Property Tax Law § 421–g[6]). However, 421–g buildings are subject to the luxury vacancy decontrol provisions of Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26–504.2(a), unlike buildings that receive tax benefits pursuant to Real Property Tax Law §§ 421–a and 489.

Real Property Tax Law § 421–g does not create another exemption to Rent Stabilization Law § 26–

504.2(a). Supreme Court essentially interpreted Real Property Tax Law § 421–g(6)'s prefatory phrase "Notwithstanding the provisions of any *557 local law for [rent stabilization]" to mean "Notwithstanding [the luxury decontrol] provisions of any local law." However, "[a] statute or legislative act is to be construed as a whole, and all parts of an act are to be read and construed together to determine the legislative intent" (*New York State Psychiatric Assn., Inc. v. New York State Dept. of Health*, 19 N.Y.3d 17, 23–24, 945 N.Y.S.2d 191, 968 N.E.2d 428 [2012] [internal quotation marks omitted]). Accordingly, the prefatory phrase, which also appears identically in RPTL 421–a(2)(f), must be read in tandem with the coverage clause of that section. The prefatory phrase and the coverage clause were both necessary to extend rent stabilization to certain dwellings in buildings receiving 421–g benefits.

As plaintiffs point out, if 421–g buildings are subject to luxury vacancy decontrol, then most, if not all, apartments in buildings receiving 421–g benefits would, in fact, never be rent-stabilized, because the initial monthly rents of virtually all such apartments were set, as here, at or above the deregulation threshold. Although courts should construe statutes to avoid "objectionable, unreasonable or absurd consequences" (*Long v. State of New York*, 7 N.Y.3d 269, 273, 819 N.Y.S.2d 679, 852 N.E.2d 1150 [2006]), the legislative history in this case demonstrates that the legislature was aware of such consequences during debate on the bill that enacted Real Property Tax Law § 421–g.

Plaintiffs also argue that a dwelling in a building receiving 421–g benefits cannot be deregulated upon the setting of the initial rent at or above the deregulation threshold. They contend that a rent-stabilized dwelling cannot be deregulated unless it is first regis-

tered as a rent-stabilized apartment. However, this Court recently rejected this contention in *Matter of Park v. New York State Div. of Hous. & Community Renewal*, 150 A.D.3d 105, 113, 50 N.Y.S.3d 377 [1st Dept. 2017], *lv dismissed* 30 N.Y.3d 961, 64 N.Y.S.3d 662, 86 N.E.3d 555 [2017]).

We have considered plaintiffs' remaining arguments and find them unavailing.

APPENDIX C

2017 WL 2840391 (N.Y.Sup.),
2017 N.Y. Slip Op. 31416(U) (Trial Order)

SUPREME COURT OF NEW YORK
NEW YORK COUNTY

No. 155266/16

JOHN KUZMICH, SANDRA MAY, JOSHUA SOCOLOW, IGNATIUS NAVASCUES, KENDTRICK CROASMUN, RISHI KHANNA, CAITLAN SENSKE, JAMIE AXFORD, JONATHAN GAZDAK, SUZY HEIMAN, MICHAEL GORZYNSKI, NIKESH DESAI, HEIDI BURKHART, BEN DRYLIE-PERKINS, KEIRON MCCAMMON, LISA ATWAN, JENNIFER SENSKE RYAN, BRAD LANGSTON, ALEJANDRA GARCIA, LISA CHU, SCOTT REALE, DAN SLIVJANOVSKI, SHIVA PEJMAN, LAURIE KARR, ADAM SEIFER, ANAND SUBRAMANIAN, DARCY JENSEN, ELIN THOMASIAN, HAZEL LYONS, DAVID DRUCKER, HOWARD PULCHIN, JIN SUP LEE, JENN WOOD, NICHOLAS APOSTOLATOS, ALEX KELLEHER, BRIAN KNAPP, JEFF RIVES, JASON LEWIS, LAURA FIESELER HICKMAN, FRANKLIN YAP, AND STEVEN GREENES,

Plaintiffs,

v.

50 MURRAY STREET ACQUISITION LLC,

Defendants.

July 3, 2017

TRIAL ORDER

Carol R. Edmead, J.

Defendant 50 Murray Street Acquisition LLC (Owner) moves, pursuant to CPLR 3212 (a), for summary judgment dismissing plaintiff tenants' (Tenants) first through sixth causes of action; granting Owner summary judgment on its first counterclaim, and declaring that Tenants' apartments are deregulated; and, granting Owner summary judgment on Owner's second counterclaim, and awarding a money judgment against Tenants for attorneys' fees and costs. Tenants cross-move for summary judgment declaring that their apartments are subject to rent stabilization, that Tenants are rent stabilized tenants thereof, and that the rents charged to Tenants, since the commencement of their tenancies, have been, and continue to be, unlawful; and, for an order ordering a prompt trial to determine the amount of rent overcharges and other damages.

The legal issue before the court may be stated succinctly: is high rent deregulation applicable to buildings receiving Real Property Tax Law (RPTL) § 421-g benefits?

In general, rent stabilized apartments cease to be subject to rent regulation when their legal regulated rent and the tenant's yearly income in each of the two preceding years exceed a certain amount, $2,700 per month, in 2015 and $200,000, respectively.

Rent Stabilization Law (RSL) § 26-504.3 (a) (2) and (3); *Matter of Park v New York State Div. of Hous. & Community Renewal*, 150 AD3d 105 (2017).

RPTL § 421-g, enacted in 1995, was intended to spur the conversion of non-residential buildings in lower Manhattan to residential use. It provides both real

estate tax exemptions and tax abatement benefits when a building, used for non-residential purposes, is converted to at least 75% residential use. RPTL § 421-g (6) provides, in relevant part:

> "Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the emergency tenant protection act of nineteen seventy-four, the rents of each dwelling unit in an eligible multiple dwelling shall be fully subject to control under such local law, unless exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit, for the entire period for which the eligible multiple dwelling is receiving benefits pursuant to this section."

The parties disagree as to whether, pursuant to section 421-g (6), the high rent decontrol provisions of the RSL are applicable during the benefit period.

Defendant argues that the phrase "such local law," in section 421-g (6), refers to the RSL as a whole, including the provisions' for decontrol, and that, when the Legislature excepted condominium and cooperative apartments from the reach of rent regulation under this statute, it could also have excepted apartments subject to high rent decontrol, but did not do so.

Defendant also points out that the language quoted above, from section 421-g (6), is identical to the language of RPTL § 421-a, and that, while, after RPTL § 421-a was enacted, the Legislature expressly excepted luxury deregulation in respect to apartments in buildings that received tax benefits pursuant to RPTL § 421-a (*see* RSL § 26-504.2), it has not done so in

respect to buildings receiving tax benefits pursuant to RPTL § 421-g.

It is established that "'all parts of a statute are to be given effect and . . . a statutory construction which renders one part meaningless should be avoided.'" *Matter of Avella v City of N. Y.*, ___ NY3d ___, 2017 WL 2427307, quoting *Rocovich v Consolidated Edison*, 78 NY2d 509, 515 (1991). Defendant's first argument is untenable, because, if adopted, it would render the introductory "[n]othwithstanding" phrase, which defendant ignores, superfluous. That phrase clearly refers to provisions in the RSL and the Emergency Tenant Protection Act of 1974, such as the high rent and high income decontrol provisions enacted in the Rent Regulation Reform Act of 1993 (RSL § 26-504.3), that are contrary to the regulation of rent. RPTL § 421-g provides that, regardless of those provisions, "the rents of each dwelling unit in an eligible multiple dwelling shall be fully subject to control under" the RSL, except for dwelling units that are exempted by the RSL, because they are cooperatives or condominiums.

Defendant's second argument also fails. RPTL § 421-g (6) provides that, after the tax benefits of section 421-g end,

> "such rents shall continue to be subject to such control, except that such rents that would not have been subject to such control but for this subdivision, shall be decontrolled if the landlord has included in each lease and renewal thereof . . . a notice . . . that the unit shall become subject to such decontrol upon the expirations of benefits pursuant to this section."

It is patent, therefor, that section 421-g, unlike section 421-a, imposed rent stabilization on units that, but for that statute, would have been excepted from rent stabilization, including units that would have been deregulated, as the result of high rent and high income. Accordingly, there was no need for the Legislature to provide for such rent regulation in a separate enactment.

The parties contend that the legislative history of RPTL § 421-g supports their respective positions. Inasmuch as section 421-g is unambiguous, as both parties also assert, the court needs not enter into that discussion. *See In Matter of RCN N.Y. Communications, LLC v Tax Commn. of the City of N.Y.*, 95 AD3d 456, 457 (1st Dept 2012), quoting *Matter of Lloyd v Grella*, 83 NY2d 537, 545-546 (1994).

Defendant argues that this court should defer to certain DHCR documents, which support defendant's position. Leaving aside the fact that those documents consist of private letters that were issued without notice or explanation, a court needs not defer to an administrative agency where the "question is one of pure statutory reading and analysis." *Matter of Ansonia Residents Assn. v New York State Div. of Hous. & Community Renewal*, 75 NY2d 206, 214 (1989); *see also Matter of KSLM -Columbus Apts., Inc. v New York State Div. of Hous. & Community Renewal*, .5 NY3d 303, 312 (2005).

In a post-briefing letter to the court, defendant urges it to follow the holding in the recently decided case of *Henry 85 LLC v Roodman Sup Ct, NY County*, May 15, 2017, Hagler, J., index No. 154499/2015. The court declines to do so. The *Henry 85* court held that the high rent decontrol provisions of the RSL are applicable to section 421-g housing, largely on two grounds. First, the court opined that, if the cooperative

or condominium status of an apartment is the only exception to the rent control provision of section 421-g, then the primary residence requirement of the RSL would be rendered ineffective. Second, the court noted that, when the Legislature enacted the Rent Regulation Reform Act of 1993, it expressly excluded apartments in buildings receiving RPTL §§ 489 or 421-a tax abatements, but it has never specifically excluded buildings receiving section 421-g tax benefits from high rent deregulation. As to the first of these grounds, section 421-g controls the rent in covered apartments; it does not give tenants any additional rights. Thus, an owner would be free to refuse to renew a tenant's lease, and to seek to evict a tenant, pursuant to Rent Stabilization Code § 2524.4 (c), which is applicable to tenants who do not use their apartments as their primary residence. As to the second ground, there was no reason for the Legislature to amend the RSL, with reference to apartments covered by section 421-g, because, as noted above, that provision, itself, imposes rent regulation on the apartments to which it applies, including those that, otherwise, would be subject to luxury decontrol.

Accordingly, plaintiffs are entitled to the declaration that they seek, and to a trial to determine the amounts of rent that they have been overcharged. Inasmuch as plaintiffs' leases include a provision for attorneys' fees in favor of defendant, plaintiffs, the prevailing parties, here, are entitled to their attorneys' fees (Real Property Law § 234; *Paganuzzi v Primrose Mgt. Co.*, 268 AD2d 213, 213 [1st Dept 2000]), with interest from the date of the first overcharge. However, plaintiffs are not entitled to treble damages, because defendant's actions cannot be said to have been "willful." While, as explained above, this court does not defer to the DHCR advisory opinions concerning section 421-g (*see*

Burden affirmation, exhibit F), it was not willful for respondent to rely upon them.

Accordingly, it is hereby

ORDERED that the motion of defendant 50 Murray Street Acquisition LLC for summary judgment is denied; and it is further

ORDERED that the cross motion of plaintiffs John Kuzmich, Sandra May, Joshua Socolow, Ignatius Navas, Kendrick Croasmun, Rishi Khanna, Caitlan Senske, Jamie Axford, Jonathan Gazdak, Suzy Heimann, Michael Gorzynski, Nikesh Desai, Heidi Burkhart, Ben Drylie-Perkins, Keiron McCammon, Lisa Atwan, Jennifer Senske Ryan, Brad Langston, Alejandra Garcia, Lisa Chu, Scott Reale, Dan Slivjanovski, Shiva Pejman, Laurie Karr, Adam Seifer, Anand Subramanian, Darcy Jensen, Elin Thomasian, Hazel Lyons, David Drucker, Howard Pulchin, Jin Sup Lee, Jenn Wood, Nicholas Apostolotos, Alex Kelleher, Brian Knapp, Jeff Rives, Jason Lewis, Laura Fieseler Hickman, Franklin Yap, and Steven Greenes for partial summary judgment is granted; and it is further

ADJUDGED and DECLARED that: (a) the apartments of said plaintiffs are subject to rent stabilization; (b) said plaintiffs are the rent stabilized tenants thereof; and (c) the rents charged to said plaintiffs since the commencement of their tenancies have been unlawful; and it is further

ORDERED that the Court, having on its own motion determined to consider the appointment of a referee to determine as follows, and it appearing to the Court that a reference to determine is proper and appropriate pursuant to CPLR 4317 (b), in that an issue of damages separately triable and not requiring a trial by jury is involved, it is now hereby

ORDERED that a Judicial Hearing Officer (JHO) or Special Referee shall be designated to determine the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

(1) the amount that each plaintiff has been overcharged, said amounts to be calculated as follows: the lowest rent registered, pursuant to Rent Stabilization Code § 2528.3, for comparable apartments in the building located at 50 Murray Street in Manhattan, that were in effect on the date that said plaintiffs first occupied their apartments; or, if defendant did not register the rents of comparable apartments in said building, amounts based upon data compiled by the New York State Division of Housing and Community Renewal, using sampling methods for regulated housing accommodations;

(2) the amount of attorneys' fees and costs properly incurred by the plaintiffs in litigating this action; and it is further ORDERED that the powers of the JHO/Special Referee shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or *spref@nycourts.gov*) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at *www.nycourts.gov/supctmanh* at the "references" link under "Courthouse Procedures") shall assign this matter to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15

days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the plaintiff shall serve a pre-hearing memorandum within 24 days from the date of this order and defendants shall serve a pre-hearing memorandum within 20 days from service of plaintiffs' papers, and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in part SRP fixed by the Clerk as set forth above; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320 [a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed on the date first fixed by the Special Referee Clerk, subject only to any adjournment by the Special Referee Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion; and it is further

ORDERED that counsel for Plaintiffs shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on all counsel.

Dated: July 3, 2017

ENTER:

<<signature>>
Carol Robinson Edmead, J.S.C.

APPENDIX D

2019 WL 4383854

Unpublished Disposition

Note: This opinion will not appear in a printed volume. The disposition will appear in the reporter.

This motion is uncorrected and subject to revision before publication in the printed Official Reports.

COURT OF APPEALS OF NEW YORK

2019-743

JOHN KUZMICH, et al.,

Appellants,

v.

50 MURRAY STREET ACQUISITION LLC,

Respondent.

Decided September 12, 2019

OPINION

Motion for reargument denied with one hundred dollars costs and necessary reproduction disbursements.

APPENDIX E

COURT OF APPEALS
STATE OF NEW YORK

APL-2018-00078

New York County Clerk's Index No. 155266/16

JOHN KUZMICH, SANDRA MAY, JOSHUA SOCOLOW, IGNATIUS NAVASCUES, KENDTRICK CROASMUN, RISHI KHANNA, CAITLAN SENSKE, JAMIE AXFORD, JONATHAN GAZDAK, SUZY HEIMAN, MICHAEL GORZYNSKI, NIKESH DESAI, HEIDI BURKHART, BEN DRYLIE-PERKINS, KEIRON MCCAMMON, LISA ATWAN, JENNIFER SENSKE RYAN, BRAD LANGSTON, ALEJANDRA GARCIA, LISA CHU, SCOTT REALE, DAN SLIVJANOVSKI, SHIVA PEJMAN, LAURIE KARR, ADAM SEIFER, ANAND SUBRAMANIAN, DARCY JENSEN, ELIN THOMASIAN, HAZEL LYONS, DAVID DRUCKER, HOWARD PULCHIN, JIN SUP LEE, JENN WOOD, NICHOLAS APOSTOLATOS, ALEX KELLEHER, BRIAN KNAPP, JEFF RIVES, JASON LEWIS, LAURA FIESELER HICKMAN, FRANKLIN YAP AND STEVEN GREENES,

Plaintiffs-Appellants,

—against—

50 MURRAY STREET ACQUISITION LLC,

Defendant-Respondent.

July 25, 2019

MOTION FOR REARGUMENT

JONATHAN LIPPMAN
LATHAM & WATKINS LLP
885 Third Avenue
New York, New York 10022
Telephone: (212) 906-1200
Facsimile: (212) 751-4864

MICHAEL E. BERN
(admitted *pro hac vice*)
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

Attorneys for Defendant-Respondent

NOTICE OF MOTION FOR REARGUMENT

PLEASE TAKE NOTICE that Respondents 50 Murray Street Acquisition LLC and B.C.R.E. – 90 West Street LLC will move before this Court on Monday, August 12, 2019, at the State of New York Court of Appeals, 20 Eagle Street, Albany, New York, for an order granting reargument pursuant to Rule 500.24 of this Court's rules. In support of the motion, Respondents submit the following brief.

Dated: July 25, 2019

/s/ Jonathan Lipmann
Jonathan Lipmann
LATHAM & WATKINS LLP
885 Third Avenue
New York, New York 10022
Telephone: (212) 906-1200
Facsimile: (212) 751-4864

Michael E. Bern
(admitted pro hac vice)
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

DISCLOSURE STATEMENT

Pursuant to 22 N.Y.C.R.R. Part 500.1(f), 50 Murray Street Acquisition LLC ("50 Murray") states that its parents are 50 Murray Mezz One LLC, 50 Murray Mezz Two LLC, 50/53 JV LLC, Clipper Realty LP, and Clipper Realty Inc., and its affiliate is Clipper Equity LLC. It has no subsidiaries.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

REGULATIONS

CONSTITUTIONAL PROVISIONS

INTRODUCTION

§ 421-g of the Real Property Tax Law (RPTL) provides a tax benefit to owners of certain buildings in Lower Manhattan, but in return it stipulates that housing units in those buildings will be "fully subject to control" under the Rent Stabilization Law of 1969 (RSL) while those benefits are in place. It is *undisputed* that one of the two branches of the State Legislature (the Senate) approved that statute by a 53-1 margin on the specific understanding that "dwelling units in property receiving benefits under the residential conversion program . . . *would be subject to rent stabilization to the same extent as, but to no greater extent than, other rent regulated property*," such that "provisions of the Rent Regulation Reform Act of 1993 that provide for the exclusion of high rent accommodation and for high income rent decontrol would apply to property receiving benefits." R.40 (emphasis added).

Not only that, but the party that proposed the legislation, R.452, expressly affirmed that that interpretation was accurate before the Senate voted to approve the bill, R.40, and there is *zero* legislative history—no debates, no signing statements, nothing—indicating that either the Governor or Assembly understood the provision otherwise. The regulators tasked with administering the RSL and RPTL proceeded to interpret § 421-g exactly as the Senate—and the bill's drafters—expected. R.29, 97, 103. And in reliance on that shared understanding, billions of dollars of investment flowed into Lower Manhattan—exactly as the program's drafters hoped.

Notwithstanding that powerful history evidencing that § 421-g was intended to render properties fully subject to the entire rent stabilization law, a majority of this Court held on June 25, 2019 that the statutory

language "*unambiguously* establishes the legislature's intent" to provide for the exact opposite result. *Kuzmich v. 50 Murray St. Acquisition LLC*, 2019 WL 2583118, at *4 (N.Y. June 25, 2019) (emphasis added). The majority opinion concluded that the statutory language was "unambiguous" even though the Chief Judge of this Court, multiple panels of the Appellate Division, the Senate, the City that proposed the 421-g program, and the regulators charged with interpreting the RSL and RPTL all interpreted § 421-g to mean otherwise—and even though the majority opinion's construction results in identical language within two closely related statutory provisions admittedly meaning the opposite thing. *See id.*, at *8 (DiFiore, C.J., dissenting). Upon finding the statute unambiguous, the majority opinion proceeded to reject any "attempt by defendants and the dissent to a contextually use legislative history to 'muddy clear statutory language,'" and concluded that § 421-g can be read only to subject properties to the pro-regulatory, but not deregulatory, provisions of the rent stabilization laws. *Id*., at *4 (quotation omitted).

The majority opinion's premise that the Legislature *unambiguously* intended to accomplish the exact opposite of what the Senate (and so many others) expressly understood the law to do was the lynchpin of its decision. But that finding is unsustainable and warrants reargument for several reasons.

First, although the majority opinion relied on inapposite *federal* caselaw to dismiss the significance of the powerful legislative history undergirding § 421-g, this Court has long indicated that legislative history is essential to interpret statutory language—even when that language supposedly is clear. *See, e.g.*, *Riley v. Cty. of Broome*, 95 N.Y.2d 455, 463-64 (2000). The majority opinion's suggestion that legislative history

cannot be used to "muddy" purportedly clear statutory language marks a drastic departure from a "long tradition" of New York cases holding the opposite, *see, e.g.*, *id.*; *New York State Bankers Ass'n v. Albright*, 38 N.Y.2d 430, 436-37 (1975), and should be reconsidered. Here, as Chief Judge DiFiore explained in dissent, the legislative and factual history leading to § 421-g overwhelmingly supports the conclusion that the provision was intended to work exactly as the Legislature expected—under which properties benefiting from § 421-g would be fully subject to the provisions of rent stabilization, including those provisions providing for decontrol.

The majority opinion's holding is particularly incompatible with the Legislature's decision to reauthorize and extend § 421-g in 2000—which the majority opinion did not address. *See* 22 N.Y.C.R.R. 500.24(c) (identifying as grounds for reargument points "overlooked or misapprehended by the Court"). Following the statute's enactment, the regulatory agencies tasked with administering the RSL and RPTL interpreted the statute as envisioned by its drafters and the Legislature. R.29, 97, 103. And because the tax break underlying § 421-g was a wild success, some (though hardly all) of the properties that were converted to residential property and subjected to rent stabilization quickly qualified for luxury decontrol. Rather than protest that settled practice or indicate that the City was misinterpreting § 421-g, the Legislature simply reauthorized the program. That is powerful evidence that § 421-g was intended to function exactly as it had to date.

Second, the majority opinion's contrary determination that "fully subject to control" cannot mean fully subject to the entire rules of rent stabilization—

including the purportedly "antithetical concept of decontrol," *Kuzmich*, 2019 WL 2583118, at *3 n.5—overlooks that other statutes use "subject to control" and similar phrases to subject properties to the *entire system* of rent control. *See, e.g.*, N.Y. UNCONSOL. LAW §§ 26-403(e)(2)(a), (e)(2)(c) (describing properties "subject to control under this chapter"). Such provisions expose properties to the entire rent control statute, including provisions that are pro-regulatory, as well as others providing for a process of "decontrol." *Id.* § (e)(2)(i)(6). Moreover, statutes distinguish situations in which a property is "not . . . subject to rent control" at all from other situations in which a property is "eligible for decontrol." *Id.* § (e)(1)(c). The import is that a property may be *subject* to control, and yet be *eligible* for decontrol.

Laboring under the mistaken impression that the statutory text here was unambiguous, the majority opinion also failed to account for practical consequences of its decision. As Chief Judge DiFiore's dissent correctly explained (*Kuzmich*, 2019 WL 2583118, at *4), the majority opinion creates a never-before-seen "enhanced form of rent stabilization" specifically for § 421-g buildings, under which the RSL's pro-regulatory provisions apply but its deregulatory provisions and exemptions do not. Such results would install a bizarre rent stabilization regime upon § 421-g properties that no one envisioned and upend the reasonable expectations of investors on whom the § 421-g program has relied for its unbridled success.

Finally, reargument is warranted because the majority opinion's interpretation of § 421-g raises serious constitutional problems—upsetting settled investment expectations in a manner that would amount to a taking under *Stop the Beach Renourishment, Inc. v.*

Florida Department of Environmental Protection, 560 U.S. 702 (2010). In that case, a four-Justice plurality of the U.S. Supreme Court recognized that an unconstitutional taking occurs where "a legislature *or a court* declares that what was once an established right of private property no longer exists." *Id.* at 715 (plurality opinion). Because the majority's opinion presently produces those results, the Court should grant reargument to interpret § 421-g as the Legislature intended—which avoids this serious constitutional issue. *Overstock.com, Inc. v. New York State Dep't of Taxation and Fin.*, 20 N.Y.3d 586, 593 (2013) ("[C]ourts must avoid, if possible, interpreting a presumptively valid statute in a way that will needlessly render it unconstitutional.").

For all these reasons, the Court should grant reargument, and upon granting reargument, affirm the result of the Appellate Division.

ARGUMENT

I. THE MAJORITY OPINION IMPROPERLY DISREGARDED LEGISLATIVE HISTORY ON THE INCORRECT ASSUMPTION THAT THE TEXT OF § 421-g WAS UNAMBIGUOUS

Despite the contrary decisions of two separate panels of the Appellate Division—and over Chief Judge DiFiore's vigorous dissent—the majority opinion concluded that the phrase "fully subject to control under [] local law" in § 421-g *unambiguously* refers only to the pro-regulatory provisions of that "local law," as opposed to those which provide for deregulation. That interpretation is fundamentally incompatible with the statute's legislative history and wrongly treated as "unambiguous" language that can—and does—bear the alternative meaning that its drafters and the Legislature intended.

A. The Legislative History Renders The Majority Opinion's "Unambiguity" Finding Unsustainable

"The primary consideration of courts in interpreting a statute is to 'ascertain and give effect to the intention of the Legislature.'" *Riley*, 95 N.Y.2d at 463 (citation omitted). In performing this exercise, this Court has said repeatedly that courts must look to legislative history, even when a statute appears to be facially unambiguous. As the Court explained in *New York State Bankers Association*: "While [] statutes may appear literally 'unambiguous' on their face, the absence of ambiguity facially is never conclusive. Sound principles of statutory interpretation generally require examination of a statute's legislative history and context to determine its meaning and scope." 38 N.Y.2d at 434; *see also* N.Y. STAT. LAW § 124 ("In ascertaining the purpose and applicability of a statute, it is proper to consider the legislative history of the act . . . ."). By giving short shrift to the legislative history and context here, the majority opinion wrongly cast aside, *sub silentio*, a "long tradition" of New York law. *Riley*, 95 N.Y.2d at 464.

Here, both the legislative history of § 421-g and longstanding agency practice clearly indicate that the ambiguous phrase "subject to control" refers to the entire rent stabilization law. In an exchange of letters, then-Mayor Giuliani and then-Senate Majority Leader Joseph Bruno (who played key roles in proposing and approving the legislation) confirmed their mutual understanding that buildings receiving benefits under § 421-g would continue to be subject to the entire system of rent regulation. According to Mayor Giuliani, the drafters' intention "has always been that dwelling units in property receiving benefits under [§ 421-g] . . .

would be subject to rent stabilization to the same extent as, but to no greater extent than, other rent regulated property." R.40-41. Thus, he explained, "[a]ny provision of law that generally exempts any housing accommodation from rent stabilization"—including "the exclusion of high rent accommodation" and "high income rent decontrol"—"would apply as well to dwelling units" receiving § 421-g benefits. *Id.* Senator Bruno responded in kind, explaining that the city's intention that § 421-g buildings would "be fully subject to the deregulation provisions" at issue here "comports with the Senate's own reading of this legislation." R.42.

The lone senator to oppose the bill—Senator Franz Leichter, who questioned whether a subsidy was needed for "luxury housing"—similarly noted that § 421-g buildings "are not going to be controlled" because of luxury deregulation. R.59. In response to Senator Leichter's statement, Senator Vincent Leibell read Mayor Giuliani's letter into the record, again clarifying that § 421-g buildings would be subject to rent regulation to the same extent as all other buildings. R.65-68. The record of debate on the bill reveals no disagreement with this interpretation. The same is true of the Assembly, which sent the bill to the Governor without amending it or otherwise indicating that its understanding was contrary to the Senate's.

The agencies tasked with administering the RSL and § 421-g—the Department of Housing Preservation & Development (HPD) and the Division of Housing & Community Renewal (DHCR)—adopted the same interpretation. As Appellants conceded in their opening brief to this Court (at 14-15), HPD adopted regulations in 1997 interpreting the statute to "mak[e] high-rent deregulation available for apartments subject to RPTL

§ 421-g" throughout the City of New York. Relying on the legislative history cited above, moreover, DHCR issued an advisory opinion in 1997 stating that "high-rent deregulation is available with respect to Sec. 421-g units." R.97.

Importantly, the Legislature ratified these interpretations in 2000, when it reauthorized § 421-g benefits without changing the language of the statute to exclude luxury decontrol. *Compare* 1995 N.Y. Laws 153, 166, Ch. 4, § 14, S. 5320, A. 8028 (initially authorizing the program until 2002), *with* 2000 N.Y. Laws 2895, 2905, Ch. 261, § 22, S. 8219 (reauthorizing the program until 2007). By 2000, HPD's regulation had made high-rent deregulation available to § 421-g apartments for several years throughout New York City. Rather than object to that settled practice or alter the statute's language to provide for a different result, the Legislature reauthorized the program exactly as it stood. Because this Court "presume[s] that the Legislature [is] aware of" how its enactments have been interpreted, *People v. Cahill*, 2 N.Y.3d 14, 118 (2003) (Read, J., concurring in part and dissenting in part), the Legislature's decision not to alter HPD's published interpretation of § 421-g strongly buttresses the conclusion that the Legislature intended for high-rent deregulation to apply to § 421-g buildings. The majority opinion did not consider the statute's reauthorization; but that fact strongly counsels against its analysis and supports reargument.

Finally, the historical backdrop of § 421-g also suggests that luxury deregulation was meant to apply to § 421-g buildings. As Chief Judge DiFiore's dissent explains, the purpose of § 421-g was to encourage investment in a then-depressed Manhattan neighborhood—"not the creation of affordable housing." *See Kuzmich*,

2019 WL 2583118, at *10 (DiFiore, C.J., dissenting). High-rent luxury apartments suited the Legislature's goal, since those apartments create the greatest tax revenue increases, encourage the most retail growth, and otherwise spur economic revitalization. *See* R.472. Given this purpose, it made perfect sense for the Legislature to encourage the construction of luxury housing by preserving luxury deregulation for § 421-g buildings.

The Legislature achieved that goal. Section 421-g spurred significant investment in Lower Manhattan real estate. In reliance on the settled legislative and regulatory understanding that high-rent deregulation applied to such buildings, R.34-35, 50 Murray alone invested $540 million in two buildings containing 505 apartments. R.36-37. The total amount of investment by 50 Murray and others in reliance on that understanding has easily amounted to billions of dollars.

B. New York Statutes Consistently Use The Phrase "Subject To Control" To Refer To Entire Regimes of Rent Regulation

The majority opinion's sole justification for disregarding this clear legislative history was that the statute on its face was unambiguous. *Id*., at *4. The majority opinion rested its holding of unambiguity in § 421-g almost entirely on its assumption that the word "control" in the phrase "subject to control" cannot refer to "the antithetical concept of decontrol." *Id.*, at *3 n.5. But as an examination of New York's rent regulation statutes reveals, that assumption is simply incorrect.

New York rent regulation statutes frequently refer to a property as being "subject to control *under*" a regime of rent regulation. For example, the statute

that governs rent control in New York City, the City Rent and Rehabilitation Law (CRRL), repeats the phrase "subject to control *under this chapter*" no fewer than six times. *See* N.Y. UNCONSOL. LAW §§ 26-403(e)(2)(a), (e)(2)(c), (e)(2)(i)(7)(ii), (e)(2)(i)(7)(iii); *see also id.* § 26-401(b) (declaring it city policy "to encourage and promote the improvement and rehabilitation of the housing accommodations *subject to control hereunder*"). But "this chapter" contains the *entire* CRRL, not just its pro-regulatory provisions. Similarly, the Emergency Tenant Protection Act—which generally governs rent stabilization outside of New York City—speaks of properties that are "subject" or "not subject to control . . . *under the provisions of*" the RSL and other rent regulation statutes. *Id.* § 8623(a); *see also id.* (speaking of properties that are "subject to stabilization or control *under such rent stabilization law*"). This provision directly contradicts the majority opinion's assumption that the phrase "subject to control" cannot mean "subject to '*the provisions of*'" a regulatory regime. *Kuzmich*, 2019 WL 2583118, at *3 (emphasis in original).

New York's rent regulation statutes also speak of "decontrolled" units—that is, units that are deregulated under the rent stabilization laws. *See, e.g.*, N.Y. UNCONSOL. LAW § 26-403(e)(2)(i)(6) (authorizing New York City's rent agency to "decontrol[]" certain units following the "substantial demolition" of a building); *id.* § 26-414 (authorizing New York City's rent agency to decontrol a class of housing after finding that the vacancy rate for that class exceeds 5%); *see also id.* § 26-504 (applying the RSL to units that were "decontrolled . . . pursuant to section 26- 414"); *id.* § 8605 (prohibiting a locality from issuing regulations to control a unit that has been "decontrolled either by operation of law or by a city housing rent agency").

By distinguishing between units that have been *decontrolled* and those that were never *subject* to control in the first place, these provisions suggest that a unit can be "subject to control" and yet also be eligible for decontrol. But this is possible only if—contrary to the majority opinion's view—the term "control" embraces a statute's deregulatory provisions as well as its pro-regulatory ones.

In any event, the majority opinion's determination of *unambiguity* is irreconcilable with this Court's "obligation to harmonize the various provisions of related statutes and to construe them in a way that renders them internally compatible." *Matter of Aaron J.*, 80 N.Y.2d 402, 407 (1992). When the Legislature enacted the 1993 provision permitting deregulation of high-rent apartments, it prescribed an exclusive list of enumerated exception to its application—including for buildings subject to RPTL § 421-a (a provision containing language substantively identical to § 421-g). *See* N.Y. UNCONSOL. LAW § 26-504.2(a) (2015) (providing that luxury decontrol does not apply to buildings that receive benefits under sections 421-a and 489 of the Real Property Tax Law). In 1995, however, when enacting § 421-g—a provision with language substantively identical to § 421-a—the Legislature declined to add § 421-g to the list of exceptions to the application of high-rent decontrol. Whether or not one views that as *dispositive*, the fact that Appellants' reading of those provisions requires "subject to control" to bear a different meaning in two statutes enacted closely in time, addressing the same subject, with substantially identical surrounding language, at minimum, creates *ambiguity*. To hold otherwise will impose harmful consequences on the legislative process, requiring the Legislature to anticipate that identical statutory language will be interpreted to mean different things,

undermining the Legislature's ability to rely on established principles of statutory interpretation, and complicating its ability to draft legislation with confidence about how it will be construed.

C. The Majority Opinion's Reading Leads To Absurd Results, Imposing A Form Of Enhanced Regulation On § 421-g Buildings Where The RSL's Operative Provisions Apply But Its Exemptions Do Not

Even if the clear indications of legislative intent were not enough to resolve the ambiguity at play in § 421-g, then the absurd consequences of the majority opinion's interpretation would confirm that it cannot be correct. As 50 Murray explained in its response brief (at 34-41), the reading adopted by the majority opinion nullifies numerous exemptions to rent regulation and decontrolling provisions for § 421-g buildings, not just the luxury decontrol provisions. Thus, the majority opinion subjects § 421-g buildings to a form of super-regulation, whereby the operative provisions of ordinary rent regulations apply but the exclusions and deregulatory provisions do not.

The majority opinion recognized this concern. It concluded (*Kuzmich*, 2019 WL 2583118, at *3 n.6) that one exemption—the "primary residence" exemption—would continue to apply to § 421-g buildings because it merely provides mechanism to evict a tenant who does not use a rent-stabilized property as his or her primary residence. *See* 9 N.Y.C.R.R. § 2524.4(c). But the majority opinion failed to explain why a mechanism for evicting certain noncompliant tenants represents a form of "control" to which a 421-g building is "subject" under the majority opinion's narrow reading of the statute. *See Kuzmich*, 2019 WL 2583118, at *3

n.5 (concluding that the word "control" cannot embrace "the antithetical concept of decontrol").

And in any case, the majority opinion overlooked other rent stabilization exemptions that would be swept away under its reading. For example, Section 2520.11 of New York City's Rent Stabilization Code exempts from the RSL units in "buildings containing fewer than six housing accommodations" and those that are "occupied by domestic servants, superintendents, caretakers, managers or other employees to whom the space is provided as part or all of their compensation." N.Y. UNCONSOL. LAW § 2520.11(d), (m). Unlike the primary residence exception, these exemptions indisputably remove an entire *unit* from rent stabilization; under the majority opinion's reading, however, they would be nullified for § 421-g buildings.

II. RECONSIDERATION IS WARRANTED TO AVOID SERIOUS CONSTITUTIONAL ISSUES

Reargument is also warranted in light of the serious constitutional questions presented by the Court's interpretation of § 421-g. *See Matter of Jamie J.*, 30 N.Y.3d 275, 282 (2017) (courts should construe statues "to avoid [constitutional] infirmity"). The Court's ruling eliminates property rights of apartment owners long recognized by state and local regulators, and thus implicates the federal Constitution's Takings Clause and due process limitations prescribed in *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702 (2010).[1]

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[1] These considerations provide additional reasons that the Court should grant reargument and clarify that luxury deregulation applies in § 421-g buildings. And, in any event, special circumstances warrant their consideration at this stage, *see* 22 N.Y.C.R.R. § 500.24(d), because they arise from the Court's

"[T]he Takings Clause bars the State from taking private property without paying for it, no matter which branch is the instrument of the taking." *Stop the Beach*, 560 U.S. at 715 (plurality opinion). For that reason, "[i]f a legislature *or a court* declares that what was once an established right of private property no longer exists, it has taken that property, no less than if the State had physically appropriated it or destroyed its value by regulation." *Id.* (emphasis in original); *see also Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161-65 (1980) (state supreme court decision constituted taking because its interpretation of state law violated "more than a unilateral expectation" of property owner and ran "contrary to [a] long established general rule").

The Due Process Clause likewise prevents courts from suddenly eliminating or narrowing established property rights. *See, e.g.*, *Brinkerhoff-Faris Tr. & Sav. Co. v. Hill*, 281 U.S. 673, 679-80 (1930) ("transgression" of due process may be "accomplished by the state judiciary in the course of construing an otherwise valid state statute") (citation omitted). Because the Due Process Clause is "a central limitation upon the exercise of judicial power," a court "decision that eliminates or substantially changes established property rights, which are a legitimate expectation of the owner, is 'arbitrary or irrational' under the Due Process Clause." *Stop the Beach*, 560 U.S. at 735, 737 (Kennedy, J., concurring).

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decision. *See Stop the Beach*, 560 U.S. at 712 & n.4 (plurality opinion) (recognizing unusual posture of judicial-takings claim and entertaining a claim raised for the first time on rehearing to the Florida Supreme Court).

This Court's interpretation violates both constitutional provisions because it vitiates what were, until this Court's decision, established rights of property owners who invested significant sums developing apartments under § 421-g. Since the law's enactment in 1995, regulators have consistently applied luxury decontrol to apartments governed by § 421-g. In 1997, for instance, HPD issued regulations providing that luxury decontrol applies to § 421-g properties. *See* 28 R.C.N.Y. §§ 32-02, 32-05 (effective Aug. 1, 1997). HPD has administered the § 421-g program consistent with those regulations ever since—for example, by acknowledging dwelling units subject to luxury decontrol as a specific exemption on § 421-g program paperwork. *See Henry 85 LLC v. Roodman*, No. 154499/2015, 2017 WL 3401332, at *9 (N.Y. Sup. Ct. N.Y. Cty. May 2, 2017).

DHCR, which has "a broad mandate" to administer "rent control and rent stabilization laws," *Rent Stabilization Ass'n of New York City, Inc. v. Higgins*, 83 N.Y.2d 156, 168 (1993), has interpreted § 421-g in the same way. In 1997, DHCR issued guidance confirming that "high-rent deregulation is available with respect to [§] 421-g units." R.97. DHCR's position on that point has not wavered since. *See Kuzmich*, 2019 WL 2583118, at *10 (DiFiore, C.J., dissenting).

By deeming the luxury decontrol provisions inapplicable to § 421-g properties, this Court "declare[d] that what was once an established right of private property no longer exists." *Stop the Beach*, 560 U.S. at 715 (plurality opinion). Apartment owners, including Respondents here, made significant investments with "more than a unilateral expectation" that the luxury decontrol provisions would continue to apply. *Webb's Fabulous Pharmacies*, 449 U.S. at 161-65; *see also Kuzmich*, 2019 WL 2583118, at *6 (DiFiore, C.J.,

dissenting) (noting that the Respondents purchased properties "[i]n reliance on" the statutory scheme); R.33-35. Thus, as in *Webb's Fabulous Pharmacies*, the sudden shift in interpretation of § 421-g violates Respondents' rights under the Takings Clause. 449 U.S. at 164-65. And the Court's decision will, if maintained, significantly diminish the value of § 421-g properties, undermining owners' reasonable investment-backed expectations. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538-39 (2005).

The Court's interpretation also violates Respondents' due process rights because it "eliminates or substantially changes established property rights, which are a legitimate expectation of the owner." *Stop the Beach*, 560 U.S. at 737 (Kennedy, J., concurring). Regulators assured owners that their investments would be protected by luxury decontrol, and those protections played an essential role in attracting the capital necessary for § 421-g to serve its purpose. Respondents invested in the properties at issue here in reliance on the availability of luxury decontrol, and would not have done so without that safety valve—indeed, in most instances it is impossible to cover the cost of an apartment conversion at the rental rates mandated by the Rent Stabilization Law. *See* R.33-35. Exempting the apartments from luxury decontrol now, long after the fact, thus "substantially changes" the rights "legitimate[ly] expect[ed]" by § 421-g apartment owners. *Stop the Beach*, 560 U.S. at 737 (Kennedy, J., concurring).

Rather than maintain an interpretation that violates the U.S. Constitution, the Court should reconsider its decision. *See People v. Epton*, 19 N.Y.2d 496, 505-06 (1967) (reversing interpretation of statute where

"previous interpretation . . . was [not] in harmony with the Federal Constitution").

CONCLUSION

For the foregoing reasons, the Court should grant 50 Murray's motion for reargument and, upon reargument, affirm the orders of the Appellate Division in these cases, with costs of the appeal and of this motion.

Dated: July 25, 2019

/s/ Jonathan Lipmann
Jonathan Lipmann
LATHAM & WATKINS LLP
885 Third Avenue
New York, New York 10022
Telephone: (212) 906-1200
Facsimile: (212) 751-4864
Michael E. Bern
(admitted pro hac vice)
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

APPENDIX F

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides in relevant part:

> [N]or shall any person . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS

New York State Real Property Tax Law Provisions

Section 421-g(6) of the New York State Real Property Tax Law provides:

> Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the emergency tenant protection act of nineteen seventy-four, the rents of each dwelling unit in an eligible multiple dwelling shall be fully subject to control under such local law, unless exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit, for the entire period for which the eligible multiple dwelling is receiving benefits pursuant to this section, provided, however, that for purposes of this subdivision, an eligible multiple dwelling receiving benefits pursuant to this section whose benefits are suspended, terminated or revoked by the department of housing preservation and development shall be deemed to be receiving benefits for the length of time such benefits would have been received if such benefits had not been suspended, terminated or revoked, or for the period such local law is in effect, whichever is shorter. Thereafter, such rents shall continue to be subject to such control, except that such rents that would not have been subject to such control but for this subdivision, shall be decontrolled if the landlord has included in each lease and renewal thereof for such unit for the tenant in residence at the time of such decontrol a notice in at least twelve point type

> informing such tenant that the unit shall become subject to such decontrol upon the expiration of benefits pursuant to this section.

Section 421-a(2)(f) of the New York State Real Property Tax Law provides, in relevant part:

> Notwithstanding the provisions of any local law for the stabilization of rents or the emergency tenant protection act of nineteen seventy-four, all affordable housing units in an extended affordability property shall be fully subject to control under such local law or such act during the extended affordability period, provided that tenants holding a lease and in occupancy of such affordable housing units in an extended affordability property at the expiration of the extended affordability period shall have the right to remain as rent stabilized tenants for the duration of their occupancy. Upon any vacancy of an affordable housing unit after the extended affordability period, such affordable housing unit shall remain fully subject to rent stabilization unless the owner is entitled to remove such affordable housing unit from rent stabilization upon such vacancy by reason of the monthly rent exceeding any limit established thereunder.

Luxury Decontrol Provisions

Section 26-504.1 of the New York City Administrative Code (effective June 24, 2011 to June 13, 2019) provided:

> Upon the issuance of an order by the division, "housing accommodations" shall not include

> housing accommodations which: (1) are occupied by persons who have a total annual income, as defined in and subject to the limitations and process set forth in section 26-504.3 of this chapter, in excess of the deregulation income threshold, as defined in section 26-504.3 of this chapter, for each of the two preceding calendar years; and (2) have a legal regulated monthly rent that equals or exceeds the deregulation rent threshold, as defined in section 26-504.3 of this chapter. Provided, however, that this exclusion shall not apply to housing accommodations which became or become subject to this law (a) by virtue of receiving tax benefits pursuant to section four hundred twenty-one-a or four hundred eighty-nine of the real property tax law, except as otherwise provided in subparagraph (i) of paragraph (f) of subdivision two of section four hundred twenty-one-a of the real property tax law, or (b) by virtue of article seven-C of the multiple dwelling law.

Section 26-504.2 of the New York City Administrative Code (effective June 15, 2015 to June 13, 2019) provided [paragraph breaks added]:

> (a) "Housing accommodations" shall not include: any housing accommodation which becomes vacant on or after April first, nineteen hundred ninety-seven and before the effective date of the rent act of 2011 and where at the time the tenant vacated such housing accommodation the legal regulated rent was two thousand dollars or more per month; or, for any housing accommodation which is or becomes vacant on or after the

effective date of the rent regulation reform act of 1997 and before the effective date of the rent act of 2011, with a legal regulated rent of two thousand dollars or more per month; or for any housing accommodation that becomes vacant on or after the effective date of the rent act of 2015, where such legal regulated rent was two thousand seven hundred dollars or more, and as further adjusted by this section.

Starting on January 1, 2016, and annually thereafter, the maximum legal regulated rent for this deregulation threshold, shall also be increased by the same percent as the most recent one year renewal adjustment, adopted by the New York city rent guidelines board pursuant to the rent stabilization law.

This exclusion shall apply regardless of whether the next tenant in occupancy or any subsequent tenant in occupancy is charged or pays less than two thousand dollars a month; or, for any housing accommodation with a legal regulated rent of two thousand five hundred dollars or more per month at any time on or after the effective date of the rent act of 2011, which is or becomes vacant on or after such effective date, but prior to the effective date of the rent act of 2015; or, any housing accommodation with a legal regulated rent that was two thousand seven hundred dollars or more per month at any time on or after the effective date of the rent act of 2015, which becomes vacant after the effective date of the rent act of 2015, provided, however, that starting on January 1, 2016, and annually thereafter, such legal regulated

rent for this deregulation threshold, shall also be increased by the same percentage as the most recent one year renewal adjustment, adopted by the New York city rent guidelines board.

This exclusion shall apply regardless of whether the next tenant in occupancy or any subsequent tenant in occupancy actually is charged or pays less than two thousand seven hundred dollars, as adjusted by the applicable rent guidelines board, a month.

Provided however, that an exclusion pursuant to this subdivision shall not apply to housing accommodations which became or become subject to this law (a) by virtue of receiving tax benefits pursuant to section four hundred twenty-one-a or four hundred eighty-nine of the real property tax law, except as otherwise provided in subparagraph (i) of paragraph (f) of subdivision two of section four hundred twenty-one-a of the real property tax law, or (b) by virtue of article seven-C of the multiple dwelling law.

This section shall not apply, however, to or become effective with respect to housing accommodations which the commissioner determines or finds that the landlord or any person acting on his or her behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including, but not limited to, interruption or discontinuance of required services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his or her use or occupancy of the

housing accommodations and in connection with such course of conduct, any other general enforcement provision of this law shall also apply.

(b) The owner of any housing accommodation that is not subject to this law pursuant to the provisions of subdivision a of this section or subparagraph k of paragraph 2 of subdivision e of section 26-403 of this code shall give written notice certified by such owner to the first tenant of that housing accommodation after such housing accommodation becomes exempt from the provisions of this law or the city rent and rehabilitation law. Such notice shall contain the last regulated rent, the reason that such housing accommodation is not subject to this law or the city rent and rehabilitation law, a calculation of how either the rental amount charged when there is no lease or the rental amount provided for in the lease has been derived so as to reach two thousand dollars or more per month or, for a housing accommodation with a legal regulated rent or maximum rent of two thousand five hundred dollars or more per month on or after the effective date of the rent act of 2011, and before the effective date of the rent act of 2015, which is or becomes vacant on or after such effective date, whether the next tenant in occupancy or any subsequent tenant in occupancy actually is charged or pays less than a legal regulated rent or maximum rent of two thousand five hundred dollars or more per month, or two thousand seven hundred dollars or more, per month, starting on January 1, 2016, and annually thereafter, the

> maximum legal regulated rent for this deregulation threshold, shall also be increased by the same percent as the most recent one year renewal adjustment, adopted by the New York city rent guidelines board pursuant to the rent stabilization law, a statement that the last legal regulated rent or the maximum rent may be verified by the tenant by contacting the state division of housing and community renewal, or any successor thereto, and the address and telephone number of such agency, or any successor thereto. Such notice shall be sent by certified mail within thirty days after the tenancy commences or after the signing of the lease by both parties, whichever occurs first or shall be delivered to the tenant at the signing of the lease. In addition, the owner shall send and certify to the tenant a copy of the registration statement for such housing accommodation filed with the state division of housing and community renewal indicating that such housing accommodation became exempt from the provisions of this law or the city rent and rehabilitation law, which form shall include the last regulated rent, and shall be sent to the tenant within thirty days after the tenancy commences or the filing of such registration, whichever occurs later.

Section 26-504.3 of the New York City Administrative Code (effective June 15, 2015 to June 13, 2019) provided:

> (a) 1. For purposes of this section, annual income shall mean the federal adjusted gross income as reported on the New York state

income tax return. Total annual income means the sum of the annual incomes of all persons whose names are recited as the tenant or co-tenant on a lease who occupy the housing accommodation and all other persons that occupy the housing accommodation as their primary residence on other than a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. In the case where a housing accommodation is sublet, the annual income of the tenant or co-tenant recited on the lease who will reoccupy the housing accommodation upon the expiration of the sublease shall be considered.

2. Deregulation income threshold means total annual income equal to one hundred seventy-five thousand dollars in each of the two preceding calendar years for proceedings commenced before July first, two thousand eleven. For proceedings commenced on or after July first, two thousand eleven, the deregulation income threshold means the total annual income equal to two hundred thousand dollars in each of the two preceding calendar years.

3. Deregulation rent threshold means two thousand dollars for proceedings commenced before July first, two thousand eleven. For proceedings commenced on or after July first, two thousand eleven, the deregulation rent

threshold means two thousand five hundred dollars. For proceedings commenced on or after July first, two thousand fifteen, the deregulation rent threshold means two thousand seven hundred dollars, provided, however, that on January first, two thousand sixteen, and annually thereafter, such deregulation rent threshold shall be adjusted by the same percentage as the most recent one year renewal adjustment adopted by the relevant guidelines board.

(b) On or before the first day of May in each calendar year, the owner of each housing accommodation for which the legal regulated rent equals or exceeds the deregulation rent threshold may provide the tenant or tenants residing therein with an income certification form prepared by the division of housing and community renewal on which such tenant or tenants shall identify all persons referred to in subdivision (a) of this section and shall certify whether the total annual income is in excess of the deregulation income threshold in each of the two preceding calendar years. Such income certification form shall state that the income level certified to by the tenant may be subject to verification by the department of taxation and finance pursuant to section one hundred seventy-one-b of the tax law and shall not require disclosure of any income information other than whether the aforementioned threshold has been exceeded. Such income certification form shall clearly state that: (i) only tenants residing in housing accommodations which have a legal regulated monthly rent, that equals or exceeds the

deregulation rent threshold are required to complete the certification form; (ii) that tenants have protections available to them which are designed to prevent harassment; (iii) that tenants are not required to provide any information regarding their income except that which is requested on the form and may contain such other information the division deems appropriate. The tenant or tenants shall return the completed certification to the owner within thirty days after service upon the tenant or tenants. In the event that the total annual income as certified is in excess of the deregulation income threshold in each of the two preceding calendar years, the owner may file the certification with the state division of housing and community renewal on or before June thirtieth of such year. Upon filing such certification with the division, the division shall, within thirty days after the filing, issue an order providing that such housing accommodation shall not be subject to the provisions of this act upon the expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be mailed to the owner.

(c) 1. In the event that the tenant or tenants either fail to return the completed certification to the owner on or before the date required by subdivision (b) of this section or the owner disputes the certification returned by the tenant or tenants, the owner may, on or before June thirtieth of such year, petition the state division of housing and community

renewal to verify, pursuant to section one hundred seventy-one-b of the tax law, whether the total annual income exceeds the deregulation income threshold in each of the two preceding calendar years. Within twenty days after the filing of such request with the division, the division shall notify the tenant or tenants named on the lease that such tenant or tenants must provide the division with such information as the division and the department of taxation and finance shall require to verify whether the total annual income exceeds the deregulation income threshold in each of the two preceding calendar years. The division's notification shall require the tenant or tenants to provide the information to the division within sixty days of service upon such tenant or tenants and shall include a warning in bold faced type that failure to respond will result in an order being issued by the division providing that such housing accommodation shall not be subject to the provisions of this law.

2. If the department of taxation and finance determines that the total annual income is in excess of the deregulation income threshold in each of the two preceding calendar years, the division shall, on or before November fifteenth of such year, notify the owner and tenants of the results of such verification. Both the owner and the tenants shall have thirty days within which to comment on such verification results. Within forty-five days after the expiration of the comment period, the division shall, where appropriate, issue an order providing that such housing accom-

modation shall not be subject to the provisions of this law upon the expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

3. In the event the tenant or tenants fail to provide the information required pursuant to paragraph one of this subdivision, the division shall issue, on or before December first of such year, an order providing that such housing accommodation shall not be subject to the provisions of this law upon the expiration of the current lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

4. The provisions of the state freedom of information act shall not apply to any income information obtained by the division pursuant to this section.

(d) This section shall apply only to section 26-504.1 of this chapter.

(e) Upon receipt of such order of deregulation pursuant to this section, an owner shall offer the housing accommodation subject to such order to the tenant at a rent not in excess of the market rent, which for the purposes of this section means a rent obtainable in an arm's length transaction. Such rental offer shall be made by the owner in writing to the tenant by certified and regular mail and shall inform the tenant that such offer must be

accepted in writing within ten days of receipt. The tenant shall respond within ten days after receipt of such offer. If the tenant declines the offer or fails to respond within such period, the owner may commence an action or proceeding for the eviction of such tenant.

Other Rent Stabilization Provisions

The Emergency Tenant Protection Act of 1974 (N.Y. Unconsol. Law § 8622) provides in relevant part:

> The legislature hereby finds and declares that a serious public emergency continues to exist in the housing of a considerable number of persons in the state of New York, that such emergency necessitates the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents; that there continues to exist in many areas of the state an acute shortage of housing accommodations caused by continued high demand, attributable in part to new household formations and decreased supply, in large measure attributable to reduced availability of federal subsidies, and increased costs of construction and other inflationary factors; that a substantial number of persons residing in housing not presently subject to the provisions of this act or the emergency housing rent control law or the local emergency housing rent control act are being charged excessive and unwarranted rents and rent increases; that preventive action by the legislature continues to be imperative in order to prevent exaction of unjust, unreasonable and oppressive rents

and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare; that in order to prevent uncertainty, hardship and dislocation, the provisions of this act4 are necessary and designed to protect the public health, safety and general welfare; that the transition from regulation to a normal market of free bargaining between landlord and tenant, while the ultimate objective of state policy, must take place with due regard for such emergency; and that the policy herein expressed shall be subject to determination of the existence of a public emergency requiring the regulation of residential rents within any city, town or village by the local legislative body of such city, town or village.

REGULATORY PROVISIONS

New York State Regulations

Section 2520.6(*o*) of the Codes, Rules, and Regulations of the State of New York (9 N.Y.C.R.R.) provides:

> Family member.
>
> (1) A spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant.
>
> (2) Any other person residing with the tenant or permanent tenant in the housing accommodation as a primary or principal residence, respectively, who can prove emotional and financial commitment, and interdependence between such person and the tenant or permanent tenant. Although no single factor shall be soley determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed, may include, without limitation, such factors as listed below. In no event would evidence of a sexual relationship between such persons be required or considered:
>
> (i) longevity of the relationship;
>
> (ii) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;
>
> (iii) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property,

credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

(iv) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;

(v) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.;

(vi) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;

(vii) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;

(viii) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship.

Section 2522.5(b) of the Codes, Rules, and Regulations of the State of New York (9 N.Y.C.R.R.) provides:

> (b) Renewal lease.
>
> (1) For housing accommodations other than hotels, upon such notice as is required by section 2523.5 of this Title, the tenant shall have the right of selecting at his or her option a renewal of his or her lease for a one- or two-year term; except that where a mortgage or a mortgage commitment existing as of April 1, 1969 prohibits the granting of one-year lease terms or the tenant is the recipient of a Senior Citizen Rent Increase Exemption pursuant to section 26-509 of the Administrative Code of the City of New York, the tenant may not select a one-year lease. The owner shall furnish to the tenant signing a renewal lease form, pursuant to section 2523.5 of this Title, a copy of the fully executed renewal lease form, bearing the signatures of the owner and tenant, and the beginning and ending dates of the lease term, within 30 days from the owner's receipt of the renewal lease form signed by the tenant. Such renewal lease form shall conform to the intent of section 5-702 of the General Obligations Law.

New York City Regulations

Section 32-02 of the Rules of the City of New York (28 R.C.N.Y.) provides in relevant part:

> Exempt Dwelling Unit. "Exempt Dwelling Unit" shall mean a dwelling unit exempt from rent regulation or deregulated pursuant to the Rent Regulation Reform Act of 1993, the

> Rent Regulation Reform Act of 1997, Local Law 4 of 1994, or by reason of the condominium or cooperative status of the dwelling unit.

Section 32-05 of the Rules of the City of New York (28 R.C.N.Y.) provides:

> (a) Applicability of Rent Regulation: Notwithstanding the provisions of the City Rent and Rehabilitation Law (§ 26-401 et seq. of the Administrative Code), as amended; or the Rent Stabilization Law of 1969 (§ 26-501 et seq. of the Administrative Code), as amended; or the Emergency Tenant Protection Act of 1974, as amended, the rents of each dwelling unit in an Eligible Multiple Dwelling, except Exempt Dwelling Units, shall be fully subject to control under such local laws and act for the entire period for which the Eligible Multiple Dwelling is receiving benefits pursuant to the Act. An Eligible Multiple Dwelling receiving benefits pursuant to the Act whose benefits are suspended, terminated or revoked by the Department shall be deemed to be receiving benefits for the length of time such benefits would have been received if such benefits had not been suspended, terminated or revoked, or for the period such local law is in effect, whichever is shorter.
>
> (b) Deregulation of Units: After the expiration of the Benefit Period, such rents shall continue to be subject to rent regulation, except that such rents that would not have been subject to such rent regulation but for this Section, shall be decontrolled if the landlord has included in each lease and renewal thereof for such unit for the tenant in resi-

dence at the time of such decontrol a notice in at least twelve point type informing such tenant that the unit shall become subject to such decontrol upon the expiration of benefits pursuant to the Act.

APPENDIX G

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

Index No. _____/2016

JOHN KUZMICH, SANDRA MAY, JOSHUA SOCOLOW, IGNATIUS NAVASCUES, KENDRICK CROASMUN, RISHI KHANNA, CAITLAN SENSKE, JAMIE AXFORD, JONATHAN GAZDAK, SUZY HEIMANN, MICHAEL GORZYNSKI, NIKESH DESAI, HEIDI BURKHART, BEN DRYLIE-PERKINS, KEIRON MCCAMMON, LISA ATWAN, JENNIFER SENSKE RYAN, BRAD LANGSTON, ALEJANDRA GARCIA, LISA CHU, SCOTT REALE, DAN SLIVJANOVSKI, SHIVA PEJMAN, LAURIE KARR, ADAM SEIFER, ANAND SUBRAMANIAN, DARCY JENSEN, ELIN THOMASIAN, HAZEL LYONS, DAVID DRUCKER, HOWARD PULCHIN, JIN SUP LEE, JENN WOOD, NICHOLAS APOSTOLATOS, ALEX KELLEHER, BRIAN KNAPP, JEFF RIVES, JASON LEWIS, LAURA FIESELER HICKMAN FRANKLIN YAP, and STEVEN GREENES,

Plaintiffs,

-against-

50 MURRAY STREET ACQUISITION LLC

Defendant.

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or if the Complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiffs within twenty (20) days after service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of the venue designated is the location of the Apartment and the Building that are the subject of this action.

Dated: New York, New York

June 21, 2016

HIMMELSTEIN, McCONNELL, GRIBBEN, DONOGHUE & JOSEPH LLP
Attorneys for Plaintiffs

By: /s/ Serge Joseph

Serge Joseph, Esq
15 Maiden Lane, 17th Floor
New York, New York 10038
(212) 349-3000

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

Index No. _____/2016

JOHN KUZMICH, SANDRA MAY, JOSHUA SOCOLOW, IGNATIUS NAVASCUES, KENDRICK CROASMUN, RISHI KHANNA, CAITLAN SENSKE, JAMIE AXFORD, JONATHAN GAZDAK, SUZY HEIMANN, MICHAEL GORZYNSKI, NIKESH DESAI, HEIDI BURKHART, BEN DRYLIE-PERKINS, KEIRON MCCAMMON, LISA ATWAN, JENNIFER SENSKE RYAN, BRAD LANGSTON, ALEJANDRA GARCIA, LISA CHU, SCOTT REALE, DAN SLIVJANOVSKI, SHIVA PEJMAN, LAURIE KARR, ADAM SEIFER, ANAND SUBRAMANIAN, DARCY JENSEN, ELIN THOMASIAN, HAZEL LYONS, DAVID DRUCKER, HOWARD PULCHIN, JIN SUP LEE, JENN WOOD, NICHOLAS APOSTOLATOS, ALEX KELLEHER, BRIAN KNAPP, JEFF RIVES, JASON LEWIS, LAURA FIESELER HICKMAN FRANKLIN YAP, and STEVEN GREENES,

Plaintiffs,

-against-

50 Murray Street Acquisition LLC

Defendant.

VERIFIED COMPLAINT

Plaintiffs named above, as and for their Complaint in this action, by their undersigned attorneys, bring this action against, and allege as follows:

I. Introduction

1. Plaintiffs, current tenants of 50 Murray Street and 53 Park Place, New York, New York, bring this action against Defendant for: (1) a judicial declaration that their respective apartments are subject to the Rent Stabilization Law (hereinafter "RSL") and Code (hereinafter "RSC"), and that renewal lease forms be provided to Plaintiffs by Defendant in the form prescribed by the RSL and RSC; (2) an order enjoining Defendant and/or their agents, assigns and successors from offering any lease renewal in violation of the terms of the RSL and RSC; (3) for money damages for residential overcharges pursuant to Civil Practice Law and Rules ("CPLR") § 213-a, to recover the amount overcharged along with interests, costs, attorneys' fees and treble damages as provided by law; (4) relief pursuant to General Business Law § 349, enjoining Defendant from engaging in the deceptive business practices set forth in the Complaint, and recovering monetary damages for Plaintiffs' injuries; and (5) injunctive relief enjoining Defendant from commencing eviction proceedings against Plaintiffs based upon expiration of Plaintiffs' leases, since this will cause Plaintiffs irreparable damage as they will be listed on Tenant Screening Bureaus, also known as "Black Lists", which may impair their credit ratings, ability to obtain credit or mortgages or rent other apartments in the future.

2. Plaintiffs have been, and continue to be, illegally charged rents in excess of the legal rent stabilized levels for their apartments even as Defendant has been receiving real estate tax benefits pursuant to Real Property Tax Law § 421-g ("the 421-g Program"). The 421-g Program grants property owners tax abatements and exemptions for the conversion of commer-

cial buildings, or portions of such buildings, into residential multiple dwellings in the Financial District area of Manhattan. Benefits of the program include a construction period exemption, exemption from the increase in real estate taxes resulting from the work, and abatement of real estate taxes. However, the 421-g Program conditions the tax benefits on the regulation of rents in the subject building.

3. Although Defendant, as owner of 50 Murray Street and 53 Park Place, has enjoyed tax benefits under the 421-g Program, Defendant has failed to treat Plaintiffs' apartments as rent stabilized, and has improperly charged Plaintiffs rents in excess of the lawful rents.

4. Plaintiffs are thus entitled to reimbursement of the excess rent amounts which they have paid while Defendant was participating in the 421-g Program. Further, as Defendant is still participating in the 421-g Program, and will continue to receive 421-g benefits until approximately June, 2017, and as Defendant has failed to include a notice in each of Plaintiffs' lease and renewal thereof in at least twelve point type informing Plaintiffs that their respective apartments shall become subject to decontrol upon the expiration of the 421-g benefits, Plaintiffs are entitled to all the rights of rent stabilized tenants, including but not limited to regulated rents going forward and the rights of renewal and succession.

II. The Parties

5. All Plaintiffs are natural persons residing in the State and County of New York.

6. Defendant is a Delaware Limited Liability Company doing business in the State of New York. Its

primary place of business is in the State and County of New York.

7. Defendant maintains an office at 46-1112th Avenue, Suite 1-L, Brooklyn, New York 11219.

III. Venue

8. Plaintiffs have selected the County of New York as the place of trial, based upon the residence of Plaintiffs.

IV. Statement of facts Common to All Plaintiffs

A. 50 Murray Street

9. 50 Murray Street is a residential apartment building located in lower Manhattan, between West Broadway and Church Streets, just north of the World Trade Center site. Completed in 1964 it was originally an office building.

10. The building was converted into residential use, and upon information and belief reopened for occupancy in or about 2001. The building has 21 stories and contains 395 housing accommodations.

11. Beginning in or around July, 2003, and continuing through the present time, Defendant as owner and managing agent and on behalf of 50 Murray Street, have applied for, and received from, New York City real estate tax relief under the 421-g Program.

12 A Certificate of Eligibility for the 421-g Program was issued by the City of New York, Department of Housing Preservation and Development, on July 1, 2003.

13. Despite its participation in the 421-g Program, Defendant has charged and collected rents in excess of the lawful stabilized rents in violation of Real property

Tax Law § 421-g, and caused numerous dwelling units at 50 Murray Street to be improperly deregulated.

B. 53 Park Place

14. 53 Park Place is a residential apartment building also located in lower Manhattan, between West Broadway and Church Streets, just north of the World Trade Center site. Completed in 1922 it was originally an office building.

15. The building was converted into residential use, and upon information and belief reopened for occupancy in or about 2001. The building has 12 stories and contains 115 housing accommodations.

16. Beginning in or around July 1, 2001 Defendant as owner and managing agent and on behalf of 53 Park Place, have applied for, and received from, New York City real estate tax relief under the 421-g Program.

17. A Certificate of Eligibility for the 421-g Program was issued by the City of New York, Department of Housing Preservation and Development, on July 1, 2001.

18. Despite its participation in the 421-g Program, Defendant has charged and collected rents in excess of the lawful stabilized rents in violation of Real property Tax Law § 421-g, and caused numerous dwelling units at 53 Park Place to be improperly deregulated.

B. The 421-g Program

19. In 1995, the New York State Legislature enacted Real Property Tax Law (RPTL) § 421-g, which enabled the City of New York to attempt the revitalization of Lower Manhattan through real property tax abatements, commercial rent tax reductions and energy rebates, and through programs providing

incentives to convert commercial office buildings to residential and mixed-use buildings.

20. The statute amended the RPTL to provide tax abatements and exemptions to convert commercial buildings in Lower Manhattan to residential use. Eligible buildings would receive a tax exemption for 12 years, and a tax abatement for 14 years. Initially, the statute was to expire on March 31, 1999.

21. In September 1997, the RPTL § 421-g statute was extended for an additional three years. Thereafter, in 2002, the RPTL § 421-g was further extended.

22. The plain terms of the statute reflect that the Legislature intended to impose rent regulation on any building that received tax benefits under the RPTL § 421-g statute, unless exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit.

23. RPTL § 421-g (6) states in pertinent part:

> Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the emergency tenant protection act of nineteen seventy-four, the rents of each dwelling unit in an eligible multiple dwelling shall be fully subject to control under such local law, unless exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit.

24. RTPL § 421-g (6) further provides that property owners must keep the dwelling units in subject buildings rent stabilized at least for the duration of the 421-g tax benefit period. At the end of the 421-g benefit period, the unit can be destabilized, assuming the tenant receives the requisite notice and there is no other

basis for stabilization. If the landlord fails to give proper notice, the unit can be destabilized on the occurrence of the first vacancy of such unit after the benefits expire.

25. In pertinent part, RPTL § 421-g (6) provides:

> Thereafter [at the expiration of the benefits], such rents shall continue to be subject to such control, except that such rents that would not have been subject to such control but for this subdivision, shall be decontrolled if the landlord has included in each lease and renewal thereof for such unit for the tenant in residence at the time of such decontrol a notice in at least twelve point type informing such tenant that the unit shall become subject to such decontrol upon the expiration of benefits pursuant to this section.

B. The Rent Regulation Reform Act of 1993 and 1997

26. In 1993, the Legislature enacted the Rent Regulation Reform Act, which amended the RSL and Emergency Tenant Protection Act ["ETPA"] to exclude certain high income renters and high rent accommodations from rent stabilization. See Admin. Code [RSL] §§ 26-504.1 & 26-504.2(a). See also ETPA § 5 (a)(13).

27. The act excluded from rent stabilization (1) any apartment occupied whose rental annual income exceeded $250,000 for each of the two preceding years and whose monthly rent equaled $2,000 or more, and (2) apartments with a monthly regulated rent upon vacancy of $2,000 or more [the "Luxury Deregulation Exclusion"]. The act provided, however, that this exclusion "shall not apply to housing accommodations which became or become subject to this law by virtue

of receiving tax benefits pursuant to section four hundred twenty-one-a or four hundred eighty-nine of the real property tax law..."

28. Two years later, the Legislature enacted RPTL § 421-g. Presumably, the Legislature was aware of all the exclusions and exemptions contained in the RSL and ETPA, including the Luxury Deregulation Exclusion.

29. Yet, in enacting the 421-g Program in 1995, the Legislature decided without reservation or equivocation that the "rents of each dwelling unit" in a building receiving benefits under the RPTL § 421-g "shall be fully subject" to rent regulation, "[n]otwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the emergency tenant protection act of nineteen seventy-four." Equally important, the Legislature also decided to exclude from rent stabilization coverage only cooperatives and condominiums.

30. In 1997, the Legislature enacted the Rent Regulation Reform Act of 1997 ("1997 RRRA"), which reduced the "high income" threshold for deregulation from $250,000 to the current $175,000.00, and extended the RSL until June 15, 2003. The 1997 RRRA made no changes to the statutory exception to the Luxury Deregulation Exclusion. Consistent with long standing public policy, the 1997 RRRA included a "guarantee that all new housing construction taking place after the effective date of the Act will not be subject to rent regulation, except where owners voluntarily accept government benefits in exchange for placing units under regulation." (Assembly Speaker Sheldon Silver, Memorandum in Support of Legislation, June 19, 1997; accord Signing Memorandum, Governor George E. Pataki, June 19, 1997.

31. Thus, regardless of whether the legal regulated rent reaches $2,000 per month or whether a tenant's income exceeds $175,000.00 per year, dwelling units in any building receiving 421-g benefits must remain rent stabilized at least during the duration of the benefits and may not be deregulated.

32. Accordingly, apartments which may have been treated as deregulated pursuant to high rent vacancy deregulation or high rent, high income deregulation are in fact rent stabilized.

33. Plaintiffs are individuals residing in apartments in the Building.

34. Each Plaintiff entered into possession of his or her respective apartment pursuant to a written lease.

35. Each Plaintiff's apartment has been, and remains, subject to the provisions of the Rent Stabilization Law (NYC Adm Code § 26-501 et seq).

36. Plaintiffs' apartments were not treated as rent stabilized nor did any of Plaintiffs' initial leases, nor any renewals thereof, contain any rider or notice pursuant to RPTL § 421-g (6), informing Plaintiffs that their respective apartments shall be subject to deregulation upon the expiration of the 421-g benefit period.

37. Upon information and belief, the initial leases entered into by Plaintiffs are titled "Standard Form Lease For Apartments Not Subject to the Rent Stabilization Law."

38. At no time were Plaintiffs ever provided with any written explanation as to how it was determined that their apartments were deregulated, nor were any Plaintiffs ever provided with any calculation as to how the amount of the monthly rent was determined.

39. No Plaintiff has ever been offered a renewal lease in the form required by the Division of Housing and Community Renewal ("DHCR") pursuant to the Rent Stabilization Law and Code.

40. No Plaintiff has ever received a "Rent Stabilization Rider."

41. At all times, Defendants, through its members, officers, agents, and employees, have represented to Plaintiffs that their apartments are exempt from rent stabilization.

42. At all relevant times, Defendants have represented to the public at large, and continue to so represent, that the apartments in the building are exempt from rent regulation.

43. Defendants through their members, officers, employees and agents, knew or reasonably should have known, that the provisions of high rent vacancy deregulation and high rent, high income deregulation did not apply to buildings receiving 421-g tax benefits.

44. Each Plaintiff's apartment has been and still is subject to the registration requirements of the Rent Stabilization Law set forth at NYC Admin Code §26-517, which provides at subdivision (e) thereof that the failure to file a proper and timely initial or annual registration with the DHCR shall, until such time as such registration is filed, bar an owner from applying for or collecting any rent in excess of the legal regulated rent in effect on the date of the last preceding proper registration statement.

45. The legal regulated rent for each Plaintiff's apartment is set at the amount of rent reflected in the last properly filed registration with the DHCR.

46. Any DHCR registration during the period of Defendants' receipt of 421-g benefits which did not state that the apartment was subject to rent stabilization is null and void.

47. In each case Plaintiffs have paid the rent set forth in the initial lease and the lease renewals entered into for the subject apartment.

48. Plaintiffs have paid a security deposit equivalent to the amount contained in their leases, in violation of the RSL and RSC.

49. The treatment of Plaintiffs' apartments as exempt from rent stabilization was unlawful.

50. As a result of the unlawful exemption of Plaintiffs' apartments from rent stabilization, the illegal assessment of rent increases, and the illegal collection of rent in excess of the amount in the last proper DHCR registration statement, Plaintiffs have been and continue to be overcharged in their rents.

51. The aforesaid acts and practices of Defendants were and continue to be consumer-oriented, aimed at the public at large.

52. The aforesaid acts and practices of Defendants were and continue to be misleading in a material way.

53. Plaintiffs have suffered injury as a result of the deceptive acts and practices of Defendants.

54. Defendants willingly or knowingly violated the provisions of General Business Law § 349.

55. Pursuant to NYC Adm Code § 26-516(a), any owner of a housing accommodation who has been found, after a reasonable opportunity to be heard, to have collected an overcharge above the rent authorized for a housing accommodation subject to the Rent

Stabilization Law shall be liable to the tenant for a penalty equal to three times the amount of such overcharge; but if the owner establishes by a preponderance of the credible evidence that overcharge was not willful, the penalty shall be established as the amount of the overcharge plus interest.

56. Also, RSL, NYC Adm Code § 26-516(a), provides that an owner found to have overcharged may be charged the reasonable costs and attorneys' fees of the proceeding and interest from the date of the overcharge at the rate payable on a judgment pursuant to CPLR § 5004; and such reasonable costs and attorneys' fees and interest should be charged to Defendants herein.

57. Upon information and belief, most if not all of Plaintiffs' leases provide that the landlord may recover attorneys' fees and/or expenses as the result of the failure of the tenant to perform any covenant or agreement contained in the lease, and that in that event the amounts shall be paid by the tenant as additional rent.

58. Accordingly, pursuant to Real Property Law ("RPL") § 234, there is implied in each of Plaintiffs' leases which contain such a provision, a covenant by the landlord to pay the tenant's attorneys' fees and/or expenses incurred as the result of the failure of the landlord to perform any covenant or agreement under the lease.

59. Thus, Plaintiffs are entitled to an award of attorneys' fees pursuant to the RSL and RPL.

60. Plaintiffs face the risk that Defendants will refuse to renew their leases when they expire, and further risk that Defendants will commence holdover proceedings or ejectment actions based upon expira-

tion of lease, which is not a lawful basis for removal of Plaintiffs under the RSL.

61. If eviction proceedings are brought against Plaintiffs for expiration of lease, Plaintiffs will be listed on Tenant Screening Bureaus, also known as "Black Lists", which may impair their credit ratings, ability to obtain credit or mortgages or rent other apartments in the future.

62. Plaintiffs lack an adequate remedy at law.

V. Statement of Facts as to Individual Plaintiffs

A. John Kuzmich – 50 Murray Street, Apartment 1121

63. Plaintiff John Kuzmich entered into possession of Apartment 1121 pursuant to an initial lease commencing on April 1, 2007. The lease stated that the apartment is not subject to the rent stabilization law.

64. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on April 1, 2016 and is scheduled to terminate on March 31, 2017 at a rental of $4,625.00 per month.

65. Upon information and belief, there is no record of a registration statement on file with DHCR.

B. Sandra May – 50 Murray Street, Apartment 301

66. Plaintiff Sandra May entered into possession of Apartment 301 pursuant to an initial lease commencing in August 2005. The lease stated that the apartment is not subject to the rent stabilization law.

67. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on September 1, 2015 and is scheduled to

terminate on August 31, 2016 at a rental of $8,500.00 per month.

68. Upon information and belief, there is no record of a registration statement on file with DHCR.

C. Joshua Socolow – 50 Murray Street, Apartment 302

69. Plaintiff Joshua Socolow entered into possession of Apartment 302 pursuant to an initial lease commencing on July 1, 2008. The lease stated that the apartment is not subject to the rent stabilization law.

70. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on July 1, 2016 and is scheduled to terminate on June 30, 2017 at a rental of $7,600.00 per month.

71. Upon information and belief, there is no record of a registration statement on file with DHCR.

D. Ignatius Navascues – 50 Murray Street, Apartment 308

72. Plaintiff Ignatius Navascues entered into possession of Apartment 308 pursuant to an initial lease commencing on August 1, 2013. The lease stated that the apartment is not subject to the rent stabilization law.

73. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on August 1, 2015 and is scheduled to terminate on July 31, 2016 at a rental of $6,250.00 per month.

74. Upon information and belief, there is no record of a registration statement on file with DHCR.

E. Kendrick Croasmun – 50 Murray Street, Apartment 309

75. Plaintiff Kendrick Croasmun entered into possession of Apartment 309 pursuant to an initial lease commencing April 1, 2008. The lease stated that the apartment is not subject to the rent stabilization law.

76. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on April 1, 2015 and terminated on March 31, 2016 at a rental of $6,075.00 per month.

77. Upon information and belief, there is no record of a registration statement on file with DHCR.

F. Rishi Khanna – 50 Murray Street, Apartment 322

78. Plaintiff Rishi Khanna entered into possession of Apartment 322 pursuant to an initial lease commencing on November 1, 2009. The lease stated that the apartment is not subject to the rent stabilization law.

79. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on November 1, 2015 and is scheduled to terminate on October 31, 2016 at a rental of $5,175.00 per month.

80. Upon information and belief, there is no record of a registration statement on file with DHCR.

G. Caitlin Senske – 50 Murray Street, Apartment 414

81. Plaintiff Caitlin Senske entered into possession of Apartment 414 pursuant to an initial lease commencing July 1, 2014. The lease stated that the apartment is not subject to the rent stabilization law.

82. The lease was renewed pursuant to a renewal lease, commencing on July 1, 2015 and ending on June 30, 2016 at a rental of $5,795.00 per month.

83. There is no record of a registration statement on file with DHCR.

H. Jamie Axford – 50 Murray Street, Apartment 503

84. Plaintiff Jamie Axford entered into possession of Apartment 503 pursuant to an initial lease commencing on July 1, 2004. The lease stated that the apartment is not subject to the rent stabilization law.

85. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on July 1, 2015 and is scheduled to terminate on June 30, 2016 at a rental of $7,875.00 per month.

86. Upon information and belief, there is no record of a registration statement on file with DHCR.

I. Jonathan Gazdak – 50 Murray Street, Apartment 801

87. Plaintiff Jonathan Gazdak entered into possession of Apartment 801 pursuant to an initial lease commencing on May 1, 2012. The lease stated that the apartment is not subject to the rent stabilization law.

88. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on May 1, 2015 and terminating on April 30, 2016 at a rental of $10,295.00 per month.

89. Upon information and belief, there is no record of a registration statement on file with DHCR.

J. Suzy Heimann – 50 Murray Street, Apartment 821

90. Plaintiff Suzy Heimann entered into possession of Apartment 821 pursuant to an initial lease commencing on April 1, 2011. The lease stated that the apartment is not subject to the rent stabilization law.

91. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on April 1, 2016 and is scheduled to terminate on March 31, 2017 at a rental of $4,480.00 per month.

92. Upon information and belief, there is no record of a registration statement on file with DHCR.

K. Michael Gorzynski – 50 Murray Street, Apartment 908

93. Plaintiff Michael Gorzynski entered into possession of Apartment 908 pursuant to an initial lease commencing October 1, 2009. The lease stated that the apartment is not subject to the rent stabilization law.

94. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on October 1, 2015 and is scheduled to terminate on September 30, 2016 at a rental of $6,085.00 per month.

95. Upon information and belief, there is no record of a registration statement on file with DHCR.

L. Nikesh Desai – 50 Murray Street, Apartment 1009

96. Plaintiff Nikesh Desai entered into possession of Apartment 1009 pursuant to an initial lease com-

mencing February 1, 2010. The lease stated that the apartment is not subject to the rent stabilization law.

97. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on March 1, 2016 and is scheduled to terminate on February 28, 2017 at a rental of $6,150.00 per month.

98. Upon information and belief, there is no record of a registration statement on file with DHCR.

M. Heidi Burkhart – 50 Murray Street, Apartment 1402

99. Plaintiff Heidi Burkhart entered into possession of Apartment 1402 pursuant to an initial lease commencing in January 2014. The lease stated that the apartment is not subject to the rent stabilization law.

100. The lease was renewed on at least two occasions, the latest of which pursuant to a renewal lease for a term of one year, commencing on February 1, 2016 and is scheduled to terminate on January 31, 2017 at a rental of $6,6955.00 per month.

101. Upon information and belief, there is no record of a registration statement on file with DHCR.

N. Ben Drylie-Perkins – 50 Murray Street, Apartment 1413

102. Plaintiff Ben Drylie-Perkins entered into possession of Apartment 1413 pursuant to an initial lease commencing July 1, 2012. The lease stated that the apartment is not subject to the rent stabilization law.

103. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on September 1, 2015 and is scheduled to

terminate on August 31, 2016 at a rental of $4,325.00 per month.

104. Upon information and belief, there is no record of a registration statement on file with DHCR.

O. Keiron McCammon – 50 Murray Street, Apartment 1507

105. Plaintiff Keiron McCammon entered into possession of Apartment 1507 pursuant to an initial lease commencing in January 2014. The lease stated that the apartment is not subject to the rent stabilization law.

106. The lease was renewed pursuant to a renewal lease, commencing on August 1, 2015 and ending on July 31, 2016, at a rental of $4,400.00 per month.

107. Upon information and belief, here is no record of a registration statement on file with DHCR.

P. Lisa Atwan – 50 Murray Street, Apartment 1511

108. Plaintiff Lisa Atwan entered into possession of Apartment 1511 pursuant to an initial lease commencing on September 1, 2011. The lease stated that the apartment is not subject to the rent stabilization law.

109. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on September 1, 2015 and is scheduled to terminate on August 31, 2016 at a rental of $5,725.00 per month.

110. Upon information and belief, there is no record of a registration statement on file with DHCR.

Q. Jennifer Senske Ryan – 50 Murray Street, Apartment 1711

111. Plaintiff Jennifer Senske Ryan entered into possession of Apartment 1711 pursuant to an initial lease commencing September 2014. The lease stated that the apartment is not subject to the rent stabilization law.

112. The lease was renewed pursuant to a renewal lease, commencing on September 1, 2015, and ending on August 31, 2016 at a rental of $4,900 per month.

113. Upon information and belief, there is no record of a registration statement on file with DHCR.

R. Brad Langston – 50 Murray Street, Apartment 2009

114. Plaintiff Brad Langston entered into possession of Apartment 2009 pursuant to an initial lease commencing September 1, 2006. The lease stated that the apartment is not subject to the rent stabilization law.

115. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on September 1, 2015 and is scheduled to terminate on August 31, 2016 at a rental of $6,895.00 per month.

116. Upon information and belief, there is no record of a registration statement on file with DHCR.

S. Alejandra Garcia – 50 Murray Street, Apartment 2011

117. Plaintiff Alejandra Garcia entered into possession of Apartment 2001 pursuant to an initial commencing in October 2012. The lease stated that the apartment is not subject to the rent stabilization law.

118. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on November 1, 2015 and is scheduled to terminate on October 31, 2016 at a rental of $5,295.00 per month.

119. Upon information and belief, there is no record of a registration statement on file with DHCR

T. Lisa Chu – 50 Murray Street, Apartment 2012

120. Plaintiff Lisa Chu entered into possession of Apartment 2012 pursuant to an initial lease commencing in March 2010. The lease stated that the apartment is not subject to the rent stabilization law.

121. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on March 1, 2016 and is scheduled to terminate on February 28, 2017 at a rental of $6,895.00 per month.

122. Upon information and belief, there is no record of a registration statement on file with DHCR.

U. Scott Reale – 50 Murray Street, Apartment 1202

123. Plaintiff Scott Reale entered into possession of Apartment 1202 pursuant to an initial lease commencing on March 1, 2003. The lease stated that the apartment is not subject to the rent stabilization law.

124. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on March 1, 2016 and is scheduled to terminate on February 28, 2017 at a rental of $7,125.00 per month.

125. Upon information and belief, there is no record of a registration statement on file with DHCR.

V. Dan Slivjanovski – 50 Murray Street, Apartment 616

126. Plaintiff Dan Slivjanovski entered into possession of Apartment 616 pursuant to an initial lease commencing in July, 2012. The lease stated the apartment is not subject to the rent stabilization law.

127. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on September 1, 2015 and is scheduled to terminate on August 31, 2016 at a rental of $4,400.00 per month.

128. Upon information and belief, there is no record of a registration statement on file with DHCR.

W. Shiva Pejman – 50 Murray Street, Apartment 1714

129. Plaintiff Shiva Pejman entered into possession of Apartment 1714 pursuant to an initial lease commencing in July, 2007. The lease stated that the apartment is not subject to the rent stabilization law.

130. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on November 1, 2015 and is scheduled to terminate on October 31, 2016 at a rental of $4,335.00 per month.

131. Upon information and belief, there is no record of a registration statement on file with DHCR.

X. Laurie Karr – 50 Murray Street. Apartment 1805

132. Plaintiff Laurie Karr entered into possession of Apartment 1805 pursuant to an initial lease commenc-

ing in June, 2014. The lease stated that the apartment is not subject to the rent stabilization law.

133. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on June 1, 2016 and is scheduled to terminate May 31, 2016 at a rental of $4,095.00 per month.

134. Upon information and belief, there is no record of a registration statement on file with DHCR.

Y. Adam Seifer – 50 Murray Street, Apartment 1301

135. Plaintiff Adam Seifer entered into possession of Apartment 1301 pursuant to an initial lease commencing in September 1, 2010. The lease stated that the apartment is not subject to the rent stabilization law.

136. The lease was renewed pursuant to a renewal lease for a term of one year, commencing on September 1, 2015 and is scheduled to terminate on August 31, 2016 at a rental of $9,125.00 per month.

137. Upon information and belief, there is no record of a registration statement on file with DHCR.

Z. Anand Subramanian – 50 Murray Street Apartment 1411

138. Plaintiff Anand Subramanian entered into possession of Apartment 1411 pursuant to an initial lease commencing in January 2014. The lease stated that the apartment is not subject to the rent stabilization law.

139. The lease was renewed pursuant to a renewal lease for a term of one year, commencing on April 1, 2015 and terminated on March 31, 2016 at a rental of $6,000.00 per month.

140. Upon information and belief, there is no record of a registration statement on file with DHCR.

AA. Darcy Jensen – 50 Murray Street, Apartment 422

141. Plaintiff Darcy Jensen entered into possession of Apartment 422 pursuant to an initial lease commencing in November, 2002. The lease stated that the apartment is not subject to the rent stabilization law.

142. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on December 1, 2015 and is scheduled to terminate on November 30, 2016 at a rental of $5,995.00 per month.

143. Upon information and belief, there is no record of a registration statement on file with DHCR.

BB. Elin Thomasian – 50 Murray Street, Apartment 813

144. Plaintiff Elin Thomasian entered into possession of Apartment 813 pursuant to an initial lease commencing in May, 2012. The lease stated that the apartment is not subject to the rent stabilization law.

145. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on May 1, 2016 and is scheduled to terminate on April 30, 2017 at a rental of $4,195.00 per month.

146. Upon information and belief, there is no record of a registration statement on file with DHCR.

CC. Hazel Lyons – 50 Murray Street, Apartment 1115

147. Plaintiff Hazel Lyons entered into possession of Apartment 1115 pursuant to an initial lease commenc-

ing in October, 2014. The lease stated that the apartment is not subject to the rent stabilization law.

148. The lease was for a term of one year term and commenced on October 15, 2015 and terminated on October 31, 2016 at a rental of $3,550.00 per month. Plaintiff Lyon's lease was renewed for a one year term commencing November 1, 2015 and terminating October 31, 2016 at a rental rate of $3,650.00 per month.

149. Upon information and belief, there is no record of a registration statement on file with DHCR.

DD. David Drucker – 50 Murray Street, Apartment 1807

150. Plaintiff David Drucker entered into possession of Apartment 1807 pursuant to an initial lease commencing in October 1, 2006. The lease stated that the apartment is not subject to the rent stabilization law.

151. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on October 1, 2014 and terminating September 30, 2015 at a rental of $4895.00 per month.

152. Upon information and belief, there is no record of a registration statement on file with DHCR.

EE. Howard Pulchin – 50 Murray Street, Apartment 917

153. Plaintiff Howard Pulchin entered into possession of Apartment 917 pursuant to an initial lease commencing in 2002. The lease stated that the apartment is not subject to the rent stabilization law.

154. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on March 1, 2014 and terminating on

February 28, 2015 at a rental of $5,695.00 .00 per month.

155. Upon information and belief, there is no record of a registration statement on file with DHCR.

FF. Laura Fieseler Hickman – 53 Park Place, Apartment 6F

156. Plaintiff Laura Fieseler Hickman entered into possession of Apartment 6F pursuant to an initial lease commencing in August, 2011. The lease stated that the apartment is not subject to the rent stabilization law.

157. The lease was renewed, the latest of which is for a term of one year, commencing on October 1, 2012 and is scheduled and terminated June 30, 2013 at a rental of $3,295.00 per month.

158. Upon information and belief, there is no record of a registration statement on file with DHCR.

GG. Jin Sup Lee – 53 Park Place, Apartment 4C

159. Plaintiff Jin Sup Lee entered into possession of Apartment 4C at 53 Park Place pursuant to an initial lease commencing in March, 2010. The lease stated that the apartment is not subject to the rent stabilization law.

160. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on March 1, 2016 and is scheduled to terminate on February 28, 2017 at a rental of $4,150.00 per month.

161. Upon information and belief, there is no record of a registration statement on file with DHCR.

HH. Jenn Wood – 53 Park Pace, Apartment 7C

162. Plaintiff Jenn Wood entered into possession of 53 Park Place, Apartment 7C pursuant to an initial lease commencing in March, 2004. The lease stated that the apartment is not subject to the rent stabilization law.

163. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on March 1, 2016 and is scheduled to terminate on February 28, 2017 at a rental of $4,100.00 per month.

164. Upon information and belief, there is no record of a registration statement on file with DHCR.

II. Jeff Rives – 53 Park Place, Apartment 11E and PHJ

165. Plaintiff Jeff Rives initially entered into possession of Apartment 11E pursuant to an initial lease commencing in June 1, 2011. The lease stated that the apartment is not subject to the Rent Stabilization Law.

166. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on June 1, 2013 and terminating on June 1, 2014 at a rental of $3,450.00 per month.

167. Thereafter Jeff Rives entered into possession of Apartment PHJ pursuant to an initial lease commencing February 1, 2014 at a rental rate of $4,295.00 per month. The lease stated that the apartment is not subject to the rent stabilization law.

168. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on February 1, 2014 and terminating April 31, 2015 at a rental of $4,600.00 per month. The

lease stated that the apartment is not subject to the rent stabilization law.

169. Upon information and belief, there is no record of a registration statement on file with DHCR.

JJ. Steven Greenes – 53 Park Place, Apartment 7E

170. Plaintiff Steven Greenes entered into possession of Apartment 7E pursuant to an initial lease commencing in January, 2010. The lease stated that the apartment is not subject to the rent stabilization law.

171. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on March 1, 2016 and terminating February 28, 2017 at a rental of $3,650.00 per month.

172. Upon information and belief, there is no record of a registration statement on file with DHCR.

KK. Franklin Yap – 53 Park Place, Apartment PHG

173. Plaintiff Franklin Yap entered into possession of Apartment PHG pursuant to an initial lease commencing in January, 2002. The lease stated that the apartment is not subject to the rent stabilization law.

174. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of six months, commencing on January 1, 2016 and terminating June 30, 2016 at a rental of $4,160.00 per month.

175. Upon information and belief, there is no record of a registration statement on file with DHCR.

LL. Jason Lewis – 53 Park Place, Apartment PHH

176. Plaintiff Jason Lewis entered into possession of Apartment PHH pursuant to an initial lease commencing in May, 2005. The lease stated that the apartment is not subject to the rent stabilization law.

177. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on June 1, 2015 and terminating May 31, 2016 at a rental of $3,350.00 per month.

178. Upon information and belief, there is no record of a registration statement on file with DHCR.

MM. Brian Knapp – 53 Park Place, Apartment PHJ

179. Plaintiff Brian Knapp entered into possession of Apartment PHJ pursuant to an initial lease commencing in June, 2007. The lease stated that the apartment is not subject to the rent stabilization law.

180. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on February 1, 2013 and terminating January 31, 2014 at a rental of $3,795.00 per month.

181. Upon information and belief, there is no record of a registration statement on file with DHCR.

NN. Alex Kelleher – 53 Park Place, Apartment 6J

182. Plaintiff Alex Kelleher entered into possession of Apartment 6J pursuant to an initial lease commencing in January, 2012. The lease stated that the apartment is not subject to the rent stabilization law.

183. The lease was renewed pursuant to a series of renewals, the latest of which is for a term of one year,

commencing on February 1, 2016 and terminating January 31, 2017 at a rental of $4,675.00 per month.

184. Upon information and belief, there is no record of a registration statement on file with DHCR.

OO. Nicholas Apostolatos – 53 Park Place, Apartment 8D and PHB

185. Plaintiff Nicholas Apostolatos entered into possession of Apartment 8D pursuant to an initial lease commencing in August, 2001. The lease stated that the apartment is not subject to the rent stabilization law. Thereafter Plaintiff Nicholas Apostolatos moved into Apartment PHB in May, 2007. The lease for PHB also stated that the apartment is not subject to the rent stabilization law.

186. The lease for Apartment PHB was renewed pursuant to a series of renewals, the latest of which is for a term of one year, commencing on May 1, 2013 and terminating May 31, 2014 at a rental of $4,395.00 per month.

187. Upon information and belief, there is no record of a registration statement on file with DHCR.

VI. Causes of Action

FIRST CAUSE OF ACTION
(Declaratory Relief)

188. Plaintiffs repeat and specifically incorporate the allegations of paragraphs 1 through 187 of this Complaint.

189. A justiciable controversy exists.

190. Plaintiffs have no adequate remedy at law.

191. Based upon the foregoing, Plaintiffs are entitled to a declaratory judgment adjudging and deter-

mining that their apartments are subject to the Rent Stabilization Law and Code, and determining the amount of the legal regulated rents for their respective apartments.

SECOND CAUSE OF ACTION
(Declaratory Relief)

192. Plaintiffs repeat and specifically incorporate the allegations of paragraphs 1 through 191 of this Complaint.

193. Plaintiffs are entitled to a declaratory judgment adjudging and determining that any leases for subsequent terms offered to Plaintiffs by Defendant are invalid and unlawful unless they are offered on renewal lease forms prescribed by the DHCR and Rent Stabilization Law and Code; and enjoining Defendant, and its agents, assigns and successors from offering lease renewals in violation of the terms of the Rent Stabilization Law and Code; and determining that Plaintiffs are not required to pay any renewal lease increase unless and until a valid lease renewal offer is made.

THIRD CAUSE OF ACTION
(Injunctive Relief)

194. Plaintiffs repeat and specifically incorporate the allegations of paragraphs 1 through 193 of this Complaint.

195. Plaintiffs face the risk that Defendant will refuse to renew their leases when they expire, and the risk that Defendant will commence holdover proceedings or ejectment actions based upon expiration of lease, which is not a lawful basis for removal of Plaintiffs under the Rent Stabilization Law.

196. If eviction proceedings are brought against Plaintiffs for expiration of lease, Plaintiffs will be listed on Tenant Screening Bureaus, also known as "Black Lists", which may impair their credit ratings, ability to obtain credit or mortgages or rent other apartments in the future.

197. Plaintiffs lack an adequate remedy at law.

198. Accordingly, Defendant should be enjoined from initiating any proceedings to terminate or otherwise interfere with Plaintiffs' tenancies based upon expiration of Plaintiffs leases.

199. The balance of hardships also favors the Plaintiffs in this matter.

200. Defendant's harm is less tangible and far less prejudicial. Under these circumstances, Plaintiffs have the most immediate and rightful claims.

201. Unless the injunctive relief requested herein is granted, Plaintiffs have no adequate remedy at law.

FOURTH CAUSE OF ACTION
(Rent Overcharge)

202. Plaintiffs repeat and specifically incorporate the allegations of paragraphs 1 through 201 of this Complaint.

203. Defendant has overcharged Plaintiffs in violation of the Rent Stabilization Law and Code, by collecting rent and other consideration in excess of the legal regulated rent.

204. As a result of Defendant's rent overcharges described above, Plaintiffs have been damaged and are entitled to an award of money damages against Defendant equal to such overcharges in an amount to be determined at trial.

205. In addition, Plaintiffs are entitled to an award of interest on the rent overcharges as described above, with such interest accruing from the date of the overcharge.

206. Further, the overcharges were willful. As such, Defendant is liable to Plaintiffs for a penalty equal to three times the overcharges.

207. Plaintiffs also demand reimbursement of any rent overcharges collected during the pendency of this action.

FIFTH CAUSE OF ACTION
(Injunctive Relief)

208. Plaintiffs repeat and specifically incorporate the allegations of paragraphs 1 through 207 of this Complaint.

209. Pursuant to General Business Law § 349 (h), Plaintiffs are entitled to an order and judgment against Defendant enjoining the unlawful acts and practices set forth in the Complaint, and recovering their actual damages or fifty dollars, whichever is greater; and in addition, increasing the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars because of Defendant's willing or knowing violation of this provision; and awarding reasonable attorneys' fees to Plaintiffs.

SIXTH CAUSE OF ACTION
(Award of Attorneys' Fees)

210. Plaintiffs repeat and specifically incorporate the allegations of paragraphs 1 through 209 of this Complaint.

211. Plaintiffs are entitled to recover their reasonable attorneys' fees, costs and expenses incurred in the prosecution of this action.

WHEREFORE, Plaintiffs respectfully request the following relief:

(A) Judgment declaring and adjudging that Plaintiffs' apartments are subject to the Rent Stabilization Law and Code, and determining the amount of the legal regulated rents for their respective apartments;

(B) Judgment adjudging and determining that the renewal lease forms provided to Plaintiffs by Defendant is invalid and unlawful; enjoining Defendant, and their agents, assigns and successors from offering lease renewals in violation of the terms of the Rent Stabilization Law and Code; determining that Defendant is required to offer lease renewals in accordance with the DHCR and Rent Stabilization Law and Code, and determining that Plaintiffs are not required to pay any renewal lease increase unless and until a valid lease renewal offer is made;

(C) Judgment permanently enjoining Defendant from initiating any proceedings to terminate or otherwise interfere with Plaintiffs' tenancies based upon expiration of Plaintiffs' leases.

(D) Separate judgments in favor of each individual Plaintiff for his or her respective apartment and against Defendant for the amount determined by the Court to have been overcharged, together with treble damages, interest, attorneys' fees, costs and expenses allowed by the Rent Stabilization Law and Code;

(E) Pursuant to General Business Law § 349(h), Plaintiffs are entitled to an order and judgment against Defendant enjoining the unlawful acts and practices set forth in the Complaint, and recovering their actual damages or fifty dollars, whichever is greater; and in addition, increasing the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars because of Defendant's willing or knowing violation of this provision; and awarding reasonable attorneys' fees to Plaintiffs;

(F) Judgment for the reasonable attorneys' fees, costs and expenses incurred by Plaintiffs in the prosecution of this action; and

(G) Costs, disbursements, and such other and further relief as this Court may deem just, proper, and equitable.

Dated: New York, New York

June 21, 2016

HIMMELSTEIN, McCONNELL, GRIBBEN, DONOGHUE & JOSEPH LLP
Attorneys for Plaintiffs

By: /s/ Serge Joseph

Serge Joseph, Esq
15 Maiden Lane, 17th Floor
New York, New York 10038
(212) 349-3000

APPENDIX H

Affidavit of JJ Bistricer, for Defendant, in Support of Motion, sworn to January 31, 2017

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

Index No. 155266/2016

JOHN KUZMICH, SANDRA MAY, JOSHUA SOCOLOW, KENDRICK CROASMUN, RISHI KHANNA, CAITLAN SENSKE, JAMIE AXFORD, JONATHAN GAZDAK, SUZY HEIMANN, MICHAEL GORZYNSKY, NIKESH DESAI, HEIDI BURKHART, BEN DRYLIE-PERKINS, KEIRON MCCAMMON, LISA ATWAN, JENNIFER SENSKE RYAN, BRAD LANGSTON, ALEJANDRA GARCIA, LISA CHU, SCOTT REALE, DAN SLIVJANOVSKI, SHIVA PEJMAN, LAURIE KARR, ADAM SEIFER, ANAND SUBRAMANIAN, DARCY JENSEN, ELIN THOMASIAN, HAZEL LYONS, DAVID DRUCKER, HOWARD PULCHIN, JIN SUP LEE, JENN WOOD, NICHOLAS APOSTOLATOS, ALEX KELLEHER, BRIAN KNAPP, JEFF RIVES, JASON LEWIS, LAURA FIESLER HICKMAN, FRANKLIN YAP, AND STEVEN GREENES,

Plaintiffs,

-against-

50 MURRAY STREET ACQUISITION LLC,

Defendant.

AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JJ BISTRICER**,** being duly sworn, hereby deposes and says:

1. I am a managing member of Defendant 50 Murray Street Acquisition LLC (the "Owner"), the owner of the buildings located at 50 Murray Street, New York, New York ("50 Murray Street") and 53 Park Place, New York, New York ("53 Park Place") (collectively referred to as the "Buildings"). I am familiar with the facts and circumstances set forth below. I submit this affidavit in support of the motion by the Owner seeking summary judgment.

2. This case is all about the Tenants' attempt to obtain a financial windfall. Not only do the Tenants ask this Court to disregard the legislative history and interpretations by the agencies tasked with implementing Real Property Tax Law ("RPTL") § 421-g, and substantially decrease the Tenants' legal rents, but also the Tenants seek millions on alleged overcharges and treble damages. It is respectfully submitted that the Owner has, at all times, followed the law as it was intended, and all of Tenants' apartments were properly deregulated.

3. The Owner's motion should be granted because there are no triable issues of fact. The units in the Buildings were lawfully deregulated pursuant to the luxury deregulation provisions of the Rent Stabilization Law ("RSL") despite receiving RPTL § 421-g tax benefits.

4. For the reasons discussed below, in the accompanying affirmation of Joseph Burden, and in the

accompanying Memorandum of Law, the Court should declare that these units are deregulated.

PRELIMINARY STATEMENT

5. Although Rent Stabilization Law applies to RPTL § 421-g units, Plaintiffs (collectively referred to as the "Tenants") ask the Court to selectively pick and choose which sections of the RSL are applicable. The Owner asks that the entire RSL be applied. The statutory language, legislative history and administrative agency interpretations all apply the entire statute, including high rent deregulation.

6. Owner purchased 50 Murray Street and 53 Park Place in 2014 (see Exhibits J and K, respectively). In doing our "due diligence" we came to learn that both the Buildings received tax benefits pursuant to RPTL § 421-g. We also learned that high rent deregulation, or luxury deregulation, applied to buildings that receive § 421-g tax benefits. This was a key component in deciding to buy the Buildings.

7. In reliance upon its inquiries, Owner learned about the legislative history and administrative agency interpretations discussed below (and in the accompanying papers and exhibits), which make clear that the deregulation provisions of the RSL added in 1993, applied to units made subject to the RSL by virtue of the receipt of § 421-g tax benefits.

8. Not only did Owner receive information from the Mayor's Office, the Speaker of the New York State Senate and the Alliance for Downtown New York, Inc., to that effect (see Exhibits A, B, and E), but we received a copy of an advisory opinion from DHCR, that the units would be exempt from Rent Stabilization if they were rented for $2,000.00 or more per month (see Exhibit F).

9. Following the enactment of RPTL § 421-g in 1995, many buildings in lower Manhattan were converted to residential use and thousands of apartments were created in reliance upon the same representations that they would be subject to rent stabilization to the same extent, but to no greater extent than other rent regulated properties. The high-rent deregulation provisions of the Rent Stabilization Law would be applicable to these buildings. As a result of the promises made by government officials and representatives, an entire residential community was created in lower Manhattan.

10. Owner relied upon these repeated representations by City and State officials in electing to purchase the Building. If we thought that the units in the Building would be subject to rent stabilization (but not high-rent deregulation) during the entire period that tax benefits were being received, we would not have purchased the Building. It would have not made economic sense without high rent deregulation!

11. If luxury deregulation did not apply, rents would be rolled back to levels which would be insufficient to cover mortgage costs and other expenses for the Buildings. Further, Owner would be liable for millions in overcharges.

FACTUAL BACKGROUND

12. Owner purchased 50 Murray Street, a 390 luxury apartment building, by deed dated December 15, 2014 (a copy of the 50 Murray deed is annexed hereto as Exhibit J).

13. Owner purchased 53 Park Place, a 115 luxury apartment building, by deed dated December 15, 2014 (a copy of the deed is annexed hereto as Exhibit K).

14. Prior to acquiring the Building, we made various inquiries with governmental agencies, including HPD, to confirm that the residential units in the Buildings were not subject to rent stabilization because the rents for those units were over $2,000.00 per month. We were consistently advised by public officials, HPD and the Downtown Alliance that they would not be and received various documents confirming that these units were properly deregulated (see Exhibits A, B and E).

15. We were made to understand that the reason for this exemption being combined with tax benefits was to jump start the lower Manhattan real estate market in 1995 by quickly creating thousands of residential units to create a vibrant 24-hour a day, mixed-use neighborhood.

16. The assurances and repeated confirmation that apartments in the Building would be deregulated if the initial or subsequent legal rent was over $2,000 per month were major reasons to purchase the Buildings.

17. Our due diligence showed that the prior owner, 110 Church Owner LLC (the "Prior Owner"), initially rented all of Tenants' apartments (and all apartments within the Buildings) at a monthly rental in excess of $2,000.00 per month and properly deregulated said apartments based upon high rent/vacancy deregulation. We further learned that the prior owner submitted continuing use certificates each year while receiving § 421-g benefits.

18. In reliance upon the legislative history, the letter from the Downtown Alliance, and the advice and opinion letter from DHCR, and our due diligence showing that the prior owner properly deregulated all

of Tenants' apartments (and all apartments within the Buildings) we were able to secure financing to purchase the Buildings. In total, we expended in excess of $540,000,000.00 to purchase the Buildings.

19. I understand that approximately 25,000 apartments were created as a result of Section 421-g, albeit not registered as rent stabilized with DHCR, because the initial rents were over $2,000 per month. Approximately 2,500 rent regulated apartments were created. A vibrant community, known as FiDi was created.[1]

20. Our due diligence revealed that in or about 2003, the Prior Owner applied for § 421-g benefits and received a Certificate of Eligibility from HPD. The benefits period commenced on July 1, 2003 and ended on June 30, 2015.

21. The Prior Owner was required to include HPD's application checklist as part of the application. The HPD checklist confirms HPD's position that apartments may be deregulated under the RSL, while a building receives benefits. HPD's application requires the applicant to provide as part of the application either (i) copies of rent registration forms filed with DHCR for rental units, or (ii) copies of leases for exempt rental units (one full lease and the first and last pages showing signature and rent, $2,000.00 or more if luxury unit, for each remaining exempt lease), or (iii) proof of filing with the Attorney General for residential coop or condo units (see Exhibit H).

22. During the receipt of § 421-g tax benefits, the Prior Owner, and subsequently the Owner also filed

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[1] A copy of the New York City Rent Guidelines Board's study, "Changes to the Rent Stabilized Housing Stock in New York City in 2012" is annexed hereto as Exhibit S.

with HPD annual continuing use certification forms which required the Owner to represent that dwelling units are in compliance with Rent Stabilization or are Exempt Dwelling Units," and also to disclose the number of "Newly Exempt Dwelling Units" (see Exhibit L).

A. 50 Murray Street

23. I have reviewed the rental history records for 50 Murray Street and apartments 301, 302, 308, 309, 322, 414, 422, 503, 616, 801, 813, 821, 908, 917, 1009, 1115, 1202, 1301, 1402, 1411, 1413, 1507, 1511, 1711, 1714, 1805, 1807, 2009, 2011, and 2012 (the "50 Murray Apartments") were all initially rented at a rate in excess of $2,000.00 per month (Copies of the first page of each initial lease for the 50 Murray Apartments are annexed hereto as Exhibit M) .

24. The initial rent exceeded $2,000.00 per month for each of the apartments and at no point after the initial leases did the monthly rent ever fall below $2,000.00 for any of the apartments.

B. 53 Park Place

25. I have reviewed the rental history records for 53 Park Place and apartments 4C, 6F, 6J, 7C, 7E, PHB, PHG, PHH, and PHJ (the "53 Park Place Apartments") were all initially rented at a rate in excess of $2,000.00 per month (copies of the first page of each initial lease for the 53 Park Place Apartments are annexed hereto as Exhibit N).

26. The initial rent exceeded $2,000.00 per month for each of the apartments and at no point after the initial leases did the monthly rent ever fall below $2,000.00 for any of the apartments.

27. As each of the 53 Park Place Apartments initially rented for more than $2,000.00, all of the

53 Park Place Apartments were registered with DHCR as permanently exempt pursuant to the applicable luxury deregulation provisions in the RSL (see Exhibit 0).

CONCLUSION

28. Based upon all of the foregoing, and the additional reasons set forth in the accompanying affirmation and Memorandum of Law, Owner's motion should be granted in its entirety.

/s/ JJ Bistricer
JJ BISTRICER

Sworn to before me this

31 day of January 2017

/s/ Jeffrey A. Kunin
Notary Public

Jeffrey A. Kunin
Notary Public, State of New York
No. 30-4955985
Qualified in Nassau County
Commission Expires Sept. 11, 2017

**Exhibit A to Foregoing Documents –
Letter from Rudolph W. Giuliani to
Joseph Bruno, dated August 16, 1995**

[LOGO]

The City of New York
Office of the Mayor
New York, N.Y. 10007

August 16, 1995

Honorable Joseph Bruno
Senator
N.Y.S. Legislative Office Building
Albany, New York 12246

Dear Senator Bruno,

I am writing as a follow up to our conversation regarding passage of the Lower Manhattan legislation. In our discussion you asked that the legislation be amended to ensure that any residential units created as a result of the legislation are subject to the most current Rent Stabilization Laws of the State.

I have discussed this matter with the drafters of the legislation and with the Commissioner of the Department of Housing Preservation and Development (HPD), the City agency responsible for implementing the residential conversion program proposed in the legislation. The City's intention has always been that the dwelling units in property receiving benefits under the residential conversion program (bill section 14) and the mixed-use program (bill section 15) would be subject to rent stabilization to the same extent as, but to no greater extent than, other rent regulated property. Any provision of law that generally exempts any housing accommodation from rent stabilization would apply as well to dwelling units in property receiving

benefits under the aforementioned programs. Thus, the provisions of the Rent Regulation Reform Act of 1993 that provide for the exclusion of high rent accommodation and for high income rent decontrol would apply to property receiving benefits under the programs created by the Lower Manhattan legislation. Any future amendments to the rent stabilization law would also apply to these properties.

The City agencies responsible for administering the residential conversion and mixed-use programs will promulgate rules that reflect our intention to apply the rent stabilization law as a whole, including any provisions that exempt housing accommodations from rent stabilization, to property receiving benefits under those programs.

If you have any further questions regarding this matter please do not hesitate to contact me. On behalf of myself, the business community of New York and the people of New York City generally I ask for your assistance in ensuring the passage of this legislation at the earliest possible moment.

Sincerely,

/s/ Rudy Giuliani
Rudolph W. Giuliani
Mayor

**Exhibit B to Foregoing Documents –
Letter from Joseph L. Bruno to
Rudolph W. Giuliani, dated August 31, 1995**

THE SENATE
STATE OF NEW YORK
ALBANY 12247

[SEAL]
Joseph L. Bruno
President Pro Tem
Majority Leader

August 31, 1995

The Honorable Rudolph W. Giuliani
The City of New York Office of the Mayor
New York, N.Y. 10007

Dear Mayor Giuliani,

Thank you or your recent letter in reply to issues I raised regarding legislation for Lower Manhattan that is currently before the Senate. I appreciate your attention to my concerns on this matter.

Your letter notes that the city specifically intended that residential property receiving benefits pursuant to programs created in this legislation be fully subject to the deregulation provisions established by the Rent Reform Act of 1993. I am gratified that your intent comports with the Senate's own reading of this legislation and I appreciate your willingness to clarify this issue. In view of your comments and the importance of this legislation to the revitalization of Lower Manhattan, the Senate will pass this bill when it reconvenes in October.

While this legislation represents an important step toward forging a new economic revival in Lower Manhattan, further reform of City rent regulation laws is equally important to achieving the goal of long-term economic revitalization. As you know, I have long advocated the importance of such reform and introduced legislation that culminated in the adoption of luxury de-control measures by the Legislature in 1993. The current system, must be overhauled,

Your anticipation of future amendments to the rent laws, as stated in your letter, is welcome. I look forward to working cooperatively with your administration to expand on the 1993 reforms to insure New York's economic future.

Sincerely,

/s/ Joe

Joseph L. Bruno

**Exhibit C to Foregoing Documents –
Excerpts from the Transcript of Senate Debate,
Dated October 12, 1995**

SENATE DEBATE TRANSCRIPTS

———

1995
CHAPTER 4
33 Pages

———

New York Legislative Service, Inc.
The Research Specialist on Legislative Intent
and Current Legislation
A New York Not-For-Profit Corporation,
Established 1932
15 Maiden Lane, New York, NY 10038
(212) 962-2826 www.nyls.org

———

October 12, 1995

———

[12362] SENATOR BRUNO: Mr. President. Can we now call up calendar 1603.

ACTING PRESIDENT NOZZOLIO: Secretary will read.

THE SECRETARY; Senator Bruno from the Committee on Rules moves to discharge **** Assembly Bill Number 8028 and substitute it for the identical Calendar Number 1603.

ACTING PRESIDENT NOZZOLIO: Substitution ordered. Read the last section. Explanation is asked for. Read the bill.

* * *

Not a good development, though. Not good for the City. But, you know, the City will be in no worse position than it was before it started.

So I would urge everyone, seriously, to vote yes because I think we do have to do this. We've done some similar things, some similar things for other boroughs, that are in this bill; and I think Lower Manhattan needs this shot in the arm to bounce back.

Thank you, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Leibell.

SENATOR LEIBELL: Thank you, Mr. President.

When this legislation came before us in June, Senator Bruno and I had expressed some concerns regarding some provisions of the original bill.

[12384] I understand now that the Mayor has contacted us and cleared up this concern, and I would like to have the opportunity, if I might, to just read in the Mayor's letter, Mayor Giuliani's letter to Senator Bruno, dated August 16, this year.

Dear Senator Bruno: "I am writing as a follow-up to our conversation regarding passage of the Lower Manhattan legislation. In our discussion, you asked that the legislation be amended to insure that any residential units created as a result of the legislation are subject to the most current rent stabilization laws of the state. I have discussed this matter with the drafters of the legislation and with the Commissioner of the Department of Housing Preservation and Development (HPD), the City agency responsible for implementing the residential conversion program proposed in the legislation. The City's intention has always been that dwelling units and property receiv-

ing benefits under the residential conversion program, bill Section 14, and the mixed use program, bill Section 15, would be subject to rent stabilization to the [12385] same extent as but to no greater extent than other rent-regulated property. Any provision of law that generally exempts any housing accommodation from rent stabilization would apply as well to dwelling units in property receiving benefits under the aforementioned program; thus, the provisions of the Rent Regulation Reform Act of 1993 that provide for the exclusion of high rent accommodation and for high income rent decontrol Would apply to property receiving benefits under the program created by the Lower Manhattan legislation. Any future amendments to the Rent Stabilization Law would also apply to these properties. The City agencies responsible for administering the residential conversion and mixed use programs will promulgate rules that reflect our intention to apply the Rent Stabilization Law as a whole, including any provisions that exempt housing accommodations from rent stabilization to property receiving benefits under those programs.

"If you have any further questions regarding this matter, please do not hesitate to contact me. .0n behalf of myself the [12386] business community of New York and the people of New York City generally, I ask for your assistance in insuring the passage of this legislation at the earliest possible moment. "Sincerely, Rudolph Giuliani, Mayor of the City of New York."

Thank you, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Goodman.

SENATOR GOODMAN; Mr. President. For some years before becoming a state Senator, I happened to have worked in this downtown area which is the sub-

* * *

THE SECRETARY: Ayes 53. *Nays* 1.

Senator Leichter recorded in the negative.

ACTING PRESIDENT NOZZOLIO:

The bill is passed.

Senator Bruno.

SENATOR BRUNO Mr. President. Can we now call up Calendar Number 1630.

ACTING PRESIDENT NOZZOLIO: Secretary will read.

THE SECRETARY; Senator Bruno moves to discharge from the Committee on Rules Assembly Print 8142 and substitute it for the identical Calendar Number 1630.

ACTING PRESIDENT NOZZOLIO: substitution so ordered.

THE SECRETARY: Calendar Number 1630, by the Assembly Committee and Rules,

* * *

**Exhibit F to Foregoing Documents –
Various Letters from New York State Division
of Housing and Community Renewal**

[LOGO]
New York State
Division Of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza / 92-31 Union Hall St.
Jamaica, NY 11433

George E. Pataki, Governor

January 30, 1997

Sherwin Belkin, Esq.
Belkin Burden Wenig & Goldman, LLP
342 Madison Ave.
New York, NY 10173-0035

Dear Mr. Belkin;

Your letter of January 7 to Assistant Commissioner Seavey and your follow-up fax submissions of January 13 and January 16 have. been referred to the undersigned, for reply. You inquired about a situation arising under Real Property Tax Law (RPTL) Sec. 421-g enacted by Chapter 4 of the Laws of 1995, which. provide for a program of tax abatements for Lower Manhattan conversions from nonresidential to residential use. Specifically you inquired whether high-rent deregulation. applies to converted units which will rent for $2,000 or more per month and whether, if so, such deregulated status would apply if tenants are granted rent abatements during the completion of construction, with such abatements bringing the rent below $2,000 per month.

Subdivision 6 of RPTL Sec. 421-g reads: "Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the emer-

gency tenant protection act of nineteen seventy-four, the rents of each dwelling unit in an eligible multiple dwelling shall be fully subject to control under such local law, unless exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit, for the entire period' for which the eligible multiple dwelling is receiving benefits pursuant to this section . . . ."

The wording of this subdivision does not address whether high-rent deregulation is available with respect to the relevant units. You have submitted an exchange of correspondence from 1995 (shortly before the passage of Chapter 4) between Mayor Giuliani and Senate Majority Leacher Bruno which indicates an intention that high-rent deregulation be available. Senator Bruno observed that such availability "comports with the Senate's own reading of this legislation . . . ." This indicates that the issue was discussed by members of at least one house. We have examined the bill jacket, and we find nothing differing from this interpretation. We conclude that high-rent deregulation is available with respect to Sec. 421-g units.

Another issue is whether, considering that high-rent deregulation operates upon. vacancy, deregulated status must await the vacancy of the first residential tenant or is available from the inception of residential tenancy. We consider the situation you described to be analogous to the "first rent" scenario, which applies when the outer dimensions of an apartment are changed and which is discussed Point: I.A.2.d. of Operational Bulletin 95-3. As with the "first rent" situations the subject apartments in your situation did not exist on the base date of rent stabilization. conclude that high-rent deregulation is available from the inception of the first residential tenancy.

You have also asked whether the proposed construction-related rent abatements would operate to preclude high-rent deregulation. We agree that the term "preferential rent" is inapplicable to such abatements. The abatements. would more accurately be described as concessions for specific months on a one-time basis, not to be prorated throughout the lease term. Under the limited circumstances you described, provided the lease specifies an initial monthly rent: of at least $2,000, and also provided that the terms of the abatement are fully set forth in the lease, such rental amount of at least $2,000 per month which the tenant agrees to pay can be considered the legal regulated rent (even if the number of months the abated rent will continue is not known at the outset because of uncertainty regarding the duration of the completion of construction), and the unit would have deregulated status during, as well as after, the period of abated rent. Our opinion assumes, of course, that all aspects of the transactions involved, are conducted in good faith and without any attempt to evade rent laws and regulations. The renovation work must be completed within a reasonable time, with the rent abatements for the affected units thus terminating, and the tenants thereupon being charged and actually paying rents of $2,000 or more per month as provided in their leases.

Please be advised that this opinion letter is not a substitute for a formal agency order issued upon prior notice to all parties, such parties having been afforded an opportunity to be heard.

Very truly yours,

Charles Goldstein
Associate Counsel
/s/ Erik Strangeways
by: Erik Strangeways Senior Attorney

George E. Pataki
Governor

Joseph B. Lynch
Commissioner

[LOGO]

New York State Division of Housing and
Community Renewal
Office of *Rent Administration*
Gertz Plaza
92-31 Union Hall Street
Jamaica, NY 11433

August 22, 2000

Your letter of July 25 has been referred to the undersigned for reply, as noted in Deputy Commissioner Roldan's letter to you of August 17. Please note for the future that requests for opinion letters should be addressed to Charles Goldstein Esq., Associate Counsel.

You inquire about the rent regulatory status of housing accommodations in a building that was recently converted from commercial to residential use with the assistance of the tax benefit program available under Real Property Tax Law (RPTL) Sec. 421-g (the Lower Manhattan initiative), where each apartment, from its creation, rents for an amount in excess of $2,000 per month.

We have had occasion previously to consider the interaction between RPTL Sec, 421-g and the high-rent decontrol provisions of the rent laws. Based on our examination of the relevant factors, including the legislative history of Chapter 4 of the Laws of 1995,

which enacted RPTL Sec. 421-g, it is our opinion that where there are Sec, *421-g benefits* being used and where the first tenant of a newly created apartment is actually charged and actually pays $2,000 per month or more, the apartment is exempt from rent regulation from the inception of occupancy.

Under these limited circumstances, where there is no period of rent regulatory jurisdiction, it would not be necessary to register the units.

We trust that we have fully answered your inquiry.

Please be advised that this opinion letter is not a substitute for a formal agency order issued upon prior notice to all parties, such parties having been afforded an opportunity to be heard.

Very truly yours,

Charles Goldstein
Associate Counsel

/s/ Erik Strangeways
by: Erik Strangeways Senior Attorney

CG:ES

cc: Deputy Commissioner Rolden

(COL-962)

George E. Pataki
Governor

Judith A. Calgero
Commissioner

[LOGO]

New York State Division of Housing and
Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, NY 11433

September 26, 2002

This is in response to your letter of August 12. You refer to an opinion letter from our agency dated August 22, 2000 which you state conflicts with the New York City Department of Housing Preservation and Development's (HPD) procedures as they relate to Real Property Tax Law Sec. 421-g benefits. In particular, you explain that HPD requires that all apartments benefitting from 421-g improvements must be subject to rent stabilization, whereas our letter explains that apartments renting at an initial rent of $2,000 or more per month are not subject to rent regulation.

You request "reassurance" from this agency regarding the position taken in our letter dated August 22, 2000.

We reiterate the position taken in that letter, and state, once again, that based on our examination of the relevant factors, including the legislative history of Chapter 4 of the Laws of 1995, which enacted RPTL Sec. 421-g, it is our opinion that where there are Sec. 421-g benefits being used and where the first tenant of a newly created apartment is actually charged and actually pays $2,000 per month or more, the apartment is exempt from rent regulation from the inception of occupancy.

We trust that we have fully responded to your inquiry.

Please be advised that this opinion. letter is not a substitute for a formal agency order issued upon prior notice to all parties and with all parties having been afforded an opportunity to be heard.

Very truly yours,

Charles Goldstein
Associate Counsel

By: /s/ John D. Lance
John D. Lance
Senior Attorney

CG: JDL

cc: Deputy Commissioner Roldan

(COL-1359)

Exhibit G to Foregoing Documents –
421-g Affidavit

THE CITY OF NEW YORK DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT
OFFICE OF DEVELOPMENT
TAX INCENTIVE PROGRAMS

421-g Affidavit

INTERIM AFFIDAVIT OF RENT REGISTRATION
OR DOCUMENTATION OF EXEMPT UNITS
FOR NEWLY CREATED DWELLING UNITS
IN RENTAL BUILDINGS

STATE OF NEW YORK)
CITY OF NEW YORK) SS.
COUNTY OF _____)

I, _____ being duly sworn, depose and say:

I am the [owner, officer, etc] of the premises at [street, address] Block: _____ Lot(s):_____

and make this affidavit in support of an application for tax benefits pursuant to §421-g of the Real Property Tax Law of the State of New York. I hereby affirm that for each of the dwelling units in the premises, other than exempt dwelling units, a filing for rent registration with the New York State Division of Housing and Community Renewal (DHCR) as required by law, will be made no later than thirty (30) days after initial occupancy or at the earliest date thereafter permitted by DHCR and a copy will be sent to the Tax Incentive Programs Office. For every exempt unit, I will provide a copy of the first and signature page of the lease and such other verification as may be required to the Tax

Incentive Programs Office within 30 days after Initial Occupancy.

I make these statement to induce the City of New York to grant tax exemption and know that the City of New York will rely on the veracity of such statements in granting tax exemption benefits.

Sworn to me this

day of _____

Notary Seal

_____

(Signature)

Exhibit H to Foregoing Documents –
Checklist for 421-g Application

CHECKLIST FOR 421-g APPLICATION

PROJECT ADDRESS_____
Block_____Lot_____

Submitted by:_____
Phone:_____ Fax:_____

The documentation noted below has been submitted to the Office for review in connection with an application for tax benefits pursuant to § 421-g of the RPTL. (Applications for the one-year pre-completion exemption ("Preliminary Benefits") require affidavits for items 4, 7 and 8.)

☐ 1. Application: Check ALL applicable: ☐Preliminary; ☐Blank; ☐Partial Eligibility (Initial); ☐[illegible] [see also "Supplemental" checklist for Final after Preliminary OR Partial]

☐ 2. Proof of pre-conversion non-residential usage: ☐ prior C of O for non-residential use; AND ☐Prior Use Letter from the Borough Superintendent, Buildings Department, OR
☐ Other_____

☐ 3. An initial permit for conversion dated after 7/1/95 and within 3 years of completion with
☐a set of plans as approved by the Department of Buildings ("DOB") with the DOB stamp or verified as such by an architect's affidavit AND
☐PW-1, P1-A, 1B and PW-2

☐ 4. A copy of the post-conversion C of O or TC of O dated prior to the relevant January 5 for all units claimed on the application or

□ for Preliminary eligibility an affidavit must be received by April 29; stating that no C of O or TC of O had been issued as of April 15. For units with *Home Occupation Usage*, lease or offering plans must include the zoning restrictions.

□ 5. Two copies of a completed Space Report (Form G-2) to be confirmed by the Office.

□ 6. Proof of lot apportionment, if any, from the Department of Finance: two copies of the new tax map with new or tentative tax lot numbers and a copy of the Declaration of Condominium. A complete application for lot apportionment with plans and the Declaration of Condominium must have been filed at the Department of Finance by December 1.

□ 7. Proof of Multiple Dwelling Registration (MDR) with HPD.

□ 8. □ a. copy of rent registration forms filed with DHCR for rental units (all pages) OR
□ b. copies of leases for exempt rental units (one full lease and the first and last pages showing signature and rent, $2,000 or more for luxury unit, for each remaining exempt lease), OR
□ c. proof of filing with the Attorney General for residential coop or condo units

□ 9. Printout from the Department of Finance showing that the applicant is the party obligated to pay taxes and that all charges are up to date as of the January before benefits are to be implemented. A deed or net lease may be submitted for proof that the applicant is obligated to pay taxes.

☐ 10. Printout from the Department of Environmental Protection showing that all water charges are paid as of the January before benefits are to be implemented.

☐ 11. Proof of landmark status (if any) from the NYC Landmarks Preservation Commission. (Copy of (a) Landmark Designation, (b) Permit, and (c) Letter of Compliance, unless all work is interior.)

☐ 12. Completed affidavit (Form G-3) regarding harassment/arson convictions.

☐ 14. Fees: A non-refundable fee (certified check or money order) payable to the New York City Department of Finance with the notation, "421-g fee."

1) base fee of $1,500	$1,500
2) plus $250 per dwelling unit (No. units _____ X $250) =	$_____
TOTAL (not to exceed $25,000)	$_____

Exhibit I to Foregoing Documents –
421-g Continuing Use Certification

CITY OF NEW YORK DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
§421-G CONTINUING USE CERTIFICATION – DUE Jan. 6, 2014

DOCKET # 4G051-02/06 Block 126; Lot 27

EFFECTIVE YEAR:	7/1/2002
PROPERTY ADDRESS:	110-120 Church Street
§421-G RECIPIENT:	David Lowenfeld, Member c/o World Wide Holdings, 950 Third Avenue, 18 Fir., New York, NY 10022 Phone: 212-486-2000:
AGENT:	Richard Lebow 950 Third Avenue, 18F, New York, NY 10022 Phone: 212-500-1223; Fax: 212-486-4665

Send to:

100 Gold Street, Room 8-D07, New York, NY 10038.

ALL RECIPIENTS MUST FILE ANNUALLY TO ESTABLISH CONTINUING ELIGIBILITY ON OR BEFORE THE *JANUARY 6th* TAXABLE STATUS DATE. PURSUANT TO §32-06 OF THE §421-g RULES, FAILURE TO FILE TIMELY WILL RESULT IN REVOCATION OF §421-g TAX BENEFITS.

FILED THIS YEAR BY:_____

COMPANY: _____

ADDRESS: _____
PHONE: _____FAX:_____

REPRESENTATIONS (Fill in as noted and sign}

1. Eligible residential and eligible non-residential floor area continue to represent p.34 of the aggregate floor area in the tax lot(s) and 390 Class A dwelling units have been and will continue to be used for dwelling purposes or have been and will continue to be held out for such use. None of these Class A dwelling units have been or will be used as part of a hotel. The use of the property complies with the Certificate of Occupancy provided with the §421-g application.

   □ YES

OR □ NO – Please attach a description of the change(s) and indicate which of the following, if any, apply:

   □ change in the number of Class A dwelling units; and/or

   □ change in percentage of eligible floor area as shown in the new Aggregate Floor Area and Non-Residential Space Report attached.

2. All dwelling units are in compliance with Rent Stabilization or are Exempt Dwelling Units (see the §421-g Rules).

   □ Attached Is a copy of the annual apartment registration summary form filed with DHCR for:

   □ (no.) Rent Stabilized dwelling units; and/or

   □ (no.) Exempt Dwelling Units as previously documented; and/or

   □ (no.) Newly Exempt Dwelling Units.

OR □ (no.) Dwelling units are Exempt Dwelling Units due to cooperative or condominium status.

3. Neither the Recipient, nor any individual or entity owning or controlling an interest of ten percent

(10%) or more of the above referenced tax lot, or any other Person described In §32-06(a) (3) of the §421-g rules, was (1) finally adjudicated by a court of competent jurisdiction for or (2) is the subject of pending charges for having violated §235 of the Real Property Law or any section of Article 150 of the Penal Law or any similar arson law of another jurisdiction. The acquisition of an interest of 10% or more in the property by any Individual or entity not named in the original application shall be reported on the first Continuing Use Certification after such acquisition.

□ There has been no ownership change since the previous affidavit.

OR □ See new Arson Affidavit attached.

4. The Project continues to be in compliance with all the statutory and regulatory requirements of §421-g of Real Property Tax Law and the §421-g Rules in Chapter 32 of Title 28 of the Rules of the City of New York.

State of New York)
City of New York)

SIGNATURE AND NOTARIZATION

I [PRINT NAME] being duly sworn state that I am the [TITLE] of the above named §421-g recipient and the statements contained in this certification are true. I make this statement to induce the City of New York to continue tax benefits under §421-g of the Real Property Tax Law for the following fiscal year.

Subscribed and sworn to before me

the___day of_____
Notary Public or Commissioner of Deeds
_____(signature)_____