

**HOUSING, RESIDENTIAL RENT AND RELOCATION
BOARD**

FULL BOARD REGULAR MEETING

January 22, 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.

OBSERVE:

- To observe the meeting by video conference, please click on the link below:

When: **January 22, 2026 06:00 PM Pacific Time (US and Canada)**

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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

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.6-384)

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 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

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
D. INGRAM	Tenant			X
C. MUÑOZ 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

Appeal Hearing Scheduled for January 22, 2026

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11
12 Attorneys for Tenants

13
14 **City of Oakland**
15 **Rent Adjustment Program**

16 Martin, et al.,

17
18 Tenants/Petitioners,

19 v.

20 Vulcan Lofts, LLC., et al.

21 Landlord/Respondents.

Brief
from
Vulcan
Review/H+

RENT ADJUSTMENT PROGRAM
OAKLAND

APR 17 2019

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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**

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

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

4

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

22

23 "New construction" is an exemption to the Ordinance, which is a general statute.
24

25 "Exceptions to the general rule of a statute are to be strictly construed...One seeking to be
26 excluded from the sweep of the general statute must establish that the exception applies." *Barnes*
27

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

17 II. STATEMENT OF FACTS

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

21 A. Construction of Rental Units at the Property

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

1 tenants moved in.¹

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 1988.² It is likely that it
6 continued for some time after that.

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

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

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

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

²Records 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.³

5

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.⁴

20

21

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

27

28 ⁴That 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
Ordinance.

6 The Hearing Decision was eventually upheld in an unpublished First District Court
7
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
14 The owners have answered those cases and have filed a landlord petition for exemption
15 based upon the *Vidor* case. Records from the Oakland Building Department have been
16
17 submitted as exhibits by both landlords and tenants.⁵

18 The tenants assert that the records do not support the owners' claims about the date
19 of completion of construction, at least for Building C. Further, the Building C records
20
21 conflict with the finalized building permit upon which the *Vidor* conclusions were based.
22
23 Records for construction of at least seven rental units are non-existent. The tenants assert
24
25 that the *Vidor* decision resulted from mistake or fraud.

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
leasing the rental units.

28 ⁵The 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 III. LEGAL ARGUMENT

8 A. The New Construction Provisions of the Rent Ordinance

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

11 A. Types of Dwelling Units Exempt. The following dwelling units are not covered
12 units...:

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

17 The Regulations for the Ordinance further define the exemption:

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

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

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

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

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

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

OMC 8.22.010, Regulation No. 8.22.030

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 is obtained. Here, the certificates of occupancy were issued on October 12, 1987. There was indisputably prior residential use of the rental units at the property prior to that date. Alexander & Orton filled rental units as quickly as they were built. If the owners' interpretation of the Ordinance is correct, it would not matter when they first rented out the units. 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.

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

1. Statutory Construction

First, of course, 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. Words used in the statute should be given their ordinary meaning. If the language is clear and unambiguous, there is no need for construction. If the statute is amendable to two alternative interpretations, the one that leads to the more reasonable result will be

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 as 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*
18 *v. Chamberlain* (1983) 147 Cal.App.3d 762, 767 [195 Cal.Rptr. 417].)

19
20 *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24,

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

23
24 Two cases, *Da Vinci Group, supra.* and *Burien, LLC v. Wiley* (2014) 230

25 Cal.App.4th 1039 illustrate the sort of strict construction applied to local rent laws which
26 provide exemption for newly constructed rental units.⁶

27
28 In *Da Vinci Group*, the owner had purchased a multi-tenant warehouse with no

27
28 ⁶New 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.

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.

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.

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

18 On appeal, the landlord contended that the unit was exempt under Civil Code
19 1954.52 because it received a certificate of occupancy after February 1995. The tenant
20 contended that the exemption referred to the first certificate of occupancy and did not
21 apply because his tenancy was established long before the new certificate of occupancy.
22
23

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 "Although the language is susceptible to this construction, the result does not further the
4 purpose of the statute. A certificate of occupancy based solely on a change in use from one
5 type of residential housing to another does not enlarge the supply of housing." *Burian* at
6 p.1047.

7
8 In affirming the trial court decision, the appellate court concluded:

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

22 Different rent control municipalities have treated the subject of prior residential use
23 in different ways. The Los Angeles ordinance exempted housing from rent control if the
24 first certificate of occupancy was issued after October 1978⁷, unless the building was first
25 occupied residentially *prior* to October 1978. (See, *Burien v. Wiley, supra.* at p. 1048.) This

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

9

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.

000025

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
Residential Rental Units Prior to the Issuance of Final Permits and
Certificates of Occupancy

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

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

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

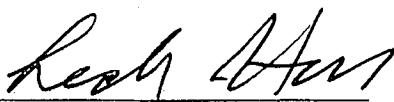
1 policies upon which building codes and housing law is based. Permitting the Vulcan
2 owners to obtain an exemption under these circumstances rewards their wrongful conduct.
3

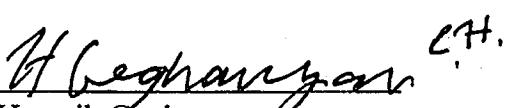
4 IV CONCLUSION.

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 
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12 Attorney at Law

13 
14 Hasmik Geghamyan ^{CH.}
15 Attorney at Law
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15 Attorneys for Tenants

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

19
20 Martin, et al, Tenants,) Case Nos. T17-2037; T18-0460; T18-0471;
21) T18-0473; T18-0479; T18-0498; T18-501;
22 Respondents and Petitioners;) T19-0021; T19-0023; L19-0013
23)
24 vs.) TENANTS' HEARING BRIEF
25)
26 Vulcan Lofts, LLC, Landlord,) Date: September 20, 2021
27) Time: 10:00 a.m.
28 Petitioner and Respondent.) Location: Remote Hearing Via Zoom
29
30 _____ Elan Consuella Lambert
31 Hearing Officer

32 INTRODUCTION

33 The Vulcan Foundry, located at 4001 San Leandro Street, Oakland, was purchased
34 by the former owners/developers Eddie Orten and James Alexander, with the intention to
35 convert it into artists' live-work studios. The former owners obtained permits and
36 promptly set to work, creating 59 rental units. The construction process took over a year
37
38

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

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

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

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

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

16 Testimony

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)

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

27 ¹This summary and analysis which follows it assume the standard for “formerly entirely non-
28 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.² 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)

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

25
26 ²Dealing 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 He responded, “Yeah. Harry Blow signed off every card before people moved
27

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

Discussion of Orten's testimony

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

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

–Witness Susan Bloomquist testified that she had moved into Unit 43, [Building C] 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)

–Peter Mars testified that he had been living in unit 5 [Building A] for a year or more on April 15, 1987, 2nd 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)

–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)

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

–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)

–Llewellyn Moreno testified that he moved into Unit 31 [Building C] no later than 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
5 response to the record subpoena. On that page, *all* of the registration dates are pre-1987.

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
9 “every card before people moved in” is equally false. That testimony demonstrates that, as
10 a developer, he knew that such conduct was wrong. Nor is it credible that he simply forgot
11 about renting out so many units for more than a year prior to obtaining permit sign-offs.
12
13 His testimony denying these matters should be disregarded.

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

17 LEGAL ANALYSIS OF THE NEW CONSTRUCTION EXEMPTION

18 Introduction

20 The Owners insist that all of the evidence that Tenants have presented is irrelevant. They
21 claim to have proven that the certificates of occupancy were obtained after January 1, 1983 and
22 there was no residential use of the building prior to January 1, 1983.³ Under that simple analysis,
23 they claim entitlement to a certificate of exemption. Thus, this case hinges upon interpretation of
24 the second element of the exemption provisions of the ordinance, that the property must have been
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27

³The 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.⁴ 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 The owners here take the position that the term "formerly entirely non-residential" means
12 that there was no residential use of the property prior to 1983. Tenants assert that the term refers,
13 not to the January 1983 date, but to the date upon which the certificate of occupancy/final permit
14 was obtained. There was indisputably prior residential use of the rental units at the property prior
15 to that date. Nonetheless, if the owners' interpretation of the Ordinance is correct, it would not
16 matter when they first rented out the units. Alternatively, if the Tenants' interpretation is correct,
17 then the property cannot be exempt, as it was used residentially prior to the issuance of documents
18 finalizing the new construction. The resolution of this issue is a question of statutory construction.

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26 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. 5th 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
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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.

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

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

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

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

18 Exceptions to the general rule of a statute are to be strictly construed. In interpreting
19 exceptions to the general statute courts include only those circumstances which are within
20 the words and reason of the exception. ... One seeking to be excluded from the sweep of the
21 general statute must establish that the exception applies. (*Barnes v. Chamberlain* (1983) 147
22 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 illustrate the sort of strict construction applied to local rent laws which provide exemptions for
4 newly constructed rental units.⁵

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

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

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⁵New 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.

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

15 In *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, a landlord sought to take advantage
16 of the exemption provisions of the Costa-Hawkins Act. (Civ. Code § 1954.52) The landlord
17 converted a rent-controlled apartment building, which had a 1972 certificate of occupancy, to
18 condominiums. He obtained a new certificate of occupancy in 2009, based on the change in use,
19 and raised the rent. When an existing tenant objected, the landlord sought a declaration from the
20 court that the unit was exempt from the Los Angeles Rent Stabilization Ordinance under
21 provisions of the Costa-Hawkins Act which exempts units that have a certificates of occupancy
22 issued after 1995. Despite the post-1995 certificate of occupancy, the trial court found that the rent
23 raise violated the ordinance.
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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." *Burien* at p.1047.
11

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

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

17 *Burien* at p. 1049.
18

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 1978⁶, 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 San Francisco, on the other hand, exempts live-work units in buildings in which a lawful
16 conversion has occurred, a certificate of occupancy has been issued after June 1979 and there has
17 been no residential use of any kind *between* June 1979 and the issuance of the certificate of
18 occupancy. Thus, the one ordinance provides that residential use prior to enactment of its
19 ordinance defeats exemption, while the other provides that residential use after enactment of the
20 ordinance but before issuance of the certificate of occupancy defeats the exemption. City of San
21 Francisco Rent Stabilization and Arbitration Board, Rules and Regulations, Regulation Section
22
23 1.17 (g).

24

25

26

27 ⁶The 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 broadens 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.
16

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

22 New construction is one of only three specified *permanent* exemptions in the Ordinance.
23
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 §

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

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

9
10 The Vulcan owners permitted occupancy almost immediately after they purchased the
11 property. They continued to rent it out for at least a year before issuance of certificates of
12 occupancy. Such a practice is unlawful and unsafe. It undermines the important public
13 policies upon which building codes and housing law is based. Permitting the Vulcan owners
14 to obtain an exemption under these circumstances rewards their wrongful conduct.

15
16 CONCLUSION

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

19
20 Respectfully submitted,

21 
22

23
24 Leah Hess
25 Attorney at Law
26
27
28

Addendum to Tenants' Hearing Brief:

Timeline, Chart Summary of Documents

10/12/87 Handwritten Certificate of Occupancy for Building B. Covers units 17 through 25. Building completion date stated as 5/27/87. Owner Exh. D; Tenant Exh. 16.	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" Owner Exh. C; Tenant Exh. 49.	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. Owner Exhibit C; Tenant Exh. 50.
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1/13/88 Temporary Certificate of Occupancy for Unit 51,52. Issued. Approval sign-offs 1/13/88. Tenant Exh. 20, Owner Exh. E	2/3/88 Temporary Certificate of Occupancy for Unit 50. Issued. Approval sign-offs the same day. Tenant Exh. 19, Owner Exh. E	
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VULCAN TIMELINE EVENTS

10/25/85 Appraisal Report Owner Exh. A	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.	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
86? Application by J. Alexander for Minor Conditional Use Permit "to create 10 joint living and work quarters." Largely illegible" Tenant Exh. 52.	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.	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 5/2/87 Owner Exh. E; Tenant Exh. 17.
"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.	5/27/87 Notice of Completion signed by Orten on 5/27/87 for entire property "3 buildings". Recorded 6/12/87.	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.

10/12/87 Handwritten Certificate of Occupancy for Building B. Covers units 17 through 25. Building completion date stated as 5/27/87. Owner Exh. D; Tenant Exh. 16.	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" Owner Exh. C; Tenant Exh. 49.	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. Owner Exhibit C; Tenant Exh. 50.
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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

Servando R. Sandoval
ssandoval@pahl-mccay.com

Lena Kazazic
lkazazic@pahl-mccay.com

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)¹.

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

¹ 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 year². 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

² 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. 5th 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. 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. 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 units³.

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.

³ 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 certificates 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. 1 047.

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 exemption⁴. 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

⁴ 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,



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

12/20/85 Building permit application by J. Alexander for Building A. Permit No. D41469. Units not listed or described. No legible date of final inspection. Final inspector signature obscured. Owner Exh. B; Tenant Exh. 45.	12/20/85 Building permit application by J. Alexander for Building B. Permit No. D41760. Units not Listed or Described. Date of finalization not legible. Owner Exh. B; Tenant Exh.48	4/3/86 Building permit application by J. Alexander for Building C. Permit No. D43880. Units not listed or described. Finalized on 5/27/87. Inspector's signature appears to be missing or torn off. Owner Exh. B; Tenant Exh. 47.
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4/21/87 Temporary Certificate of Occupancy for Building C, Units 28 through 45, and 47 through 49. Units Listed but not described individually No description of work to be done. Most approval sign-offs dated the next day, 4/22/87. Building Section final approval date obscured. Owner Exh. E; Tenant Exh. 17.	10/12/87 Handwritten Certificate of Occupancy for Building A. Covers Units 1-16. Building Completion date stated to be "5/27/87". Units listed and described individually.	10/12/87 Handwritten Certificate of Occupancy for Building B. Covers units 17 through 26. Building completion date stated as "5/27/87". Units listed and described individually.
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1/13/88 Temporary Certificate of Occupancy for Unit 51 & 52. Units listed but not described No description of work to be done. Approvals signed-off the same day application made 1/13/88. Tenant Exh. 20, Owner Exh. E	2/3/88 Temporary Certificate of Occupancy for Building C, Unit 50 Unit listed but not described. No description of work to be done. All approvals signed off the same day the application submitted. Tenent Exh. 19, Owner Exh. E	2/5/88 Letter from Chief Building Inspector and Supervising Building Inspector to J.R. Orten: “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] Units listed but not described. No description of work to be done. Tenant Exh. 18
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10/20/87

Application for building permit by
Orten.

“Change 1 commercial unit into 3
units. Change to Artist Studios.”

No description of unit numbers or
description of units.

Final inspection date illegible.

Last legible date on document:
“12/1/87”

Tenant Exh. 49

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	<ul style="list-style-type: none"> •Voter Registrations: H20483 •Voter Registration: G511489 •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). •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 •Testimony Karen Beck (formerly Karen Smith): 12/16/19 hrng 4:35:05-4:53:50). Moved into Unit 5 with Peter Smith.
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	<ul style="list-style-type: none"> •Voter Registration, X426298 •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), •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) Carpenter David Cheek Sworn Decl. (Ten Exh. 6) Boekelheide was residing at the property when Cheek started working there in 1986 (¶¶ 3, 4, 7)

	10/06/1986	unk.	<ul style="list-style-type: none"> •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
18	10/06/1986 Feb 1986 1986	B	<ul style="list-style-type: none"> •Voter Registration X489752 •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) •David Cheek Sworn Decl. (Exh 6): Hussong and wife Tracy McBride lived at the Vulcan when Cheek started working in 1986. (¶¶ 3, 8)
19	05/07/84 05/07/84	B	<ul style="list-style-type: none"> •Voter Registration, G267674 •Voter Registration, G267675
21	09/25/1986 09/25/1986 1986 or 1987 Late 1986	B	<ul style="list-style-type: none"> •Voter Registration, H074029 •Voter Registration, H074030 •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. •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.
22	10/03/1986	B	<ul style="list-style-type: none"> •Voter Registration, H105022
23	04/28/1987 December 1986	B	<ul style="list-style-type: none"> •Voter Registration, H191495 •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)

25	02/20/1987 Fall, 1986 1986	B	<ul style="list-style-type: none"> •Voter Registration H121815 •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 Fall of '86. (4:28:58-4:29:10) •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
31	March of April 1987	C	<ul style="list-style-type: none"> •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.
43	9/28/87 9/28/87 June 1986	C	<ul style="list-style-type: none"> •Voter Registration, H262087 • Voter Registration, H189199 •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.
54	Fall '87	C	<p>Witness <u>Elizabeth Ross</u>: Moved into Unit 54 in "Fall of '87", in October or November. There were items left from a previous tenant.</p> <p>12/16/19 Hrng. 3:25:17-3:28:08</p>
57	06/12/1987	C	<ul style="list-style-type: none"> •Voter Registration, H214660 •Voter Registration, H214001

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

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Oakland, CA 94601

Savannah Crespo
Pamela Hearne
Angeline Huang
Serena Kirk
Adam Rebellion
Sarah Rund
Ezra Unter Unterseher
4401 San Leandro Street #17

Oakland, CA 94601

Aileen Lawlor
4401 San Leandro Street #18
Oakland, CA 94601

Annmarie Bustamante
Ross Duncan
Takehito Etani
Harel Meri
Hadas Teitel
4401 San Leandro Street #19
Oakland, CA 94601

Ziaa Szymanski
Arthur Cardenas
John Goda
Zach Stockman
4401 San Leandro Street #21
Oakland, CA 94601

Ross Clark
4401 San Leandro Street #23
Oakland, CA 94601

Ross Clark
4401 San Leandro Street #24
Oakland, CA 94601

Leslie W. Breanna
Myles Faigin
W. Breanne Leslie, Lucid Dream Lounge, Inc.
Jakob Valvo
4401 San Leandro Street #25
Oakland, CA 94601

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

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

Thelma Andree
Matthew Hudson
4401 San Leandro Street #36
Oakland, CA 94601

Woodruff Burley
Garth Ferris
Jeremy Gage
Sarah J Paturzo
Eric Thorsen
Darius Todar
4401 San Leandro Street #39
Oakland, CA 94601

Ian Nathan
Delila Santos
4401 San Leandro Street #40
Oakland, CA 94601

Torey Broderson
Michael Mann
Joseph Robertson
Daniel Wang
4401 San Leandro Street #41
Oakland, CA 94601

Pamela Mangan
Randall Spencer
4401 San Leandro Street #43
Oakland, CA 94601

Ezra Eismont
4401 San Leandro Street #46
Oakland, CA 94601

Troy Clancy
Bryan Kitchens
Cassie McKenney
Tzong Rogers
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

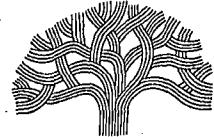
Justin Archer
Christian Eichelberger
Bolton Littlefield
Matthew Martin
April Miller
4401 San Leandro Street #58
Oakland, CA 94601

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 December 9, 2022 in Oakland, California.

H. Geghamyan
Hasmik Geghamyan

CITY OF OAKLAND



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

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 Corne, 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 Fillipchuck, 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.¹

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.

¹ 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.

Exhibits²

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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² 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 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.

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Unit #23, Unit #24: Ross Clark.

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

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Unit #31: Deborah Weber.

Unit #36: Thelma Andree and Matthew Hudson.

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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.
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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 Fillipchuck, 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.³

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

³ 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.⁴

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.⁵

Exhibits

During the hearing, Exhibits 52⁶, 53,⁷ and 55⁸ were admitted by stipulation.⁹

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⁴ 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.

⁵ 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.

⁶ A color copy photo of a postcard for Paul Howard.

⁷ A City building permit application from Peter Mars.

⁸ Ms. Bloomquist's lease.

⁹ 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 searching 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.¹⁰

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.¹¹

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.¹²

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

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

¹¹ Exhibit 52.

¹² 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 45th 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 45th Avenue as an actual address. An additional door was installed on the 45th 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.¹³

The appraisal report for the property was dated October 25, 1985.¹⁴ Mr. Orton purchased it in December 1985.

¹³ Exhibit 53.

¹⁴ 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 Fenstenmacher, 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.¹⁵

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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¹⁵ 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.

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 Fillipchuck, 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 – 1987.¹⁶

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, 1983.¹⁷ 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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¹⁶ 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, “dims”, and “nr” that were indiscernible and without further clarification, cannot be ruled out as immaterial to the facts at issue.

¹⁷ 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 45th 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 Garrellick 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.¹⁸ 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

¹⁸ 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, 1985.¹⁹

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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¹⁹ 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.

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 Fillipchuck, Julian Vielva, and Serge B Yelena.
Unit #56: Stephanie Kavakis and Jared Kadish.
Unit #57: Efrem 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 Document²⁰

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

²⁰ 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

Represented tenants:

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

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Unit #55: Yelena Fillipchuck, 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.”²¹ 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.”²²

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.²³ 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

²¹ O.M.C. § 8.22.030(A)(5)

²² O.M.C. § 8.22.030(A)(5)

²³ *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

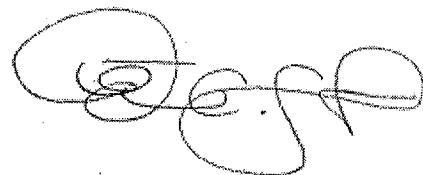
1. Petition L19-0013 is granted.

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

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

Owner

Landlord One, Vulcan Lofts, LLC
155 Grand Avenue #950
Oakland, CA 94612

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

Tenant

Aileen Lawlor
4401 San Leandro Street #18
Oakland, CA 94601

Tenant

Aimee Seaver
4401 San Leandro Street Unit # 47 A
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
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
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
4401 San Leandro Street #17
Oakland, CA 94601

Tenant

Fred Gromadski
4401 San Leandro Street #37
Oakland, CA 94601

Tenant

Gabriel Penifield
4401 San Leandro Street #13
Oakland, CA 94601

Tenant

Garth Ferris
4401 San Leandro Street #39
Oakland, CA 94601

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
Oakland, CA 94601

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
Oakland, CA 94601

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
Oakland, CA 94601

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
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

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
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 Rogers
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 Fillipchuck
4401 San Leandro Street #55
Oakland, CA 94601

Tenant

Zach Stockman
4401 San Leandro Street #21
Oakland, CA 94601

Tenant

Ziaa Szymanski
4401 San Leandro Street #21
Oakland, CA 94601

Tenant Representative

Hasmik Geghamyan, Tenant Attorney
1736 Franklin Street Suite 400
Oakland, CA 94612

Tenant Representative

Leah Hess, Attorney at Law
PO Box 8867
Emeryville, CA 94662-0067

Owner

Madison Park Financial/John Protopassas
155 Grand Ave Ste #950
Oakland, CA 94612

Owner

Vulcan Lofts, LLC
155 Grand Ave. Ste. #950
Oakland, CA 94612

Owner Representative

Elicia Holland
4401 San Leandro St
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

Servando 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 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

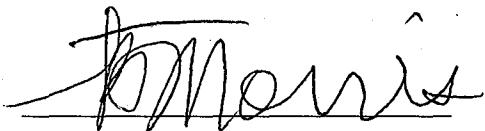
Keiko Steimetz
1943 Tyler Street
San Pablo, CA 94806

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.

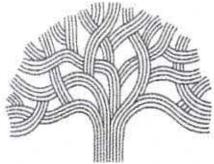
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
Executed on **May 23, 2023** in Oakland, CA.



Teresa Brown-Morris

Oakland Rent Adjustment Program

000161

 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	For Rent Adjustment Program date stamp.
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APPEAL

Appellant's Name Helena Martin, Ziaa Szymanski, et. al.	<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
Property Address (Include Unit Number) 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
Appellant's Mailing Address (For receipt of notices) 4401 San Leandro Street, Oakland, California (see pg.6 of the Proof of Service for the names of all represented tenants and their unit numbers)	Case Number 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 Date of Decision appealed Issued April 30, 2023 and Served on May 23, 2023
Name of Representative (if any) Leah Hess Hasmik Geghamyan	Representative's Mailing Address (For notices) 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:

<u>Name</u>	Servando Sandoval, Pahl & McCay
<u>Address</u>	225 W. Santa Clara Street, Suite 1500
<u>City, State Zip</u>	San Jose, California 95113

<u>Name</u>	Andrew Zacks, Zacks, Freedman and Patterson
<u>Address</u>	1970 Broadway, Suite 1270
<u>City, State Zip</u>	Oakland, California 94612

See the Proof of Service Attachment for List of Unrepresented Tenants

<i>M. Leghamyan</i>	<i>06/07/2023</i>
---------------------	-------------------

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 1985.¹ 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 granted

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

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 Residential 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
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EXHIBIT A

000180

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</u>(formerly <u>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	<ul style="list-style-type: none"> •Voter Registration <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	?	<ul style="list-style-type: none"> •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

18	X489752	10/06/1986	B	<ul style="list-style-type: none"> •Voter Registration <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> <ul style="list-style-type: none"> •Registration Record shows person living there in 1986. <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	<ul style="list-style-type: none"> •Voter Registration

21	H074029 H074030	09/25/1986	B	<ul style="list-style-type: none"> •Voter Registrations •<u>Witness Gayle Bryan</u> (12/16/19 Hrng) <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"> •Corroborating: Valerie Steel testified to moving into Unit 23 with her husband in late '86.
22	H105022	10/03/1986	B	•Voter Registration

23	H191495	04/28/1987	B	<ul style="list-style-type: none"> •Voter Registration •<u>Witness Valerie Steel [6/10/19 Hrng.]</u> <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 formerly Allison Cheek (12/26/19 Hrng)</u></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 (Exh. 6)</u></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 bedroooms. 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"> •See above re testimony of Allison Davis, •Declaration of her brother David Cheek.
31	None		C	<p>•Witness Llewellyn Moreno (formerly, Llewellyn Hilliard)</p> <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></p> <p>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 & postmarked in France. Postcard from "Barb & Chuck" to Mark & 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:

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Pahl & McCay

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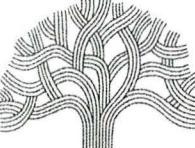
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Bolton Littlefield
Matthew Martin
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Joshua R Miller
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 7, 2023 in Oakland, California.

H. Geghamyan
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	For Rent Adjustment Program date stamp. RECEIVED JUN 13 2023 RENT ADJUSTMENT PROGRAM OAKLAND
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APPEAL

Appellant's Name Helena Martin, Ziaa Szymanski, et. al.	<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
Property Address (Include Unit Number) 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
Appellant's Mailing Address (For receipt of notices) 4401 San Leandro Street, Oakland, California (see pg.6 of the Proof of Service for the names of all represented tenants and their unit numbers)	Case Number 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 Date of Decision appealed Issued April 30, 2023 and Served on May 23, 2023
Name of Representative (if any) Leah Hess Hasmik Geghamyan	Representative's Mailing Address (For notices) 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:**

<u>Name</u>	Servando Sandoval, Pahl & McCay
<u>Address</u>	225 W. Santa Clara Street, Suite 1500
<u>City. State Zip</u>	San Jose, California 95113
<u>Name</u>	Andrew Zacks, Zacks, Freedman and Patterson
<u>Address</u>	1970 Broadway, Suite 1270
<u>City. State Zip</u>	Oakland, California 94612

See the Proof of Service Attachment for List of Unrepresented Tenants

<i>M. Leghamyan</i>	<i>06/07/2023</i>
---------------------	-------------------

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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**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 1985.¹ 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 Residential 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

Ms. H. Geghamyan
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	<ul style="list-style-type: none"> •<u>Voter Registrations</u> •<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) •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) •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) <u>Karen Beck(formerly Karen Smith)</u> (12/16/19 Hearing) •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)
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	<ul style="list-style-type: none"> •Voter Registration <p><u>Witness Todd Boekleheide</u> (6/10/19 Hrng)</p> <ul style="list-style-type: none"> •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>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> <ul style="list-style-type: none"> •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>•<u>Corroboration:</u> Tenant Exh. No. 58:</p> <ul style="list-style-type: none"> •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>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	?	<ul style="list-style-type: none"> •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

18	X489752	10/06/1986	B	<ul style="list-style-type: none"> •Voter Registration <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> <ul style="list-style-type: none"> •Registration Record shows person living there in 1986. <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	<ul style="list-style-type: none"> •Voter Registration

21	H074029 H074030	09/25/1986	B	<ul style="list-style-type: none"> •Voter Registrations •<u>Witness Gayle Bryan</u> (12/16/19 Hrng) <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"> •Corroborating: Valerie Steel testified to moving into Unit 23 with her husband in late '86.
22	H105022	10/03/1986	B	•Voter Registration

23	H191495	04/28/1987	B	<ul style="list-style-type: none"> •Voter Registration •<u>Witness Valerie Steel</u> [6/10/19 Hrng.] <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 formerly Allison Cheek (12/26/19 Hrng)</u></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 (Exh. 6)</u></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 bedroooms. 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"> •See above re testimony of Allison Davis, •Declaration of her brother David Cheek.
31	None		C	<p><u>•Witness Llewellyn Moreno (formerly, Llewellyn Hilliard</u></p> <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 & postmarked in France. Postcard from "Barb & Chuck" to Mark & 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:

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

Michael Robinson
Cassie Stuurman
Michael Lichen
4401 San Leandro Street, #1
Oakland, California 94601

Denise Marie Kennedy
Nick Negusse
4401 San Leandro Street #6
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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)

Helena Martin
Gary Doyle
Megan Girart
Martin Laurent
Helena Stoddard
4401 San Leandro Street #2
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Sara Le Cornec
Sarah Noelle
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Adam Rebellion
Sarah Rund
Ezra Unter Unterseher
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Ross Duncan
Takehito Etani
Harel Meri
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Ziaa Szymanski
Arthur Cardenas
John Goda
Zach Stockman
4401 San Leandro Street #21
Oakland, CA 94601

Ross Clark
4401 San Leandro Street #23
Oakland, CA 94601

Ross Clark
4401 San Leandro Street #24
Oakland, CA 94601

Leslie W. Breanna
Myles Faigin
W. Breanne Leslie, Lucid Dream Lounge, Inc.
Jakob Valvo
4401 San Leandro Street #25
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Darin Marshall
Brittany Valdez
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Bolton Littlefield
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April Miller
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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.

H. Geghamyan
Hasmik Geghamyan

 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	For Rent Adjustment Program date stamp.
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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.)

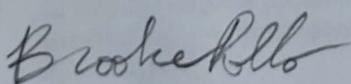
g) The decision denies the Owner a fair return on the Owner's investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)

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:

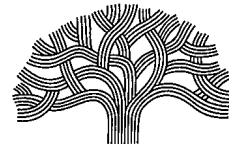
<u>Name</u>	Servando Sandoval, Pahl & McCay
<u>Address</u>	225 W. Santa Clara Street, Suite 1500
<u>City, State Zip</u>	San Jose, California 95113
<u>Name</u>	Andrew Zacks, Zacks, Freedman and Patterson
<u>Address</u>	1970 Broadway, Suite 1270
<u>City, State Zip</u>	Oakland, California 94612

	June 13, 2023
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SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

CITY OF OAKLAND



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: Respondent/Owner Servando Sandoval
Representative:
Appellants/Tenants Leah Hess
Representatives: Hasmik Geghamyan

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.

GROUNDS 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

3311746v2

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

Vulcan Lofts, LLC
155 Grand Avenue, #950
Oakland, CA 94612

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

Tenant

4401 San Leandro Street
Oakland, CA 94601

Tenant

Aileen Lawlor
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Aimee Seaver
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616 Santa Rosa Avenue
Berkeley, CA 94707

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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 Rogers
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 Fillipchuck
4401 San Leandro Street, #55
Oakland, CA 94601

Tenant

Zach Stockman
4401 San Leandro Street, #21
Oakland, CA 94601

Tenant

Ziaa Szymanski
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Briana Lawrence-McGowan
Oakland Rent Adjustment Program

000257

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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.¹ 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.

¹See 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.² 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

²The 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.³ 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.

³After 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. 4th 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-

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,

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Attorneys for Tenants

ADDENDUM A

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**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	<ul style="list-style-type: none"> •Voter Registrations: H20483 •Voter Registration: G511489 •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. •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 •Testimony Karen Beck (formerly Karen Smith): 12/16/19 hrng 4:35:05-4:53:50). Moved into Unit 5 with Peter Smith.
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	<ul style="list-style-type: none"> •Voter Registration, X426298 •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), •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) Carpenter David Cheek Sworn Decl. (Ten Exh. 6) Boekelheide was residing at the property when Cheek started working there in 1986 (¶¶ 3, 4, 7)

	10/06/1986	unk.	<ul style="list-style-type: none"> •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
18	10/06/1986 Feb 1986 1986	B	<ul style="list-style-type: none"> •Voter Registration X489752 •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) •David Cheek Sworn Decl. (Exh 6): Hussong and wife Tracy McBride lived at the Vulcan when Cheek started working in 1986. (¶¶ 3, 8)
19	05/07/84 05/07/84	B	<ul style="list-style-type: none"> •Voter Registration, G267674 •Voter Registration, G267675
21	09/25/1986 09/25/1986 1986 or 1987 Late 1986	B	<ul style="list-style-type: none"> •Voter Registration, H074029 •Voter Registration, H074030 •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. •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.
22	10/03/1986	B	<ul style="list-style-type: none"> •Voter Registration, H105022
23	04/28/1987 December 1986	B	<ul style="list-style-type: none"> •Voter Registration, H191495 •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)

25	02/20/1987 Fall, 1986 1986	B	<ul style="list-style-type: none"> •Voter Registration H121815 •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 Fall of '86. (4:28:58-4:29:10) •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
31	March of April 1987	C	<ul style="list-style-type: none"> •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.
43	9/28/87 9/28/87 June 1986	C	<ul style="list-style-type: none"> •Voter Registration, H262087 • Voter Registration, H189199 •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.
54	Fall '87	C	<p>Witness <u>Elizabeth Ross</u>: Moved into Unit 54 in "Fall of '87", in October or November. There were items left from a previous tenant.</p> <p>12/16/19 Hrng. 3:25:17-3:28:08</p>
57	06/12/1987	C	<ul style="list-style-type: none"> •Voter Registration, H214660 •Voter Registration, H214001

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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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.

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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.¹ 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.

¹See 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.² 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

²The 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.³ 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.

³After 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. 4th 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

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	<ul style="list-style-type: none"> •Voter Registrations: H20483 •Voter Registration: G511489 •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). •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 •Testimony Karen Beck (formerly Karen Smith): 12/16/19 hrng 4:35:05-4:53:50). Moved into Unit 5 with Peter Smith.
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	<ul style="list-style-type: none"> •Voter Registration, X426298 •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), •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) Carpenter David Cheek Sworn Decl. (Ten Exh. 6) Boekelheide was residing at the property when Cheek started working there in 1986 (¶¶ 3, 4, 7)

	10/06/1986	unk.	<ul style="list-style-type: none"> •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
18	10/06/1986 Feb 1986 1986	B	<ul style="list-style-type: none"> •Voter Registration X489752 •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) •David Cheek Sworn Decl. (Exh 6): Hussong and wife Tracy McBride lived at the Vulcan when Cheek started working in 1986. (¶¶ 3, 8)
19	05/07/84 05/07/84	B	<ul style="list-style-type: none"> •Voter Registration, G267674 •Voter Registration, G267675
21	09/25/1986 09/25/1986 1986 or 1987 Late 1986	B	<ul style="list-style-type: none"> •Voter Registration, H074029 •Voter Registration, H074030 •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. •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.
22	10/03/1986	B	<ul style="list-style-type: none"> •Voter Registration, H105022
23	04/28/1987 December 1986	B	<ul style="list-style-type: none"> •Voter Registration, H191495 •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)

25	02/20/1987 Fall, 1986 1986	B	<ul style="list-style-type: none"> •Voter Registration H121815 •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 Fall of '86. (4:28:58-4:29:10) •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
31	March of April 1987	C	<ul style="list-style-type: none"> •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.
43	9/28/87 9/28/87 June 1986	C	<ul style="list-style-type: none"> •Voter Registration, H262087 • Voter Registration, H189199 •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.
54	Fall '87	C	<p>Witness <u>Elizabeth Ross</u>: Moved into Unit 54 in "Fall of '87", in October or November. There were items left from a previous tenant.</p> <p>12/16/19 Hrng. 3:25:17-3:28:08</p>
57	06/12/1987	C	<ul style="list-style-type: none"> •Voter Registration, H214660 •Voter Registration, H214001

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

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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



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment ProgramTEL (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

REMAND 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?¹

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."² 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."³

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

¹ 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.

² O.M.C. § 8.22.030(A)(5)

³ O.M.C. § 8.22.030(A)(5)

residential artists' live/work units in three different buildings.⁴ 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, 1983.⁵

Likewise, it was held that if the property was converted and received a certificate of occupancy after ⁶January 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

⁴ 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).

⁵ HRRRB Appeal Decision in LIS-0061, 4CH Inc. v. Tenants.

⁶ 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.⁷

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 foundry 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.

⁷ 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

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
Oakland, CA 94601

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
Oakland, CA 94601

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
Oakland, CA 94601

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
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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

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Berkeley, CA 94707

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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 Graham
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
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Tenant

Stephanie Kavakis
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Tenant

Susan Leffingwell
4401 San Leandro Street #35
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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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Tenant

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4401 San Leandro Street #25
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Tenant

Thelma Andree
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Tenant

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Tenant

Thurman Adam Lorick III
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Tenant

Tiana Fraser
4401 San Leandro Street #44
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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 Rogers
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

Andrea Ives
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Oakland, CA 94601

Tenant

Haley Wilson
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Tenant

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Tenant
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Oakland, CA 94601

Tenant
Andrew Pulkabek
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Annmarie Bustamante
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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

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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
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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
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

For Rent Adjustment Program date stamp.

APPEAL

Appellant's Name Helena Martin, Ziaa Szymanski, et al.	<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
Property Address (Include Unit Number) 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
Appellant's Mailing Address (For receipt of notices) 4401 San Leandro Street, Oakland, CA (see proof of service)	Case Number L19-0013 (bifurcated from tenants' petitions) Date of Decision appealed
Name of Representative (if any) Leah Hess, Hasmik Geghamyan	Representative's Mailing Address (For notices) 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.

<u>Name</u>	Servando Sandoval, Spencer Fane LLP
<u>Address</u>	225 West Santa Clara St., Suite 1500
<u>City, State Zip</u>	San Jose, CA 95113
<u>Email Address</u>	ssandoval@spencerfane.com
<u>Name</u>	Zacks & Freedman, PC
<u>Address</u>	180 Montgomery St, Suite 1940
<u>City, State Zip</u>	San Francisco, CA 94104

Email Address

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).

Haswile 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

000347

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</u>(formerly <u>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	<ul style="list-style-type: none"> •Voter Registration <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	?	<ul style="list-style-type: none"> •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

18	X489752	10/06/1986	B	<ul style="list-style-type: none"> •Voter Registration <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> <ul style="list-style-type: none"> •Registration Record shows person living there in 1986. <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	<ul style="list-style-type: none"> •Voter Registration

21	H074029 H074030	09/25/1986	B	<ul style="list-style-type: none"> •Voter Registrations •<u>Witness Gayle Bryan</u> (12/16/19 Hrng) <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"> •Corroborating: Valerie Steel testified to moving into Unit 23 with her husband in late '86.
22	H105022	10/03/1986	B	•Voter Registration

23	H191495	04/28/1987	B	<ul style="list-style-type: none"> •Voter Registration •<u>Witness Valerie Steel [6/10/19 Hrng.]</u> <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 formerly Allison Cheek (12/26/19 Hrng)</u></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 (Exh. 6)</u></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 bedroooms. 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"> •See above re testimony of Allison Davis, •Declaration of her brother David Cheek.
31	None		C	<p>•Witness Llewellyn Moreno (formerly, Llewellyn Hilliard)</p> <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></p> <p>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 & postmarked in France. Postcard from "Barb & Chuck" to Mark & 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):

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)

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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



CITY OF OAKLAND

Housing and Community Development Department
Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612-2034

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NOTICE OF APPEAL HEARING

Case Number: **L19-0013**
Case Title: **Vulcan Lofts, LLC v. Tenants**
Property Address: **4401 San Leandro St. Oakland, CA 94601**

THE HEARING ON THIS APPEAL WILL BE HELD:

Date: January 22, 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.

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 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 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 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: L19-0013
Case Name: Vulcan Lofts, LLC v. Tenants

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

Landlord One
Vulcan Lofts, LLC
155 Grand Avenue #950
Oakland, CA 94612

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

Tenant

4401 San Leandro Street
Oakland, CA 94601

Tenant

Aileen Lawlor
4401 San Leandro Street #18
Oakland, CA 94601

Tenant

Aimee Seaver
4401 San Leandro Street Unit # 47 A
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
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
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
4401 San Leandro Street #17
Oakland, CA 94601

Tenant

Fred Gromadski
4401 San Leandro Street #37
Oakland, CA 94601

Tenant

Gabriel Penfield
4401 San Leandro Street #13
Oakland, CA 94601

Tenant

Garth Ferris
4401 San Leandro Street #39
Oakland, CA 94601

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
Oakland, CA 94601

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
Oakland, CA 94601

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
Oakland, CA 94601

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
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
4401 San Leandro Street #8
Oakland, CA 94601

Tenant

Lia Walker
616 Santa Rosa Avenue
Berkeley, CA 94707

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

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
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 #4A
Oakland, CA 94601

Tenant

Resident
4401 San Leandro Street #9
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 #23
Oakland, CA 94601

Tenant

Ross Clark
4401 San Leandro Street #24
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 Fillipchuck
4401 San Leandro Street #55
Oakland, CA 94601

Tenant

Zach Stockman
4401 San Leandro Street #21
Oakland, CA 94601

Tenant

Ziaa Szymanski
4401 San Leandro Street #21
Oakland, CA 94601

Tenant Representative

Hasmik Geghamyan
Tenant Attorney
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 **December 24, 2025** in Oakland, California.

Nyila Webb
Nyila Webb
Oakland Rent Adjustment Program