

**HOUSING, RESIDENTIAL RENT AND RELOCATION  
BOARD  
FULL BOARD REGULAR MEETING  
February 12, 2026  
6:00 P.M.  
CITY HALL, HEARING ROOM # 1  
ONE FRANK H. OGAWA PLAZA  
OAKLAND, CA 94612**

**AGENDA**

**PUBLIC PARTICIPATION**

The public may observe or participate in this meeting in person or remotely via Zoom.

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**PARTICIPATION/COMMENT:**

To participate/comment during the meeting, you may appear in person or remotely via Zoom. Comments on all agenda items will be taken during public comment at the beginning of the meeting. Comments for items not on the agenda will be taken during open forum towards the end of the meeting.

If you have any questions, please email [hearingsunit@oaklandca.gov](mailto:hearingsunit@oaklandca.gov)

**000001**

## **HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD MEETING**

### **1. CALL TO ORDER**

### **2. ROLL CALL**

### **3. PUBLIC COMMENT**

- a. Comments on all agenda items will be taken at this time. Comments for items not on the agenda will be taken during open forum.

### **4. CONSENT ITEMS**

- a. Approval of Board Minutes, 01/08/2026 (pp.3-5)

### **5. APPEALS\***

- a. L19-0013, Vulcan Lofts, LLC v. Tenants (pp.6-408)
- b. T25-0161, Moran v. De Jesus Guzman (pp.409-457)

### **6. INFORMATION AND ANNOUNCEMENTS**

### **7. NEW BOARD BUSINESS**

### **8. SCHEDULING AND REPORTS**

### **9. OPEN FORUM**

- a. Comments from the public on all items will be taken at this time.

### **10. ADJOURNMENT**

*The Rent Adjustment Program and the Clerk's office has at least 72 hours prior to the meeting to post all meeting materials pursuant to O.M.C. 2.20.080.C and 2.20.090.*

As a reminder, alternates in attendance (other than those replacing an absent board member) will not be able to take any action, such as with regard to the consent calendar.

**Accessibility:** Contact us to request disability-related accommodations, American Sign Language (ASL), Spanish, Cantonese, Mandarin, or another language interpreter at least five (5) business days before the event. Rent Adjustment Program (RAP) staff can be contacted via email at [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) or via phone at (510) 238-3721. California relay service at 711 can also be used for disability-related accommodations.

**HOUSING, RESIDENTIAL RENT AND RELOCATION  
BOARD  
FULL BOARD REGULAR MEETING  
January 8, 2026  
6:00 P.M.  
CITY HALL, HEARING ROOM # 1  
ONE FRANK H. OGAWA PLAZA  
OAKLAND, CA 94612**

**MINUTES**

**1. CALL TO ORDER**

a. The Board meeting was administered in-person by Nyila Webb from the Rent Adjustment Program (RAP), Housing and Community Development Department. Nyila Webb explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Chair Cucullu Lim at 6:10 PM.

**2. ROLL CALL**

<b>MEMBER</b>	<b>STATUS</b>	<b>PRESENT</b>	<b>ABSENT</b>	<b>EXCUSED</b>
D. INGRAM	Tenant			X
C. MUNOZ RAMOS	Tenant	X		
Vacant	Tenant Alt.			
M. GOOLSBY	Tenant Alt.			X
C. OSHINUGA	Undesignated			X
M. CUCULLU LIM	Undesignated	X		
R. SAMATI	Undesignated	X		
K. BRODFUEHRER	Landlord			X
C. JACKSON	Landlord	X		
Vacant	Landlord Alt.			

**Staff Present**

Oliver Luby  
Jessica Leavitt  
Nyila Webb

Deputy City Attorney  
Assistant Manager (RAP)  
Administrative Assistant II

**3. PUBLIC COMMENT**

- a. No requests submitted online or in-person.

**4. CONSENT ITEMS**

- a. Approval of Board Minutes, 11/13/2025 (pp. )

**Member Munoz Ramos made a motion to approve the minutes from November 13, 2025. Vice Chair seconded.**

The Board voted as follows:

**Aye:** C. Jackson, Vice Chair Samati, C. Munoz Ramos  
**Nay:** None  
**Abstain:** Chair Cucullu Lim

The Minutes were approved.

**5. APPEALS\***

- a. L25-0013, Nesmith v. Tenants (pp. )

**Appearances at appeal:**

**Owner Rep:** Chris Nesmith

**Owner Representative:** Ilona Clark

**Owner Representative:** Gurleen Kaur

Once the tenant rep had time for discussion, the Board asked questions and then deliberated on the case. After consideration, they concluded, and a motion was made.

**Member Muñoz Ramos made a motion to remand this matter to the Hearing Officer to provide further analysis on the issue of whether the unit is subject to the fee. If not, to issue a decision on the merits. The Board finds that there is not substantial evidence supporting the decision that the unit is subject to the fee.**

**Vice Chair Samati seconded.**

The Board voted as follows:

**Aye:** C. Jackson, Vice Chair Samati, Chair Cucullu Lim, C. Munoz Ramos  
**Nay:** None  
**Abstain:** None

The motion was approved.

## **6. INFORMATION AND ANNOUNCEMENTS**

- a. “Role of the Board Training” - City Attorney Led (pp.)
- The City Attorney provided a training on the role of the Board, including member responsibilities, authority, and expectations when carrying out Board duties.
- b. RAP Annual Report Follow-Up by RAP staff (pp.)
- The Assistant Manager of RAP provided updates and participated in discussion with the Board regarding the RAP Annual Report that was presented in November 2025 and responded to Board questions and comments.

## **7. NEW BOARD BUSINESS**

- a. Brief Overview of New Brown Act Requirements (Effective January 1, 2026)
- The City Attorney gave a brief overview of new Brown Act rules that take effect on January 1, 2026. The presentation explained when Board members may attend meetings remotely, the reasons allowed for doing so, limits on how often remote participation may be used, and new meeting requirements such as roll-call voting, quorum rules, and what must be noted in the meeting minutes.

## **8. SCHEDULING AND REPORTS**

- a. None

## **9. OPEN FORUM**

- a. Two speaker cards were submitted online.

## **10. ADJOURNMENT**

- a. Meeting adjourned at 7:50 pm.

## CHRONOLOGICAL CASE REPORT

Case No.: L19-0013  
Case Name: Vulcan Lofts, LLC v. Tenants (Vulcan et al.)  
Property Address: 4401 San Leandro Street Oakland, CA 94601

Parties: Owner- Vulcan Lofts, LLC (Landlord One)  
Owner Representative- Servando Sandoval  
Owner Representative- Andrew Zacks  
Tenant Representative – Hasmik Geghamyan  
Tenant Representative - Leah Hess  
Tenants: L19-0013, T17-0237, T18-0460, T18-0461, T18-0462, T18-0463,  
T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18- 0470, T18-0471, T18-0473,  
T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500,  
T18-0501, T19- 0021, T19-0022 , T19-0023,T19-0236

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petitioners Brief	April 17, 2019
Tenants Exhibit	September 14, 2021
Tenant Submission for Closing Brief	December 9, 2022
Vulcan Hearing Decision	May 23, 2023
Tenant Appeal & Brief	June 7, 2023

Tenant Appeal & Brief	June 13, 2023
Tenant Appeal	June 13, 2023
Appeal Decision	November 16, 2023
Tenants' Closing Brief following Remand	February 2, 2025
Tenants' Closing Brief following Remand	February 25, 2025
Remand Decision	October 14, 2025
Tenants Appeal with Exhibits	October 31, 2025
Owner's Brief in Objection to Second Appeal	December 8, 2025
Appeal Hearing Scheduled	January 22, 2026

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Attorneys for Tenants

**City of Oakland  
Rent Adjustment Program**

Martin, et al.,  
  
Tenants/Petitioners,  
  
v.  
  
Vulcan Lofts, LLC., et al.  
  
Landlord/Respondents.

Case Nos: T17-0237; T-180460-T180471;  
T18-0473-T180479; T18-0498-T18501;  
T19-0021-T19-0023; L19-0013

**TENANT PETITIONERS' BRIEF  
REGARDING RESIDENTIAL USE  
PRIOR TO LEGAL CONVERSION**

Brief  
from  
Vulcan  
Rec'd 4/17

**RECEIVED**  
APR 17 2019  
RENT ADJUSTMENT PROGRAM  
OAKLAND

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1 Martin, et al. v. Vulcan Lofts, LLC, et al.

2  
3 TENANT PETITIONERS' BRIEF REGARDING  
4 RESIDENTIAL USE PRIOR TO LEGAL CONVERSION

5 I. INTRODUCTION

6 This case hinges upon statutory construction of one of the two elements that a landlord  
7 must prove to demonstrate entitlement to a "new construction" certificate of exemption: 1) The  
8 property must have received a certificate of occupancy on or after January 1, 1983 and 2) it must  
9 have been "formerly entirely non-residential."  
10

11 The evidence will demonstrate that the owner/builders of the three-building, a 59-unit live-  
12 work property here began renting out residential units long before they received any finalized  
13 permits or certificates of occupancy. As soon as a unit was built, it was leased to tenants, who  
14 then resided at the property. This practice continued for well over a year. Under such  
15 circumstances, can the property be said to have been "formerly entirely non-residential?"  
16  
17

18 The present owners assert that, in order to defeat their exemption petition, the tenants must  
19 show residential use prior to January 1, 1983. This position ignores basic principles of statutory  
20 construction and rewards landlords who break the law. "Formerly entirely non-residential" should  
21 be interpreted to mean prior to issuance of certificates of occupancy. Proof of residential use prior  
22 to issuance of the certificates should be sufficient to defeat a landlord's new construction petition.  
23  
24

25 "New construction" is an exemption to the Ordinance, which is a general statute.  
26 "Exceptions to the general rule of a statute are to be strictly construed...One seeking to be  
27 excluded from the sweep of the general statute must establish that the exception applies." *Barnes*  
28

1 v. *Chamberlain* (1983) 147 Cal.App.3d 762, 767; see, also, *Da Vinci Group v. San Francisco*  
2 *Residential Rent Board* (1992) 5 Cal.App.4th 24, 28.

3  
4 In this brief, the tenants discuss the factors in this case which compel a narrow  
5 interpretation of the new construction exemption. Such factors include case law examples of  
6 application of strict construction to rent control exemptions, the ambiguity inherent in Oakland's  
7 exemption provisions as written, the ordinance's Regulations designed to protect against  
8 erroneous determination of new construction petitions, the fact that the owner's practice of leasing  
9 property prior to issuance of final permits and certificates of occupancy was unlawful and unsafe,  
10 and the inherent undermining of public policy when landlords who engage in such practices are  
11 rewarded with certificates of exemption.  
12

13  
14 The Ordinance should be construed narrowly. The term "formerly entirely non-residential"  
15 should be taken to refer to residential occupancy prior to issuance final permits and of certificates  
16 of occupancy.  
17

18 **II. STATEMENT OF FACTS**

19 The Tenant petitioners/respondents will demonstrate the following facts at the  
20 hearing of this matter:  
21

22 **A. Construction of Rental Units at the Property**

23 In December 1985, James Alexander and Eddie Orton (Alexander & Orton, LLC)  
24 purchased the Vulcan Foundry, three large industrial buildings in the Fruitvale District of  
25 Oakland. The buildings were eventually designated Buildings A, B and C. A portion of the  
26 property continued as a working foundry briefly for a time after the property changed hands and  
27  
28

1 tenants moved in.<sup>1</sup>

2 The new owners planned to build a series of artists' live-work rental units at the property.  
3  
4 The work began immediately. Permits were taken out on December 31, 1985, the day the sale was  
5 recorded. Construction at the property continued until at least early 1988.<sup>2</sup> It is likely that it  
6 continued for some time after that.

7  
8 Units were rented out to new occupants as soon as they were completed, beginning around  
9 Spring of 1986. Indeed, construction of some units was not completed at the time they were rented  
10 for residences. The occupants had to finish the build-out themselves. The tenants were not  
11 compensated for this work. Some tenants paid the owners to complete portions of their rental  
12 units. The finished units contained a number of defects in common. There were gaps between the  
13 walls and the floor and between the walls and the ceilings. There were leaks and repeated  
14 flooding. There were heavy accumulations of industrial soot which the tenants were required to  
15 clean.  
16  
17

18 Eventually, some fifty-nine rental units were built. All but a handful were live-work  
19 spaces. A few studio spaces were built without residential amenities. A café was constructed and  
20 opened for business in Building A.  
21

22 The units were rented to the tenants for residential use. They contained kitchens with  
23

---

24 <sup>1</sup>At present, only fragmentary information about possible residential use prior to  
25 Alexander/Orton's ownership has been located.. If Tenant Petitioners are permitted to obtain Voter  
26 Registration records for the pre-1983 time period, it is anticipated that the issue of pre-1983 residential  
27 use could be definitively determined

28 <sup>2</sup>Records submitted by the current owner and the tenants demonstrate conflicts between the "final"  
building permit for Building C, and later applications for certificates of occupancy. Tenants allege that  
this goes to the issue of mistake (or fraud) in the initial exemption of units in building C.

1 hookups for appliances, fully equipped bathrooms (sink, toilet, tub, shower) and sleeping rooms,  
2 as well as spacious work studios. It is abundantly clear that the rental units at the Vulcan were in  
3 residential use prior to issuance of certificates of occupancy and prior to finalization of all  
4 permits.<sup>3</sup>

6 B. The Prior Rent Program Case (Vidor)

7  
8 In 2005 four tenants brought petitions challenging rent raises. [T05-0110, -0119, -0127 & -  
9 0146, Unit 19, Bldg. A; Unit 29, Bldg B; Units 45 and 54, Bldg. C]. The owners defended by  
10 claiming that the property was exempt under the "new construction" provisions of the Rent  
11 Ordinance. The Hearing Decision concluded that the four rental units were exempt.

12  
13 The case focused almost exclusively on whether Certificates of Occupancy had, in  
14 fact, ever been issued, as required by law, for each of the buildings. Numerous exhibits  
15 were submitted and the Owners' representatives and the tenants testified. At a second  
16 hearing, the Hearing Officer called the then-current Building Department Director, who  
17 testified about the Department's lack of consistent follow-up on Certificates of Occupancy  
18 and about documents lost due to the 1989 earthquake. Evidence submitted concerning  
19 prior residential use of the property was scant.<sup>4</sup>

---

22  
23 <sup>3</sup>Units in Building A (Units No 1 through 16) and Building B (Units 17 through 26) were  
24 constructed between January 1986 and mid-to late 1987, with certificates of occupancy issued for all units  
25 on October 12, 1987. Building C never received a final certificate of occupancy. A building permit was  
26 finalization for Units 28-49 on May 27, 1987. Then, a number of applications for temporary certificates of  
27 occupancy were issued for Units 28-52 between April 1987 and February 1988. Those applications appear  
28 to have received final approval in January and February 1988. The record contains no evidence of building  
permits or applications for certificates of occupancy for Units 53-59 in Building C.

<sup>4</sup>That evidence consisted of a single document, an April 1987 application for a permit to build a  
second loft in Unit 5. The applicant described the use of the premises as "existing live-work studio." The  
hearing examiner dismissed the application as irrelevant because it was dated after the owners had

1 The Hearing Officer concluded:

2 The landlord has proven by a preponderance of the evidence that the tenants'  
3 units were created from space that was formerly entirely non-residential, and  
4 that the units either did or should have received Certificates of Occupancy  
5 after January 1, 1983. Therefore, the units are exempt from the Rent  
6 Ordinance.

7 The Hearing Decision was eventually upheld in an unpublished First District Court  
8 of Appeal Decision, which found that it was supported by substantial evidence. *Vidor v.*  
9 *City of Oakland.*

10 C. The Current Consolidated Cases

11 Tenants of 28 rental units at the property have brought the petitions objecting to  
12 rent increases and raising issues of lack of service of RAP notices and decreased services.  
13 The owners have answered those cases and have filed a landlord petition for exemption  
14 based upon the *Vidor* case. Records from the Oakland Building Department have been  
15 submitted as exhibits by both landlords and tenants.<sup>5</sup>

16 The tenants assert that the records do not support the owners' claims about the date  
17 of completion of construction, at least for Building C. Further, the Building C records  
18 conflict with the finalized building permit upon which the *Vidor* conclusions were based.  
19 Records for construction of at least seven rental units are non-existent. The tenants assert  
20 that the *Vidor* decision resulted from mistake or fraud.  
21

22  
23  
24  
25 \_\_\_\_\_  
26 purchased the property and began construction. The petitioners here will present the testimony of that  
27 resident and others from the same time period, during which the owners were engaged in unlawfully  
28 leasing the rental units.

<sup>5</sup>The records submitted were included in the *Vidor v. City of Oakland* case discussed *infra*. The parties have stipulated to their admissibility.

1 Overshadowing these issues is a larger problem for the owners. It is clear that all of  
2 the buildings contained residential tenants prior to the issuance of the certificates of  
3 occupancy for Buildings A and B and before the permit finalization for Building C. The  
4 evidence will contradict the owners' assertion that the property was formerly entirely non-  
5 residential.  
6

7  
8 III. LEGAL ARGUMENT

9 A. The New Construction Provisions of the Rent Ordinance

10 The Oakland Municipal Code provisions for an exemption from rent control for  
11 newly constructed rental units requires a two-part test:  
12

13 A. Types of Dwelling Units Exempt. The following dwelling units are not covered  
14 units...:

15 5. Dwelling units which were newly constructed and received a certificate of  
16 occupancy on or after January 1, 1983.,, To qualify as a newly constructed dwelling  
17 unit, the dwelling unit must be entirely newly constructed or created from space that  
18 was formerly entirely non-residential.

19 The Regulations for the Ordinance further define the exemption:

20 2. Newly constructed dwelling units (receiving a certificate of occupancy  
21 after January 1, 1983).

22 a. Newly constructed units include legal conversions of uninhabited  
23 spaces not used by Tenants, such as:

- 24 i. Garages;
- 25 ii. Attics;
- 26 iii. Basements;
- 27 iv. Spaces that were formerly entirely commercial.

28 b. Any dwelling unit that is exempt as newly constructed under  
applicable interpretations of the new construction exemption pursuant  
to Costa-Hawkins (California Civil Code Section 1954.52).

1 c. Dwelling units not eligible for the new construction exemption  
2 include:

- 3 i. Live/work space where the work portion of the space was  
4 converted into a separate dwelling unit;  
ii. Common area converted to a separate dwelling unit.

5 OMC 8.22.010, Regulation No. 8.22.030

6 The owners here take the position that the term "formerly entirely non-residential"  
7 means that there was no residential use of the property prior to 1983. Tenants assert that  
8 the term refers, not to the January 1983 date, but to the date upon which the certificate of  
9 occupancy is obtained. Here, the certificates of occupancy were issued on October 12,  
10 1987. There was indisputably prior residential use of the rental units at the property prior  
11 to that date. Alexander & Orton filled rental units as quickly as they were built. If the  
12 owners' interpretation of the Ordinance is correct, it would not matter when they first  
13 rented out the units. If the Tenants' interpretation is correct, then the property cannot be  
14 exempt, as it was used residentially prior to the issuance of documents finalizing the new  
15 construction. The resolution of this issue is a question of statutory construction.  
16  
17  
18

19 B. Rules of Statutory Construction and Case Law Require Narrow  
20 Interpretation of Exemptions to Rent Control

21 1. Statutory Construction

22 First, of course, the intent of the legislative body must be determined, so as to  
23 construe the statute to effect that purpose. *Doe v. Brown* (2009) 177 Cal.App.4th 408, 417.  
24 Words used in the statute should be given their ordinary meaning. If the language is clear  
25 and unambiguous, there is no need for construction. If the statute is amendable to two  
26 alternative interpretations, the one that leads to the more reasonable result will be  
27  
28

1 followed. *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735. In interpreting ambiguous  
2 language, the court adopts the interpretation that best harmonizes the statute internally and  
3 may look to extrinsic aids, such a legislative history, other parts of the statutory scheme, or  
4 public policy to determine the proper interpretation. *Pacific Sunwear, Inc. v. Olaes*  
5 *Enterprises, Inc.* (2008) 167 Cal.App.4th 466, 474.

6  
7 "The construction of a municipal ordinance is governed by the same rules as the  
8 construction of statutes." *City of Los Angeles v. Los Olivos Mobile Home Park* (1989) 213  
9 Cal.App.3d 1427, 1433.

10  
11 For our purposes here, it is crucial to note that this case involves an exemption to a  
12 general statute. As an exemption, the following applies:

13  
14 Exceptions to the general rule of a statute are to be strictly construed. In interpreting  
15 exceptions to the general statute courts include only those circumstances which are  
16 within the words and reason of the exception. ... One seeking to be excluded from  
17 the sweep of the general statute must establish that the exception applies. ( *Barnes*  
*v. Chamberlain* (1983) 147 Cal.App.3d 762, 767 [195 Cal.Rptr. 417].)

18 *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24,

19 2. Case Law Requires that Exemptions to Rent Control Be Narrowly Construed

20  
21 Two cases, *Da Vinci Group, supra.* and *Burien, LLC v. Wiley* (2014) 230  
22 Cal.App.4th 1039 illustrate the sort of strict construction applied to local rent laws which  
23 provide exemption for newly constructed rental units.<sup>6</sup>

24  
25 In *Da Vinci Group*, the owner had purchased a multi-tenant warehouse with no

---

26  
27 <sup>6</sup>New construction is also one of the three types of permanent exemption required of local rent  
28 ordinances by the Costa-Hawkins Act, As an exception to Costa-Hawkins, the same analysis applies under  
state law.

1 certificate of occupancy. For years after the purchase, the new owner continued to rent it to  
2 tenants without a certificate of occupancy. After the city flagged the building for having  
3 been changed to apartments without a permit, the owner made improvements and received  
4 a certificate of occupancy. The owner then claimed exemption from the local rent  
5 ordinance, which exempted "rental units located in a structure for which a certificate of  
6 occupancy was first issued after the effective date of this ordinance." At the time, the San  
7 Francisco Ordinance lacked a provision barring units which had previously been used  
8 residentially from the exemption. The appellate court looked beyond the bare language of  
9 the Ordinance to the Board's regulations, which added the element that new construction  
10 exemptions applied "only where there has been no residential use since the enactment of  
11 the Ordinance." *Da Vinci Group, supra.* at p. 29.  
12  
13  
14

15 Noting that the new construction exemption's purpose was to ease the housing  
16 shortage by creation of new units, the appellate court commented, "The 1986 certificate of  
17 occupancy in this case created legal residential units where there were illegal ones before.  
18 Legalizing de facto residential use does not enlarge San Francisco's housing stock." *Id.* at  
19 p. 30.  
20  
21

22 Da Vinci's units were not newly constructed, nor was the building restructured to  
23 permit new residential use. Existing residential use was made legal by bringing the  
24 building up to code and obtaining a certificate of occupancy. While this is a  
25 commendable undertaking, it does not bring the premises within the Ordinance's  
26 "new construction" exemption.

26 *Id.* at p. 30

27 This case is remarkably similar to *Da Vinci*. The sole difference is that the Vulcan  
28

1 was apparently empty when purchased. However, the owners filled the property with  
2 renters, accepted rent for the entire time construction was ongoing, and have acted in the  
3 ensuing years as if the property were not rent controlled. They chose to put the property to  
4 residential use prior to final approvals of the construction process. They nonetheless assert  
5 that they are entitled to an exemption because the prior residential use did not occur before  
6 1983. Nowhere in the ordinance or regulations is there a requirement that the residential  
7 use precede the enactment of the ordinance.  
8

10 In *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, a landlord sought to take  
11 advantage of the exemption provisions of the Costa-Hawkins Act. (Civ. Code § 1954.52)  
12 The landlord converted a rent-controlled apartment building, which had a 1972 certificate  
13 of occupancy, to condominiums. He obtained a new certificate of occupancy in 2009,  
14 based on the change in use, and raised the rent. When an existing tenant objected, the  
15 landlord sought a declaration from the court that the unit was exempt from the Los  
16 Angeles Rent Stabilization Ordinance under provisions of the Costa-Hawkins Act which  
17 exempts units that have a certificates of occupancy issued after 1995. Despite the post-  
18 1995 certificate of occupancy, the trial court found that the rent raise violated the  
19 ordinance.  
20  
21  
22

23 On appeal, the landlord contended that the unit was exempt under Civil Code  
24 1954.52 because it received a certificate of occupancy after February 1995. The tenant  
25 contended that the exemption referred to the first certificate of occupancy and did not  
26 apply because his tenancy was established long before the new certificate of occupancy.  
27  
28

1 In discussing the landlord's contention that the exemption applied broadly to any  
2 certificate of occupancy issued after February 1995 the appellate court determined,  
3  
4 "Although the language is susceptible to this construction, the result does not further the  
5 purpose of the statute. A certificate of occupancy based solely on a change in use from one  
6 type of residential housing to another does not enlarge the supply of housing." *Burian* at  
7 p.1047.  
8

9 In affirming the trial court decision, the appellate court concluded:

10 In this case, Tenant's unit is not exempt under [Costa-Hawkins] because the  
11 tenant occupied the unit prior to the issuance of the 2009 certificate of  
12 occupancy. *The 2009 certificate of occupancy did not precede the residential*  
13 *use of the property.* (Emphasis added)

14 *Burien* at p. 1049.

15 Similarly, in the instant case, the Certificates of Occupancy for Buildings A and B,  
16 and the finalization of the building permit for Building C did not precede the residential  
17 use of the property.  
18

19 3. The Oakland Rent Ordinance Does Not State a Specific Time Period During  
20 Which Prior Residential Use Must Have Occurred to Disqualify the Property  
21 from Exemption; The Exemption Provisions Must Be Narrowly Construed to  
22 Bar Exemption

23 Different rent control municipalities have treated the subject of prior residential use  
24 in different ways. The Los Angeles ordinance exempted housing from rent control if the  
25 first certificate of occupancy was issued after October 1978<sup>7</sup>, unless the building was first  
26 occupied residentially *prior* to October 1978. (See, *Burien v. Wiley, supra.* at p. 1048.) This  
27

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28 <sup>7</sup>The dates which appear in the different ordinances relate to the original dates of enactment of the  
rent ordinances.

1 is the construction of the Oakland ordinance that the Owners urge in this petition.

2 San Francisco, on the other hand, exempts live-work units in buildings in which a  
3 lawful conversion has occurred, a certificate of occupancy has been issued after June 1979  
4 and there has been no residential use of any kind *between* June 1979 and the issuance of  
5 the certificate of occupancy. Thus, the one ordinance provides that residential use prior to  
6 enactment of its ordinance defeats exemption, while the other provides that residential  
7 use after the enactment of the ordinance but before issuance of the certificate of occupancy  
8 defeats the exemption. City of San Francisco Rent Stabilization and Arbitration Board,  
9 Rules and Regulations, Regulation Section 1.17 (g).

10 The Oakland Ordinance and Regulations are silent as to when, precisely, prior  
11 residential use defeats a later claim of exemption. The Ordinance is ambiguous in that it is  
12 capable of more than one construction. It could mean residential use prior to 1983. It could  
13 mean residential use prior to the issuance of the certificate of occupancy. The latter  
14 interpretation furthers the purpose of the Ordinance by preserving affordable housing and  
15 limiting rent increases for existing tenants.(OMC 8.22.010. A and 8.22.010.C-Findings  
16 and Purpose) The former interpretation widens the scope of the new construction  
17 exemption provisions of the Ordinance. Per *Da Vinci* and *Burien*. exemption must be  
18 strictly construed. Further, per the language of the Regulations, Section 8.22.030  
19 (B)(2)(a)(iv) which states that “newly constructed units include *legal conversions of*  
20 *uninhabited spaces not used by Tenants*” also supports the latter interpretation. Not only  
21 must the conversion be from entirely commercial use, the new units cannot be inhabited  
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28

1 until it is a *legal conversion*, which means allowing occupancy only after obtaining the  
2 Certificates of Occupancy, and in rare case, its equivalent of final building permit  
3 approvals. Per *Da Vinci* and *Burien*. exemption must be strictly construed. The term,  
4 “formerly entirely non-residential” should mean prior to the issuance of the certificate of  
5 occupancy.  
6

7  
8 4. The Regulations for Permanent Exemption Hearings Demonstrate That  
9 Caution Should Be Exercised In Granting Certificates of Exemption.

10 New construction is one of only three specified *permanent* exemptions in the  
11 Ordinance. They permit landlords to remove rental units from rent control entirely. Due to  
12 the serious consequences of wrongfully-granted certificates of exemption, the Regulations  
13 contain special provisions to protect against erroneous determinations:  
14

15 C. Certificates of Exemption

16 1. Whenever an Owner seeks a Certificate of Exemption the following procedures  
17 apply:

- 18 a. The petition cannot be decided on a summary basis and may only be  
19 decided after a hearing on the merits;  
20 b. Staff may intervene in the matter for the purpose of better ensuring that  
21 all facts relating to the exemption are presented to the Hearing Officer;  
22 c. In addition to a party’s right to appeal, Staff or the Hearing Officer may  
23 appeal the decision to the Rent Board; and,  
24 d. A Certificate of Exemption shall be issued in the format specified by  
25 Government Code Section 27361.6 for purposes of recording with the County  
26 Recorder.

27 2. In the event that a previously issued Certificate of Exemption is found to have  
28 been issued based on fraud or mistake and thereby rescinded, the Staff shall record  
a rescission of the Certificate of Exemption against the affected real  
property with the County Recorder.



1           These regulations add emphasis to the substantial body of statutory and case law  
2 doctrine that exemptions to general statutes must be narrowly construed.

3  
4           5.     Public Policy Disfavors Granting Exemptions to Landlords Who Lease  
5                 Residential Rental Units Prior to the Issuance of Final Permits and  
6                 Certificates of Occupancy

7           The original owners of the property leased the roughed-out rental units at the Vulcan  
8 as quickly as possible while construction was ongoing. The California Building Codes'  
9 stated purpose is to establish minimum requirements to safeguard public health, safety and  
10 general welfare through structural strength, means of egress,, sanitation, adequate light and  
11 ventilation, and safety to life and property from fire and other hazards. (California Building  
12 Code § 101.3) Both the Oakland Municipal Code and state law require issuance of a  
13 certificate of occupancy before a building can be occupied. (California Building Code §  
14 110.1 *et seq.*; Oakland Municipal Code §15.08.150) The owners simply ignored these laws.

15  
16  
17           A landlord is not entitled to collect rent if a property lacks a certificate of occupancy  
18 required by law. The lease is an illegal transaction and thus void. *Gruzen v. Henry* (1978)  
19 84 Cal.App.3d 515, 519. What is more, the tenant of such a unit is entitled to the  
20 protections of local rent ordinances. As the person intended to be protected by the laws, she  
21 is entitled to enforce her tenancy rights, even though the lease itself may be void. *Carter v.*  
22 *Cohen* (2010) 188 Cal.App.4th 1038.

23  
24           The Vulcan owners permitted occupancy almost immediately after they purchased  
25 the property. They continued to rent it out for at least a year before issuance of certificates  
26 of occupancy. Such a practice is unlawful and unsafe. It undermines the important public  
27  
28

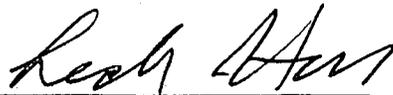
1 policies upon which building codes and housing law is based. Permitting the Vulcan  
2 owners to obtain an exemption under these circumstances rewards their wrongful conduct.

3  
4 IV CONCLUSION.

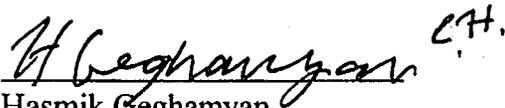
5 The tenants respectfully request that the Landlord petition be denied and that the  
6 Landlord's defense of "new construction" in answer to the Tenant petitions be stricken.

7  
8 Dated: April 14, 2019

9 Respectfully submitted,

10 

11  
12 Leah Hess  
13 Attorney at Law

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15 Hasmik Geghamyan  
16 Attorney at Law  
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14 Attorneys for Tenants

15 CITY OF OAKLAND  
16 HOUSING AND COMMUNITY DEVELOPMENT  
17 Rent Adjustment Program

18 Martin, et al, Tenants,	)	Case Nos. T17-2037; T18-0460; T18-0471;
	)	T18-0473; T18-0479; T18-0498; T18-501;
19 Respondents and Petitioners;	)	T19-0021; T19-0023; L19-0013
	)	
20 vs.	)	TENANTS' HEARING BRIEF
	)	
21 Vulcan Lofts, LLC, Landlord,	)	Date: September 20, 2021
	)	Time: 10:00 a.m.
22 Petitioner and Respondent.	)	Location: Remote Hearing Via Zoom

23 Elan Consuella Lambert  
24 Hearing Officer

25 INTRODUCTION

26 The Vulcan Foundry, located at 4001 San Leandro Street, Oakland, was purchased  
27 by the former owners/developers Eddie Orten and James Alexander, with the intention to  
28 convert it into artists' live-work studios. The former owners obtained permits and  
promptly set to work, creating 59 rental units. The construction process took over a year

1 and a half. During at least the last year of that construction, the former owner rented out  
2 units for people to live and work in. They did so before obtaining final sign-offs on  
3 permits and before obtaining certificates of occupancy. Both are required by law.  
4

5 Now, thirty-six years later, the present owner, represented by Vulcan Lofts, LLC  
6 (hereinafter "Owner" or "Landlord") has filed a petition for a certificate of exemption from  
7 rent control against tenants who reside at the property. Owner asserts that the property  
8 qualifies for the "new construction" exemption from rent control by claiming that the  
9 buildings at the property received certificates of occupancy.  
10  
11

12 Owner claims that the buildings at the property received certificates of occupancy  
13 (or equivalent building permit sign-offs) after January 1, 1983 and that the three buildings  
14 were "formerly entirely non-residential". OMC 8.22.030.  
15

16 The tenants challenge Landlords' assertion that the buildings qualify as "formerly  
17 entirely non-residential." Tenants assert that the term refers, not to the January 1983 date, but to  
18 the date upon which the certificate of occupancy was obtained. A reasonable construction of the  
19 term "formerly entirely non-residential" should not be construed to apply only to  
20 residential use prior to 1983. If the phrase is to have any meaning at all, it must include  
21 residential use prior to issuance of the certificate of occupancy.  
22  
23  
24

25 The Owner has steadfastly maintained that there was no residential use of the  
26 premises prior to issuance of the certificates of occupancy/permit. The sole witness the  
27 Owner has presented, developer, Eddie Orten testified that no tenants resided at the  
28

1 property prior to issuance of final permits. That testimony was false.

2  
3 This brief will review the evidence presented in the three evidentiary hearings and, F  
4 once again, will address principles of statutory construction of the term “formerly entirely  
5 non-residential” as applied to this case.

6  
7 EVIDENCE PRESENTED

8 Landlords’ Witness, Eddie Orten, First Hearing 3/15/19

9  
10 In support of its claim of exemption, the Owner has produced City of Oakland  
11 Building Department documents reflecting building completion, permits and certificate of  
12 occupancy activity. Their sole witness was former owner/developer Eddie Orten.<sup>1</sup> A  
13 summary of Mr. Orten’s testimony follows.  
14

15 Landlord’s Witness, Eddie Orten, First Hearing 3/15/19

16 Testimony

17  
18 Mr. Orten testified that he purchased the property in 1985 with the intent of  
19 converting it into artists’ live-work units. He identified photos showing the main central  
20 bay in 1985. It was full of equipment and debris. (36:48-39:10; 51:30-53:52) He testified  
21 that no one lived at the property when he purchased it. (39:28-40)  
22

23 “At the last minute” the former owners asked to lease the foundry back so they could  
24 finish some contracts. He agreed. (40:32-41:05) It was “a six month deal”. (1:09:46)  
25  
26

27  
28 

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<sup>1</sup>This summary and analysis which follows it assume the standard for “formerly entirely non-residential” means “not used residentially before issuance of certificates of occupancy/permits.”

1 Mr. Orten testified that originally, there were two buildings at the site, but that the  
2 larger one had to be “broken up” by creating fire separations. He didn’t remember how  
3 many such separations there were. “I think it was four” (45:00-49).

5 Mr. Orten identified building permit applications for the three buildings at the  
6 property, certificates of occupancy for Buildings A and B, Temporary certificates of  
7 occupancy for Building C, a Notice of Completion , and a Certificate of Complete Building  
8 Rehabilitation, (Owner Exhs. B - G) largely by reading from them.<sup>2</sup> In summary, the  
9 certificates of occupancy [Building A (Units 1 through 16)], and B (Units 17-26)] were  
10 issued October 12, 1987, and reference a “completion date” of May 27, 1987. The building  
11 permit for Building C did not list unit numbers. It noted final inspections on May 22, 1987.  
12 A series of three applications for three “temporary certificates of occupancy” for 18 units  
13 in Building C received final approvals in May 1987 (Units 28-45, and 47-49) January 13,  
14 1988 (units 51 and 52) and February 3, 1988 (Unit 50). None of the temporary certificates  
15 of occupancy made mention of Units 53-59. (Landlord’s Exhs. B-G)

16 Mr. Orten testified at length about his frustrations in completing the project and  
17 attempting to get certificates of occupancy for a live/work remodel of a foundry into  
18 live/work lofts. He described Building Department uncertainty about the new live/work

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25  
26 <sup>2</sup>Dealing with 35 year old, poorly duplicated public records proved challenging for  
27 both sides. Tenants have created an timeline/chart of these documents, which both sides  
28 used as exhibits. The chart summarizing their contents and referencing corresponding  
exhibit numbers is attached hereto as Addendum 1.

1 laws and lengthy interactions with city officials, and about his own diligence in working  
2 with them. (1:31:02-1:35:20)  
3

4 Mr. Orten testified that work began soon after he purchased the property. (1:10:36-  
5 1:11:57) No units were completed in the first six months. He did not have an exact  
6 recollection of when he rented out the first unit, stating that Mid-April or May 1987 would  
7 be the earliest. (1:13:40-1:14:13)  
8

9 When asked “To the best of your recollection, were certificates of occupancy issued  
10 for all the units at Vulcan Lofts in 1987?”, he responded:  
11

12 They were all issued. I’m not sure they were all issued by 1987. There were a  
13 couple of units that went way too—that we didn’t get done and that dragged on  
14 because we were out of money. They all got done eventually, but none before  
15 1987—none before ‘87. (47:52-48:21)

16 Mr. Orten stated that no tenants moved in until about 18 months after he purchased  
17 the property. (1:8:55-1:9:30; 1:22:35-1:22:39) He stated that most of the apartments were  
18 not occupied by May 1, 1987. When they finished the first twelve to fourteen units they  
19 “rolled” up to the next. The northern section (Building C) didn’t get completed until “later,  
20 1988. Certainly by 1989.” (1:35:34-1:36:20)  
21

22 He was asked, “As you stand here today would you be able to say definitively that  
23 there was a finalized building permit for every building at the property prior to the time  
24 you began renting out—leased units at the property?” (1:33:16-1:33:36)  
25  
26

27 He responded, “Yeah. Harry Blow signed off every card before people moved  
28

1 in—Couldn't move them in without that card being signed off". (1:33:37-1:33:49)

2  
3 Discussion of Orten's testimony

4 Mr. Orten's claim that he did not rent out any units before mid-1987 is false. His  
5 testimony that he did not move people in to buildings without finalized permits is also  
6 false. These responses were made to avoid admitting that he had, indeed, moved many  
7 people in before the earliest permit was signed in mid-1987.  
8

9 His testimony is rebutted by former tenants who testified that they resided at the  
10 property well before mid-1987. Evidence provided by former tenants at the second and  
11 third hearings directly refuted these claims:  
12

13  
14 –Witness Susan Bloomquist testified that she had moved into Unit 43, [Building C]  
15 by June 1986. She moved in with Suzanne Lang, who had already been living there  
(June 10, 2019 Hearing, 4:53:20-24; 4:54:46-53)

16  
17 –Peter Mars testified that he had been living in unit 5 [Building A] for a year or  
18 more on April 15, 1987, 2<sup>nd</sup> Hearing when he filed an application for a permit to  
install a loft in his unit . (June 10, 2019 Hearing 2:28:20-2:33:03)

19  
20 –Karen Beck, Peter Mars's former wife testified that she moved into unit 5 [Building  
A] in 1985 or 1986. (December 16, 2019 Hearing, 4:37:24-4:38:00-16)

21  
22 –Allison Davis had just moved into Unit 24 or 25 [Building B] when she started  
23 commuting to UC Davis in the Fall of 1986 (December 16, 2019 Hearing, 4:14:46-  
4:15:19; 4:28:55-57)

24  
25 –Valerie Steel lived in unit 23 beginning in late 1986. [Building B] (June 10,  
2019 Hearing, 3:51:07-28; 4:04:23; 4:13:00)

26  
27 –Llewellyn Moreno testified that he moved into Unit 31 [Building C] no later than  
28 March 1987. (June 10, 2019 Hearing, 5:35:57-59; 5:24:48-43; 5:34:55-5:35:04;  
5:35:14-21)

1 –David Cheek submitted a sworn declaration that he worked as a carpenter at the  
2 property. There were definitely people residing there when started working there in  
3 1986. The owners were in a “huge rush to get people in.” They would move people  
4 in as soon as units were finished. (Tenant Exh. 6)

5 –Paul Howard submitted a sworn declaration that his mother and her husband, Mark  
6 Seymour resided at the property in 1986. He attached a copy of a postcard he sent to  
7 his mother at the property, postmarked April 11, 1987. (December 16, 2019 Hearing  
8 (Tenant Exh. 8)

9 –Randy Hussong testified that he moved into the property in 1985, based on his  
10 recollection of the date of his marriage. However, his marriage license is dated  
11 February 1986, which would mean that his anniversary party (which he remember as  
12 occurring in Unit 18 (Building B), where he lived) would have been in  
13 February 1987 (1:23:15-1:23:35, and Tenant Exh. 57)

14 –Gayle Bryan testified that she moved into Unit 21 (Building B) in 1986 or 1987.  
15 She and her husband lived there at the time he graduated in 1987 from Holy Names  
16 University in Oakland, so based on that they probably entered tenancy in 1985 or  
17 1986. (June 10, 2019 Hearing 3:42:59-3:45:26)

18 Witnesses also described certain features of life at the Vulcan that were unique to  
19 the property.

20 –For example, several testified to the foundry’s continued operation for the first six  
21 months of 1986, a fact about which Mr. Orten also testified [Gayle Bryan, Peter  
22 Mars, Randy Hussong, Chris Vivona]

23 –Some testified to heavy concentrations of soot in their units from the foundry.  
24 [Gayle Bryan, Llewellyn Moreno, Susan Bloomquist]

25 –Many testified about neighboring tenants they knew by name. [Allison Davis,  
26 Gayle Bryan, Elizabeth Ross, Karen Beck, Peter Mars, Randy Hussong]

27 –Some described building out their own units which were not ready for move-in  
28 when they leased their units. . [Susan Bloomquist, Valerie Steel, Llewellyn Moreno,  
Todd Boekelheide]

1           –Some witnesses described ongoing construction activity and the filling up of  
2 buildings over time. [Allison Davis, Gayle Bryan, Chris Vivona, Randy Hussong ]

3           The Hearing Officer has now briefly shown the first page of the Registrar of Voters  
4 response to the record subpoena. On that page, *all* of the registration dates are pre-1987.  
5

6           The evidence demonstrates that Mr. Orten’s testimony that he did not rent out  
7 apartments until about May 1987 was untrue. His assertion that the inspector signed off  
8 “every card before people moved in” is equally false. That testimony demonstrates that, as  
9 a developer, he knew that such conduct was wrong. Nor is it credible that he simply forgot  
10 about renting out so many units for more than a year prior to obtaining permit sign-offs.  
11 His testimony denying these matters should be disregarded.  
12  
13

14           The Owners have not met their burden of proof that the property that the property  
15 was “formerly entirely non-residential”.  
16

## 17           LEGAL ANALYSIS OF THE NEW CONSTRUCTION EXEMPTION

### 18                           Introduction

19           The Owners insist that all of the evidence that Tenants have presented is irrelevant. They  
20 claim to have proven that the certificates of occupancy were obtained after January 1, 1983 and  
21 there was no residential use of the building prior to January 1, 1983.<sup>3</sup> Under that simple analysis,  
22 they claim entitlement to a certificate of exemption. Thus, this case hinges upon interpretation of  
23 the second element of the exemption provisions of the ordinance, that the property must have been  
24  
25  
26

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27           <sup>3</sup>The accuracy of this contention may be resolved by review of the full records produced by the  
28 Registrar of Voters and (if warranted) obtaining further such records.

1 “formerly entirely non-residential.”

2           Tenants have demonstrated that the owner/developers of the property began renting out  
3 residential units long before they received any finalized permits or certificates of occupancy. This  
4 practice continued for well over a year.<sup>4</sup> Under such circumstances, can the property reasonably be  
5 said to have been “formerly entirely non-residential?” Yet the Owners assert that, in order to defeat  
6 their exemption petition, the tenants must show residential use prior to January 1, 1983. This  
7 assertion ignores basic principles of statutory construction and rewards landlords who break the  
8 law. “Formerly entirely non-residential” should be interpreted to mean prior to issuance of  
9 certificates of occupancy. Proof of residential use prior to issuance of the certificates should be  
10 sufficient to defeat a landlord’s new construction petition.  
11

12           The owners here take the position that the term “formerly entirely non-residential” means  
13 that there was no residential use of the property prior to 1983. Tenants assert that the term refers,  
14 not to the January 1983 date, but to the date upon which the certificate of occupancy/final permit  
15 was obtained. There was indisputably prior residential use of the rental units at the property prior  
16 to that date. Nonetheless, if the owners’ interpretation of the Ordinance is correct, it would not  
17 matter when they first rented out the units. Alternatively, if the Tenants’ interpretation is correct,  
18 then the property cannot be exempt, as it was used residentially prior to the issuance of documents  
19 finalizing the new construction. The resolution of this issue is a question of statutory construction.  
20  
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25  
26           <sup>4</sup>The certificates of occupancy were issued on October 12, 1987. Building C had a “Final”  
27 building permit signed off on May 22, 87. This “final” permit is hard to understand or to believe in  
28 light of Mr. Orten’s testimony that construction in that building dragged on into 1988 and in light of the  
series of “temporary” certificates of occupancy issued for Building C

1           A.    Rules of Statutory Construction and Case Law Require Narrow  
2                    Interpretation of Exemptions to Rent Control

3                    1. Statutory Construction

4                    "The construction of a municipal ordinance is governed by the same rules as the  
5 construction of statutes." *City of Los Angeles v. Los Olivos Mobile Home Park* (1989) 213  
6 Cal.App.3d 1427, 1433.

7                    First, of course, the intent of the legislative body must be determined, so as to construe the  
8 statute to effect that purpose. *Doe v. Brown* (2009) 177 Cal.App.4th 408, 417. The basic purposes  
9 of the rent ordinance are to preserve safe affordable housing for tenants and promote investment in  
10 such housing. (OMC 8.22.010) Rewarding Owners who fail to follow building and housing codes  
11 by renting out property without final sign offs, does not encourage providing safe housing. Nor  
12 does it promote new creation of safe and legal housing.

13                    Words used in the statute should be given their ordinary meaning. If the language is clear  
14 and unambiguous, there is no need for construction. *San Jose Unified School District v. Santa*  
15 *Clara County Office of Education*, 7 Cal.App. 5<sup>th</sup> 967, 982.

16                    The language in the Ordinance is ambiguous. There are two alternative interpretations.  
17 Standing alone, the word "formerly" could refer to either January 1, 1983 or to the date of the  
18 certificate of occupancy/final permit. The ordinance does not state a specific time period during  
19 which prior residential use must have occurred to disqualify the property from exemption.

20                    If the statute is amendable to two alternative interpretations, the one that leads to the more  
21 reasonable result will be followed. *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735. In  
22  
23  
24  
25  
26  
27  
28

1 interpreting ambiguous language, the court adopts the interpretation that best harmonizes the  
2 statute internally and may look to extrinsic aids, such a legislative history, other parts of the  
3 statutory scheme, or public policy to determine the proper interpretation. *Pacific Sunwear, Inc. v.*  
4 *Olaes Enterprises, Inc.* (2008) 167 Cal.App.4th 466, 474.

6 It is a fundamental rule of statutory construction that a law should not be applied in a manner  
7 producing absurd results, because the Legislature is presumed not to intend such results. *San Jose Unified*  
8 *School District v. Santa Clara County Office of Education*, 7 Cal.App. 5<sup>th</sup> 967, 982.

10 Indeed, adoption of the Owners' interpretation of the term "formerly" to apply only to the  
11 time period prior to January 1, 1983 leads to absurd results. As in this case, property owners would  
12 feel free to act as the property owner did in *Da Vinci*, by renting illegal residential units for  
13 lengthy periods of time before obtaining certificates of occupancy. Then, when it benefits them,  
14 they could obtain a certificate of exemption. It is doubtful the drafters of the Oakland rent  
15 ordinance intended such a result. Interpreting "formerly entirely non-residential" to mean "prior to  
16 obtaining a certificate of occupancy" will encourage landlord compliance with laws designed to  
17 ensure safe dwellings.

21 2. Case Law Requires that Exemptions to Rent Control Be Narrowly Construed

22 For our purposes here, it is also crucial to note that a certificate of exemption is an  
23 exception from a general statute. As an exception, the following applies:

24 Exceptions to the general rule of a statute are to be strictly construed. In interpreting  
25 exceptions to the general statute courts include only those circumstances which are within  
26 the words and reason of the exception. ... One seeking to be excluded from the sweep of the  
27 general statute must establish that the exception applies. (*Barnes v. Chamberlain* (1983) 147  
28 Cal.App.3d 762, 767 [195 Cal.Rptr. 417].)

1 *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24,

2 Two cases, *Da Vinci Group, supra.* and *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039  
3  
4 illustrate the sort of strict construction applied to local rent laws which provide exemptions for  
5 newly constructed rental units.<sup>5</sup>

6 In *Da Vinci Group*, the owner purchased a multi-tenant warehouse with no certificate of  
7  
8 occupancy. For years, the new owner continued to rent it to tenants without a certificate of  
9 occupancy. After the city flagged the building for having been changed to apartments without a  
10 permit, the owner made improvements and received a certificate of occupancy. The owner then  
11 claimed exemption from the local rent ordinance, which exempted “rental units located in a  
12 structure for which a certificate of occupancy was first issued after the effective date of this  
13 ordinance.” At the time, the San Francisco Ordinance lacked a provision barring exemption for  
14 units which had previously been used residentially. Nonetheless, appellate court looked beyond the  
15 bare language of the Ordinance to the Board’s regulations, which added the element that new  
16 construction exemptions applied “only where there has been no residential use since the enactment  
17 of the Ordinance.” *Da Vinci Group, supra.* at p. 29.

18 Noting that the new construction exemption’s purpose was to ease the housing shortage by  
19 creation of new units, the appellate court commented, “ The 1986 certificate of occupancy in this  
20 case created legal residential units where there were illegal ones before. Legalizing de facto  
21 residential use does not enlarge San Francisco's housing stock.” *Id.* at p. 30.

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24  
25  
26  
27 <sup>5</sup>New construction is also one of the three types of permanent exemption required of local rent  
28 ordinances by the Costa-Hawkins Act, As an exception to Costa-Hawkins, the same analysis applies under  
state law.

1 Da Vinci's units were not newly constructed, nor was the building restructured to permit  
2 new residential use. Existing residential use was made legal by bringing the building up to  
3 code and obtaining a certificate of occupancy. While this is a commendable undertaking, it  
4 does not bring the premises within the Ordinance's "new construction" exemption.  
5

6 *Id.* at p. 30.  
7

8 This case is similar to *Da Vinci*. The sole difference is that the Vulcan was apparently  
9 empty when purchased. However, the Vulcan owners filled the property with renters, accepted rent  
10 for the entire time construction was ongoing, and acted in the ensuing years as if the property were  
11 not rent controlled. They chose to put the property to residential use prior to final approvals of the  
12 construction process. They nonetheless assert that they are entitled to an exemption because the  
13 prior residential use did not occur before 1983. But nowhere in the Oakland ordinance does it state  
14 that the term "formerly entirely non-residential" applies only to January 1, 1983.  
15  
16

17 In *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, a landlord sought to take advantage  
18 of the exemption provisions of the Costa-Hawkins Act. (Civ. Code § 1954.52) The landlord  
19 converted a rent-controlled apartment building, which had a 1972 certificate of occupancy, to  
20 condominiums. He obtained a new certificate of occupancy in 2009, based on the change in use,  
21 and raised the rent. When an existing tenant objected, the landlord sought a declaration from the  
22 court that the unit was exempt from the Los Angeles Rent Stabilization Ordinance under  
23 provisions of the Costa-Hawkins Act which exempts units that have a certificates of occupancy  
24 issued after 1995. Despite the post-1995 certificate of occupancy, the trial court found that the rent  
25 raise violated the ordinance.  
26  
27  
28

1 On appeal, the landlord contended that the unit was exempt under Civil Code 1954.52  
2 because it received a certificate of occupancy after February 1995. The tenant contended that the  
3 exemption referred to the first certificate of occupancy and did not apply because his tenancy was  
4 established long before the new certificate of occupancy.  
5

6 In discussing the landlord's contention that the exemption applied broadly to any certificate  
7 of occupancy issued after February 1995 the appellate court determined, "Although the language is  
8 susceptible to this construction, the result does not further the purpose of the statute. A certificate  
9 of occupancy based solely on a change in use from one type of residential housing to another does  
10 not enlarge the supply of housing." *Burian* at p.1047.  
11  
12

13 In affirming the trial court decision, the appellate court concluded:

14 In this case, Tenant's unit is not exempt under [Costa-Hawkins] because the tenant  
15 occupied the unit prior to the issuance of the 2009 certificate of occupancy. *The 2009*  
16 *certificate of occupancy did not precede the residential use of the property.*  
17 (Emphasis added)

18 *Burien* at p. 1049.

19 The Los Angeles Ordinance did not contain an explicit requirement that the second  
20 certificate of occupancy must precede residential use in order to obtain exemption. Nevertheless,  
21 the appellate court reasoned:

22 "We must select the construction that comports most closely with the apparent intent of the  
23 Legislature, with a view to promoting, rather than defeating the general purpose of the statute, and  
24 avoid an interpretation which would lead to absurd consequences." *Burien* at p. 1044.  
25

26 Similarly, in the instant case, the Certificates of Occupancy for Buildings A and B, and the  
27  
28

1 finalization of the building permit for Building C did not precede the residential use of the  
2 property. But requiring that owners not rent out living units prior to final approval is the more  
3 reasonable interpretation is the phrase “formerly entirely non-residential”. To do otherwise, simply  
4 gives them a pass to violate the law.  
5

6 3. The Oakland Rent Ordinance Does Not State a Specific Time Period During Which  
7 Prior Residential Use Must Have Occurred to Disqualify the Property from  
8 Exemption; The Exemption Provisions Must Be Narrowly Construed to Bar  
9 Exemption

10 Different rent control municipalities have treated the subject of prior residential use in  
11 different ways. The Los Angeles ordinance exempted housing from rent control if the first  
12 certificate of occupancy was issued after October 1978<sup>6</sup>, unless the building was first occupied  
13 residentially *prior* to October 1978. (See, *Burien v. Wiley, supra.* at p. 1048.) This is the  
14 construction of the Oakland ordinance that the Owners urge in this petition.  
15

16 San Francisco, on the other hand, exempts live-work units in buildings in which a lawful  
17 conversion has occurred, a certificate of occupancy has been issued after June 1979 and there has  
18 been no residential use of any kind *between* June 1979 and the issuance of the certificate of  
19 occupancy. Thus, the one ordinance provides that residential use prior to enactment of its  
20 ordinance defeats exemption, while the other provides that residential use after enactment of the  
21 ordinance but before issuance of the certificate of occupancy defeats the exemption. City of San  
22 Francisco Rent Stabilization and Arbitration Board, Rules and Regulations, Regulation Section  
23 1.17 (g).  
24  
25

---

27 <sup>6</sup>The dates which appear in the different ordinances relate to the original dates of enactment of the  
28 rent ordinances.

1 The Oakland Ordinance and Regulations are silent as to when, precisely, prior residential  
2 use defeats a later claim of exemption. The Ordinance is ambiguous in that it is capable of more  
3 than one construction. It could mean only residential use prior to 1983. It could mean residential  
4 use prior to the issuance of the certificate of occupancy. The latter interpretation furthers the  
5 purpose of the Ordinance by preserving affordable housing and limiting rent increases for existing  
6 tenants.(OMC 8.22.010. A and 8.22.010.C-Findings and Purpose) The former interpretation  
7 broaden's the scope of the new construction exemption provisions of the Ordinance. Per *Da Vinci*  
8 and *Burien*, however, exemption must be strictly construed. Further, per the language of the  
9 Regulations, Section 8.22.030 (B)(2)(a)(iv) which states that "newly constructed units include  
10 *legal conversions of uninhabited spaces not used by Tenants*" also supports the tenant's  
11 interpretation. Not only must the conversion be from entirely commercial use, the new units cannot  
12 be inhabited until it is a *legal conversion*, which means allowing occupancy only after obtaining  
13 the Certificates of Occupancy, and in a rare case, final building permit approvals. Per *Da Vinci* and  
14 *Burien*. exemption must be strictly construed. The term, "formerly entirely non-residential" should  
15 mean prior to the issuance of the certificate of occupancy.

20  
21 4. The Regulating for Permanent Exemption Hearings Demonstrate That Caution  
22 Should Be Exercised In Granting Certificates of Exemption.

23 New construction is one of only three specified *permanent* exemptions in the Ordinance.  
24 They permit landlords to remove rental units from rent control entirely. Due to the serious  
25 consequences of wrongfully-granted certificates of exemption, the Regulations contain special  
26 provisions to protect against erroneous determinations:  
27  
28

1 C. Certificates of Exemption

2 1. Whenever an Owner seeks a Certificate of Exemption the following procedures  
3 apply:

4 a. The petition cannot be decided on a summary basis and may only be  
5 decided after a hearing on the merits;

6 b. Staff may intervene in the matter for the purpose of better ensuring that  
7 all facts relating to the exemption are presented to the Hearing Officer;

8 c. In addition to a party's right to appeal, Staff or the Hearing Officer may  
9 appeal the decision to the Rent Board; and,

10 d. A Certificate of Exemption shall be issued in the format specified by  
11 Government Code Section 27361.6 for purposes of recording with the County  
12 Recorder.

13 2. In the event that a previously issued Certificate of Exemption is found to have  
14 been issued based on fraud or mistake and thereby rescinded, the Staff shall record a  
15 rescission of the Certificate of Exemption against the affected real  
16 property with the County Recorder.

17 These regulations add emphasis to the substantial body of statutory and case law doctrine  
18 that exemptions to general statutes must be narrowly construed.

19 5. Public Policy Disfavors Granting Exemptions to Landlords Who Lease Residential  
20 Rental Units Prior to the Issuance of Final Permits and Certificates of Occupancy

21 The original owners of the property leased the roughed-out rental units at the Vulcan  
22 as quickly as possible while construction was ongoing. The California Building Codes'  
23 stated purpose is to establish minimum requirements to safeguard public health, safety and  
24 general welfare through structural strength, means of egress,, sanitation, adequate light and  
25 ventilation, and safety to life and property from fire and other hazards. (California Building  
26 Code § 101.3) Both the Oakland Municipal Code and state law require issuance of a  
27 certificate of occupancy before a building can be occupied. (California Building Code §  
28

1 110.1 *et seq.*; Oakland Municipal Code §15.08.150) The Vulcan owners simply ignored  
2 these laws.

3  
4 A landlord is not entitled to collect rent if a property lacks a certificate of occupancy  
5 required by law. Without a certificate of occupancy, a lease is an illegal transaction and thus  
6 void. *Gruzen v. Henry* (1978) 84 Cal.App.3d 515, 519. However, the tenant of such a unit is  
7  
8 entitled to the protections of local rent ordinances. As the person intended to be protected by  
9 the laws, she is entitled to enforce her tenancy rights, even though the lease itself may be  
10 void. *Carter v. Cohen* (2010) 188 Cal.App.4th 1038.

11  
12 The Vulcan owners permitted occupancy almost immediately after they purchased the  
13 property. They continued to rent it out for at least a year before issuance of certificates of  
14 occupancy. Such a practice is unlawful and unsafe. It undermines the important public  
15 policies upon which building codes and housing law is based. Permitting the Vulcan owners  
16  
17 to obtain an exemption under these circumstances rewards their wrongful conduct.

18 CONCLUSION

19 The tenants respectfully request that the Landlord petition be denied and that the  
20  
21 Landlord's defense of "new construction" in answer to the Tenant petitions be stricken.

22 Respectfully submitted,

23 

24 Leah Hess  
25 Attorney at Law

Addendum to Tenants' Hearing Brief:

Timeline, Chart Summary of Documents

<p>10/12/87 Handwritten Certificate of Occupancy for Building B. Covers units 17 through 25. Building completion date stated as 5/27/87.</p> <p>Owner Exh. D; Tenant Exh. 16.</p>	<p>10/28/87 Permit application by Orten. Permit No. B8705362. "Convert one commercial unit into 3 units.", "Change to live work artist studio." Number of units at property stated to be 59. "Proposed use: "Commercial". "Planned use building: "Commercial 35"</p> <p>Owner Exh. C; Tenant Exh. 49.</p>	<p>1/13/88 Permit Application by Orten. Largely indecipherable. Only legible terms: "Convert Warehouse Space to live/work artist studio. Never finaled. Expired 9/17/90.</p> <p>Owner Exhibit C; Tenant Exh. 50.</p>
<p>1/13/88 Temporary Certificate of Occupancy for Unit 51,52. Issued. Approval sign-offs 1/13/88. Tenant Exh. 20, Owner Exh. E</p>	<p>2/3/88 Temporary Certificate of Occupancy for Unit 50. Issued. Approval sign-offs the same day. Tenant Exh. 19, Owner Exh. E</p>	

VULCAN TIMELINE EVENTS

<p>10/25/85 Appraisal Report  Owner Exh. A</p>	<p>12/20/85 Building permit application by J. Alexander for Building A Permit No. D41469. No final inspection shown on document.  Owner Exh. B; Tenant Exh. 45.</p>	<p>12/20/85 Building permit application by J. Alexander for Building B. Permit No. D411760. Date of finalization not legible.  Owner Exh. B; Tenant Exh.48</p>
<p>86? Application by J. Alexander for Minor Conditional Use Permit “to create 10 joint living and work quarters.” Largely illegible”  Tenant Exh. 52.</p>	<p>4/3/86 Building permit application by J. Alexander for Building C. Permit No. D43880. Finalized on 5/22/87. Inspector’s signature appears to be missing or torn off.  Owner Exh. B; Tenant Exh. 47.</p>	<p>4/21/87 Temporary Certificate of Occupancy for Building C, Units 28 through 45, and 47 through 49. Approval sign-offs the following day, 4/22/87. Building inspector’s approval 5/?/87  Owner Exh. E; Tenant Exh. 17.</p>
<p>“April 1987” Date stated by Orten in a 1997 document he authored, titled, “Certificate of Complete Building Rehabilitation”. Orten claimed the rehabilitation took place between January 1985 (<i>sic</i>) and April 1987. Owner Exh. G.</p>	<p>5/27/87 Notice of Completion signed by Orten on 5/27/87 for entire property “3 buildings”. Recorded 6/12/87.</p>	<p>10/12/87 Handwritten Certificate of Occupancy for Building A. Covers Units 1-16. Building Completion date stated to be 5/27/87. Owner Exh. C; Tenant Exh. 16.</p>

<p>10/12/87 Handwritten Certificate of Occupancy for Building B. Covers units 17 through 25. Building completion date stated as 5/27/87.</p> <p>Owner Exh. D; Tenant Exh. 16.</p>	<p>10/28/87 Permit application by Orten. Permit No. B8705362. "Convert one commercial unit into 3 units.", "Change to live work artist studio." Number of units at property stated to be 59. "Proposed use: "Commercial". "Planned use building: "Commercial 35"</p> <p>Owner Exh. C; Tenant Exh. 49.</p>	<p>1/13/88 Permit Application by Orten. Largely indecipherable. Only legible terms: "Convert Warehouse Space to live/work artist studio. Never finalized. Expired 9/17/90.</p> <p>Owner Exhibit C; Tenant Exh. 50.</p>
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**PROOF OF SERVICE ELECTRONICALLY**

I am over the age of eighteen (18) and not a party to the within case. My business address is P.O. Box 8065, Emeryville, CA 94662.

On September 13, 2021, I served a copy of the following documents:

TENANTS' HEARING BRIEF

ADDEMDUM; TIMELINE CHART OF DOCUMENTS

By email to the following persons at the following email addresses:

Robert F. Costa  
[rcosta@oaklandca.gov](mailto:rcosta@oaklandca.gov)

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Oakland, California on September 13, 2021.

  
LEAH HESS

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Attorneys for Tenants

CITY OF OAKLAND  
Rent Adjustment Program

**Case Name:** Vulcan Lofts, LLC v. Tenants

**Case Number(s):** L19-0013 et al T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022 & T19-0023

**TENANTS' CLOSING BRIEF OPPOSING VULCAN LOFTS, LLC'S PETITION FOR  
CERTIFICATE OF EXEMPTION**

**I. INTRODUCTION**

The Vulcan Foundry, located at 4401 San Leandro Street, Oakland, was purchased in 1985 by developers Eddie Orten and James Alexander who intended to convert it into artists' live-work studios. They obtained building permits for each of the three buildings and promptly set to work, eventually creating some 59 rental units. The construction process took over two years, during which time the Owners unlawfully leased rental units to tenants to live and work in. The evidence of these early residential tenancies is overwhelming. Now, some 36 years later,

the current owner has petitioned to have the property exempted from the Rent Adjustment Program as “new construction.”

The case hinges upon statutory construction of the elements that a landlord must prove to demonstrate entitlement to a “new construction” certificate of exemption. These elements are set out in OMC 8.22.030. They are: 1) The property was “newly constructed and received a certificate of occupancy on or after January 1, 1983” and 2) The property was “formerly entirely non-residential.” (OMC 8.22.030A.5). The Regulations provide further guidance “Newly constructed units include legal conversions (emphasis added) of uninhabited spaces not used by Tenants, such as spaces that were formerly entirely commercial”. (Emphasis added) [OMC 8.22.B].

The first requirement of the exemption is clear. The property must have been newly constructed and received a certificate of occupancy on or after January 1, 1983. There is no ambiguity there. The second prong requires that the property was “formerly non-residential.” No specific date or event is provided to illuminate the meaning of “formerly non-residential.” This omission renders the requirement ambiguous. The Owners believe that the term “formerly” means prior to January 1, 1983. Tenants assert that the reasonable construction of the term “formerly entirely non-residential” means prior to receipt of the certificate of occupancy.

Under the Owners’ reading of the Ordinance, only evidence of residential use prior to 1983 could disprove their new construction claim. The fact that they unlawfully filled the property with residential tenants in 1986 and 1987, prior to issuance of certificates of occupancy and/or final permits, would have no consequences.

However, the Regulations specify that only properties which have been legally converted from formerly non-residential space are entitled to the exemption. Legal conversion occurs when permits are finalized, and certificates of occupancy are obtained. It is unlawful for

an owner to lease residential property prior to obtaining final permits and certificates of occupancy. [OMC 15.08.150]

The tenants in this case have produced overwhelming evidence that, between the time the property was purchased in late 1985 and “final” approvals were obtained, the developers leased multiple residential units in each building. These rentals were unlawful under state statutes, local building codes and case law. And, while prior Rent Board decisions have loosened the requirement for certificates of occupancy during times when they could not be obtained from the Building Department, final permits have always been required.

Strict construction of exemptions from general ordinances is the rule which should be followed here to further the beneficial purposes of the Ordinance.

## **II. EVIDENCE PRESENTED BY THE PARTIES**

### **A. Landlord’s Evidence in Support of New Construction Exemption**

For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. A certificate of exemption is a final determination of exemption absent fraud or mistake. [OMC 8.22.030.B.1(b)] The Owners here have failed to meet their burden.

#### 1. Testimony of Julian Robert “Eddie” Orten (4/15/2019 RAP Hearing)

Vulcan Lofts, LLC called former owner/developer Robert Julian “Eddie” Orten III as its sole witness. He testified to the following:

In late 1985, he and James Alexander purchased the property, an old iron foundry, intending to convert it to artist live-work space. (36:48-39:10–41:30) He testified that no one lived at the property at the time of the purchase. (36:48-39:40, 40:52-41:05) When asked on cross-examine whether he rented out units in 1986, he responded that he had just done a lease-back to the

former owner, who needed to finish some contracts. But on further questioning, he acknowledged that the lease-back was “kind of like a six-month deal” and that only the larger building (Building C) was leased back. He testified that he was able to begin construction of new units “pretty promptly” in the “smaller building” (Building A). He rented out the first unit in Mid-April or May of 1987. (1:09:46-1;11:57;1;10:36-1:10 56; 1.11.07-1:11:57; 1:13:40-1:14:13)

Mr. Orten testified that the first unit was not rented until “approximately” 18 months after purchase. (1:08:58–1:09:46). He insisted There were no tenants until mid-1987. (1:22:35-1:22:39)<sup>1</sup>.

When questioned about whether there were certificates of occupancy for all buildings housing tenants during 1986–87, he did not respond directly. Instead, he described protracted interactions with the city Building Department about whether Certificates of Occupancy could be issued. “Eventually” they got the certificates, but he did not know categorically whether they were in place before every tenant moved in. (1:20:17–1:20:30; 1;22;35-1:22:39; 1:31:02–1:32).

Kazazic: To the best of your recollection, were certificates of occupancy issued for all the units at Vulcan Lofts in 1987?

Orten: They were all issued. I’m not sure they were all issued by 1987. There were a couple of units that went late, that went way too-that we didn’t get done and that dragged on because we were out of money. They all got done eventually, but none before ‘87, for sure.

RAP Hearing, April 15, 2019, 47:52-48.21

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<sup>1</sup> Mr. Orten testified that at that time the Building Department issued “cards” which showed final Building Department signoffs. He also testified that the Department allowed some partial occupancy of buildings. No corroboration of the existence of these practices is found in the record.

When asked whether there were finalized building permits for every building prior to people moving in he responded: “Yeah. Harry Blow [the inspector] signed off every card before people moved in—couldn’t move them in without the card being signed off.” (1:33:27-1:35:34)

Orten testified that most of the units were not occupied by May 1, 1987, just the first 12-14 units in the smaller building. “The northern section [Building C] did not get completed until 1988. Certainly by 1989. The whole place would have been full.” (1:36:31-1:36:19)

## 2. Owners’ Documentary Evidence

The Owners submitted several Building Department documents to which the parties had stipulated. The Tenants have compiled a chart summarizing Exhibits B through E, which it is hoped, will assist the parties and the Hearing Officer in evaluating the documents,

**[ADDENDUM A, Tenants’ Chart of Building Permits and Certificates of Occupancy]**

attached hereto. These documents, some 35-plus years old, were in poor condition. Portions were illegible, lacking final inspection dates or names of final inspectors. When asked about these exhibits, Mr. Orton struggled, largely reading from the documents rather than memory, and unable to decipher dates. (41:50-44:33) The documents included Building Permit Applications for buildings A, B and C. Exhibits C and D were handwritten Certificates of Occupancy for Building A, Units 1-16 and Building B, Units 17-26 respectively. They were dated October 12, 1987.

Exhibit E contained a series of applications for “Temporary” Certificates of Occupancy for Building C.

Oakland Municipal Code 15.08 governs certificates of occupancy in Oakland. OMC 15.8.150 provides:

A temporary certificate of occupancy may be issued for re-occupation or re-use of a building, structure, portion thereof, or real property prior to the completion of the rehabilitation of the building or structure or repair of the real property if the Building Official finds that no substantial hazard will result from the re-

occupation or re-use, but such temporary certificate shall expire at the conclusion of the time limitation set forth therein and thereafter shall be no longer valid.

These Temporary Certificates obtained for Building C all expired almost immediately after issuance. The first, dated 4/21/87, sought a Temporary Certificate for Units 28 through 45 and 47 through 49. It was signed off by most of the inspectors the very next day, although the Building Section final approval date was obscured. The second application for a “temporary” certificate, dated January 13, 1988, was for Units 51 and 52. Final approvals were signed off the same day the application was made. On February 3, 1988, an application was made for Unit 50. Again, all approvals were signed off the day the application was submitted. [Landlord’s Exh. E] The Owners did not submit a February 5, 1988, letter from the Chief Building Inspector to J.R. Orten, which read:

As you requested, this is a TEMPORARY CERTIFICATE OF OCCUPANCY permitting occupancy of units# 50, 51 and 52 at 4401 San Leandro Street. As understood and as a condition of occupancy all work is to be completed by April 4, 1988.” [Tenants Exhibit 18]

These documents contain main inconsistencies and are not complete. To begin, Building C obtained a “finalized” Building Permit on May 27, 1987. Yet, the owners were in need a “temporary” certificate of occupancy in January 2018. Yet it is highly unlikely that anyone moved in after those certificates, were issued, because they expired immediately after being issued. In addition, missing completely from Building C records are Units 27, 46, and 53-59. Every other Temporary Certificate listed the units involved. It is reasonable to assume that the missing units never received any inspections or finalizations. The Owners offered no evidence which would explain why they needed temporary certificates and the omission of any documentation of 27, 46, and 53-59. One thing is clear, however, pursuant to OMC 15.-08.150, the temporary certificates were no longer valid after expiration.

## **B. TENANTS' EVIDENCE IN REBUTTAL OF OWNERS' PETITION FOR EXEMPTION**

The Owners' evidence is insufficient to demonstrate that there was no residential use of the property prior to finalization of certificates of occupancy or finalized building permits. Mr. Orten's testimony is not credible. His testimony that he did not rent out residential units until mid-1987 was simply untrue. His testimony that there were finalized building permits for every building at the property prior to people moving in was knowingly false. His statement "couldn't move them in without the card being signed out" shows that he knew his conduct was wrongful. He could hardly have forgotten that he filled the property as fast as he was able in 1986 and 1987. In addition to his inadequate testimony, his statements were proven to be untrue by the testimony of numerous former renters who resided at the property in 1986 and 1987. Former employees also swore to their own and others' residence at the property. Multiple tenants described certain features of life at the Vulcan that were unique to the property. Some testified to the foundry's continued operation. [Gayle Bryan, Llewellyn Moreno, Susan Bloomquist] Some described features of the property that were substandard—such as heavy deposits of soot. [Gayle Bryan, Peter Mars, Randy Hussong, Chris Vivona]. Some described building out their own units which were not ready for move in. [Susan Bloomquist, Valerie Steel, Llewellyn Moreno]. Many described ongoing construction activity and the filling up of the property. [Allison Davis, Gayle Bryan, Chris Vivona, Randy Hussong, David Cheek (sworn declaration)]

The Tenants also subpoenaed voter registration records from the Registrar of Voters which produced a summary of registered voters in the buildings in 1986 and 1987. This evidence of testimony and voter registrations is summarized for the convenience of the parties and the Hearing Officer in ADDENDUM B. Evidence of Residential Use of the Property Prior

to Legal Conversion]. This summary shows registrations for Units 1, 2, 5, 6, 10, 11, 14, 18, 19, 21, 22, 23, 25, in Buildings A and B prior to the date of the Certificate of Occupancy, October 12, 1987. In Building C, Units 31, 43, 54 and 57 were in residential use (proven by former tenant testimony and voter registration) before any of the “temporary” certificates of occupancy were finalized.

### LEGAL ARGUMENT

The Owners insist that all the evidence that Tenants have presented is irrelevant and concede that the Owners moved tenants into the buildings before the finalization of permits and certificates of occupancy. They claim to have proven that the certificates of occupancy were obtained after January 1, 1983, and there was no residential use of the building prior to January 1, 1983. Under that simple analysis, they claim entitlement to a certificate of exemption. Thus, this case hinges upon interpretation of the second element of the exemption provisions of the ordinance, that the property must have been “formerly entire non-residential.”

Tenants have demonstrated that the owner/developers of the property began renting out residential units long before they received any finalized permits or certificates of occupancy. This practice continued for well over a year<sup>2</sup>. Under such circumstances, can the property reasonably be said to have been "formerly entirely non-residential?" Yet the Owners assert that, to defeat their exemption petition, the tenants must show residential use prior to January 1, 1983. This assertion ignores basic principles of statutory construction and rewards landlords who break the law. "Formerly entirely non-residential" should be interpreted to mean prior to issuance of certificates of occupancy. Proof of residential use

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<sup>2</sup> The certificates of occupancy were issued on October 12, 1987. Building C had a "Final" building permit signed off on May 22, 1987. This "final" permit is hard to understand or to believe in light of Mr. Orten's testimony that construction in that building dragged on into 1988 and in light of the series of "temporary" certificates of occupancy issued for Building C.

prior to issuance of the certificates should be sufficient to defeat a landlord's new construction petition.

The owners here take the position that the term "formerly entirely non-residential" means that there was no residential use of the property prior to 1983. Tenants assert that the term refers, not to the January 1983 date, but to the date upon which the certificate of occupancy/final permit was obtained. There was indisputably prior residential use of the rental units at the property prior to that date. Nonetheless, if the owners' interpretation of the Ordinance is correct, it would not matter when they first rented out the units. Alternatively, if the Tenants' interpretation is correct, then the property cannot be exempt, as it was used residentially prior to the issuance of documents finalizing the new construction. The resolution of this issue is a question of statutory construction.

**A. Rules of Statutory Construction and Case Law Require Narrow Interpretation of Exemptions to Rent Control**

1. Statutory Construction

“The construction of a municipal ordinance is governed by the same rules as the construction of statutes.” *City of Los Angeles v. Los Olivos Mobile Home Park* (1989) 213 Cal.App.3d 1427, 1433.

First, the intent of the legislative body must be determined, so as to construe the statute to effect that purpose. *Doe v. Brown* (2009) 177 Cal.App.4th 408, 417. The basic purpose of the rent ordinance is to preserve safe affordable housing for tenants and promote investment in such housing. (OMC 8.22.010) Rewarding Owners who fail to follow building and housing codes by renting out property without final sign offs, does not encourage providing safe housing. Nor does it promote new creation of safe and legal housing.

Words used in the statute should be given their ordinary meaning. If the language is clear and unambiguous, there is no need for construction. *San Jose Unified School District v.*

*Santa Clara County Office of Education*, 7 Cal.App. 5<sup>th</sup> 967, 982. The language in the Ordinance is ambiguous. There are two alternative interpretations. Standing alone, the word "formerly" could refer to either January 1, 1983, or to the date of the certificate of occupancy/final permit. The ordinance does not state a specific time period during which prior residential use must have occurred to disqualify the property from exemption.

If the statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735. In interpreting ambiguous language, the court adopts the interpretation that best harmonizes the statute internally and may look to extrinsic aids, such a legislative history, other parts of the statutory scheme, or public policy to determine the proper interpretation. *Pacific Sunwear, Inc. v. Olaes Enterprises, Inc.* (2008) 167 Cal.App.4th 466,474.

It is a fundamental rule of statutory construction that a law should not be applied in a manner producing absurd results because the Legislature is presumed not to intend such results. *San Jose Unified School District v. Santa Clara County Office of Education*, 7 Cal.App. 5<sup>th</sup> 967, 982.

Indeed, adoption of the Owners' interpretation of the term "formerly" to apply only to the time period prior to January 1, 1983, leads to absurd results. As in this case, property owners would feel free to act as the property owner did in *Da Vinci*, by renting illegal residential units for lengthy periods of time before obtaining certificates of occupancy. Then, when it benefits them, they could obtain a certificate of exemption. It is doubtful the drafters of the Oakland rent ordinance intended such a result. Interpreting "formerly entirely non-residential" to mean "prior to obtaining a certificate of occupancy" will encourage landlord compliance with laws designed to ensure safe dwellings.

## 2. Case Law Requires that Exemptions to Rent Control Be Narrowly Construed

For our purposes here, it is also crucial to note that a certificate of exemption is an exception from a general statute. As an exception, the following applies:

Exceptions to the general rule of a statute are to be strictly construed. In interpreting exceptions to the general statute courts include only those circumstances which are within the words and reason of the exception...One seeking to be excluded from the sweep of the general statute must establish that the exception applies. (*Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767 [195 Cal.Rptr. 417].)

*Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 27. Two cases, *Da Vinci Group, supra.* and *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039 illustrate the sort of strict construction applied to local rent laws which provide exemptions for newly construction rental units<sup>3</sup>.

In *Da Vinci Group*, the owner purchased a multi-tenant warehouse with no certificate of occupancy. For years, the new owner continued to rent it to tenants without a certificate of occupancy. After the city flagged the building for having been changed to apartments without a permit, the owner made improvements and received a certificate of occupancy. The owner then claimed exemption from the local rent ordinance, which exempted "rental units located in a structure for which a certificate of occupancy was first issued after the effective date of this ordinance." At the time, the San Francisco Ordinance lacked a provision barring exemption for units which had previously been used residentially. Nonetheless, appellate court looked beyond the bare language of the Ordinance to the Board's regulations, which added the element that new construction exemptions applied "only where there has been no residential use since the enactment of the Ordinance." *Da Vinci Group, supra.* at p. 29.

Noting that the new construction exemption's purpose was to ease the housing shortage by creation of new units, the appellate court commented, "The 1986 certificate of occupancy in this case created legal residential units where there were illegal ones before. Legalizing de facto residential use does not enlarge San Francisco's housing stock." *Id.* at p. 30.

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<sup>3</sup> New construction is also one of the three types of permanent exemption required of local rent ordinances by the Costa-Hawkins Act, as an exception to Costa-Hawkins, the same analysis applies under state law.

Da Vinci's units were not newly constructed, nor was the building restructured to permit new residential use. Existing residential use was made legal by bringing the building up to code and obtaining a certificate of occupancy. While this is a commendable undertaking, it does not bring the premises within the Ordinance's "new construction" exemption. *Id.* at p. 30.

This case is like *Da Vinci*. The sole difference is that the Vulcan was apparently empty when purchased. However, the Vulcan owners filled the property with renters, accepted rent for the entire time construction was ongoing, and acted in the ensuing years as if the property were not rent controlled. They chose to put the property to residential use prior to final approvals of the construction process. They nonetheless assert that they are entitled to an exemption because the prior residential use did not occur before 1983. But nowhere in the Oakland ordinance does it state that the term "formerly entirely non-residential" *applies only* to January 1, 1983.

In *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, a landlord sought to take advantage of the exemption provisions of the Costa-Hawkins Act. (Civ. Code § 1954.52) The landlord converted a rent-controlled apartment building, which had a 1972 certificate of occupancy, to condominiums. He obtained a new certificate of occupancy in 2009, based on the change in use, and raised the rent. When an existing tenant objected, the landlord sought a declaration from the court that the unit was exempt from the Los Angeles Rent Stabilization Ordinance under provisions of the Costa-Hawkins Act which exempts units that have a certificate of occupancy issued after 1995. Despite the post-1995 certificate of occupancy, the trial court found that the rent raise violated the ordinance.

On appeal, the landlord contended that the unit was exempt under Civil Code 1954.52 because it received a certificate of occupancy after February 1995. The tenant contended that the exemption referred to the first certificate of occupancy and did not apply because his tenancy was established long before the new certificate of occupancy.

In discussing the landlord's contention that the exemption applied broadly to any certificate of occupancy issued after February 1995 the appellate court determined, "Although the language is susceptible to this construction, the result does not further the purpose of the statute. A certificate of occupancy based solely on a change in use from one type of residential housing to another does not enlarge the supply of housing." *Burien* at p. 1047.

In affirming the trial court decision, the appellate court concluded:

In this case, Tenant's unit is not exempt under [Costa-Hawkins] because the tenant occupied the unit prior to the issuance of the 2009 certificate of occupancy. *The 2009 certificate of occupancy did not precede the residential use of the property.* (Emphasis added)

*Burien* at p. 1049.

The Los Angeles Ordinance did not contain an explicit requirement that the second certificate of occupancy must precede residential use in order to obtain exemption.

Nevertheless, the appellate court reasoned:

“We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting, rather than defeating the general purpose of the statute, and avoid an interpretation which would lead to absurd consequences.” *Burien* at p. 1044.

Similarly, in the instant case, the Certificates of Occupancy for Buildings A and B, and the finalization of the building permit for Building C did not precede the residential use of the property. But requiring that owners not rent out living units prior to final approval is the more reasonable interpretation of the phrase “formerly entirely non-residential.” To do otherwise, simply gives them a pass to violate the law.

3. The Oakland Rent Ordinance Does Not State a Specific Time Period during which Prior Residential Use Must Have Occurred to Disqualify the Property from Exemption: The Exemption Provisions Must Be Narrowly Construed to Bar Exemption

Different rent control municipalities have treated the subject of prior residential use in different ways. The Los Angeles ordinance exempted housing from rent control if the first certificate of occupancy was issued after October 19786, unless the building was first

occupied residentially *prior* to October 1978. (See, *Burien v. Wiley, supra.* at p. I048.) This is the construction of the Oakland ordinance that the Owners urge in this petition.

San Francisco, on the other hand, exempts live-work units in buildings in which lawful conversion has occurred, a certificate of occupancy has been issued after June 1979 and there has been no residential use of any kind *between* June 1979 and the issuance of the certificate of occupancy. Thus, the one ordinance provides that residential use prior to enactment of its ordinance defeats exemption, while the other provides that residential use after enactment of the ordinance but before issuance of the certificate of occupancy defeats the exemption<sup>4</sup>. City of San Francisco Rent Stabilization and Arbitration Board Rules and Regulations, Regulation Section 1.17 (g).

The Oakland Ordinance and Regulations are silent as to when, precisely, prior residential use defeats a later claim of exemption. The Ordinance is ambiguous in that it is capable of more than one construction. It could mean only residential use prior to 1983. It could mean residential use prior to the issuance of the certificate of occupancy. The latter interpretation furthers the purpose of the Ordinance by preserving affordable housing and limiting rent increases for existing tenants. (OMC 8.22.010.A and 8.22.010.C-Findings and Purpose) The former interpretation broadens's the scope of the new construction exemption provisions of the Ordinance. Per *Da Vinci* and *Burien*, however, exemption must be strictly construed. Further, per the language of the Regulations, Section 8.22.030 (B)(2)(a)(iv) which states that "newly constructed units include *legal conversions of uninhabited spaces not used by Tenants*" also supports the tenant's interpretation. Not only must the conversion be from entirely commercial use, but the new units also cannot be inhabited until it is a *legal conversion*, which means allowing occupancy only after obtaining the Certificates of

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<sup>4</sup> The dates which appear in the different ordinances relate to the original dates of enactment of the rent ordinances.

Occupancy, and in a rare case, final building permit approvals. Per *Da Vinci* and *Burien*. exemption must be strictly construed. The term, "formerly entirely non-residential" should mean prior to the issuance of the certificate of occupancy.

4. The Regulating for Permanent Exemption Hearings Demonstrate That Caution Should Be Exercised in Granting Certificates of Exemption.

New construction is one of only three specified *permanent* exemptions in the Ordinance. They permit landlords to remove rental units from rent control entirely. Due to the serious consequences of wrongfully granted certificates of exemption, the Regulations contain special provisions to protect against erroneous determinations:

C. Certificates of Exemption

1. Whenever an Owner seeks a Certificate of Exemption the following procedures apply:
  - a. The petition cannot be decided on a summary basis and may only be decided after a hearing on the merits;
  - b. Staff may intervene in the matter for the purpose of better ensuring that all facts relating to the exemption are presented to the Hearing Officer;
  - c. In addition to a party's right to appeal, Staff or the Hearing Officer may appeal the decision to the Rent Board; and,
  - d. A Certificate of Exemption shall be issued in the format specified by Government Code Section 27361.6 for purposes of recording with the County Recorder.
2. In the event that a previously issued Certificate of Exemption is found to have been issued based on fraud or mistake and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.

These regulations add emphasis to the substantial body of statutory and case law doctrine that exemptions to general statutes must be narrowly construed.

5. Public Policy Disfavors Granting Exemptions to Landlords Who Lease Residential Rental Units Prior to the Issuance of Final Permits and Certificates of Occupancy

The original owners of the property leased the roughed-out rental units at the Vulcan as quickly as possible while construction was ongoing. The California Building Codes' stated purpose is to establish minimum requirements to safeguard public health, safety and general welfare through structural strength, means of egress, sanitation, adequate light and ventilation, and safety to life and property from fire and other hazards. (California Building Code § 101.3) Both the Oakland Municipal Code and state law require issuance of a certificate of occupancy before a building can be occupied. (California Building Code §110.1 *et seq.*; Oakland Municipal Code §15.08.150) The Vulcan owners simply ignored these laws.

A landlord is not entitled to collect rent if a property lacks a certificate of occupancy required by law. Without a certificate of occupancy, a lease is an illegal transaction and thus void. *Gruzen v. Henry* (1978) 84 Cal.App.3d 515, 519. However, the tenant of such a unit is entitled to the protections of local rent ordinances. As the person intended to be protected by the laws, she is entitled to enforce her tenancy rights, even though the lease itself may be void. *Carter v. Cohen* (2010) 188 Cal.App.4th 1038.

The Vulcan owners permitted occupancy almost immediately after they purchased the property. They continued to rent it out for at least a year before issuance of certificates of occupancy. Such a practice is unlawful and unsafe. It undermines the important public policies upon which building codes and housing law is based. Permitting the Vulcan owners to obtain an exemption under these circumstances rewards their wrongful conduct.

**B. THE PRIOR VIDOR DECISION (T05-110) IS INAPPLICABLE TO THIS MATTER**

**C.**

In 2005, four tenants of the Vulcan brought petitions challenging rent raises [Units 19, 29, 45 and 54]. The owners defended by claiming that the property was exempt as “new construction”. The Hearing Decision concluded that the four rental units were exempt. *Vidor*, Order, p. 14. *Vidor* focused almost exclusively on whether Certificates of Occupancy had, in fact, ever been issued for each building. Numerous exhibits were presented including of the “finalized” permits and purported certificates of occupancy that were presented in the instant case. At a second hearing, the Hearing Officer called the Building Department Director, Ray Durania, to testify. Durania testified that in the 1980s the Department lacked follow-up in “typing up” Certificates of Occupancy once permits were finalized. He also testified that many documents had been lost in the 1989 earthquake. (*Vidor*, p. 8-11)

Although acknowledging that there was no evidence to prove the Certificates were lost in the earthquake, or were never issued due to clerical oversight, the Hearing Decision nevertheless stated that, “under these circumstances, it would be illogical and unfair to penalize the landlord for the result of acts of nature or clerical mistakes”. There was no discussion of whether it might be unfair to the petitioning tenants. The Hearing Decision stated that finalized permits were the “practical equivalent” of a Certificate of occupancy. *Vidor* pp.11-12.

The Hearing Officer found the lack of permit applications prior to the date the owners purchased the building in 1985 to be “proof” that the units were formerly non-residential. He also found that the 1987 application of Peter Smith for a permit to build a loft in an existing live/work unit “proves nothing. The landlord had applied for all relevant building permits in the year 1985”. *Vidor* p.11.

The *Vidor* Hearing Officer was confronting—and ignoring—the very issue presented in this case: Should only residential use of the property before 1983 be considered “formerly non-residential”? Or should any residential use of the property prior to permit finalization or certificate of occupancy be sufficient to preclude a new construction exemption? In *Vidor*, the Hearing Officer took an extreme position. He refused to consider evidence of occupancy because the owners had applied for permits two years before. He was replacing an already questionable standard—the acceptance of finalized permits as the “practical equivalent” of a certificate of occupancy—with an even lower standard. That standard replaces having obtained a final building permit with merely applying for a building permit. Are future tenants to be limited in their claim that a property was “formerly non-residential” only to presenting evidence that such residency occurred before 1983?

The new construction provisions of the Rent Ordinance do not require that a landlord seeking a certificate of exemption to that a property was non-residential before 1983. Rather, they require demonstration that it was “formerly non-residential.” The *Vidor* Decision narrowed the Ordinance to require that tenants locate evidence of residential use forty years ago, increasing the burden on the tenant and easing the burden on property owners who provide unlawful, and often substandard residential units after 1983. Such a requirement does not further the Ordinance’s purposes of providing relief to tenants by limiting rent increases for existing tenants and encouraging investment in new residential rental property in the city. OMC 8.22.010.C.

**D. THE EFFECT OF VIDOR ON THE INSTANT CASE**

The *Vidor* decision was affirmed by the Rent Board on appeal, the tenants’ petition was denied by the Superior Court and lost at the appellate level in an unpublished opinion. As an unpublished decision, the Opinion cannot be cited or relied upon. Res judicata is an exception to

the rule. [California Rules of Court, Rule 8.1115]. For *res judicata* to apply, the second action must be between the same parties and involve the same claim. *Samara v. Matar* Cal. App. 8 Cal. App. 5th 796 (2017). Opposition to a claim for new construction is not the same claim as attacking a previously issued exemption because it resulted from fraud and mistake.

The only Tenant in this action who participated in *Vidor* is Rebecca Cotton, who continues to reside in Unit 54. However, her participation in *Vidor* is not a bar to her proceeding in this case. Ms. Cotton has alleged, along with the other responding tenants, that the exemption granted in *Vidor* was the result of fraud or mistake.

A certificate of exemption is a final determination of exemption absent fraud or mistake. OMC 8.22.030.B.1.c (emphasis added)

Timely submission of a certificate of exemption previously granted in response to a petition shall result in dismissal of the petition absent proof of fraud or mistake regarding the granting of the certificate. OMC 8.22.030.B.1.c

Unit 54 is in Building C, the building for which the developers submitted a string of applications for “temporary” certificates of occupancy. All the certificates were “finalized” within a day or two of their submission and all promptly expired pursuant to OMC 15.8.150.

Each of the handwritten Certificates of Occupancy for Buildings A and B described each unit in terms of unit number and the function of each room. [Owners’ Exhs. C and D]. But the “temporary” certificates of occupancy merely listed unit numbers. Moreover, Unit 54, Ms. Cotton’s home, was one of nine units in Building C which were not listed on any of the temporary certificates of occupancy.

There clearly were tenants in Building C up to, and most likely through 1988. See the tenant addendum summarizing occupancy. It shows residents in Units 31, 43, 54, and 57 in 1986

and 1987. Two Building C tenants in this case testified to conditions which were substantially substandard. [Moreno Testimony [6/10/19-5:32:15; Bloomquist testimony 6/10/19-4:51:27] Taking into consideration Orten's false testimony, the records produced by the Owners, and tenant testimony of near full occupancy at the property, it is far more likely than not that Orten's failure to obtain a permanent certificate of occupancy for Building C was the result of his inability to put substandard units into passable shape. There is sufficient evidence to conclude that the exemptions granted for Unit 54, and other units in the *Vidor* case were the result of fraud.

#### CONCLUSION

The tenants respectfully request that the Landlord petition for certificate of exemption be denied and that the Landlord's defense of "new construction" in answer to the Tenant petitions be stricken.

Respectfully Submitted,



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Leah Hess  
Hasmik Geghamyan  
Attorneys for Tenants

# ADDENDUM A

**VULCAN LOFTS, LLC V. TENANTS, L19-0013**

**TENANTS' CHART OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY**

<p>12/20/85</p> <p>Building permit application by J. Alexander for Building A. Permit No. D41469.</p> <p>Units not listed or described.</p> <p>No legible date of final inspection.</p> <p>Final inspector signature obscured.</p> <p>Owner Exh. B; Tenant Exh. 45.</p>	<p>12/20/85</p> <p>Building permit application by J. Alexander for Building B. Permit No. D41760.</p> <p>Units not Listed or Described.</p> <p>Date of finalization not legible.</p> <p>Owner Exh. B; Tenant Exh.48</p>	<p>4/3/86</p> <p>Building permit application by J. Alexander for Building C. Permit No. D43880.</p> <p>Units not listed or described.</p> <p>Finalized on5/27/87. Inspector's signature appears to be missing or torn off.</p> <p>Owner Exh. B; Tenant Exh. 47.</p>
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<p>4/21/87</p> <p>Temporary Certificate of Occupancy for Building C, Units 28 through 45, and 47 through 49.</p> <p>Units Listed but not described individually</p> <p>No description of work to be done.</p> <p>Most approval sign-offs dated the next day, 4/22/87.</p> <p>Building Section final approval date obscured.</p> <p>Owner Exh. E; Tenant Exh. 17.</p>	<p>10/12/87</p> <p>Handwritten Certificate of Occupancy for Building A. Covers Units 1-16. Building Completion date stated to be "5/27/87".</p> <p>Units listed and described individually.</p> <p>Owner Exh. C; Tenant Exh. 15.</p>	<p>10/12/87</p> <p>Handwritten Certificate of Occupancy for Building B. Covers units 17 through 26. Building completion date stated as "5/27/87".</p> <p>Units listed and described individually.</p> <p>Owner Exh. D; Tenant Exh. 16.</p>
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<p>1/13/88</p> <p>Temporary Certificate of Occupancy for Unit 51 &amp; 52.</p> <p>Units listed but not described</p> <p>No description of work to be done.</p> <p>Approvals signed-off the same day application made 1/13/88.</p> <p>Tenant Exh. 20, Owner Exh. E</p>	<p>2/3/88</p> <p>Temporary Certificate of Occupancy for Building C, Unit 50</p> <p>Unit listed but not described.</p> <p>No description of work to be done.</p> <p>All approvals signed off the same day the application submitted.</p> <p>Tenant Exh. 19, Owner Exh. E</p>	<p>2/5/88</p> <p>Letter from Chief Building Inspector and Supervising Building Inspector to J.R. Orten:</p> <p>“As you requested, this is a TEMPORARY CERTIFICATE OF OCCUPANCY permitting the occupancy of units# 50, 51 and 52 at 4401 San Leandro Street. As understood and <i>as a condition of occupancy</i> all work is to be completed by April 4, 1988.” [emphasis added]</p> <p>Units listed but not described.</p> <p>No description of work to be done.</p> <p>Tenant Exh. 18</p>
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<p>10/20/87</p> <p>Application for building permit by Orten.</p> <p>“Change 1 commercial unit into 3 units. Change to Artist Studios.”</p> <p>No description of unit numbers or description of units.</p> <p>Final inspection date illegible.</p> <p>Last legible date on document: “12/1/87”</p> <p>Tenant Exh. 49</p>		
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**No certificates of occupancy or finalized permits specifically sought for building C, Units 27, 46 or 53-59**

# **ADDENDUM B**

EVIDENCE OF RESIDENTIAL USE OF THE PROPERTY PRIOR TO  
LEGAL CONVERSION–SUMMARY

Unit #	Date of Occupancy	Bldg	Evidence
1	09/08/1982	A	•Voter registration: F870498 (pre-1/1/83)
2	06/09/1986	A	•Voter registration G:987540
5	9/17/1986  9/17/ 1984  End of 1987  4/13/1987  1985 or 1986	A	<p>•Voter Registrations: H20483</p> <p>•Voter Registration: G511489</p> <p>•Testimony Peter Mars: (formerly Peter Smith), Lived in Unit 5 with wife Karen Beck. (6/10/19 Hrng: 2:18:01- 1/18/06; 2/17/11- 2/17/39; 2:18:07-2;24:56.</p> <p>•Application for bldg permit for Unit 5 to build storage loft in “existing live/work Studio”. signed “Peter Smith”. Mars acknowledged application in testimony. Tenant Exh. 46; 6/10/19 hrng: 2:28:20-2:33:03</p> <p>•Testimony Karen Beck (formerly Karen Smith): 12/16/19 hrng 4:35:05-4:53:50). Moved into Unit 5 with Peter Smith.</p>
6	06/02/1986	A	•Voter Registration, G865845
10	08/22/1987	A	•Voter Registration H257469
11	09/19/1986	A	•Voter Registration, G771855
14	05/29/1987  1986 9/1987  Mid 1987  1986	A	<p>•Voter Registration, X426298</p> <p>•Testimony Todd Boekleheide 6/10/29 Hrng; Moved into unit 14 “probably” in 1986. (4:31:27-4:31:58) “definitely“at least” as early as September, 1987. (5:21:38–5:23:16),</p> <p>•Owner Eddie Orten testified that he rented a unit to Todd Boekelheide in mid-1987. (4/15/2019 Hrng; 1:16:06-1:17:30)</p> <p>Carpenter David Cheek Sworn Decl. (Ten Exh. 6) Boekelheide was residing at the property when Cheek started working there in 1986 (¶¶ 3, 4, 7)</p>

	10/06/1986	unk.	<ul style="list-style-type: none"> <li>•Voter Registration Records. H099880 No Unit Number stated in registration records But see notes below (Unit 18) which show two persons in No. 18 registered 10/06/1986</li> </ul>
18	10/06/1986  Feb 1986  1986	B	<ul style="list-style-type: none"> <li>•Voter Registration X489752</li> <li>•Randy Hussong testimony, (12/16/19 Hrng) He worked at the property when he and his wife moved into Unit 18 in 1985. (1:21:43-1:22:33. (1:21:15-1:21:35)</li> <li>•David Cheek Sworn Decl. (Exh 6): Hussong and wife Tracy McBride lived at the Vulcan when Cheek started working in 1986. (¶¶ 3, 8)</li> </ul>
19	05/07/84  05/07/84	B	<ul style="list-style-type: none"> <li>•Voter Registration, G267674</li> <li>•Voter Registration, G267675</li> </ul>
21	09/25/1986  09/25/1986  1986 or 1987  Late 1986	B	<ul style="list-style-type: none"> <li>•Voter Registration, H074029</li> <li>•Voter Registration, H074030</li> <li>•Witness Gayle Bryan. Moved into Unit 21 with husband, Patrick in '86 or '87. Could have been '85. 12/16/19 Hrng: 3:42:59-3:45:2 3:56:30–3:57:05; 4:00:44-4:01:12.</li> <li>•Witness Valerie Steel: Bryans were living across the hall when she moved in, late 1986. 6/10/19 hrng: 3:56:48-4:00:38.</li> </ul>
22	10/03/1986	B	<ul style="list-style-type: none"> <li>•Voter Registration, H105022</li> </ul>
23	04/28/1987  December 1986	B	<ul style="list-style-type: none"> <li>•Voter Registration, H191495</li> <li>•Witness Valerie Steel. Rented Unit 23 with her fiancé in 1986. Moved in around December. [6/10/19 Hrng. 3:50:45-3:51:11-27; 3:52: 28-3:52:42)</li> </ul>

25	02/20/1987  Fall, 1986  1986	B	<ul style="list-style-type: none"> <li>•Voter Registration H121815</li> <li>•Witness Allison Davis formerly Allison Cheek: (12/26/19 Hrng) She lived in unit 24 or 25. Moved in with her husband “sometime in 1986”.(4:14:22-4:18:59) Had just moved in when started commuting to U.C. Davis in the in the Fall of ‘86. (4:28:58-4:29:10)</li> <li>•Declaration of witness David Cheek (Exh. 6) Cheek was a construction supervisor in 1986. (¶¶ 4, 5) His sister, Allison Davis, lived at the property in Unit 25 with her husband Cheek in 1986. He worked on construction of her unit. Before she moved in</li> </ul>
31	March of April 1987	C	<ul style="list-style-type: none"> <li>•Witness Llewellyn Moreno (formerly, Llewellyn Hilliard):He moved into Unit 31 “no later” than March or April 1987–it could have been several months earlier. He had been living in the unit for some time when informed that his father had been hospitalized in early June 6/10/19 Hrng: 5:24:43–5:37:18; 5:41:57-5:42:31.</li> </ul>
43	9/28/87  9/28/87  June 1986	C	<ul style="list-style-type: none"> <li>•Voter Registration, H262087</li> <li>• Voter Registration, H189199</li> <li>•Witness Susan Bloomquist, formerly <u>Susan Nickel</u>: Testified she moved into Unit 43 as a sublessor of tenant Suzanne Lang. (4:53:39-4:53:35) Moved in “sometime in 1986”, but “for sure” by June 1986 when she was due to lose her student apartment. 6/10/19 Hrng. 4:53:20-4:53:25; 4:54:46-4:54:53.</li> </ul>
54	Fall ‘87	C	<p><u>Witness Elizabeth Ross</u>: Moved into Unit 54 in “Fall of ‘87”, in October or November. There were items left from a previous tenant. 12/16/19 Hrng. 3:25:17-3:28:08</p>
57	06/12/1987	C	<ul style="list-style-type: none"> <li>•Voter Registration, H214660</li> <li>•Voter Registration, H214001</li> </ul>

**PROOF OF SERVICE**

**Case Name: Vulcan Lofts, LLC v. Tenants**

**Case Number(s):** L19-0013 et al T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022 & T19-0023

I am a resident of the State of California and at least eighteen years of age. I reside in Alameda County, California. My address is 1720 Broadway, Suite 430, Oakland, California 94612.

Today, I served the attached document listed below electronically as well as by placing a true copy in a City of Oakland mail collection receptacle for mailing via US Mail on the below date in Oakland, California, addressed to:

Documents Included:

**Tenants' Closing Brief Opposing Vulcan Lofts, LLC's Petition for Certificate of Exemption**

City of Oakland - Rent Adjustment Program - electronic service only

Hearing Officer Lambert  
Robert Costa, Rent Adjustment Program Analyst  
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Oakland, California 94612  
[RCosta@oaklandca.gov](mailto:RCosta@oaklandca.gov)  
[hearingsunit@oaklandca.gov](mailto:hearingsunit@oaklandca.gov)

Owner Representatives - electronic service only

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Pahl & McCay  
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San Jose, CA 95113  
[ssandoval@pahl-mccay.com](mailto:ssandoval@pahl-mccay.com)

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Sent via USPS for Tenants not represented by Hasmik Geghamyan and Leah Hess:

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Michael Lichen  
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Jared Kadish  
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Efrem Rensi  
Reuben Tomar  
4401 San Leandro Street #57, Oakland, CA 94601

Represented Units with Unit Representative by Hasmik Geghamyan and Leah Hess:  
(served via e-mail)

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Megan Girart  
Martin Laurent  
Helena Stoddard  
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Sarah Noelle  
Amy Wieliczka  
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Angeline Huang  
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Myles Faigin  
W. Breanne Leslie, Lucid Dream Lounge, Inc.  
Jakob Valvo  
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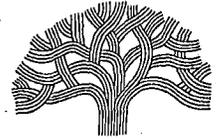
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 9, 2022 in Oakland, California.

*H. Geghamyan*

\_\_\_\_\_  
Hasmik Geghamyan



Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

**HEARING DECISION**

**CASE NUMBER:** L19-0013, T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022, T19-0023, T19-0236,

**CASE NAME:** Vulcan Lofts v. Tenants (Vulcan et al.)

**PROPERTY ADDRESS:** 4401 San Leandro Street  
Oakland, CA

**DATE(S) OF HEARING:** April 15, 2019, June 10, 2019,  
December 16, 2019, September 20, 2021,  
March 7, 2022, November 7, 2022

**DATE OF DECISION:** April 30, 2023

**APPEARANCES:** As listed below.

**SUMMARY OF DECISION**

The owner's petition is granted. The subject property is exempt on the ground that it is new construction. The subject property is not exempt from the Rent Adjustment Program Service Fee.

**Appearances: April 15, 2019**

Attorneys for Owners: Servando Sandoval, Lerna Kazazic

Attorneys for the represented tenants: Leah Hess, Hasmik Geghamyan

Represented tenants:

Unit #2: Helena Martin, Gary Doyle, Megan Girart, Martin Laurent, and Helena Stoddard.

Unit #3: Andrea Ives, Sara Le Cornec, Sarah Noelle, Amy Wieliczka, and Haley Wilson.

Unit #4b: Charles Long.

Unit #5: Bryanne Crabtree.

Unit #8 Kathleen Callahan and Lia Walker.

Unit #17: Savannah Crespo, Pamela Hearne, Angeline Huang, Serena Kirk, Adam Rebellion, Sarah Rund, and Ezra Unterseher.

Unit #18: Aileen Lawlor.

Unit #19: Annmarie Bustamante, Ross Duncan, Takehito Etani, Harel Meri, and Hadas Teitel.

Unit #21: Ziaa Szymanski, Arthur Cardenas, John Goda, and Zach Stockman.

Unit #23, Unit #24: Ross Clark.

Unit #25: Leslie W. Breanna, Myles Faigin, W. Breanne Leslie, Lucid Dream Lounge, Inc., and Jakob Valvo.

Unit #26: Darin Marshall and Brittany Valdez.

Unit #31: Deborah Weber.

Unit #36: Thelma Andree and Matthew Hudson.

Unit #39: Woodruff Burley, Garth Ferris, Jeremy Gage, Sarah J Paturzo, Eric Thorsen, and Darius Todar.

Unit #40: Ian Nathan, and Delila Santos.

Unit #41: Torey Broderson, Michael Mann, Joseph Robertson, and Daniel Wang.

Unit #43: Pamela Mangan and Randall Spencer.

Unit #46: Ezra Eismont.

Unit #52: Troy Clancy, Bryan Kitchens, Cassie McKenney, and Tzong Rogers.

Unit #53: Colin Sullivan, Geneva Harrison, Sandra Lawson, and Kathryn Stewart.

Unit #54: Rebecca Burnett, and Alfonso Kellenberger.

Unit #58: Justin Archer, Christian Eichelberger, Bolton Littlefield, Matthew Martin, and April Miller

Unit #59: Joshua R Miller.

Unrepresented Tenants:

Unit #1: Michael Robinson, Cassie Stuurman, and Michael Lichen.

Unit #6: Denise Marie Kennedy and Nick Negusse.

Unit #10: Jeremy Simmons.

Unit #11: Stephanie Kavrakis and Barbara Rodgers.

Unit #12: David Bernbaum, and Yasmine Salem.  
Unit #13: Jennifer Jennings, Gabriel Penifield, and Hanna Tatar.  
Unit #14: Krystal Bell, Ian Fernandez, and Miles Ross.  
Unit #20: Josh Bettenhausen, and Kristi Walker.  
Unit #21: Ziaa Szymanski, Arthur Cardenas, John Goda, and Zach Stockman.  
Unit #22: Austin Maples-Fleck, and Lilli Thomas-Brumme.  
Unit #27: Brandon Mullins.  
Unit #28: Marshal Lane.  
Unit #29: Amelia Adams and Michael Cavanaugh.  
Unit #30: Anari Cade and Eric Wilson.  
Unit #32: Susannah Israel.  
Unit #33: Dani Reagan and Kelley Halvorson.  
Unit #34: Jeff Maloney.  
Unit #35: Juliana Broek, Rigel Juratovac, and Susan Leffingwell.  
Unit #37: Fred Gromadski and Mark Leavitt.  
Unit #38: Kevin Baldwin, Maelle Boer, Chris Keller, and Mael Ryckeboer.  
Unit #42: Michael Parker.  
Unit #44: Genevieve Busby, Kyle Charleton, Martha Fehrman, Tiana Fraser, and Mikhall Lapin.  
Unit #45: Lael Eisenlohr, Robert Jacobs, and Leah Samelson.  
Unit #46: Brooke Rollo.  
Unit #47b: Johnathan Bishop, Rachel Cole-Jansen, Aimee Seaver, and August Toman-Yih.  
Unit #48: Matthew Grahm, Robert Hart, and Noel Rolden.  
Unit #49: Michael Blodgett.  
Unit #50: Loreley Bunoan and Gary Prince.  
Unit #51: Gregg Martinez.  
Unit #55: Yelena Phillipchuck, Julian Vielva, and Serge B Yelena.  
Unit #56: Stephanie Kavakis and Jared Kadish.  
Unit #57: Efrem Rensi, and Reuben Tomar.

## **PROCEDURAL BACKGROUND/INTRODUCTION**

The owner filed the petition, L19-0019, on December 2, 2019, claiming the property is exempt from the Rent Adjustment Ordinance. Petition T17-0237 was remanded for further hearing. The remaining Tenant petitions were consolidated for hearing on the jurisdictional issue.

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### Bifurcation

Before issues related to habitability can be evaluated, the property must first be identified as either eligible or ineligible for the rent exemption under O.M.C. § 8.22.030. If the property is determined to be exempt, the rent adjustment program has no authority to discuss habitability issues. If the property is not exempt, habitability issues must be addressed at a separate hearing. Claims for habitability are bifurcated, for hearing purposes, while the claim of exemption is at issue.

### Motion in Limine

Ms. Hess requested to disallow non-parties to the case in the courtroom during case proceedings. It was confirmed that only parties to the case were present in the courtroom before proceeding with the hearing.

### Stipulated Exhibits

Owner's exhibits A-J were admitted without objection by attorneys for the Tenants and the unrepresented Tenants.

Tenants' Exhibits 15-21 were admitted by stipulation.<sup>1</sup>

### Pre-Hearing Argument

Tenants' attorneys argued that the plain language of O.M.C. § 8.22.030 is ambiguous and subject to different interpretations and that any occupancy in Building A and B before October 12, 1987, constitutes prior unlawful residential use, such that the entire parcel is no longer considered new construction, thereby making it ineligible for exemption under O.M.C. § 8.22.030.

Unrepresented Tenants Daniel Parks and Pamela Mangan amended their legal position to that asserted by the Tenant Attorneys for the represented tenants. They also wished to challenge the plain language interpretation of O.M.C. § 8.22.030.

Unrepresented Tenants Aldo Rossetto and Kyle Charlton did not change their legal position.

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<sup>1</sup> Owner objected to Tenants Exhibits 1-14 and 21-38 and they were not admitted during the hearing.

Given the change in legal theories by the attorneys for the represented tenants, the attorneys for the owners were afforded additional time to consider the amended legal position and respond accordingly.

The witness list was previously reduced at the pre-trial hearing. However, given the changes in legal theory, additional witnesses will be allowed to testify. Attorneys for the owners reserved their right to call more witnesses after the briefing concludes.

### Document Deadlines

Unrepresented tenants at the hearing were provided with copies of the brief from the attorneys for the represented tenants. The deadline for the brief rebuttal is the close of business on May 20, 2019.

Both sides will present witness lists, exhibit lists, and stipulations by May 23, 2019. Exhibits will be served to each other and all unrepresented tenants (units 30, 43, 44, 45, and 51) by May 28, 2019.

### Brooke Rollo

At the end of the hearing, Ms. Rollo presented with questions about representation. It was clarified that the Unit is being represented, but Ms. Rollo is not. Ms. Rollo claims Ms. Geghamyan is indirectly representing her. Her partner, Ezra Eismont, is a named party and is represented by Ms. Geghamyan.

## **EVIDENCE: APRIL 15, 2019**

### **Julian Robert Orton III (Eddy)**

After being duly sworn, Julian Robert Orton III provided the following testimony:

He was an owner of the subject property in question. In the fourth quarter of 1985, he purchased the property under his corporation Athena Development. Athena Development routinely purchased and rehabilitated factories. He was also an investor with a company that rehabilitated the Golf Furniture factory before his involvement at this property.

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### Property Condition at Time of Purchase

The property was an iron foundry with a tin metal exterior, internal monorail, iron shaping patterns, ovens for heating iron, a crucible, boxes, forklifts, equipment, pallets, containers, high bay lights, debris, and finishing guns to heat blast the iron pieces and make them smooth before distribution.

At the time of purchase, there were two physical buildings; inside the larger of the two structures were two additional fire separation walls; including the two separation walls in the larger building, there were four buildings.

### Pre-purchase Due Diligence

Before purchasing the subject property, the title was checked, arranged for structural and environmental investigations, and created preliminary blueprints. He could not recall if any permits were obtained before purchase.

### Lease-back Agreement

After Athena Development purchased the property, the two larger buildings were leased back to the prior owner and continued to be part of a working foundry. This agreement was made so the prior owner could fulfill contracts established before the property purchase. He could not recall how long the lease-back agreement lasted or the specific dates of the lease-back agreement.

### Property Use at Time of Purchase

No one was living at the foundry at the time of purchase. Therefore, he could not testify to the habitability of the foundry building because no one was living there. The Molders Union represented the staff working at the property at the time of purchase. He was unaware of any union staff or leaders residing on the property before or at the time of purchase.

### Conversion to Live/Work Units

His intention with Athena Development was to build live/work artist studios. It took eighteen months to convert part of the foundry to live/work artist studios. No units were inhabited before the initial property conversion to live/work artist studios in 1987.

Efforts to convert the other building (not leased back for use as an iron foundry) to artist studios began roughly six months after the property purchase. No residential units were completed within the six months following the property purchase.

Once all conversions were completed, there were fifty-nine live/work artist units.

### Certificates of Occupancy

Certificates for the completed live/work unit conversion were issued in 1987. The remaining buildings on the property continued to be converted in 1988 and 1989. As the buildings were completed, certificates of occupancy were issued. By 1989, all units were issued certificates of occupancy and rented to tenants.

He could not recall if the property's occupancy certificate was established before renting to the first Tenant. The building department, specifically Harry Blow/Inspector and Calvin Huang/Plan Checker, ensured the live/work conversion was legal according to ordinances and laws at that time. At the time of the property conversion from an iron foundry to artist studios, legal live/work properties were a novel idea in the Bay Area.

Seven more units were built after unit 52 was completed, for a total of fifty-nine units, all with temporary certificates of occupancy issued.

Each building on the subject property had a finalized building permit and a physical card signed by Mr. Blow before renting the live/work units.

### Tenants

The first Unit was rented to a tenant between April 1987 and May 1987. By the end of 1987, approximately 14 units were rented to tenants.

He did not remember the name of the first Tenant. Approximately thirteen units were rented concurrently or shortly thereafter. He remembered the names of the following tenants: Valerie Steele, Todd Bucklehide, Randy Hussong (Tenant and worker from 1986 – 1988), and Donna Fenstenmacher.

He remembered the names Kenny Jackson, Llewellyn Moreno, and Susan Nickels. However, he could not remember if they were tenants or what units they rented.

He did not remember the names Peter Smith, Gayle Bryan, Patrick Bryan, Alison Davis, Karen Beck, and Elizabeth Ross. He did remember a banker he worked with named Peter Smith, but that Peter Smith was not a tenant.

He remembered Jim Alexander/ General Contractor, Ray Bouvet/ Electrician, and Eddie/ Plumber, who were employed to convert the property to artist studios.

Tenant Complaint Request

Mr. Orton received a request from attorneys representing Tenants requesting that he produce any and all tenant complaints between specific dates. He could not recall the specific dates. He indicated there were no complaints during the timeframe tenant's counsel specified in their request for information, and therefore, he did not furnish any documents.

Property Sold Date

The subject property was sold to an LLC investment company. Madison Park, sometime in 2008.

Exhibits<sup>2</sup>

The witness reviewed and testified as follows related to the Exhibits:

Exhibit A

The appraisal report dated October 25, 1985, contained a picture of the main central bay contained in the report and described a forklift, a box, pallets, containers, high bay lights, and debris. The picture is consistent with the items he recalled being in the building. Attention was called to page 4 of the report, which states: "The appraiser has not measured these buildings for it was too difficult to do because it is a working foundry and it is virtually impossible ..."

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<sup>2</sup> Exhibit C: Certificate of Occupancy dated October 12, 1987.

Exhibit D: Certificate of Occupancy for units 17 – 26.

Exhibit E: Temporary Certificate of occupancy for building C, dated April 21, 1987.

Exhibit F: Notice of completion" issued June 12, 1987.

Exhibit B

Building permit applications, dated 1985, 1986, and 1987. The last page contains a document titled; "Notice of completion," dated June 12, 1987. Attention was called to page 3, signed December 1, 1987, which states: "Convert one commercial (ineligible word) two units change to (ineligible word) and be artist studios.

Exhibit G

Certification of "Complete building rehabilitation." Attention was called to the following: "These properties have been in use in their entirety as a foundry and have been converted in their entirety to artists' lofts and live/work."

Exhibit 15

Certificate of occupancy for building 1 and units 1- 16; thirteen residential units and three non-residential work units that were music studios at the time of document signing. The exhibit listed completion dates of May 27, 1987, and October 12, 1987.

Exhibit 16

Certificate of occupancy for Building B and units 17 – 26 with a completion date of May 27, 1987.

Exhibit 17

Temporary certificate of occupancy for building C and units 28-49; issued April 21, 1987, with another date listed as possibly May 27, 1987.

Exhibit 18

Letter dated February 5, 1988, from the building inspector to Mr. Orton, stating: "As you requested, this is a temporary certificate of occupancy for permitting occupancy for studios 51 and 52; all work is completed as of April 4, 1988."

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Exhibit 19

Temporary certificate of occupancy for unit 50, signed February 3, 1988. The document is not a permit card posted at the property. The document was likely signed at City Hall.

Exhibit 20

Temporary certificate of occupancy for units 51 and 52.

Appearances: June 10, 2019

Attorneys for Owners: Servando Sandoval, Lerna Kazazic

Attorneys for the represented tenants: Leah Hess, Hasmik Geghamyan

Represented tenants:

Unit #2: Helena Martin, Gary Doyle, Megan Girart, Martin Laurent, and Helena Stoddard.

Unit #3: Andrea Ives, Sara Le Corneq, Sarah Noelle, Amy Wieliczka, and Haley Wilson.

Unit #4b: Charles Long.

Unit #5: Bryanne Crabtree.

Unit #8 Kathleen Callahan and Lia Walker.

Unit #17: Savannah Crespo, Pamela Hearne, Angeline Huang, Serena Kirk, Adam Rebellion, Sarah Rund, and Ezra Unterseher.

Unit #18: Aileen Lawlor.

Unit #19: Annmarie Bustamante, Ross Duncan, Takehito Etani, Harel Meri, and Hadas Teitel.

Unit #21: Ziaa Szymanski, Arthur Cardenas, John Goda, and Zach Stockman.

Unit #23, Unit #24: Ross Clark.

Unit #25: Leslie W. Breanna, Myles Faigin, W. Breanne Leslie, Lucid Dream Lounge, Inc., and Jakob Valvo.

Unit #26: Darin Marshall and Brittany Valdez.

Unit #31: Deborah Weber.

Unit #36: Thelma Andree and Matthew Hudson.

Unit #39: Woodruff Burley, Garth Ferris, Jeremy Gage, Sarah J Paturzo, Eric Thorsen, and Darius Todar.

Unit #40: Ian Nathan, and Delila Santos.

Unit #41: Torey Broderson, Michael Mann, Joseph Robertson, and Daniel Wang.  
Unit #43: Pamela Mangan and Randall Spencer.  
Unit #46: Ezra Eismont.  
Unit #52: Troy Clancy, Bryan Kitchens, Cassie McKenney, and Tzong Rogers.  
Unit #53: Colin Sullivan, Geneva Harrison, Sandra Lawson, and Kathryn Stewart.  
Unit #54: Rebecca Burnett and Alfonso Kellenberger.  
Unit #58: Justin Archer, Christian Eichelberger, Bolton Littlefield, Matthew Martin, and April Miller  
Unit #59: Joshua R Miller.

Unrepresented Tenants:

Unit #1: Michael Robinson, Cassie Stuurman, and Michael Lichen.  
Unit #6: Denise Marie Kennedy and Nick Negusse.  
Unit #10: Jeremy Simmons.  
Unit #11: Stephanie Kavrakis and Barbara Rodgers.  
Unit #12: David Bernbaum, and Yasmine Salem.  
Unit #13: Jennifer Jennings, Gabriel Penifield, and Hanna Tatar.  
Unit #14: Krystal Bell, Ian Fernandez, and Miles Ross.  
Unit #20: Josh Bettenhausen, and Kristi Walker.  
Unit #21: Ziaa Szymanski, Arthur Cardenas, John Goda, and Zach Stockman.  
Unit #22: Austin Maples-Fleck, and Lilli Thomas-Brumme.  
Unit #27: Brandon Mullins.  
Unit #28: Marshal Lane.  
Unit #29: Amelia Adams and Michael Cavanaugh.  
Unit #30: Anari Cade and Eric Wilson.  
Unit #32: Susannah Israel.  
Unit #33: Dani Reagan and Kelley Halvorson.  
Unit #34: Jeff Maloney.  
Unit #35: Juliana Broek, Rigel Juratovac, and Susan Leffingwell.  
Unit #37: Fred Gromadski and Mark Leavitt.  
Unit #38: Kevin Baldwin, Maelle Boer, Chris Keller, and Mael Ryckeboer.  
Unit #42: Michael Parker.  
Unit #44: Genevieve Busby, Kyle Charleton, Martha Fehrman, Tiana Fraser, and Mikhall Lapin.  
Unit #45: Lael Eisenlohr, Robert Jacobs, and Leah Samelson.  
Unit #46: Brooke Rollo.  
Unit #47b: Johnathan Bishop, Rachel Cole-Jansen, Aimee Seaver, and August Toman-Yih.  
Unit #48: Matthew Grahm, Robert Hart, and Noel Rolden.

Unit #49: Michael Blodgett.

Unit #50: Loreley Bunoan and Gary Prince.

Unit #51: Gregg Martinez.

Unit #55: Yelena Phillipchuck, Julian Vielva, and Serge B Yelena.

Unit #56: Stephanie Kavakis and Jared Kadish.

Unit #57: Efrem Rensi, and Reuben Tomar.

## **PROCEDURAL BACKGROUND/INTRODUCTION**

### Pre-Hearing Argument

Attorneys for the represented tenants present two issues. First, they allege extensive evidence shows the property's residential occupation before January 1, 1983, making the property ineligible for exemption under O.M.C. § 8.22.030. Second, they challenge the plain language of O.M.C. § 8.22.030, claiming different interpretations exist. They assert that the relevant operative date for consideration of prior residential use is when the owner obtains a certificate of occupancy and finalized permit for said use.

Attorneys for the represented tenants claim that Mr. Orton was unlawfully renting live/work units on the property before the operative date, asserting that by doing so, the property is ineligible for exemption from the rent adjustment program under O.M.C. § 8.22.030.

Attorneys for the property owners assert that under the plain language of O.M.C. § 8.22.030, the property is eligible for exemption from the rent adjustment program because all residential units were built after January 1, 1983.

### Counsel for Represented Tenants Attachment

Ms. Geghamyan reiterated that they included an attachment in their Tenant's response, served on March 28, 2019, to the attorneys for the owners. In this attachment, the amended legal position was outlined in the response. Therefore, attorneys for the owners had ample opportunity to review the legal position and respond accordingly.

However, the attachment was not provided to the unrepresented tenant parties. Accordingly, a continuance was granted at the April 15, 2019, hearing to allow the unrepresented parties to review the attachment, present evidence, and produce witnesses.

### Unrepresented Tenants Petitions

Attorneys for the represented tenants asserted that unrepresented tenants did not file Tenant's petitions and filed responses to the landlord's petition.

It was confirmed that tenants in units #43 and #46 did file a petition. Ms. Geghamyan represents the Tenant in unit #46.

Tenants in units #44 and #51 did not file petitions.

### Subpoena to the Registrar of Voters

The Hearing Officer, Steven Kasdin, issued the subpoena in December 2018. A second request was authored by the undersigned. To date, no response from the Registrar of Voters has not yet been received.

Attorneys for the represented tenants requested the timeframe of the subpoena to the registrar of voters to span 1975 – 1987. This subpoena would support counsel for represented tenants' efforts to find potential residents who lived at the property before January 1, 1983.

Based on the evidence presented by attorneys for the represented tenants, the subpoena was limited in time from December 1985 – October 12, 1987.

Further requests to expand the request from 1975 to 1987 were denied. On April 1, 2019, Rent Adjustment Program Manager Franklin requested the by way of correspondence Alameda County Counsel Zeigler, who objected.

The request to amend the subpoena to include the registrar of voter's records for 1975 – 1987 was renewed.<sup>3</sup>

At this hearing, compelling evidence was not presented to justify subpoena expansion to include 1975-1985.

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<sup>3</sup> The request was deferred until such time that new and compelling evidence is received or the evidence presented during the hearing warrants expansion.

Witness Subpoenas

Attorneys for the represented tenants indicated ten witnesses were willing to testify at the prior hearing on April 15, 2019. As of June 10, 2019, six witnesses are willing and available to testify. Attorneys for the represented tenants requested a subpoena for the witnesses who were not voluntarily testifying.<sup>4</sup>

Declarations and Prior Tenant Interviews

Private Investigator Joffe was hired by attorneys for the represented tenants to locate and interview prior tenants who resided at the property. Mr. Joffe prepared declarations for prior tenants based on their responses to his questions via telephone or e-mail. Attorneys for the represented tenants offered the declarations as evidence of residential tenancy at the property.<sup>5</sup>

Exhibits

During the hearing, Exhibits 52<sup>6</sup>, 53,<sup>7</sup> and 55<sup>8</sup> were admitted by stipulation.<sup>9</sup>

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<sup>4</sup> Prior to issuing the subpoena to the remaining witnesses, the six present (via telephone or in-person) witnesses will first testify and then it will be determined if a subpoena is necessary for the remaining witnesses. Subsequently, subpoenas were issued for Allison Davis, Chris Vivona, Wayne Campbell, Randy Hussong, and Elizabeth Ross. Attorneys for the owners objected to the additional subpoenas. The objection will be preserved and deferred until the next hearing when the witnesses testify.

<sup>5</sup> Attorneys for the owners objected to the declarations from past tenants, as recited by Mr. Joffe in court. Testimony of the declarations from Mr. Joffe is inadmissible as double hearsay and unauthenticated evidence. The objections were sustained. Attorneys for the represented tenants countered the hearsay objection by providing a relevant administrative code citing that declarations are routinely used in civil proceedings of this sort and should be admitted as evidence. However, Mr. Joffe admitted that he did not take any steps to authenticate the identities of the people he corresponded with. Therefore, the objection to declarations obtained during the past tenant interviews was sustained, they are inadmissible evidence absent authentication by the declarant.

<sup>6</sup> A color copy photo of a postcard for Paul Howard.

<sup>7</sup> A City building permit application from Peter Mars.

<sup>8</sup> Ms. Bloomquist's lease.

<sup>9</sup> The remaining exhibits were marked for identification and not admitted.

## EVIDENCE: JUNE 10, 2019

### Michael Joffe

After being duly sworn, Michael Joffe provided the following testimony:

He became a licensed private investigator in California in 2004 and opened Joffe Investigations. Prior to obtaining his license, he was a clerk at a law office. In 1995, he worked under another investigator's license until 2004.

In late 2018, Mr. Joffrey was hired as an investigator by Ms. Geghamyan and Ms. Hess. He was tasked with locating and interviewing past tenants of the subject property, specifically, people who lived there immediately after the property was converted to live/work units. He was tasked with searing for tenants who occupied the subject property between 1983 and 1989.

### Contacting Prior Tenants

To locate the prior tenants, he utilized databases provided by Transunion TLO through a paid subscription.

He initially experienced difficulties locating contact information for some of the prior tenants of the property because available databases were not widely used or populated with contact information until the mid-1990s. However, archival contact information for people as far back as the 1970s and 1980s was available, and he could locate past property tenants.

He contacted past tenants through telephone and e-mail and confirmed their identity verbally by asking them to confirm their names.

### Certificates of Occupancy

He was unaware of a Certificate of Occupancy issued before April 11, 1987.

### Telephone Communications

He spoke with the following prior tenants via telephone, who verbally confirmed their identity during the telephone call: Wayne Campbell, Allison Davis, Kenny Jackson, Randy Hussong, Elizabeth Ross, and Nancy Gee.

### Telephone, In-person Communications

He spoke with the following prior tenants via telephone and in person, who verbally confirmed their identity during the telephone call: J.C. Garrett, Llewellyn Moreno, and Chris Vivona.

#### Paul Howard

To reach Paul Howard, Mr. Joffe called a phone number on record for Mr. Howard's mother, at which point a man answered the phone and verbally confirmed his identity as Paul Howard.<sup>10</sup>

Mr. Howard was not one of the first tenants at the property; his mother was one of the first tenants. Mr. Howard visited the property when his mother resided there. Mr. Howard later became a tenant beginning in 1991.

Mr. Howard produced a photograph of a postcard with the subject property address listed with a postmark of April 11, 1987. The photograph was sent from Mr. Howard to Mr. Joffe by electronic mail. Mr. Howard's only documentation of his mother being a resident of the property is a postcard showing her address at the listed subject property.<sup>11</sup>

#### Todd Bucklehide

He communicated with Mr. Bucklehide exclusively through electronic mail, sending his questions and receiving Mr. Bucklehide's responses. He prepared a written declaration from those responses and sent it for review and approval. He was confident that his communications were with Mr. Bucklehide because the responses contained specific information about the property that only a tenant would know. However, no steps were taken to authenticate or verify the identity of the person he corresponded with.<sup>12</sup>

#### Karen Beck

He spoke with a woman on the telephone who responded to the name Karen Beck and provided information about the subject property and her cohabitation with Peter Mars, her then-husband

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<sup>10</sup> Owner's Attorneys renew their objection to the declarations based on Mr. Joffe's testimony.

<sup>11</sup> Exhibit 52.

<sup>12</sup> The objection to the declaration was sustained.

### David Cheek

He spoke with a man on the telephone and video conferencing using Google Hangouts. During the video conversation, the man used the screen name David Cheek and responded to the name David Cheek.

### Peter Mars

He spoke with a man on the telephone and via e-mail correspondence. The man responded to the name Peter Mars and provided information about the property and cohabitation with his then-wife, Karen Beck, as tenants.

### Peter Mars

After being duly sworn, Peter Mars provided the following testimony:

He resided at the property in four separate units during different periods. He was known as Peter Smith during his tenancy at the property. He was one of the first tenants at the property.

He does not remember how he became aware of the property being available for rent but thinks he likely found it through an advertisement or bulletin.

He visited the property in 1985 and discussed with Eddy Orton how his future Unit would be constructed to accommodate his business and living quarters. At the time of move-in, he saw the space that would become the Vulcan Café. He does not think there were residents living on the property at the time of his walk-through.

He remembered the names of the following tenants: Mr. Bucklehide, J. C. Garrett, and Mr. Hussong. He was unable to recall and recite the names of other tenants.

### Construction

Construction was ongoing for a number of years at the property during his time as a resident. The construction was to build units and existing units to accommodate tenants' live/work arrangements.

### Unit #5

He moved his business and residence to Unit #5 sometime between the spring of 1986 and the end of 1986. He received a monetary settlement in 1984 and moved in with motorcycles that he used for racing, as well as racing trophies and magazine stories from his racing.

Unit #5 was an open loft at the southwest corner of the building and property, previously the foundry employee shower and restroom. He knew of the bathroom's prior use because it remained intact during his walk-through. The showers and restrooms were removed in 1985 before he moved into the Unit.

Unit #5 had two entrances, one from an inner courtyard and one from 45<sup>th</sup> Avenue. At the time of his move-in, two buildings were on the property, one of which was a working foundry making ship propellers. The foundry was active with pouring molten brass and train tracks. The foundry was located on the north side of the property.

Prior to moving in, he worked with the property owners and their construction team to partition the open loft, creating separate business and living spaces. Before moving in, he did some construction work with the City of Oakland to solidify 925 45<sup>th</sup> Avenue as an actual address. An additional door was installed on the 45<sup>th</sup> Avenue side of the Unit.

He moved his shop, "Performance and Design," and the residence of he and his wife, Karen Beck, into the live/work unit.

Unit #5 had a toilet, vanity, tub/shower, electrical outlets, kitchen sink, cabinets, and stub for gas and heat installed before his move-in. During the initial tour, not all amenities were in the Unit. The amenities were later added before him moving into the property.

He applied for a storage loft building permit in April 1987 with the City of Oakland. The picture of the storage loft building permit contained his signature.<sup>13</sup>

The appraisal report for the property was dated October 25, 1985.<sup>14</sup> Mr. Orton purchased it in December 1985.

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<sup>13</sup> Exhibit 53.

<sup>14</sup> Exhibit A.

He may have done the walk-through with Mr. Orton before purchasing the property. It would not have been uncommon to complete a walk-through before purchase.

### Valerie Steel

After being duly sworn, Valerie Steel provided the following testimony via telephone:

She and her then fiancé lived at the Vulcan Foundry studios from December 1986 until 1990. She toured the space with Eddy Orton or Jim Alexander before moving in. She found the live/work unit property through a newspaper advertisement.

Her fiancé was a cabinet maker, and she was a custom picture framer. They both needed space for working and residence. They moved into the property about a month after signing the lease in January 1987; the painting work was completed.

She provided a photograph of herself at the property, standing in front of the Unit #23 double doors. The picture was taken in 1987 or 1988.

### Unit #23

All the units, including #23, were rough. Each Unit had a gas outlet for a stove, kitchen sinks, a full bathroom, and painted sheetrock walls. The units were typical of work/live spaces at that time in Oakland. She had to provide all appliances, countertops, cabinets, and shelves. She and her fiancé made their cabinets for the Unit and re-painted the Unit.

Unit #23 had a main floor space of 20 x 30 with a smaller upstairs loft. The upstairs loft had a kitchen and bathroom. Downstairs on the main floor were train tracks and a one-ton overhead crane on a sliding mechanism with lights affixed to it. She and her fiancé would move the crane back and forth while working.

A door to the hallway from the living space under the upstairs loft and double doors from the Unit that opened to the driveway. The double doors were located on the eastern side of the Unit. From the Unit's front doors, there was a view of the driveway and the location that later became Vulcan Café.

The Unit was around 20 feet high from floor to ceiling/corrugated metal roof. There was one gas-powered heater for the entire Unit. The heater successfully heated the Unit.

She does not know the Units or the property's condition since leaving in 1990.

### Tenants

Other people were living at the subject property on her side of the building. People were living and working in the building where the future Vulcan Café would be located and in the building that housed unit #23.

Ms. Steel was one of the first out of a dozen live/work tenants.

She recalled the tenants who lived at the property: Gayle and Patrick Bryan, Denise Owens, Donna Fenstermacher, Allison Cheek, her brother David Cheek, Bob Drago, and Todd Bucklehide and his girlfriend.

She met Gayle and Patrick Bryan while they were cleaning soot from the roof to prepare for painting the corrugated roof with oil-based paint.

### Foundry

When she moved into the property, the foundry was still operating and making "brick parts" for BART.

### Property Manager

Valerie was a property manager at the property for many years. She started her role in 1988.

She showed properties to prospective tenants, completed lease agreements, collected rents, submitted rents to the main office, and scheduled unit maintenance and repairs.

The walls in unit #23 and other units were not flush with the ceilings/roof or the floors because of the uneven surface of the units. Therefore, there were gaps on the floor and toward the roof.

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### Construction

Construction work on the property was probably discontinued in 1988. All units had been built by 1990. Valerie did not know if more construction was done after moving out in 1990.

### Day Space Units

Not all units were live/work; some were considered "day space" units. She did not know the number of day space units; her best estimate was up to one dozen.

She and her then fiancé rented an additional day space unit on the San Leandro Street side of the property. The day space served exclusively as a cabinet-making business space. Unit #23 continued to be used for the framing business workspace and residence.

### Todd Bucklehide

After being duly sworn, Todd Bucklehide provided the following testimony via telephone call:

Mr. Bucklehide is a recording engineer and a subject matter expert for soundproofing. He originally heard about the property from a friend of a friend, Eddy Orton. Mr. Orton asked for his professional opinion about how to build soundproof spaces. Mr. Orton wanted to build practice rooms for bands.

Mr. Orton contacted him in the early 1980s. He was unsure if Mr. Orton owned the property when he outreached for soundproofing advice.

He moved into the property around 1986 but didn't remember exactly what year. Construction was ongoing at the time he moved in.

### Unit #14

He moved into Unit #14, which was located in the smaller of the two buildings. There was a parking area separating the two buildings. There was no loft in the Unit. There was no ceiling when he moved in, only the roof. When he started paying rent, the Unit was rough, and the interior wall coverings may not have been installed. He negotiated to share the cost with Mr. Orton to install a ceiling.

He built an upstairs loft and stairs in the Unit after moving in. The bedroom and storage area was underneath the loft. There was basic plumbing on the floor level of the Unit; he installed a stove, sink, and refrigerator in the Unit. All the work in his Unit occurred after he began paying rent for the Unit. He physically resided elsewhere while the interior work was completed on the Unit. His rent was reduced to compensate for the work he completed on the Unit. The work he performed on the Unit took a few months.

He did not receive separate monetary compensation for his work in the Unit. However, there was an informal agreement for him to be compensated upon move-out and rental to the subsequent Tenant. That arrangement never materialized, and he never pursued it with Mr. Orton or Mr. Alexander.

When he moved in, an industrial heater attached to the ceiling was in the Unit.

#### Owner Interactions

His interaction with the owners was minimal. On one occasion, the owners stopped by the Unit to confirm he was living there; it may have been to determine if the living space was safe.

#### Tenants

He recalled the following tenants living at the property: Valerie Steel, Gary Prince, Bill, the Boudreax Brothers, the Vulcan Café (same building as unit #14), J.C. Garrett, and Madeline Morton. He was unsure who lived at the property and who had moved in after him.

#### Call-Back Testimony

Upon being called back to the stand via telephone and still under oath, he provided the following testimony:

He was living at the property as early as September of 1987. He may have lived there as early as 1986; he was still unsure of the approximate month or year he moved into the property.

After his testimony concluded, he researched and reviewed films he had worked on to refresh his memory of when he lived at the property. He recalled writing a

specific piece of music included in the film, "Dear America: Letters Home from Vietnam." According to Mr. Bucklehide, the movie was released in October 1987.

He looked up the movie's IMDB and Wikipedia to determine when the movie was released. The release date on Wikipedia helped him narrow the possible timeframe he lived at the property.

He indicated that Wikipedia has strict policies that allow only factual information to be included on the page before public publishing online. He had also heard of people updating Wikipedia with false information, such as a false date of death.

### Susan Bloomquist

After being duly sworn, Susan Bloomquist provided the following testimony via telephone call:

She moved into the property in 1986 as a sub-lessee with Suzanne Lang. She left the property in 1992.

When she had six months left on her lease, she sub-leased to another person.

At the time of move-in, her name was Susan Nickel. Ms. Lang asked her to move in and share the rent and costs of renovating the space. She wanted to live at the property to have a large, shared artist studio that could be used for both work and residence. The nature of the live/work studio unit concept appealed to her as an artist, and she was happy to move in.

Ms. Lang knew Eddy Orton. As far as she was aware, Mr. Orton was okay and had no objection to her sub-lessee verbal agreement with Ms. Lang.

### Unit #43

She did not sign a lease when she moved into Unit #43 in June 1986. She moved out of Unit #43 in April 1988. Before moving in, she began cleaning the cement floors of the Unit, building interior walls, and installing interior doors for bedrooms and the bathroom in March 1986. There was running water, a toilet, a shower, and sinks. Ms. Lang furnished a refrigerator and stove. The bathroom did not have a room ceiling, just the main roof of the building. The bathroom had a 7-foot-tall wall that acted as a partition.

She is not aware that the rent was reduced for the Unit in consideration of the work she and Ms. Lang completed on the Unit.

### Unit #31

After Ms. Lang got engaged, she and her fiancé moved into Unit #43, and Ms. Bloomquist moved into Unit #31. She took over the lease from Llewellyn Hilliard. She and Mr. Hilliard were not friends; they had just transferred the lease. Mr. Hilliard's lease was soon ending, and she was able to assume the lease.

The rooms in unit #31 had low walls and a high ceiling. There was no door in the bathroom, and she did not install a door because she was living there alone. The Unit had a kitchen structure with a gas outlet for a stove, which she furnished.

### Owner Interaction

Mr. Orton was at the property often but did not interact with her. He only interacted with Ms. Lang. Although she knew of Mr. Orton, she had never met with him.

### Construction

The Vulcan Café was operating when she moved in. She was not aware if there were vacant units. By the end of 1987, most of the construction was completed, and tenants occupied most units.

### Tenants

She remembered Valerie Steel but could not say when she moved in or how long she lived there. However, she was under the impression Ms. Steel lived at the property before she moved into the property. She deduced this because Ms. Steel's Unit had all interior work completed. Ms. Steel lived across from the tenants with wolves.

She could not recall the names of other tenants but remembered a person living there with three wolves, a recording artist named Todd Bucklehide, and a couple with a baby.

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### Lease

She had a lease for a live/work space.<sup>15</sup>

### Ms. Lang's Occupancy

Ms. Lang asked her to visit Unit #43 at the property. Ms. Lang's room was in the upstairs loft. She is not aware that Ms. Lang built the bedroom or the bathroom. Ms. Bloomquist built her bedroom under the loft by adding a wall and a door.

Ms. Lang had occupied the Unit for a short period before Ms. Bloomquist moved in. Ms. Lang had the keys to the Unit and invited her to move in with her as a sub-lessee.

She does not know how long Ms. Lang lived there before moving in, how long Ms. Lang lived there, or if Ms. Lang had another residence while the Unit was being cleaned and the interior built.

She did not see Ms. Lang's bedroom or personal belongings aside from toiletries in the bathroom.

### Llewellyn Moreno

After being duly sworn, Llewellyn Moreno provided the following testimony by telephone:

He heard about the property through Eddy Orton, who was an acquaintance of an acquaintance. He moved into the property no later than March or April of 1987 and possibly earlier. He knew this because he worked on the property to clean the Unit, install walls, and add floors and other amenities to the Unit before finding out in early June 1987 that his father had been hospitalized. He lived at the property while working on the property. However, he did not move in until the floors were laid and soot removed from the Unit.

He recalled signing a lease but does not remember the lease terms, except the property being a live/work unit. He lived there for approximately one year.

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<sup>15</sup> Exhibit 55.

### Unit #31

The Unit was two-level. The Unit had plumbing, a bathroom, and kitchen appliance hook-ups. There were deposits of soot on the rafters. The second-floor supports also had soot.

He installed some walls, flooring on top of the existing flooring, kitchen counters, a refrigerator, and a stove. When he moved in, the Unit had running water, a full bathroom, a kitchen sink, gas heating, and a hook-up for a gas stove. He was the first Tenant in unit #31.

He did not understand that the corresponding rent for the Unit reflected that he would be cleaning and working on the Unit and that the rent was proportional to the work. He does not recall those terms being explicitly discussed with Mr. Orton. He did not get permits from the city to perform the work on the property.

He knew that other tenants routinely did interior work to improve their units. Mr. Orton visited his Unit and praised him for the work he did.

Susan Nickel took over the Unit in April 1988.

### Tenants

There were several "generations of tenants," meaning tenants moved in at different times as the units were built. The property had been built in stages. His Unit was built during the "third stage" of construction.

He does not know when other tenants moved in, but most seemed settled, and their unit interiors were fully built. He does not know how many other tenants were at the property. There were some remaining spaces to be converted into units when he moved into the property.

He remembers fellow tenants Mark Wagner, Liv Goodman, and a clothing designer named Jeri.

### Owners

He knew Eddy Orton. Their interactions were cordial and professional.

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Occupancy Permit

He was unaware that unit #31 had an occupancy permit issued in April 1987.

**Appearances: December 18, 2019**

Attorneys for Owners: Servando Sandoval, Lerna Kazazic

Attorneys for the represented tenants: Leah Hess, Hasmik Geghamyan

Represented tenants:

Unit #2: Helena Martin, Gary Doyle, Megan Girart, Martin Laurent, and Helena Stoddard.

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Unit #59: Joshua R Miller.

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Unit #38: Kevin Baldwin, Maelle Boer, Chris Keller, and Mael Ryckeboer.

Unit #42: Michael Parker.

Unit #44: Genevieve Busby, Kyle Charleton, Martha Fehrman, Tiana Fraser, and Mikhall Lapin.

Unit #45: Lael Eisenlohr, Robert Jacobs, and Leah Samelson.

Unit #46: Brooke Rollo.

Unit #47b: Johnathan Bishop, Rachel Cole-Jansen, Aimee Seaver, and August Toman-Yih.

Unit #48: Matthew Grahm, Robert Hart, and Noel Rolden.

Unit #49: Michael Blodgett.

Unit #50: Loreley Bunoan and Gary Prince.

Unit #51: Gregg Martinez.

Unit #55: Yelena Phillipchuck, Julian Vielva, and Serge B Yelena.

Unit #56: Stephanie Kavakis and Jared Kadish.

Unit #57: Efrem Rensi, and Reuben Tomar.

## PROCEDURAL BACKGROUND/INTRODUCTION

### Subpoena

The subpoena contained an attachment. The attachment is a request to include all records for all units at the property, including persons who listed the property (all units) as their residential address for voting between December 1, 1985 – October 12, 1987.

The response to the subpoena requesting the list of voters who registered the property as their residential address from December 1, 1985 – October 12, 1986, was inadequate. Information for one of the units was provided, not the entire property. Only two residents (possibly related) listed the property as their address with the Registrar of Voters in 1986. The parties agreed that a copy of the subpoena and results was necessary to ensure compliance and completeness of all records according to the subpoena for the timeframe 1985 – 1987.<sup>16</sup>

Attorneys for the represented tenants renewed their request for the subpoena to be expanded and include registration records from 1975 – 1985, alleging that based on evidence not yet shared, it was plausible for people to reside at the foundry before January 1, 1983.<sup>17</sup> Second, they asserted that the Registrar of Voters failed to comply with the subpoena when they only supplied records from 1985 – 1987.

### Permanent and Temporary Certificates of Occupancy

Attorneys for the Owners allege that tenants were living at the property after issuing certificates of occupancy being issued and finalized for the property. The Tenant Attorneys claim that no certificates of occupancy were issued before October 1987, temporary or permanent.

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<sup>16</sup> These actions are intended to gain clarity about the specific timeframes that were to be included in the document, as well as heading and acronym clarification. The document contained acronyms, “dms”, and “nr” that were indiscernible and without further clarification, cannot be ruled out as immaterial to the facts at issue.

<sup>17</sup> The request was denied.

Conclusion

The parties stipulated that a new hearing date must be provided if the Registrar of Voters produces a new document. It was agreed that the hearing officer should schedule a hearing for counsel from both parties to inspect the document.

If needed, February 24, 2020, was selected as the next hearing date, a Monday, as previously agreed, consistent with the availability of the parties. A subsequent hearing will not be required if no additional information is provided. In the alternative, a status conference may be scheduled.

**EVIDENCE: DECEMBER 18, 2019**

**Christopher Vivona**

After being duly sworn, Christopher Vivona provided the following testimony:

His neighbor, James Alexander, was a building contractor and employed him as a carpenter. He was the carpentry foreman at the Vulcan Foundry Studios from the spring of 1985 to sometime in 1986. He was not a general contractor.

He and his crew had to work within the space in the building, not being used as a foundry.

At the inception of his work at the subject property, the foundry was still pouring molten steel, either functioning or being dismantled during his employment. The foundry ceased operating in the summer of 1985.

Crew

He worked with four to six persons at the subject property to convert the buildings to live/work units. After the purchase, he and the crew were the first workers employed at the property.

He was unaware if other workers completed additional work after completing his carpentry assignment but acknowledged it was possible. He remembered working with David Cheek, who was not a tenant as part of his crew.

He worked at the larger two buildings located north of the subject property. He did not recall performing any construction on the smaller building. He estimated five

or six units in the smaller building but was unsure. His work was indoors, not considered seasonal or impacted by weather conditions.

His assignment was to build out the perimeter, which included framing walls, installing sheetrock, building the deck, and installing stairs in anticipation of the live/work units. Utilities, including electrical, and plumbing, were completed by other workers, and he did not interact with any of the other workers outside of his crew and his work assignments.

During his tenure, he worked on all units in the larger building, approximately twenty-five to thirty-five units.

Generally, they worked on three to five units at a time. After completing those units, they would move on to the next group of units. He could not recall any specific contractors or work done on the units after completing his duties.

#### Unit Completion

He estimated that the large units took thirty to forty days to complete.

He assumes construction continued at the property after his tenure because all units were not built or habitable when his project concluded. He estimated that a third of the larger building units were completed when his employment concluded.

The Vulcan Café opened at the end of 1986, right before his employment at the property concluded, and he remembered eating there. The smaller building housed the Vulcan Café and was nearest the side alley from 45<sup>th</sup> Avenue.

#### Unit Habitability

His completed units did not contain utilities, and he would not consider the units to be habitable after his work. He believed this required more work to make the units habitable and rentable to tenants.

He could not recall if any units were completed and habitable by the end of 1985.

After the foundry operations ceased, foundry personnel cleaned the area formerly occupied as a foundry. This allowed him and his crew to continue their carpentry assignments in space vacated by the foundry.

He was not involved or aware of any advertisements for the live/work units. He was not a tenant at the property. He lived at a separate residence nearby. He recalled that Allison Cheek was a tenant at the property and thought she lived there before registering the art gallery as a non-profit organization.

He remembered Randy Hussong as a tenant and classmate at school.

He had no knowledge of any tenants in the smaller building during his employment.

He was unaware of who occupied the units he completed. He does not recall tenants moving into units in the larger building, as the units were completed, but admitted it was possible. He did meet Allison Davis and Rick Tringally, who were tenants, but he does not remember if he met them while working at the property or later.

While he had no specific recollection of non-workers or non-tenants at the property, there may have been people at the property who were not tenants, or part of the crew present there for varied periods.

He remembered Jill Garrelick but did not think she was a tenant at the property.

### Art Gallery

He was involved with the art gallery, "Gallery 44", at the subject property.

The art gallery was opened after most of the construction work on the property concluded, and tenants moved in, but it could not say if all of the construction had concluded. He was involved with the art gallery at the end of 1986 or after that, as he was no longer working at the property when he became involved with the gallery.

James Alexander donated the space for the art gallery for its exclusive use. The art gallery was established as a non-profit organization.

Ms. Cheek was responsible for organizing the non-profit. He does not recall if the art gallery opened before filing the articles of incorporation, which he does remember signing and were completed in 1988. He does not remember when the art gallery opened but was interested in showing his artwork.

He met Tim Angler, who was also an artist and showcased artwork at the gallery; he was not a tenant at the property.

### Documentation

He did not create or file any permits or certificates of occupancy. His understanding was the owners, and the contractors were responsible for any permits or certificates of occupancy.

### Declaration

He asserts that the information in the declaration is true and correct to the best of his knowledge and was prepared by Mr. Joffe.<sup>18</sup> The declaration indicates that he signed the art gallery articles of incorporation on February 29, 1988.

### Randy Hussong

After being duly sworn, Randy Hussong provided the following testimony:

He is a friend of Chris Vivona and heard of the subject property through Mr. Vivona, who suggested it would be an excellent place to rent a live/work unit.

James Alexander employed him as a painter. He did not immediately move in when he began working at the property but was one of the original tenants to live on the property.

### Unit #18

He began living at the property in the summer of 1985 while married to his then-wife, Tracy and recalled having his first anniversary party in February 1986. He moved out of the property in October 1989.

He painted fifty units, including unit #18, which he rented and moved into. He moved in after his employment began.

Upon move-in, the Unit had heat, sheetrock, a bathroom with a sink, bedroom stairs, a locking front door, and six skylights. The utilities already activated upon move-in were: water, electricity, gas, and a space heater. He installed his own

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<sup>18</sup> The declaration was no admitted, however, the attachments were admitted with no objection.

kitchen cabinets and stove. He didn't like the Home Depot cabinets the owner was installing.

Unit #18 was fifty yards away from the foundry.

He could not remember which building letter he lived in. One of the buildings was very large, separated from a smaller building that housed the Vulcan Café. There was a driveway separating the two buildings.

Unit #18 was in the larger of the two buildings.

### Voter Registration

He did not remember if he registered to vote using his address at the subject property.

### Employment

He began working as a painter, at the subject building, in May 1985. He began painting in the smaller of the two buildings, which included the Vulcan Café.

Units #17 - #26 were the first to be completed in the larger building and, therefore, the first to be painted in the larger building.

To paint a unit, he had to build scaffolding to paint high areas and, using inexpensive Kelly-Moore paint in buckets with an airless paint sprayer; he would paint one coat of paint inside and outside. He painted 54 units during his employment, taking over a year to paint all the units.

While working as a painter at the subject property, he did not complete any documents for his employer or the city.

He worked with three other painters; Jonathan Garrett, Steve Dolan, and another person whose name he cannot remember, who became a chef at the Vulcan Café.

### Tenants

He recalled seeing tenants moving into the property starting in May 1985 but was unable to determine which tenants moved in at that time.

He recalled seeing tenants move into the smaller two buildings when he moved into the property, in the summer of 1985, within thirty days of the units being painted.

He does not remember when his fellow tenants moved in, except for J.C. Garrett. He recalls Mr. Garrett moving into the property at the end of 1985. He remembers this because Mr. Garret worked with him as a member of the painting crew.

He remembered David Cheek, who lived nearby and hung around the property. His sister is Allison Cheek. He also remembered Ms. Cheek's partner, Rick Tringally. Ms. Cheek and Mr. Tringally lived at the property.

He met Ms. Cheek in 1984 at a different live/work space called "Twin Palms" gallery in San Francisco.

He also remembered the following tenants: J. C. Garrett, Todd Bucklehide, Ron, and Bob Drago.

He was unsure if tenants moved into the units thirty days or more after completing his painting work in each Unit.

#### Foundry Operation Dates

When people began moving into Building A, the first building to rent units to tenants, the foundry had ceased operations and was moving out. It took the foundry personnel a few months to move out their equipment. He recalls this happening around the end of 1985.

The foundry was operating at the time he began painting. He could not confirm if the foundry had business operating hours while he was working or living at the property. The section of the larger building where the foundry was still operating was where units 50 – 59 would eventually be housed.

He stated that in 1985, when he moved into unit #18, the foundry was no longer operating; precisely, it was not casting metal when he moved into the property, but they were moving and clearing equipment. He had no actual knowledge of when the foundry was operating and when operations ceased. He was not concerned about air quality resulting from work done at the foundry. He said the area "stunk" with dust and smells. He was unsure if the odors and dust came from the foundry, railroad tracks, or the Clorox company.

## Building A

He remembers tenants moving into Building A after January 1985 and that people were living in Building A before his moving into unit #18.

## Construction

He recalled a construction process involving unit framing, sheetrock installation, plumbing fixtures, and gas lines. This included building shelves and doors and adding walls. After that, tenants would rent the Unit and continue any additional work there.

Construction stopped sometime in 1986, including utility installation and painting.

The last section of the larger building built out was in the northernmost section of the larger building. The last section to be converted into units was where the foundry operated and became units 50 – 59.

This section of the larger building had a big roll-up door and was converted into four units. Those were the last units he painted. All units were occupied by 1988, and there was no continuing construction on units in 1989.

## Vulcan Café

The Vulcan Café was not open in 1985. The space was fully built but did not open until late 1985 or 1986.

## Gallery 44

In 1986, he negotiated with James Alexander about the space. He was confident of the year because the section of the gallery's property was completed until then.

Mr. Alexander donated the space after he and others asked if they could open a gallery. The space was raw, with no bathroom, only sheetrock and heating.

Ms. Cheek helped organize and incorporate the art gallery. The gallery opened and had many events before the completion of the articles of incorporation. The gallery did not last long because Mr. Alexander soon began asking for money to house the gallery.

Mr. Vivona's Testimony

He heard Mr. Vivona's entire testimony. He heard that Mr. Vivona began work in 1985, and when his portion of the work was done, the units did not have utilities.

Building Permit Application

He was unaware of any building permits being pulled for the two buildings or sections of the buildings, as each section became occupied.

He was unaware that the property's building permit application requesting electrical and plumbing was filed on December 20, 1985.<sup>19</sup>

Elizabeth Ross

After being duly sworn, Elizabeth Ross provided the following testimony:

She lived at the property from October/November 1987 to the spring 1990.

She heard about the property through her friends, Allison Cheek and Rick Tringally. She worked with Rick in San Francisco and had a studio in the same warehouse that Ms. Cheek and Mr. Tringally occupied.

Prior she moved in, she was traveling for six months. She left her belongings with Ms. Cheek in March of 1987. She recalls moving her items from their Unit to her Unit when she moved into the property.

Unit #54

She was not the first Tenant in the Unit, based on things left before her arrival, including a pink refrigerator and gas stove. Tenants provided their stoves and refrigerators.

She signed a lease for the Unit at the subject property with either James Alexander or Eddy Orton.

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<sup>19</sup> Exhibit B.

## Tenants

She does not know when Ms. Cheek and Mr. Tringally moved into the property in 1986 or 1987 after losing tenancy in their San Francisco residence.

There were other tenants at the property when she moved in, including Denise Owen, Dicky and Linda Vivenza, Kim, The Bordeauxs, Kenny Jackson, Tahani, Max Gardener, Bill Nolan, Steve Dolan, Randy and Tracy Hussong, J.C. and Madeleine Garret, K.C., and Arturo Rosenberg.

She had construction in her Unit to transform it from a large space to include a balcony walkway connecting to the second bedroom, bathroom, and kitchen area.

Another unit, possibly two, was also being created in her courtyard.

## Gayle Bryan

After being duly sworn, Gayle Bryan provided the following testimony:

She lives in Bellevue, Washington, and joined via telephone conference. She was reminded not to review documents while providing testimony because others could not see her referencing documents.

She moved into the property from 1986 to 1987 and remained a tenant for three years with her husband, Patrick Bryan. She is an artist specializing in textile art.

## Unit #21

She moved into the property, intending to utilize it as a live/work unit.

A parking driveway separated her building and Unit from the second building. There were other units in her building, including the Vulcan Café.

Her Unit was large. There was a large downstairs area with stairs going up to a loft area with a kitchen, bedroom, and bathroom. She installed her stove and refrigerator. There were no ceilings in the Unit, just a roof. She paid extra to have ceilings installed below the corrugated roof.

There was soot in the Unit. The floors, ceilings, and beams had soot. The beams had about three inches of soot, and the floor had a constant film of soot. She

believes her neighbors, Mr. and Mrs. Steele, “pulled something” in their Unit, which dumped soot into her Unit and onto her husband, Mr. Bryan.

Her Unit had two doors, one from the hallway near the post office and one to the patio. On the other side of the patio, three doors were adjoining other units behind her Unit and patio.

Her Unit experienced flooding often.

### Owners

Mr. Orton and Mr. Alexander were the property owners.

### Tenants

She knew of tenants living at the property before her moving into the property. She knew Valerie Steele and her husband Richard moved into the property one month after she and Mr. Bryan moved in.

The tenants stopped moving in during the three months before she moved. The property was fully occupied.

### Foundry

The foundry was still operating when she was a tenant. Mr. Orton showed her the foundry sometime during her tenancy at the property. She does not know why Mr. Orton showed her this.

She observed men working in the foundry. She did not know the work at the foundry, although she observed flames. She does not know why flames are coming from the foundry. She believes equipment was also being dismantled. She referred to this as “a different world” from the units.

She does not know when the foundry ceased operating but thinks it may have ceased operations in 1987.

The foundry was located behind her Unit’s patio and the adjoining units, not directly behind her.

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Mr. Bryan

Her husband, Mr. Bryan, may have attended Holy Names while they lived at the property. He graduated in 1987 from Holy Names. He attended school the entire time they lived at the property; she is unsure if it was Holy Names or another school because he went to several schools.

Registered Voter

She and Mr. Bryan were registered to vote while living at the property.

Continued Construction

Units continued to be built during her tenancy at the property. People were moving into the property after she moved in. After units were built, tenants would move in.

She does not know if more units were built in the building where the operating foundry was located once the foundry ceased operations.

Allison Davis

After being duly sworn, Allison Davis (formerly Allison Cheek) provided the following testimony:

She is a prior resident of the property. She began living there sometime in 1986 or 1987 for one year. She still technically resided at the property until September 1989 but mostly stayed in Reno for a legal clerkship. She recalls commuting to U.C. Davis from the property school.

She lived at the property with her husband, Ricardo Tringally. Mr. Tringally was an artist who painted large paintings.

Mr. Tringally found the property. She and Mr. Tringally moved there so Mr. Tringally could have live/work space for his paintings and sculptures. They had previously lived in a loft space that was not legal.

David Cheek is her brother. He worked at the property. He did not live at the property.

She could not recall how she found out about the property.

## Unit

Her Unit was either unit #24 or 25; she could not remember definitively. Closer to the street and opened into a courtyard, surrounded by other units. It was a large open space with a kitchen, a stove, a refrigerator, sinks, a bathroom, and a deck. The Unit had an open ceiling, and soot fell from the roof into the Unit. It was very dirty.

She recalled the Vulcan Café across the parking lot from the building she lived in at the property.

## Tenants

She remembered Max Gardner, Chris Vivona, Kenny Jackson, Elizabeth Ross, Mr. Boudreaux, Valerie Smith, and her husband, living at the property. She did not remember any other tenants at the property.

She knew Ms. Ross before moving to the property while living in San Francisco. She is unsure of when Ms. Ross moved to the property.

Ms. Smith and her husband lived near her, specifically to the left of her Unit.

She believed she was part of the first wave of tenants; however, there were residents at the property when she and her husband moved in. Therefore, she is unsure.

She does not recall how many tenants were living at the property. Units were still being built, there was continued construction, and tenants moved in after she moved into the property.

Construction workers were working on units when she moved into the property.

## Gallery 44

She took part in incorporating the gallery and worked to open the gallery along with other tenants.

The work to open the gallery began in the late 1980s.

The gallery operated for a short period of time.

### Voter Registration

She is unsure if she was registered to vote while living at the property.

### Foundry

The foundry was not operating at all when she moved in.

### Education

She transferred to the U. C. Davis School of Law during the 1986 – 1987 academic year. She lived at the Vulcan lofts during her attendance but did not recall precisely when she moved in.

She had a separate apartment in Reno for her clerkship and visited the property on weekends, or her husband would visit her in Reno. Her husband remained physically domiciled at the property for her clerkship. Her official address during her clerkship continued to be at the property.

### Karen Beck

After being duly sworn, Karen Beck provided the following testimony:

She was a prior property resident from late 1985 or early 1986 through January 1988, when she moved out. Her name was Karen Smith at the time of move-in.

She knows that she moved out of the property in January 1988 because she was in an accident in September 1987 and could not use the stairs connected to her Unit. Her inability to traverse the stairs led to her decision to leave in January 1988.

She moved into the Unit with her then-husband, Peter Smith. They were married in either 1980 or 1981. He is now known as Peter Mars.

### Unit #5

She lived in unit #5 for her residency at the property. The Unit had a small kitchen with a refrigerator, sink, and no countertops. The Unit had a loft, a set of windows that opened, a sleeping area, a platform with stairs, and a wall which created a semi-enclosed space.

She was the first occupant of the Unit. She knew this because the property was newly renting units. More units were being built when she moved into the property and throughout her tenancy.

She did not recall seeing construction crew members or workers at the property during her tenancy.

### Voter Registration

She is unsure if she was registered to vote while living at the property.

### Tenants

She recalled fellow tenants artist/painter Mark Wagner, Ramona, Antoine, and the Vulcan café next door to her Unit. These were the only other tenants she recalled at the property.

She does not know if these tenants moved into the property before or after she did.

She did not recall Randy Hussong and Chris Vivonna.

She is unsure if other tenants lived in the building, and she resided in the property.

### Vulcan Café

She is unclear if the Vulcan Café was opened when she moved into the property. However, she does recall it being opened shortly after moving to the property.

The Vulcan Café opened in late 1986. She remembers eating pie at the Vulcan Café and being displeased with the taste. Shortly after, she began baking pies for the Café to sell. She baked pies for the Vulcan Café between 1986 – 1987.

This knowledge did not change her assertion that she moved into the property in either late 1985 or early 1986, through January 1988.

### Foundry

The foundry was not operating when she moved into the property. She explained that the foundry had completely closed while units were rented for live/work.

She does not recall seeing workers near the foundry area.

**Appearances: September 20, 2021**

**PARTIES:**

Attorneys for Owners: Servando Sandoval, Lerna Kazazic

Attorneys for the represented tenants: Leah Hess, Hasmik Geghamyan

Represented tenants:

Unit #2: Helena Martin, Gary Doyle, Megan Girart, Martin Laurent, and Helena Stoddard.

Unit #3: Andrea Ives, Sara Le Cornec, Sarah Noelle, Amy Wieliczka, and Haley Wilson.

Unit #4b: Charles Long.

Unit #5: Bryanne Crabtree.

Unit #8 Kathleen Callahan, and Lia Walker.

Unit #17: Savannah Crespo, Pamela Hearne, Angeline Huang, Serena Kirk, Adam Rebellion, Sarah Rund, and Ezra Unterseher.

Unit #18: Aileen Lawlor.

Unit #19: Annmarie Bustamante, Ross Duncan, Takehito Etani, Harel Meri, and Hadas Teitel.

Unit #21: Ziaa Szymanski, Arthur Cardenas, John Goda, and Zach Stockman.

Unit #23, Unit #24: Ross Clark.

Unit #25: Leslie W. Breanna, Myles Faigin, W. Breanne Leslie, Lucid Dream Lounge, Inc., and Jakob Valvo.

Unit #26: Darin Marshall and Brittany Valdez.

Unit #31: Deborah Weber.

Unit #36: Thelma Andree and Matthew Hudson.

Unit #39: Woodruff Burley, Garth Ferris, Jeremy Gage, Sarah J Paturzo, Eric Thorsen, and Darius Todar.

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Unit #41: Torey Broderson, Michael Mann, Joseph Robertson, and Daniel Wang.

Unit #43: Pamela Mangan and Randall Spencer.

Unit #46: Ezra Eismont.

Unit #52: Troy Clancy, Bryan Kitchens, Cassie McKenney, and Tzong Rogers.

Unit #53: Colin Sullivan, Geneva Harrison, Sandra Lawson, and Kathryn Stewart.

Unit #54: Rebecca Burnett, and Alfonso Kellenberger.

Unit #58: Justin Archer, Christian Eichelberger, Bolton Littlefield, Matthew Martin, and April Miller

Unit #59: Joshua R Miller.

Unrepresented Tenants:

Unit #1: Michael Robinson, Cassie Stuurman, and Michael Lichen.

Unit #6: Denise Marie Kennedy and Nick Negusse.

Unit #10: Jeremy Simmons.

Unit #11: Stephanie Kavrakis and Barbara Rodgers.

Unit #12: David Bernbaum, and Yasmine Salem.

Unit #13: Jennifer Jennings, Gabriel Penifield, and Hanna Tatar.

Unit #14: Krystal Bell, Ian Fernandez, and Miles Ross.

Unit #20: Josh Bettenhausen, and Kristi Walker.

Unit #21: Ziaa Szymanski, Arthur Cardenas, John Goda, and Zach Stockman.

Unit #22: Austin Maples-Fleck, and Lilli Thomas-Brumme.

Unit #27: Brandon Mullins.

Unit #28: Marshal Lane.

Unit #29: Amelia Adams and Michael Cavanaugh.

Unit #30: Anari Cade and Eric Wilson.

Unit #32: Susannah Israel.

Unit #33: Dani Reagan and Kelley Halvorson.

Unit #34: Jeff Maloney.

Unit #35: Juliana Broek, Rigel Juratovac, and Susan Leffingwell.

Unit #37: Fred Gromadski and Mark Leavitt.

Unit #38: Kevin Baldwin, Maelle Boer, Chris Keller, and Mael Ryckeboer.

Unit #42: Michael Parker.

Unit #44: Genevieve Busby, Kyle Charleton, Martha Fehrman, Tiana Fraser, and Mikhall Lapin.

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Unit #56: Stephanie Kavakis and Jared Kadish.

Unit #57: Efreem Rensi, and Reuben Tomar.

A status conference was held via Zoom in accordance with the covid-19 pandemic social distancing requirements set forth by Alameda County.

### **EVIDENCE: September 20, 2021**

#### Alameda County Registrar of Voters Document<sup>20</sup>

In response to the subpoena, the Alameda County Registrar of Voters provided a document detailing people who registered to vote with the property listed as their residence. The timeframe of the subpoena was from December 1, 1985 – October 12, 1987.

#### Document Details

The document included the following five columns of information: 1) date of microfiche listing; name; 2) affidavit #; 3) registration date; 4) apartment number; and 5) comments.

#### Registration Date Column Header

It was unclear if the header represented the first time the Tenant registered to vote in Alameda County or registered to vote at the property in question.

#### 1982 Registration Date

The owners' attorneys pointed out that one person registered to vote in 1982 and indicated they lived at the property in unit #1. This date would conflict with all evidence and testimony indicating the property was an operating foundry in 1982. Additionally, construction did not begin on the first live/work unit until 1985 at the earliest.

#### Voter Registration Prior to October 12, 1987

Ms. Geghamyan argued the document registration date column shows tenants living at the property before issuing the final certificate of occupancy. She further

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<sup>20</sup> Pursuant to the stipulation between the City and the Registrar of Voters, the parties were admonished that copies of the document cannot be disseminated but can be shown during this hearing. As the agreement was made prior to the pandemic, that has been expanded to include screenshots, and other means of preserving images of the document.

asserted this corroborated the testimony of past tenants indicating they lived at the property before October 12, 1987.

### Temporary Certificate of Occupancy

There are three structures on the property A, B, and C. Building C's temporary certificate of occupancy was issued in April 1987 and finalized in May 1987.

### Appearances: March 7, 2022

Attorneys for Owners: Servando Sandoval, Lerna Kazazic

Attorneys for the represented tenants: Leah Hess, Hasmik Geghamyan

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Unit #12: David Bernbaum, and Yasmine Salem.

Unit #13: Jennifer Jennings, Gabriel Penifield, and Hanna Tatar.

Unit #14: Krystal Bell, Ian Fernandez, and Miles Ross.

Unit #20: Josh Bettenhausen, and Kristi Walker.

Unit #21: Ziaa Szymanski, Arthur Cardenas, John Goda, and Zach Stockman.

Unit #22: Austin Maples-Fleck, and Lilli Thomas-Brumme.

Unit #27: Brandon Mullins.

Unit #28: Marshal Lane.

Unit #29: Amelia Adams and Michael Cavanaugh.

Unit #30: Anari Cade and Eric Wilson.

Unit #32: Susannah Israel.

Unit #33: Dani Reagan and Kelley Halvorson.

Unit #34: Jeff Maloney.

Unit #35: Juliana Broek, Rigel Juratovac, and Susan Leffingwell.

Unit #37: Fred Gromadski and Mark Leavitt.

Unit #38: Kevin Baldwin, Maelle Boer, Chris Keller, and Mael Ryckeboer.

Unit #42: Michael Parker.

Unit #44: Genevieve Busby, Kyle Charleton, Martha Fehrman, Tiana Fraser, and Mikhall Lapin.

Unit #45: Lael Eisenlohr, Robert Jacobs, and Leah Samelson.

Unit #46: Brooke Rollo.

Unit #47b: Johnathan Bishop, Rachel Cole-Jansen, Aimee Seaver, and August Toman-Yih.

Unit #48: Matthew Grahm, Robert Hart, and Noel Rolden.

Unit #49: Michael Blodgett.

Unit #50: Loreley Bunoan and Gary Prince.

Unit #51: Gregg Martinez.

Unit #55: Yelena Phillipchuck, Julian Vielva, and Serge B Yelena.

Unit #56: Stephanie Kavakis and Jared Kadish.

Unit #57: Efrem Rensi, and Reuben Tomar.

## PROCEDURAL BACKGROUND/INTRODUCTION

A Status Conference was held remotely in accordance with the covid-19 pandemic social distancing requirements set forth by Alameda County to review the status of the Exhibits. The following are the Stipulated Exhibits:

### Exhibit AA

This exhibit includes 2018, 2019, 2020, and 2021 RAP fees that were augmented to include 2022 RAP fees. On behalf of the landowners, Ms. Kazazic's office provided separate service to the attorneys for the represented and unrepresented tenants.

### Exhibit BB

A redacted copy of the list was obtained from the Alameda County Voter Registrar's Office, and a copy of the sealed, unredacted list.

### Submitted by Owner

Exhibits A through J

### Submitted by Tenants

Exhibits 10, 15 – 21, 45 – 51, 52 – 54, and 56 – 58.

The following exhibits, submitted by Tenants, have been deferred: 2, 6, 8, 13, 44, and 55.

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## Tenant Brief

Unrepresented tenants included their electronic mail addresses in the chat section of the Zoom status conference to receive a copy of the closing briefs from the Owners and Tenant's Attorneys.

### **ISSUE(S) PRESENTED**

1. Is the subject property exempt from the Rent Adjustment Ordinance (Ordinance) as new construction?

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Is the subject Unit exempt from the Rent Adjustment Program as new construction?**

The Oakland Rent Adjustment Ordinance states that dwelling units are not "covered units" under the Ordinance if such units "were newly constructed and received a certificate of occupancy on or after January 1, 1983."<sup>21</sup> The Ordinance states:

"To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential."<sup>22</sup>

An owner has the burden of proof on all elements of a claim for exemption. It was held that Owners Orton and Alexander purchased the subject property in December 1985 and then converted the foundry into 59 residential artists' live/work units in three different buildings.<sup>23</sup> Moreover, no evidence contradicted those findings.

The undisputed evidence establishes that at the time of the appraisal, before the purchase, the subject property was an operating foundry; the subject property was purchased on December 1, 1985, by Mr. Orton and Mr. Alexander as Athena Development and converted into 59 residential live/work units. The undisputed evidence establishes that the new Owners filed for a permit application for

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<sup>21</sup> O.M.C. § 8.22.030(A)(5)

<sup>22</sup> O.M.C. § 8.22.030(A)(5)

<sup>23</sup> *Vidor v. City of Oakland Community & Economic Dev. Agency*, No. A120973 (Cal. Ct. App. Oct. 6, 2009).

Building A requesting electrical and plumbing and a Building B permit application. The record contains no evidence of a Certificate of Occupancy issued before the December 1, 1985 purchase date. Moreover, there is no evidence of residential occupancy before the purchase date. There is evidence, through the records provided by the Registrar of Voters, that in 1982, at least one person claimed to live at the subject property. However, no evidence supports that claim.

There was substantial witness testimony regarding the dates of move-in and construction, which directly conflicted with the established record of the purchase date and evidence of foundry operations. Additionally, many witnesses testified credibly that they became aware of the subject property directly or indirectly from Owners Orton and Alexander. It seems unlikely that the tenants who moved in, and detailed their connections to Owners Orton and Alexander, moved in before they purchased the subject property. However, their accounts were consistent with moving into the subject property as part of the live/work environment that Owners Orton and Alexander created after purchasing the subject property in December 1985. The witnesses' recollections of dates in conflict with the established lack persuasiveness as to the dates but are otherwise credible as to the accounts of living on the subject property.

The testimony and evidence established by a preponderance that the subject property was newly constructed after the purchase of the property in December 1985. Likewise, overwhelming evidence established that the subject property was not residential before the purchase in 1985. Furthermore, the evidence establishes that residential occupancy started at the subject property after the purchase in 1985. A *Certificate of Occupancy* issued by the City of Oakland for the residential use of the building was finalized on October 12, 1987. Therefore, the owner has met its burden of proof to establish that the subject received a certificate of occupancy on or after January 1, 1983. Accordingly, the subject property is exempt from The Ordinance.

Based on the foregoing, no other issues can be reached, and the Tenant's petitions are hereby dismissed for lack of jurisdiction.

### **ORDER**

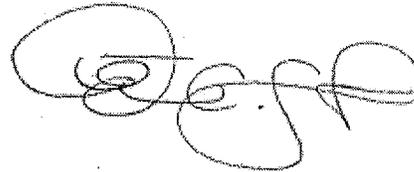
1. Petition L19-0013 is granted.

2. Petitions T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022, T19-0023 and T19-0236, are dismissed.

3. The subject units are exempt on the ground that it is new construction.

4. The subject property is not exempt from the Rent Adjustment Program Service Fee.

**Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within seventeen (17) calendar days of electronic service or twenty (20) days if served by first-class mail. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day. The date and service method are shown on the attached Proof of Service.



Dated: April 30, 2023

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Élan Consuella Lambert  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number(s): L19-0013, T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022, T19-0023, T19-0236**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Hearing Decision

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Oakland, CA 94612

**Owner Representative**

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Oakland, CA 94612

**Owner Representative**

Servando Sandoval, Pahl & McCay  
225 W. Santa Clara Street Suite 1500  
San Jose, CA 95113

**Tenant**

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Oakland, CA 94601

**Tenant**

Aimee Seaver  
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Oakland, CA 94601

**Tenant**

Alfonso Kellenberger  
4401 San Leandro Street #54  
Oakland, CA 94601

**Tenant**

Amelia Adams  
4401 San Leandro Street #29  
Oakland, CA 94601

**Tenant**

Anari Cade  
4401 San Leandro Street Unit # 30  
Oakland, CA 94601

**Tenant**

Andrea Ives  
4401 San Leandro Street #3  
Oakland, CA 94601

**Tenant**

Andrew Pulkrabek  
4401 San Leandro Street #18  
Oakland, CA 94601

**Tenant**

Angeline Huang  
4401 San Leandro Street Unit # 17  
Oakland, CA 94601

**Tenant**

Annmarie Bustamante  
4401 San Leandro Street #19  
Oakland, CA 94601

**Tenant**

April Miller  
4401 San Leandro Street #58  
Oakland, CA 94601

**Tenant**

Arthur Cardenas  
4401 San Leandro Street #21  
Oakland, CA 94601

**Tenant**

August Toman-Yih  
4401 San Leandro Street #47A  
Oakland, CA 94601

**Tenant**

Austin Maples-Fleck  
4401 San Leandro Street #22  
Oakland, CA 94601

**Tenant**

Barbara Rodgers  
4401 San Leandro Street #11  
Oakland, CA 94601

**Tenant**

Bolton Littlefield  
4401 San Leandro Street # 58  
Oakland, CA 94601

**Tenant**

Brandon Mullins  
4401 San Leandro Street #27  
Oakland, CA 94601

**Tenant**

Brianne Crabtree  
4401 San Leandro Street #5  
Oakland, CA 94601

**Tenant**

Brittany Valdez  
4401 San Leandro Street #26  
Oakland, CA 94601

**Tenant**

Brooke Rollo  
4401 San Leandro Street Unit # 46  
Oakland, CA 94601

**Tenant**

Bryan Kitchens  
4401 San Leandro Street #52  
Oakland, CA 94601

**Tenant**

Cassie McKenney  
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Oakland, CA 94601

**Tenant**

Cassie Stuurman  
4401 San Leandro Street #1  
Oakland, CA 94601

**Tenant**

Charles Long  
4401 San Leandro Street #4B  
Oakland, CA 94601

**Tenant**

Chris Keller  
4401 San Leandro Street #38  
Oakland, CA 94601

**Tenant**

Christian Eichelberger  
4401 San Leandro Street #58  
Oakland, CA 94601

**Tenant**

Colin Sullivan  
4401 San Leandro Street #53  
Oakland, CA 94601

**Tenant**

Dani Reagan  
4401 San Leandro Street #33  
Oakland, CA 94601

**Tenant**

Danny Wang  
4401 San Leandro Street #41  
Oakland, CA 94601

**Tenant**

Darin Marshall  
4401 San Leandro Street #26  
Oakland, CA 94601

**Tenant**

Darius Todar  
4401 San Leandro Street #39  
Oakland, CA 94601

**Tenant**

David Bernbaum  
4401 San Leandro Street #12  
Oakland, CA 94601

**Tenant**

Deborah Weber  
4401 San Leandro Street #31  
Oakland, CA 94601

**Tenant**

Delila Santos  
4401 San Leandro Street #40  
Oakland, CA 94601

**Tenant**

Denise Marie Kennedy  
4401 San Leandro Street #6  
Oakland, CA 94601

**Tenant**

Efrem Rensi  
4401 San Leandro Street #57  
Oakland, CA 94601

**Tenant**

Eric Thorsen  
4401 San Leandro Street Unit #39  
Oakland, CA 94601

**Tenant**

Eric Wilson  
4401 San Leandro Street #30  
Oakland, CA 94601

**Tenant**

Ezra Eismont  
4401 San Leandro Street #46  
Oakland, CA 94601

**Tenant**

Ezra Unterseher  
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**Tenant**

Fred Gromadski  
4401 San Leandro Street #37  
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**Tenant**

Gabriel Penifield  
4401 San Leandro Street #13  
Oakland, CA 94601

**Tenant**

Garth Ferris  
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**Tenant**

Gary Doyle  
4401 San Leandro Street #2  
Oakland, CA 94601

**Tenant**

Gary Prince  
4401 San Leandro Street #50  
Oakland, CA 94601

**Tenant**

Geneva Harrison  
4401 San Leandro Street #53  
Oakland, CA 94601

**Tenant**

Genevieve Busby  
4401 San Leandro Street #44  
Oakland, CA 94601

**Tenant**

Gregg Martinez  
4401 San Leandro Street #51  
Oakland, CA 94601

**Tenant**

Hadas Teitel  
4401 San Leandro Street #19  
Oakland, CA 94601

**Tenant**

Haley Wilson  
4401 San Leandro Street #3  
Oakland, CA 94601

**Tenant**

Hanna Tatar  
4401 San Leandro Street Unit #13  
Oakland, CA 94601

**Tenant**

Harel Meri  
4401 San Leandro Street #19  
Oakland, CA 94601

**Tenant**

Helena Stoddard  
4401 San Leandro Street #2  
Oakland, CA 94601

**Tenant**

Ian Fernandez  
4401 San Leandro Street Unit # 14  
Oakland, CA 94601

**Tenant**

Ian S Nathan  
4401 San Leandro Street #40  
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**Tenant**

Jared Kadish  
4401 San Leandro Street #56  
Oakland, CA 94601

**Tenant**

Jeff Maloney  
4401 San Leandro Street #34  
Oakland, CA 94601

**Tenant**

Jennifer Jennings  
4401 San Leandro Street #13  
Oakland, CA 94601

**Tenant**

Jeremy Gage  
4401 San Leandro Street #39  
Oakland, CA 94601

**Tenant**

Jeremy Simmons  
4401 San Leandro Street #10  
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**Tenant**

John Goda  
4401 San Leandro Street #21  
Oakland, CA 94601

**Tenant**

Johnathan Bishop  
4401 San Leandro Street Unit #47 A  
Oakland, CA 94601

**Tenant**

Joseph Robertson  
4401 San Leandro Street #41  
Oakland, CA 94601

**Tenant**

Josh Bettenhausen  
4401 San Leandro Street #20  
Oakland, CA 94601

**Tenant**

Joshua Miller  
4401 San Leandro Street #59  
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**Tenant**

Julian Vielva  
4401 San Leandro Street Unit # 55  
Oakland, CA 94601

**Tenant**

Juliana Broek  
4401 San Leandro Street #35  
Oakland, CA 94601

**Tenant**

Justin Archer  
4401 San Leandro Street #58  
Oakland, CA 94601

**Tenant**

Kathleen Callahan  
4401 San Leandro Street #8  
Oakland, CA 94601

**Tenant**

Kathryn Stewart  
4401 San Leandro Street #53  
Oakland, CA 94601

**Tenant**

Kelley Halvorson  
4401 San Leandro Street #33  
Oakland, CA 94601

**Tenant**

Kevin Baldwin  
4401 San Leandro Street #38  
Oakland, CA 94601

**Tenant**

Kristi Walker  
4401 San Leandro Street Unit # 20  
Oakland, CA 94601

**Tenant**

Krystal Bell  
4401 San Leandro Street #14  
Oakland, CA 94601

**Tenant**

Kyle Charleton  
4401 San Leandro Street #44  
Oakland, CA 94601

**Tenant**

Lael Eisenlohr  
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Oakland, CA 94601

**Tenant**

Leah Samelson  
4401 San Leandro Street #45  
Oakland, CA 94601

**Tenant**

Leslie W. Breanna  
4401 San Leandro Street Unit # 25  
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**Tenant**

Lia Walker  
616 Santa Rosa Avenue  
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**Tenant**

Lia Walker  
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Oakland, CA 94601

**Tenant**

Lilli Thomas-Brumme  
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Oakland, CA 94601

**Tenant**

Loreley Bunoan  
4401 San Leandro Street Unit # 50  
Oakland, CA 94601

**Tenant**

Mael Ryckeboer  
4401 San Leandro Street #38  
Oakland, CA 94601

**Tenant**

Maelle Boer  
4401 San Leandro Street Unit # 38  
Oakland, CA 94601

**Tenant**

Mark Leavitt  
4401 San Leandro Street #37  
Oakland, CA 94601

**Tenant**

Marshal Lane  
4401 San Leandro Street #28  
Oakland, CA 94601

**Tenant**

Martha Fehrman  
4401 San Leandro Street #44  
Oakland, CA 94601

**Tenant**

Martin Laurent  
4401 San Leandro Street #2  
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**Tenant**

Matthew Grahm  
4401 San Leandro Street #48  
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**Tenant**

Matthew Hudson  
4401 San Leandro Street #36  
Oakland, CA 94601

**Tenant**

Matthew Martin  
4401 San Leandro Street #58  
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**Tenant**

Megan Girart  
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**Tenant**

Michael Blodgett  
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**Tenant**

Michael Cavanaugh  
4401 San Leandro Street #29  
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**Tenant**

Michael Lichen  
4401 San Leandro Street #1  
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**Tenant**

Michael Mann  
4401 San Leandro Street #41  
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**Tenant**

Michael Parker  
4401 San Leandro Street #42  
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**Tenant**

Michael Robinson  
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**Tenant**

Mikhail Lapin  
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**Tenant**

Miles Ross  
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**Tenant**

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**Tenant**

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**Tenant**

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**Tenant**

Randall Spencer  
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**Tenant**

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**Tenant**

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4401 San Leandro Street #26  
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**Tenant**

Resident  
4401 San Leandro Street #9  
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**Tenant**

Resident  
4401 San Leandro Street #4A  
Oakland, CA 94601

**Tenant**

Reuben Tomar  
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**Tenant**

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**Tenant**

Robert Jacobs  
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**Tenant**

Ross Clark  
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**Tenant**

Ross Clark  
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**Tenant**

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Sarah Rund  
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**Tenant**

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Oakland, CA 94601

**Tenant**

Susan Leffingwell  
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**Tenant**

Susannah Israel  
4401 San Leandro Street #32  
Oakland, CA 94601

**Tenant**

Takehito Etani  
4401 San Leandro Street #19  
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The Lucid Dream Lounge  
4401 San Leandro Street #25  
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Oakland, CA 94601

**Tenant**

Thelma Andree  
4401 San Leandro Street Unit 36  
Oakland, CA 94601

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**Tenant**

Torey Broderson  
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**Tenant**

Troy Clancy  
4401 San Leandro Street #52  
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**Tenant**

Tzong Tzu Rogerts  
4401 San Leandro Street #52  
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Yasmine Salem  
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**Tenant**

Yelena Phillipchuck  
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**Tenant**

Zach Stockman  
4401 San Leandro Street #21  
Oakland, CA 94601

**Tenant**

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**Tenant Representative**

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**Owner**

Madison Park Financial/John Protopassas  
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**Owner**

Vulcan Lofts, LLC  
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**Owner Representative**

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**Tenant**

Andrea Ives  
4401 San Leandro Street #3  
Oakland, CA 94601

**Tenant**

Haley Wilson  
4401 San Leandro Street #3  
Oakland, CA 94601

**Tenant**

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**Tenant**

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**Tenant**

Lia Walker  
4401 San Leandro Street #8  
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Tenant

David Bernbaum  
4401 San Leandro Street #12  
Oakland, CA 94601

Tenant

Andrew Pulkrabek  
4401 San Leandro Street #18  
Oakland, CA 94601

Tenant

Annmarie Bustamante  
4401 San Leandro Street #19  
Oakland, CA 94601

**Manager**

Barbara Turner, Madison Park Financial LLC  
155 Grand Avenue Suite 950  
Oakland, CA 94612

Tenant

Ross Clark  
4401 San Leandro Street #23  
Oakland, CA 94601

**Tenant**

Jakob Valvo  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**

Myles Faigin  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**

W. Breanne Leslie, Lucid Dream Lounge, Inc.  
4401 San Leandro Street #25  
Oakland, CA 94601

Tenant

Darin Marshall  
4401 San Leandro Street #26  
Oakland, CA 94601

Tenant

Deborah Weber  
4401 San Leandro Street #31  
Oakland, CA 94601

**Tenant**

Matthew Hudson  
4401 San Leandro Street #36  
Oakland, CA 94601

## Tenant

Woodruff Burley  
4401 San Leandro Street #39  
Oakland, CA 94601

## Tenant

Ian Nathan  
4401 San Leandro Street #40  
Oakland, CA 94601

## Tenant

Daniel Wang  
4401 San Leandro Street #41  
Oakland, CA 94601

## Tenant

Ezra Eismont  
4401 San Leandro Street #46  
Oakland, CA 94601

**Tenant**

Matthew Martin  
4401 San Leandro Street #58  
Oakland, CA 94601

## Tenant

Colin Sullivan  
4401 San Leandro Street #53  
Oakland, CA 94601

## Tenant

Joshua R Miller  
4401 San Leandro Street #59  
Oakland, CA 94601

## Tenant

Tzong Rogers  
4401 San Leandro Street #52  
Oakland, CA 94601

## Manager

Barbara Turner, Madison Park Financial LLC  
155 Grand Avenue Suite 950  
Oakland, CA 94612

Tenant  
Miles Ross  
4401 San Leandro Street #14  
Oakland, CA 94601

**Tenant**  
Ezra Unter Unterseher  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**  
Sarah Rund  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**  
Sarena Kirk  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**  
Savannah Crespo  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**  
Rebecca Cotton  
4401 San Leandro Street #54  
Oakland, CA 94601

**Tenant**  
Charles Long  
4401 San Leandro Street #4B  
Oakland, CA 94601

**Tenant**  
Randall Spencer  
4401 San Leandro Street #43  
Oakland, CA 94601

**Owner**  
John Protopappas, Madison Park  
155 Grand Avenue Suite 950  
Oakland, CA 94612

**Tenant**  
John Reed  
1943 Tyler Street  
San Pablo, CA 94806

**Tenant**

John Reed  
1080 23rd Avenue Unit 104  
Oakland, CA 94606

**Tenant**

Keiko Steimetz  
1943 Tyler Street  
San Pablo, CA 94806

**Tenant**

Keiko Steimetz  
1080 23rd Avenue Unit 104  
Oakland, CA 94606

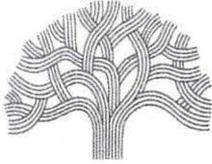
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.  
Executed on **May 23, 2023** in Oakland, CA.



Teresa Brown-Morris

Oakland Rent Adjustment Program

 <p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>  250 Frank H. Ogawa Plaza, Suite 5313  Oakland, CA 94612-0243  (510) 238-3721  CA Relay Service 711  <a href="http://www.oaklandca.gov/RAP">www.oaklandca.gov/RAP</a></p>	For Rent Adjustment Program date stamp.
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## APPEAL

<b>Appellant's Name</b> Helena Martin, Ziaa Szymanski, et. al.	<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
<b>Property Address (Include Unit Number)</b> 4401 San Leandro Street, Oakland, California	
<b>Represented Units: 2, 3, 4B, 5, 8, 17, 18, 19, 21, 23, 24, 25, 26, 31, 36, 39, 40, 41, 43, 46, 52, 53, 54, 58, 59</b>	
<b>Appellant's Mailing Address (For receipt of notices)</b> 4401 San Leandro Street, Oakland, California (see pg.6 of the <b>Proof of Service</b> for the names of all represented tenants and their unit numbers)	<b>Case Number</b> L19-0013 (bifurcated from the rest): T17-0237, T18-0460-0471, T18-0473-T18-0479 T18-0498-0499, T18-0500-0501, T19-0021-0023, T19-0236  <b>Date of Decision appealed</b> Issued April 30, 2023 and Served on May 23, 2023
<b>Name of Representative (if any)</b> Leah Hess  Hasmik Geghamyan	<b>Representative's Mailing Address (For notices)</b> Law Office of Leah Hess, PO Box 8867, Emeryville, CA 94662-8867 Geghamyan Law Office, 1720 Broadway, Suite 430, Oakland, 94612

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board.** *(In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  **The decision is inconsistent with decisions issued by other Hearing Officers.** *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  **The decision raises a new policy issue that has not been decided by the Board.** *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  **The decision violates federal, state, or local law.** *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  **The decision is not supported by substantial evidence.** *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

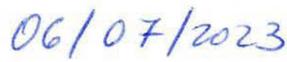
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on the Owner's investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Supporting documents (in addition to this form) must *not* exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 24.

- You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on June 7, 2023, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows as well as served electronically to the opposing counsel only:

<b>Name</b>	Servando Sandoval, Pahl & McCay
<b>Address</b>	225 W. Santa Clara Street, Suite 1500
<b>City, State Zip</b>	San Jose, California 95113
<b>Name</b>	Andrew Zacks, Zacks, Freedman and Patterson
<b>Address</b>	1970 Broadway, Suite 1270
<b>City, State Zip</b>	Oakland, California 94612

See the Proof of Service Attachment for List of Unrepresented Tenants

	
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SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

## ADDENDUM TO THE APPEAL FORM

**Case Numbers:** L19-0013, T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022, T19-0023, T19-0236,

### **2) Appealing the decision for one of the grounds below (required):**

**a) X The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board.** *(In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)*

The Decision is inconsistent with OMC §8.22.010 C.; OMC §8.22.030 A.5 and RAP rules and regulations §8.22.020 B. The language of §8.22.030(B)(1)(b) is ambiguous. The Decision fails to recognize the ambiguity and adopts an arbitrary interpretation of OMC 8.20.030(B)(1)(b) that ignores the beneficial purposes of the Ordinance as set out in §8.22.010. [See Tenants' Memorandum]

**b) X The decision is inconsistent with decisions issued by other Hearing Officers.** *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*

Armory v. Green Sage, LLC T18-0372, with the Corrected Remand Hearing Decision issued on 12/9/2022 deals with the precise question raised in this brief (interpretation of new construction provision of Ordinance and reaches a conclusion that the subject building in that case was not exempt. Tenants seek finding consistent with Armory case. [See Tenants' Memorandum]

**c) X The decision raises a new policy issue that has not been decided by the Board.** *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*

While the Armory v. Green Sage, LLC T18-0372 Corrected Remand Hearing Decision resulted from instructions to the Hearing Officer from the Board, the Corrected Remand Hearing Decision was not appealed, so it is not a formal Board decision. A Board decision adopting the conclusions of Armory would result in consistent guidance for such cases in the future. [See Tenants' Memorandum]

**d) X The decision violates federal, state, or local law.** *(In your explanation, you must provide a detailed statement as to what law is violated.)*

The Hearing Officer interpretation of the law is in conflict with Cal. Building Code and Oakland's Building codes, both of which require Certificates of Occupancy and final permits prior to occupancy. [See Tenants' Memorandum]

**e) X The decision is not supported by substantial evidence.** *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

While the Hearing Officer finds the testimonies of prior residents credible as well as the registration records confirming prior residency before Certificate of Occupancy, she still decides in favor of the Landlord despite the substantial evidence presented. [See Tenants' Memorandum].

**h) X Other.** *(In your explanation, you must attach a detailed explanation of your grounds for appeal.)*

The Decision is not supported by the findings and findings are not supported by the evidence. [See Hearing Decision, pgs. 50-51, Tenants' Memorandum]

## **IMPORTANT INFORMATION:**

**This Appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.**

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- **Any response to the appeal by the responding party must be received by the Rent Adjustment Program, along with a proof of service on appealing party, within 15 days of service of the service of the appeal if the party was personally served. If the responding party was served the appeal by mail, the party must file the response within 20 days of the date the appeal was mailed to them.**
- There is no form for the response, but the entire response is limited to 25 pages or less.
- The Board will not consider new claims. All claims, except jurisdictional issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings that you want the Board to review must be pre-designated to Rent Adjustment Staff.

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Attorneys for Tenants/Appellants  
Helena Martin, Ziaa Szymanski, et.al.

**OAKLAND RENT ADJUSTMENT BOARD  
CITY OF OAKLAND**

**Case Name: Vulcan Lofts, LLC v. Tenants**

Case Number(s): L19-0013 (Bifurcated) with T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498,

**MEMORANDUM IN SUPPORT OF APPEAL OF TENANT-APPELLANTS  
HELENA MARTIN, ZIAA SZYMANKSI, ET. AL. V. VULCAN LOFTS, LLC.**

**INTRODUCTION**

Tenant/Appellants appeal the decision finding that their dwelling units at the Vulcan Foundry in East Oakland are exempt from the RAP as new construction.

The Vulcan Foundry, located at 4401 San Leandro Street, Oakland, was purchased in 1985 by developers Eddie Orten and James Alexander who converted it to live-work units primarily resided by artists. They obtained building permits for each of the three buildings and eventually created 59 rental units. Construction took over two years, during which time the Owners unlawfully leased rental units to tenants between 1986

and 1987, before any legal conversion took place. There were Temporary Certificates of Occupancy issued before the building permits for some units in Building C which became void soon after issuance. The permits were not finalized until May of 1987 and Certificates of Occupancy for most of the units were not issued until October of 1987 (to this day, there is no evidence of Certificates of Occupancy of finalized permits specifically sought for Building C, units 27, 46 or 53-59). Now, some 36 years later, the current owner has petitioned to have the property exempted from the Rent Adjustment Program as “new construction.”

This matter hinges upon statutory construction of the elements that a landlord must prove to demonstrate entitlement to a new construction Certificate of Exemption from rent control. These elements are that the property was “newly constructed and received a certificate of occupancy on or after January 1, 1983” and that the property was “formerly entirely non-residential.” (OMC 8.22.030A.5). The Regulations provide further guidance “Newly constructed units include *legal conversions* (emphasis added) of uninhabited spaces not used by Tenants, such as...iv. Spaces that were formerly entirely commercial”. (OMC 8.22.B.5). No specific date or event is provided to illuminate the meaning of “formerly entirely non-residential.” The Owners interpret “formerly entirely non-residential” to mean before 1983 regardless of when or for how long it was rented.

The Tenants assert that, for a conversion to be legal, it must at a minimum require owners to refrain from renting out residential units prior to finalization of permits and Certificates of Occupancy. They also assert that the term “formerly entirely non-residential” means that there was no residential use of a property prior to the issuance of a Certificate of Occupancy.

The Hearing Decision does not address these questions. The Decision simply presumes that residential occupancy must have occurred prior to 1983 to prevent issuance of a Certificate of Exemption from rent control. It states:

The testimony and evidence established by a preponderance that the subject property was newly constructed after the purchase of the property in December 1985. Likewise, overwhelming evidence established that the subject property was not residential before the purchase in 1985.<sup>1</sup> Furthermore, the evidence establishes that residential occupancy started at the subject property after the purchase in 1985. A Certificate of Occupancy issued by the City of Oakland for the residential use of the building was finalized on October 12, 1987. Therefore, the owner has met its burden of proof to establish that the subject property is exempt from The Ordinance. (Emphasis added)

Nothing in the new construction provisions of the ordinance requires that arbitrary rule. Tenants do not dispute the essential facts stated in the Decision. It acknowledges that residential use occurred between 1985 and 1987 prior to finalization of permits and Certificates of Occupancy. But it fails to address the main question: Does the presence of residents at the property from 1985 until issuance of the Certificates of Occupancy prevent the owner from obtaining a Certificate of Exemption? That is, does the phrase “formerly entirely non-residential” mean “residential occupancy prior to 1983” or does it mean “before the conversion is legally finalized by issuance of a Certificate of Occupancy”?

Tenants assert that the Decision violates the RAP by granting an exemption for units that do not meet the requirements for new construction (OMC 8.22.030(A)(5)) and RAP Regulations (8.22.020(B)) since the units must be created from legal conversions of uninhabited spaces not used by Tenants. The Landlord has failed to prove the units are exempt as new construction. The exemption should not have been grant

**Appeal Form2(a): The Decision is Inconsistent with Intended Purpose of the Rent Ordinance (OMC 8.22.010 C.)**

The intent of the legislative body must be determined, so as to construe the statute to affect the intended purpose. *Doe v. Brown* (2009) 1A77 Cal.App .4th 408,417. In RAP cases, the basic purpose of the rent ordinance is to preserve safe, affordable housing, protect tenants from precipitous rent increases, and to promote investment in such housing. (OMC 8.22.010) Rewarding Owners who fail to follow building and housing codes by renting out property without final sign offs does not encourage providing safe, affordable housing or promote investment in such housing.

When interpreting statutes, words used in the statute should be given their ordinary meaning. If the language is clear and unambiguous, there is no need for construction. *San Jose Unified School District v. Santa Clara County Office of Education*, 7 Cal.App. 5th 967, 982. The language in Ordinance is ambiguous when there are two alternative interpretations. In this case, the word "formerly" could refer to either January 1, 1983, or to the date of issuance of the Certificate of Occupancy/final permit. The ordinance does not state a specific time period during which prior residential use must have occurred to disqualify the property from exemption.

If the statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. *Lungren v. Deukmejian* (1988) 45 Cal.3d 727,735. In interpreting ambiguous language, the court adopts the interpretation that best harmonizes the statute internally and may look to extrinsic aids, such as legislative history, other parts of the statutory scheme, or public policy to determine the proper interpretation. *Pacific Sunwear, Inc. v. Olaes Enterprises, Inc.* (2008) 167 Cal.App.4th

466,474. It is a fundamental rule of statutory construction that a law should not be applied in a manner producing absurd results because the Legislature is presumed not to intend such results. *San Jose Unified School District v. Santa Clara County Office of Education*, 7 Cal.App. 5th 967, 982.

Indeed, adoption of the Owners' interpretation of the term "formerly" to apply only to the time period prior to January 1, 1983 leads to absurd results. In this case, it would encourage property owners to feel free to rent out illegal residential units for lengthy periods of time before obtaining Certificates of Occupancy. Then, when it benefits them, they could obtain a Certificate of Exemption. It is doubtful that the drafters of the Oakland rent ordinance intended such a result. Interpreting "formerly entirely non-residential" to mean "non-residential prior to obtaining a Certificate of Occupancy" will encourage landlord compliance with laws designed to ensure safe dwellings. Appellants are existing residential tenants. They live in units that have been occupied residentially by former residents since at least 1986. Most of the units were not legalized until October of 1987. Illegal residential units are covered under Oakland's rent control ordinance. (OMC 8.22.020). Not only did the units not qualify as "uninhabited space" when legally converted in October of 1987, they could not possibly qualify as "new construction," having been in existence and occupied residentially since at least June 1986. If the stated purpose of the Rent Ordinance is to be met, a decision removing rent protections from longstanding tenants cannot be supported.

#### **EVIDENCE PRESENTED**

***Appeal Form 2(e): The Owner Has Failed to Meet Its Burden of Proof, as its Evidence Is Not Substantial***

For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. [OMC 8.22.030.B.1(b)] The Owner here has failed to meet its burden.

**a) Testimony of Julian Robert “Eddie” Orten. (4/15/2019 Hearing)** Vulcan Lofts, LLC called former owner/developer Robert Julian “Eddie” Orten III as its sole witness. He testified to the following: In late 1985, he and James Alexander purchased the property, an old iron foundry. (36:48-39:10–41:30) He testified that no one lived at the property at the time of the purchase. (36:48-39:40, 40:52-41:05) When asked on cross-examination whether he rented out units in 1986, he responded that he had just done a lease-back to the former owner, who needed to finish some contracts. But on further questioning, he acknowledged that the leaseback was “kind of like a six-month deal” and that only Building C was leased back. He was able to begin construction of new units “pretty promptly” in Building A. He testified that he rented out the first unit in Mid-April or May 1987. (1:09:46-1:11:57;1:10:36-1:10 56; 1:11.07-1:11:57; 1:13:40-1:14:13) The first unit was not rented until “approximately” 18 months after purchase. (1:08:58– 1:09:46). He insisted there were no tenants until mid-1987. (1:22:35- 1:22:39)

When questioned about whether there were Certificates of Occupancy for all buildings housing tenants during 1986-87, he testified that “eventually” they got the certificates, but he did not know “categorically” whether they were in place before every tenant moved in. (1:20:17–1:20:30; 1;22;35-1:22:39; 1:31:02–1:32).

Kazazic: To the best of your recollection, were certificates of occupancy issued for all the units at Vulcan Lofts in 1987?

Orten: They were all issued. I’m not sure they were all issued by 1987.

There were a couple of units that went late, that went way too- that we didn't get done and that dragged on because we were out of money. They all got done eventually, but none before '87, for sure. (47:52-48.21)

When asked whether there were finalized building permits for every building prior to people moving in he responded "Yeah. Harry Blow [the inspector] signed off every card before people moved in—couldn't move them in without the card being signed off." (:33:27-1:35:34) .

Orten testified that most of the units were not occupied by May 1987, just the first 12-14 units in the smaller building. "The northern section [Building C] did not get completed until 1988. Certainly by 1989. The whole place would have been full." (1:36:31-1:36:19)

Orten's testimony is not credible. For example, it is clear and even the Hearing Decision acknowledges that he rented out units long before mid-1987. His testimony that there were finalized building permits for every building prior to people moving in was false. The falsity of his statements was demonstrated by records subpoenaed from the Registrar of Voters and the sworn testimony of former tenants who resided at the property in 1986 and early 1987.

Orten's testimony is contradictory, untrue and insufficient to demonstrate that there was no residential use of the property prior to finalization of certificates of occupancy or finalized building permits. His testimony that there were finalized building permits for every building at the property prior to people moving in was knowingly false. His statement "couldn't move them in without the card being signed out" shows that he knew that, as a developer his conduct was wrongful. He could hardly have forgotten that he filled the property as fast as he was able in 1986 and 1987

**b) Incomplete Documentary Evidence with missing Certificate of Occupancy for Building C**

The City records of final permits and Certificates of Occupancy submitted by the Owner (and Tenants) do not advance the Owner's case. As the Hearing Decision acknowledges, many tenants were already residing in the buildings prior to issuance of these documents.

There is a glaring lack of documentation concerning Building C. The former owners obtained a finalized permit on May 27, 1987. (Tenant's Exhibit 47) but the landlord submitted no permanent Certificate of Occupancy. Instead, a series of "temporary" Certificates of Occupancy were issued for Units 28 through 45, and 47 through 52 dated late 1987 and early 1988. All were all signed off within a few days in April of 1988. Such temporary Certificates are void at the conclusion of the time limit specified. (California Building Code section 15.8.150). The Owner provided no explanation of why these documents were needed, other than Orten's testimony that construction "dragged on." in Building C. Also, unlike every other unit at the property, there is a complete lack of documentation of any sort concerning Units 27, 46, and 53-59 in Building C.

**c) Tenants' Evidence Rebutting Owner's Petition for Exemption**

The tenants' evidence that the former owners unlawfully rented residential units at the property is voluminous. For the convenience of the Board and the parties, Tenants have prepared a summary, attached hereto, of detailed evidence of such rentals. The chart includes witness testimony, with citations to the record, voter registration information, and other corroborating evidence of such occupancy (hereinafter, "Evidence of Residential Use of the Property Prior to Legal Conversion" attached to this Memorandum)

In response to a subpoena for records from 1985 through 1987, the Registrar of Voters produced a summary of registered voters. This summary shows there were registrations for people in 17 rental units prior to final permits or Certificates of Occupancy.

The Hearing Decision deemed the Tenants' testimony credible with respect to their accounts of living at the property, but not credible with respect to the dates of their tenancies. This conclusion does not name any specific tenant's testimony, nor does it otherwise specify the facts upon which it is based on. The conclusion ignores the high degree of corroborating testimony by other tenants and workers at the property placing them at the property in 1986 through 1987. It ignores the voter registration records which correspond with many tenancies. It ignores its own conclusion that tenancies occurred prior to finalization of permits and Certificates of Occupancy in October of 1987.

**Appeal Form 2d: The Decision Violates State and Local Law.**

a) **State Case Law Requires that Exemptions to Rent Control Be Narrowly Construed**

It is also crucial to note that a Certificate of Exemption is an exception from a general Ordinance.

As an exception, the following applies:

Exceptions to the general rule of a statute are to be strictly construed. In interpreting exceptions to the general statute courts include only those circumstances which are within the words and reason of the exception. One seeking to be excluded from the sweep of the general statute must establish that the exception applies. (*Barnes v. Chamberlain* (1983) 17 Cal.App.3d 762, 767)

Two cases, *Da Vinci Group v. San Francisco ResidentPial Rent Board* (1992) 5 Cal.App.4th 24,27 and *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, illustrate the s

sort of strict construction applied to local rent laws which provide exemptions for newly constructed rental units.

In *Da Vinci Group*, the owner purchased a multi-apartment warehouse with no and continued to rent units to tenants. After the city flagged the building for changing to apartments without a permit, the owner made improvements and obtained a Certificate of Exemption. He then claimed exemption from the local rent ordinance, which exempted "rental units located in a structure for which a was first issued after the effective date of this ordinance." At the time, the San Francisco Ordinance lacked a provision barring exemption for units which had previously been used residentially. Nonetheless, the appellate court looked beyond the bare language of the Ordinance to the Board's regulations, which added the element that new construction exemptions applied "only where there has been no residential use since the enactment of the Ordinance." *Da Vinci Group, Id.* at 29. Noting that the new construction exemption's purpose was to ease the housing shortage by creation of new units, the appellate court commented, "Legalizing de facto residential use does not enlarge San Francisco's housing stock." *Id.* at p. 30.

This case is similar to *Da Vinci*. The owners chose to put the property to residential use prior to final approvals. They nonetheless assert that they are entitled to an exemption because the prior residential use did not occur before 1983. However, nowhere in the Oakland Ordinance does it state that the term "formerly entirely non- residential" applies only to such occupancy if it occurred before January 1, 1983.

In *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, a landlord sought to take advantage of the provisions of the Costa-Hawkins Act. (Civ. Code§ 1954.52) The

landlord converted a rent-controlled apartment building, with a 1972 Certificate of Occupancy to condominiums. In 2009, he obtained a new Certificate of Occupancy based upon the change in use. When a tenant challenged a rent raise, the landlord sought a declaration from the court that the unit was exempt from the Los Angeles rent Ordinance under provisions of the Costa-Hawkins Act which exempts units that have certificates of occupancy issued after 1995. The landlord appealed a trial court finding that the rent raise violated the Ordinance. In affirming the trial court decision, the appellate court concluded:

In this case, Tenant's unit is not exempt under [Costa-Hawkins] because the tenant occupied the unit prior to the issuance of the 2009. The 2009 Certificate of Exemption did not precede the residential use of the property. (Emphasis added)

*Burien* at p. 1049.

The Los Angeles Ordinance did not contain an explicit requirement that the second Certificate of Occupancy must precede residential use in order to obtain exemption.

Nevertheless, the appellate court reasoned:

"We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting, rather than defeating the general purpose of the statute, and avoid an interpretation which would lead to absurd consequences."

A construction of the Ordinance that gives landlord permission to rent out unit uninspected and potentially unsafe dwellings is absurd. Exemption should not be granted.

**b) The Hearing Decision Conflicts with State and Local Laws Prohibiting Residential Occupancy Prior to Obtaining a Certificate of Occupancy**

Both the Oakland Municipal Code and state law require issuance of both a permit and a Certificate of Occupancy before a building can be occupied. (California Building

Code§110.1 et seq.; Oakland Municipal Code §15.08.150)

California case law reflect the importance of requiring these finalizing documents. A landlord is not entitled to collect rent if a property lacks a Certificate of Occupancy Without a Certificate of Occupancy, a lease is an illegal transaction and thus void. *Gruzen v. Henry* (1978) 84 Cal.App.3d 515,519. However, the tenant of such a unit is entitled to the protections of local rent ordinances. As the person intended to be protected by the laws, the tenant is entitled to enforce tenancy rights, even though the lease itself may be void. *Carter v. Cohen* (2010) 188 Cal.App.4th 1038.

The former Owners rented out units for over two years before issuance of Certificates of Occupancy. Such practices are unlawful and unsafe. The undermine they important public policies upon which building codes and housing law are based. Permitting the Vulcan owners to obtain an exemption under these circumstances rewards their wrongful conduct.

**Appeal Form 2b: The Decision is Inconsistent with Decisions Issued by Other Hearing Officers.**

**a) The Hearing Decision Directly Conflicts with *Armory v. Green Sage, LLC (2022), T18-0372, et al.***

Armory v. Green Sage, LLC (2022) T-18-0372 et al. reached a conclusion which directly conflicts with the Hearing Decision in this case. Armory concerned two buildings at a former cannery which was converted to artists' live-work units. The Hearing Decision granted exemption for one building based upon proof of residential occupancy prior to 1983 but denied exemption for the other. Tenants at the other building appealed. In that building tenants of two units had entered tenancies in 2009 while the Certificate of Occupancy had issued in 2011.

The Board remanded the case for reevaluation in light of the “the lack of temporal limitation on residential use prior to conversion...”). Eventually, a Corrected Remand Hearing Decision was issued, finding the building to not be exempt from the Ordinance. After reviewing the Board’s discussion at the Appeal Hearing, the Hearing Officer articulated that “the subject property is not exempt as new construction if there was residential use prior to the issuance of the Certificate of Occupancy *even if* the property was newly constructed and received the Certificate of Occupancy after January 1, 1983.” (pg. 2 of the Corrected Remand Hearing Decision) The Order stated: “Per the Board’s instruction, the units at [the subject building] are not exempt from the Rent Adjustment Ordinance because there was residential use prior to issuance of the Certificate of Occupancy.” (pg. 7 of the Corrected Remand Hearing Decision)

The simple formula set out in Armory solves many problems inherent in new construction cases. It promotes stable housing and affordable rents. It protects tenants, many of whom have resided for decades in their rental units from sudden rent raises, and potentially losing their housing. It avoids the absurdity of the “lack of temporal limitation on residential use prior to conversion.”

**Appeal Form 2(c): The Decision Raises a New Policy Issue that Has Not been Decided by the Board.**

While the Armory v. Green Sage LLC T180372 Decision resulted from instructions to the Hearing Officer from the Board, the Corrected Remand Hearing Decision was not appealed, so it is not a formal Board decision. A Board decision adopting the conclusions of Armory would result in consistent guidance for cases in the future.

## CONCLUSION

For the reasons set forth in this Memorandum, the Tenants respectfully request a decision denying the Landlord's petition, stating that all residential units at 4401 San Leandro Street are not exempt from the Oakland Rent Adjustment Program.

Dated: June 7, 2023

LAW OFFICE OF LEAH HESS  
GEGHAMYAN LAW OFFICE

A handwritten signature in blue ink, appearing to read "M. Geghamyan", is written over a horizontal line.

Leah Hess  
Hasmik Geghamyan  
Attorney for Tenants/Appellants

# **EXHIBIT A**

**TENANT-APELLANTS MARTIN, ET.AL. v. VULCAN LOFTS, LLC**  
**EVIDENCE OF RESIDENTIAL USE OF THE PROPERTY PRIOR TO LEGAL CONVERSION - SUMMARY**

Unit #	Reg #	Date		Evidence of Early Residential Occupancy
1	F870498	09/08/1982	A	•Voter registration (pre-1/1/83)
2	G987540	06/09/1986	A	•Voter registration
5	H204832 G511489	11/25/1986 9/17/ 1984	A	<p>•<u>Voter Registrations</u></p> <p>•<u>Witness testimony Peter Mars (formerly Peter Smith)</u>, (6/10/19 Hearing) Lived in Unit 5 with Karen Beck. (2:18:01- 1/18/06; 2/17/11-2/17/39). ( 2:18:07-2;24:56)</p> <p>•Application for bldg permit for Unit 5 to build a storage loft “In existing live/work Studio”. signed “Peter Smith”. Date April 13, 1987. (Tenant Exh. 46)</p> <p>•Mars testified that, at the time he applied for the permit, he would have been living at the Vulcan “a year or possibly at year and a half”. (2:28:20-2:33:03)</p> <p><u>Karen Beck(formerly Karen Smith)</u> (12/16/19 Hearing)</p> <p>•Beck testified to moving into <u>Unit 5</u> with husband Peter Smith in 1985 or 1986. She moved out in January ‘88. (12/16/19 Hearing, (4:37:24-53; 4:38:59-4:00)</p>
6	G865845	06/02/1986	A	•Voter Registration
10	H257469	08/22/1987	A	•Voter Registration
11	G771855	09/19/1986	A	•Voter Registration

14	X426298	05/29/1987	A	<p>•Voter Registration</p> <p><u>Witness Todd Boekleheide</u> (6/10/19 Hrng)</p> <p>•Boekelheide testified that he moved into unit 14 “probably” in 1986. (4:31:27-4:31:58) Construction of new units was ongoing. (4:32:32-41) People were already living there when he moved in. (4:32.23)</p> <p>Responding to Hearing Officer, he stated that he could not say “with a reasonable degree of certainty” that it was 1986. (4:44:32-4:44:59)</p> <p>Shortly after his testimony, he requested to reopen his testimony to give a more accurate answer. The request was granted.</p> <p>•He then testified that he could “definitely declare” that he was living at the Vulcan “at least” as early as September, 1987 based upon the release date of a film he was working on the time. He was working on the film for at least a month prior to its release in October 1987. (5:21:38—5:23:38)</p> <p>•<u>Corroboration:</u> Tenant Exh. No. 58:</p> <p>•Witness <u>Eddie Orten</u> testified that he rented a unit to <u>Todd Boekelheide</u> in mid-1987. (April 15, 2019 Hearing, 1:16:06-1:17:30)</p> <p>Carpenter <u>David Cheek Sworn Declaration</u></p> <p>Cheek testified that he became a supervisor at the Vulcan in 1986. (¶ 4) He testified that Todd Boekelheide was residing at the property prior to when Cheek started working there. (¶¶ 3, 7)</p>
	H099880	10/06/1986	?	<p>•No Unit Number Stated in Voter Registration Records. However, see notes below (Unit 18) person at the property registering to vote on the same day: 10/06/1986</p>

18	X489752	10/06/1986	B	<p>•Voter Registration</p> <p><u>Witness Randy Hussong (12/16/19 Hmg)</u></p> <p>Hussong testified that he worked at the property as a painter before he and his wife moved into Unit 18 in 1985. (1:21:43-1:22:33) Voter</p> <p>•Registration Record shows person living there in 1986.</p> <p>He stated that David Cheek worked on the painting crew, and David's sister Allison lived at the property. (1:29:53-1:30:04)</p> <p>Stated he was one of the initial tenants at the Vulcan. Tenants started moving into building A as units became available. He named other tenants: Allison Cheek, Ric Tingali, Jonathan Garrett, Bob Drecco and Tod Boekelheide but did not recall when they moved in. He estimated that construction was finished "sometime in 1986". He moved from the property at the end of October 1989. He remembers because he was there during the 1989 Loma Prieta earthquake (1:38:15-1:40:21)</p> <p><u>David Cheek Sworn Declaration:</u></p> <p>Carpenter David Cheek testified that Randy Hussong and his wife Tracy McBride resided at the Vulcan when Cheek started working there in 1986. Randy worked on the construction crew with Cheek as a painter. (¶¶ 3, 8)</p>
19	G267674 G267675	05/07/1984 05/07/1984	B	<p>•Voter Registration</p>

21	H074029 H074030	09/25/1986	B	<ul style="list-style-type: none"> <li>•Voter Registrations</li> <li>•<u>Witness Gayle Bryan</u> (12/16/19 Hrng)</li> </ul> <p>Ms. Bryan testified that she moved into Unit 21 with her husband, Patrick Bryan, in '86 or '87. Could have been '85. She lived there for 3 years. (3:42:59-3:45:26)(3:56:30-3:57:05)</p> <p>She knows the approximate date of their move-in because they were living there when he graduated in from Holy Names in. 1987. (4:00:44-4:01:12)</p> <p>Valerie Steel and her husband moved in across the hall about a month after she moved in. (3:46:01-3:46:44)</p> <p>Many other artists were moving into the Vulcan when she moved in. Rental units were still being built. People moved in immediately after the units were built. (3:58:23-3:58:44)</p> <ul style="list-style-type: none"> <li>•Corroborating: Valerie Steel testified to moving into Unit 23 with her husband in late '86.</li> </ul>
22	H105022	10/03/1986	B	<ul style="list-style-type: none"> <li>•Voter Registration</li> </ul>

23	H191495	04/28/1987	B	<p>•Voter Registration</p> <p>•<u>Witness Valerie Steel</u> [6/10/19 Hrng.]</p> <p>Ms. Steel testified to renting Unit 23 with her fiancé (later husband) in late '86. They had to prep their space, so they moved in around December.(3:50:45-3:51:11-27; 3:52: 28-3:52:42). They rented it as live/work space. (3:52:52-3:53:21)</p> <p>There were about a dozen people living in the buildings adjacent to the parking lot. She listed several people living at the property around the time of her move-in: Gayle and Patrick Bryan lived across the hall; David and Allison Cheek, lived behind them to the left; Bob Drego lived next door; Todd Boekleheide was across the driveway; Denise Owen was an "early, early tenant"; Donna Fenstermaker was a tenant, but "she doesn't recall when she came. (3:56:48-4:00:38)</p> <p>She was manager for several years. She wasn't sure of the date when she started, but she was manager on the day of the 1989 earthquake, so it was probably a couple years after she moved to the property. (4:04:00-4:04:13)</p> <p>All units had been built out when she moved from the property in 1990. She doesn't know exactly when the owners stopped working—maybe 1988. The units were totally built-out long before the earthquake. (4:08:37-4:10:08)</p> <p>There were a few units "day space" units that were not live/work, 12-15, "maybe not even that number." (4:10:10-4:11:23)</p> <p>See witness Gayle Bryan testimony above re: Steel move into the property.</p>
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25	H121815	02/201987	B	<p>•Voter Registration</p> <p><u>Witness Allison Davis</u> formerly Allison Cheek (12/26/19 Hrng)</p> <p>Ms. Davis testified that she lived in unit 24 or 25. She thinks she moved into the Vulcan "sometime in 1986".(4:14:22-4:18:59) She lived there with her husband Ricardo Tringali. (4/15/50-4/16/04)</p> <p>She had just moved to the Vulcan when she started commuting to U.C. Davis as a transfer student in the 1986/87 academic year, starting in the Fall of '86. (4:28:58-4:29:10)</p> <p>She knew several people at the Vulcan that were part of the "first wave" of tenants to move in. She and her husband lived to the left of Valerie Steel. (4:22:56-4:23:00; 4:26:44-4:27:14)</p> <p>There were still a lot of empty spaces and there was a lot of building at the time she moved in. (4:27:14-4:27:18)</p> <p>She moved out in the Fall of 1989. (4:32:40-4:33:09)</p> <p><u>Declaration of witness David Cheek</u> (Exh. 6)</p> <p>Carpenter David Cheek testified that became a supervisor at the Vulcan in 1986. (¶ 4) There were "definitely" people residing there when he started working. The owners were in a "huge rush to get people in". Units were rented out soon after they were completed. The units were intended as residences. His crew installed running water, electricity, bathrooms, kitchens and bedrooms. The owners rented the spaces as residences. (¶ 5)</p> <p>His sister, Allison Davis, resided at the property in Unit 25 with her husband Rick Tingali. Cheek was working on units at the property prior to her moving in. He worked on construction of her unit.</p>
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25	H121814	02/20/1987	B	<ul style="list-style-type: none"> <li>•See above re testimony of Allison Davis,</li> <li>•Declaration of her brother David Cheek.</li> </ul>
31	None		C	<ul style="list-style-type: none"> <li>•<u>Witness Llewellyn Moreno</u> (formerly, Llewellyn Hilliard</li> </ul> <p>Mr. Moreno testified that he moved into Unit 31 “no later” than March or April 1987—it could have been several months earlier. He did extensive work on his rental unit prior to move in but he had been living in the unit for some time when he was informed that his father had been hospitalized in early June (5:24:43–5:37:18)</p> <p>He lived at the Vulcan for approximately one year. (5:41:57-5:42:31)</p> <p>He was the first tenant in his unit. There were “several generations of tenants” because the property had developed in stages. His unit and other units available at the same time were the third stage of development of the property. There were people at the property who were “quite well settled” by the time he was there. (5:38:58–5:39:42)</p> <p>When he moved in, there were “quite a number” of people already living at the Vulcan. (5:40:20-5:40:41)</p>

43	H262087	09/28/1987	C	<p>•Voter Registration</p> <p><u>Witness Susan Bloomquist</u>, formerly <u>Susan Nickel</u>. Susan Bloomquist testified that she moved into Unit 43 as a sublessor of existing tenant Suzanne Lang. (4:53:39-4:53:35) They agreed to share the costs and share the work of fixing up the space so they would have a large studio to work. (4:53:56-4:54:17)</p> <p>Ms. Bloomquist moved in “sometime in 1986”, but “for sure” by June 1986. At the time, she was due to lose her student apartment in June. (4:53:20-4:53:25; 4:54:46-4:54:53)</p> <p>Ms. Bloomquist began paying rent and building out the space so that it would be comfortable for her to live there when she had to vacate her student apartment in June. (4:54:56-4:55:03:10; 4:55:11-4:55:35; 4:55:11-4:55:35; 4:55:50-4:56:06; 4:57:06-4:57:45; 4:58:04-4:58:34)</p> <p>WThe units in the building across the parking lot ) were built out and people were living in them when she moved in. (4:58:40-4:59:09) Todd Boekleheide was living in “the first building” when she moved in. (4:59:46-4:59:51)</p> <p>Ms. Bloomquist testified that “most of the construction was finished by the end of 1987 because they kept going north building the units. (5:03:27-5:05:08).</p>
43	H189199	09/28/1987	C	<p>•Voter Registration</p> <p>See above re: Unit 43 and tenants.</p>

48			C	<p><u>Witness Paul Howard</u> sworn declaration (Exh. 8) stated that his mother <u>Rhoda Lee London</u> resided in Unit 48 with her husband Mark Seymour in 1986-1987. (¶ 3) Prior to their move-in, he toured the property with them while construction was underway. (¶ 4) The units were offered as live/work artists' studios and her unit was rented to her as live/work. He helped them move in and visited frequently. It was "definitely their residence. (¶¶ 4, 5)</p> <p><u>Postcard</u> attached to Howard Declaration: Stamped &amp; postmarked in France. Postcard from "Barb &amp; Chuck" to Mark &amp; Rhoda Seymour, 4401 San Leandro # 8 (Exh iii)</p>
54			C	<p><u>Witness Elizabeth Ross</u></p> <p>Ms Ross testified that she moved into Unit 54 in "Fall of '87". Unsure whether it was October or November. She believes that she was not the first tenant in the unit because there were items from the previous tenant.</p> <p>Items found in apartment indicated that she was not the first tenant at that unit. She understood that tenants were required to provide their own stoves and refrigerator. Unit four came with a pink refrigerator. (3:25:17-3:28:08)</p>
57	H214660	06/12/1987	C	•Voter Registration
57	H214001	06/12/1987	C	•Voter Registration

## PROOF OF SERVICE

**Case Appeal Name: Tenant-Appellants Martin, Szymanski, et al. v. Vulcan Lofts, LLC**

**Case Name: Vulcan Lofts, LLC v. Tenants**

**Case Number(s):** L19-0013 *bifurcated from* T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022 & T19-0023

I am a resident of the State of California and at least eighteen years of age. I reside in Alameda County, California. My address is 1720 Broadway, Suite 430, Oakland, California 94612. I served a copy of:

- **Appeal Form (with Addendum)**
- **Memorandum in Support of Tenant-Appellants Helena Martin, et.al. vs. Vulcan Lofts, LLC**
- **Additional Documents (9 pages)**
- **Proof of Service**

**To each opposing party, whose names and addresses are listed below, by one of the following means (check one):**

X **USPS Mail.** I enclosed the documents in a sealed envelope or package addressed to the persons listed below and at the addresses below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

X **By Electronic Mail.** Electronic mail to Landlords' Counsel Only (in addition to USPS Mail)

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4401 San Leandro Street #52  
Oakland, CA 94601

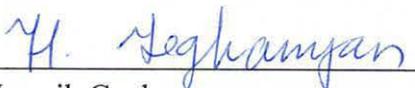
Colin Sullivan  
Geneva Harrison  
Sandra Lawson  
Kathryn Stewart  
4401 San Leandro Street #53  
Oakland, CA 94601

Rebecca Burnett  
Alfonso Kellenberger  
4401 San Leandro Street #54  
Oakland, CA 94601

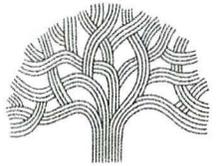
Justin Archer  
Christian Eichelberger  
Bolton Littlefield  
Matthew Martin  
April Miller  
4401 San Leandro Street #58  
Oakland, CA 94601

Joshua R Miller  
4401 San Leandro Street #59  
Oakland, CA 94601

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 7, 2023 in Oakland, California.

  
\_\_\_\_\_  
Hasmik Geghamyan

L19-0013



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

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**JUN 13 2023**  
RENT ADJUSTMENT PROGRAM  
OAKLAND

## APPEAL

<b>Appellant's Name</b> Helena Martin, Ziaa Szymanski, et. al.		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 4401 San Leandro Street, Oakland, California		<b>Represented Units: 2, 3, 4B, 5, 8, 17, 18, 19, 21, 23, 24, 25, 26, 31, 36, 39, 40, 41, 43, 46, 52, 53, 54, 58, 59</b>	
<b>Appellant's Mailing Address (For receipt of notices)</b> 4401 San Leandro Street, Oakland, California (see pg.6 of the <b>Proof of Service</b> for the names of all represented tenants and their unit numbers)		<b>Case Number</b> L19-0013 (bifurcated from the rest): T17-0237, T18-0460-0471, T18-0473-T18-0479 T18-0498-0499, T18-0500-0501, T19-0021-0023, T19-0236	
		<b>Date of Decision appealed</b> Issued April 30, 2023 and Served on May 23, 2023	
<b>Name of Representative (if any)</b> Leah Hess Hasmik Geghamyan		<b>Representative's Mailing Address (For notices)</b> Law Office of Leah Hess, PO Box 8867, Emeryville, CA 94662-8867 Geghamyan Law Office, 1720 Broadway, Suite 430, Oakland, 94612	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

1) There are math/clerical errors that require the Hearing Decision to be updated. (Please clearly explain the math/clerical errors.)

2) Appealing the decision for one of the grounds below (required):

- a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board. (In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)
- b)  The decision is inconsistent with decisions issued by other Hearing Officers. (In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)
- c)  The decision raises a new policy issue that has not been decided by the Board. (In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)
- d)  The decision violates federal, state, or local law. (In your explanation, you must provide a detailed statement as to what law is violated.)
- e)  The decision is not supported by substantial evidence. (In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)

- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on the Owner's investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Supporting documents (in addition to this form) must **not** exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 24.

• You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. •

I declare under penalty of perjury under the laws of the State of California that on June 7, 2023, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows as well as served electronically to the opposing counsel only:

<b>Name</b>	Servando Sandoval, Pahl & McCay
<b>Address</b>	225 W. Santa Clara Street, Suite 1500
<b>City, State Zip</b>	San Jose, California 95113
<b>Name</b>	Andrew Zacks, Zacks, Freedman and Patterson
<b>Address</b>	1970 Broadway, Suite 1270
<b>City, State Zip</b>	Oakland, California 94612

See the Proof of Service Attachment for List of Unrepresented Tenants

<u>M. Leghanyan</u>	<u>06/07/2023</u>
---------------------	-------------------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

**ADDENDUM TO THE APPEAL FORM**

**Case Numbers:** L19-0013, T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022, T19-0023, T19-0236,

**2) Appealing the decision for one of the grounds below (required):**

**a) X The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board.** *(In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)*

The Decision is inconsistent with OMC §8.22.010 C.; OMC §8.22.030 A.5 and RAP rules and regulations §8.22.020 B. The language of §8.22.030(B)(1)(b) is ambiguous. The Decision fails to recognize the ambiguity and adopts an arbitrary interpretation of OMC 8.20.030(B)(1)(b) that ignores the beneficial purposes of the Ordinance as set out in §8.22.010. [See Tenants' Memorandum]

**b) X The decision is inconsistent with decisions issued by other Hearing Officers.** *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*

Armory v. Green Sage, LLC T18-0372, with the Corrected Remand Hearing Decision issued on 12/9/2022 deals with the precise question raised in this brief (interpretation of new construction provision of Ordinance and reaches a conclusion that the subject building in that case was not exempt. Tenants seek finding consistent with Armory case. [See Tenants' Memorandum]

**c) X The decision raises a new policy issue that has not been decided by the Board.** *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*

While the Armory v. Green Sage, LLC T18-0372 Corrected Remand Hearing Decision resulted from instructions to the Hearing Officer from the Board, the Corrected Remand Hearing Decision was not appealed, so it is not a formal Board decision. A Board decision adopting the conclusions of Armory would result in consistent guidance for such cases in the future. [See Tenants' Memorandum]

**d) X The decision violates federal, state, or local law.** *(In your explanation, you must provide a detailed statement as to what law is violated.)*

The Hearing Officer interpretation of the law is in conflict with Cal. Building Code and Oakland's Building codes, both of which require Certificates of Occupancy and final permits prior to occupancy. [See Tenants' Memorandum]

**e) X The decision is not supported by substantial evidence.** *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

While the Hearing Officer finds the testimonies of prior residents credible as well as the registration records confirming prior residency before Certificate of Occupancy, she still decides in favor of the Landlord despite the substantial evidence presented. [See Tenants' Memorandum].

**h) X Other.** *(In your explanation, you must attach a detailed explanation of your grounds for appeal.)*

The Decision is not supported by the findings and findings are not supported by the evidence. [See Hearing Decision, pgs. 50-51, Tenants' Memorandum]

**IMPORTANT INFORMATION:**

**This Appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision.** If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- **Any response to the appeal by the responding party must be received by the Rent Adjustment Program, along with a proof of service on appealing party, within 15 days of service of the service of the appeal if the party was personally served. If the responding party was served the appeal by mail, the party must file the response within 20 days of the date the appeal was mailed to them.**
- There is no form for the response, but the entire response is limited to 25 pages or less.
- The Board will not consider new claims. All claims, except jurisdictional issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings that you want the Board to review must be pre-designated to Rent Adjustment Staff.

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Attorneys for Tenants/Appellants  
Helena Martin, Ziaa Szymanski, et.al.

**OAKLAND RENT ADJUSTMENT BOARD  
CITY OF OAKLAND**

**Case Name: Vulcan Lofts, LLC v. Tenants**

Case Number(s): L19-0013 (Bifurcated) with T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498,

**MEMORANDUM IN SUPPORT OF APPEAL OF TENANT-APPELLANTS  
HELENA MARTIN, ZIAA SZYMANKSI, ET. AL. V. VULCAN LOFTS, LLC.**

**INTRODUCTION**

Tenant/Appellants appeal the decision finding that their dwelling units at the Vulcan Foundry in East Oakland are exempt from the RAP as new construction.

The Vulcan Foundry, located at 4401 San Leandro Street, Oakland, was purchased in 1985 by developers Eddie Orten and James Alexander who converted it to live-work units primarily resided by artists. They obtained building permits for each of the three buildings and eventually created 59 rental units. Construction took over two years, during which time the Owners unlawfully leased rental units to tenants between 1986

and 1987, before any legal conversion took place. There were Temporary Certificates of Occupancy issued before the building permits for some units in Building C which became void soon after issuance. The permits were not finalized until May of 1987 and Certificates of Occupancy for most of the units were not issued until October of 1987 (to this day, there is no evidence of Certificates of Occupancy of finalized permits specifically sought for Building C, units 27, 46 or 53-59). Now, some 36 years later, the current owner has petitioned to have the property exempted from the Rent Adjustment Program as “new construction.”

This matter hinges upon statutory construction of the elements that a landlord must prove to demonstrate entitlement to a new construction Certificate of Exemption from rent control. These elements are that the property was “newly constructed and received a certificate of occupancy on or after January 1, 1983” and that the property was “formerly entirely non-residential.” (OMC 8.22.030A.5). The Regulations provide further guidance “Newly constructed units include *legal conversions* (emphasis added) of uninhabited spaces not used by Tenants, such as...iv. Spaces that were formerly entirely commercial”. (OMC 8.22.B.5). No specific date or event is provided to illuminate the meaning of “formerly entirely non-residential.” The Owners interpret “formerly entirely non-residential” to mean before 1983 regardless of when or for how long it was rented.

The Tenants assert that, for a conversion to be legal, it must at a minimum require owners to refrain from renting out residential units prior to finalization of permits and Certificates of Occupancy. They also assert that the term “formerly entirely non-residential” means that there was no residential use of a property prior to the issuance of a Certificate of Occupancy.

The Hearing Decision does not address these questions. The Decision simply presumes that residential occupancy must have occurred prior to 1983 to prevent issuance of a Certificate of Exemption from rent control. It states:

The testimony and evidence established by a preponderance that the subject property was newly constructed after the purchase of the property in December 1985. Likewise, overwhelming evidence established that the subject property was not residential before the purchase in 1985.<sup>1</sup> Furthermore, the evidence establishes that residential occupancy started at the subject property after the purchase in 1985. A Certificate of Occupancy issued by the City of Oakland for the residential use of the building was finalized on October 12, 1987. Therefore, the owner has met its burden of proof to establish that the subject property is exempt from The Ordinance. (Emphasis added)

Nothing in the new construction provisions of the ordinance requires that arbitrary rule. Tenants do not dispute the essential facts stated in the Decision. It acknowledges that residential use occurred between 1985 and 1987 prior to finalization of permits and Certificates of Occupancy. But it fails to address the main question: Does the presence of residents at the property from 1985 until issuance of the Certificates of Occupancy prevent the owner from obtaining a Certificate of Exemption? That is, does the phrase “formerly entirely non-residential” mean “residential occupancy prior to 1983” or does it mean “before the conversion is legally finalized by issuance of a Certificate of Occupancy”?

Tenants assert that the Decision violates the RAP by granting an exemption for units that do not meet the requirements for new construction (OMC 8.22.030(A)(5)) and RAP Regulations (8.22.020(B)) since the units must be created from legal conversions of uninhabited spaces not used by Tenants. The Landlord has failed to prove the units are exempt as new construction. The exemption should not have been grant

**Appeal Form2(a): The Decision is Inconsistent with Intended Purpose of the Rent Ordinance (OMC 8.22.010 C.)**

The intent of the legislative body must be determined, so as to construe the statute to affect the intended purpose. *Doe v. Brown* (2009) 1A77 Cal.App .4th 408,417. In RAP cases, the basic purpose of the rent ordinance is to preserve safe, affordable housing, protect tenants from precipitous rent increases, and to promote investment in such housing. (OMC 8.22.010) Rewarding Owners who fail to follow building and housing codes by renting out property without final sign offs does not encourage providing safe, affordable housing or promote investment in such housing.

When interpreting statutes, words used in the statute should be given their ordinary meaning. If the language is clear and unambiguous, there is no need for construction. *San Jose Unified School District v. Santa Clara County Office of Education*, 7 Cal.App. 5th 967, 982. The language in Ordinance is ambiguous when there are two alternative interpretations. In this case, the word "formerly" could refer to either January 1, 1983, or to the date of issuance of the Certificate of Occupancy/final permit. The ordinance does not state a specific time period during which prior residential use must have occurred to disqualify the property from exemption.

If the statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. *Lungren v. Deukmejian* (1988) 45 Cal.3d 727,735. In interpreting ambiguous language, the court adopts the interpretation that best harmonizes the statute internally and may look to extrinsic aids, such as legislative history, other parts of the statutory scheme, or public policy to determine the proper interpretation. *Pacific Sunwear, Inc. v. Olaes Enterprises, Inc.* (2008) 167 Cal.App.4th

466,474. It is a fundamental rule of statutory construction that a law should not be applied in a manner producing absurd results because the Legislature is presumed not to intend such results. *San Jose Unified School District v. Santa Clara County Office of Education*, 7 Cal.App. 5th 967, 982.

Indeed, adoption of the Owners' interpretation of the term "formerly" to apply only to the time period prior to January 1, 1983 leads to absurd results. In this case, it would encourage property owners to feel free to rent out illegal residential units for lengthy periods of time before obtaining Certificates of Occupancy. Then, when it benefits them, they could obtain a Certificate of Exemption. It is doubtful that the drafters of the Oakland rent ordinance intended such a result. Interpreting "formerly entirely non-residential" to mean "non-residential prior to obtaining a Certificate of Occupancy" will encourage landlord compliance with laws designed to ensure safe dwellings. Appellants are existing residential tenants. They live in units that have been occupied residentially by former residents since at least 1986. Most of the units were not legalized until October of 1987. Illegal residential units are covered under Oakland's rent control ordinance. (OMC 8.22.020). Not only did the units not qualify as "uninhabited space" when legally converted in October of 1987, they could not possibly qualify as "new construction," having been in existence and occupied residentially since at least June 1986. If the stated purpose of the Rent Ordinance is to be met, a decision removing rent protections from longstanding tenants cannot be supported.

#### **EVIDENCE PRESENTED**

**Appeal Form 2(e): The Owner Has Failed to Meet Its Burden of Proof, as its Evidence Is Not Substantial**

For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. [OMC 8.22.030.B.1(b)] The Owner here has failed to meet its burden.

**a) Testimony of Julian Robert “Eddie” Orten, (4/15/2019 Hearing)** Vulcan Lofts, LLC called former owner/developer Robert Julian “Eddie” Orten III as its sole witness. He testified to the following: In late 1985, he and James Alexander purchased the property, an old iron foundry. (36:48-39:10–41:30) He testified that no one lived at the property at the time of the purchase. (36:48-39:40, 40:52-41:05) When asked on cross-examination whether he rented out units in 1986, he responded that he had just done a lease-back to the former owner, who needed to finish some contracts. But on further questioning, he acknowledged that the leaseback was “kind of like a six-month deal” and that only Building C was leased back. He was able to begin construction of new units “pretty promptly” in Building A. He testified that he rented out the first unit in Mid-April or May 1987. (1:09:46-1;11:57;1;10:36-1:10 56; 1.11.07-1:11:57; 1:13:40-1:14:13) The first unit was not rented until “approximately” 18 months after purchase. (1:08:58– 1:09:46). He insisted there were no tenants until mid-1987. (1:22:35- 1:22:39)

When questioned about whether there were Certificates of Occupancy for all buildings housing tenants during 1986-87, he testified that “eventually” they got the certificates, but he did not know “categorically” whether they were in place before every tenant moved in. (1:20:17–1:20:30; 1;22;35-1:22:39; 1:31:02–1:32).

Kazazic: To the best of your recollection, were certificates of occupancy issued for all the units at Vulcan Lofts in 1987?

Orten: They were all issued. I’m not sure they were all issued by 1987.

There were a couple of units that went late, that went way too-that we didn't get done and that dragged on because we were out of money. They all got done eventually, but none before '87, for sure. (47:52-48.21)

When asked whether there were finalized building permits for every building prior to people moving in he responded "Yeah. Harry Blow [the inspector] signed off every card before people moved in--couldn't move them in without the card being signed off." (:33:27-1:35:34) .

Orten testified that most of the units were not occupied by May 1987, just the first 12-14 units in the smaller building. "The northern section [Building C] did not get completed until 1988. Certainly by 1989. The whole place would have been full." (1:36:31-1:36:19)

Orten's testimony is not credible. For example, it is clear and even the Hearing Decision acknowledges that he rented out units long before mid-1987. His testimony that there were finalized building permits for every building prior to people moving in was false. The falsity of his statements was demonstrated by records subpoenaed from the Registrar of Voters and the sworn testimony of former tenants who resided at the property in 1986 and early 1987.

Orten's testimony is contradictory, untrue and insufficient to demonstrate that there was no residential use of the property prior to finalization of certificates of occupancy or finalized building permits. His testimony that there were finalized building permits for every building at the property prior to people moving in was knowingly false. His statement "couldn't move them in without the card being signed out" shows that he knew that, as a developer his conduct was wrongful. He could hardly have forgotten that he filled the property as fast as he was able in 1986 and 1987

**b) Incomplete Documentary Evidence with missing Certificate of Occupancy for Building C**

The City records of final permits and Certificates of Occupancy submitted by the Owner (and Tenants) do not advance the Owner's case. As the Hearing Decision acknowledges, many tenants were already residing in the buildings prior to issuance of these documents.

There is a glaring lack of documentation concerning Building C. The former owners obtained a finalized permit on May 27, 1987. (Tenant's Exhibit 47) but the landlord submitted no permanent Certificate of Occupancy. Instead, a series of "temporary" Certificates of Occupancy were issued for Units 28 through 45, and 47 through 52 dated late 1987 and early 1988. All were all signed off within a few days in April of 1988. Such temporary Certificates are void at the conclusion of the time limit specified. (California Building Code section 15.8.150). The Owner provided no explanation of why these documents were needed, other than Orten's testimony that construction "dragged on." in Building C. Also, unlike every other unit at the property, there is a complete lack of documentation of any sort concerning Units 27, 46, and 53-59 in Building C.

**c) Tenants' Evidence Rebutting Owner's Petition for Exemption**

The tenants' evidence that the former owners unlawfully rented residential units at the property is voluminous. For the convenience of the Board and the parties, Tenants have prepared a summary, attached hereto, of detailed evidence of such rentals. The chart includes witness testimony, with citations to the record, voter registration information, and other corroborating evidence of such occupancy (hereinafter, "Evidence of Residential Use of the Property Prior to Legal Conversion" attached to this Memorandum)

In response to a subpoena for records from 1985 through 1987, the Registrar of Voters produced a summary of registered voters. This summary shows there were registrations for people in 17 rental units prior to final permits or Certificates of Occupancy.

The Hearing Decision deemed the Tenants' testimony credible with respect to their accounts of living at the property, but not credible with respect to the dates of their tenancies. This conclusion does not name any specific tenant's testimony, nor does it otherwise specify the facts upon which it is based on. The conclusion ignores the high degree of corroborating testimony by other tenants and workers at the property placing them at the property in 1986 through 1987. It ignores the voter registration records which correspond with many tenancies. It ignores its own conclusion that tenancies occurred prior to finalization of permits and Certificates of Occupancy in October of 1987.

**Appeal Form 2d: The Decision Violates State and Local Law.**

a) **State Case Law Requires that Exemptions to Rent Control Be Narrowly Construed**

It is also crucial to note that a Certificate of Exemption is an exception from a general Ordinance.

As an exception, the following applies:

Exceptions to the general rule of a statute are to be strictly construed. In interpreting exceptions to the general statute courts include only those circumstances which are within the words and reason of the exception. One seeking to be excluded from the sweep of the general statute must establish that the exception applies. (*Barnes v. Chamberlain* (1983) 17 Cal.App.3d 762, 767)

Two cases, *Da Vinci Group v. San Francisco ResidentPial Rent Board* (1992) 5 Cal.App.4th 24,27 and *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, illustrate the s

sort of strict construction applied to local rent laws which provide exemptions for newly constructed rental units.

In *Da Vinci Group*, the owner purchased a multi-apartment warehouse with no and continued to rent units to tenants. After the city flagged the building for changing to apartments without a permit, the owner made improvements and obtained a Certificate of Exemption. He then claimed exemption from the local rent ordinance, which exempted "rental units located in a structure for which a was first issued after the effective date of this ordinance." At the time, the San Francisco Ordinance lacked a provision barring exemption for units which had previously been used residentially. Nonetheless, the appellate court looked beyond the bare language of the Ordinance to the Board's regulations, which added the element that new construction exemptions applied "only where there has been no residential use since the enactment of the Ordinance." *Da Vinci Group, Id.* at 29. Noting that the new construction exemption's purpose was to ease the housing shortage by creation of new units, the appellate court commented, "Legalizing de facto residential use does not enlarge San Francisco's housing stock." *Id.* at p. 30.

This case is similar to *Da Vinci*. The owners chose to put the property to residential use prior to final approvals. They nonetheless assert that they are entitled to an exemption because the prior residential use did not occur before 1983. However, nowhere in the Oakland Ordinance does it state that the term "formerly entirely non- residential" applies only to such occupancy if it occurred before January 1, 1983.

In *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, a landlord sought to take advantage of the provisions of the Costa-Hawkins Act. (Civ. Code§ 1954.52) The

landlord converted a rent-controlled apartment building, with a 1972 Certificate of Occupancy to condominiums. In 2009, he obtained a new Certificate of Occupancy based upon the change in use. When a tenant challenged a rent raise, the landlord sought a declaration from the court that the unit was exempt from the Los Angeles rent Ordinance under provisions of the Costa-Hawkins Act which exempts units that have certificates of occupancy issued after 1995. The landlord appealed a trial court finding that the rent raise violated the Ordinance. In affirming the trial court decision, the appellate court concluded:

In this case, Tenant's unit is not exempt under [Costa-Hawkins] because the tenant occupied the unit prior to the issuance of the 2009. The 2009 Certificate of Exemption did not precede the residential use of the property. (Emphasis added)

*Burien* at p. 1049.

The Los Angeles Ordinance did not contain an explicit requirement that the second Certificate of Occupancy must precede residential use in order to obtain exemption.

Nevertheless, the appellate court reasoned:

"We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting, rather than defeating the general purpose of the statute, and avoid an interpretation which would lead to absurd consequences."

A construction of the Ordinance that gives landlord permission to rent out unit uninspected and potentially unsafe dwellings is absurd. Exemption should not be granted.

b) **The Hearing Decision Conflicts with State and Local Laws Prohibiting Residential Occupancy Prior to Obtaining a Certificate of Occupancy**

Both the Oakland Municipal Code and state law require issuance of both a permit and a Certificate of Occupancy before a building can be occupied. (California Building

Code §110.1 et seq.; Oakland Municipal Code §15.08.150)

California case law reflect the importance of requiring these finalizing documents. A landlord is not entitled to collect rent if a property lacks a Certificate of Occupancy Without a Certificate of Occupancy, a lease is an illegal transaction and thus void. *Gruzen v. Henry* (1978) 84 Cal.App.3d 515,519. However, the tenant of such a unit is entitled to the protections of local rent ordinances. As the person intended to be protected by the laws, the tenant is entitled to enforce tenancy rights, even though the lease itself may be void. *Carter v. Cohen* (2010) 188 Cal.App.4th 1038.

The former Owners rented out units for over two years before issuance of Certificates of Occupancy. Such practices are unlawful and unsafe. They undermine the important public policies upon which building codes and housing law are based. Permitting the Vulcan owners to obtain an exemption under these circumstances rewards their wrongful conduct.

**Appeal Form 2b: The Decision is Inconsistent with Decisions Issued by Other Hearing Officers.**

**a) The Hearing Decision Directly Conflicts with *Armory v. Green Sage, LLC* (2022), T18-0372, et al.**

Armory v. Green Sage, LLC (2022) T-18-0372 et al. reached a conclusion which directly conflicts with the Hearing Decision in this case. Armory concerned two buildings at a former cannery which was converted to artists' live-work units. The Hearing Decision granted exemption for one building based upon proof of residential occupancy prior to 1983 but denied exemption for the other. Tenants at the other building appealed. In that building tenants of two units had entered tenancies in 2009 while the Certificate of Occupancy had issued in 2011.

The Board remanded the case for reevaluation in light of the “the lack of temporal limitation on residential use prior to conversion...”). Eventually, a Corrected Remand Hearing Decision was issued, finding the building to not be exempt from the Ordinance. After reviewing the Board’s discussion at the Appeal Hearing, the Hearing Officer articulated that “the subject property is not exempt as new construction if there was residential use prior to the issuance of the Certificate of Occupancy *even if* the property was newly constructed and received the Certificate of Occupancy after January 1, 1983.” (pg. 2 of the Corrected Remand Hearing Decision) The Order stated: “Per the Board’s instruction, the units at [the subject building] are not exempt from the Rent Adjustment Ordinance because there was residential use prior to issuance of the Certificate of Occupancy.” (pg. 7 of the Corrected Remand Hearing Decision)

The simple formula set out in Armory solves many problems inherent in new construction cases. It promotes stable housing and affordable rents. It protects tenants, many of whom have resided for decades in their rental units from sudden rent raises, and potentially losing their housing. It avoids the absurdity of the “lack of temporal limitation on residential use prior to conversion.”

**Appeal Form 2(c): The Decision Raises a New Policy Issue that Has Not been Decided by the Board.**

While the Armory v. Green Sage LLC T180372 Decision resulted from instructions to the Hearing Officer from the Board, the Corrected Remand Hearing Decision was not appealed, so it is not a formal Board decision. A Board decision adopting the conclusions of Armory would result in consistent guidance for cases in the future.

## CONCLUSION

For the reasons set forth in this Memorandum, the Tenants respectfully request a decision denying the Landlord's petition, stating that all residential units at 4401 San Leandro Street are not exempt from the Oakland Rent Adjustment Program.

Dated: June 7, 2023

LAW OFFICE OF LEAH HESS  
GEGHAMYAN LAW OFFICE

A handwritten signature in blue ink, appearing to read "M. Geghamyan", is written over a horizontal line.

Leah Hess  
Hasmik Geghamyan  
Attorney for Tenants/Appellants

# EXHIBIT A

**TENANT-APPELLANTS MARTIN, ET.AL. v. VULCAN LOFTS, LLC**  
**EVIDENCE OF RESIDENTIAL USE OF THE PROPERTY PRIOR TO LEGAL CONVERSION - SUMMARY**

Unit #	Reg #	Date		Evidence of Early Residential Occupancy
1	F870498	09/08/1982	A	•Voter registration (pre-1/1/83)
2	G987540	06/09/1986	A	•Voter registration
5	H204832 G511489	11/25/1986 9/17/ 1984	A	<p>•<u>Voter Registrations</u></p> <p>•<u>Witness testimony Peter Mars (formerly Peter Smith), (6/10/19 Hearing) Lived in Unit 5 with Karen Beck. (2:18:01- 1/18/06; 2/17/11-2/17/39). ( 2:18:07-2;24:56)</u></p> <p>•Application for bldg permit for Unit 5 to build a storage loft “In existing live/work Studio”. signed “Peter Smith”. Date April 13, 1987. (Tenant Exh. 46)</p> <p>•Mars testified that, at the time he applied for the permit, he would have been living at the Vulcan “a year or possibly at year and a half”. (2:28:20-2:33:03)</p> <p><u>Karen Beck(formerly Karen Smith) (12/16/19 Hearing)</u></p> <p>•Beck testified to moving into Unit 5 with husband Peter Smith in 1985 or 1986. She moved out in January ‘88. (12/16/19 Hearing, (4:37:24-53; 4:38:59-4:00)</p>
6	G865845	06/02/1986	A	•Voter Registration
10	H257469	08/22/1987	A	•Voter Registration
11	G771855	09/19/1986	A	•Voter Registration

14	X426298	05/29/1987	A	<p>•Voter Registration</p> <p><u>Witness Todd Boekleheide (6/10/19 Hrng)</u></p> <p>•Boekelheide testified that he moved into unit 14 “probably” in 1986. (4:31:27-4:31:58) Construction of new units was ongoing. (4:32:32-41) People were already living there when he moved in. (4:32.23)</p> <p>Responding to Hearing Officer, he stated that he could not say “with a reasonable degree of certainty” that it was 1986. (4:44:32-4:44:59)</p> <p>Shortly after his testimony, he requested to reopen his testimony to give a more accurate answer. The request was granted.</p> <p>•He then testified that he could “definitely declare” that he was living at the Vulcan “at least” as early as September, 1987 based upon the release date of a film he was working on the time. He was working on the film for at least a month prior to its release in October 1987. (5:21:38—5:23:38)</p> <p>•<u>Corroboration:</u> Tenant Exh. No. 58:</p> <p>•Witness <u>Eddie Orten</u> testified that he rented a unit to <u>Todd Boekelheide</u> in mid-1987. (April 15, 2019 Hearing, 1:16:06-1:17:30)</p> <p>Carpenter <u>David Cheek Sworn Declaration</u></p> <p>Cheek testified that he became a supervisor at the Vulcan in 1986. (¶ 4) He testified that Todd Boekelheide was residing at the property prior to when Cheek started working there. (¶¶ 3, 7)</p>
	H099880	10/06/1986	?	<p>•No Unit Number Stated in Voter Registration Records. However, see notes below (Unit 18) person at the property registering to vote on the same day: 10/06/1986</p>

18	X489752	10/06/1986	B	<p>•Voter Registration</p> <p><u>Witness Randy Hussong (12/16/19 Hrng)</u></p> <p>Hussong testified that he worked at the property as a painter before he and his wife moved into Unit 18 in 1985. (1:21:43-1:22:33) Voter</p> <p>•Registration Record shows person living there in 1986.</p> <p>He stated that David Cheek worked on the painting crew, and David's sister Allison lived at the property. (1:29:53-1:30:04)</p> <p>Stated he was one of the initial tenants at the Vulcan. Tenants started moving into building A as units became available. He named other tenants: Allison Cheek, Ric Tingali, Jonathan Garrett, Bob Drecco and Tod Boekelheide but did not recall when they moved in. He estimated that construction was finished "sometime in 1986". He moved from the property at the end of October 1989. He remembers because he was there during the 1989 Loma Prieta earthquake (1:38:15-1:40:21)</p> <p><u>David Cheek Sworn Declaration:</u></p> <p>Carpenter David Cheek testified that Randy Hussong and his wife Tracy McBride resided at the Vulcan when Cheek started working there in 1986. Randy worked on the construction crew with Cheek as a painter. (¶¶ 3, 8)</p>
19	G267674 G267675	05/07/1984 05/07/1984	B	<p>•Voter Registration</p>

21	H074029 H074030	09/25/1986	B	<ul style="list-style-type: none"> <li>•Voter Registrations</li> <li>•<u>Witness Gayle Bryan</u> (12/16/19 Hrng)</li> </ul> <p>Ms. Bryan testified that she moved into Unit 21 with her husband, Patrick Bryan, in '86 or '87. Could have been '85. She lived there for 3 years. (3:42:59-3:45:26)(3:56:30-3:57:05)</p> <p>She knows the approximate date of their move-in because they were living there when he graduated in from Holy Names in. 1987. (4:00:44-4:01:12)</p> <p>Valerie Steel and her husband moved in across the hall about a month after she moved in. (3:46:01-3:46:44)</p> <p>Many other artists were moving into the Vulcan when she moved in. Rental units were still being built. People moved in immediately after the units were built. (3:58:23-3:58:44)</p> <ul style="list-style-type: none"> <li>•Corroborating: Valerie Steel testified to moving into Unit 23 with her husband in late '86.</li> </ul>
22	H105022	10/03/1986	B	<ul style="list-style-type: none"> <li>•Voter Registration</li> </ul>

23	H191495	04/28/1987	B	<p>•Voter Registration</p> <p>•<u>Witness Valerie Steel</u> [6/10/19 Hrng.]</p> <p>Ms. Steel testified to renting Unit 23 with her fiancé (later husband) in late '86. They had to prep their space, so they moved in around December.(3:50:45-3:51:11-27; 3:52: 28-3:52:42). They rented it as live/work space. (3:52:52-3:53:21)</p> <p>There were about a dozen people living in the buildings adjacent to the parking lot. She listed several people living at the property around the time of her move-in: Gayle and Patrick Bryan lived across the hall; David and Allison Cheek, lived behind them to the left; Bob Drego lived next door; Todd Boekleheide was across the driveway; Denise Owen was an "early, early tenant"; Donna Fenstermaker was a tenant, but "she doesn't recall when she came. (3:56:48-4:00:38)</p> <p>She was manager for several years. She wasn't sure of the date when she started, but she was manager on the day of the 1989 earthquake, so it was probably a couple years after she moved to the property. (4:04:00-4:04:13)</p> <p>All units had been built out when she moved from the property in 1990. She doesn't know exactly when the owners stopped working—maybe 1988. The units were totally built-out long before the earthquake. (4:08:37-4:10:08)</p> <p>There were a few units "day space" units that were not live/work, 12-15, "maybe not even that number." (4:10:10-4:11:23)</p> <p>See witness Gayle Bryan testimony above re: Steel move into the property.</p>
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25	H121815	02/201987	B	<p>•Voter Registration</p> <p><u>Witness Allison Davis</u> formerly Allison Cheek (12/26/19 Hrng)</p> <p>Ms. Davis testified that she lived in unit 24 or 25. She thinks she moved into the Vulcan "sometime in 1986".(4:14:22-4:18:59) She lived there with her husband Ricardo Tringali. (4/15/50-4/16/04)</p> <p>She had just moved to the Vulcan when she started commuting to U.C. Davis as a transfer student in the 1986/87 academic year, starting in the Fall of '86. (4:28:58-4:29:10)</p> <p>She knew several people at the Vulcan that were part of the "first wave" of tenants to move in. She and her husband lived to the left of Valerie Steel. (4:22:56-4:23:00; 4:26:44-4:27:14)</p> <p>There were still a lot of empty spaces and there was a lot of building at the time she moved in. (4:27:14-4:27:18)</p> <p>She moved out in the Fall of 1989. (4:32:40-4:33:09)</p> <p><u>Declaration of witness David Cheek</u> (Exh. 6)</p> <p>Carpenter David Cheek testified that became a supervisor at the Vulcan in 1986. (¶ 4) There were "definitely" people residing there when he started working. The owners were in a "huge rush to get people in". Units were rented out soon after they were completed. The units were intended as residences. His crew installed running water, electricity, bathrooms, kitchens and bedrooms. The owners rented the spaces as residences. (¶ 5)</p> <p>His sister, Allison Davis, resided at the property in Unit 25 with her husband Rick Tingali. Cheek was working on units at the property prior to her moving in. He worked on construction of her unit.</p>
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25	H121814	02/20/1987	B	<ul style="list-style-type: none"> <li>•See above re testimony of Allison Davis,</li> <li>•Declaration of her brother David Cheek.</li> </ul>
31	None		C	<ul style="list-style-type: none"> <li>•<u>Witness Llewellyn Moreno</u> (formerly, Llewellyn Hilliard</li> </ul> <p>Mr. Moreno testified that he moved into Unit 31 “no later” than March or April 1987—it could have been several months earlier. He did extensive work on his rental unit prior to move in but he had been living in the unit for some time when he was informed that his father had been hospitalized in early June (5:24:43–5:37:18)</p> <p>He lived at the Vulcan for approximately one year. (5:41:57-5:42:31)</p> <p>He was the first tenant in his unit. There were “several generations of tenants” because the property had developed in stages. His unit and other units available at the same time were the third stage of development of the property. There were people at the property who were “quite well settled” by the time he was there. (5:38:58–5:39:42)</p> <p>When he moved in, there were “quite a number” of people already living at the Vulcan. (5:40:20-5:40:41)</p>

43	H262087	09/28/1987	C	<p>•Voter Registration</p> <p><u>Witness Susan Bloomquist, formerly Susan Nickel.</u> Susan Bloomquist testified that she moved into Unit 43 as a sublessor of existing tenant Suzanne Lang. (4:53:39-4:53:35) They agreed to share the costs and share the work of fixing up the space so they would have a large studio to work. (4:53:56-4:54:17)</p> <p>Ms. Bloomquist moved in "sometime in 1986", but "for sure" by June 1986. At the time, she was due to lose her student apartment in June. (4:53:20-4:53:25; 4:54:46-4:54:53)</p> <p>Ms. Bloomquist began paying rent and building out the space so that it would be comfortable for her to live there when she had to vacate her student apartment in June. (4:54:56-4:55:03:10; 4:55:11-4:55:35; 4:55:11-4:55:35; 4:55:50-4:56:06; 4:57:06-4:57:45; 4:58:04-4:58:34)</p> <p>WThe units in the building across the parking lot ) were built out and people were living in them when she moved in. (4:58:40-4:59:09) Todd Boekleheide was living in "the first building" when she moved in. (4:59:46-4:59:51)</p> <p>Ms. Bloomquist testified that "most of the construction was finished by the end of 1987 because they kept going north building the units. (5:03:27-5:05:08).</p>
43	H189199	09/28/1987	C	<p>•Voter Registration</p> <p>See above re: Unit 43 and tenants.</p>

48			C	<p><u>Witness Paul Howard</u> sworn declaration (Exh. 8) stated that his mother <u>Rhoda Lee London</u> resided in Unit 48 with her husband Mark Seymour in 1986-1987. (¶ 3) Prior to their move-in, he toured the property with them while construction was underway. (¶ 4) The units were offered as live/work artists' studios and her unit was rented to her as live/work. He helped them move in and visited frequently. It was "definitely their residence. (¶¶ 4, 5)</p> <p><u>Postcard</u> attached to Howard Declaration: Stamped &amp; postmarked in France. Postcard from "Barb &amp; Chuck" to Mark &amp; Rhoda Seymour, 4401 San Leandro # 8 (Exh iii)</p>
54			C	<p><u>Witness Elizabeth Ross</u></p> <p>Ms Ross testified that she moved into Unit 54 in "Fall of '87". Unsure whether it was October or November. She believes that she was not the first tenant in the unit because there were items from the previous tenant.</p> <p>Items found in apartment indicated that she was not the first tenant at that unit. She understood that tenants were required to provide their own stoves and refrigerator. Unit four came with a pink refrigerator. (3:25:17-3:28:08)</p>
57	H214660	06/12/1987	C	•Voter Registration
57	H214001	06/12/1987	C	•Voter Registration

## PROOF OF SERVICE

**Case Appeal Name: Tenant-Appellants Martin, Szymanski, et al. v. Vulcan Lofts, LLC**

**Case Name: Vulcan Lofts, LLC v. Tenants**

**Case Number(s):** L19-0013 *bifurcated from* T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022 & T19-0023

I am a resident of the State of California and at least eighteen years of age. I reside in Alameda County, California. My address is 1720 Broadway, Suite 430, Oakland, California 94612. I served a copy of:

- **Appeal Form (with Addendum)**
- **Memorandum in Support of Tenant-Appellants Helena Martin, et.al. vs. Vulcan Lofts, LLC**
- **Additional Documents (9 pages)**
- **Proof of Service**

**To each opposing party, whose names and addresses are listed below, by one of the following means (check one):**

**USPS Mail.** I enclosed the documents in a sealed envelope or package addressed to the persons listed below and at the addresses below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

**By Electronic Mail.** Electronic mail to Landlords' Counsel Only (in addition to USPS Mail)

Owner Representatives – US Mail and Electronic

Service:

Servando Sandoal

Pahl & McCay

225 W. Santa Clara Street Suite 1500

San Jose, CA 95113

[ssandoval@pahl-mccay.com](mailto:ssandoval@pahl-mccay.com)

Andrew Zacks, Zacks, Freedman & Patterson

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Sent via USPS for Tenants not represented by Hasmik Geghamyan and Leah Hess

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Oakland, CA 94601

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 7, 2023 in Oakland, California.

  
\_\_\_\_\_  
Hasmik Geghamyan



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**APPEAL**

Appellant's Name Brooke Rollo		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) Unit #46 4401 San Leandro Street, Oakland, California 94601			
Appellant's Mailing Address (For receipt of notices) Unit #46 4401 San Leandro street, Oakland, California, 94601		Case Number L19-0013	
		Date of Decision appealed Issued April 30, 2023 and Served on May 23, 2023	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

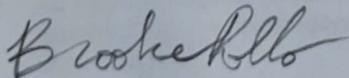
- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  The decision violates federal, state, or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on the Owner's investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Supporting documents (in addition to this form) must *not* exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 1.

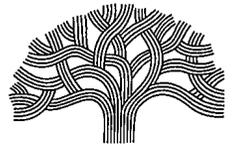
- You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. •
- I declare under penalty of perjury under the laws of the State of California that on JUNE 13, 2023, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Servando Sandoval, Pahl & McCay
<b>Address</b>	225 W. Santa Clara Street, Suite 1500
<b>City, State Zip</b>	San Jose, California 95113
<b>Name</b>	Andrew Zacks, Zacks, Freedman and Patterson
<b>Address</b>	1970 Broadway, Suite 1270
<b>City, State Zip</b>	Oakland, California 94612

	June 13, 2023
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SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

## Housing Residential Rent and Relocation Board (HRRRB)

### APPEAL DECISION

**CASE NUMBER:** L19-0013, Vulcan Lofts, LLC v. Tenants and Related Tenant Petitions  
**APPEAL HEARING:** August 24, 2023  
**PROPERTY ADDRESS:** 4401 San Leandro Street, Oakland, CA  
**APPEARANCES:**

<b>Respondent/Owner Representative:</b>	<b>Servando Sandoval</b>
<b>Appellants/Tenants Representatives:</b>	<b>Leah Hess Hasmik Geghamyan</b>

### PROCEDURAL BACKGROUND

This case involved an appeal to tenant petitions and a property owner petition for a certificate of exemption. In August and October 2018, tenants from Vulcan Lofts filed petitions challenging rent increases and alleging decreased housing services. The tenants also contested the exemption on the basis of fraud or mistake—as a prior ruling from the Board determined that four units of the property were exempt from the Rent Adjustment Ordinance on the basis of new construction. This was appealed by one tenant and affirmed by the Superior Court and Court of Appeals.

In November 2018, the property owner filed a petition seeking an exemption on the basis of new construction for units located at 4401 San Leandro Street. Tenants filed responses to the petition, arguing that the ordinance does not grant exemptions to properties where there has been residential use prior to the issuance of a certificate of occupancy—and that there was evidence of residential use prior to issuance of the certificate in 1987.

### RULING ON THE CASE

On April 30, 2023, the Hearing Officer issued a hearing decision, granting the property owner's petition and dismissing the tenant petitions. The Hearing Officer found that the evidence established that the property was newly constructed after the purchase of the property in December 1985—and that the property was not residential

before the purchase. The Hearing Officer also found that the residential occupancy started after the purchase in 1985, and that the certificate of occupancy was finalized on October 20, 1987. Based on these findings, the hearing decision concluded that the owners had met their burden of proof to establish that the property received a certificate of occupancy after January 1, 1983—and therefore, the subject property is exempt from the Rent Adjustment Ordinance.

### **GROUND FOR APPEAL**

The represented tenants appealed the hearing decision on the owner petition and dismissal of all tenant petitions, arguing that:

- 1.) The Hearing Officer failed to address the primary legal question of whether any residential use prior to the issuance of the certificate of occupancy counts as prior residential use for the purpose of exemption—or if only residential use before January 1, 1983, matters for exemption purposes and
- 2.) Because exemptions are narrowly construed, post 1983 residential use occurring before the issuance of the certificate of occupancy means that the units should not be exempt as new construction under the Rent Adjustment Ordinance. There is evidence in the record of residential use from at least June 1986—prior to the issuance of the certificate of occupancy in 1987 and
- 3.) The prior case, *Vidor v. City of Oakland*, does not control here because the decision only applied to 4 units in the property and exemption decisions can be overturned upon the showing of fraud or mistake.

The owner then submitted a response, contending that Oakland law does not expressly provide that any residential use before the issuance of the certificate of occupancy removes an exemption claim based on new construction—and that for the prior residential use standard, to preclude a new construction exemption, the residential use must have occurred prior to January 1, 1983. The owner also argued that prior cases holding that the Vulcan Lofts units were exempt should be given deference.

The following issues were presented to the Board:

- 1.) If a unit receives a certificate of occupancy on or after January 1, 1983, as a result of conversion from existing space, does the unit qualify for the new construction exemption, so long as the former unit was not used residentially prior to 1983 or prior to conversion?
- 2.) Did the Hearing Officer's decision adequately connect the finding to the ultimate conclusion that the property was exempt by applying a clear legal rule?

**BOARD DECISION**

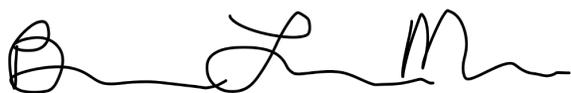
After parties' arguments, questions to the parties, and Board discussion, Chair Ingram moved to remand the cases back to the Hearing Officer for a determination on the exemption based on the Amory v. Green Sage decision. For clarification, to qualify for an exemption, the property must have been entirely non-residential—i.e., no residential use, prior to the issuance of the final certificate of occupancy. The Hearing Officer is also to make a decision on the tenant petitions based on the merits. Member J. deBoer seconded the motion. Member J. deBoer withdrew his second.

Chair Ingram moved to remand the cases back to the Hearing Officer for a determination on the exemption based on the Amory v. Green Sage decision. For clarification, to qualify for an exemption, the property must have been entirely non-residential—i.e., no residential use, prior to the issuance of the certificate of occupancy. If the Hearing Officer determines that the property is not exempt, the Hearing Officer is to conduct a hearing and make a decision on the tenant petitions based on the merits. Member K. Brodfuehrer seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, M. Goolsby, J. deBoer, K. Brodfuehrer  
**Nay:** None  
**Abstain:** None

The motion was adopted.



BRIANA LAWRENCE-MCGOWAN  
BOARD DESIGNEE  
CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND  
RELOCATION BOARD

November 6, 2023

DATE

**PROOF OF SERVICE**  
**Case Number L19-0013**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Appeal Decision

**Owner**

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155 Grand Avenue, #950  
Oakland, CA 94612

**Owner Representative**

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Zacks, Freedman & Patterson  
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Oakland, CA 94612

**Owner Representative**

Servando Sandoval  
Pahl & McCay  
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San Jose, CA 95113

**Tenant**

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Oakland, CA 94601

**Tenant**

Aileen Lawlor  
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Oakland, CA 94601

**Tenant**

Aimee Seaver  
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Oakland, CA 94601

**Tenant**

Alfonso Kellenberger  
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Oakland, CA 94601

**Tenant**

Amelia Adams  
4401 San Leandro Street, #29  
Oakland, CA 94601

**Tenant**

Anari Cade  
4401 San Leandro Street, Unit # 30  
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**Tenant**

Andrea Ives  
4401 San Leandro Street, #3  
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**Tenant**

Andrew Pulkrabek  
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Oakland, CA 94601

**Tenant**

Angeline Huang  
4401 San Leandro Street, Unit # 17  
Oakland, CA 94601

**Tenant**

Annmarie Bustamante  
4401 San Leandro Street, #19  
Oakland, CA 94601

**Tenant**

April Miller  
4401 San Leandro Street, #58  
Oakland, CA 94601

**Tenant**

Arthur Cardenas  
4401 San Leandro Street, #21  
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**Tenant**

August Toman-Yih  
4401 San Leandro Street, #47A  
Oakland, CA 94601

**Tenant**

Austin Maples-Fleck  
4401 San Leandro Street, #22  
Oakland, CA 94601

**Tenant**

Barbara Rodgers  
4401 San Leandro Street, #11  
Oakland, CA 94601

**Tenant**

Bolton Littlefield  
4401 San Leandro Street, # 58  
Oakland, CA 94601

**Tenant**

Brandon Mullins  
4401 San Leandro Street, #27  
Oakland, CA 94601

**Tenant**

Brianne Crabtree  
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Oakland, CA 94601

**Tenant**

Brittany Valdez  
4401 San Leandro Street, #26  
Oakland, CA 94601

**Tenant**

Brooke Rollo  
4401 San Leandro Street Unit, # 46  
Oakland, CA 94601

**Tenant**

Bryan Kitchens  
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Oakland, CA 94601

**Tenant**

Cassie McKenney  
4401 San Leandro Street, #52  
Oakland, CA 94601

**Tenant**

Cassie Stuurman  
4401 San Leandro Street, #1  
Oakland, CA 94601

**Tenant**

Charles Long  
4401 San Leandro Street, #4B  
Oakland, CA 94601

**Tenant**

Chris Keller  
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Oakland, CA 94601

**Tenant**

Christian Eichelberger  
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Oakland, CA 94601

**Tenant**

Colin Sullivan  
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Oakland, CA 94601

**Tenant**

Dani Reagan  
4401 San Leandro Street, #33  
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**Tenant**

Danny Wang  
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**Tenant**

Darin Marshall  
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**Tenant**

Darius Todar  
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**Tenant**

David Bernbaum  
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**Tenant**

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**Tenant**

Delila Santos  
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**Tenant**

Denise Marie Kennedy  
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Oakland, CA 94601

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**Tenant**

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Ezra Eismont  
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**Tenant**

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**Tenant**

Kathleen Callahan  
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**Tenant**

Kathryn Stewart  
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Oakland, CA 94601

**Tenant**

Kelley Halvorson  
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Kevin Baldwin  
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**Tenant**

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**Tenant**

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Mark Leavitt  
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Martha Fehrman  
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Martin Laurent  
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**Tenant**

Matthew Grahm  
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**Tenant**

Matthew Hudson  
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**Tenant**

Matthew Martin  
4401 San Leandro Street, #58  
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**Tenant**

Megan Girart  
4401 San Leandro Street, #2  
Oakland, CA 94601

**Tenant**

Michael Blodgett  
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**Tenant**

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**Tenant**

Michael Lichen  
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**Tenant**

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**Tenant**

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**Tenant**

Randall Spencer

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**Tenant**

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**Tenant**

Resident

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**Tenant**

Resident

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**Tenant**

Resident

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**Tenant**

Robert Jacobs  
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**Tenant**

Ross Clark  
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**Tenant**

Ross Clark  
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**Tenant**

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**Tenant**

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**Tenant**

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**Tenant**

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**Tenant**

Serge B Yelena  
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Susan Leffingwell  
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**Tenant**

Susannah Israel  
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**Tenant**

Takehito Etani  
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**Tenant**

The Lucid Dream Lounge  
4401 San Leandro Street, #25  
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**Tenant**

Thelma Andree  
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**Tenant**

Thelma Andree  
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**Tenant**

Tiana Fraser  
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Oakland, CA 94601

**Tenant**

Torey Broderson  
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Oakland, CA 94601

**Tenant**

Troy Clancy  
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Oakland, CA 94601

**Tenant**

Tzong Tzu Rogerts  
4401 San Leandro Street, #52  
Oakland, CA 94601

**Tenant**

Woodruff Burley  
4401 San Leandro Street, #39  
Oakland, CA 94601

**Tenant**

Yasmine Salem  
4401 San Leandro Street, Unit # 12  
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**Tenant**

Yelena Fillipchuck  
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**Tenant**

Zach Stockman  
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**Tenant**

Ziaa Szymanski  
4401 San Leandro Street, #21  
Oakland, CA 94601

**Tenant Representative**

Hasmik Geghamyan  
1720 Broadway, Suite 430  
Oakland, CA 94612

**Tenant Representative**

Leah Hess, Attorney at Law  
PO Box 8867  
Emeryville, CA 94662-0067

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **November 16, 2023** in Oakland, CA.



Briana Lawrence-McGowan

Oakland Rent Adjustment Program

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Attorneys for Tenants

CITY OF OAKLAND  
Rent Adjustment Program

Case Name: **Vulcan Lofts, LLC v. Tenants**

Case Numbers: L19-0013, et al.

**TENANTS' REBUTTAL TO LANDLORD'S CLOSING ARGUMENT FOLLOWING  
REMAND HEARING**

**I. PROCEDURAL HISTORY–OVERVIEW**

These cases have now been pending for more than seven years.<sup>1</sup> By agreement of the parties, the cases were consolidated early on to expedite resolution. The parties also agreed that, to avoid unnecessary duplication and delay, the exemption issue would be determined prior to other issues raised in the Tenants' petitions, such as decreased services.

These efforts to streamline procedures did not work as expected.

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<sup>1</sup>See RAP CHRONOLOGICAL CASE REPORT (hereinafter, "RAP Chron Report").

Equally unexpected were the events that took place following issuance of the Rent Board's Appeal Decision on November 6, 2023. The Board remanded the case back to the Hearing Officer with instructions "for a determination on the exemption based on the Amory v. Green Sage decision." Specifically, the Board directed the Hearing Officer as follows: "For clarification, to qualify for the exemption, the property must have been entirely non-residential – i.e. no residential use, prior to the issuance of the certificate of occupancy." Neither the Rent Ordinance, nor its Regulations describe procedures to be undertaken when a Hearing Officer fails to comply with an Appeal Decision.

In the following brief, Tenants will discuss issues arising from the Hearing Officer's reopening of the record and the Landlord's claims advanced in their Closing Argument Following Remand, res judicata/collateral estoppel, and the overwhelming evidence of residential use prior to issuance of certificates of occupancy or finalized building permits.

A. **THE HEARING OFFICER'S DECISION**

The Hearing Officer's Decision was comprised of 57 pages describing testimony from former tenants, workers, and visitors about residential use of the property. The Hearing Decision devoted little attention to the voter registration records which had been subpoenaed by the Tenants.<sup>2</sup> The Decision noted that "There is evidence through the records provided by the Registrar of Voters, only that, in 1982, at least one person claimed to live at the subject property. "However, no evidence supports that claim." In this assertion, the

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<sup>2</sup>The Tenants initially sought to obtain voter registration records from 1975 through 1987, but the Hearing Officer who ruled on their application limited the subpoena to the time period between 1985 and 1987, thus precluding discovery of any earlier records.

Decision ignored the obvious—the fact that the voter registration was itself evidence of pre-1983 residential use.<sup>3</sup> Because the hearing officer’s analysis focused on pre-1983 residence, the hearing officer did not consider the registered voters residing after the former owners purchased the property. With respect to “substantial witness testimony regarding dates of move-in”, the Hearing Officer found nonetheless that the testimony “lacked persuasiveness”, in that different tenants recalled different dates as to when certain peripheral events—such as the opening of the café, occurred. She also ignored the fact that many witnesses tied their recollection of residing at the property to major life events, *e.g.* illness of father (Moreno), injury from accident (Beck), legal clerkship (Alison), husband’s college graduation (Bryan), starting up new business, obtaining building permit for addition to existing live-work studio (Mars). Nor did she take notice that many of the witness names were corroborated in the Registrar’s production of records. (See **Addendum A**, Evidence of Residential Use of the Property Prior to Legal Conversion - Summary)

The Hearing Decision concluded:

The evidence establishes that residential occupancy started at the subject property after the purchase in 1985. A *Certificate of Occupancy*, issued by the city of Oakland for the residential use of the building was finalized on October 12, 1987. Therefore the owner has met its burden of proof to establish that the subject [*sic*] received a certificate of occupancy on or after January 1, 1983. Accordingly, the subject property from The Ordinance [*sic*]

The Order granted the Landlord’s petition and dismissed the Tenant petitions.

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<sup>3</sup>After serving the Registrar of Voters Office with the subpoena, the Registrar objected, based on privacy concerns. Oakland’s City Attorney and County Counsel negotiated an agreement under which a summary of the records was created and produced, with one copy from which resident names were redacted, to be shown the parties in hearings and one without redaction to be kept under seal in the case file.

The Tenants appealed to the Rent Board.

**B. HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD’S APPEAL DECISION**

On or around August 4, 2023, the City Attorney’s office provided members of the Rent Board with its analysis of this case and issued a formal Recommendation. It discussed the facts at issue in this case in light of *Da Vinci v. San Francisco Rent Stabilization* 5 Cal. App. 4<sup>th</sup> 24 (1992). It reviewed the *Vidor* case in depth (see, *infra*, section on res judicata/collateral estoppel). It made the following recommendation:

“The Office of the City Attorney recommends that the Board remand the Hearing Officer’s decision to apply the Board’s recent decision in T18–0372, Amory et al. v. Green Sage that there is no temporal limitation on residential use prior to conversion.”

On August 24, 2023, the Board heard the case. In a unanimous Appeal Decision dated on November 6, 2023, the Rent Board remanded this case back to the Hearing Officer:

“for a determination of the exemption based on the Armory v. Green Sage decision. For clarification, to qualify for an exemption, the property must have been entirely non-residential—i.e., no residential use, prior to the issuance of the final certificate of occupancy.”

**II. EVIDENCE PRESENTED BY THE PARTIES**

**A. HEARING OFFICER REOPENS CASE FOR “NEW EVIDENCE” EVEN THOUGH THE EVIDENTIARY STANDARD WAS NOT MET.**

Instead of issuing the expected remand hearing decision as directed by the Board, the Hearing Officer announced that she would hold a hearing to determine whether the case should be reopened to allow the landlord to locate and present “new evidence.” Landlord’s counsel agreed to reopen the evidence, while Plaintiff’s counsel vigorously objected, stating

that Landlord had years in which to discover “new evidence” and should not be permitted to produce more at this late date.

California statute, case law, and the Ordinance all strongly disfavor the admission of new evidence after trial. (C.C.P. 657 subbed. 4, *Missionary Guadeloupians v. Roumillard* (2019) 38 Cal.App. 5, 421); *Estate of Cover 9* (1922) 188 Cal. 133, 149). To support reopening the record, “new evidence” must be material (i.e., capable of changing the outcome) and, it could not have been discovered in the exercise of reasonable diligence prior to the trial. This standard was not met, since no new evidence was submitted at the Remand Hearing on January 6, 2025. Landlord’s “new documents” were Building Department records already submitted by Owner in this case and in *Vidor v. Vulcan Properties*. T05–0110. Their sole witness was David Miles, Principal Inspection Supervisor of the Building and Planning Division, whose city employment began in 1999. Mr. Miles could have been asked to testify in 2019 when the case was pending, and there were plenty of opportunities for him to testify before the case closed in 2022. Mr. Miles repeatedly testified that he had no personal knowledge of the Vulcan Property until 2005, when he worked on more recent issues there. (Testimony of David Miles, Video of Remand Hearing, “Miles” 01/06/2025).

All of the “new evidence” presented by the Landlord at the remand hearing in this case had been available in public records for decades. Miles’ testimony about Building Division practices in the 1980s derived largely from hearsay, nor was it useful to the Landlord’s case. Miles testified that “Based on what you’ve shown me, I believe a

Certificate of Occupancy was issued for 57 Units” and, when asked the date, he responded “Looks like December 1, 1987.” The hearing was underwhelming, as it failed to produce any material evidence capable of altering the outcome or justifying a reopening of the case.

**B. EVIDENCE PRODUCED BY BOTH LANDLORD AND TENANTS PROVES EXTENSIVE, SUSTAINED RESIDENTIAL USE OF THE PROPERTY PRIOR TO ISSUANCE OF CERTIFICATES OF OCCUPANCY.**

Each of the buildings at the property had separate Permit Applications. From the extant records, it seems likely that Buildings A and B received Certificates of Occupancy on October 12, 1987. This is the date acknowledged in the first Hearing Decision as the date of issuance of the COOs. Records for Building C had only a series of signed-off Temporary Certificates of Occupancy in late 1987 to early 1988. Such temporary certificates expired once signed off, per OMC 15.08.150.

The Owner/Developer who installed the living units, Eddie Orten, testified at the Hearing in 2019. He testified that after purchasing, the Foundry continued to operate briefly. The lease-back was “kind of like a six month deal” and only for a portion of the property. He stated that he began renting out living units in mid-April or May of 1987, approximately 18 months after purchase. When asked whether there were COOs for all units at the property, he said they were all issued, but he was not sure they were all issued by 1987. He said, “they all got done eventually, but none before ‘87 for sure.” When asked whether there were finalized building permits prior to people moving in, he replied that the Building Inspector had signed off on everyone. “Couldn’t move them in without the card being signed off.” (Orten Testimony, April 2019, 1:09:46-1;11:57;1;10:36-1:10 56; 1.11.07-

1:11:57; 1:13:40-1:14:13, 1:22:35-1:22:39)

Orten's testimony on whether he rented out units before legal conversion was simply false. Tenants' representatives made an extensive search for evidence of persons' residing at the property. Ten former tenants of the property were located and testified about their residence at the property. Their dates of tenancy spanned mid-1986 through 1987. They also testified about conditions of the property which were often in an unfinished state when they moved in. Former workers, who participated in building the units, testified that the property filled up with new tenants quickly.

Of vital importance, was the evidence produced in response to the subpoena to the Registrar of Voters. Twenty persons registered with the Registrar of Voters as residents of the property from September 1982 through September 1987. In addition to the former tenants and workers who testified, many other persons who lived at the property were identified by those witnesses.

### **III. LEGAL ARGUMENT**

#### **A. THE TENANTS' CLAIMS AND DEFENSES ARE NOT BARRED BY RES JUDICATA OR COLLATERAL ESTOPPEL.**

In 2005, four tenants at 4401 San Leandro Street filed RAP petitions challenging the Owners' claim of exemption. The petitions were largely based on a claim that the buildings at the property lacked Certificates of Occupancy ("COOs"). *Vidor v. Vulcan Properties* T05-0110. In that case, the Hearing Officer found that the missing COOs were likely destroyed in a natural disaster or were not issued due to a lack of follow up by the Building Division. Under such circumstances, the Hearing Decision concluded that a finalized

building permit was the “practical equivalent” of a COO. The four units were declared to be exempt, *Vidor v Vulcan Properties*, T05-0110. The Hearing Officer’s decision was affirmed in an unpublished appellate decision. *Vidor v. City of Oakland Community & Economic Dev. Agency*, No. A120973, (Cal. Ct. App. Oct. 6, 2009)

In the ten years following the *Vidor* appellate decision, the Owners did not obtain a certificate of exemption for those four or any other of the live-work units at the property. Yet the Owners’ present Petition for a Certificate of Exemption, as well as their Answers to the Tenants’ Petitions in this case relied almost exclusively on the *Vidor* decision as their basis for exemption. Regardless of the timing to file their petition, they cannot argue that the prior decision has a preclusive effect on each and every tenant’s due process right to defend against exemption. In the *Vidor* matter, the parties were Vulcan Properties, LP and four tenants. Only one tenant is a petitioner in this case.

*Res Judicata*, or claim preclusion, bars a second suit only when “a second suit involves (1) the same cause of action or claim (2) between the same parties. Thus, *res judicata* could not apply to any tenant other than one of the tenants who remains on the property. None of the other tenants at the time were parties to the *Vidor* case.

Collateral estoppel, or issue preclusion, applies only if the issue is identical and is asserted against one who was a party to the first suit. And, while one was a party to the first case, she is bringing a different claim in her present petition, which is that the landlord’s exemption was based on fraud or mistake. The Rent Board has determined that a claim of fraud or mistake in obtaining an exemption is a different cause of action against the landlord’s

petition for exemption. In *Michelsen v. City of Oakland*, the city supported the Tenant’s Motion for a remand for a determination of the tenant’s claim that a previously granted exemption was obtained through fraud or mistake.

The Rent Board has determined that a claim of fraud or mistake in obtaining an exemption is a different cause of action from the original defense against the landlord’s petition for exemption. *Michelsen v. Sherman Alameda County Superior Court* RG16843773k *City of Oakland Reply to Motion to Remand*, p.2 5010.

**B. GRANTING RENT CONTROL DOES NOT VIOLATE COSTA-HAWKINS.**

Costa-Hawkins (Cal. Civ. Code § 1954.52 et seq.) was enacted to moderate the excesses of local rent control by exempting certain categories of “new construction” from local rent stabilization. A landlord must demonstrate entitlement to a “new construction” certificate of exemption by proving that the property meets the statutory criteria established in the local ordinance. The elements are set out in OMC 8.22.030 and include: 1) the property was “newly constructed and received a certificate of occupancy on or after January 1, 1983,” and 2) the property was “formerly entirely non-residential” (OMC 8.22.030A.5). The Regulations provide further guidance, stating that “newly constructed units include *legal conversions* of uninhabited spaces not used by Tenants, such as spaces that were formerly entirely commercial.” (OMC 8.22.B).

The key point is that the exemption is intended to apply only to properties that are genuinely “new construction.” That is, a property qualifies as new construction only if it is built or legally converted for residential use without any prior residential occupancy that

would otherwise have contributed to the existing housing stock. Costa-Hawkins, therefore, “furthers the purpose of the exemption by encouraging construction” that adds to the supply of legal, new rental housing, rather than by rewarding the conversion of previously occupied properties.

In *NCR Properties, LLC v. City of Berkeley* (2023), the landlords purchased derelict single-family homes and converted them into triplexes. Although the owners obtained new certificates of occupancy after conversion, the Rent Board found that because substantial residential occupancy had occurred before these documents were finalized, the properties did not qualify for the new-construction exemption. In that case, the Court affirmed that a certificate issued after residential use had already commenced did not trigger exemption under Costa-Hawkins.

The present matter differs in two key respects. First, in *NCR Properties*, the properties were already legally operated as residential units before the conversion’s finalization. The Vulcan properties were not originally residential. Based on the evidence we gathered through former residents who testified as well as voter registration records, the properties were used for non-residential purposes (as a foundry) until they were acquired in late 1985, and only afterward did the owner attempt to convert them to residential use. Second, *NCR Properties* involved a conversion from a pre-existing residential use (albeit an unlawful rooming house) into a multifamily building. The Court in *NCR Properties* emphasized that merely legalizing an illegal conversion does not qualify as “new construction.” Here, the Vulcan properties were converted from a non-residential industrial

use (a foundry) into residential use. Because the property was not being “rented out” residentially prior to conversion, its conversion represents an addition of residential housing where none existed before. The issue here is that we have demonstrated sufficient evidence, both through testimony and multiple voter registration records, that illegal occupancy commenced before final permits or certificates were obtained. Such occupancy was not an extension of a pre-existing residential market but rather a *premature and unlawful* use that occurred during an ongoing conversion process. It was not a legal conversion.

In *Amory, et al. v. Green Sage, LLC* (2022), an Oakland ruling squarely addressed the question of whether a new certificate of occupancy issued *after residential use began* could trigger the new-construction exemption. The Appeal Board held that if residential occupancy occurs prior to the issuance of a certificate of occupancy, the property does not qualify as “new construction.” The reasoning in *Amory* is directly applicable here. Since the property was occupied during its conversion process, it cannot later qualify for exemption merely because the final permits were issued afterwards, or a certificate of occupancy was eventually issued. The occupancy commenced *before* the legal conversion was fully finalized.

**C. “NEW CONSTRUCTION” EXEMPTION FROM RENT CONTROL REQUIRES LEGAL CONVERSION, NOT ILLEGAL CONVERSION.**

Both Costa-Hawkins and the relevant local ordinances are designed to encourage the creation of entirely new residential units. Granting the exemption to a property that was unlawfully used for residential purposes during conversion (or that was converted from a

previously non-residential use but then occupied prior to legal finalization) would frustrate the Legislature’s intent. In this case, because the property’s legal conversion to residential use was not entirely “new” as contemplated by Costa-Hawkins, granting an exemption does not and should not occur.

Given that the subject property was originally non-residential and that its subsequent conversion involved improper occupancy, the exemption under Costa-Hawkins should not apply. Rather, as established in *Amory* and distinguished from *NCR Properties*, our facts support the conclusion that granting rent control protections here does not violate Costa-Hawkins. The exemption was designed to reward genuine new construction, not to permit landlords to reap the benefits of legalizing unlawful conversions.

**D. PUBLIC POLICY DISFAVORS GRANTING EXEMPTIONS TO LANDLORDS WHO LEASE RESIDENTIAL RENTAL UNITS PRIOR TO THE ISSUANCE OF FINAL PERMITS AND CERTIFICATES OF OCCUPANCY**

The original owners of the property leased the roughed-out rental units at the Vulcan as quickly as possible while construction was ongoing. The California Building Codes' stated purpose is to establish minimum requirements to safeguard public health, safety and general welfare through structural strength, means of egress, sanitation, adequate light and ventilation, and safety to life and property from fire and other hazards. (California Building Code § 101.3) Both the Oakland Municipal Code and state law require issuance of a certificate of occupancy before a building can be occupied. (California Building Code §110.1 *et seq.*; Oakland Municipal Code §15.08.150) The Vulcan owners simply ignored these laws.

A landlord is not entitled to collect rent if a property lacks a certificate of occupancy required by law. Without a certificate of occupancy, a lease is an illegal transaction and thus void. *Gruzen v. Henry* (1978) 84 Cal.App.3d 515, 519. However, the tenant of such a unit is entitled to the protections of local rent ordinances. As the person intended to be protected by the laws, she is entitled to enforce her tenancy rights, even though the lease itself may be void. *Carter v. Cohen*(2010) 188 Cal.App.4th 1038.

The Vulcan owners permitted occupancy almost immediately after they purchased the property. They continued to rent it out before finalization of the permits and issuance of certificates of occupancy. Such a practice is unlawful and unsafe. It undermines the important public policies upon which building codes and housing law are based. Permitting the Vulcan owners to obtain an exemption under these circumstances rewards their wrongful conduct.

## CONCLUSION

Tenants, both in their first closing brief and here, have sufficiently demonstrated that the owner/developers of the Vulcan Lofts began renting out residential units before they received any finalized permits or certificates of occupancy. This practice continued for well over a year. Mr. Miles' testimony did not change these facts. Proof of residential use prior to finalization of permits and issuance of the certificates should be sufficient to defeat a landlord's new construction petition. This was also the City Attorney's recommendation to

the Appeal Board. The tenants respectfully request that the Landlord petition for certificate of exemption be denied.

Dated: February 25, 2025

Respectfully Submitted,

*Hasmik Geghamyan*

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Leah Hess  
Hasmik Geghamyan  
Attorneys for Tenants

# **ADDENDUM A**

EVIDENCE OF RESIDENTIAL USE OF THE PROPERTY PRIOR TO  
LEGAL CONVERSION–SUMMARY

Unit #	Date of Occupancy	Bldg	Evidence
1	09/08/1982	A	•Voter registration: F870498 (pre-1/1/83)
2	06/09/1986	A	•Voter registration G:987540
5	9/17/1986  9/17/ 1984  End of 1987  4/13/1987  1985 or 1986	A	<p>•Voter Registrations: H20483</p> <p>•Voter Registration: G511489</p> <p>•Testimony Peter Mars: (formerly Peter Smith), Lived in Unit 5 with wife Karen Beck. (6/10/19 Hrng: 2:18:01- 1/18/06; 2/17/11- 2/17/39; 2:18:07-2;24:56.</p> <p>•Application for bldg permit for Unit 5 to build storage loft in “existing live/work Studio”. signed “Peter Smith”. Mars acknowledged application in testimony. Tenant Exh. 46; 6/10/19 hrng: 2:28:20-2:33:03</p> <p>•Testimony Karen Beck (formerly Karen Smith): 12/16/19 hrng 4:35:05-4:53:50). Moved into Unit 5 with Peter Smith.</p>
6	06/02/1986	A	•Voter Registration, G865845
10	08/22/1987	A	•Voter Registration H257469
11	09/19/1986	A	•Voter Registration, G771855
14	05/29/1987  1986 9/1987  Mid 1987  1986	A	<p>•Voter Registration, X426298</p> <p>•Testimony Todd Boekleheide 6/10/29 Hrng; Moved into unit 14 “probably” in 1986. (4:31:27-4:31:58) “definitely“at least” as early as September, 1987. (5:21:38–5:23:16),</p> <p>•Owner Eddie Orten testified that he rented a unit to Todd Boekelheide in mid-1987. (4/15/2019 Hrng; 1:16:06-1:17:30)</p> <p>Carpenter David Cheek Sworn Decl. (Ten Exh. 6) Boekelheide was residing at the property when Cheek started working there in 1986 (¶¶ 3, 4, 7)</p>

	10/06/1986	unk.	<ul style="list-style-type: none"> <li>•Voter Registration Records. H099880 No Unit Number stated in registration records But see notes below (Unit 18) which show two persons in No. 18 registered 10/06/1986</li> </ul>
18	10/06/1986  Feb 1986  1986	B	<ul style="list-style-type: none"> <li>•Voter Registration X489752</li> <li>•Randy Hussong testimony, (12/16/19 Hrng) He worked at the property when he and his wife moved into Unit 18 in 1985. (1:21:43-1:22:33. (1:21:15-1:21:35)</li> <li>•David Cheek Sworn Decl. (Exh 6): Hussong and wife Tracy McBride lived at the Vulcan when Cheek started working in 1986.(¶¶ 3, 8)</li> </ul>
19	05/07/84  05/07/84	B	<ul style="list-style-type: none"> <li>•Voter Registration, G267674</li> <li>•Voter Registration, G267675</li> </ul>
21	09/25/1986  09/25/1986  1986 or 1987  Late 1986	B	<ul style="list-style-type: none"> <li>•Voter Registration, H074029</li> <li>•Voter Registration, H074030</li> <li>•Witness Gayle Bryan. Moved into Unit 21 with husband, Patrick in '86 or '87. Could have been '85. 12/16/19 Hrng: 3:42:59-3:45:2 3:56:30–3:57:05; 4:00:44-4:01:12.</li> <li>•Witness Valerie Steel: Bryans were living across the hall when she moved in, late 1986. 6/10/19 hrng: 3:56:48-4:00:38.</li> </ul>
22	10/03/1986	B	<ul style="list-style-type: none"> <li>•Voter Registration, H105022</li> </ul>
23	04/28/1987  December 1986	B	<ul style="list-style-type: none"> <li>•Voter Registration, H191495</li> <li>•Witness Valerie Steel. Rented Unit 23 with her fiancé in 1986. Moved in around December. [6/10/19 Hrng. 3:50:45-3:51:11-27; 3:52: 28-3:52:42)</li> </ul>

25	02/20/1987  Fall, 1986  1986	B	<ul style="list-style-type: none"> <li>•Voter Registration H121815</li> <li>•Witness Allison Davis formerly Allison Cheek: (12/26/19 Hrng) She lived in unit 24 or 25. Moved in with her husband “sometime in 1986”.(4:14:22-4:18:59) Had just moved in when started commuting to U.C. Davis in the in the Fall of ‘86. (4:28:58-4:29:10)</li> <li>•Declaration of witness David Cheek (Exh. 6) Cheek was a construction supervisor in 1986. (¶¶ 4, 5) His sister, Allison Davis, lived at the property in Unit 25 with her husband Cheek in 1986. He worked on construction of her unit. Before she moved in</li> </ul>
31	March of April 1987	C	<ul style="list-style-type: none"> <li>•Witness Llewellyn Moreno (formerly, Llewellyn Hilliard):He moved into Unit 31 “no later” than March or April 1987—it could have been several months earlier. He had been living in the unit for some time when informed that his father had been hospitalized in early June 6/10/19 Hrng: 5:24:43–5:37:18; 5:41:57-5:42:31.</li> </ul>
43	9/28/87  9/28/87  June 1986	C	<ul style="list-style-type: none"> <li>•Voter Registration, H262087</li> <li>• Voter Registration, H189199</li> <li>•Witness Susan Bloomquist, formerly <u>Susan Nickel</u>: Testified she moved into Unit 43 as a sublessor of tenant Suzanne Lang. (4:53:39-4:53:35) Moved in “sometime in 1986”, but “for sure” by June 1986 when she was due to lose her student apartment. 6/10/19 Hrng. 4:53:20-4:53:25; 4:54:46-4:54:53.</li> </ul>
54	Fall ‘87	C	<p><u>Witness Elizabeth Ross</u>: Moved into Unit 54 in “Fall of ‘87”, in October or November. There were items left from a previous tenant. 12/16/19 Hrng. 3:25:17-3:28:08</p>
57	06/12/1987	C	<ul style="list-style-type: none"> <li>•Voter Registration, H214660</li> <li>•Voter Registration, H214001</li> </ul>

## PROOF OF SERVICE

**Case Name: Vulcan Lofts, LLC v. Tenants**

**Case Number(s):** L19-0013 et al T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022 & T19-0023

I am a resident of the State of California and at least eighteen years of age. I reside in Alameda County, California. My address is 1720 Broadway, Suite 430, Oakland, California 94612.

Today, I served the attached document listed below electronically as well as by placing a true copy in a City of Oakland mail collection receptacle for mailing via US Mail on the below date in Oakland, California, addressed to:

Documents Included:

**Tenants' Rebuttal to Landlord's Closing Argument Following Remand Hearing**

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Represented Units with Unit Representative by Hasmik Geghamyan and Leah Hess:  
(served via e-mail)

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 25, 2025 in Oakland, California.

*H. Geghamyan*

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Attorneys for Tenants

CITY OF OAKLAND  
Rent Adjustment Program

Case Name: **Vulcan Lofts, LLC v. Tenants**

Case Numbers: L19-0013, et al.

**TENANTS' REBUTTAL TO LANDLORD'S CLOSING ARGUMENT FOLLOWING  
REMAND HEARING**

**I. PROCEDURAL HISTORY—OVERVIEW**

These cases have now been pending for more than seven years.<sup>1</sup> By agreement of the parties, the cases were consolidated early on to expedite resolution. The parties also agreed that, to avoid unnecessary duplication and delay, the exemption issue would be determined prior to other issues raised in the Tenants' petitions, such as decreased services.

These efforts to streamline procedures did not work as expected.

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<sup>1</sup>See RAP CHRONOLOGICAL CASE REPORT (hereinafter, "RAP Chron Report").

Equally unexpected were the events that took place following issuance of the Rent Board's Appeal Decision on November 6, 2023. The Board remanded the case back to the Hearing Officer with instructions "for a determination on the exemption based on the Amory v. Green Sage decision." Specifically, the Board directed the Hearing Officer as follows: "For clarification, to qualify for the exemption, the property must have been entirely non-residential – i.e. no residential use, prior to the issuance of the certificate of occupancy." Neither the Rent Ordinance, nor its Regulations describe procedures to be undertaken when a Hearing Officer fails to comply with an Appeal Decision.

In the following brief, Tenants will discuss issues arising from the Hearing Officer's reopening of the record and the Landlord's claims advanced in their Closing Argument Following Remand, res judicata/collateral estoppel, and the overwhelming evidence of residential use prior to issuance of certificates of occupancy or finalized building permits.

A. **THE HEARING OFFICER'S DECISION**

The Hearing Officer's Decision was comprised of 57 pages describing testimony from former tenants, workers, and visitors about residential use of the property. The Hearing Decision devoted little attention to the voter registration records which had been subpoenaed by the Tenants.<sup>2</sup> The Decision noted that "There is evidence through the records provided by the Registrar of Voters, only that, in 1982, at least one person claimed to live at the subject property. "However, no evidence supports that claim." In this assertion, the

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<sup>2</sup>The Tenants initially sought to obtain voter registration records from 1975 through 1987, but the Hearing Officer who ruled on their application limited the subpoena to the time period between 1985 and 1987, thus precluding discovery of any earlier records.

Decision ignored the obvious—the fact that the voter registration was itself evidence of pre-1983 residential use.<sup>3</sup> Because the hearing officer’s analysis focused on pre-1983 residence, the hearing officer did not consider the registered voters residing after the former owners purchased the property. With respect to “substantial witness testimony regarding dates of move-in”, the Hearing Officer found nonetheless that the testimony “lacked persuasiveness”, in that different tenants recalled different dates as to when certain peripheral events—such as the opening of the café, occurred. She also ignored the fact that many witnesses tied their recollection of residing at the property to major life events, *e.g.* illness of father (Moreno), injury from accident (Beck), legal clerkship (Alison), husband’s college graduation (Bryan), starting up new business, obtaining building permit for addition to existing live-work studio (Mars). Nor did she take notice that many of the witness names were corroborated in the Registrar’s production of records. (See **Addendum A**, Evidence of Residential Use of the Property Prior to Legal Conversion - Summary)

The Hearing Decision concluded:

The evidence establishes that residential occupancy started at the subject property after the purchase in 1985. A *Certificate of Occupancy*, issued by the city of Oakland for the residential use of the building was finalized on October 12, 1987. Therefore the owner has met its burden of proof to establish that the subject [*sic*] received a certificate of occupancy on or after January 1, 1983. Accordingly, the subject property from The Ordinance [*sic*]

The Order granted the Landlord’s petition and dismissed the Tenant petitions.

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<sup>3</sup>After serving the Registrar of Voters Office with the subpoena, the Registrar objected, based on privacy concerns. Oakland’s City Attorney and County Counsel negotiated an agreement under which a summary of the records was created and produced, with one copy from which resident names were redacted, to be shown the parties in hearings and one without redaction to be kept under seal in the case file.

The Tenants appealed to the Rent Board.

**B. HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD’S APPEAL DECISION**

On or around August 4, 2023, the City Attorney’s office provided members of the Rent Board with its analysis of this case and issued a formal Recommendation. It discussed the facts at issue in this case in light of *Da Vinci v. San Francisco Rent Stabilization* 5 Cal. App. 4<sup>th</sup> 24 (1992). It reviewed the *Vidor* case in depth (see, *infra*, section on res judicata/collateral estoppel). It made the following recommendation:

“The Office of the City Attorney recommends that the Board remand the Hearing Officer’s decision to apply the Board’s recent decision in T18–0372, Amory et al. v. Green Sage that there is no temporal limitation on residential use prior to conversion.”

On August 24, 2023, the Board heard the case. In a unanimous Appeal Decision dated on November 6, 2023, the Rent Board remanded this case back to the Hearing Officer:

“for a determination of the exemption based on the Armory v. Green Sage decision. For clarification, to qualify for an exemption, the property must have been entirely non-residential—i.e., no residential use, prior to the issuance of the final certificate of occupancy.”

**II. EVIDENCE PRESENTED BY THE PARTIES**

**A. HEARING OFFICER REOPENS CASE FOR “NEW EVIDENCE” EVEN THOUGH THE EVIDENTIARY STANDARD WAS NOT MET.**

Instead of issuing the expected remand hearing decision as directed by the Board, the Hearing Officer announced that she would hold a hearing to determine whether the case should be reopened to allow the landlord to locate and present “new evidence.” Landlord’s counsel agreed to reopen the evidence, while Plaintiff’s counsel vigorously objected, stating

that Landlord had years in which to discover “new evidence” and should not be permitted to produce more at this late date.

California statute, case law, and the Ordinance all strongly disfavor the admission of new evidence after trial. (C.C.P. 657 subbed. 4, *Missionary Guadeloupians v. Roumillard* (2019) 38 Cal.App. 5, 421); *Estate of Cover 9* (1922) 188 Cal. 133, 149). To support reopening the record, “new evidence” must be material (i.e., capable of changing the outcome) and, it could not have been discovered in the exercise of reasonable diligence prior to the trial. This standard was not met, since no new evidence was submitted at the Remand Hearing on January 6, 2025. Landlord’s “new documents” were Building Department records already submitted by Owner in this case and in *Vidor v. Vulcan Properties*. T05–0110. Their sole witness was David Miles, Principal Inspection Supervisor of the Building and Planning Division, whose city employment began in 1999. Mr. Miles could have been asked to testify in 2019 when the case was pending, and there were plenty of opportunities for him to testify before the case closed in 2022. Mr. Miles repeatedly testified that he had no personal knowledge of the Vulcan Property until 2005, when he worked on more recent issues there. (Testimony of David Miles, Video of Remand Hearing, “Miles” 01/06/2025).

All of the “new evidence” presented by the Landlord at the remand hearing in this case had been available in public records for decades. Miles’ testimony about Building Division practices in the 1980s derived largely from hearsay, nor was it useful to the Landlord’s case. Miles testified that “Based on what you’ve shown me, I believe a

Certificate of Occupancy was issued for 57 Units” and, when asked the date, he responded “Looks like December 1, 1987.” The hearing was underwhelming, as it failed to produce any material evidence capable of altering the outcome or justifying a reopening of the case.

**B. EVIDENCE PRODUCED BY BOTH LANDLORD AND TENANTS PROVES EXTENSIVE, SUSTAINED RESIDENTIAL USE OF THE PROPERTY PRIOR TO ISSUANCE OF CERTIFICATES OF OCCUPANCY.**

Each of the buildings at the property had separate Permit Applications. From the extant records, it seems likely that Buildings A and B received Certificates of Occupancy on October 12, 1987. This is the date acknowledged in the first Hearing Decision as the date of issuance of the COOs. Records for Building C had only a series of signed-off Temporary Certificates of Occupancy in late 1987 to early 1988. Such temporary certificates expired once signed off, per OMC 15.08.150.

The Owner/Developer who installed the living units, Eddie Orten, testified at the Hearing in 2019. He testified that after purchasing, the Foundry continued to operate briefly. The lease-back was “kind of like a six month deal” and only for a portion of the property. He stated that he began renting out living units in mid-April or May of 1987, approximately 18 months after purchase. When asked whether there were COOs for all units at the property, he said they were all issued, but he was not sure they were all issued by 1987. He said, “they all got done eventually, but none before ‘87 for sure.” When asked whether there were finalized building permits prior to people moving in, he replied that the Building Inspector had signed off on everyone. “Couldn’t move them in without the card being signed off.” (Orten Testimony, April 2019, 1:09:46-1;11:57;1;10:36-1:10 56; 1.11.07-

1:11:57; 1:13:40-1:14:13, 1:22:35-1:22:39)

Orten's testimony on whether he rented out units before legal conversion was simply false. Tenants' representatives made an extensive search for evidence of persons' residing at the property. Ten former tenants of the property were located and testified about their residence at the property. Their dates of tenancy spanned mid-1986 through 1987. They also testified about conditions of the property which were often in an unfinished state when they moved in. Former workers, who participated in building the units, testified that the property filled up with new tenants quickly.

Of vital importance, was the evidence produced in response to the subpoena to the Registrar of Voters. Twenty persons registered with the Registrar of Voters as residents of the property from September 1982 through September 1987. In addition to the former tenants and workers who testified, many other persons who lived at the property were identified by those witnesses.

### **III. LEGAL ARGUMENT**

#### **A. THE TENANTS' CLAIMS AND DEFENSES ARE NOT BARRED BY RES JUDICATA OR COLLATERAL ESTOPPEL.**

In 2005, four tenants at 4401 San Leandro Street filed RAP petitions challenging the Owners' claim of exemption. The petitions were largely based on a claim that the buildings at the property lacked Certificates of Occupancy ("COOs"). *Vidor v. Vulcan Properties* T05-0110. In that case, the Hearing Officer found that the missing COOs were likely destroyed in a natural disaster or were not issued due to a lack of follow up by the Building Division. Under such circumstances, the Hearing Decision concluded that a finalized

building permit was the “practical equivalent” of a COO. The four units were declared to be exempt, *Vidor v Vulcan Properties*, T05-0110. The Hearing Officer’s decision was affirmed in an unpublished appellate decision. *Vidor v. City of Oakland Community & Economic Dev. Agency*, No. A120973, (Cal. Ct. App. Oct. 6, 2009)

In the ten years following the *Vidor* appellate decision, the Owners did not obtain a certificate of exemption for those four or any other of the live-work units at the property. Yet the Owners’ present Petition for a Certificate of Exemption, as well as their Answers to the Tenants’ Petitions in this case relied almost exclusively on the *Vidor* decision as their basis for exemption. Regardless of the timing to file their petition, they cannot argue that the prior decision has a preclusive effect on each and every tenant’s due process right to defend against exemption. In the *Vidor* matter, the parties were Vulcan Properties, LP and four tenants. Only one tenant is a petitioner in this case.

*Res Judicata*, or claim preclusion, bars a second suit only when “a second suit involves (1) the same cause of action or claim (2) between the same parties. Thus, *res judicata* could not apply to any tenant other than one of the tenants who remains on the property. None of the other tenants at the time were parties to the *Vidor* case.

Collateral estoppel, or issue preclusion, applies only if the issue is identical and is asserted against one who was a party to the first suit. And, while one was a party to the first case, she is bringing a different claim in her present petition, which is that the landlord’s exemption was based on fraud or mistake. The Rent Board has determined that a claim of fraud or mistake in obtaining an exemption is a different cause of action against the landlord’s

petition for exemption. In *Michelsen v. City of Oakland*, the city supported the Tenant's Motion for a remand for a determination of the tenant's claim that a previously granted exemption was obtained through fraud or mistake.

The Rent Board has determined that a claim of fraud or mistake in obtaining an exemption is a different cause of action from the original defense against the landlord's petition for exemption. *Michelsen v. Sherman Alameda County Superior Court* RG16843773k *City of Oakland Reply to Motion to Remand*, p.2 5010.

**B. GRANTING RENT CONTROL DOES NOT VIOLATE COSTA-HAWKINS.**

Costa-Hawkins (Cal. Civ. Code § 1954.52 et seq.) was enacted to moderate the excesses of local rent control by exempting certain categories of "new construction" from local rent stabilization. A landlord must demonstrate entitlement to a "new construction" certificate of exemption by proving that the property meets the statutory criteria established in the local ordinance. The elements are set out in OMC 8.22.030 and include: 1) the property was "newly constructed and received a certificate of occupancy on or after January 1, 1983," and 2) the property was "formerly entirely non-residential" (OMC 8.22.030A.5). The Regulations provide further guidance, stating that "newly constructed units include *legal conversions* of uninhabited spaces not used by Tenants, such as spaces that were formerly entirely commercial." (OMC 8.22.B).

The key point is that the exemption is intended to apply only to properties that are genuinely "new construction." That is, a property qualifies as new construction only if it is built or legally converted for residential use without any prior residential occupancy that

would otherwise have contributed to the existing housing stock. Costa-Hawkins, therefore, “furthers the purpose of the exemption by encouraging construction” that adds to the supply of legal, new rental housing, rather than by rewarding the conversion of previously occupied properties.

In *NCR Properties, LLC v. City of Berkeley* (2023), the landlords purchased derelict single-family homes and converted them into triplexes. Although the owners obtained new certificates of occupancy after conversion, the Rent Board found that because substantial residential occupancy had occurred before these documents were finalized, the properties did not qualify for the new-construction exemption. In that case, the Court affirmed that a certificate issued after residential use had already commenced did not trigger exemption under Costa-Hawkins.

The present matter differs in two key respects. First, in *NCR Properties*, the properties were already legally operated as residential units before the conversion’s finalization. The Vulcan properties were not originally residential. Based on the evidence we gathered through former residents who testified as well as voter registration records, the properties were used for non-residential purposes (as a foundry) until they were acquired in late 1985, and only afterward did the owner attempt to convert them to residential use. Second, *NCR Properties* involved a conversion from a pre-existing residential use (albeit an unlawful rooming house) into a multifamily building. The Court in *NCR Properties* emphasized that merely legalizing an illegal conversion does not qualify as “new construction.” Here, the Vulcan properties were converted from a non-residential industrial

use (a foundry) into residential use. Because the property was not being “rented out” residentially prior to conversion, its conversion represents an addition of residential housing where none existed before. The issue here is that we have demonstrated sufficient evidence, both through testimony and multiple voter registration records, that illegal occupancy commenced before final permits or certificates were obtained. Such occupancy was not an extension of a pre-existing residential market but rather a *premature and unlawful* use that occurred during an ongoing conversion process. It was not a legal conversion.

In *Amory, et al. v. Green Sage, LLC* (2022), an Oakland ruling squarely addressed the question of whether a new certificate of occupancy issued *after residential use began* could trigger the new-construction exemption. The Appeal Board held that if residential occupancy occurs prior to the issuance of a certificate of occupancy, the property does not qualify as “new construction.” The reasoning in *Amory* is directly applicable here. Since the property was occupied during its conversion process, it cannot later qualify for exemption merely because the final permits were issued afterwards, or a certificate of occupancy was eventually issued. The occupancy commenced *before* the legal conversion was fully finalized.

**C. “NEW CONSTRUCTION” EXEMPTION FROM RENT CONTROL REQUIRES LEGAL CONVERSION, NOT ILLEGAL CONVERSION.**

Both Costa-Hawkins and the relevant local ordinances are designed to encourage the creation of entirely new residential units. Granting the exemption to a property that was unlawfully used for residential purposes during conversion (or that was converted from a

previously non-residential use but then occupied prior to legal finalization) would frustrate the Legislature’s intent. In this case, because the property’s legal conversion to residential use was not entirely “new” as contemplated by Costa-Hawkins, granting an exemption does not and should not occur.

Given that the subject property was originally non-residential and that its subsequent conversion involved improper occupancy, the exemption under Costa-Hawkins should not apply. Rather, as established in *Amory* and distinguished from *NCR Properties*, our facts support the conclusion that granting rent control protections here does not violate Costa-Hawkins. The exemption was designed to reward genuine new construction, not to permit landlords to reap the benefits of legalizing unlawful conversions.

**D. PUBLIC POLICY DISFAVORS GRANTING EXEMPTIONS TO LANDLORDS WHO LEASE RESIDENTIAL RENTAL UNITS PRIOR TO THE ISSUANCE OF FINAL PERMITS AND CERTIFICATES OF OCCUPANCY**

The original owners of the property leased the roughed-out rental units at the Vulcan as quickly as possible while construction was ongoing. The California Building Codes' stated purpose is to establish minimum requirements to safeguard public health, safety and general welfare through structural strength, means of egress, sanitation, adequate light and ventilation, and safety to life and property from fire and other hazards. (California Building Code § 101.3) Both the Oakland Municipal Code and state law require issuance of a certificate of occupancy before a building can be occupied. (California Building Code §110.1 *et seq.*; Oakland Municipal Code §15.08.150) The Vulcan owners simply ignored these laws.

A landlord is not entitled to collect rent if a property lacks a certificate of occupancy required by law. Without a certificate of occupancy, a lease is an illegal transaction and thus void. *Gruzen v. Henry* (1978) 84 Cal.App.3d 515, 519. However, the tenant of such a unit is entitled to the protections of local rent ordinances. As the person intended to be protected by the laws, she is entitled to enforce her tenancy rights, even though the lease itself may be void. *Carter v. Cohen*(2010) 188 Cal.App.4th 1038.

The Vulcan owners permitted occupancy almost immediately after they purchased the property. They continued to rent it out before finalization of the permits and issuance of certificates of occupancy. Such a practice is unlawful and unsafe. It undermines the important public policies upon which building codes and housing law are based. Permitting the Vulcan owners to obtain an exemption under these circumstances rewards their wrongful conduct.

## CONCLUSION

Tenants, both in their first closing brief and here, have sufficiently demonstrated that the owner/developers of the Vulcan Lofts began renting out residential units before they received any finalized permits or certificates of occupancy. This practice continued for well over a year. Mr. Miles' testimony did not change these facts. Proof of residential use prior to finalization of permits and issuance of the certificates should be sufficient to defeat a landlord's new construction petition. This was also the City Attorney's recommendation to

the Appeal Board. The tenants respectfully request that the Landlord petition for certificate of exemption be denied.

Dated: February 25, 2025

Respectfully Submitted,

*Hasmik Geghamyan*

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# **ADDENDUM A**

EVIDENCE OF RESIDENTIAL USE OF THE PROPERTY PRIOR TO  
LEGAL CONVERSION–SUMMARY

Unit #	Date of Occupancy	Bldg	Evidence
1	09/08/1982	A	•Voter registration: F870498 (pre-1/1/83)
2	06/09/1986	A	•Voter registration G:987540
5	9/17/1986  9/17/ 1984  End of 1987  4/13/1987  1985 or 1986	A	<p>•Voter Registrations: H20483</p> <p>•Voter Registration: G511489</p> <p>•Testimony Peter Mars: (formerly Peter Smith), Lived in Unit 5 with wife Karen Beck. (6/10/19 Hrng: 2:18:01- 1/18/06; 2/17/11- 2/17/39; 2:18:07-2;24:56.</p> <p>•Application for bldg permit for Unit 5 to build storage loft in “existing live/work Studio”. signed “Peter Smith”. Mars acknowledged application in testimony. Tenant Exh. 46; 6/10/19 hrng: 2:28:20-2:33:03</p> <p>•Testimony Karen Beck (formerly Karen Smith): 12/16/19 hrng 4:35:05-4:53:50). Moved into Unit 5 with Peter Smith.</p>
6	06/02/1986	A	•Voter Registration, G865845
10	08/22/1987	A	•Voter Registration H257469
11	09/19/1986	A	•Voter Registration, G771855
14	05/29/1987  1986 9/1987  Mid 1987  1986	A	<p>•Voter Registration, X426298</p> <p>•Testimony Todd Boekleheide 6/10/29 Hrng; Moved into unit 14 “probably” in 1986. (4:31:27-4:31:58) “definitely“at least” as early as September, 1987. (5:21:38–5:23:16),</p> <p>•Owner Eddie Orten testified that he rented a unit to Todd Boekelheide in mid-1987. (4/15/2019 Hrng; 1:16:06-1:17:30)</p> <p>Carpenter David Cheek Sworn Decl. (Ten Exh. 6) Boekelheide was residing at the property when Cheek started working there in 1986 (¶¶ 3, 4, 7)</p>

	10/06/1986	unk.	<ul style="list-style-type: none"> <li>•Voter Registration Records. H099880 No Unit Number stated in registration records But see notes below (Unit 18) which show two persons in No. 18 registered 10/06/1986</li> </ul>
18	10/06/1986  Feb 1986  1986	B	<ul style="list-style-type: none"> <li>•Voter Registration X489752</li> <li>•Randy Hussong testimony, (12/16/19 Hrng) He worked at the property when he and his wife moved into Unit 18 in 1985. (1:21:43-1:22:33. (1:21:15-1:21:35)</li> <li>•David Cheek Sworn Decl. (Exh 6): Hussong and wife Tracy McBride lived at the Vulcan when Cheek started working in 1986. (¶¶ 3, 8)</li> </ul>
19	05/07/84  05/07/84	B	<ul style="list-style-type: none"> <li>•Voter Registration, G267674</li> <li>•Voter Registration, G267675</li> </ul>
21	09/25/1986  09/25/1986  1986 or 1987  Late 1986	B	<ul style="list-style-type: none"> <li>•Voter Registration, H074029</li> <li>•Voter Registration, H074030</li> <li>•Witness Gayle Bryan. Moved into Unit 21 with husband, Patrick in '86 or '87. Could have been '85. 12/16/19 Hrng: 3:42:59-3:45:2 3:56:30–3:57:05; 4:00:44-4:01:12.</li> <li>•Witness Valerie Steel: Bryans were living across the hall when she moved in, late 1986. 6/10/19 hrng: 3:56:48-4:00:38.</li> </ul>
22	10/03/1986	B	<ul style="list-style-type: none"> <li>•Voter Registration, H105022</li> </ul>
23	04/28/1987  December 1986	B	<ul style="list-style-type: none"> <li>•Voter Registration, H191495</li> <li>•Witness Valerie Steel. Rented Unit 23 with her fiancé in 1986. Moved in around December. [6/10/19 Hrng. 3:50:45-3:51:11-27; 3:52: 28-3:52:42)</li> </ul>

25	02/20/1987  Fall, 1986  1986	B	<ul style="list-style-type: none"> <li>•Voter Registration H121815</li> <li>•Witness Allison Davis formerly Allison Cheek: (12/26/19 Hrng) She lived in unit 24 or 25. Moved in with her husband “sometime in 1986”.(4:14:22-4:18:59) Had just moved in when started commuting to U.C. Davis in the in the Fall of ‘86. (4:28:58-4:29:10)</li> <li>•Declaration of witness David Cheek (Exh. 6) Cheek was a construction supervisor in 1986. (¶¶ 4, 5) His sister, Allison Davis, lived at the property in Unit 25 with her husband Cheek in 1986. He worked on construction of her unit. Before she moved in</li> </ul>
31	March of April 1987	C	<ul style="list-style-type: none"> <li>•Witness Llewellyn Moreno (formerly, Llewellyn Hilliard):He moved into Unit 31 “no later” than March or April 1987—it could have been several months earlier. He had been living in the unit for some time when informed that his father had been hospitalized in early June 6/10/19 Hrng: 5:24:43–5:37:18; 5:41:57-5:42:31.</li> </ul>
43	9/28/87  9/28/87  June 1986	C	<ul style="list-style-type: none"> <li>•Voter Registration, H262087</li> <li>• Voter Registration, H189199</li> <li>•Witness Susan Bloomquist, formerly <u>Susan Nickel</u>: Testified she moved into Unit 43 as a sublessor of tenant Suzanne Lang. (4:53:39-4:53:35) Moved in “sometime in 1986”, but “for sure” by June 1986 when she was due to lose her student apartment. 6/10/19 Hrng. 4:53:20-4:53:25; 4:54:46-4:54:53.</li> </ul>
54	Fall ‘87	C	<p><u>Witness Elizabeth Ross</u>: Moved into Unit 54 in “Fall of ‘87”, in October or November. There were items left from a previous tenant. 12/16/19 Hrng. 3:25:17-3:28:08</p>
57	06/12/1987	C	<ul style="list-style-type: none"> <li>•Voter Registration, H214660</li> <li>•Voter Registration, H214001</li> </ul>

## PROOF OF SERVICE

**Case Name: Vulcan Lofts, LLC v. Tenants**

**Case Number(s):** L19-0013 et al T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022 & T19-0023

I am a resident of the State of California and at least eighteen years of age. I reside in Alameda County, California. My address is 1720 Broadway, Suite 430, Oakland, California 94612.

Today, I served the attached document listed below electronically as well as by placing a true copy in a City of Oakland mail collection receptacle for mailing via US Mail on the below date in Oakland, California, addressed to:

Documents Included:

**Tenants' Rebuttal to Landlord's Closing Argument Following Remand Hearing**

City of Oakland - Rent Adjustment Program - electronic service only

Hearing Officer Lambert  
Robert Costa, Rent Adjustment Program Analyst  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, California 94612  
[RCosta@oaklandca.gov](mailto:RCosta@oaklandca.gov)  
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Owner Representatives - electronic service only

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[ssandoval@spencerfane.com](mailto:ssandoval@spencerfane.com)

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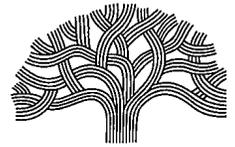
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 25, 2025 in Oakland, California.

*H. Geghamyan*

\_\_\_\_\_  
Hasmik Geghamyan



Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

**REMAND DECISION**

**CASE NUMBER:** L19-0013, T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18- 0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19- 0021, T19-0022 , T19-0023,T19-0236,

**CASE NAME:** Vulcan Lofts v. Tenants (Vulcan et al.)

**PROPERTY ADDRESS:** 4401 San Leandro Street  
Oakland, CA

**DATE(S) OF HEARING:** April 15, 2019, June 10, 2019,  
December 16, 2019, September 20, 2021,  
March 7, 2022, November 7, 2022,  
January 6, 2025

**REAMND DECISION:** October 3, 2025

**APPEARANCES:** As listed below.

**Appearances: January 6, 2025**

Attorneys for Owners: Servando Sandoval

Agent for Owner: Dantea Gallat

Attorneys for the Represented Tenants: Leah Hess, and  
Hasmik Geghamyan

Represented Tenants:

Tenants in Unit 4b, Unit 39, Unit 21.

Witness for the Petitioner:

David Miles

## **SUMMARY OF DECISION**

The owner's petition is granted. The subject property is exempt on the ground that it is new construction. The subject property is not exempt from the Rent Adjustment Program Service Fee.

## **ISSUE(S) PRESENTED FOR REMAND**

1. Is the subject property exempt from the Rent Adjustment Ordinance (Ordinance) as new construction under the Green Sage decision?<sup>1</sup>

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Is the subject Unit exempt from the Rent Adjustment Program as new construction under the Green Sage decision?**

The Oakland Rent Adjustment Ordinance states that dwelling units are not "covered units" under the Ordinance if such units "were newly constructed and received a certificate of occupancy on or after January 1, 1983."<sup>2</sup> The Ordinance states:

"To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential."<sup>3</sup>

An owner has the burden of proof on all elements of a claim for exemption. It was previously held that Owners Orton and Alexander purchased the subject property in December 1985 and then converted the operating foundry into 59

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<sup>1</sup> The Residential Rent and Relocation Board (Rent Board) instructed the Hearing Officer to apply the following rule: the subject property is not exempt as new construction if there was residential use prior to the issuance of the Certificate of Occupancy even if the property was newly constructed and received the Certificate of Occupancy after January 1, 1983.

<sup>2</sup> O.M.C. § 8.22.030(A)(5)

<sup>3</sup> O.M.C. § 8.22.030(A)(5)

residential artists' live/work units in three different buildings.<sup>4</sup> Moreover, no evidence contradicted those findings.

The subject property was also the subject of the petition filed in T05-0119, *Vidor v. Orton*. The evidence presented, which includes some of the same evidence presented in the case herein, resulted in a Hearing Decision, which concluded that the Vulcan loft properties were “created from space that was formerly entirely non-residential, and that the units either did or should have received Certificates of Occupancy after January 1, 1983.” After the appeal was denied, the Petitioner filed a writ of Mandamus which was denied by the trial court and the Court of Appeals. Leaving the original decision undisturbed. The Hearing Decisions in T05-0110 and T05-0019 remain undisputed, and final.

It is well established that the Oakland Rent Adjustment Ordinance (Ordinance) exempts all units built after January 1, 1983, that are entirely newly constructed from the ground up or units that were converted or created from a non-residential space and that if the unit is not built entirely from the ground up, the property must be created or converted from a non-residential space after January 1, 1983.<sup>5</sup>

Likewise, it was held that if the property was converted and received a certificate of occupancy after<sup>6</sup> January 1, 1983, but the unit was used for a residential purpose prior to 1983, it is not exempt.

In contrast, The Rent Board, in the Cases T18-0372, *Amory v. Green Sage* (5707 #A), T19-0032, *Long v. Green Sage* (5707 #H), T19-0218/T20-0219, *Laws v. Green Sage* (5707 #8), T19-0220, *Schultz v. Green Sage* (5707 #D), T19-0251, and *Baird/Hollander v. Green Sage* (5707 #G), collectively referred to as the Green Sage Cases, instructed the Hearing Officer to apply the following rule: the subject property is not exempt as new construction if there was residential use prior to the issuance of the Certificate of Occupancy even if the property was newly constructed and received the Certificate of Occupancy after January 1, 1983.

However, the witness testimony, at the remand hearing, established that there were times that a Certificate of Occupancy would not be issued by the City of Oakland. Moreover, his undisputed testimony was that it was outside the Owner’s control to

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<sup>4</sup> Official Notice is taken of T05-0110, *Peacock v. Vulcan Properties*, and T05-0119 *Vidor v. Orton* which includes the unpublished decision of *Vidor v. City of Oakland Community & Economic Dev. Agency*, No. A120973 (Cal. Ct. App. Oct. 6, 2009).

<sup>5</sup> HRRRB Appeal Decision in LIS-0061, *4CH Inc. v. Tenants*.

<sup>6</sup> HRRRB Appeal Decision in L14-0054/T16-0258/L18-0081, *Michelsen v. Shennan*

have a certificate issued after the final inspection(s) occurred, but that the final inspection authorized to occupy the units and that a final certificate of occupancy was not required for occupancy.

To apply the result in Green sage, to the cases herein, would be hold that units that were created well after January 1, 1983 were not exempt based they City's failure to timely issue a Certificate of Occupancy that the Owner had no ability to compel. Moreover, that result, would directly contradict the instructions to the property Owner at the time of the final inspections, that the units were tenants were authorized to occupy the units following the final inspections, as noted in Tenant's brief.<sup>7</sup>

The subject property's Certificate of Occupancy for Building A is dated October 12, 1987. There is a Temporary Certificate of Occupancy for Building C, dated April 21, 1987, and Exhibit B confirms the building permit was finalized as of December 1, 1987, for the entirety of the subject property.

Notwithstanding the above, there remains no credible testimony that there was residential use of the units prior to the Certificates of Occupancy issued for the subject property. The credible testimony was that no units were occupied before the property was converted from a working founding to the live/work artists' studios after the purchase in 1985.

The testimony and evidence established by a preponderance that the subject property was newly constructed after the purchase of the subject property in December 1985. Likewise, the evidence established that the subject property was not residential before the purchase in 1985. Additionally, the evidence establishes that there was no residential use of the subject property prior to the Certificates of Occupancy, issued for the subject units. Therefore, the owner has met its burden of proof to establish that the subject property is exempt from The Ordinance.

## **ORDER**

1. Petition L19-0013 is granted.

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<sup>7</sup> Tenant's brief cites this statement as Orten Testimony, April 2019, 1:09:46-1;11:57;1;10:36-1:10 56; 1.11.07-71:11:57; 1:13:40-1:14:13, 1:22:35-1:22:39).

2. Petitions T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022, T19-0023 and T19-0236, are dismissed.

3. The subject units are exempt on the ground that they are new construction and that there was no residential use prior to the Certificates of Occupancy.

4. The subject property is not exempt from the Rent Adjustment Program Service Fee.

**Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within seventeen (17) calendar days of electronic service or twenty (20) days if served by first-class mail. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day. The date and service method are shown on the attached Proof of Service.



Dated: October 3, 2025

---

Élan Consuella Lambert  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number(s): L19-0013, T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18- 0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19- 0021, T19-0022, T19-0023, T19-0236**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Tgo cpf "Decision

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Oakland, CA 94601

**Tenant**

Kathleen Callahan  
4401 San Leandro Street #8  
Oakland, CA 94601

**Tenant**

Kathryn Stewart  
4401 San Leandro Street #53  
Oakland, CA 94601

**Tenant**

Kelley Halvorson  
4401 San Leandro Street #33  
Oakland, CA 94601

**Tenant**

Kevin Baldwin  
4401 San Leandro Street #38  
Oakland, CA 94601

**Tenant**

Kristi Walker  
4401 San Leandro Street Unit # 20  
Oakland, CA 94601

**Tenant**

Krystal Bell  
4401 San Leandro Street #14  
Oakland, CA 94601

**Tenant**

Kyle Charleton  
4401 San Leandro Street #44  
Oakland, CA 94601

**Tenant**

Lael Eisenlohr  
4401 San Leandro Street #45  
Oakland, CA 94601

**Tenant**

Leah Samelson  
4401 San Leandro Street #45  
Oakland, CA 94601

**Tenant**

Leslie W. Breanna  
4401 San Leandro Street Unit # 25  
Oakland, CA 94601

**Tenant**

Lia Walker  
616 Santa Rosa Avenue  
Berkeley, CA 94707

**Tenant**

Lia Walker  
4401 San Leandro Street #8  
Oakland, CA 94601

**Tenant**

Lilli Thomas-Brumme  
4401 San Leandro Street Unit # 22  
Oakland, CA 94601

**Tenant**

Loreley Bunoan  
4401 San Leandro Street Unit # 50  
Oakland, CA 94601

**Tenant**

Mael Ryckeboer  
4401 San Leandro Street #38  
Oakland, CA 94601

**Tenant**

Mælle Boer  
4401 San Leandro Street Unit # 38  
Oakland, CA 94601

**Tenant**

Mark Leavitt  
4401 San Leandro Street #37  
Oakland, CA 94601

**Tenant**

Marshal Lane  
4401 San Leandro Street #28  
Oakland, CA 94601

**Tenant**

Martha Fehrman  
4401 San Leandro Street #44  
Oakland, CA 94601

**Tenant**

Martin Laurent  
4401 San Leandro Street #2  
Oakland, CA 94601

**Tenant**

Matthew Grahm  
4401 San Leandro Street #48  
Oakland, CA 94601

**Tenant**

Matthew Hudson  
4401 San Leandro Street #36  
Oakland, CA 94601

**Tenant**

Matthew Martin  
4401 San Leandro Street #58  
Oakland, CA 94601

**Tenant**

Megan Girart  
4401 San Leandro Street #2  
Oakland, CA 94601

**Tenant**

Michael Blodgett  
4401 San Leandro Street #49  
Oakland, CA 94601

**Tenant**

Michael Cavanaugh  
4401 San Leandro Street #29  
Oakland, CA 94601

**Tenant**

Michael Lichen  
4401 San Leandro Street #1  
Oakland, CA 94601

**Tenant**

Michael Mann  
4401 San Leandro Street #41  
Oakland, CA 94601

**Tenant**

Michael Parker  
4401 San Leandro Street #42  
Oakland, CA 94601

**Tenant**

Michael Robinson  
4401 San Leandro Street Unit # 1  
Oakland, CA 94601

**Tenant**

Mikhail Lapin  
4401 San Leandro Street #44  
Oakland, CA 94601

**Tenant**

Miles Ross  
4401 San Leandro Street #14  
Oakland, CA 94601

**Tenant**

Nick Negusse  
4401 San Leandro Street #6  
Oakland, CA 94601

**Tenant**

Noel Rolden  
4401 San Leandro Street #48  
Oakland, CA 94601

**Tenant**

Pamela Hearne  
4401 San Leandro Street Unit # 17  
Oakland, CA 94601

**Tenant**

Pamela Mangan  
4401 San Leandro Street #43  
Oakland, CA 94601

**Tenant**

Rachel Cole-Jansen  
4401 San Leandro Street #47A  
Oakland, CA 94601

**Tenant**

Randall Spencer  
4401 San Leandro Street #43  
Oakland, CA 94601

**Tenant**

Rebecca Burnett  
4401 San Leandro Street #54  
Oakland, CA 94601

**Tenant**

Resident  
4401 San Leandro Street #26  
Oakland, CA 94601

**Tenant**

Resident  
4401 San Leandro Street #9  
Oakland, CA 94601

**Tenant**

Resident  
4401 San Leandro Street #4A  
Oakland, CA 94601

**Tenant**

Reuben Tomar  
4401 San Leandro Street #57  
Oakland, CA 94601

**Tenant**

Rigel Juratovac  
4401 San Leandro Street #35  
Oakland, CA 94601

**Tenant**

Robert Hart  
4401 San Leandro Street #48  
Oakland, CA 94601

**Tenant**

Robert Jacobs  
4401 San Leandro Street #45  
Oakland, CA 94601

**Tenant**

Ross Clark  
4401 San Leandro Street #24  
Oakland, CA 94601

**Tenant**

Ross Clark  
4401 San Leandro Street #23  
Oakland, CA 94601

**Tenant**

Ross Duncan  
4401 San Leandro Street #19  
Oakland, CA 94601

**Tenant**

Sandra Lawson  
4401 San Leandro Street #53  
Oakland, CA 94601

**Tenant**

Sarah J Paturzo  
4401 San Leandro Street #39  
Oakland, CA 94601

**Tenant**

Sarah Noelle  
4401 San Leandro Street Unit # 3  
Oakland, CA 94601

**Tenant**

Sarah Rund  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Savannah Crespo  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Serena Kirk  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Serge B Yelena  
4401 San Leandro Street #55  
Oakland, CA 94601

**Tenant**

Stephanie Kavakis  
4401 San Leandro Street #56  
Oakland, CA 94601

**Tenant**

Stephanie Kavrakis  
4401 San Leandro Street Unit # 11  
Oakland, CA 94601

**Tenant**

Susan Leffingwell  
4401 San Leandro Street #35  
Oakland, CA 94601

**Tenant**

Susannah Israel  
4401 San Leandro Street #32  
Oakland, CA 94601

**Tenant**

Takehito Etani  
4401 San Leandro Street #19  
Oakland, CA 94601

**Tenant**

The Lucid Dream Lounge  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**

Thelma Andree  
4401 San Leandro Street Unit # 36  
Oakland, CA 94601

**Tenant**

Thelma Andree  
4401 San Leandro Street Unit 36  
Oakland, CA 94601

**Tenant**

Thurman Adam Lorick III  
4401 San Leandro Street Unit # 17  
Oakland, CA 94601

**Tenant**

Tiana Fraser  
4401 San Leandro Street #44  
Oakland, CA 94601

**Tenant**

Torey Broderson  
4401 San Leandro Street #41  
Oakland, CA 94601

**Tenant**

Troy Clancy  
4401 San Leandro Street #52  
Oakland, CA 94601

**Tenant**

Tzong Tzu Rogerts  
4401 San Leandro Street #52  
Oakland, CA 94601

**Tenant**

Woodruff Burley  
4401 San Leandro Street #39  
Oakland, CA 94601

**Tenant**

Yasmine Salem  
4401 San Leandro Street Unit # 12  
Oakland, CA 94601

**Tenant**

Yelena Phillipchuck  
4401 San Leandro Street #55  
Oakland, CA 94601

**Tenant**

Zach Stockman  
4401 San Leandro Street #21  
Oakland, CA 94601

**Tenant**

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**Tenant Representative**

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**Owner**

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Oakland, CA 94612

**Owner**

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**Owner Representative**

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Concord, CA 94520

**Owner Representative**

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**Tenant**

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Oakland, CA 94612

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San Jose, CA 95113

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Amy Wieliczka  
4401 San Leandro Street #3  
Oakland, CA 94601

**Tenant**

Andrea Ives  
4401 San Leandro Street #3  
Oakland, CA 94601

**Tenant**

Haley Wilson  
4401 San Leandro Street #3  
Oakland, CA 94601

**Tenant**

Sara Le Cornec  
4401 San Leandro Street #3  
Oakland, CA 94601

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San Jose, CA 95113

**Tenant**

Brianne Crabtree  
4401 San Leandro Street #5  
Oakland, CA 94601

**Tenant**

Lia Walker  
4401 San Leandro Street #8  
Oakland, CA 94601

Tenant  
David Bernbaum  
4401 San Leandro Street #12  
Oakland, CA 94601

Tenant  
Andrew Pulkrabek  
4401 San Leandro Street #18  
Oakland, CA 94601

Tenant  
Annmarie Bustamante  
4401 San Leandro Street #19  
Oakland, CA 94601

**Manager**  
Barbara Turner, Madison Park Financial LLC  
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Oakland, CA 94612

Tenant  
Ross Clark  
4401 San Leandro Street #23  
Oakland, CA 94601

**Tenant**  
Jakob Valvo  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**  
Myles Faigin  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**  
W. Breanne Leslie, Lucid Dream Lounge, Inc.  
4401 San Leandro Street #25  
Oakland, CA 94601

Tenant  
Darin Marshall  
4401 San Leandro Street #26  
Oakland, CA 94601

Tenant  
Deborah Weber  
4401 San Leandro Street #31  
Oakland, CA 94601

**Tenant**

Matthew Hudson  
4401 San Leandro Street #36  
Oakland, CA 94601

Tenant

Woodruff Burley  
4401 San Leandro Street #39  
Oakland, CA 94601

Tenant

Ian Nathan  
4401 San Leandro Street #40  
Oakland, CA 94601

Tenant

Daniel Wang  
4401 San Leandro Street #41  
Oakland, CA 94601

Tenant

Ezra Eismont  
4401 San Leandro Street #46  
Oakland, CA 94601

**Tenant**

Matthew Martin  
4401 San Leandro Street #58  
Oakland, CA 94601

Tenant

Colin Sullivan  
4401 San Leandro Street #53  
Oakland, CA 94601

Tenant

Joshua R Miller  
4401 San Leandro Street #59  
Oakland, CA 94601

Tenant

Tzong Rogers  
4401 San Leandro Street #52  
Oakland, CA 94601

Manager

Barbara Turner, Madison Park Financial LLC  
155 Grand Avenue Suite 950  
Oakland, CA 94612

Tenant  
Miles Ross  
4401 San Leandro Street #14  
Oakland, CA 94601

**Tenant**  
Ezra Unter Unterscher  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**  
Sarah Rund  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**  
Sarena Kirk  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**  
Savannah Crespo  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**  
Rebecca Cotton  
4401 San Leandro Street #54  
Oakland, CA 94601

**Tenant**  
Charles Long  
4401 San Leandro Street #4B  
Oakland, CA 94601

**Tenant**  
Randall Spencer  
4401 San Leandro Street #43  
Oakland, CA 94601

**Owner**  
John Protopappas, Madison Park  
155 Grand Avenue Suite 950  
Oakland, CA 94612

**Tenant**  
John Reed  
1943 Tyler Street  
San Pablo, CA 94806

**Tenant**

John Reed  
1080 23rd Avenue Unit 104  
Oakland, CA 94606

**Tenant**

Keiko Steimetz  
1943 Tyler Street  
San Pablo, CA 94806

**Tenant**

Keiko Steimetz  
1080 23rd Avenue Unit 104  
Oakland, CA 94606

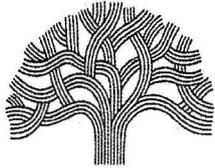
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.  
Executed on **October 14, 2025** in Oakland, CA.

*Robert Costa*

---

Robert F. Costa, Program Analyst II  
Oakland Rent Adjustment Program



CITY OF OAKLAND

### CITY OF OAKLAND RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

## APPEAL

<b>Appellant's Name</b> Helena Martin, Ziaa Szymanski, et al.		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 4401 San Leandro Street, Oakland, California		Represented Units: 2, 3, 4B, 5, 8, 17, 18, 19, 21, 23, 24, 25, 26, 31, 36, 39, 40, 41, 43, 46, 52, 53, 54, 58, 59	
<b>Appellant's Mailing Address (For receipt of notices)</b> 4401 San Leandro Street, Oakland, CA (see proof of service)		<b>Case Number</b> L19-0013 (bifurcated from tenants' petitions)	
		<b>Date of Decision appealed</b>	
<b>Name of Representative (if any)</b> Leah Hess, Hasmik Geghamyan		<b>Representative's Mailing Address (For notices)</b> Law Office of Leah Hess, PO Box 8867, Emeryville, CA 94662 Geghamyan Law Office, 1720 Broadway Suite 430, Oakland, CA 94612	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  The decision violates federal, state, or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on the Owner's investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

**Supporting documents (in addition to this form) must not exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document.** Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively.

**• You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. •**

I served a copy of: Tenants' Brief in Support of Second Appeal (insert name of document served)

And Additional Documents

and (write number of attached pages) 16 attached pages (not counting the Appeal Form or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. First-Class Mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.
- c. Electronic Service. I electronically sent the document(s) to the person(s) at the address(es) listed below who have previously given written consent to receiving notices and documents in this matter from the RAP and from the OTHER PARTY/IES electronically at the email address(es) they provided.

<b>Name</b>	Servando Sandoval, Spencer Fane LLP
<b>Address</b>	225 West santa Clara St., Suite1500
<b>City, State Zip</b>	San Jose, CA 95113
<b>Email Address</b>	ssandoval@spencerfane.com
<b>Name</b>	Zacks & Freedmand, PC
<b>Address</b>	180 Montgomery St, Suite 1940
<b>City, State Zip</b>	San Francisco, CA 94104

<b>Email Address</b>	az@zfplaw.com
----------------------	---------------

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and the documents were served on 10/31/2025 (insert date served).

Hasmik GEGHAMYAN  
 PRINT YOUR NAME

H. Meghamyan  
 SIGNATURE

10/31/2025  
 DATE

**IMPORTANT INFORMATION:**

**This Appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.**

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- **Any response to the appeal by the responding party must be received by the Rent Adjustment Program, along with a proof of service on appealing party, within 30 days of service of the service of the appeal if the party was personally served. If the responding party was served the appeal by mail, the party must file the response within 35 days of the date the appeal was mailed to them.**
- There is no form for the response, but the entire response is limited to 25 pages or less.
- The Board will not consider new claims. All claims, except jurisdictional issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The case record is available to the Board, but sections of audio recordings that you want the Board to review must be pre-designated to Rent Adjustment Staff.

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Attorneys for Tenants/Appellants  
Helena Martin, Ziaa Szymanski, et al.

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

Case Name: Vulcan Lofts, LLC v. Tenants  
Case Numbers: L19-0013 bifurcated with T17-0237, T18-0460, T18-0461, T18-0462,  
T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468,  
T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475,  
T18-0476, T18-0477, T18-0478, T18-0479, T18-0498

**TENANTS' BRIEF IN SUPPORT OF SECOND APPEAL FROM HEARING  
OFFICER'S REMAND DECISION TO THE HOUSING, RESIDENTIAL RENT AND  
RELOCATION BOARD OF THE CITY OF OAKLAND**

**INTRODUCTION**

In 2019, following the filing of numerous Tenant petitions objecting to rent increases, the Owner filed petitions against all Tenants, asserting that the Property was exempt from Oakland's Rent Ordinance under the "new construction" provisions of the Ordinance. At issue in these cases is Section 8.22.030.A.5 of the Ordinance, which provides, in relevant

part:

[T]he following dwelling units are not covered units for purposes of this Chapter:

Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983....To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.

Regulations to the Ordinance further clarify that *legal* conversion (emphasis added) of structures which were formerly entirely commercial qualify for exemption. The Owner asserts that the above statutory language means that *only* residential occupancy *prior to January 1, 1983* bars the Owner from obtaining exemption. The Tenants assert that *any residential occupancy before issuance of a certificate of occupancy* (or finalized building permit) will prevent the Owner from obtaining exemption from the Ordinance.

#### **I. PRIOR EVIDENTIARY HEARINGS**

Prior to the Hearing Officer's First Hearing Decision (served on May 23, 2023), the evidentiary hearings of the Owner's petition took place over several sessions, at which profuse evidence demonstrated residential use of the property prior to issuance of Certificates of Occupancy and final permits. Tenants produced voter registration records, and detailed testimony of former tenants, visitors, construction workers, and tenant family members. All testified from their personal knowledge of events at the property. This is Tenants' Second Appeal to the Housing, Residential Rent and Relocation Board ("The Board). The Board already has the full record from the First Appeal, including all exhibits filed on June 7, 2023. For the Board's convenience, Tenants re-attach **Exhibit A**, which summarizes evidence of

residential use predating the Certificates of Occupancy and incorporates records from the Alameda County Registrar of Voters.

On April 15, 2019, the Owner presented a single witness, former owner/developer Julian Robert Eddie Orten who testified about the purchase, development and early occupancy of the property. Mr.Orten testified to renting out live-work units in mid-1987. He testified that he was able to begin construction of new units “pretty promptly” in the “smaller building” (Building A). He rented out the first unit in Mid-April or May, 1987. (1:09:46-1:11:57; 1:10:36-1:10 56; 1:11:07-1:11:57; 1:13:40-1:14:13) He stated that the first unit was not rented until “approximately” 18 months after purchase. (1:08:58–1:09:46). He stated that most of the units were not occupied by May 1, 1987, just the first 10 to 12 in the smaller building (Building A) “The northern section [Building C] did not get completed until 1988. Certainly by 1989. The whole place would have been full.” (1:36:31-1:37:19)

The evidence presented is undeniable. Units at the property were rented out for residential use *prior* to issuance of certificates of occupancy or final permits.

## **II. INITIAL HEARING DECISION**

After considerable delay, a Hearing Decision granted the Owner’s petition, served on May 23, 2023. The Decision adhered to the Owner’s interpretation of the new construction exemption. It concluded:

The evidence establishes that residential occupancy started at the subject property after the purchase in 1985. A *Certificate of Occupancy*, issued by the city of Oakland for the residential use of the building was finalized on October 12, 1987. Therefore the owner has met its burden of proof to establish that the subject received a certificate of occupancy on or after January 1, 1983. Accordingly, the subject property from The Ordinance [*sic*]

The Decision also discounted Tenants’ voluminous and credible testimony as “unpersuasive” about dates. She did not provide any details of which tenants were unpersuasive or why she felt they lacked credibility, or why.

### **III. THE FIRST APPEAL DECISION AND REMAND**

The Tenants timely appealed the Vulcan Hearing Decision on June 7, 2023 citing, among other matters, the Green Sage cases. (See Vulcan Tenants’ Memorandum in Support of Appeal of Tenant-Appellants Martin, Szymanski, et al.).

In Green Sage, the tenants had occupied a property in 2009, but the building did not obtain a Certificate of Occupancy until 2011. (Armory v. Green Sage T18-0372. Green Sage ended in a Corrected Remand Hearing Decision on December 9, 2022). That Corrected Remand Hearing Decision addressed “the Board’s instruction and its interpretation of the rule on new construction: [“The subject property is not exempt as new construction if there was residential use prior to the issuance of the Certificate of Occupancy even if the property was newly constructed and received the Certificate of Occupancy after January 1, 1983.”]

On November 6, 2023, after the in-person hearing on August 24, 2023, the Board remanded the case back to the Hearing Officer for reconsideration in light of the lack of temporal limitation on residential use prior to conversion. Neither the Ordinance nor the Regulations state any specific date mandating a cut-off for proving unauthorized residential use. Instead, they provide an *event* before which there must not be any residential use. In order to qualify as new construction, a landlord must prove that there was no residential

occupancy of a property prior to issuance of a certificate of occupancy or if no certificate of occupancy is available, the final permits. For clarification, to qualify for an exemption, the property must have been *entirely non-residential*—i.e., no residential use, prior to the issuance of the final certificate of occupancy. Here, the Owner again has not met its burden of proof to demonstrate that any unit at the property was “newly constructed.”

#### **IV. THE HEARING OFFICER’S REMAND DECISION AND TESTIMONY OF MR. MILES**

The Rent Board remanded the case back to the Hearing Officer for a determination on exemption based on the Armory v. Green Sage decision. “If the Hearing Officer makes a determination that the property is not exempt, the Hearing Officer was to conduct a hearing and make a determination regarding the tenant petitions on the Merits.” (Page 3, November 6, 2023 Appeal Decision)

The Hearing Officer did not comply with the Board’s directive. Instead, over Tenants’ objections, she announced that she was reopening the case to submit “new evidence” after attending a workshop and encouraging opposing counsel to invite another witness from the City of Oakland to testify. She then demanded that the parties provide dates for a hearing. At the reopened hearing, she called David Miles, City of Oakland Senior Housing Inspector, to testify about City policies and practices in the 1980s.

Mr. Miles began working for the Building Department in 1999. His testimony was entirely hearsay. It was not “new evidence” and could not, in any event, have changed the

outcome of the case nor anything that the previous witness, Orton, testified. California statute, case law and the Ordinance strongly disfavor the admission of new evidence after trial. (Gov. Code, § 11513(d); CCP § 657(4); *Horowitz v. Noble* (1978), 79 Cal.App. 123).

Reopening the case caused only delay. The Hearing Officer then took another eight months to issue a Remand Decision, which was served on October 14, 2025.

Rather than applying the Board's Green Sage decision to the record, the Hearing Officer declared that "the evidence established that there was no residential use of the subject property prior to the Certificates of Occupancy issued for the subject premises." (p. 5 of Remand Decision). On that basis, the Order granted the Owner's petition, dismissed the Tenants' petitions, and declared the units exempt.

### **CONCLUSION AND REQUESTED RELIEF**

Tenants have sufficiently demonstrated that the property is covered by the Ordinance in their First and Second Appeal. Tenants respectfully request that the Board reverse the Remand Decision, hold that the property is covered under the Rent Adjustment Ordinance, and that the tenant cases be remanded for determination of adjustments including calculation of lawful rent, rent reductions, and rebates of any overcharges with interest.

DATED: October 31, 2025

Respectfully submitted,



HASMIK GEGHAMYAN

LEAH HESS

Attorneys for Tenants/Appellants

**000346**

# EXHIBIT A

**TENANT-APELLANTS MARTIN, ET.AL. v. VULCAN LOFTS, LLC**  
**EVIDENCE OF RESIDENTIAL USE OF THE PROPERTY PRIOR TO LEGAL CONVERSION - SUMMARY**

Unit #	Reg #	Date		Evidence of Early Residential Occupancy
1	F870498	09/08/1982	A	•Voter registration (pre-1/1/83)
2	G987540	06/09/1986	A	•Voter registration
5	H204832 G511489	11/25/1986 9/17/ 1984	A	<p>•<u>Voter Registrations</u></p> <p>•<u>Witness testimony Peter Mars (formerly Peter Smith)</u>, (6/10/19 Hearing) Lived in Unit 5 with Karen Beck. (2:18:01- 1/18/06; 2/17/11-2/17/39). ( 2:18:07-2;24:56)</p> <p>•Application for bldg permit for Unit 5 to build a storage loft “In existing live/work Studio”. signed “Peter Smith”. Date April 13, 1987. (Tenant Exh. 46)</p> <p>•Mars testified that, at the time he applied for the permit, he would have been living at the Vulcan “a year or possibly at year and a half”. (2:28:20-2:33:03)</p> <p><u>Karen Beck(formerly Karen Smith)</u> (12/16/19 Hearing)</p> <p>•Beck testified to moving into <u>Unit 5</u> with husband Peter Smith in 1985 or 1986. She moved out in January ‘88. (12/16/19 Hearing, (4:37:24-53; 4:38:59-4:00)</p>
6	G865845	06/02/1986	A	•Voter Registration
10	H257469	08/22/1987	A	•Voter Registration
11	G771855	09/19/1986	A	•Voter Registration

14	X426298	05/29/1987	A	<p>•Voter Registration</p> <p><u>Witness Todd Boekleheide</u> (6/10/19 Hrng)</p> <p>•Boekelheide testified that he moved into unit 14 “probably” in 1986. (4:31:27-4:31:58) Construction of new units was ongoing. (4:32:32-41) People were already living there when he moved in. (4:32.23)</p> <p>Responding to Hearing Officer, he stated that he could not say “with a reasonable degree of certainty” that it was 1986. (4:44:32-4:44:59)</p> <p>Shortly after his testimony, he requested to reopen his testimony to give a more accurate answer. The request was granted.</p> <p>•He then testified that he could “definitely declare” that he was living at the Vulcan “at least” as early as September, 1987 based upon the release date of a film he was working on the time. He was working on the film for at least a month prior to its release in October 1987. (5:21:38—5:23:38)</p> <p>•<u>Corroboration:</u> Tenant Exh. No. 58:</p> <p>•Witness <u>Eddie Orten</u> testified that he rented a unit to <u>Todd Boekelheide</u> in mid-1987. (April 15, 2019 Hearing, 1:16:06-1:17:30)</p> <p>Carpenter <u>David Cheek Sworn Declaration</u></p> <p>Cheek testified that he became a supervisor at the Vulcan in 1986. (¶ 4) He testified that Todd Boekelheide was residing at the property prior to when Cheek started working there. (¶¶ 3, 7)</p>
	H099880	10/06/1986	?	<p>•No Unit Number Stated in Voter Registration Records. However, see notes below (Unit 18) person at the property registering to vote on the same day: 10/06/1986</p>

18	X489752	10/06/1986	B	<p>•Voter Registration</p> <p><u>Witness Randy Hussong (12/16/19 Hmg)</u></p> <p>Hussong testified that he worked at the property as a painter before he and his wife moved into Unit 18 in 1985. (1:21:43-1:22:33) Voter</p> <p>•Registration Record shows person living there in 1986.</p> <p>He stated that David Cheek worked on the painting crew, and David's sister Allison lived at the property. (1:29:53-1:30:04)</p> <p>Stated he was one of the initial tenants at the Vulcan. Tenants started moving into building A as units became available. He named other tenants: Allison Cheek, Ric Tingali, Jonathan Garrett, Bob Drecco and Tod Boekelheide but did not recall when they moved in. He estimated that construction was finished "sometime in 1986". He moved from the property at the end of October 1989. He remembers because he was there during the 1989 Loma Prieta earthquake (1:38:15-1:40:21)</p> <p><u>David Cheek Sworn Declaration:</u></p> <p>Carpenter David Cheek testified that Randy Hussong and his wife Tracy McBride resided at the Vulcan when Cheek started working there in 1986. Randy worked on the construction crew with Cheek as a painter. (¶¶ 3, 8)</p>
19	G267674 G267675	05/07/1984 05/07/1984	B	<p>•Voter Registration</p>

21	H074029 H074030	09/25/1986	B	<ul style="list-style-type: none"> <li>•Voter Registrations</li> <li>•<u>Witness Gayle Bryan</u> (12/16/19 Hrng)</li> </ul> <p>Ms. Bryan testified that she moved into Unit 21 with her husband, Patrick Bryan, in '86 or '87. Could have been '85. She lived there for 3 years. (3:42:59-3:45:26)(3:56:30-3:57:05)</p> <p>She knows the approximate date of their move-in because they were living there when he graduated in from Holy Names in. 1987. (4:00:44-4:01:12)</p> <p>Valerie Steel and her husband moved in across the hall about a month after she moved in. (3:46:01-3:46:44)</p> <p>Many other artists were moving into the Vulcan when she moved in. Rental units were still being built. People moved in immediately after the units were built. (3:58:23-3:58:44)</p> <ul style="list-style-type: none"> <li>•Corroborating: Valerie Steel testified to moving into Unit 23 with her husband in late '86.</li> </ul>
22	H105022	10/03/1986	B	<ul style="list-style-type: none"> <li>•Voter Registration</li> </ul>

23	H191495	04/28/1987	B	<p>•Voter Registration</p> <p>•<u>Witness Valerie Steel</u> [6/10/19 Hrng.]</p> <p>Ms. Steel testified to renting Unit 23 with her fiancé (later husband) in late '86. They had to prep their space, so they moved in around December.(3:50:45-3:51:11-27; 3:52: 28-3:52:42). They rented it as live/work space. (3:52:52-3:53:21)</p> <p>There were about a dozen people living in the buildings adjacent to the parking lot. She listed several people living at the property around the time of her move-in: Gayle and Patrick Bryan lived across the hall; David and Allison Cheek, lived behind them to the left; Bob Drego lived next door; Todd Boekleheide was across the driveway; Denise Owen was an "early, early tenant"; Donna Fenstermaker was a tenant, but "she doesn't recall when she came. (3:56:48-4:00:38)</p> <p>She was manager for several years. She wasn't sure of the date when she started, but she was manager on the day of the 1989 earthquake, so it was probably a couple years after she moved to the property. (4:04:00-4:04:13)</p> <p>All units had been built out when she moved from the property in 1990. She doesn't know exactly when the owners stopped working—maybe 1988. The units were totally built-out long before the earthquake. (4:08:37-4:10:08)</p> <p>There were a few units "day space" units that were not live/work, 12-15, "maybe not even that number." (4:10:10-4:11:23)</p> <p>See witness Gayle Bryan testimony above re: Steel move into the property.</p>
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25	H121815	02/201987	B	<p>•Voter Registration</p> <p><u>Witness Allison Davis</u> formerly Allison Cheek (12/26/19 Hrng)</p> <p>Ms. Davis testified that she lived in unit 24 or 25. She thinks she moved into the Vulcan "sometime in 1986".(4:14:22-4:18:59) She lived there with her husband Ricardo Tringali. (4/15/50-4/16/04)</p> <p>She had just moved to the Vulcan when she started commuting to U.C. Davis as a transfer student in the 1986/87 academic year, starting in the Fall of '86. (4:28:58-4:29:10)</p> <p>She knew several people at the Vulcan that were part of the "first wave" of tenants to move in. She and her husband lived to the left of Valerie Steel. (4:22:56-4:23:00; 4:26:44-4:27:14)</p> <p>There were still a lot of empty spaces and there was a lot of building at the time she moved in. (4:27:14-4:27:18)</p> <p>She moved out in the Fall of 1989. (4:32:40-4:33:09)</p> <p><u>Declaration of witness David Cheek</u> (Exh. 6)</p> <p>Carpenter David Cheek testified that became a supervisor at the Vulcan in 1986. (¶ 4) There were "definitely" people residing there when he started working. The owners were in a "huge rush to get people in". Units were rented out soon after they were completed. The units were intended as residences. His crew installed running water, electricity, bathrooms, kitchens and bedrooms. The owners rented the spaces as residences. (¶ 5)</p> <p>His sister, Allison Davis, resided at the property in Unit 25 with her husband Rick Tingali. Cheek was working on units at the property prior to her moving in. He worked on construction of her unit.</p>
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25	H121814	02/20/1987	B	<ul style="list-style-type: none"> <li>•See above re testimony of Allison Davis,</li> <li>•Declaration of her brother David Cheek.</li> </ul>
31	None		C	<ul style="list-style-type: none"> <li>•<u>Witness Llewellyn Moreno</u> (formerly, Llewellyn Hilliard</li> </ul> <p>Mr. Moreno testified that he moved into Unit 31 “no later” than March or April 1987—it could have been several months earlier. He did extensive work on his rental unit prior to move in but he had been living in the unit for some time when he was informed that his father had been hospitalized in early June (5:24:43–5:37:18)</p> <p>He lived at the Vulcan for approximately one year. (5:41:57-5:42:31)</p> <p>He was the first tenant in his unit. There were “several generations of tenants” because the property had developed in stages. His unit and other units available at the same time were the third stage of development of the property. There were people at the property who were “quite well settled” by the time he was there. (5:38:58–5:39:42)</p> <p>When he moved in, there were “quite a number” of people already living at the Vulcan. (5:40:20-5:40:41)</p>

43	H262087	09/28/1987	C	<p>•Voter Registration</p> <p><u>Witness Susan Bloomquist</u>, formerly <u>Susan Nickel</u>. Susan Bloomquist testified that she moved into Unit 43 as a sublessor of existing tenant Suzanne Lang. (4:53:39-4:53:35) They agreed to share the costs and share the work of fixing up the space so they would have a large studio to work. (4:53:56-4:54:17)</p> <p>Ms. Bloomquist moved in "sometime in 1986", but "for sure" by June 1986. At the time, she was due to lose her student apartment in June. (4:53:20-4:53:25; 4:54:46-4:54:53)</p> <p>Ms. Bloomquist began paying rent and building out the space so that it would be comfortable for her to live there when she had to vacate her student apartment in June. (4:54:56-4:55:03:10; 4:55:11-4:55:35; 4:55:11-4:55:35; 4:55:50-4:56:06; 4:57:06-4:57:45; 4:58:04-4:58:34)</p> <p>WThe units in the building across the parking lot ) were built out and people were living in them when she moved in. (4:58:40-4:59:09) Todd Boekleheide was living in "the first building" when she moved in. (4:59:46-4:59:51)</p> <p>Ms. Bloomquist testified that "most of the construction was finished by the end of 1987 because they kept going north building the units. (5:03:27-5:05:08).</p>
43	H189199	09/28/1987	C	<p>•Voter Registration</p> <p>See above re: Unit 43 and tenants.</p>

48			C	<p><u>Witness Paul Howard</u> sworn declaration (Exh. 8) stated that his mother <u>Rhoda Lee London</u> resided in Unit 48 with her husband Mark Seymour in 1986-1987. (¶ 3) Prior to their move-in, he toured the property with them while construction was underway. (¶ 4) The units were offered as live/work artists' studios and her unit was rented to her as live/work. He helped them move in and visited frequently. It was "definitely their residence. (¶¶ 4, 5)</p> <p><u>Postcard</u> attached to Howard Declaration: Stamped &amp; postmarked in France. Postcard from "Barb &amp; Chuck" to Mark &amp; Rhoda Seymour, 4401 San Leandro # 8 (Exh iii)</p>
54			C	<p><u>Witness Elizabeth Ross</u></p> <p>Ms Ross testified that she moved into Unit 54 in "Fall of '87". Unsure whether it was October or November. She believes that she was not the first tenant in the unit because there were items from the previous tenant.</p> <p>Items found in apartment indicated that she was not the first tenant at that unit. She understood that tenants were required to provide their own stoves and refrigerator. Unit four came with a pink refrigerator. (3:25:17-3:28:08)</p>
57	H214660	06/12/1987	C	•Voter Registration
57	H214001	06/12/1987	C	•Voter Registration

**PROOF OF SERVICE**

**Case Appeal Name: Tenant-Appellants Martin, Szymanski, et al. v. Vulcan Lofts, LLC**

**Case Name: Vulcan Lofts, LLC v. Tenants**

**CaseNumber(s):** L19-0013 *bifurcated from* T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022 & T19-0023

I am a resident of the State of California and at least eighteen years of age. I reside in Alameda County, California. My address is 1720 Broadway, Suite 430, Oakland, California 94612. On October 31, 2025, I served a copy of:

**Appeal Form, Tenants' Brief in Support of Second Appeal (6 pages), and Additional Documents (10 pages) and Proof of Service**

**To each opposing party, whose names and addresses are listed below, by one of the following means (check one):**

X **USPS Mail.** I enclosed the documents in a sealed envelope or package addressed to the persons listed below and at the addresses below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

X **By Electronic Mail.** Electronic mail to Landlords' Counsel Only (in addition to USPS Mail)

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 31, 2025 in Oakland, California.

/s/ Hasmik Geghamyan  
Hasmik Geghamyan

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8 CITY OF OAKLAND  
9 RENT ADJUSTMENT PROGRAM  
10 RESPONSE TO APPEAL  
11

12 In Re: VULCAN LOFTS, LLC,  
13 Petitioner,

Case No. L19-0013, T17-0237, T18-0460,  
T18-0461, T18-0462, T18-0463, T18-0464,  
T18-0465, T18-0466, T18-0467, T18-0468,  
T18-0469, T18-0470, T18-0471, T18-0473,  
T18-0474, T18-0475, T18-0476, T18-0477,  
T18-0478, T18-0479, T18-0498, T18-0499,  
T18-0500, T18-0501, T19-0021, T19-0022,  
T19-0023, T19-0236

**BRIEF IN OBJECTION TO SECOND  
APPEAL**

19  
20 Petitioner VULCAN LOFTS LLC's ("Landlord") hereby submits its objection to the  
21 second appeal following the Remand Decision dated October 3, 2025. For the reasons set forth  
22 herein, the Remand Decision that the Property is exempt from the Oakland Rent Adjustment  
23 Ordinance, should be affirmed.

24 **I.**

25 **HISTORY OF PROCEEDINGS**

26 This request for exemption was originally filed in 2019, wherein Petitioners asserted that  
27 the Property was exempt from Oakland's Rent Ordinance as it is a new construction. After  
28 substantial filings, on April 30, 2023, the Hearing Officer issued a Hearing Decision granting

1 Petitioner’s Petition finding that the property located at 4401 San Leandro Street, Oakland,  
2 California (the “Property”) is exempt from the Oakland Rent Adjustment Ordinance on the  
3 grounds that the Property is “newly constructed” as defined by the Ordinance. Tenants thereafter  
4 filed an appeal of the Hearing Decision. The Appeal hearing was conducted and the Housing  
5 Residential Rent and Relocation Board (the “Board”) issued its Appeal Decision on November 6,  
6 2023. The Appeal Decision remanded the case back to the Hearing Officer for a determination on  
7 the applicability of the exemption based on the *Armory v Green Sage* decision.

8 A new hearing was held, and additional evidence submitted on the specific question of  
9 whether the subject property is exempt from the Rent Adjustment Ordinance as a new  
10 construction under the *Green Sage* decision. On October 3, 2025, a remand decision was reached  
11 finding that the subject units are exempt. In reaching this decision the Hearing Officer found that  
12 the Property is a new construction and there was no residential use prior to the issuance of the  
13 Certificates of Occupancy.

14 Tenants have now appealed this remand decision again requesting that Property be  
15 determined to be subject to the Oakland Rent Adjustment Ordinance. Tenants also object to the  
16 Hearing Officer, on remand, considering any new evidence despite it being necessary to do so to  
17 issue a decision.

18 **II.**

19 **ISSUE PRESENTED ON REMAND**

20 In the Remand Decision issued by the Board, the Hearing Officer was directed to make a  
21 determination on the exemption based on the *Armory v Green Sage* decision. The only issue  
22 considered on remand was the question “[i]s the subject property exempt from the Rent  
23 Adjustment Ordinance (Ordinance) as new construction under the *Green Sage* decision.”

24 The collective *Green Sage* decisions, if applicable, held that a subject property is not  
25 exempt as a new construction if there was residential use prior to the issuance of a Certificate of  
26 Occupancy even if the property was newly constructed after January 1, 1983.

27 In determining whether *Green Sage* was applicable, the Hearing Officer correctly found  
28 that the Property was first purchased in December 1985 and then converted from an operating

1 foundry into 59 residential live/work units in three buildings. No evidence was found to  
2 contradict these findings. Witness testimony was submitted by an Oakland Senior Housing  
3 Inspector, David Miles, confirming that it was outside of Petitioners control when a certificate of  
4 occupancy was issued, and that the final certificate of occupancy was not required for occupancy.  
5 Rather, an initial temporary certificate of occupancy is usually issued which would permit  
6 residents to begin occupying the Property prior to the issuance of the final certificate.

7 The Remand Decision correctly found that to apply the result of *Green Sage* would hold  
8 that new construction created well after January 1, 1983, may not be exempt based only on the  
9 City's failure to timely issue a final certificate of occupancy and through no fault of the owner.  
10 This testimony was necessary to establish the applicability of *Green Sage* and whether the final  
11 certificate of occupancy should be considered for this determination, or if a temporary certificate  
12 of occupancy would be sufficient to authorize tenants to begin occupying the Property. This  
13 question, and the necessity of evidence from the City, was crucial in determining the applicability  
14 of *Green Sage*. The Hearing Officer further determined that there was a certificate of occupancy  
15 issued for Building A on October 12, 1987, a temporary certificate for building C dated April 21,  
16 1987, and a finalized building permit dated December 1, 1987.

17 The Remand Decision confirmed that the relevant Certificates of Occupancy, which  
18 included initial temporary certificates of occupancy, were issued in 1987, and that there was no  
19 credible testimony that there was any residential use of the units prior to the issuance of the  
20 issuance of these Certificates of Occupancy. Consequently, it was found that the subject property  
21 is exempt.

### 22 III.

### 23 ISSUES PRESENTED ON APPEAL

24 On appeal, Tenants now allege that the evidence considered in the remand hearing was  
25 inadmissible. In support of this allegation they cite Government Code, § 11513(d), regarding the  
26 admission of hearsay evidence, and *Horowitz v. Noble* (1978), 79 Cal.App. 123, which discusses  
27 evidentiary standards on appellate review and the essential elements necessary to grant a new trial  
28

1 on the basis of newly discovered evidence. They also generally object to the inclusion of David  
2 Miles testimony as hearsay.

3 Neither this statute nor case are applicable. This matter was remanded back to the Hearing  
4 Officer to consider the applicability of the *Green Sage* decisions, which permitted the inclusion of  
5 new evidence to make this determination. Specifically, the order on remand was for the Hearing  
6 Officer to consider that “to qualify for an exemption, the property must have been entirely non-  
7 residential – i.e., no residential use, prior to the issuance of the certificate of occupancy”  
8 (November 3, 2023, Housing Residential Rent and Relocation Board Appeal Decision).

9 After conducting a hearing on this point, the Remand Decision finds that “the evidence  
10 establishes that there was no residential use of the subject property prior to the Certificates of  
11 Occupancy, issued for the subject units.” (October 3, 2025, Remand Decision). This was directly  
12 in line with the requirement and direction on remand. There was no direction from the Board that  
13 the Hearing Officer make this determination purely on legal grounds or based on previously  
14 submitted evidence, in fact, if no new evidence was necessary there would be no need for a  
15 remand. The Board and any Appeal Panels should not conduct evidentiary hearings and when  
16 additional evidence or reconsideration of evidence is necessary it should be remanded back to the  
17 Hearing Officer. Rent Adjustment Program Regulations 8.22.120(F).

18 The Board’s remand to the Hearing Officer, who is the finder of fact throughout this  
19 petition<sup>1</sup>, was done to collect additional information as to the residential use. The Hearing Officer  
20 is also the decision maker on whether evidence is hearsay, and what is credible. In making their  
21 decision the Hearing Officer found that there was no credible testimony that there was residential  
22 use of the units prior to the Certificates of Occupancy issued. However, there was credible  
23 testimony that no units were occupied before the conversion from a working foundry which  
24 occurred in 1985. The Tenants’ now demand that this determination of credibility be overturned  
25 on appeal in direct contradiction of the relevant hearing procedures.

26  
27  
28 <sup>1</sup> Rent Adjustment Program Regulations Section 8.22.110(F) – “The Hearing Officer shall make  
written findings of fact. . .”



1 regard, testimony was provided by Mr. Miles that the final building permit inspection was the  
2 equivalent of a certificate of occupancy.

3 Mr. Miles also provided testimony regarding missing documentation with the City of  
4 Oakland. He testified that the City of Oakland did in fact have missing documentation for a  
5 variety of reasons. He testified of the possibility that temporary certificates of occupancy were  
6 issued for the Property, other than those that are reflected in the records submitted in these  
7 proceedings.

8 With respect to evidence of residential use prior to the final permit approval or the  
9 Certificates of Occupancy for the Property, testimony was clear and convincing that there was  
10 definitely no residential use prior to the time the Property was purchase in last 1985. The  
11 conversion work did not commence until later 985, but more likely not before 1986. Julian  
12 Robert Orton III (Eddy) testified on the first date of the hearing. He testified that no units were  
13 inhabited before the initial property conversion to live/work artist studios in 1987. He further  
14 testified that Harry Blow/Inspector and Calvin Huang/Plan Checker, both employees of the City  
15 of Oakland Building Department, ensured that the unit conversion was legal according to the  
16 ordinances and laws applicable at the time of the conversions. Finally, he testified that each of the  
17 buildings at the Property had finalized building permits and a “physical card” singed before any  
18 of the units were rented to tenants.

19 While there was testimony by certain individuals regarding residential use prior to 1987,  
20 the testimony was simply no reliable. For instance, Paul Howard testified that he received a post  
21 card from his mother, with a postmark of April 11, 1987, and bearing the property address. This  
22 alone does not establish residential use prior to the final building permit approval or issuance of a  
23 Certificate of Occupancy. Peter Mars testified that he visited the Property in 1985 to discuss his  
24 future unit. He testified that he had a walk walk-through with Eddy Orton during this visit. Per  
25 his testimony, Mr. Mars stated that he “does not think there were residents living on the property  
26 at the time.”

27 Valerie Steele testified that she moved into the property in 1987, after the painting work  
28 was completed. She moved into Unit 23, “about one month after signing the lease in January

1 1987.” Exhibit B reflects that a certificate of occupancy was in fact issued in February 1987.  
2 Thus, it appears that Ms. Steele did not take occupancy of Unit 23 prior to the issuance of the  
3 Certificate of Occupancy.

4 Toff Blucklehide testified inconsistently as to when he first moved into his unit. He first  
5 testified that he moved into the unit “around 1986 but didn’t remember exactly what year.” This  
6 witness was subsequently recalled to testify and testified that “he was living at the property as  
7 early as September 1987. He may have lived there as early as 1986; he was still unsure of the  
8 approximate month year he moved into the property.”

9 Susan Bloomquist testified that he moved into the property in June 1986 as a sub-lessee  
10 with Suzanne Lang. However, she testified that she had a lease for her unit (Exhibit 55), which  
11 does not support a move in date in 1986. She also testified that the Vulcan Café was operating  
12 when she first moved into her unit.

13 Christopher Vivona, was employed as a carpenter and worked at the Vulcan Lofts. He  
14 testified that when he first started working at Vulcan Lofts, the foundry was still pouring molten  
15 steel. He also testified that the Vulcan Café was not opened until the end of 1986, which means  
16 that Ms. Bloomquist’s testimony as to when she moved in does not coincide with the opening of  
17 the Vulcan Café.

18 Randy Hussong testified that he first moved into the Property in the summer of 1985.  
19 However, the Property was not purchased until the last quarter of 1985. Mr. Hussong also  
20 testified that his unit had heat, sheetrock, a bathroom, sink, bedroom stairs and that his utilities  
21 were activated upon move-in. It is simply not credible that he moved to the Property in the  
22 summer of 1985 when the Property was still operating as a foundry when it was purchased.  
23 Further, there was no construction commenced until the end of 1985 or early 1986. Thus, it was  
24 simply impossible that a completed unit would have been available at the Property in the summer  
25 of 1985.

26 Elizabeth Ross testified that she moved to the Property when the foundry was still  
27 operating. This testimony is simply not credible as construction did not commence at the  
28 Property prior to the Foundry ceasing operations. She further testified that she was supposedly

1 not the first tenant to live in her unit as there were items left inside her unit before she moved it.  
2 Again, this would be simply impossible given the time when the Property was purchased and  
3 when construction commenced at the Property. Gayle Bryan similarly testified that she moved in  
4 while the Foundry was operating. She also testified that the foundry continued to operate through  
5 1987, which is again not reliable given that final permits and Certificates of Occupancy were  
6 issued in 1987.

7 Gayle Bryan testified that she moved to the Property in 1986 or 1987. She testified that  
8 the Vulcan Café already existed when she moved in. Per prior testimony, the Vulcan Café was  
9 not completed until the end of 1986. She further testified that the Foundry was still operating  
10 when she moved in. For the reasons stated above, this testimony is simply not reliable.

11 Karen Beck testified that she moved to the Property in either 1985 or 1986, although she  
12 did not recall exactly when. However, she testified that the Foundry was no longer in operation  
13 when she moved into the Property. This is important because the Foundry continued to operate  
14 for some time after it was purchased in the last quarter of 1985. As noted in the Build Permit  
15 Applications, construction work did not commence until 1986. She testified that her unit had a  
16 small kitchen with refrigerator, sink and no countertops, which would not have existed in 1986,  
17 that would have been before construction work commenced at the Property.

18 **V.**

19 **LEGAL ARGUMENT**

20 **A. THE NEW CONSTRUCTION EXEMPTION OF THE RENT CONTROL**  
21 **ORDINANCE APPLIES TO THE INSTANT CASE.**

22 The Oakland Rent Control Ordinance (the “Ordinance”) allows certain exemptions from  
23 rent control to different types of dwelling units. One of those exemptions is for “[d]welling units  
24 which were newly constructed and received a certificate of occupancy on or after January 1,  
25 1983. [...] To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely  
26 newly constructed or created from a space that was formerly entirely non-residential.” The  
27 Regulations for the Ordinance further expands on this definition by explaining that newly  
28 constructed units include legal conversions of uninhabited spaces not used by tenants.

1 It is clear from the plain reading of these provisions of the Ordinance and Regulations that the  
2 terms read together mean that there was no residential use at an exempt property prior to 1983.  
3 The Tenants are attempting to interpret these provisions to mean that there may be no residential  
4 use prior to the issuance of the certificate of occupancy – which would in turn, make the 1983  
5 obsolete and without purpose. Any interpretation contrary to this reading would be a violation of  
6 the Costa-Hawkins Rental Housing Act.

7 In the Remand Decision issued by the Board, the Hearing Officer was requested to make a  
8 determination on the exemption based on the Armory v Green Sage decision. Specifically, the  
9 Board directed the Hearing Officer as follows: “For clarification, to qualify on the exemption, the  
10 property must have been entirely non-residential – i.e., no residential use, prior to the issuance of  
11 the certificate of occupancy.” As discussed above, the evidence does not support a finding that  
12 there was any residential use prior to the final sign off of the Building Permits or the issuance of  
13 the Certificates of Occupancy. The testimony provided by various witnesses, for the reasons  
14 discussed above, is simply not reliable. The evidence suggests that tenants did not in fact move  
15 into the units until after the final sign off by the City of Oakland.

16 **B. THE COSTA-HAWKINS RENTAL HOUSING ACT PREVENTS A**  
17 **FINDING THAT THE PROPERTY IS NOT EXEMPT.**

18 The City of Oakland has discretion in creating and applying its own rent control  
19 regulations, however, it is limited by the Costa-Hawkins Rental Housing Act (“Costa-Hawkins”).  
20 Cal. Civ. Code § 1954.50 et seq. Costa-Hawkins permits the owner of residential real property to  
21 establish the initial and all subsequent rental rates if either 1) the property has a certificate of  
22 occupancy issued after February 1, 1995, 2) it has already been exempt from residential rent  
23 control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption,  
24 or 3) if a unit is alienable separate from the title of any other dwelling unit. Cal.Civ.Code §  
25 1954.52. Local governments are barred from enacting new rent controls on units already  
26 exempted from local controls as of February 1, 1995. Cal.Civ.Code § 1954.52(a).

27 The City of Oakland, in conjunction with Costa-Hawkins, exempts newly constructed  
28 dwelling units which receive a certificate of occupancy on or after January 1, 1983, from Article

1 1 of their Residential Rent Adjustment Program (“Rent Control”). Oakland Municipal Code  
2 8.22.020(A)(4) and Cal.Civ.Code § 1954.52(a)(2).

3 Certificates of occupancy for the Property were first issued in 1987, exempting the  
4 Property from rent control under both the City’s ordinance as well as Costa-Hawkins. The  
5 Tenants now argue that the residential use of the Property began prior to the issuance of the  
6 certificate of occupancy in 1987, but after January 1, 1983, and that the Property should lose its  
7 exemption as a result. The evidence, however, does not support such a finding and the Hearing  
8 Officer correctly found that there was no evidence supporting this contention submitted by the  
9 Tenants.

10 In any event, applying rent control restrictions to the Property would violate the  
11 protections established under Costa-Hawkins. If a property “has already been exempt” from the  
12 residential rent control ordinance on or before February 1, 1995, pursuant to a local exemption,  
13 the owner of the property may establish the initial and all subsequent rents. Cal.Civ.Code §  
14 1954.52(a). The City of Oakland cannot therefore exempt a property from the protections of  
15 Costa-Hawkins, and cannot enact new rent controls on a unit that is already exempt. Further, the  
16 exemption determination in Costa-Hawkins is based on the ordinance that was then in effect on  
17 February 1, 1995. A subsequent ordinance or decision cannot retroactively change whether a  
18 property was or was not exempt at the time Costa-Hawkins was passed.

19 The Berkeley Rent Board, in their own Resolution 17-13, has addressed a similar situation  
20 and resolved that in some situations a rental unit with a certificate of occupancy issued after the  
21 residential use of the unit began will not qualify as exempt. This resolution was challenged. *NCR*  
22 *Properties, LLC v. City of Berkeley* held that issuing a new certificate of occupancy and  
23 converting the property to a different category of residential use would not qualify for exemption,  
24 if the space was already potentially subject to rent control and was used prior to the issuance of  
25 the new certificate of occupancy. The decision considered the legislature’s intent to ensure a  
26 property would only become exempt if it constituted a new construction built after the relevant  
27 exemption date, as the purpose of Costa Hawkins “furthers the purpose of the exemption by  
28 encouraging construction”, not converting the use of existing properties. *NCR Properties, LLC v.*

1 City of Berkeley, 89 Cal. App. 5th 39, 53 (2023) (The building originally received a certificate of  
2 occupancy as a single-family home in the 1970s; the Court determined a change from single  
3 family to multifamily was not considered the issuance of a new certificate of occupancy for the  
4 purposes of Costa-Hawkins).

5 Crucially, the issue in NCR was that the property already had a certificate of occupancy  
6 and the landlord was not permitted to claim an exemption simply because a new certificate was  
7 issued, converting the use from a single-family home to multifamily use. This reading is  
8 consistent with Burien, LLC v. Wiley, 230 Cal. App. 4th 1039 (2014) (Landlord obtained new  
9 certificate of occupancy after conversion from residential apartments to condominiums which  
10 found that the certificate of occupancy exemption may require a determination of when the  
11 residential use began if there was a prior certificate of occupancy for the same property.)

12 In both of the above cases, the relevant inquiry of the court was whether residential use  
13 began before the relevant exemption date under Costa-Hawkins, either February 1, 1995, or an  
14 earlier date if exempted by a local rent control ordinance. Imposing rent control on an Oakland  
15 property where the first residential use was well after January 1, 1983, would necessarily require  
16 the enactment of new rent controls, and is impermissible under Costa-Hawkins. If a court is to  
17 read beyond the unambiguous exemption for properties already exempt from residential rent  
18 control ordinances on or before February 1, 1995, it may only do so to determine when a new  
19 building is constructed so that it adds to the residential housing supply. NCR Properties, at 53.  
20 The present matter differs in two ways, first, the Property at issue here did not originally have a  
21 residential use or any residential permits. Unlike NCR Properties and Burien, the Property was  
22 not converted from one type of residential use to another, it was converted from a completely  
23 non-residential use to a residential one. The evidence is conclusive that the Property was used as a  
24 Foundry until the Property was purchased in the last quarter of 1985, two years after the January  
25 1, 1983.

26 Second, the property in NCR was put in use in the 1970s and was not qualified for an  
27 exemption under Cal. Civ Code § 1954.52(a). The analysis conducted by both NCR and Burien  
28 considered when residential use began, but did not impose rent control restrictions as a penalty

1 because residential use occurred before a certificate of occupancy was issued. Instead, the  
2 relevant consideration is when the residential units were occupied for residential use and whether,  
3 based on that occupancy date, Costa-Hawkins is applicable. Here, the residential use of the  
4 Property commenced well after 1983. Even if the date of initial occupancy is used, as an  
5 alternative to using the certificate of occupancy date, the Property qualifies for an exemption as  
6 residential use did not commence until after January 1, 1983, i.e., 1987.

7 The Tenants have relied on San Francisco rent control regulations for support of their  
8 position. Specifically, they have cited to Da Vinci Group v. San Francisco Residential Rent  
9 Board, 5 Cal.App.4th 24, 29 (1992). In that case, it was abundantly clear from the express  
10 regulations that any residential use prior to the issuance of a certificate of occupancy would  
11 invalidate a landlord's exemption to the rent control ordinance. In the present case, however,  
12 Oakland Ordinance is completely lacking of any express language that would invalidate the  
13 exemption under the circumstances of this case. Thus, the Da Vinci Group case is completely  
14 inapplicable to the present case. As noted above, the Board cannot now change its regulations to  
15 expand the rent control ordinance.

16 The Tenants would argue that the Da Vinci Group case and this present case are  
17 "remarkably similar." This is dramatically incorrect. In the Da Vinci Group case, a warehouse  
18 was converted into live-work units without any permitting and was cited a year after the  
19 conversion by the City of San Francisco. Following the citation by the City, the landlords  
20 obtained the necessary permits, made additional improvement, and finally received a certificate of  
21 occupancy some five years later. Meaning that residents were living at that property for  
22 approximately six years before the certificate was obtained and where construction work was  
23 performed without any permits. In that case, the court concluded that the property was subject to  
24 rent control because obtaining a certificate following illegal conversion did not create new  
25 housing in the City, which in turn did not further the purpose of the ordinance. Rather, the  
26 landlord simply made previously available illegal units legal.

27 Vulcan Lofts, on the other hand, were legally built with all required permits, received all  
28 required sign offs, and were legally occupied following their completion of each unit. The

1 testimony and evidence provided makes it clear that this is what transpired. Unlike Da Vinci  
2 Group, the new ownership created nearly four dozen new units and helped expand the housing  
3 market, which were ultimately approved by the City of Oakland.

4 VI.

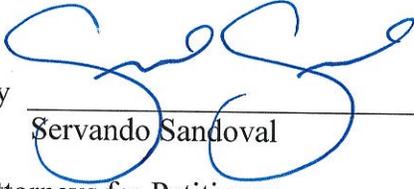
5 CONCLUSION

6 The Remand Decision was correctly decided and the consideration of a new hearing on a  
7 limited question was justified and in accordance with the directions provided on remand. This  
8 decision was made by the finder of fact after considering all relevant evidence presented  
9 throughout this petition, as well as its credibility, and should not be overturned. Accordingly, the  
10 Remand Decision must be upheld.

11 Dated: December 5, 2025

SPENCER FANE LLP

12  
13 By

14   
\_\_\_\_\_  
Servando Sandoval

15 Attorneys for Petitioner  
16 VULCAN LOFTS, LLC  
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1 **Vulcan Lofts LLC v. Tenants**

2 **Case Number(s):** L19-0013, T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464,  
3 T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18- 0470, T18-0471, T18-0473, T18-  
4 T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500,  
5 T18-0501, T19- 0021, T19-0022, T19-0023, T19-0236

6 **PROOF OF SERVICE**

7 State of California )  
8 ) xx  
9 County of Santa Clara )

10 I am a citizen of the United States and an employee of the County aforesaid. I am  
11 over the age of eighteen years and not a party to the within action. My business address is 225  
12 West Santa Clara Street, Suite 1500, San Jose, California 95113-1752. On the date mentioned  
13 below, I caused a true copy(ies) of the following document(s) to be served on the parties below  
14 using the method(s) checked:

- 15 • ***BRIEF IN OBJECTION TO SECOND APPEAL***

16 On the Addressee(s) below named in said action by:

- 17  First Class Mail. I am familiar with the regular mail collection and processing  
18 practices of the business. The mail will be deposited with the United States  
19 Postal Service on the same day following ordinary business practices. I enclosed  
20 the above-mentioned document(s) in a sealed envelope with postage thereon  
21 fully prepaid in the United States Post Office mail box at San Jose, California.

22 **Addressee(s): SEE ATTACHED SERVICE LIST**

23 City of Oakland  
24 Rent Adjustment Program  
25 250 Frank H. Ogawa Plaza, Suite 5313  
26 Oakland, CA 94612-0243  
27 RAP@oaklandca.gov  
28 hearingsunit@oaklandca.gov

**Via Electronic Mail only.**

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on December 5, 2025, at San Jose, California.

  
\_\_\_\_\_  
Estella R. Chavarria

**SERVICE LIST**

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Colin Sullivan 4401 San Leandro Street #53 Oakland, CA 94601	Efrem Rensi 4401 San Leandro Street #57 Oakland, CA 94601
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Darin Marshall 4401 San Leandro Street #26 Oakland, CA 94601	Gary Doyle 4401 San Leandro Street #2 Oakland, CA 94601
Darius Todar 4401 San Leandro Street #39 Oakland, CA 94601	Geneva Harrison 4401 San Leandro Street #53 Oakland, CA 94601
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Deborah Weber 4401 San Leandro Street #31 Oakland, CA 94601	Kathleen Callahan 4401 San Leandro Street #8 Oakland, CA 94601
Helena Stoddard 4401 San Leandro Street #2 Oakland, CA 94601	Kathryn Stewart 4401 San Leandro Street #53 Oakland, CA 94601
Harel Meri 4401 San Leandro Street #19 Oakland, CA 94601	Krystal Bell 4401 San Leandro Street #14 Oakland, CA 94601
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Ian S Nathan 4401 San Leandro Street #40 Oakland, CA 94601	Leslie W. Breanna 4401 San Leandro Street Unit # 25 Oakland, CA 94601
Jeremy Gage 4401 San Leandro Street #39 Oakland, CA 94601	Lia Walker 616 Santa Rosa Avenue Berkeley, CA 94707
Jeremy Simmons 4401 San Leandro Street #10 Oakland, CA 94601	Loreley Bunoan 4401 San Leandro Street Unit # 50 Oakland, CA 94601
Johnathan Bishop 4401 San Leandro Street Unit #47 A Oakland, CA 94601	Marshal Lane 4401 San Leandro Street #28 Oakland, CA 94601
Joseph Robertson 4401 San Leandro Street #41 Oakland, CA 94601	Martha Fehrman 4401 San Leandro Street #44 Oakland, CA 94601

<p>Joshua Miller  4401 San Leandro Street #59  Oakland, CA 94601</p>	<p>Martin Laurent  4401 San Leandro Street #2  Oakland, CA 94601</p>
<p>Juliana Broek  Rigel Juratovac  Susan Leffingwell  4401 San Leandro Street #35  Oakland, CA 94601</p>	<p>Pamela Mangan  4401 San Leandro Street #43  Oakland, CA 94601</p>
<p>Matthew Graham  4401 San Leandro Street #48  Oakland, CA 94601</p>	<p>Rachel Cole-Jansen  4401 San Leandro Street #47A  Oakland, CA 94601</p>
<p>Matthew Hudson  4401 San Leandro Street #36  Oakland, CA 94601</p>	<p>Randall Spencer  4401 San Leandro Street #43  Oakland, CA 94601</p>
<p>Matthew Martin  4401 San Leandro Street #58  Oakland, CA 94601</p>	<p>Rebecca Burnett  4401 San Leandro Street #54  Oakland, CA 94601</p>
<p>Megan Girart  4401 San Leandro Street #2  Oakland, CA 94601</p>	<p>Reuben Tomar  4401 San Leandro Street #57  Oakland, CA 94601</p>
<p>Michael Blodgett  4401 San Leandro Street #49  Oakland, CA 94601</p>	<p>Rigel Juratovac  4401 San Leandro Street #35  Oakland, CA 94601</p>
<p>Michael Robinson  Cassie Stuurman  4401 San Leandro Street Unit # 1  Oakland, CA 94601</p>	<p>Robert Hart  4401 San Leandro Street #48  Oakland, CA 94601</p>
<p>Mikhail Lapin  4401 San Leandro Street #44  Oakland, CA 94601</p>	<p>Ross Clark  4401 San Leandro Street #24  Oakland, CA 94601</p>
<p>Miles Ross  4401 San Leandro Street #14  Oakland, CA 94601</p>	<p>Ross Clark  4401 San Leandro Street #23  Oakland, CA 94601</p>

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Susannah Israel 4401 San Leandro Street #32 Oakland, CA 94601	Jakob Valvo 4401 San Leandro Street #25 Oakland, CA 94601
The Lucid Dream Lounge 4401 San Leandro Street #25 Oakland, CA 94601	Myles Faigin 4401 San Leandro Street #25 Oakland, CA 94601
Thelma Andree 4401 San Leandro Street Unit # 36 Oakland, CA 94601	W. Breanne Leslie, Lucid Dream Lounge, Inc. 4401 San Leandro Street #25 Oakland, CA 94601
Tiana Fraser 4401 San Leandro Street #44 Oakland, CA 94601	Ian Nathan 4401 San Leandro Street #40 Oakland, CA 94601
Troy Clancy 4401 San Leandro Street #52 Oakland, CA 94601	Daniel Wang 4401 San Leandro Street #41 Oakland, CA 94601
Tzong Tzu Rogers 4401 San Leandro Street #52 Oakland, CA 94601	Joshua R Miller 4401 San Leandro Street #59 Oakland, CA 94601
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Fred Gromadski Mark Leavitt 4401 San Leandro Street #37 Oakland, CA 94601	Kevin Baldwin Maelle Boer Chris Keller Mael Ryckeboer 4401 San Leandro Street #38 Oakland, CA 94601
Michael Parker 4401 San Leandro Street #42 Oakland, CA 94601	
Sarena Kirk 4401 San Leandro Street #17 Oakland, CA 94601	<b>Owner</b> John Protopassas Madison Park Financial 155 Grand Ave Ste #950 Oakland, CA 94612
<b>Representative</b> Leah Hess Law Office of Leah Hess PO Box 8867 Emeryville, CA 94662-8867	<b>Owner Representative</b> Elicia Holland 4401 San Leandro St Oakland, CA 94601
<b>Owner</b> Vulcan Lofts, LLC 155 Grand Ave. Ste. #950 Oakland, CA 94612	<b>Representative</b> Hasmik Geghamyan 1736 Franklin Street Suite 400 Oakland, CA 94612



Housing and Community Development Department  
Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612-2034

TEL (510) 238-3721  
FAX (510) 238-6181  
TDD (510) 238-3254

### NOTICE OF APPEAL HEARING

**Case Number:** L19-0013, T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19-0021, T19-0022, T19-0023, T19-0236  
**Case Title:** Vulcan Lofts v. Tenants (Vulcan et al.)  
**Property Address:** 4401 San Leandro St. Oakland, CA 94601

### THE HEARING ON THIS APPEAL WILL BE HELD:

**Date:** February 12, 2026  
**Time:** 6:00 p.m. or as soon thereafter as the matter may be heard.  
**Place:** Hearing Room 1, City Hall, One Frank H. Ogawa Plaza, Oakland, CA 94612

### **Important Information**

The Staff decision (Administrative or Hearing Decision) is suspended until a final decision is issued by the appeal body (Rent Board, appeal panel, or appeal officer). The decision of the appeal body is the final decision in the administrative process of the City of Oakland. There is no appeal of the appeal body to the City Council.

**You may appear in person or remotely via Zoom. If you do not appear, the Board may decide the appeal on the record pursuant to Regulation 8.22.120.I.**

A request for a change in the date or time of the appeal hearing must be made in writing. A form for requesting a postponement is available from the Rent Adjustment Program. A continuance will be granted only for good cause. See Regulation 8.22.120.C. A second request for continuance will be granted only under exceptional circumstances. If the appealing party does not appear at the appeal hearing and no continuance was granted before the meeting, the appeal body may decide the appeal on the record, i.e. papers already submitted.

The Board will not hear oral testimony at the appeal hearing. Each party will have a total of 6 minutes to present argument in favor of or in opposition to the appeal. This time includes opening argument and any rebuttal or response to the other party. However, the appeal body may increase or reduce the time, and/or specifically divide the time, such as 3 minutes each for opening argument and rebuttal. The appealing party presents their argument first. Any party may be assisted by an attorney or any other person designated by the party. You will be notified of the appeal body's action on the appeal.

**000386**

Appeal hearings are public. The Rent Adjustment Program makes an audio recording of the appeal hearings. Any party may also bring a court reporter to record the proceedings at their own expense.

### **Accessibility**

Contact us to request disability-related accommodations, American Sign Language (ASL), Spanish, Cantonese, Mandarin, or another language interpreter at least five (5) business days before the event. Rent Adjustment Program (RAP) staff can be contacted via email at [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) or via phone at (510) 238-3721. California relay service at 711 can also be used for disability-related accommodations.

Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en Español, Cantones, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) o llame al (510) 238-3721 o 711 por lo menos cinco días hábiles antes de la reunión.

需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) 或致電 (510) 238-3721 或 711 California relay service.

### **Service Animals/Emotional Support Animals**

The City of Oakland's Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use service animals or emotional support animals.

If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care.

Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates, or defecates, etc.) will be removed.

**PROOF OF SERVICE**

**Case Number(s): L19-0013, T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18- 0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500, T18-0501, T19- 0021, T19-0022, T19-0023, T19-0236**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Notice of Appeal Hearing

**Owner**

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**Owner Representative**

Andrew Zacks, Zacks, Freedman & Patterson  
1970 Broadway Suite 1270  
Oakland, CA 94612

**Owner Representative**

Servando Sandoval, Pahl & McCay  
225 W. Santa Clara Street Suite 1500  
San Jose, CA 95113

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**Owner**

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155 Grand Ave Ste #950  
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**Owner**

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**Owner Representative**

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Oakland, CA 94601

**Owner Representative**

Ericksen Arbuthnot  
2300 Clayton Rd. Ste. 350  
Concord, CA 94520

**Owner Representative**

Madison Park Financial/Barbara Turner  
155 Grand Ave Ste #950  
Oakland, CA 94612

**Owner Representative**

Servando Sandoval, Pahl & McCay  
225 West Santa Clara St., Ste.#1500  
San Jose, CA 95113

**Tenant**

Ziaa Szymanski  
4401 San Leandro St #21  
Oakland, CA 94601

**Tenant Representative**

Leah Hess, Law Office of Leah Hess  
610 16th Street Suite M-8  
Oakland, CA 94612

Vulcan Lofts LLC & Vulcan Loft's Management Company  
155 Grand Avenue Suite 950  
Oakland, CA 94612

**Owner Representative**

Lerna Kazazic, Pahl & McCay  
225 W. Santa Clara Street #1500  
San Jose, CA 94113

**Tenant**

Helena Martin  
4401 San Leandro Street #2  
Oakland, CA 94601

**Tenant Representative**

Hasmik Geghamyan,  
Geghamyan Law Office  
1736 Franklin Street Suite 400  
Oakland, CA 94612

**Tenant Representative**

Leah Hess  
PO Box 8867 8867  
Emeryville, CA 94662-0067

**Owner Representative**

Servando Sandoval, Pahl & McCay  
225 W Santa Clara Street #1500  
San Jose, CA 95113

**Tenant**

Amy Wieliczka  
4401 San Leandro Street #3  
Oakland, CA 94601

**Tenant**

Andrea Ives  
4401 San Leandro Street #3  
Oakland, CA 94601

**Tenant**

Haley Wilson  
4401 San Leandro Street #3  
Oakland, CA 94601

**Tenant**

Sara Le Cornec  
4401 San Leandro Street #3  
Oakland, CA 94601

**Owner Representative**

Serrvando Sandoval, Pahl & McCay  
225 W Santa Clara Street #1500  
San Jose, CA 95113

**Tenant**

Brianne Crabtree  
4401 San Leandro Street #5  
Oakland, CA 94601

**Tenant**

Lia Walker  
4401 San Leandro Street #8  
Oakland, CA 94601

**Tenant**

David Bernbaum  
4401 San Leandro Street #12  
Oakland, CA 94601

**Tenant**

Andrew Pulkrabek  
4401 San Leandro Street #18  
Oakland, CA 94601

**Tenant**

Annmarie Bustamante  
4401 San Leandro Street #19  
Oakland, CA 94601

**Manager**

Barbara Turner, Madison Park Financial LLC  
155 Grand Avenue Suite 950  
Oakland, CA 94612

**Tenant**

Ross Clark  
4401 San Leandro Street #23  
Oakland, CA 94601

**Tenant**

Jakob Valvo  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**

Myles Faigin  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**

W. Breanne Leslie, Lucid Dream Lounge, Inc.  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**

Darin Marshall  
4401 San Leandro Street #26  
Oakland, CA 94601

**Tenant**

Deborah Weber  
4401 San Leandro Street #31  
Oakland, CA 94601

**Tenant**

Matthew Hudson  
4401 San Leandro Street #36  
Oakland, CA 94601

**Tenant**

Woodruff Burley  
4401 San Leandro Street #39  
Oakland, CA 94601

**Tenant**

Ian Nathan  
4401 San Leandro Street #40  
Oakland, CA 94601

**Tenant**

Daniel Wang  
4401 San Leandro Street #41  
Oakland, CA 94601

**Tenant**

Ezra Eismont  
4401 San Leandro Street #46  
Oakland, CA 94601

**Tenant**

Matthew Martin  
4401 San Leandro Street #58  
Oakland, CA 94601

**Tenant**

Colin Sullivan  
4401 San Leandro Street #53  
Oakland, CA 94601

**Tenant**

Joshua R Miller  
4401 San Leandro Street #59  
Oakland, CA 94601

**Tenant**

Tzong Rogers  
4401 San Leandro Street #52  
Oakland, CA 94601

**Manager**

Barbara Turner, Madison Park Financial  
LLC 155 Grand Avenue Suite 950  
Oakland, CA 94612

**Tenant**

Miles Ross  
4401 San Leandro Street #14  
Oakland, CA 94601

**Tenant**

Ezra Unter Unterscher  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Sarah Rund  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Sarena Kirk  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Savannah Crespo  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Rebecca Cotton  
4401 San Leandro Street #54  
Oakland, CA 94601

**Tenant**

Charles Long  
4401 San Leandro Street #4B  
Oakland, CA 94601

**Tenant**

Randall Spencer  
4401 San Leandro Street #43  
Oakland, CA 94601

**Owner**

John Protopappas, Madison Park  
155 Grand Avenue Suite 950  
Oakland, CA 94612

**Tenant**

John Reed  
1943 Tyler Street  
San Pablo, CA 94806

**Tenant**

John Reed  
1080 23rd Avenue Unit 104  
Oakland, CA 94606

**Tenant**

Keiko Steimetz  
1943 Tyler Street  
San Pablo, CA 94806

**Tenant**

Keiko Steimetz  
1080 23rd Avenue Unit 104  
Oakland, CA 94606

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.  
Executed on **January 28, 2026** in Oakland, CA.

  
\_\_\_\_\_  
Nyila Webb  
Oakland Rent Adjustment Program

## CHRONOLOGICAL CASE REPORT

Case No.: T25-0161

Case Name: Moran v. De Jesus Guzman

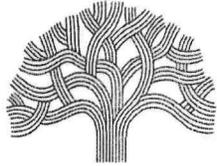
Property Address: 1169 75th Ave Oakland, CA 94621

Parties: Owner - Jose De Jesus Guzman  
Tenant - Evelin Moran

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	September 22, 2025
No Owner Response filed	
Administrative Decision mailed	November 21, 2025
Owner Appeal filed	December 9, 2025
Tenant Response submitted	December 11, 2025
ORDER Issued	December 30, 2025
Appeal Hearing Scheduled	February 12, 2026

T25-0161 EL/BJ



CITY OF OAKLAND

**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**RECEIVED**

**SEP 22 2025**

**RENT ADJUSTMENT PROGRAM**  
**OAKLAND**

## TENANT PETITION

**Please fill out this form as completely as you can.** Use this form to contest a rent increase, seek a rent decrease, and/or contest an owner exemption from the Rent Adjustment Program. Failure to provide the required information may result in your petition being rejected or delayed. See the last pages of this petition packet ("Important Information Regarding Filing Your Petition") or the RAP website for more information. **CONTACT A HOUSING COUNSELOR TO REVIEW YOUR PETITION BEFORE SUBMITTING.** To make an appointment email [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov).

### Rental Unit Information

1169 Street Number      75th Ave Street Name      2 Unit Number      Oakland, CA 94603 Zip Code

Move-in Date: 11/2019      Initial Rent at Move-In: \$ 1,050      Current Rent: \$ 1,728.28

Is your rent subsidized or controlled by a government agency (such as HUD or Section 8), other than Oakland Rent Adjustment Program? (See page 5 "Jurisdiction" for more information)       Yes  
 No  
 Not sure

Type of unit(s) (check one):       Single family home  
 Condominium  
 Apartment, room, or live-work

When (if ever) did the property owner first provide you with the City form, NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")?       I first received the RAP Notice on: \_\_\_\_\_  
 I was never provided with the RAP Notice  
 I do not remember if I ever received the RAP Notice

Case number(s) of any relevant prior Rent Adjustment case(s):

### Tenant Information (List each tenant petitioner in unit. If you need more space, attach additional sheet.)

Evelin First Name      Moran Last Name  
Mailing Address (if different from above): 10504 Creekside Circle, Oakland Ca  
Primary Telephone: 5107591531      Other Telephone: \_\_\_\_\_      Email: evelinmoran1982@gmail.com

\_\_\_\_\_  
First Name      Last Name  
Mailing Address (if different from above): \_\_\_\_\_  
Primary Telephone: \_\_\_\_\_      Other Telephone: \_\_\_\_\_      Email: \_\_\_\_\_

### Tenant Representative (Check one): No Representative    Attorney    Non-Attorney

\_\_\_\_\_  
First Name      Last Name      Firm/Organization (if any)  
Mailing Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_      Email: \_\_\_\_\_

**Property Owner Information**

Property Owner

Jose \_\_\_\_\_ De Jesus Guzman \_\_\_\_\_  
 First Name Last Name

Company/LLC/LP (if applicable): \_\_\_\_\_

Mailing Address: 2485 Washington Ave, San Leandro, Ca \_\_\_\_\_

Phone Number: 5104721131 \_\_\_\_\_ Email: N/A \_\_\_\_\_

Property Manager (if applicable)

\_\_\_\_\_ Name of Management Company  
 First Name Last Name

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**GROUND FOR PETITION**

**Select the grounds for this petition from the list below. Check all that apply. You must check at least one box. To contest a rent increase, select item(s) from Category A. If you have experienced a decrease in housing services and/or have issues with the condition of your unit, or are being charged for utilities in violation of the law, select item(s) from Category B. For more information on each of the grounds, see Oakland Municipal Code (O.M.C.) Sections 8.22.070 and 8.22.090 (Rent Adjustment Ordinance) and the corresponding Regulations. A copy of the Ordinance and Regulations are available here: [www.oaklandca.gov/resources/read-the-oakland-rent-adjustment-program-ordinance](http://www.oaklandca.gov/resources/read-the-oakland-rent-adjustment-program-ordinance).**

<b>A.</b>	<b>Unlawful Rent Increase(s)</b> <i>(Complete section A on page 3)</i>	<input checked="" type="checkbox"/> (A1) I received a rent increase above the allowable amount.
		<input checked="" type="checkbox"/> (A2) I received a rent increase that I believe is unlawful because I was not given proper notice, was not properly served, and/or was not provided with the required RAP Notice ("Notice to Tenants of the Residential Rent Adjustment Program").
		<input type="checkbox"/> (A3) I received a rent increase and do not believe I should be required to pay it because a government agency has cited my unit for serious health, safety, fire, or building code violations. <b>(You must attach a copy of the citation to your petition.)</b>
		<input type="checkbox"/> (A4) Before serving the rent increase notice, the property owner failed to substantially comply with the annual registration and reporting obligations as required under Oakland Municipal Code, Section 8.22.510.
<b>B.</b>	<b>Decreased Housing Services</b> <i>(Complete section B on page 3)</i>	<input type="checkbox"/> (B1) The property owner is providing me with fewer housing services than I previously received and/or I am being charged for services originally paid for by the owner. <b>(Check this box for petitions based on bad conditions/failure to repair.)</b>
		<input type="checkbox"/> (B2) I am being unlawfully charged for utilities.
<b>C.</b>	<b>Other</b>	<input type="checkbox"/> (C1) My rent was not reduced after: a) a prior rent increase period for capital improvements, or b) after the owner received undeclared capital improvement benefits, or c) after an additional tenant for whom the owner was allowed an increase, vacated from the premises.

		<input type="checkbox"/> (C2) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.
		<input type="checkbox"/> (C3) The initial rent amount when I first moved in was unlawful because the property owner was not permitted to set the initial rent without limitation. O.M.C. § 8.22.080 (C).

<b>A.</b>	<b>Unlawful Rent Increase(s)</b>
	<i>(Complete this section if any of the grounds for petition fall under category A, above)</i>

**List all rent increases you wish to contest.** Begin with the most recent increase and work backwards. If you never received the RAP Notice, you can contest all past increases. See the "Important Information" page at the end of this petition packet for more information on time limits for contesting rent increases. If you need additional space, attach a separate sheet or an additional copy of this form.

- For petitions contesting a rent increase on the grounds that the unit has been cited by a government agency for serious health, safety, fire, or building code violations, **you must attach a copy of the citation** to your petition. Failure to attach a copy of the citation may result in your petition being dismissed.

Date received rent increase notice: (Month/Day/Year)	Date rent increase went into effect: (Month/Day/Year)	Amount of increase:		Received RAP Notice with notice of rent increase?	
		FROM	TO	YES	NO
	01/2020	\$ 1,050	\$ 1,350	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	12/2022	\$ 1,350	\$ 1,567.50	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	11/2023	\$ 1567.50	\$ 1645.87	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	11/2024	\$ 1645.87	\$ 1,728.28	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>

<b>B.</b>	<b>Decreased Housing Services</b>
	<i>(Complete this section if any of the grounds for petition fall under category B, above)</i>

**List all the conditions that you believe entitle you to a rent decrease.** If your petition is based on problems related to your unit, or because the owner has taken away service(s) or is charging for services originally provided by the owner, you must complete this section. If you need more space, attach a separate sheet or an additional copy of this form.

- You are strongly encouraged to submit documentary evidence** (photographs, inspection reports, correspondence with your landlord, etc.) together with your petition. Evidence may be submitted up to seven calendar days prior to your hearing.
- You may wish to have a City inspector come inspect your unit** for possible code violations in advance of your hearing. Copies of any inspection report(s) may be submitted in support of your petition. To schedule an inspection, contact the City of Oakland Code Enforcement Unit at (510) 238-3381, or file a complaint online at <https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement>. *Note: if additional items are cited in an inspection report that were not included in your original petition (below), you must file an additional petition listing those items in order for RAP staff to consider them as a part of your claim.*

#	Description of problem or decreased housing service (list separately):	Date problem or decreased service started: (Month/Day/Year)	Date first notified owner or manager of problem: (Month/Day/Year)	Date problem or service was fixed, if ever: (Month/Day/Year)	What is the dollar value of your claimed loss?
1.					\$

2.					\$
3.					\$
4.					\$

**TENANT VERIFICATION**

*(Required)*

I/We declare under penalty of perjury pursuant to the laws of the State of California that everything I/we said in this Tenant Petition is true and that all of the documents attached to the Petition are true copies of the originals.

Evelin Moran  
Tenant 1 Signature

09/15/25  
Date

\_\_\_\_\_  
Tenant 2 Signature

\_\_\_\_\_  
Date

**CONSENT TO ELECTRONIC SERVICE**

*(Highly Recommended)*

Check the box below if you agree to have RAP staff and the OTHER PARTY/PARTIES send you documents related to your case electronically. If you agree to electronic service, the RAP and other parties may send certain documents (except a response to petition) only electronically and not by first class mail.

I/We consent to receiving notices and documents in this matter from the RAP and from the OTHER PARTY/IES electronically at the email address(es) provided in this petition.

**MEDIATION PROGRAM**

Mediation is an optional process offered by RAP to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. A trained third party will work with the parties prior to the hearing to see if a mutual agreement can be reached. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing. If no settlement is reached, the case will go to a formal hearing with a Rent Adjustment Hearing Officer, who will then issue a hearing decision.

Mediation will only be scheduled if both parties agree to mediate. Sign below if you agree to mediation in your case.

**I agree to have the case mediated by a Rent Adjustment Program staff mediator.**

Evelin Moran  
Tenant Signature

09/15/25  
Date

**INTERPRETATION SERVICES**

If English is not your primary language, you have the right to an interpreter in your primary language/dialect at the Rent Adjustment hearing and mediation session. You can request an interpreter by completing this section.

I request an interpreter fluent in the following language at my Rent Adjustment proceeding:

- Spanish (Español)
- Cantonese (廣東話)
- Mandarin (普通话)
- Other: \_\_\_\_\_

**-END OF PETITION-**



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA  
94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

## **NOTICE TO PROPERTY OWNER OF TENANT PETITION**

### **ATTENTION: IMMEDIATE ACTION REQUIRED**

If you are receiving this NOTICE together with a completed TENANT PETITION form, it means that a tenant has filed a case against you with the Oakland Rent Adjustment Program ("RAP") (commonly referred to as the "Rent Board").

- **YOU MUST FILE A RESPONSE WITHIN 35 CALENDAR DAYS AFTER THE PETITION WAS MAILED TO YOU (30 DAYS IF DELIVERED IN-PERSON).**

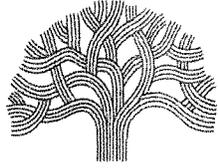
- TO RESPOND:

- 1) Complete and sign a **PROPERTY OWNER RESPONSE** form found on the RAP website. (<https://www.oaklandca.gov/services/respond-to-a-tenant-petition-for-the-rent-adjustment-program>)
- 2) Complete a **PROOF OF SERVICE (POS)** form (which is attached to the Response form and also available on the website) and provide an unsigned copy of the **POS** to the tenant (or tenant's representative) together with a copy of your signed **PROPERTY OWNER RESPONSE** form.
- 3) Submit your signed **PROPERTY OWNER RESPONSE** form and completed and signed **PROOF OF SERVICE\*** form to RAP through RAP's online portal, via email, or by mail.

**\*Note: The Response will not be considered complete until a PROOF OF SERVICE is filed indicating that the tenant has been served with a copy.**

**DOCUMENT REVIEW:** The tenant is required to serve on you all documents the tenant filed in this case in addition to the petition. Additionally, all documents are available for review at RAP.

**FOR ASSISTANCE:** Contact a RAP Housing Counselor at (510) 238-3721 or by email at [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov). Additional information is also available on the RAP website and on the **PROPERTY OWNER RESPONSE** form.



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

## PROOF OF SERVICE

**NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION (PLUS ANY ATTACHMENTS) ON THE PROPERTY OWNER PRIOR TO FILING YOUR PETITION WITH RAP. You must include a copy of the RAP form "NOTICE TO PROPERTY OWNER OF TENANT PETITION" (the preceding page of this petition packet) and a completed PROOF OF SERVICE form together with your Petition.**

- 1) Use this *PROOF OF SERVICE* form to indicate the date and manner of service and the person(s) served.
- 2) **NOTE:** Email is not a form of allowable service on a party of a petition or response pursuant to the Ordinance.
- 3) Provide a complete but unsigned copy of this *PROOF OF SERVICE* form to the person(s) being served together with the documents being served.
- 4) File your completed and signed copy of this *PROOF OF SERVICE* form with RAP together with your Petition. Your Petition will not be considered complete until this form has been filed indicating that service has occurred.

On the following date: 09 / 15 / 25 I served a copy of (check all that apply):

**TENANT PETITION** plus \_\_\_\_\_ attached pages (number of pages attached to Petition not counting the Petition form, NOTICE TO PROPERTY OWNER OF TENANT PETITION, or PROOF OF SERVICE)

**NOTICE TO PROPERTY OWNER OF TENANT PETITION**

Other: \_\_\_\_\_

by the following means (check one):

**First-Class Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

**Personal Service.** I personally delivered the document(s) to the person(s) at the address(es) listed below or I left the document(s) at the address(es) with some person not younger than 18 years of age.

///

///

///

**PERSON(S) SERVED:**

Name	Jose De Guzman
Address	2485 Washington Ave
City, State, Zip	San Leandro, Ca

Name	
Address	
City, State, Zip	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Evelin Moran

PRINTED NAME

Evelin Moran

SIGNATURE

09/15/25

DATE SIGNED

# **IMPORTANT INFORMATION REGARDING FILING YOUR PETITION**

---

## **TIME TO FILE YOUR PETITION**

Your Tenant Petition form must be received by the Rent Adjustment Program within the required time limit for filing. RAP staff cannot grant an extension of time to file your Petition.

- For Petitions contesting a rent increase, you have 90 days from the date of notice of increase or from the first date you received the RAP Notice (whichever is later) to file a Petition. If you did not receive a RAP Notice with the rent increase you are contesting but have received one in the past, you have 120 days to file a Petition. If you have never received a RAP Notice, you may contest all rent increases.
- For Petitions claiming decreased housing services, you have 90 days from either the date you first became aware of the decreased service or the date you first received the RAP Notice (whichever is later) to file a Petition. If the decreased housing service is ongoing, you may file a Petition at any time. See O.M.C. §§ 8.22.090 (A)(2)-(3) for more information.

## **CONTACT A HOUSING COUNSELOR TO REVIEW YOUR PETITION BEFORE SUBMITTING**

To make an appointment, email [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) or call (510) 238-3721. Although the Housing Resource Center is temporarily closed for drop-in services, assistance is available by email or telephone.

## **DOCUMENTS SUBMITTED IN SUPPORT OF PETITION**

All attachments submitted together with your Petition must be numbered sequentially. You may submit additional evidence in support of your Petition up to seven days before your hearing<sup>1</sup>. You must serve a copy of any documents filed with RAP on the other party and submit a PROOF OF SERVICE form.

*REMINDER:* Once a petition and its attachments are submitted to the RAP they become public records. Please redact any private information (such as social security numbers, bank account numbers, credit card numbers and similar financial data) from the documents you submit as part of this petition. If you have any questions, you may contact RAP staff at (510) 238-3721 or by email at [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov).

Additionally, all documents submitted to the RAP, including but not limited to emails, petitions, attachments, potential evidence, text messages, screenshots, etc., are a part of the file in your case and all parties to a case are entitled to have access to this information.

## **SERVICE ON PROPERTY OWNER**

You are required to serve ALL the following documents on the property owner and/or the property owner's representative:

1. Copy of RAP form entitled "NOTICE TO PROPERTY OWNER OF TENANT PETITION" (*included in petition packet and available on RAP website*).
2. Copy of completed Petition form and attachments.
3. Completed PROOF OF SERVICE form (*included in petition packet and available on RAP website*).

You may serve the property owner and/or the owner's representative by mail or personal delivery. A copy of the completed PROOF OF SERVICE form must be submitted to RAP together with your Petition. Your Petition will not be considered complete until a PROOF OF SERVICE form is filed indicating that the owner has been served. Note that you cannot serve a Petition by email, even if you have an agreement to electronic service between the parties, because the Ordinance requires service by mail or in person.

---

<sup>1</sup> Note that certain documents are required to be submitted with the Petition. See petition for details.

## FILING YOUR PETITION

Although RAP normally does not accept filings by email or fax, RAP is temporarily accepting Petitions via email during the COVID-19 local state of emergency. You may also fill out and submit your Petition online through the RAP website or deliver the Petition to the RAP office by mail. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open. If you send your Petition by mail, a postmark date does not count as the date it was received. Remember to file a PROOF OF SERVICE form together with your Petition.

- Via email:** [hearingsunit@oaklandca.gov](mailto:hearingsunit@oaklandca.gov)
- Mail to:** City of Oakland  
Rent Adjustment Program  
250 Frank H. Ogawa Plaza, Ste. 5313  
Oakland, CA 94612-0243
- File online:** <https://www.oaklandca.gov/services/file-a-tenant-petition>
- In person:** TEMPORARILY CLOSED  
City of Oakland  
Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313

## AGREEMENT TO ELECTRONIC SERVICE

Except for service of a petition or a response to a petition, documents may be electronically served on you when you have agreed to receive electronic service from the Rent Adjustment Program and from the other party/parties to the case.

## AFTER PETITION IS FILED

The property owner has 30 days after service of the Petition to file a Response (35 days if served by mail). The property owner must serve you with a copy of their Response form and any attachments filed with the Response. In most cases, RAP will schedule a hearing. You will be mailed a Notice of Hearing indicating the hearing date. If you are unable to attend the hearing, contact RAP as soon as possible. The hearing will only be postponed for good cause.

## FILE/DOCUMENT REVIEW

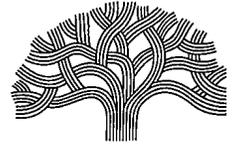
Either party may contact RAP to review the case file and/or to request copies of any documents pertaining to the case at any time prior to the scheduled hearing.

## JURISDICTION

Please note that if your rent is controlled or subsidized by any other governmental agency, your unit is not covered by the Rent Adjustment Ordinance and the Oakland Rent Adjustment Program does not have jurisdiction over your claim. O.M.C. § 8.22.030 (A)(1).

## FOR MORE INFORMATION

Additional information on the petition and hearing process is located on the RAP website and in the Residential Rent Adjustment Program Ordinance and Regulations (see Oakland Municipal Code 8.22.010 *et seq.*). For more information on rent increases, including the list of the annual allowable CPI rates and calculators for certain justifications, see: <https://www.oaklandca.gov/resources/learn-more-about-allowable-rent-increases> or you can refer to the Guide on Oakland Rental Housing Law at <https://cao-94612.s3.amazonaws.com/documents/Guide-to-Oakland-Rental-Housing-Law-1.pdf>. You may also contact a RAP Housing Counselor with questions at any time by emailing [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) or calling (510) 238-3721.

**ADMINISTRATIVE DECISION**

**CASE NUMBER:** T25-0161

**CASE NAME:** Moran v. De Jesus Guzman

**PROPERTY ADDRESS:** 1169 75th Avenue, Unit 2  
Oakland, CA

**PARTIES:** Evelin Moran, Tenant

**SUMMARY OF DECISION**

The Tenant's petition is granted.

**INTRODUCTION**

**Reason for Administrative Decision:** An Administrative Decision is issued without a hearing. The purpose of a hearing is to allow the parties to present testimony and other evidence to resolve disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a hearing, and no material facts are disputed. Therefore, an administrative decision is being issued without a hearing.

**BACKGROUND**

On September 22, 2025, the Tenant filed the petition herein. The petition alleges that the Tenant received a rent increase above the allowable amount, that the rent increase was unlawful because they were not given proper notice, was not adequately served, and/or was not provided with the required RAP Notice.<sup>1</sup> The petition, completed under penalty of perjury, also indicates that the Tenant was not provided a RAP Notice at the inception of their tenancy in November 2019 and that they received rent increases in 2020, 2022, 2023, and 2024 without service of the RAP Notice.

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<sup>1</sup> Notice to Tenants of the Residential Rent Adjustment Program.

The Owner did not file a response to the petition.

## **RATIONALE FOR ADMINISTRATIVE DECISION**

### Rent Increases

The Rent Adjustment Ordinance (Ordinance) requires an owner to serve the RAP Notice at the start of a tenancy,<sup>2</sup> and together with any notice of rent increase or change in the terms of a tenancy.<sup>3</sup> Effective September 21, 2016, Owners are required to provide the initial RAP Notice in English, Spanish, and Chinese. An owner may cure the failure to give notice at the start of the tenancy. However, a notice of rent increase is not valid if the effective date of the increase is less than six months after a tenant first receives the required RAP notice.<sup>4</sup>

### 2020 Rent Increase

The Tenants' rent was increased from \$1,050.00 to \$1,350.00, effective January 2020. The Tenant Petition states, under penalty of perjury, that they were never given a RAP Notice. Therefore, it is undisputed that the Tenant was not served the RAP Notice at the inception of the Tenancy. Likewise, it is undisputed that the Tenant did not receive a RAP Notice with the Notice of Rent Increase. Accordingly, the rent increase is invalid.

Notwithstanding the above, an Owner may increase the Rent on a Covered Unit occupied continuously by the same Tenant only once in 12 months. Here, the Tenant moved in in November 2019, and the rent increase took effect in January 2020, less than 3 months later. Accordingly, had the rent increase been served with the RAP Notice, it would still be invalid on this basis.

As of July 1, 2019, the CPI<sup>5</sup> Rent Adjustment was 3.5%. The rent for the subject unit was \$1,050.00. The rent was increased from \$1,050.00 to \$1,350.00, an increase of \$300.00. Therefore, increasing the Tenant's base rent above 3.5%, or \$36.75, violates the Ordinance and is unenforceable. Therefore, absent the other factors invalidating the 2020 rent increase, the amount exceeded the allowable limit and was invalid on that basis as well.

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<sup>2</sup> O.M.C. § 8.22.060(A).

<sup>3</sup> O.M.C. § 8.22.070(H)(1)(A).

<sup>4</sup> O.M.C. § 8.22.060 C.

<sup>5</sup> Consumer Price Index.

## Rent Increase Moratorium

Oakland City Council Ordinance 13589 CMS, adopted on March 27, 2020, states as follows at Section 4:

For rental units regulated by the Oakland Municipal Code Section 8.22.010 et seq, any notice of rent increase in excess of the CPI Rent Adjustment, as defined in Oakland Municipal Code Section 8.22.020, shall be void and unenforceable if the Notice is served or has an effective date between March 9, 2020, and June 30, 2024.

### December 2022

In December 2022, the Tenants' rent was increased from \$1,350.00 to \$1,567.50, an increase of \$78.37. The petition states, under penalty of perjury, that no RAP Notice was received with the rent increase.

Therefore, it is undisputed that the Tenant was not served the RAP Notice at the inception of the Tenancy. Likewise, it is undisputed that the Tenant did not receive a RAP Notice with the Notice of Rent Increase. Accordingly, the December 2022 rent increase is invalid, as well.

As of August 1, 2022, the CPI Rent Adjustment was 3%. The rent charged at the time for the subject unit was \$1,350.00. The Tenant's rent was increased from \$1350.00 to \$1567.50, an increase of \$217.50. Notwithstanding that the amount being charged for the rent violated the Ordinance, increasing the Tenant's base rent above 3%, or \$40.50, violated the Rent Increase Moratorium and is void and unenforceable. Accordingly, the rent increase from \$1,350.00 to \$1,567.50 is void and unenforceable on this basis as well.

### November 2023

In November 2023, the Tenants' rent was increased from \$1,567.50 to \$1,645.87, an increase of \$78.37. The petition states, under penalty of perjury, that no RAP Notice was received with the rent increase.

Therefore, it remains undisputed that the Tenant was not served the RAP Notice at the inception of the Tenancy. Likewise, it remains undisputed that the Tenant did not receive a RAP Notice with the 2023 Notice of Rent Increase. Accordingly, the 2023 rent increase is invalid.

An Owner may increase the Rent on a Covered Unit occupied continuously by the same Tenant only once in 12 months. Here, the Tenant moved in in November 2019, and the rent was increased in January 2020, December 2022, and November 2023. There was less than 12 months between the December 2022 and November 2023 rent increases. Accordingly, had the rent increase been served with the RAP Notice, it would still be invalid on this basis.

Finally, as of August 1, 2023, the CPI Rent Adjustment was 2.5%. The rent charged at the time for the subject unit was \$1,1567.50. The Tenant's rent was increased from \$1,567.50 to \$1,645.87, an increase of \$78.37. Notwithstanding that the amount being charged for the rent violated the Ordinance, increasing the Tenant's base rent above 2.5%, or \$39.19, violated the Rent Increase Moratorium and is void and unenforceable. Accordingly, the November 2023 rent increase from \$1,567.50 to \$1,645.87 is void and unenforceable on this basis as well.

#### November 2024

In November 2024, the Tenants' rent was increased from \$1,645.87 to \$1,728.28, an increase of \$82.41. The petition states, under penalty of perjury, that no RAP Notice was received with the rent increase.

Therefore, it continues to be undisputed that the Tenant was not served the RAP Notice at the inception of the Tenancy. Likewise, it continues to be undisputed that the Tenant did not receive a RAP Notice with the 2024 Notice of Rent Increase. Accordingly, the 2024 rent increase is invalid.

Additionally, as of August 1, 2023, the CPI Rent Adjustment was 2.3%. The rent charged at the time for the subject unit was \$1,645.87. The Tenant's rent was increased from \$1,645.87 to \$1,728.28, an increase of \$82.41.

The Ordinance states that rent increases in any twelve months are limited by ten percent (10%), or the amount permitted for Oakland rental units subject to California Civil Code 1947.12 (or successor provisions), whichever is **lower**, for any and all rent increases based on the CPI Rent Adjustment, as set out in O.M.C. 8.22.070 B. (CPI Rent Adjustment), and any justifications pursuant to O.M.C. 8.22.070 C.2. (Rent Increases In Excess of CPI Rent Adjustment).

Accordingly, the November 2024 rent increase would have been calculated as no more than \$37.86, as follows:

Calculation of Limit on Increase	
Current base rent	\$1,645.87
Maximum percentage Increase	6.9%
Ceiling on allowable increase - dollar amount	\$113.57
Allowable Percentage CPI increase this year	2.3%
Allowable Increase Based on CPI - Dollar Amount	\$37.86
Banked Amount	\$0.00
Sum of Banking amount and current CPI	\$37.86
Total Allowable Increase- the smaller of "ceiling on allowable increase" and "sum of banking and current CPI"	\$37.86
Prior capital improvements recovery	\$0.00
Rent ceiling w/o other new increases	\$1,683.73

Notwithstanding that the amount being charged for the rent violated the Ordinance, the total allowable increase was the lesser of the "ceiling on allowable increase" and "sum of banking and current CPI," or \$37.86. Therefore, even if the rent charged was valid, the maximum rent increase for November 2024 was \$37.86. The Tenant received a notice of rent increase for \$82.41, which is invalid. Accordingly, the November 2024 rent increase from \$1,645.87 to \$1,728.28 is invalid on this basis as well.

### Restitution

The Tenant has overpaid rent in the amount of \$28,560.58, calculated as follows:

OVERPAID RENT						
From	To	Monthly	Max	Difference	No.	Sub-total
1-Jan-20	30-Nov-21	\$1,350	\$1,050	\$ 300.00	23	\$ 6,900.00
1-Dec-22	1-Oct-23	\$1,568	\$1,050	\$ 517.50	11	\$ 5,692.50
1-Nov-23	30-Oct-24	\$1,646	\$1,050	\$ 595.87	12	\$ 7,150.44
1-Nov-24	1-Nov-25	\$1,728	\$1,050	\$ 678.28	13	\$ 8,817.64
				\$ -		-
				\$ -		-
<b>TOTAL OVERPAID RENT</b>						<b>\$ 28,560.58</b>

Restitution is usually awarded over 12 months, but extending the restitution period is proper when the Tenant is owed 2720% of the monthly rent.<sup>6</sup> Therefore, the Tenant is entitled to restitution in the amount of \$28,560.58, amortized over 28 months, to allow for credit of the rent overpayment. The restitution amount is \$1050.00 per month for 27 months and \$210.58 for one month.

<sup>6</sup> Regulations Section 8.22.110(F)

## ORDER

1. Petition T25-0161 is granted, and the Remote Settlement Conference and Hearing, scheduled for December 15, 2025, is canceled.
2. The total base rent for the subject unit remains \$1,050.00.
3. The total overpayment of rent by the Tenant is \$28,560.58.
4. The Tenant is entitled to restitution of \$1,050.00 per month as rent credit, beginning December 2025, and continuing for 27 months. Thereafter, the Tenant is entitled to a restitution amount of \$210.58 for one month.
5. If the Owner wishes to, they can repay the restitution owed to the Tenant at any time. If they do so, the monthly restitution decreases when the Tenant is provided restitution in full.
6. Nothing in this order prevents the Owner from increasing the rent according to the laws of the Rent Adjustment Ordinance and the State of California at any time, at least 6 months after the Tenant is served with the RAP Notice in English, Spanish, and Chinese.
7. Nothing in this order prevents the Owner from increasing the rent according to the laws of the Rent Adjustment Ordinance and the State of California at any time, at least 12 months from the last rent increase.

**Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within seventeen (17) calendar days of electronic service or twenty (20) days if served by first-class mail. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day. The date and service method are shown on the attached Proof of Service.

*Élan Consuella Lambert*

Dated: November 19, 2025

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Élan Consuella Lambert  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Number: T25-0161**  
**Case Name: Moran v. De Jesus Guzman**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:**

**Documents Included**

Administrative Decision

**Owner**

Jose De Jesus Guzman  
2485 Washington Avenue  
San Leandro, CA 94577

**Tenant**

Evelin Moran  
1169 75th Avenue Unit 2  
Oakland, CA 94603

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **November 21, 2025** in Oakland, California.



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Brittni Jackson  
Oakland Rent Adjustment Program



Jose Guzmán &lt;pepitoguzbaez@gmail.com&gt;

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**RE: T25-0161, Moran v. De Jesus Guzman**

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Jose Guzmán <pepitoguzbaez@gmail.com>  
To: "Jackson, Brittini" <BJackson@oaklandca.gov>  
Cc: Evelin Moran <evelinmoran1982@gmail.com>

Tue, Dec 9, 2025 at 11:50 PM

Greetings Brittini Jackson,

I hope all is well;

Thank you for providing the information. After reviewing and considering all the details, I have decided to move forward with an appeal.

Evelin Moran,

I am serving you with the attached document(s) related to my appeal. Please consider this email as an official service. A hard copy will also be personally delivered to the rent adjustment program staff on Thursday, December 11th, 2025 at the Dalzier Building.

Best regards,  
Jose De Jesus Guzman

 2022 contract.pdf

 2023 contract.pdf

 2024 contract.pdf

 APPEAL FORM.pdf

 Appeal Letter\_ Rent Adjustment Board .pdf

[Quoted text hidden]

**000427**



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

## APPEAL

<b>Appellant's Name</b> JOSE DE JESUS GUZMAN	<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant
<b>Property Address (Include Unit Number)</b> 1169 75TH AVE UNIT #2 OAKLAND CA 94621	
<b>Appellant's Mailing Address (For receipt of notices)</b> 1711 86TH AVE OAKLAND CA 94621	<b>Case Number</b> T25-0161
	<b>Date of Decision appealed</b> 12/09/2025
<b>Name of Representative (if any)</b>	<b>Representative's Mailing Address (For notices)</b>

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  The decision violates federal, state, or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner’s claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on the Owner’s investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Supporting documents (in addition to this form) must **not exceed 25 pages**, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively.

**• You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. •**

**APPEAL FORM, SOME CONTRACT PAGES,**

I served a copy of: LETTER EXPLAINING MY APPEAL (insert name of document served)

And Additional Documents

and (write number of attached pages) 15 attached pages (not counting the Appeal Form or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. First-Class Mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.
- c. Electronic Service. I electronically sent the document(s) to the person(s) at the address(es) listed below who have previously given written consent to receiving notices and documents in this matter from the RAP and from the OTHER PARTY/IES electronically at the email address(es) they provided.

<b><u>Name</u></b>	EVELIN MORAN
<b><u>Address</u></b>	1169 75TH AVE UNIT #2
<b><u>City, State Zip</u></b>	OAKLAND CA 94621
<b><u>Email Address</u></b>	evelinmoran1982@gmail.com
<b><u>Name</u></b>	
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	

<b>Email Address</b>	
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and the documents were served on 12/9/25 (insert date served).

JOSE DE JESUS GUZMAN  
PRINT YOUR NAME

Jose de Jesus Guzman  
SIGNATURE

12/09/2025  
DATE

**IMPORTANT INFORMATION:**

**This Appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.**

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- **Any response to the appeal by the responding party must be received by the Rent Adjustment Program, along with a proof of service on appealing party, within 30 days of service of the service of the appeal if the party was personally served. If the responding party was served the appeal by mail, the party must file the response within 35 days of the date the appeal was mailed to them.**
- There is no form for the response, but the entire response is limited to 25 pages or less.
- The Board will not consider new claims. All claims, except jurisdictional issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The case record is available to the Board, but sections of audio recordings that you want the Board to review must be pre-designated to Rent Adjustment Staff.

Greetings Rent Adjustment Board,

My name is Jose de Jesus Guzman, and I am writing to formally appeal case T25-0161. There are several inaccuracies in the administrative decision that I would like to address.

I purchased the property at 1169 75th Ave, Oakland, CA 94621, in August 2019. The tenants, Evelin Moran and Sergio Ramirez, have been living in the property since December 2016. Therefore, their tenancy did not begin in November 2019, as stated on page one of the administrative decision package.

At the time of purchase, the property was in poor condition and required significant repairs. The roof needed replacement, the kitchen was in bad condition, and the existing stucco required attention. I introduced myself to the tenants at the time of purchase and discussed these issues with them. Sergio, Evelin's husband, and I reached a verbal agreement: I would make necessary improvements to the property, and in return, they would pay \$1,350. I completed the agreed-upon improvements, including replacing the roof, installing a new kitchen with a quartz countertop, replacing the stucco, and renovating the back stoop. Both parties fulfilled their responsibilities under this agreement.

On November 1, 2022, a new lease agreement was signed by the tenants. The rent increased by \$67.50, bringing the new rent to \$1,417.50. Additionally, the tenants requested a second parking space for \$150.00, as they did not want to park on the street. This was an added service outside of their original lease and should not be included in the base rent, as stated on page three of the administrative decision. Including the parking space, their total monthly payment was \$1,567.50.

On November 1, 2023, the lease was renewed, and the rent increased by \$70.87, bringing the base rent to \$1,488.37. The cost for the additional parking space was adjusted to \$157.50, resulting in a total monthly payment of \$1,645.88, which was approved and signed by the tenants.

On November 1, 2024, the lease was renewed again, with a rent increase of \$82.41, bringing the base rent to \$1,570.78. The cost for the additional parking space remained \$157.50, making the total monthly payment \$1,728.28, also approved and signed by the tenants.

At no point was my intention to harm or overcharge the tenants. I have always acted fairly and reasonably, and I believe the tenants understood this. This case took me by surprise, as the tenants never previously raised any concerns. Evelin delivered the case paperwork without providing me any details. Due to a language barrier, I asked my son for assistance in understanding the documents. My son helped me contact Brittni Jackson via email to request guidance on the case. I agreed to participate in mediation and requested a Spanish interpreter.

During the mediation, I expected to discuss all the above details and present my side. However, the conversation focused primarily on what the tenants were requesting and what I was willing to offer. The mediator informed the tenants that they were only entitled to claim for the last three years. Despite this, I felt the amount being discussed was still excessive because it included the additional parking service, which is not part of the base rent. As a result, we were unable to reach an agreement.

This is my first experience with this process, and I found the situation overwhelming and stressful. I attempted to explain the calculations to the mediator, but I felt that my points were disregarded. I

**000431**

understand that verbal agreements are not legally binding, but I felt unsupported and that my perspective was not fully considered.

After careful reflection and consultation with my support system, I have decided to formally appeal this case. I respectfully request that the Board review the facts and consider the points I have raised regarding the tenancy start date, rent increases, and additional services.

Thank you for your time and consideration.

Sincerely,

Jose de Jesus Guzman

RENTAL AGREEMENT (1 year 1)

THIS AGREEMENT between Jose de Jesus Guzman "Landlord",  
(Name of Landlord)

and Evelin Moran, Juan Oliva  
(List all Residents who will sign this Agreement)

2022

"Resident" is effective when fully executed by all parties. The Owner's obligation to deliver possession to Resident is conditioned on Resident making all payments due at or prior to move-in under this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. RENTAL UNIT: Subject to the terms and conditions of this Agreement, Landlord rents to Resident and Resident rents from Landlord for residential use only, the premises located at:

1169 75th Ave, Unit # (if applicable), 2  
(Street Address)

Oakland, CA, 94621  
(City) (Zip)

2. AB 1482 DISCLOSURES:

a.  Separately Alienable From Any Other Dwelling Unit:

This property is not subject to the rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections 1947.12(d)(5) and 1946.2(e)(8) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.

b.  This Unit's AB 1482 New Construction Exemption May Expire During This Tenancy: AB 1482 exempts housing that has been issued a certificate of occupancy within the last 15 years.

The following disclosure is effective 11-01-2023  
(Date)

California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.

c.  Subject to AB 1482 rent caps and just cause as provided in Civil Code Section 1946.2 and 1947.12. The following disclosure is required by law.

California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.



Unauthorized Reproduction of Blank Forms is Illegal.



3. **TERM AND TERMINATION:** The term of this Agreement is month-to-month. Except as prohibited by law, this Agreement may be terminated by Resident after service of a written 30-day notice of termination of tenancy, in accordance with California law. Except as prohibited by law, this Agreement may be terminated by the Landlord by service upon the Resident of a written 60-day notice of termination of tenancy. However, Civil Code Section 1946.1 provides that "if any tenant or resident has resided in the dwelling for less than one year", the Landlord may terminate this Agreement by service upon the Resident of a written 30-day notice. Any holding over by the Resident after termination shall entitle the Landlord to initiate legal proceedings to recover possession of the premises. Resident shall be liable to Landlord for daily rental damages equal to the current fair rental value of the unit, divided by 30, in addition to any other damages allowed by law.

For units subject to AB 1482 just cause, Civil Code 1946.2(a) provides that "after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate tenancy. If any additional adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for 24 months, then this subdivision shall only apply if either of the following are satisfied: (1) all of the tenants have continuously and lawfully occupied the residential real property for 12 months or more; or (2) one or more tenants have continuously and lawfully occupied the residential real property for 24 months or more." "Just cause" to terminate the tenancy includes termination "if the owner, or their spouse, domestic partner, children, grandchildren, parents, or grandparents, unilaterally decides to occupy the residential real property."

4. **RENT:** Rent is due in advance on the 5<sup>th</sup> day of each and every month, at \$ 1417.50 + 150 Parking Extra  
1,567.50  
per month. Tenancy start date: 11-01-2022 (Date). Rent for any partial month shall be prorated at the amount of 1/30<sup>th</sup> of the monthly rent per day.

a. **Prorated Rent (if applicable)**

The tenancy did not start on the rent due date specified above. Resident is to pay:

One month's rent at move-in: \$ \_\_\_\_\_  
(Full rent amount)

Prorated rent of \$ \_\_\_\_\_ on \_\_\_\_\_  
(Amount of prorated rent) (Date)

The regular rent of \$ \_\_\_\_\_, each month, beginning \_\_\_\_\_.

b. **Payment Methods for Rent and Other Amounts Due under This Agreement**

Payments made in person may be delivered between the hours of 8am and 5pm on the following days of the week:  Monday  Tuesday  Wednesday  Thursday  Friday  Saturday  Sunday  Other Any day

Acceptable methods of payment:

Personal Check  Cashier's Check  Money Order  EFT/Credit Card (see Landlord for details) and  Cash

c. **Rent Payee and Location**

Rent is to be paid to Jose de Jesus Guzman  
(Name to whom rent payment should be made)

and is to be delivered to Jose de Jesus Guzman  
(Name to whom rent should be delivered)

at 2485 Washington ave, San Leandro, 94577  
(Address where payments should be delivered)

Telephone number for above address: 510-472-1131



- d. **Payments** In the event of roommates, or another form of multiple occupancy, Resident understands and agrees that rent shall be paid with a single payment and that it is up to Resident to collect individual checks or other payments in order to submit a single rent payment. If payment by mail is allowed, Resident bears the risk of loss or delay of any payment made by mail and Landlord must receive mailed rent payments on or before the due date, except as otherwise provided by law. In the absence of a signed acknowledgement that complies with Civil Code 1947.3, Landlord will accept rent payments only from the Resident. Landlord may require a separate signed acknowledgement for each rent payment made by a third party. Rent tendered by a Non-Resident shall be deemed rent tendered on behalf of Resident only and not on behalf of the Non-Resident. Should the Landlord elect to accept a payment that does not comply with this paragraph, this shall not be construed as a waiver of this provision. If Resident pays online or by direct deposit, such payment shall be deemed to come from Resident regardless of the source of the payment. Payment online or by direct deposit may be rejected or returned by Landlord during the pendency of any legal action, or in anticipation of legal action. Failure or refusal by Resident to cash Landlord's rent refund check shall not defeat Landlord's rejection of the rent being refunded.
- e. **Change to Payment Method.** The Landlord may refuse certain payment methods listed in subparagraph (b) above, as the form of payment to cure a ~~Three-Day Notice to Pay Rent or Quit, Three-Day Notice to Perform Conditions and/or Covenants or Quit~~, a check passed on insufficient funds or dishonored for any other reason, or a stopped payment and may refuse certain methods for future rent payments thereafter. Notwithstanding the provisions above, the Landlord may demand or require cash as the exclusive form of payment of rent or security deposit if the Resident has previously attempted to pay the Landlord with a check drawn on insufficient funds or the Resident has stopped payment on a check, draft, or money order. If the Landlord chooses to demand or require cash payment under these circumstances, the Landlord shall give the Resident a written notice stating that the payment instrument was dishonored and informing the Resident that the Resident shall pay in cash for a period determined by Landlord, not to exceed three months, and attach a copy of the dishonored instrument to the notice.

5. **SECURITY DEPOSIT:** Resident shall deposit with Landlord, as a security deposit, the sum of \$ 900<sup>00</sup>, as follows:

- prior to taking possession of the unit (If no box is checked, this provision applies).
- at the time this Agreement is signed.

Resident shall not use the security deposit to pay any month's rent. Landlord may withhold from the security deposit only such amounts as are reasonably necessary to remedy Resident defaults including, but not limited to, the following:

- (a) defaults in the payment of rent,
- (b) to repair damages to the premises caused by Resident, exclusive of ordinary wear and tear, and/or
- (c) to clean the premises, if necessary, upon termination of the tenancy in order to return the unit to the same level of cleanliness it was in at the inception of the tenancy, and/or
- (d) to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear.

No later than 21 calendar days after Landlord has regained possession of the premises, Landlord shall return any remaining portion of such security deposit to Resident. Any remaining portion of the security deposit shall be returned in the form of a single check made out to all Residents listed above. After either the Landlord or the Resident provides notice to terminate the tenancy, the Landlord and Resident may mutually agree to have the Landlord deposit any remaining portion of the security deposit electronically to a bank account or other financial institution designated by the Resident or to another form or method of return.

6. **UTILITIES:** Resident shall pay for all utilities, services and charges, if any, made payable by or based upon occupancy of Resident, except: Water and Trash

Resident shall have the following utilities connected at all times during the tenancy (check as applicable):

Gas  Electric  Water  Trash  Sewer  Other: \_\_\_\_\_

**Disconnection of utilities due to non-payment is a material breach of this Agreement.**

Resident shall not use common area utilities (such as water or electricity) for the Resident's personal use, without prior written permission from the Landlord.



# NOTICE OF AB 1482 ADDENDUM (Properties Subject to Civil Code Section 1946.2 and 1947.12)

This document is an Addendum and is part of the Rental/Lease Agreement, dated 11-1-2022 between  
(Date)  
Jose de Jesus Guzman (Landlord) and  
(Name of Landlord)

\_\_\_\_\_  
(Resident) for the  
(List all Residents as listed on the Rental/Lease Agreement)

premises located at 1169 75th, Unit # (if applicable) \_\_\_\_\_  
(Street Address)

Oakland, CA 94621  
(City) (Zip)

As required by Civil Code Section 1946.2 and 1947.12

Your unit is subject to AB 1482 rent caps and just cause. The following disclosure is required by law.

California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all the tenants have continuously and lawfully occupied the property for ~~12 months or more or at least one of the tenants has continuously~~ and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.

Your unit will become subject to AB 1482 rent caps and just cause on 11-01-2022. On that date the following disclosure is required by law.

California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.

# NOTICE OF AB 1482 ADDENDUM (Properties Subject to Civil Code Section 1946.2 and 1947.12)

The undersigned Resident(s) acknowledge(s) having read and understood the foregoing.

_____	<u>Eveli Ju</u>	<u>11/5/22</u>	_____
Date	Resident	Date	Resident
_____	<u>[Signature]</u>	<u>11/2/22</u>	_____
Date	Resident	Date	Resident
_____	_____	_____	_____
Date	Resident	Date	Resident

\_\_\_\_\_  by \_\_\_\_\_, \_\_\_\_\_ Agent for Landlord  
Landlord Individual Signing for Landlord Management Co. (If Applicable)

\_\_\_\_\_ Date

\_\_\_\_\_  by \_\_\_\_\_, \_\_\_\_\_ Agent for Landlord  
Landlord Individual Signing for Landlord Management Co. (If Applicable)

\_\_\_\_\_ Date



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2023

## California Residential Lease Agreement

THIS AGREEMENT (hereinafter referred to as the "California Lease Agreement") is made and entered into this 1 day of November, 2023, by and between Jose Guzman (hereinafter referred to as "Landlord") and Evelin Moran (hereinafter referred to as "Tenant." For and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **PROPERTY.** Landlord owns certain real property and improvements located at \_\_\_\_\_ (hereinafter referred to as the "Property"). Landlord desires to lease the Premises to Tenant upon the terms and conditions contained herein. Tenant desires to lease the Premises from Landlord on the terms and conditions as contained herein.

2. **TERM.** This California Lease Agreement shall commence on November 2023 and shall continue as a lease for term. The termination date shall be on October 31 2024 at 11:59 PM. Upon termination date, Tenant shall be required to vacate the Premises unless one of the following circumstances occur:

- (i) Landlord and Tenant formally extend this California Lease Agreement in writing or create and execute a new, written, and signed California Lease Agreement; or
- (ii) Landlord willingly accepts new Rent from Tenant, which does not constitute past due Rent.

In the event that Landlord accepts new rent from Tenant after the termination date, a month-to-month tenancy shall be created. If at any time either party desires to terminate the month-to-month tenancy, such party may do so by providing to the other party written notice of intention to terminate at least 30 days prior to the desired date of termination of the month-to-month tenancy.

Notices to terminate may be given on any calendar day, irrespective of Commencement Date. Rent shall continue at the rate specified in this California Lease Agreement, or as allowed by law. All other terms and conditions as outlined in this California Lease Agreement shall remain in full force and effect. Time is of the essence for providing notice of termination (strict compliance with dates by which notice must be provided is required).

3. **RENT.** Tenant shall pay to Landlord the sum of \$1488.37 + 157.50 per month as Rent for the Term of the Agreement. Due date for Rent payment shall be the 1st day of each calendar month and shall be considered advance payment for that month. Weekends and holidays do not delay or excuse Tenant's obligation to timely pay rent. #1645.87 Rent. Per monts.

A. **Delinquent Rent.** If not paid on the 1st, Rent shall be considered overdue and delinquent on the 2nd day of each calendar month. If Tenant fails to timely pay any month's rent, Tenant will pay Landlord a late charge of \$ 75 per day until rent is paid in full. If Landlord **receives** the monthly rent by the 3<sup>rd</sup> day of the month, Landlord will waive the late charges for that month. Any waiver of late charges under this paragraph will not affect or diminish any other right or remedy Landlord may exercise for Tenant's failure to timely pay rent.

B. **Prorated Rent.** In the event that the Commencement Date is not the 1st of the calendar month, Rent payment remitted on the Commencement Date shall be prorated based on a 30-day period.

Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service. Additional information about sex offenders may be displayed on the Internet at <http://www.meganslaw.ca.gov>.

36. **JOINT AND INDIVIDUAL OBLIGATIONS.** If more than one Tenant signs this Agreement, each one shall be individually and completely responsible for the performance of all obligations of the Tenant under this Agreement, jointly with every other Tenant, and individually, irrespective of whether such Tenant is in possession.
37. **FOREIGN LANGUAGE NEGOTIATION.** If Landlord and Tenant have negotiated this Agreement primarily in Chinese, Tagalog, Korean, or Vietnamese, pursuant to the California Civil Code, Landlord shall provide Tenant a translation of this Agreement in the language used for the negotiation.

As to Landlord this 01 day of Noviembre, 2023.

LANDLORD:

Sign: Jose Guzman

Print: Jose Guzman Date: \_\_\_\_\_

As to Tenant, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

TENANT

Sign: Evelin Moran

Print: Evelin Moran Date: 11/01/2023

TENANT:

Sign: \_\_\_\_\_

Print: \_\_\_\_\_ Date: 11/01/2023

RENTAL AGREEMENT (Month-to-Month)

2024

THIS AGREEMENT between Jose de Jesus Guzman "Landlord",  
(Name of Landlord)

and Evelin Moran  
(List all Residents who will sign this Agreement)

"Resident" is effective when fully executed by all parties. The Owner's obligation to deliver possession to Resident is conditioned on Resident making all payments due at or prior to move-in under this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. RENTAL UNIT: Subject to the terms and conditions of this Agreement, Landlord rents to Resident and Resident rents from Landlord for residential use only, the premises located at:

1169 75th Ave, Unit # (if applicable), #2  
(Street Address)

Oakland CA, CA, 94621  
(City) (Zip)

2. AB 1482 DISCLOSURES:

a.  Separately Alienable From Any Other Dwelling Unit:

This property is not subject to the rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections 1947.12(d)(5) and 1946.2(e)(8) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.

b.  This Unit's AB 1482 New Construction Exemption May Expire During This Tenancy: AB 1482 exempts housing that has been issued a certificate of occupancy within the last 15 years.

The following disclosure is effective 11-01-2024  
(Date)

California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.

c.  Subject to AB 1482 rent caps and just cause as provided in Civil Code Section 1946.2 and 1947.12. The following disclosure is required by law.

California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.



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3. **TERM AND TERMINATION:** The term of this Agreement is month-to-month. Except as prohibited by law, this Agreement may be terminated by Resident after service of a written 30-day notice of termination of tenancy, in accordance with California law. Except as prohibited by law, this Agreement may be terminated by the Landlord by service upon the Resident of a written 60-day notice of termination of tenancy. However, Civil Code Section 1946.1 provides that "if any tenant or resident has resided in the dwelling for less than one year", the Landlord may terminate this Agreement by service upon the Resident of a written 30-day notice. Any holding over by the Resident after termination shall entitle the Landlord to initiate legal proceedings to recover possession of the premises. Resident shall be liable to Landlord for daily rental damages equal to the current fair rental value of the unit, divided by 30, in addition to any other damages allowed by law.

For units subject to AB 1482 just cause, Civil Code 1946.2(a) provides that "after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate tenancy. If any additional adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for 24 months, then this subdivision shall only apply if either of the following are satisfied: (1) all of the tenants have continuously and lawfully occupied the residential real property for 12 months or more; or (2) one or more tenants have continuously and lawfully occupied the residential real property for 24 months or more." "Just cause" to terminate the tenancy includes termination "if the owner, or their spouse, domestic partner, children, grandchildren, parents, or grandparents, unilaterally decides to occupy the residential real property."

4. **RENT:** Rent is due in advance on the 1 day of each and every month, at \$ 1570.78 + 157.50 Extra Parking per month. Tenancy start date: 11/01/2024 (Date). Rent for any partial month shall be prorated at the amount of = \$1728.28 1/30<sup>th</sup> of the monthly rent per day.

a. **Prorated Rent (if applicable)**

The tenancy did not start on the rent due date specified above. Resident is to pay:

One month's rent at move-in: \$ \_\_\_\_\_  
(Full rent amount)

Prorated rent of \$ \_\_\_\_\_ on \_\_\_\_\_  
(Amount of prorated rent) (Date)

The regular rent of \$ \_\_\_\_\_, each month, beginning \_\_\_\_\_.

b. **Payment Methods for Rent and Other Amounts Due under This Agreement**

Payments made in person may be delivered between the hours of \_\_\_\_\_ and \_\_\_\_\_ on the following days of the week:  Monday  Tuesday  Wednesday  Thursday  Friday  Saturday  Sunday  Other \_\_\_\_\_

Acceptable methods of payment:

Personal Check  Cashier's Check  Money Order  EFT/Credit Card (see Landlord for details) and  Cash

c. **Rent Payee and Location**

Rent is to be paid to Jose Guzman  
(Name to whom rent payment should be made)

and is to be delivered to Jose Guzman  
(Name to whom rent should be delivered)

at 2485 Washington Ave San Leandro CA  
(Address where payments should be delivered)

Telephone number for above address: 510-4721131 510 4727651



d. **Payments** In the event of roommates, or another form of multiple occupancy, Resident understands and agrees that rent shall be paid with a single payment and that it is up to Resident to collect individual checks or other payments in order to submit a single rent payment. If payment by mail is allowed, Resident bears the risk of loss or delay of any payment made by mail and Landlord must receive mailed rent payments on or before the due date, except as otherwise provided by law. In the absence of a signed acknowledgement that complies with Civil Code 1947.3, Landlord will accept rent payments only from the Resident. Landlord may require a separate signed acknowledgement for each rent payment made by a third party. Rent tendered by a Non-Resident shall be deemed rent tendered on behalf of Resident only and not on behalf of the Non-Resident. Should the Landlord elect to accept a payment that does not comply with this paragraph, this shall not be construed as a waiver of this provision. If Resident pays online or by direct deposit, such payment shall be deemed to come from Resident regardless of the source of the payment. Payment online or by direct deposit may be rejected or returned by Landlord during the pendency of any legal action, or in anticipation of legal action. Failure or refusal by Resident to cash Landlord's rent refund check shall not defeat Landlord's rejection of the rent being refunded.

e. **Change to Payment Method.** The Landlord may refuse certain payment methods listed in subparagraph (b) above, as the form of payment to cure a Three-Day Notice to Pay Rent or Quit, Three-Day Notice to Perform Conditions and/or Covenants or Quit, a check passed on insufficient funds or dishonored for any other reason, or a stopped payment and may refuse certain methods for future rent payments thereafter. Notwithstanding the provisions above, the Landlord may demand or require cash as the exclusive form of payment of rent or security deposit if the Resident has previously attempted to pay the Landlord with a check drawn on insufficient funds or the Resident has stopped payment on a check, draft, or money order. If the Landlord chooses to demand or require cash payment under these circumstances, the Landlord shall give the Resident a written notice stating that the payment instrument was dishonored and informing the Resident that the Resident shall pay in cash for a period determined by Landlord, not to exceed three months, and attach a copy of the dishonored instrument to the notice.

5. **SECURITY DEPOSIT:** Resident shall deposit with Landlord, as a security deposit, the sum of \$ 900.00, as follows:

prior to taking possession of the unit (If no box is checked, this provision applies).

at the time this Agreement is signed.

Resident shall not use the security deposit to pay any month's rent. Landlord may withhold from the security deposit only such amounts as are reasonably necessary to remedy Resident defaults including, but not limited to, the following:

- (a) defaults in the payment of rent,
- (b) to repair damages to the premises caused by Resident, exclusive of ordinary wear and tear, and/or
- (c) to clean the premises, if necessary, upon termination of the tenancy in order to return the unit to the same level of cleanliness it was in at the inception of the tenancy, and/or
- (d) to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear.

No later than 21 calendar days after Landlord has regained possession of the premises, Landlord shall return any remaining portion of such security deposit to Resident. Any remaining portion of the security deposit shall be returned in the form of a single check made out to all Residents listed above. After either the Landlord or the Resident provides notice to terminate the tenancy, the Landlord and Resident may mutually agree to have the Landlord deposit any remaining portion of the security deposit electronically to a bank account or other financial institution designated by the Resident or to another form or method of return.

6. **UTILITIES:** Resident shall pay for all utilities, services and charges, if any, made payable by or based upon occupancy of

Resident, except: Trash and Water

Resident shall have the following utilities connected at all times during the tenancy (check as applicable):

Gas  Electric  Water  Trash  Sewer  Other: \_\_\_\_\_

**Disconnection of utilities due to non-payment is a material breach of this Agreement.**

Resident shall not use common area utilities (such as water or electricity) for the Resident's personal use, without prior written permission from the Landlord.



49. **ADDENDA:** By initialing as provided below, Resident(s) acknowledge receipt of the following applicable addenda (as checked), copies of which are attached hereto and are incorporated as part of this Agreement.

**CA-097 Subject to AB 1482 Addendum**

- Asbestos Addendum (Form CA-061)
- CC&Rs Addendum (Form CA-067)
- Clothesline/Drying Rack Addendum (Form CA-066)
- Day Care Addendum (Form CA-068)
- Grilling Addendum (Form CA-070)
- Guarantee of Rental/Lease Agreement (Form CA-019)
- Lead-Based Paint Addendum (Form CA-071)
- Lead Brochure: Protect Your Family (Form CA-072)
- Parking/Garage Addendum (Form CA-076)
- Periodic Application by Pest Control Operator Addendum (Form CA-078)
- Periodic Application of Pesticides by Landlord Addendum (Form CA-077)
- Personal Agriculture Addendum (Form CA-079)

- Pet Addendum (Form CA-080)
- Pool/Spa Rules Addendum (Form CA-082)
- Proposition 65 Warning Addendum (Form CA-083)
- Smoking Policy Addendum (Form CA-088)
- Storage Addendum (Form CA-090)
- Water Submetering Addendum (Form CA-093)
- Waterbed Addendum (Form CA-094)
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_

Resident(s) initials here: EM

The undersigned Resident(s) acknowledge(s) having read and understood the foregoing, and receipt of a duplicate original.

<u>11/01/2024</u> Date	<u>Evelin Moran</u> Resident	<u>11/01/24</u> Date	<u>Briana Moran</u> Resident
<u>11/01/2024</u> Date	<u>Juan Olivo</u> Resident	_____	_____
<u>11/01/2024</u> Date	<u>Utziel Moran</u> Resident	_____	_____

\_\_\_\_\_  
Landlord  by \_\_\_\_\_, \_\_\_\_\_ Agent for Landlord  
Individual Signing for Landlord Management Co. (If Applicable)

Jose de Jesus Garcia  
Landlord  by \_\_\_\_\_, \_\_\_\_\_ Agent for Landlord  
Individual Signing for Landlord Management Co. (If Applicable)

11/01/2024  
Date



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# NOTICE OF AB 1482 ADDENDUM (Properties Subject to Civil Code Section 1946.2 and 1947.12)

This document is an Addendum and is part of the Rental/Lease Agreement, dated 11/01/2024 between Jose Guzman (Landlord) and Evelin Moran (Resident) for the

Evelin Moran (List all Residents as listed on the Rental/Lease Agreement)

premises located at 1169 75 Ave, Unit # (if applicable) # 2

Oakland, CA 94621

As required by Civil Code Section 1946.2 and 1947.12

Your unit is subject to AB 1482 rent caps and just cause. The following disclosure is required by law.  
California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.

Your unit will become subject to AB 1482 rent caps and just cause on \_\_\_\_\_. On that date the following disclosure is required by law.  
California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.



# NOTICE OF AB 1482 ADDENDUM (Properties Subject to Civil Code Section 1946.2 and 1947.12)

The undersigned Resident(s) acknowledge(s) having read and understood the foregoing.

11/01/24  
Date

[Signature]  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

Jose Guzman  
Landlord

by

Jose de Jesus Guzman  
Individual Signing for Landlord

\_\_\_\_\_  
Management Co. (If Applicable)

Agent for Landlord

11/01/2024  
Date

\_\_\_\_\_  
Landlord

by

\_\_\_\_\_  
Individual Signing for Landlord

\_\_\_\_\_  
Management Co. (If Applicable)

Agent for Landlord

\_\_\_\_\_  
Date



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01/13/2026

My name is Evelin Moran, and I am submitting this written response regarding the landlord's appeal of the administrative decision in Case T25-0161. I am asking the Board to uphold the original ruling. The landlord's appeal does not accurately reflect our experience as long-term tenants or the conditions we lived under for many years.

Throughout our tenancy from 2019 through the years the landlord references we experienced repeated habitability problems that significantly affected our health and safety. Each year we had severe flea and rats infestations inside the home and outside. We asked the landlord multiple times to send a professional pest inspector, yet it routinely took more than a month for them to take any action. The landlord was aware that my son has allergies to insect bites, but they did not prioritize treating the issue. The infestation became so severe at one point that my son developed a fever and had bug bites across his body, and he had to be evaluated by his doctor on September 9th, 2025.

We also went without hot water from November 25th, 2024 to March 4th, 2025. It took the landlord 3 months to install the correct water heater, leaving our family unable to shower or wash properly with warm water for an extended period. These were not small delays; these were basic habitability failures that lasted for long periods despite our repeated requests.

Additionally, when repairs were made in the kitchen, it took the landlord 3 years to make repairs and did not bring licensed or certified professionals. We were unaware if the apartments carried asbestos. As tenants, we were never provided proper safety precautions or reassurances about exposure risks. The landlord describes renovations he claims to have made voluntarily, but many of these repairs only happened after long delays or after we repeatedly reported unsafe conditions. His appeal also mentions a verbal agreement from years ago, but the Board already clarified that verbal agreements cannot override legal rent-increase limits.

I want to be very clear that I did not know the rent increases were unlawful at the time they were made. That is the only reason I signed the agreements that Mr. Guzman attached to his appeal. As a tenant with no previous experience navigating rent laws, I trusted that what I was being asked to sign was legal. However, because we were living in such difficult conditions, ongoing flea infestations, long delays for basic repairs, and health concerns for my family it finally pushed me to look further into my rights and search for help. Through that process, I learned that the rent increases over the years were not allowed under Oakland's rent laws. Once I understood the situation fully, I followed the proper steps to address the illegal increases.

The administrative decision focused on the rent increases that exceeded what the law allows. That is the central issue of this case, and the documentation we submitted supports that the rent was raised illegally for several years.

**000446**

The landlord attempted to include a parking space as justification for the increase, but the parking spots were bounded together with rent payment. It cannot be used to justify unlawful base-rent increases or to avoid refunding rent that was raised beyond legal limits.

The mediator reviewed the documents, calculations, and rent history. The 27-month calculation provided in the decision was within the legal timeframe allowed for recovery of overpaid rent. The landlord had the opportunity to present his information during the process, and the decision reflected the facts of the case and not personal disagreement or misunderstandings.

As tenants, we lived through years of habitability issues, delayed repairs, and rent increases that were not lawful. The administrative decision was reasonable and based on the evidence provided. I respectfully ask that the Board uphold it and deny the landlord's appeal. Thank you for your time and consideration.

Sincerely,  
Evelin Moran

A handwritten signature in cursive script, appearing to read "Evelin Moran", written in light blue or grey ink.



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
 250 Frank H. Ogawa Plaza, Suite 5313 Oakland,  
 CA 94612-0243  
 (510) 238-3721  
 CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

## PROOF OF SERVICE

**NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.**

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a complete but unsigned copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) being served.
- File the completed and signed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and copies of any attachments you served on the opposing party/parties.
- Please sequentially number all additional documents provided to the RAP.

**PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.**

I served a copy of: \_\_\_\_\_ (insert name of document served) and

And Additional Documents

(write number of attached pages) \_\_\_\_\_ attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. First-Class Mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.
- c. Electronic Service (DO NOT USE THIS SERVICE METHOD TO SERVE PETITIONS OR RESPONSES TO PETITIONS.) I electronically sent the document(s) to the person(s) at the address(es) listed below who have previously given written consent to receiving notices and documents in this matter from the RAP and from the OTHER PARTY/IES electronically at the email address(es) they provided.

**PERSON(S) SERVED:**

Name	
Address	
City, State, Zip	
Email Address	

Name	
Address	
City, State, Zip	
Email Address	

Name	
Address	
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Address	
City, State, Zip	
Email Address	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and the documents were served on \_\_\_ / \_\_\_ / \_\_\_ (insert date served).

\_\_\_\_\_

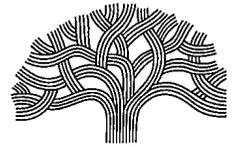
PRINT YOUR NAME

\_\_\_\_\_

SIGNATURE

\_\_\_\_\_

DATE

**ORDER**

**CASE NUMBER:** T25-0161

**CASE NAME:** Moran v. De Jesus Guzman

**PROPERTY ADDRESS:** 1169 75th Avenue, Unit 2  
Oakland, CA

**BACKGROUND**

The Tenants' rent was increased from \$1,050.00 to \$1,350.00, effective January 2020, without providing a RAP Notice. As of July 1, 2019, the Rent Adjustment was 3.5%, or \$36.75. Instead, the Tenant's rent was increased \$300.00.

The Oakland City Council Ordinance 13589 CMS, adopted on March 27, 2020, provided for a moratorium on rent increases during the COVID-19 emergency. Despite the moratorium, in December 2022, the Tenants' rent was increased from \$1,350.00 to \$1,567.50, an increase of \$ 217.50, when the CPI Rent Adjustment was 3% (\$40.50), effective August 1, 2022.

In November 2023, while the moratorium was still in effect, the Tenants' rent was increased from \$1,567.50 to \$1,645.87, an increase of \$78.37, despite the CPI Rent Adjustment being 2.5% (\$39.19) and the last rent increase being less than 12 months ago.

In November 2024, the Tenants' rent was increased from \$1,645.87 to \$1,728.28, an increase of \$82.41, more than 5%, while the CPI Rent Adjustment was 2.3%, effective August 1, 2023.

On September 22, 2025, the Tenant filed the petition herein. The petition alleges that the Tenant received a rent increase above the allowable amount, that the rent increase was unlawful because they were not given proper notice, was not adequately served, and/or was not provided with the required RAP Notice.

The petition, completed under penalty of perjury, also indicates that the Tenant was not provided a RAP Notice at the inception of their tenancy in November 2019 and that they received rent increases in 2020, 2022, 2023, and 2024 without service of the RAP Notice.

The petition was served on the Owner at 2485 Washington Avenue, San Leandro, CA, on September 15, 2025. The Owner, via email, confirmed receipt of the paperwork related to T25-0161, requested an interpreter, and agreed to mediation.

The file contains a Proof of Service signed by a staff member of the Rent Adjustment Program, which states that on October 2, 2025, she mailed a packet of documents to the Owner at 2485 Washington Avenue, San Leandro, CA, including copies of the tenant petition in Case No. T25-0161. One document in the packet states, in part:

As instructed on the petition, the Respondent(s) have 30 days from the date of service (if served personally) and 35 days (if served by mail) to file a Response to the petition. To file a Response, the Respondent(s) must serve a Response on the Petitioner and file the Response ( along with a Proof of Service) with the Rent Adjustment Program.

The Rent Adjustment Ordinance requires an owner to file a response to a tenant’s petition within 30 days of service. “[T]he owner must provide the following: . . . A completed response... on a form prescribed by the Rent Adjustment Program.”

The Administrative Decision from which the Owner appeals was also served to 2485 Washington Avenue, San Leandro, CA.

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## ORDER

A party that fails to file a timely response to a petition is prohibited from calling or examining witnesses or introducing oral or written evidence and is limited to cross-examination, unless the party has good cause for failing to file a response.<sup>1</sup>

The Owner's appeal provided no reason for not filing a response. Therefore, the Owner's reason for not filing a response is not legally sufficient and cannot constitute good cause. Therefore, the Owner's participation must be limited to cross-examination and presenting a summation.



Dated: December 24, 2025

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Élan Consuella Lambert  
Hearing Officer  
Rent Adjustment Program

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<sup>1</sup> O.M.C. Section 8.22.110(E)(g).

**PROOF OF SERVICE**  
**Case Number: T25-0161**  
**Case Name: Moran v. De Jesus Guzman**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:**

**Documents Included:**

Order

**Owner**

Jose De Jesus Guzman  
2485 Washington Avenue  
San Leandro, CA 94577

**Tenant**

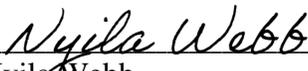
Evelin Moran  
1169 75th Avenue Unit 2  
Oakland, CA 94603

**Tenant**

Evelin Moran  
10504 Creekside Circle  
Oakland, CA 94603

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **December 30, 2025** in Oakland, California.

  
\_\_\_\_\_  
Nyila Webb  
Oakland Rent Adjustment Program



Housing and Community Development Department  
Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612-2034

TEL (510) 238-3721  
FAX (510) 238-6181  
TDD (510) 238-3254

### NOTICE OF APPEAL HEARING

**Case Number:** T25-0161  
**Case Title:** Moran v. De Jesus Guzman  
**Property Address:** 1169 75th Ave Oakland, CA 94621

#### THE HEARING ON THIS APPEAL WILL BE HELD:

**Date:** February 12, 2026  
**Time:** 6:00 p.m. or as soon thereafter as the matter may be heard.  
**Place:** Hearing Room 1, City Hall, One Frank H. Ogawa Plaza, Oakland, CA 94612

#### **Important Information**

The Staff decision (Administrative or Hearing Decision) is suspended until a final decision is issued by the appeal body (Rent Board, appeal panel, or appeal officer). The decision of the appeal body is the final decision in the administrative process of the City of Oakland. There is no appeal of the appeal body to the City Council.

**You may appear in person or remotely via Zoom. If you do not appear, the Board may decide the appeal on the record pursuant to Regulation 8.22.120.I.**

A request for a change in the date or time of the appeal hearing must be made in writing. A form for requesting a postponement is available from the Rent Adjustment Program. A continuance will be granted only for good cause. See Regulation 8.22.120.C. A second request for continuance will be granted only under exceptional circumstances. If the appealing party does not appear at the appeal hearing and no continuance was granted before the meeting, the appeal body may decide the appeal on the record, i.e. papers already submitted.

The Board will not hear oral testimony at the appeal hearing. Each party will have a total of 6 minutes to present argument in favor of or in opposition to the appeal. This time includes opening argument and any rebuttal or response to the other party. However, the appeal body may increase or reduce the time, and/or specifically divide the time, such as 3 minutes each for opening argument and rebuttal. The appealing party presents their argument first. Any party may be assisted by an attorney or any other person designated by the party. You will be notified of the appeal body's action on the appeal.

**000455**

Appeal hearings are public. The Rent Adjustment Program makes an audio recording of the appeal hearings. Any party may also bring a court reporter to record the proceedings at their own expense.

### **Accessibility**

Contact us to request disability-related accommodations, American Sign Language (ASL), Spanish, Cantonese, Mandarin, or another language interpreter at least five (5) business days before the event. Rent Adjustment Program (RAP) staff can be contacted via email at [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) or via phone at (510) 238-3721. California relay service at 711 can also be used for disability-related accommodations.

Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en Español, Cantones, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) o llame al (510) 238-3721 o 711 por lo menos cinco días hábiles antes de la reunión.

需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) 或致電 (510) 238-3721 或 711 California relay service.

### **Service Animals/Emotional Support Animals**

The City of Oakland's Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use service animals or emotional support animals.

If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care.

Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates, or defecates, etc.) will be removed.

**PROOF OF SERVICE**  
**Case Number: T25-0161**  
**Case Name: Moran v. De Jesus Guzman**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:**

**Documents Included:**

Notice of Appeal Hearing

**Owner**

Jose De Jesus Guzman  
2485 Washington Avenue  
San Leandro, CA 94577

**Tenant**

Evelin Moran  
1169 75th Avenue Unit 2  
Oakland, CA 94603

**Tenant**

Evelin Moran  
10504 Creekside Circle  
Oakland, CA 94603

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 27, 2026** in Oakland, California.



\_\_\_\_\_  
Nyila Webb  
Oakland Rent Adjustment Program