

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
FULL BOARD SPECIAL MEETING  
August 24, 2023  
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 many ways.

**OBSERVE:**

• To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10

• To observe the meeting by video conference, please click on the link below:  
When: Aug 24, 2023 06:00 PM Pacific Time (US and Canada)

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/87613914068>

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**The Zoom link is to view/listen to the meeting only, not for participation.**

**PARTICIPATION/COMMENT:**

There is one way to submit public comments:

• To participate/comment during the meeting, you must attend in-person. Comments on all agenda items will be taken during public comment at the beginning of the meeting. Comments for items not on the agenda will be taken during open forum towards the end of the meeting.

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

## 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, 8/10/2023 (pp. 4-10)
  - b. Resolution to Recommend Amendment of the Rent Adjustment Program Regulations to (1) extend amortization period for mandatory seismic retrofits to 25 years; (2) reduce argument time to six (6) minutes per party; (3) remove appearance requirement for appellant at appeal hearings; (4) allow non-voting alternates to participate in Board meetings in non-voting capacity; (5) add good cause hearings for failure to appeal at hearings; (6) change meeting time to 6 PM; (7) codify existing procedural practices in regulations; and (8) make other clarifying and reorganization changes (pp. 11-50)
5. APPEALS\*
  - a. L19-0013 et al., Vulcan Lofts, LLC v. Tenants (pp. 51-635)
6. INFORMATION AND ANNOUNCEMENTS
7. SCHEDULING AND REPORTS
8. OPEN FORUM
9. ADJOURNMENT

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*\*Staff appeal summaries will be available on the Rent Adjustment Program's website and the City Clerk's office at least 48 hours prior to the meeting pursuant to O.M.C. 2.20.070.B and 2.20.090*

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

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

Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en Español, Cantonés, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) o llame al (510) 238-3721 o 711 por lo menos cinco días hábiles antes de la reunión.

需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) 或致電 (510) 238-3721 或711 California relay service.

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**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
FULL BOARD SPECIAL MEETING**

**August 10, 2023**

**6:00 P.M.**

**CITY HALL**

**1 FRANK H. OGAWA PLAZA, HEARING ROOM #1**

**OAKLAND, CA 94612**

**MINUTES**

**1. CALL TO ORDER**

The Board meeting was administered in-person by B. Lawrence-McGowan from the Rent Adjustment Program (RAP), Housing and Community Development Department. B. Lawrence-McGowan explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Chair Ingram at 6:24 p.m.

**2. ROLL CALL**

<b>MEMBER</b>	<b>STATUS</b>	<b>PRESENT</b>	<b>ABSENT</b>	<b>EXCUSED</b>
Vacant	Tenant			
D. WILLIAMS	Tenant	X		
J. DEBOER	Tenant Alt.			X
M. GOOLSBY	Tenant Alt.			X
D. INGRAM	Undesignated	X		
C. OSHINUGA	Undesignated			X
M. ESCOBAR	Undesignated			X
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
D. TAYLOR	Landlord	X		
K. BRODFUEHRER	Landlord	X		
C. JACKSON	Landlord Alt.			X
Vacant	Landlord Alt.			

**Staff Present**

Braz Shabrell

Marguerita Fa-Kaji

Briana Lawrence-McGowan

Deputy City Attorney

Senior Hearing Officer (RAP)

Administrative Analyst II (RAP)

**3. WELCOME NEW BOARD MEMBERS**

- a. Chair Ingram and fellow Board members welcomed new landlord representative, Kara Brodfuehrer. Member Brodfuehrer briefly introduced herself.

**4. PUBLIC COMMENT**

- a. No members of the public spoke during public comment.

**5. CONSENT ITEMS**

- a. Approval of Board Minutes, 7/27/2023: Chair Ingram moved to approve the Board Minutes from 7/27/2023. Member Williams seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, D. Taylor, D. Williams, K. Brodfuehrer  
**Nay:** None  
**Abstain:** None

The minutes were approved.

**6. APPEALS\***

- a. T23-0019, Barragan v. Mead Holding LLC

Chair Ingram announced that this appeal hearing has been postponed.

- b. T19-0384, Salvador v. Fong

Appearances: May Fong & Michael Lee Owners  
Gregory Ching Tenant Representative

This case involved an owner appeal of a decision that invalidated a previously granted certificate of exemption on the basis of fraud or mistake. A certificate of exemption is a determination by the Rent Adjustment Program (RAP) that a property is permanently exempt from the rent controls of their Rent Adjustment Ordinance. In this case, the exemption was granted based on the Costa Hawkins condo exemption—which exempts a dwelling or unit that is alienable separate from the title to any other dwelling unit. The certificate of exemption was granted in 2019.

Under the Rent Adjustment Ordinance, tenants may contest a previously granted certificate of exemption on the basis of fraud or mistake. Initially, the Hearing Officer denied the tenant's petition on the basis that the court order from the exemption case prohibited relitigating between the parties. The tenant appealed that decision, and the case first came before the Board in 2021. The Board agreed with the tenant and found that the court order in the exemption case did not preclude the current matter, because the court order did not decide the issue of fraud or mistake—the court order in the previous case was limited to a sold separate analysis of the Costa Hawkins statue. The Board remanded the case for a hearing on the issue of fraud or mistake.

After the case came before the Board in 2021, both parties submitted additional briefings and a hearing on the merits took place over two days in January and March 2023. On the merits, the Hearing Officer agreed that there had been fraud or mistake and that the certificate of exemption should not have been issued. The Hearing Officer found that there had been fraud or mistake because the certificate of exemption was issued based on the representation that the unit was a separate condo; and because there were misrepresentations about the layout of the property. The unit is not its own condo—it is a unit as part of the structure that contains 2 separate units. At the prior hearing for the certificate of exemption, the owners denied the existence certain documents, such as the CC&Rs, and stated that they were verbal—both of which were not true. Discovery of the CC&Rs demonstrated that the parcel map conflicted with the actual layout of the property and the tenant's petition was granted.

The owner has now appealed that decision on two grounds. The owners assert that the decision conflicts with the court order on the exemption case and that there is insufficient evidence to support a finding of fraud. On the first ground raised by the owner, this issue was already argued and decided upon by the Board in 2021. The Board previously determined that the court order did not conflict with the current petition. The following issue was presented to the Board:

1.) Was there sufficient evidence to support the finding of fraud or mistake?

The owners contended that this case has gone through two Oakland Rent Board hearings and a Supreme Court hearing—and that the Oakland Rent Board was ordered to issue their exemption because they had met the burden of proof under Costa Hawkins. The owners argued that the Rent Board was barred from relitigating this case by collateral estoppel, that the tenant and the Rent Board did not appeal the matter, and that the matter has already been adjudicated. The owners contended that the tenant and

the Rent Board are now trying to overturn the Supreme Court order by claiming fraud, that there was no extrinsic fraud, and that collateral estoppel has been ordered.

The owners argued that res judicata applies in this case and that only extrinsic fraud can overturn these doctrines. The owners contended that if extrinsic fraud is shown, a judgment is normally voidable—but that this case did not involve extrinsic fraud and that only intentional deceptive artifacts can reach the level of extrinsic fraud. The owners argued that they were unaware of the CC&Rs and that there was no intentional deception—and that they are requesting for the Board to vacate and dismiss the remand decision that Hearing Officer issued on May 12, 2023.

The owners contended that unit 1354A is in fact a condominium and that they did not commit any fraud or misrepresentation. The owners argued that they bought the unit as a foreclosure, that they were given odd paperwork, and that the previous owners did not have any CC&Rs. The owners contended that they went to the county recorder's office to find all the paperwork but did not receive the CC&Rs.

The tenant representative contended that the property owners have presented both verbally and in their brief three main arguments—preclusion should apply to this petition and prohibit further litigation, the decision was not supported by sufficient evidence, and that the owners lacked knowledge of the fraud or mistake that took place. The tenant representative argued that preclusion exists as a legal doctrine to prevent overburdening courts with unnecessary relitigating of already decided issues; however, preclusion does not apply to this petition because the issue of fraud was not raised in the prior litigation during which the property owners sought the exemption. The tenant representative contended that the Superior Court did not preclude further litigation and that they only decided on one single issue—which was that multiple condominiums purchased by a single bona fide purchaser may satisfy the sold separately prong of the Costa Hawkins exception analysis. The tenant representative argued that the Superior Court did not rule on the issue of fraud and that the owners' fraud was not discovered until after their court appearance had already taken place.

The tenant representative argued that the Board previously decided on the issue of whether or not preclusion applied in this case—and in 2021, the Board ruled that the petition was not precluded from relitigating because the issue of fraud or mistake had not been raised and was not apparent at the time to prior litigation. The tenant representative contended that the Hearing Officer was not mistaken by granting the relitigating. The tenant

representative argued that the owners have argued that there was no evidence of fraud—however, in this case, significantly more than a near scintilla of evidence has been presented. The tenant representative contended that the Hearing Officer was presented with evidence that included an audio recording of the owners’ sworn testimony and exemption petition hearing that took place in 2017 and certified copies of the covenants, conditions, and restrictions (also known as CC&Rs) delivered directly to RAP by the Alameda County clerk recorder’s office. The tenant representative argued that the CC&Rs were recorded in 2007 and include a map—which shows the actual boundaries of the condominium units in question. The tenant representative contended that the Hearing Officer also heard sworn testimony from a witness—who discovered the CC&Rs through a public records request with the county recorder’s office. The tenant representative argued that the witness had also visited the site and testified that he observed and inspected the property and noted that the boundaries as set forth in the CC&Rs for the condominium in question are almost double that of the tenant’s home—and that the boundaries of the condo 1354A, that was mistakenly granted an exemption, included 2 separate apartments. The tenant representative contended that the Hearing Officer also heard sworn testimony from the tenant, who testified that she had not been informed of the CC&Rs by the owners—and confirmed that her home encompassed only approximately half of the 1354A condo unit—with the other half belonging to her neighbor.

The tenant representative contended that the owners argued that they were unaware of the pre-existing CC&Rs, and as such, they could not have committed fraud—but that the owners fundamentally misunderstand the knowledge inquiry of fraud and of mistake. The tenant representative argued that in the 2017 exemption hearing, the Hearing Officer asked the owners directly if they were aware of any CC&Rs and the owners responded by saying no—however, the CC&Rs did exist and were duly recorded with the Alameda County clerk recorder’s office in 2006. The tenant representative argued that it is factually impossible for CC&Rs to not exist and to exist but be verbal—and that the owners’ contradictions amounted to a misrepresentation of the CC&Rs. The tenant representative contended that the Hearing Officer was more than justified and correct in determining that the owners had committed fraud or that a mistake had occurred regarding the misrepresentations of the CC&Rs.

The tenant representative argued that the owners keep stating that they were unaware of the existence of the CC&Rs—however, they were submitted into evidence to the Hearing Officer, they did exist, and they were available through public records request through the Alameda County clerk recorder's office. The tenant representative contended that the CC&Rs were in existence and since 2007 and that they were easily



discoverable. The tenant representative argued that it is the owners' burden when seeking an exemption to provide all documentation necessary for a Hearing Officer to determine whether or not an exemption should be granted. The tenant representative contended that the owners did not provide these—and that even if the owners were unaware of the existence of the CC&Rs, they asserted and stated affirmatively upon questioning by the Hearing Officer that the CC&Rs did not exist. The tenant representative argued that the owners also stated that they existed but were verbal. The tenant representative contended that if the owners did not know truly know about the existence the CC&Rs—they could have stated such, rather than making an assertion and misleading the Hearing Officer. The tenant representative also argued that the owners could have also asked for more time to supplement the record—and then they could have inserted the CC&Rs upon discovery.

The tenant representative argued that the owners have not tried to correct the record, even after certified copies of the CC&Rs were provided to RAP directly from the county clerk recorder's office. The tenant representative contended that it is true that the CC&Rs exist and that they have existed since 2007—and argued that even if the owners were unaware of the CC&Rs, they asserted that they knew something about them, that they knew that they did not exist; but at the same time, somehow—they did exist, but only in verbal form. The tenant representative argued that this is enough to constitute a misrepresentation because the owners stated things that they did not know to be true.

After parties' arguments, questions to the parties, and Board discussion, Chair Ingram moved to uphold the Hearing Officer's remand decision on the basis that the determination made by the Hearing Officer, that there was mistake or fraud, was supported by substantial evidence. Member Williams seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, D. Taylor, D. Williams, K. Brodfuehrer  
**Nay:** None  
**Abstain:** None

The motion was approved.

**7. RESOLUTION TO RECOMMEND AMENDMENT TO THE RENT ADJUSTMENT PROGRAM REGULATIONS**

- a. Chair Ingram and Deputy City Attorney, Braz Shabrell, presented to the Board a proposed resolution to recommend amendments to the Rent Adjustment Program Regulations. Final revisions will be made and the final proposed resolution will be brought back to the Board at a future meeting.

**8. INFORMATION AND ANNOUNCEMENTS**

- a. Deputy City Attorney, Braz Shabrell, staff, and fellow Board members wished Chair Ingram a Happy Birthday.
- b. Chair Ingram thanked all the Board members who attended the Board and Commissions mixer that was hosted by the City Administrator's office.

**9. SCHEDULING AND REPORTS**

- a. None

**10. OPEN FORUM**

- a. No members of the public spoke during open forum.

**11. ADJOURNMENT**

- a. The meeting was adjourned at 7:24 p.m.

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND  
RELOCATION BOARD (HRRRB)**

**RESOLUTION NO. \_\_\_\_\_**

**INTRODUCED BY BOARD CHAIR DENARD INGRAM**

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**RESOLUTION TO RECOMMEND AMENDMENT OF THE RENT ADJUSTMENT PROGRAM REGULATIONS TO (1) EXTEND AMORTIZATION PERIOD FOR MANDATORY SEISMIC RETROFITS TO 25 YEARS; (2) REDUCE ARGUMENT TIME TO SIX (6) MINUTES PER PARTY; (3) REMOVE APPEARANCE REQUIREMENT FOR APPELLANT AT APPEAL HEARINGS; (4) ALLOW NON-VOTING ALTERNATES TO PARTICIPATE IN BOARD MEETINGS IN NON-VOTING CAPACITY; (5) ADD GOOD CAUSE HEARINGS FOR FAILURE TO APPEAR AT HEARINGS; (6) CHANGE MEETING TIME TO 6 PM; (7) CODIFY EXISTING PROCEDURAL PRACTICES IN REGULATIONS; AND (8) MAKE OTHER CLARIFYING AND REORGANIZATION CHANGES**

**WHEREAS**, the Housing, Residential Rent and Relocation Board may make recommendations to the City Council or appropriate City Council committee pertaining to Chapter 8.22 of the Oakland Municipal Code (O.M.C.) or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so, pursuant to O.M.C. 8.22.040 D.4; and

**WHEREAS**, on January 22, 2019, the City Council adopted Ordinance No. 13516, to require mandatory seismic evaluation and retrofit of certain multifamily residential buildings; and

**WHEREAS**, in Ordinance No. 13516, the City Council directed the Rent Board to revise the capital improvements amortization schedule in the Rent Program Regulations to provide an

amortization period for Mandatory Seismic Capital Improvements that conforms with the Rent Board's final motion passed during Item 5 of their July 9, 2015 meeting; and

**WHEREAS**, on June 21, 2022, the City Council adopted Ordinance No. 13695, which established a rent registry and requires evidence of registration before submitting an owner petition or an owner response to a tenant petition; and now, therefore, be it

**WHEREAS**, Rent Adjustment Program Regulation Section 8.22.120.I. provides that if an appellant fails to appear at an appeal hearing, the Board will consider the appeal dropped and will issue a decision dismissing the appeal, subject to the appellant showing good cause for the failure to appear; and

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.120.D.2. provides that unless the Board or Appeal Panel votes otherwise, each party will have fifteen (15) minutes to present argument on or in opposition to the appeal; and

**WHEREAS**, on October 20, 2020, the City Council adopted Ordinance No. 13618 (Efficiency Ordinance), to among other things, streamline Rent Board meetings by allowing the Housing, Residential Rent and Relocation Board (Rent Board) to limit argument time for each party to six (6) minutes; and

**WHEREAS**, to make the appeal process more efficient and to minimize time commitment for parties to appeals, the Rent Board wishes to make appearances at appeals voluntary and reduce argument time to six (6) minutes per side; and

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.100.B provides that if a petitioner fails to appear at a properly noticed mediation, the Hearing Officer may dismiss the case; and

**WHEREAS**, because mediations are voluntary, the Rent Board wishes to amend the regulations to allow parties who miss a mediation the opportunity to receive a hearing on the petition; and

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.110.B provides that if a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may dismiss the case;

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.110 does not currently outline any good-cause relief for a party that fails to appear at a properly noticed hearing except through the appeal process; and

**WHEREAS**, either party can potentially wait an extended period of time for a scheduled appeal hearing just to address their good cause evidence, depending on the number of pending petitions; and

**WHEREAS**, significant wait times for either party to be able to present their good-cause evidence can, in some occasions, significantly impact the relief that can be granted by the Appeal

Body or by the Hearing Officer; and

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.040 does not currently address Alternate Board Members and their participation in scheduled Board meetings unless they are filling in for regular members; and

**WHEREAS**, allow non-voting alternates to participate in board meetings would allow alternates to learn about the Rent Board in a non-voting capacity; and

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.090.B.1 provides that A Tenant petition or response to an Owner petition is not considered filed unless the tenant submits evidence that the tenant is current on rent or lawfully withholding rent; and

**WHEREAS**, consistent with the Rent Board's recommendation to City Council to remove the current on rent requirement from the Rent Adjustment Ordinance, the Rent Board wishes to remove the requirement for the tenant be current on rent before filing a petition from the Rent Adjustment Regulations; and

**WHEREAS**, the Rent Board wishes to revise the Rent Adjustment Regulations to clarify rent board procedures from case precedents and codify them in regulations;

**WHEREAS**, the Housing, Residential Rent and Relocation Board seeks to ensure that all covered Oakland tenants and property owners have equitable access to the protections and relief provided by the Rent Adjustment Ordinance; now, therefore, be it

**RESOLVED**, That the Housing, Residential Rent and Relocation Board recommends the City Council amend the Rent Adjustment Program Regulations by adopting the attached amendments to the Rent Adjustment Regulations;

**RESOLVED:** That the Rent Board wishes to amend the Rent Adjustment Regulations consistent with these ordinance changes; and be it

**FURTHER RESOLVED:** That the Rent Board approves the attached Rent Adjustment Regulation amendments and forwards the attached regulation amendments to City Council for approval; and be it

**Proposed Amendments to the Rent Adjustment Regulations Sections 8.22.020-040, 8.22.060, 8.22.070, 8.22.090-120, and Appendix A.** (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

**8.22.020 DEFINITIONS.**

“Additional Occupancy Level” means a number equal to the total number of occupants minus the base occupancy level, as defined by O.M.C 8.22.020 and Regulation 8.22.020.

“Base occupancy level” means the number of tenants occupying the covered unit as principal residence as of June 16, 2020, with the owner’s knowledge, or allowed by the lease or rental agreement effective as of June 16, 2020, whichever is greater, except that, for units that had an initial rent established on or after June 17, 2020, “base occupancy level” means the number of tenants allowed by the lease or rental agreement entered into at the beginning of the current tenancy. When there is a new lease or rental agreement solely as a result of adding one or more additional occupants to the lease or rental agreement, the “beginning of the current tenancy” refers to the tenancy existing prior to the new lease or rental agreement regarding the additional occupant(s).

“Imputed interest” means ~~the average of the 10 year United States treasury bill rate and the 10 year LIBOR swap rate~~ for the quarter prior to the date the permits for the improvements were obtained plus an additional one and one-half percent, to be taken as simple interest. The Rent Program will post the quarterly interest rates allowable.

“Initial Base Rent” means the monthly rental rate during the initial term of tenancy. If the rental agreement provides for a period of “free” or discounted rent within its initial term, the initial base rent shall account for the “free” or discounted period. Notwithstanding any agreement to the contrary, the “rental rate” is the total lawful consideration (excluding the security deposit) charged by the owner in the initial term of the lease divided by the number of months in the lease term.

“Landlord”: For the purpose of these rules, the term "landlord" will be synonymous with owner or lessor of real property that is leased or rented to another and the representative, agent, or successor of such owner or lessor.

“Manager”: A manager is a paid (either salary or a reduced rental rate) representative of the landlord.

“Petitioner”: A petitioner is the party (landlord or tenant) who first files an action under the ordinance.

“Primary tenant” means a tenant who resides in a covered unit, is not an owner of record of the property, and charges rent to or receives rent from one or more subtenants in the covered unit.

“Principal Residence” means the one dwelling place where an individual primarily resides. Such occupancy does not require that the individual be physically present in the dwelling place at all times or continuously, but the dwelling place must be the individual’s usual or intended place of return. A Principal Residence is distinguishable from one kept primarily for secondary residential occupancy, such as a pied-a-terre or vacation home, or non-residential use, such as storage or commercial use. A determination of Principal Residence shall be based on the totality of circumstances, which may include, but are not limited to, the following factors: (1) whether the individual carries on basic living activities at the subject premises; (2) whether the individual maintains another dwelling and, if so, the amount of time that the individual spends at each dwelling place and indications, if any, that residence in one dwelling is temporary; (3) the subject premises are listed as the individual’s place of residence on any motor vehicle registration, driver’s license, voter registration, or with any other public agency, including Federal, State and local taxing authorities; (4) utilities are billed to and paid by the individual at the subject premises; (5) all or most of the individual’s personal possessions have been moved into the subject premises; (6) a

homeowner's tax exemption for the individual has not been filed for a different property; (7) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, incarceration, or other reasonable temporary periods of absence.

"Respondent": A respondent is the party (landlord or tenant) who responds to the petitioner.

"Staff" means the staff appointed by City Administrator to administer the Rent Adjustment Program.

"Subtenant," for purposes of Regulation 8.22.025, means a tenant who resides with and pays rent to one or more primary tenants, rather than directly to the owner to whom the primary tenant(s) pay rent, for the housing services provided to the subtenant.

## **8.22.030 EXEMPTIONS.**

### **A. Dwelling Units That Are Not Covered Units**

1. In order to be a Covered Unit, the Owner must be receiving Rent in return for the occupancy of the dwelling unit.
  - a. Rent need not be cash, but can be in the form of “in-kind” services or materials that would ordinarily be the Owner’s responsibility.
    - i. For example, a person who lives in a dwelling unit and paints the premises, repairs damage, or upgrades the unit is considered to be paying Rent unless the person caused the damage.
  - b. Payment of some of expenses of the dwelling unit even though not all costs are paid is Rent.
    - i. Payment of all or a portion of the property taxes or insurance.
    - ii. Payment of utility costs that are not directly associated with the use of the unit occupied.
2. If California law determines that an “employee of the Owner”, including a manager who resides in the Owner’s property, is not a Tenant, then the dwelling unit occupied by such person is not subject to OMC Chapter 8.22 so long as the person is an employee and continues to reside in the unit.

### **B. Types of Dwelling Units Exempt**

1. Subsidized units. Dwelling units whose rents are subsidized by a governmental unit, including the federal Section 8 voucher program.
2. Newly constructed dwelling units (receiving a certificate of occupancy after January 1, 1983).
  - a. Newly constructed units include legal conversions of uninhabited spaces not used by Tenants, such as:
    - i. Garages;
    - ii. Attics;
    - iii. Basements;
    - iv. Spaces that were formerly entirely commercial.
  - b. Any dwelling unit that is exempt as newly constructed under applicable interpretations of the new construction exemption pursuant to Costa-Hawkins (California Civil Code Section 1954.52).
  - 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.
3. ~~Substantially rehabilitated buildings.~~
  - a. ~~In order to qualify for the substantial rehabilitation exemption, the rehabilitation work must be completed within a two (2) year period after the issuance of the building permit for the work unless the Owner demonstrates good cause for the work exceeding two (2) years.~~
  - b. ~~For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units~~Reserved.
4. Dwelling Units Exempt Under Costa-Hawkins. Costa-Hawkins addresses dwelling units that are exempt under state law. The Costa Hawkins exemptions are contained at California Civil Code Section 1954.52. ~~The text of Costa-Hawkins is attached as an appendix to OMC Chapter 8.22.~~

### **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, or is no longer valid due to an intervening material change in law or circumstances, and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.

## **8.22.040 THE BOARD.**

### **A. Meetings**

1. Notice. Meetings shall be noticed and the agenda posted in accordance with the Ralph M. Brown Act (California Government Code Sections 54950, et. seq. (“Brown Act”) and Sunshine Ordinance (OMC Chapter 2.20).)
2. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month, unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.
3. Special Meetings. Meetings called by the Mayor or City Administrator, or meetings scheduled by the Board for a time and place other than regular meetings are to be designated Special Meetings. The agenda of Special Meetings shall be restricted to those matters for which the meeting was originally called and no additional matters may be added to the agenda.
4. Adjourned or Rescheduled Meetings. A meeting may be adjourned to a time and place to complete the agenda if voted by the Board members present. A rescheduled meeting may be held when a quorum cannot be convened for a regular meeting or when a quorum votes to substitute another time and/or place for a scheduled meeting. Notice of change of meeting time and/or place shall be sent to the City Clerk and absent Board members and provided in accordance with the Brown Act and Sunshine Ordinance.
5. Time of Meetings. Board meetings shall start at ~~7~~<sup>7</sup>:00 p.m. and end by 10:00 p.m. unless some other time is set in advance or the meeting is extended by a vote of the Board.
6. Location of Meetings. The Board meetings shall be held at City Hall, One Frank H. Ogawa Plaza, Oakland, CA 94612, unless otherwise designated.
7. Agenda. The agenda for each meeting shall be posted at such time and places as required by the Brown Act and Sunshine Ordinance.
8. Board meetings shall be conducted in accordance with “Robert’s Rules of Order (Newly Revised),” unless modified by these Regulations, requirements of the Brown Act or Sunshine Ordinance, or the Board.
9. Open to Public. The meetings shall be open to the public in accordance with the Brown Act and the Sunshine Ordinance, except for circumstances where the Brown Act or Sunshine Ordinance permits the Board to address a matter in closed session, such as litigation or personnel matters.
10. Board Vacations. The Board may schedule dates during the year when no regular Board meetings may be held so that the entire Board may take vacations. The Board must schedule vacation times at least two (2) months prior to the date of the vacation time.
11. Alternate Board Members. Alternate board members may participate in discussion and deliberations, but will only be allowed to vote when filling in for a regular member who is not

present or who has been excused from consideration of or voting on a matter by the Board.

## **B. Quorum and Voting**

1. Four Board members constitutes a quorum of the Board.
2. Decisions of the Board. For the Board to make a decision on the first time a matter comes before the Board, the quorum must include at least one of each of the three categories of Board members (Tenant, residential rental property Owner, and one who is neither of the foregoing). If a matter cannot be decided because at least one of each of the three categories of Board members is not present, the matter will be considered a second time at a future meeting where the matter can be decided even if at least one member from each category is not present. A majority of the Board members present are required to make decisions, provided a quorum is present and sufficient members of each category are present.
3. A Board member who does not participate in a matter because of a conflict of interest or incompatible employment neither counts towards a quorum nor in calculating the number of Board members required to make a majority.
4. Special voting requirements for Just Cause for Eviction regulations enacted as part of partial settlement of *Kim v. City of Oakland*, Alameda County Superior Court Case No. RG03081362 (the "Settlement Regulations").

a. The special voting requirements set out in this subsection apply only to the Just Cause for Eviction regulations set out in Exhibit A.

b. The Settlement Regulations may be amended only by affirmative vote of at least five (5) members of the Rent Board, provided that at least one member from each class of Rent Board members (homeowner, landlord, and tenant) affirmatively votes to modify the Settlement Regulations.

c. Before the Board adopts any amendments to the Settlement Regulations, the Board must introduce the proposed amendments at a meeting, hold a public hearing at which members of the public and interested organizations, including the Rental Housing Association of Northern Alameda County, Inc. and Just Cause Oakland, are noticed, and the amendments can only be considered for adoption at a subsequent meeting.

d. After the introduction of proposed amendments to the Settlement Regulations, if the Board decides to further consider the adoption of the regulations and sets a public hearing to do so, the Board must also transmit the proposed amendments to the appropriate committee of the City Council so the City Council may have the option of commenting on or holding its own hearing before the Rent Board votes to adopt or reject the proposed amendments. If the Council elects not to comment on the proposed amendments or does not comment on them within 90 days after transmittal of the proposed amendments by the Rent Board, the Rent Board may proceed to vote on the proposed amendments.

**C. Officers**

1. The Board shall select a Chair from among the Board members who are neither tenants nor residential rental property owners. Each Appeal Panel shall be chaired by the member of that panel who is neither a tenant nor a residential rental property owner.
2. The Board may also select a Vice-Chair (who is neither a Tenant nor an Owner) to act as Chair in the Chair's absence.
3. The Officers shall serve one-year terms.
4. The Board shall elect Officers each year at the second meeting in February.
5. The Chair votes on matters as any other Board member.

**D. Standing Committees**

The Board may establish standing committees subject to prior approval of the City Council. A request to create a standing committee must include:

1. The staffing costs for the committee; and
2. The costs of complying with meeting noticing requirements.

**8.22.060 NOTICE OF THE EXISTENCE OF CHAPTER 8.22 REQUIRED AT COMMENCEMENT OF TENANCY.**

A. Providing Notice in Multiple Languages

1. The requirement to provide the Notice of the Existence of Chapter 8.22 Required at Commencement of Tenancy in multiple languages took effect on September 21, 2016 and only applies to new tenancies that commenced on or after that date.

2. No Owner will be penalized for failing to comply with this requirement until the later of sixty (60) days after the Rent Program makes a general announcement of the requirement or all the translations are available on the Rent Program website.

3. Until September 21, 2017, no Owner will be denied a Rent increase for failing to provide the notice in the required languages, unless:

a. the Tenant is proficient in one of the non-English languages specified in OMC 8.22.060 (Spanish or Chinese), and is not proficient in English;

or

b. the Owner negotiated the terms of the rental agreement in either Spanish or Chinese and failed to give the notice in that language.

## **8.22.070 RENT ADJUSTMENTS FOR OCCUPIED COVERED UNITS.**

### **A. Purpose**

This section sets forth the Regulations for a Rent adjustment exceeding the CPI Rent Adjustment and that is not authorized as an allowable increase following certain vacancies.

### **B. CPI and Banking Rent Adjustments**

1. If a landlord chooses to increase rents less than the annual CPI Adjustment [formerly Annual Permissible Increase] permitted by the Ordinance, any remaining CPI Rent Adjustment may be carried over to succeeding twelve (12) month periods (“Banked”). However, the total of CPI Adjustments imposed in any one Rent increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the Rent Increase notice.

2. Banked CPI Rent Adjustments may be used together with other Rent justifications, except Increased Housing Service Costs and Fair Return, because these justifications replace the current year’s CPI increase.

3. In no event may any banked CPI Rent Adjustment be implemented more than ten years after it accrues.

### **C. Justifications for a Rent Increase in Excess of the CPI Rent Adjustment or Banking**

~~1. Regulations regarding~~ 1. The justifications for a Rent increase in excess of the CPI Rent Adjustment or Banking are attached as Appendix A to these Regulations. The justifications are: banking; capital improvement costs; uninsured repair costs; increased housing service costs; the rent increase is necessary to meet constitutional or fair return requirements; additional occupant as defined by OMC 8.22.020; and Tenant does not reside in the unit as their principal residence; and the rent increase is necessary to meet constitutional or fair return requirements.

**a. Capital Improvement Costs:** Capital Improvement Costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements primarily must benefit the tenant rather than the landlord.

(1) Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date the petition for a rent increase based on the improvements is filed.

(2) Eligible capital improvements include, but are not limited to, the following items:

1. Those improvements which primarily benefit the tenant rather than the landlord. (For example, the remodeling of a lobby would be eligible as a capital improvement, while the construction of a sign advertising the rental complex would not be eligible). However, the complete painting of the exterior of a building, and the complete interior painting of internal dwelling units are eligible capital improvement costs.

2. In order for equipment to be eligible as a capital improvement cost, such equipment must be permanently fixed in place or relatively immobile (for example, draperies, blinds, carpet, sinks, bathtubs, stoves, refrigerators, and kitchen cabinets are eligible capital

improvements. Hot plates, toasters, throw rugs, and hibachis would not be eligible as capital improvements).

3. Except as set forth in subsection 4, repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements.

4. The following may not be considered as capital improvements:

a. Repairs for code violations may not be considered capital improvements if the Tenant proves the following:

i. That a repair was performed to correct a Priority 1 or 2 Condition from the list set forth in Subsection (8), below, that was not created by the Tenant, which may be demonstrated by any of the following:

(a) the condition was cited by Code Enforcement Services in a notice of violation; or ~~a City Building Services Inspector as a Priority 1 or 2 Condition;~~

(b) the Tenant produces factual evidence to show that had the property or unit been inspected, Code Enforcement Services would have issued a notice of violation. ~~by a City Building Services Inspector, the Inspector would have determined the condition to be a Priority 1 or 2 Condition, but the~~ The Hearing Officer may determine that in order to decide if a condition is a Priority 1 or 2 Condition expert testimony is required, in which case the Hearing Officer may require such testimony.

ii. That the tenant

(a) informed the Owner of the condition in writing;

(b) otherwise proves that the landlord knew of the conditions, or

(c) proves that there were exceptional circumstances that prohibited the tenant from submitting needed repairs in writing; and

iii. That the Owner failed to repair the condition within a reasonable time after the Tenant informed Owner of the condition or the Owner otherwise knew of the condition.

iv. A reasonable time is determined as follows:

(a) If the condition was cited by a City Building Services Inspector and the Inspector required the repairs to be performed within a particular time frame, or any extension thereof, the time frame set out by the Inspector is deemed a reasonable time; or

(b) Ninety (90) days after the Owner received notice of the condition or otherwise learned of the condition is presumed a reasonable time unless either of the following apply:

(1) the violation remained unabated for ninety (90) days after the date of notice to the Owner and the Owner demonstrates timely, good faith efforts to correct the violation within the ninety the (90) days but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause; or

(2) the Tenant demonstrated that the violation was an immediate threat to the health and safety of occupants of the property, [in which case] fifteen (15) business days is presumed a reasonable time unless:

(i) the Tenant proves a shorter time is reasonable based on the hazardous nature of the condition,

and the ease of correction, or  
(ii) the Owner demonstrates timely, good faith efforts to correct the violation within the fifteen (15) business days after notice but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause.

(c) If an Owner is required to get a building or other City permit to perform the work, or is required to get approval from a government agency before commencing work on the premises, the Owner's attempt to get the required permit or approval within the timelines set out in (i) and (ii) above shall be deemed evidence of good faith and the Owner shall not be penalized for delays attributable to the action of the approving government agency.

b. Deferred Maintenance. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

i. Among the factors that may be considered in determining if the landlord knew or should reasonably have known of the problem that caused the damage:

(a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?

(b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?

(c) Did the landlord conduct routine inspections of the property?

(d) Did the tenant permit the landlord to inspect the interior of the unit?

ii. Examples:

(a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case, replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.

(b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord or landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition, and tenant complaints.

iii. Burden of Proof

(a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.

(b) Once a tenant meets the burden to prove the landlord knew or



should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem.

c. "Gold-plating" or "Over-improvements"

i. Examples:

(a) A landlord replaces a Kenmore stove with a Wolf range. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

(b) A landlord replaces a standard bathtub with a jacuzzi bathtub. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

ii. Burden of Proof

(a) The tenant has the initial burden to prove that the improvement is greater in character or quality than existing improvements.

(b) Once a tenant meets the burden to prove that the improvement is greater in character or quality than existing improvements, the burden shifts to the landlord to prove that the tenant approved the improvement in writing, the improvement brought the unit up to current building or housing codes, or the improvement did not cost more than a substantially equivalent replacement.

d. Use of a landlord's personal appliances, furniture, etc., or those items inherited or borrowed are not eligible for consideration as capital improvements.

e. Normal routine maintenance and repair of the rental until and the building is not a capital improvement cost, but a housing service cost. (For example: while the replacement of old screens with new screens would be a capital improvement).

f. Costs for which an Owner is reimbursed (e.g., insurance, court awarded damages, subsidies, tax credits, and grants) are not capital improvement costs.

(3) Rent Increases for Capital Improvement costs are calculated according to the following rules:

1. For mixed-use structures, only the percent of residential square footage will be applied in the calculations. The same principle shall apply to landlord-occupied dwellings (i.e., exclusion of landlord's unit).

2. Items determined to be capital improvements pursuant to Section 10.2.2. shall be amortized over the useful life of the improvement as set out in the Amortization Schedule attached as Exhibit 1 to these regulations and the total costs shall be amortized over that time period, unless the Rent increase using this amortization would exceed the Rent increase limits provided by O.M.C. 8.22.070 A2 or 3. Whenever a Capital Improvement Rent increase alone or with any other Rent increases noticed at the same time for a particular Unit exceeds the limits set by O.M.C. 8.22.070 A2 or 3, if the Owner elects to recover the portion of the Capital Improvement that causes the Rent Increase to exceed the limits set by O.M.C. 8.22.070 A2 or 3, the excess can only be recovered by extending the Capital Improvement's amortization period in yearly increments sufficient to cover the excess, and complying with any requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement increase. The dollar amount of the rent increase justified by Capital Improvements shall be removed from the allowable rent at the end of the amortization period.

3. A monthly Rent increase for a Capital Improvement is determined as follows:

a. A maximum of seventy percent (70%) of the total cost for the Capital

Improvement (plus imputed interest calculated pursuant to the formula set forth in Regulation 8.22.020) may be passed through to the Tenant;

b. The amount of the Capital Improvement calculated in a. above is then divided equally among the Units that benefit from the Capital Improvement;

c. The monthly Rent increase is the amount of the Capital Improvement that may be passed through as determined above, divided by the number of months the Capital Improvement is amortized over for the particular Unit.

4. If a unit is occupied by an agent of the landlord, this unit must be included when determining the average cost per unit. (For example, if a building has ten (10) units, and one is occupied by a nonpaying manager, any capital improvement would have to be divided by ten (10), not nine (9), in determining the average rent increase). This policy applies to all calculations in the financial statement which involve average per unit figures.

5. Undocumented labor costs provided by the landlord cannot exceed 25% of the cost of materials.

6. Equipment otherwise eligible as a Capital Improvement will not be considered if a "use fee" is charged (i.e., coin-operated washers and dryers).

7. Where a landlord is reimbursed for Capital Improvements (i.e., insurance, court-awarded damages, subsidies, etc.), this reimbursement must be deducted from such Capital Improvements before costs are amortized and allocated among the units. For each improvement listed on a petition, the landlord must state whether a reimbursement or tax credit is or will be received for that improvement.

(4) In some cases, it is difficult to separate costs between rental units; common vs. rental areas; commercial vs. residential areas; or housing service costs vs. Capital Improvements. In these cases, the Hearing Officer will make a determination on a case-by-case basis.

(5) Interest on Failure to Reduce Capital Improvement Increase After End of Amortization Period.

1. If an Owner fails to reduce a Capital Improvement Rent increase in the month following the end of the amortization period for such improvement and the Tenant pays any portion of such Rent increase after the end of the amortization period, the Tenant may recover interest on the amount overpaid.

2. The applicable rate of interest for overpaid Capital Improvements shall be the rate specified by law for judgments pursuant to California Constitution, Article XV and any legislation adopted thereto and shall be calculated at simple interest.

(6) Documentation of improvement costs with proof of payment (i.e., invoices, receipts, and/or canceled checks) must be presented for all costs which are being used for justification of the proposed rent increase.

(7) Amortization of Capital Improvements. The following schedule shall be used to determine the amortization period of the capital improvement:

<u>IMPROVEMENT</u>	<u>YEARS</u>
<u>Air Conditioners</u>	10
<u>Appliances</u>	
Refrigerator	5
Stove	5
Garbage Disposal	5
Water Heater	5
Dishwasher	5
Microwave Oven	5
Washer/Dryer	5
Fans	5
<u>Cabinets</u>	10
<u>Carpentry</u>	10
<u>Counters</u>	10
<u>Doors</u>	10
Knobs	5
Screen Doors	5
<u>Earthquake Expenses</u>	
Architectural and Engineering Fees	5
Emergency Services	
Clean Up	5
Fencing and Security	5
Management	5
<u>Structural Repair and Retrofitting</u>	
Foundation Repair	10
Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Install	10

<u>IMPROVEMENT</u>	<u>YEARS</u>
<u>Seismic Retrofit</u>	<u>25</u>
<u>Electrical Wiring</u>	10
<u>Elevator</u>	20
<u>Fencing and Security</u>	
Chain	10
Block	10
Wood	10
<u>Fire Alarm System</u>	10
<u>Fire Sprinkler System</u>	20
<u>Fire Escape</u>	10
<u>Flooring/Floor Covering</u>	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
<u>Fumigation</u>	
Tenting	5
<u>Furniture</u>	5
<u>Automatic Garage Door Openers</u>	10
<u>Gates</u>	
Chain Link	10
Wrought Iron	10
Wood	10
<u>Glass</u>	
Windows	5
Doors	5
Mirrors	5
<u>Heating</u>	
Central	10

<u>IMPROVEMENT</u>	<u>YEARS</u>
Gas	10
Electric	10
Solar	10
<u>Insulation</u>	10
<u>Landscaping</u>	
Planting	10
Sprinklers	10
Tree Replacement	10
<u>Lighting</u>	
Interior	10
Exterior	10
<u>Locks</u>	5
<u>Mailboxes</u>	10
<u>Meters</u>	10
<u>Plumbing</u>	
Fixtures	10
Pipe Replacement	10
Re-Pipe Entire Building	20
Shower Doors	5
<u>Painting</u>	5
<u>Paving</u>	
Asphalt	10
Cement	10
Decking	10
<u>Plastering</u>	10
<u>Pumps- Sump</u>	10
<u>Railing</u>	10
<u>Roofing</u>	
Shingle/Asphalt	10
Built-Up, Tar, and Gravel	10
Tile and Linoleum	10
Gutters/Downspout	10

<b><u>IMPROVEMENT</u></b>	<b><u>YEARS</u></b>
<b><u>Security</u></b>	
Entry Telephone Intercom	10
Gates/Doors	10
Fencing	10
Alarms	10
<b><u>Sidewalks/ Walkways</u></b>	10
<b><u>Stairs</u></b>	10
<b><u>Stucco</u></b>	10
<b><u>Tilework</u></b>	10
<b><u>Wallpaper</u></b>	5
<b><u>Window Coverings</u></b>	
Drapes	5
Shades	5
Screens	5
Awnings	5
Blinds/Miniblinds	5
Shutters	5

(8) The following describe five major hazard conditions classified as Priorities 1 & 2:

I. MECHANICAL

Priority 1

- A. Unvented heaters
- B. No combustion chamber, fire or vent hazard
- C. Water heaters in sleeping rooms, bathrooms
- D. Open gas lines, open flame heaters

Priority 2

- A. Damaged gas appliance
- B. Flame impingement, soot
- C. Crimped gas line, rubber gas connections
- D. Dampers in gas heater vent pipes, no separation or clearance, through or near combustible surfaces
- E. Water heater on garage floor

II. PLUMBING

Priority 1

- A. Sewage overflow on surface

Priority 2

- A. Open sewers or waste lines
- B. Unsanitary, inoperative fixtures; leaking toilets
- C. T & P systems, newly or improperly installed

III. ELECTRICAL

Priority 1

- A. Bare wiring, open splices, unprotected knife switches, exposed energized electrical parts
- B. Evidence of overheated conductors including extension cords
- C. Extension cords under rugs

Priority 2

- A. Stapled cord wiring; extension cords
- B. Open junction boxes, switches, outlets
- C. Over-fused circuits
- D. Improperly added wiring

IV. STRUCTURAL

Priority 1

- A. Absence of handrail, loose, weakly-supported handrail
- B. Broken glass, posing potential immediate injury
- C. Hazardous stairs
- D. Collapsing structural members

Priority 2

- A. Garage wall separation
- B. Uneven walks, floors, tripping hazards
- C. Loose or insufficient supporting structural members
- D. Cracked glass, leaky roofs, missing doors (exterior) and windows
- E. Exit, egress requirements; fire safety

Note: Floor separation and stairway enclosures in multi-story handled on a case basis.

V. OTHER

Priority 1

- A. Wet garbage

- B. Open wells or unattended swimming pools

- C. Abandoned refrigerators
- D. Items considered by field person to be immediate hazards

Priority 2

- A. Broken-down fences or retaining walls
- B. High, dry weeds, next to combustible surfaces
- C. Significant quantity of debris
- D. Abandoned vehicles

Questions concerning permits, repairs and compliance schedules should be referred to code enforcement office of the City of Oakland — (510) 238-3381.

**b. Uninsured Repair Costs:** Uninsured Repair Costs are costs for work done by a landlord or tenant to a rental unit or to the common area of the property or structure containing a rental unit which is performed to secure compliance with any state or local law as to repair damage resulting from, fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds

(1) Uninsured Repair Costs are those costs incurred as a result of natural causes and casualty claims; it does not include improvement work or code correction work. Improvements work or code correction work will be considered either capital improvements or housing services, depending on the nature of the improvement.

(2) Increases justified by Uninsured Repair Costs will be calculated as Capital Improvement costs.

**c. Increased Housing Service Costs:** Increased Housing Service Costs are services provided by the landlord related to the use or occupancy of a rental unit, including, but not limited to, insurance, repairs, replacement maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service and employee services. Any repair cost that is the result of deferred maintenance, as defined in Appendix A, Section 10-2-28.22.070.C.1.a(2)(4)(b), cannot be considered a repair for calculation of Increased Housing Service Costs. Property tax is not considered a housing service cost.

(1) In determining whether there has been an increase in housing service costs, consider the annual operating expenses for the previous two years. (For example: if the rent increase is proposed in 1993, the difference in housing service costs between 1991 and 1992 will be considered.) The average housing service cost percentage (%) increase per month per unit shall be derived by dividing this difference by twelve (12) months, then by the number of units in the building and finally by the average gross operating income per month per unit (which is determined by dividing the gross monthly operating income by the number of units). Once the percentage increase is determined the percentage amount must exceed the allowable rental increase deemed by City Council. The total determined percentage amount is the actual percentage amount allowed for a rental increase.

(2) Any major or unusual housing service costs (i.e., a major repair which does not occur every year) shall be considered a capital improvement. However, any repair cost that is not eligible as a capital improvement because it is deferred maintenance pursuant to Appendix A, Section 10-2-28.22.070.C.1.a(2)(4)(b), may not be considered a repair for purposes of calculating Increased Housing Service Costs.

(3) Any item which has a useful life of one year or less, or which is not considered to be a capital improvement, will be considered a housing service cost (i.e., maintenance and repair).

(4) Individual housing service cost items will not be considered for special consideration. For example, PG&E increased costs will not be considered separately from other housing service costs.

(5) Documentation (i.e., bills, receipts, and/or canceled checks) must be presented for all costs which are being used for justification of the proposed rent increase.

(6) Landlords are allowed up to 8% of the gross operating income of unspecified expenses (i.e., maintenance, repairs, legal and management fees, etc.) under housing service costs unless verified documentation in the form of receipts and/or canceled checks justify a greater percentage.

(7) If a landlord chooses to use 8% of his/her income for unspecified expenses, it must be applied to both years being considered under housing service cost (for example, 8% cannot be applied to 1980 and not 1981).

(8) An Increased Housing Service Costs increase may not be taken in the same year as a CPI increase because it replaces the current year's CPI increase.

~~1.8 A decrease in housing service costs (i.e., any items originally included as housing service costs such as water, garbage, etc.) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.~~

~~1.9 The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs.~~

~~1.10 When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E. The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent.~~

**d. "Fair Return"**

(1) Owners are entitled to the opportunity to receive a fair return. Ordinarily, a fair return will be measured by maintaining the net operating income (NOI) produced by the property in a base year, subject to CPI related adjustments. Permissible rent increases will be adjusted upon a showing that the NOI in the comparison year is not equal to the base year NOI.

(2) Maintenance of Net Operating Income (MNOI) Calculations

1. The base year shall be the calendar year 2014.
  - a. New owners are expected to obtain relevant records from prior owners.
  - b. Hearing officers are authorized to use a different base date, however, if an owner can demonstrate that relevant records were unavailable (e.g., in a foreclosure sale) or that use of base year 2014 will otherwise result in injustice.
2. The NOI for a property shall be the gross income less the following: property taxes, housing service costs, and the amortized cost of capital improvements. Gross income shall be the total of gross rents lawfully collectible from a property at 100% occupancy, plus any other consideration received or



receivable for, or in connection with, the use or occupancy of rental units and housing services. Gross rents collectible shall include the imputed rental value of owner-occupied units.

3. When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with the expense level for that item for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

(3) Owners may present methodologies alternative to MNOI for assessing their fair return if they believe that an MNOI analysis will not adequately address the fair return considerations in their case. To pursue an alternative methodology, owners must first show that they cannot get a fair return under an MNOI analysis. They must specifically state in the petition the factual and legal bases for the claim, including any calculations.

**e. Additional Occupants**

As provided by O.M.C. 8.22.020, “Additional occupant,” the addition of occupants above the base occupancy level, as defined by the Rent Adjustment Ordinance, allows an owner to petition to increase the rent by an amount up to 5% for each occupant above the base occupancy level. Such petitions must be filed within ninety (90) days of approval, or deemed approval as provided by O.M.C. 8.22.360.A.2.b, of the tenant’s written request to add the occupant. No rent increase shall be granted for an additional occupant who is the spouse, registered domestic partner, parent, grandparent, child, adopted child, foster child, or grandchild of an existing tenant, or the legal guardian of an existing tenant’s child or grandchild who resides in the unit, or a caretaker/attendant as required for a reasonable accommodation for an occupant with a disability.

Such rent increases must be reversed by the Owner if the additional occupancy level decreases, beginning with the most recently granted increase. Once a tenant provides written notice to the Owner of a decrease in the additional occupancy level and lists all current occupants, the Owner must provide written notice within fifteen (15) days to the tenant of the applicable reduced rent, effective as of the next regular rent due date occurring no sooner than thirty (30) days after the tenant’s written notice.

If there are changes in occupancy following a tenant’s request to add an occupant and, prior to the Owner’s 15-day rent reduction notice deadline and the Owner issuing the notice, the additional occupancy level remains the same (e.g., a departing occupant is replaced), the Owner need not issue the rent reduction notice and the rent increase granted due to the prior additional occupant shall remain in effect, until and unless the additional occupancy level decreases. When the additional occupancy level remains the same following a change in occupancy, the Owner may not be granted a new additional occupant rent increase for any additional occupant that is added. The number of rent increases for additional occupants that currently apply to the rent may not exceed the additional occupancy level.

**f. Tenant Not Residing in Unit as Principal Residence** [Added May 5, 2021, but does not take effect until 3 months after the Local Emergency regarding the COVID-19 pandemic declared on March 9, 2020, is terminated by the City Council]

An Owner who seeks to impose a rent increase without limitation because the Tenant is not residing in the unit as their principal residence must petition for approval of the unrestricted rent increase based on a determination made pursuant to a hearing that the Tenant does not reside in the unit as their principal residence as of the date the petition is filed. The Hearing Officer shall not consider evidence in support of a petition that is obtained in violation of California Civil Code Section 1954 or the Oakland Tenant Protection Ordinance.

D. Rent Adjustment Based on Decreased Housing Services

1. A decrease in housing services ~~costs~~ (i.e., any items originally included as housing services ~~costs~~ such as water, garbage, etc.) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent). ~~If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.~~

2. The transfer of utility costs to the tenant by the landlord is considered a decrease in housing services, unless the tenant agreed to the transfer at the inception of the tenancy or not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs.

3. When more than one rental unit shares any type of utility bill with another ~~rental~~ unit, it is illegal to divide up the bill between units. ~~Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E.~~ The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill and build the cost into the initial rent.

## 8.22.090 PETITION AND RESPONSE FILING PROCEDURES.

### A. Filing Deadlines

1. In order for a document to meet the filing deadlines prescribed by OMC Chapter 8.22.090, documents must be received by the Rent Adjustment Program offices no later than 5 PM on the date the document is due. A postmark is not sufficient to meet the requirements of OMC Chapter 8.22.090. Additional Regulations regarding electronic and facsimile filing will be developed when these filing methods become available at the Rent Adjustment Program.

2. Electronically filed documents must be received by the Rent Adjustment Program no later than 11:59 PM on the date the document is due.

### B. Subtenant Petitions

1. Primary tenant responses to subtenant petitions described by Regulation 8.22.025 are not subject to the Owner response requirements in this section.

### C. Supporting Documentation

1. Petitions and responses are not considered filed until all filing requirements have been met, including the requirement to submit organized documentation justifying a rent increase or exemption. Petitions and responses that are submitted without necessary documentation may be dismissed.

2. Any additional documentation not submitted together with the petition or response must be filed and served on the other party at least seven (7) days prior to the scheduled hearing.

### B. Tenant Petition and Response Requirements

1. A Tenant petition or response to an Owner petition is not considered filed until the following has been submitted:

a. Evidence that the Tenant is current on his or her Rent or is lawfully withholding Rent. For purposes of filing a petition or response, a statement under oath that a Tenant is current in his or her Rent or is lawfully withholding Rent is sufficient, but is subject to challenge at the hearing;

b. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath; and

e. For Decreased Housing Services claims, organized documentation clearly showing the Housing Service decreases claimed and the claimed value of the services, and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file.

d. Proof of service by first class mail or in person of the tenant petition or response and any supporting documents on the owner.

2. Subtenant petitions described by Regulation 8.22.025 and Primary Tenant responses to them are subject to the tenant petition and response requirements in this section.

### **C. Owner Petition and Response Requirements**

1. An Owner's petition or response to a petition is not considered filed until the following has been submitted:

a. Evidence that the Owner has paid his or her City of Oakland Business License Tax;

b. Evidence that the Owner has paid his or her Rent Program Service Fee;

c. Evidence that the Owner has provided written notice, to all Tenants affected by the petition or response, of the existence and scope of the Rent Adjustment Program as required by OMC 8.22.060. For purposes of filing a petition or response, a statement that the Owner has provided the required notices is sufficient, but is subject to challenge at the hearing;

ii. After July 1, 2023, evidence of registration with the Rent Adjustment Program as required by O.M.C. 8.22.510 for each affected covered unit in the building prior to the petition or response being filed;

d. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath;

e. Organized documentation clearly showing the Rent increase justification and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file; and

f. Proof of service by first class mail or in person of the owner petition or response and any supporting documents on the tenants of all units affected by the petition. Supporting documents that exceed twenty five (25) pages are exempt from the service requirement, provided that: (1) the owner petition form must be served by first class mail or in person; (2) the petition or attachment to the petition must indicate that additional documents are or will be available at the Rent Adjustment Program; and (3) the owner must provide a paper copy of supporting documents to the tenant or the tenant's representative within ten (10) days if a tenant requests a paper copy in the tenant's response.

2. Primary tenant responses to subtenant petitions described by Regulation 8.22.025 are not subject to the Owner response requirements in this section.

### **D. Time of Hearing and Decision**

1. The time frames for hearings and decisions set out below are repeated from OMC 8.22.110 D.

2. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.

3. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later.

**E.D. Designation of Representative**

Parties have the right to be represented by the person of their choice. A Representative does not have to be a licensed attorney. Representatives must be designated in writing by the party. Notices and correspondence from the Rent Adjustment Program will be sent to representatives as well as parties so long as a written Designation of Representative has been received by the Rent Adjustment Program at least ten (10) days prior to the mailing of the notice or correspondence. Parties are encouraged to designate their representatives at the time of filing their petition or response whenever possible.

## **8.22.100     MEDIATION OF RENT DISPUTES.**

### **A.     Availability of Mediation**

Voluntary mediation of Rent disputes will be available to all parties participating in Rent adjustment proceedings after the filing of a petition and response. Mediation will only be conducted in those cases in which all parties agree in advance to an effort to mediate the dispute.

### **B.     Procedures**

1. Parties who desire mediation shall have the choice between the use of Rent Adjustment Program Staff Hearing Officers acting as mediators or the selection of an outside mediator. Staff Hearing Officers shall be made available to conduct mediations free of charge. The Rent Adjustment Program will develop a list of available outside mediators for those who do not wish to have Staff Hearing Officers mediate rent disputes. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

2. The following rules apply to mediations conducted by Staff Hearing Officers and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and a hearing on the petition will be scheduled;

c. Written notice of the mediation session shall be served on the parties by the Rent Adjustment Program in accordance with OMC 8.22.110.

d. It is the goal to have the mediation scheduled within the first 30 days after the response to the petition is filed.

e. Absence Of Parties. If either party fails to appear for a properly noticed mediation, the Hearing Officer will refer the matter to the Rent Adjustment Program for administrative review or hearing on the petition, whichever is appropriate.

~~i. If a petitioner fails to appear at a properly noticed mediation, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case.~~

~~ii. If a respondent fails to appear, the Hearing Officer will refer the matter to the Rent Adjustment Program for administrative review or hearing on the petition, whichever is appropriate.~~

3. The following rules apply to mediations conducted by outside mediators and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. The Rent Adjustment Program will not schedule the mediation; the parties will be responsible for scheduling the mediation between themselves and the mediator and for notifying the Rent Adjustment Program of the time and date for the mediation;

c. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and an administrative hearing will be scheduled.

~~d. In the event that the responding either party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative review and or hearing on the petition, whichever is appropriate.~~

~~d. In the event that the petitioning party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative dismissal of the petition.~~

4. The Regulations regarding representation by an agent and translation apply to mediations.

5. If the parties fail to settle the rent dispute through the mediation process after a good faith effort, a hearing on the petition will be scheduled on a priority basis with a Staff Hearing Officer. If the mediation was conducted by a Staff Hearing Officer, the hearing on the petition will be conducted by a different Hearing Officer.

6. If the parties reach an agreement during the mediation, a written mediation agreement will be prepared immediately by the mediator and signed by the parties at the conclusion of the mediation. To the extent possible, mediation agreements shall be self-enforcing. The Hearing Officer will issue an order corresponding to the mediated agreement and signed by the parties that either dismisses the petition or grants the petition according to terms set out in the mediation agreement.

7. A settlement agreement reached by the parties will become a part of the record of the proceedings on the petition unless the parties otherwise agree.

8. The parties cannot agree to grant an Owner a permanent exemption of for dwelling unit. Permanent exemption claims must be decided by a Hearing Officer after a hearing on the evidence.

### **C. Postponements of Mediations Before Hearing Officers**

1. A Hearing Officer or designated Staff member may grant a postponement of the mediation only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" includes but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or

material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled mediation date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of a mediation must be made in writing at the earliest date possible after receipt of the notice of mediation with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the mediation.



## **8.22.110 HEARING PROCEDURE.**

### **A. Postponements**

1. A Hearing Officer or designated Staff member may grant a postponement of the hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.
2. "Good cause" includes but is not limited to: a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party; b. Verified travel plans scheduled before the receipt of notice of hearing; c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".
3. A request for a postponement of a hearing must be made in writing at the earliest date possible after receipt of the notice of hearing with supporting documentation attached.
4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the hearing.

### **B. Absence Of Parties**

1. If a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case, subject to the petitioner showing good cause for the failure to appear.
  - a. Any excuse for failing to appear, along with supporting documentation, must be submitted to the Hearing Officer within ten (10) days of service of the hearing decision.
  - b. The Hearing Officer will determine if the excuse constitutes a prima facie case of good cause based on the standards for failing to appear at a hearing and any Board decisions interpreting good cause for failure to appear.
  - c. If the Hearing Officer determines that the petitioner's excuse establishes a prima facie case of good cause, the Hearing Officer may schedule a new hearing on good cause and on the petition.
  - d. If the petitioner submits a timely application under subsection (a), the time to appeal the Hearing Decision is extended until fifteen (15) days after service of the Hearing Officer's decision denying good cause for failure to appear.

2. If a respondent fails to appear, the Hearing Officer may rule against the respondent, or proceed to a hearing on the evidence.

### **C. Record Of Proceedings**

1. All proceedings before a Hearing Officer or the Rent Board, except mediation sessions, shall

be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

#### **D. Translation**

Translation services for documents, procedures, hearings and mediations in languages other than English pursuant to the Equal Access to Services ordinance (O.M.C. Chapter 2.3) shall be made available to persons requesting such services subject to the City's ability to provide such services. In the event that the City is unable to provide such services, petitioners and respondents who do not speak or are not comfortable with English must provide their own translators. The translators will be required to take an oath that they are fluent in both English and the relevant foreign language and that they will fully and to the best of their ability translate the proceedings.

#### **E. Conduct Of Hearings Before Hearing Officers**

1. Each party, attorney, other representative of a party or witness appearing at the hearing shall complete a written Notice of Appearance and oath, as appropriate, that will be submitted to the Hearing Officer at the commencement of the hearing. All Notices of Appearance shall become part of the record.

2. All oral testimony must be given under oath or affirmation to be admissible.

3. Each party shall have these rights:

a. To call and examine witnesses;

b. To introduce exhibits, provided that the party provides the exhibits to the Rent Adjustment Program and serves copies to the other party not less than seven (7) days before the hearing unless the party has good cause for late filing;

c. To cross-examine opposing witnesses on any matter relevant to the issues even if that issue was not raised on direct examination;

d. To impeach any witness regardless of which party called first called him or her to testify;

e. To rebut the evidence against him or her;

f. To cross-examine an opposing party or their agent even if that party did not testify on his or her own behalf or on behalf of their principal

g. A party who fails to file a timely response to a petition is prohibited from calling or examining witnesses or introducing oral or written evidence and is limited to cross-examination.

unless the party has good cause for failing to file a response.

4. Unless otherwise specified in these Regulations or OMC Chapter 8.22, the rules of evidence applicable to administrative hearings contained in the California Administrative Procedures Act (California Government Code Section 11513) shall apply.

#### **F. Decisions Of The Hearing Officer**

1. The Hearing Officer shall make written findings of fact and issue a written decision on petitions filed.

2. If an increase in Rent is granted, the Hearing Officer shall state the amount of increase that is justified, ~~and the effective date of the increase.~~

3. If a decrease in Rent is granted, the Hearing Officer shall state when the decrease commenced, the nature of the service decrease, the value of the decrease in services, and the amount to which the rent may be increased when the service is restored. When the service is restored, any Rent increase based on the restoration of service may only be taken following a valid change of terms of tenancy notice pursuant to California Civil Code Section 827. A Rent increase for restoration of decreased Housing Services is not considered a Rent increase for purposes of the limitation on one Rent increase in twelve (12) months pursuant to OMC 8.22.070 A. (One Rent Increase Each Twelve Months).

4. The Hearing Officer may order Rent adjustment for overpayments or underpayments over a period of months, however, such adjustments shall not span more than a twelve (12) month period, unless longer period is warranted for extraordinary circumstances. The following is a schedule of adjustments for underpayment and overpayments that Hearing Officers must follow unless the parties otherwise agree or good cause is shown:

a. If the underpayment or overpayment is 25% of the Rent or less, the Rent will be adjusted over 3 months;

b. If the underpayment or overpayment is 50% of the Rent or less, the Rent will be adjusted over 6 months;

c. If the underpayment or overpayment is 75% of the Rent or less, the Rent will be adjusted over 9 months;

d. If the underpayment or overpayment is 100% of the Rent or more, the Rent will be adjusted over 12 months.

5. For Rent overpayments based on an Owner's failure to reduce Rent after the expiration of the amortization period for a Capital Improvement, the decision shall also include a calculation of any interest that may be due pursuant to Reg. 8.22.070.C.1.a(5) 10.2.5 (see Appendix A).

6. If the Landlord has petitioned for multiple capital improvements covering the same unit or building, the Hearing Officer may consolidate the capital improvements into a single amortization period and, in the Hearing Officer's discretion, determine the length for that

amortization period in the Decision.

**G. Administrative Decisions**

For rent increase petitions based on one or more additional occupants, if there is no genuine dispute regarding any material fact, the petition may be decided as a matter of law, and the tenant waives their right to a hearing in writing on a form provided by the Rent Adjustment Program, the Hearing Officer shall issue a decision without a hearing.

## **8.22.120 APPEALS.**

### **A. Statement of Grounds for Appeal and Supporting Documentation**

1. A party who appeals a decision of a Hearing Officer or administrative decision must clearly state the grounds for the appeal on the appeal form or an attachment. The grounds for appeal must be stated sufficiently clearly for the responding party, and the Board to reasonably determine the basis for the appeal so that the responding party can adequately respond and the Board can adequately adjudicate the appeal.
2. A party who files an appeal must file any supporting argument and documentation and serve it on the opposing party within fifteen (15) days of filing the appeal along with a proof of service on the opposition party.
3. A party responding to an appeal must file any response to the appeal and any supporting documentation and serve it on the opposing party within ~~thirty (30)~~fifteen (15) days of the service of the ~~supporting documentation~~appeal along with a proof of service on the opposing party.
4. Any argument and supporting documentation may not be any more than twenty-five (25) pages. Arguments must be legible and double-spaced if typed. Any submissions not conforming to these requirements may be rejected by Staff. Staff may limit the pages for argument and supporting documentation submitted in consolidated cases.
5. Staff, in its discretion, may modify or waive the above requirements for good cause. The good cause must be provided in writing by the party seeking a waiver or modification.

### **B. Grounds for Appeal**

The grounds on which a party may appeal a decision of a Hearing Officer include, but are not limited to, the following:

1. The decision is inconsistent with OMC Chapter 8.22, the Regulations, or prior decisions of the Board;
2. The decision is inconsistent with decisions issued by other Hearing Officers;
3. The decision raises a new policy issue that has not previously been decided by the Board;
4. The decision violates federal, state, or local law;
5. The decision is not supported by substantial evidence. Where a party claims the decision is not supported by substantial evidence, the party making this claim has the burden to ensure that sufficient record is before the Board to enable the Board to evaluate the party's claim;
6. The Hearing Officer made a procedural error that denied the party sufficient opportunity to adequately present his or her claim or to respond to the opposing party; or
7. The decision denies the Owner a fair return.

a. This appeal ground may only be used by an Owner when his or her underlying petition for approval of a rent increase was based on a fair return claim.

b. Where an Owner claims the decision denies a fair return, the Owner must specifically state on the appeal form the basis for the claim, including any calculations, and the legal basis for the claim.

### **C. Postponements**

1. The Board or Staff may grant a postponement of the appeal hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" shall include but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of an appeal hearing must be made in writing at the earliest date possible after receipt of the notice of appeal hearing with supporting documentation attached.

~~4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date for the appeal hearing.~~

### **D. Procedures at Appeal Hearings**

1. It is the Board's or Appeal Panel's goal to hear three (3) appeals per meeting.

2. Unless the Board or Appeal Panel votes otherwise, or the Appeal Body Chair establishes an alternate time limit prior to the first appeal being heard by the Appeal Body, each party will have ~~fifteen (15)~~ six (6) minutes to present argument on or in opposition to the appeal. This time includes opening argument and any response.

3. Whenever the Board or Appeal Panel considers an appeal at more than one meeting, any Board member not present at a prior hearing must listen to a tape of the prior hearing in order to participate at a subsequent hearing.

4. Only those grounds presented in the written appeal may be argued before the Board or the Appeal Panel.

### **E. Record Of Proceedings**

1. All proceedings before the Rent Board shall be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any appeal hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.
2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

#### **F. Evidentiary Hearings**

1. As a general rule, the Board and Appeal Panels should not conduct evidentiary hearings. When the Board or Appeal Panel determines that additional evidence or reconsideration of evidence is necessary, the Board or Appeal Panel should remand the matter back to a Hearing Officer for consideration of evidence.
2. The Board or Appeal Panel should only consider evidence when the evidence is limited in scope and resolution of the matter is more efficient than having it remanded to a Hearing Officer for consideration of the evidence.
3. In order for new evidence to be considered, the party offering the new evidence must show that the new evidence could not have been available at the Hearing Officer proceedings.
4. If the Board or Appeal Panel deems an evidentiary hearing necessary, the appeal will be continued and the Board will issue a written order setting forth the issues on which the parties may present evidence.
5. The parties must file any new documentary evidence with the Board or Appeal Panel and also serve it the opposing party not more than ten (10) days after notice is given that a date has been set for the evidentiary appeal hearing.
  - a. Parties must also file with the Rent Program proofs of service of the evidence on the opposing party.
  - b. Failure to file the evidence and the proofs of service may result in the evidence not being considered by the Board or Appeal Panel.
6. When the Board or Appeal Panel conducts an evidentiary hearing, the same rules will apply as to hearings before Hearing Officers.

#### **G. Appeal Decisions**

1. **Vote Required.** Provided a quorum of the Board is present, or all three Appeal Panel members if a matter is being heard by an Appeal Panel, a majority vote of the Board members present is required to overturn or modify a Hearing Officer's decision. A tie vote upholds the Hearing Officer's decision. If no Board member makes a motion to uphold, reverse, or modify the Hearing Officer's decision on appeal or no motion receives a second, the appeal is deemed denied without comment.

2. Vote at Close of Appeal Hearing. Unless the Board or Appeal Panel votes otherwise, it shall vote on each appeal at the close of the appeal. The motion should include the reasons for the decisions so that the reasons can be set forth in a written decision.

a. Form of Decision. An appeal decision must be in writing and include findings and conclusions.

b. Time for Written Decision. The Board has the goal of issuing a written decision within thirty (30) days of the close of the appeal hearing.

c. Final decision.

i. Written appeal decisions are drafted by Staff, reviewed by the City Attorney, signed by staff as the Board's designee, and served on the parties.

ii. In any individual matter, however, the Board or Appeal Panel may vote to require that a decision first come to the full Board or full Appeal Panel or to the Board or Appeal Panel Chair for final approval and signature of that Chair. A decision is not final until signed by Staff or the Board or Appeal Panel Chair and served on the parties.

d. In its decision, the Board is authorized to designate a schedule for refunds or repayments consistent with Reg. 8.22.110 F.4 in cases where its decision results in under- or over-payments by a party; alternatively, the Board may remand to the Hearing Officer for purposes of devising a refund or repayment plan.

e. Staff shall serve decisions on the parties.

## **H. Dismissal of Appeal**

1. Untimely appeal filing.

a. Staff may dismiss an appeal that is not timely filed.

b. Within ten (10) days following Staff's notice of the dismissal, the party filing the late appeal may submit a written statement explaining any good cause for the late filing.

c. If the good cause appears within the guidelines for acceptable good cause set out in Rent Board decisions, Staff may reinstate the appeal or set a hearing before the Board on whether there is good cause for the late appeal.

d. If the good cause does not appear within the acceptable good cause parameters, Staff may reject the good cause and affirm the appeal dismissal.

2. Failing to adequately state grounds for appeal.

a. If Staff determines that an appeal fails to adequately state the grounds for appeal, Staff will send a deficiency notice to the appellant notifying the appellant of the deficiency and giving the appellant ten (10) days to correct the deficiency.



b. If the appellant fails to respond to the deficiency notice or fails to correct the deficiency in the response, Staff may dismiss the appeal, or ask the Rent Board to determine the adequacy of the appeal.

### **I. Failure to Appear**

1. Appellant. If an appellant fails to appear at an appeal hearing, the Board or Appeal Panel will decide the appeal on the record as submitted, unless the Board or Appeal Panel votes to postpone the appeal to a future meeting ~~consider the appeal dropped and will issue a decision dismissing the appeal, subject to the appellant showing good cause for the failure to appear.~~

a. ~~Any excuse for failing to appear, along with supporting documentation, must be submitted to Staff with ten (10) days of the date of the service of the appeal decision.~~

b. ~~Staff will, in the first instance determine if the excuse represents a prima facie case of good cause based on the standards for failing to appear at a hearing and any Board decisions interpreting good cause for failure to appear.~~

e. ~~If a prima facie case of good cause is shown, Staff will schedule an appeal hearing on whether the Board or Appeal Panel accepts the good cause.~~

2. Responding party. If an appellant appears and the responding party fails to appear, the Board or Appeal Panel must still hear and decide the appeal.

**Appendix A**

Deleted [Contents moved to Section 8.22.070.]

**FURTHER RESOLVED:** That the Rent Board authorizes the Chair or the Chair's designee to speak in support of the resolution on behalf of the Board at City Council or Committee meetings.

APPROVED BY THE FOLLOWING VOTE

AYES: BRODFUEHRER, ESCOBAR, NICKENS, OSHINUGA, TAYLOR, WILLIAMS AND  
CHAIRPERSON INGRAM

NOES:

ABSENT:

ABSTENTION:

\_\_\_\_\_  
Date:

ATTEST

\_\_\_\_\_  
BRIANA LAWRENCE-MCGOWAN  
Rent Adjustment Program, Housing  
& Community Development  
Department

3253243v8

## CHRONOLOGICAL CASE REPORT

Case No.: L19-0013 et al.

Case Name: Vulcan Lofts, LLC v. Tenants

Property Address: 4401 San Leandro Street, Oakland, CA 94601

Parties: Helena Martin, Ziaa Szymanski, et al. (Tenants)  
Leah Hess (Tenant Representative)  
Hasmik Geghamyan (Tenant Representative)  
Vulcan Lofts, LLC (Owner)  
Servando Sandoval (Owner Representative)  
Andrew Zacks (Owner Representative)

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed (T17-0237)	April 3, 2017
Tenant Petition filed (T18-0460)	August 31, 2018
Tenant Petition filed (T18-0461)	August 31, 2018
Tenant Petition filed (T18-0462)	August 31, 2018
Tenant Petition filed (T18-0463)	August 31, 2018
Tenant Petition filed (T18-0464)	August 31, 2018
Tenant Petition filed (T18-0465)	August 31, 2018

Tenant Petition filed (T18-0466)	August 31, 2018
Tenant Petition filed (T18-0467)	August 31, 2018
Tenant Petition filed (T18-0468)	August 31, 2018
Tenant Petition filed (T18-0469)	August 31, 2018
Tenant Petition filed (T18-0470)	August 31, 2018
Tenant Petition filed (T18-0471)	August 31, 2018
Tenant Petition filed (T18-0473)	August 31, 2018
Tenant Petition filed (T18-0474)	August 31, 2018
Tenant Petition filed (T18-0475)	August 31, 2018
Tenant Petition filed (T18-0476)	August 31, 2018
Tenant Petition filed (T18-0477)	August 31, 2018
Tenant Petition filed (T18-0478)	August 31, 2018
Tenant Petition filed (T18-0479)	August 31, 2018
Tenant Petition filed (T18-0498)	September 19, 2018
Tenant Petition filed (T18-0499)	September 19, 2018
Tenant Petition filed (T18-0500)	September 19, 2018

Tenant Petition filed (T18-0501)	September 19, 2018
Tenant Petition filed (T19-0021)	October 17, 2018
Tenant Petition filed (T19-0022)	October 17, 2018
Tenant Petition filed (T19-0023)	October 17, 2018
Property Owner Petition filed	November 27, 2018
Order Re Issuance of Subpoenas	March 2, 2019
Tenant Response filed (Leffingwell & Zuratovac)	March 26, 2019
Tenant Response filed (Robinson)	March 28, 2019
Tenant Response filed (Martin)	March 28, 2019
Tenant Response filed (Ives & Wilson)	March 28, 2019
Tenant Response filed (Le Cornec & Weiliczka)	March 28, 2019
Tenant Response filed (Long)	March 28, 2019
Tenant Response filed (Crabtree)	March 28, 2019
Tenant Response filed (Walker)	March 28, 2019
Tenant Response filed (Kirk)	March 28, 2019
Tenant Response filed (Crespo)	March 28, 2019

Tenant Response filed (Rund)	March 28, 2019
Tenant Response filed (Unterseher)	March 28, 2019
Tenant Response filed (Pulkrabek)	March 28, 2019
Tenant Response filed (Bustamante)	March 28, 2019
Tenant Response filed (Zack)	March 28, 2019
Tenant Response filed (Szymanski)	March 28, 2019
Tenant Response filed (Clark)	March 28, 2019
2nd Tenant Response filed (Clark)	March 28, 2019
Tenant Response filed (Leslie)	March 28, 2019
Tenant Response filed (Valvo)	March 28, 2019
Tenant Response filed (Marshall)	March 28, 2019
Tenant Response filed (Parks)	March 28, 2019
Tenant Response filed (Weber)	March 28, 2019
Tenant Response filed (Hudson)	March 28, 2019
Tenant Response filed (Burley & Case)	March 28, 2019
Tenant Response filed (Ferris & Toder)	March 28, 2019

Tenant Response filed (Nathan)	March 28, 2019
Tenant Response filed (Wang)	March 28, 2019
Tenant Response filed (Spencer)	March 28, 2019
Tenant Response filed (Mangan)	March 28, 2019
Tenant Response filed (Eismont)	March 28, 2019
Tenant Response filed (Rogers)	March 28, 2019
Tenant Response filed (Kitchens)	March 28, 2019
Tenant Response filed (Clancy)	March 28, 2019
Tenant Response filed (Sullivan)	March 28, 2019
Tenant Response filed (Stewart)	March 28, 2019
Tenant Response filed (Harrison)	March 28, 2019
Tenant Response filed (Cotton)	March 28, 2019
Tenant Response filed (Martin)	March 28, 2019
Tenant Response filed (Miller)	March 28, 2019
Tenant Response filed (Negusse)	March 29, 2019
Property Owner's Witness List submitted	April 11, 2019

Property Owner's Amended Witness List submitted	April 12, 2019
Tenants' Brief Re Residential Use Prior to Conversion	April 17, 2019
Hearing Dates	April 15, 2019 June 10, 2019 December 16, 2019 September 20, 2021 March 7, 2022 November 7, 2022
Property Owner Exhibit submitted	September 14, 2021
Tenant Hearing Brief submitted	September 14, 2021
Tenants' Request to Hearing Officer	December 31, 2021
Letter to Hearing Officer	January 17, 2022
Property Owner Exhibit submitted	June 16, 2022
Property Owner Exhibit submitted	June 20, 2022
Property Owner Demand Letter submitted	July 20, 2022
Tenant Motion to Remand & Dismiss Granted	October 26, 2022
Reply in Support of Motion to Remand & Dismiss	October 26, 2022
Tenants' Closing Brief submitted	December 9, 2022
Hearing Decision mailed	May 23, 2023
Tenants' Appeal filed	June 7, 2023







**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
 P.O. Box 70243  
 Oakland, CA 94612-0243  
 (510) 238-3721

For date: \_\_\_\_\_ ap.

**RECEIVED**  
**APR 03 2017**  
**TENANT PETITION**

RENT ADJUSTMENT PROGRAM  
**OAKLAND**

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly** T17-0237 KM/SK

Your Name <b>ZIAA SZYMANSKI</b>	Rental Address (with zip code) <b>4401 SAN LEONARDO ST. OAKLAND CA 94601 'VULCAN LOFTS' LLC</b>	Telephone: <b>510 434 1077</b>
Your Representative's Name	Mailing Address (with zip code)	E-mail: <b>Ziaa@INTERFACINGS.COM</b>
Property Owner(s) name(s) <b>MADISON PARK FINANCIAL OWNS VULCAN LOFTS LLC OWNER OF MPF JOHN PROTOPASSAS</b>	Mailing Address (with zip code) <b>LAKE MERRITT TOWER 155 GRAND AVE ste 950 OAKLAND CA. 94612</b>	Telephone: <b>510 452-2944</b>
Property Manager or Management Co. (if applicable) <b>PROP Mgt ASSO A HQ BARBARA ADDRESS ABOVE ON SITE MANAGER: ELEGIA HOLLAND</b>	Mailing Address (with zip code) <b>TURNER - ADDRESS ABOVE FOR MPF. VULCAN LOFTS #460 4401 SAN LEONARDO ST. OAK 94601</b>	E-mail: <b>&lt;NAME&gt;@mpfcorp.com</b> Phone: <b>BARB: 510 452 2944 ext 21 ELEG: 510-715-1803</b> Email: <b>BARBARA@mpf.COM ELEGIA@mpf.com.</b>

Number of units on the property: **59 UNITS 1 SHOP & 1 CAFE.**

\* NOTE: CITY RECORDS SHOW FILED AS CONDOMINIUMS

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090.  
**I (We) contest one or more rent increases on one or more of the grounds:**

000058

- 2
- (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
  - (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
  - (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.
  - (d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
  - (e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
  - (f) The rent increase notice(s) was (were) not given to me in compliance with State law.
  - (g) The increase I am contesting is the second increase in my rent in a 12-month period.
  - (h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
  - (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
  - (j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
  - (k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
  - (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake (OMC 8.22, Article I)
  - (m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
  - (n) The rent was raised illegally after the unit was vacated as set forth under OMC 8.22.080.

## II. RENTAL HISTORY: (You must complete this section)

Date you moved into the Unit: FIRST AS SUB TENANT IN JAN 2011 Initial Rent: 2011 \$1782.00 RENT  
\$2500.00 /month ON MY TAKE OVER OR LEASE 4/18/2016. 2016 \$1960.00 RENT

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date:

NEVER. If never provided, enter "Never." THEY CLAIM VULCAN LOFT STUDIOS IS A CONDOMINIUM - IT IS "LIVE-WORK" 2011 CoA.

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
3/25/17	5/1/17	\$ 2500-	\$ 2575-	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3/21/16	4/18/16	\$ 1960-	\$ 2500-	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

Yes

No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING**

**SERVICES:** Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?  Yes  No

Have you lost services originally provided by the owner or have the conditions changed?  Yes  No

24

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

Zin by mousli  
Tenant's Signature

3/27 / 2017  
Date

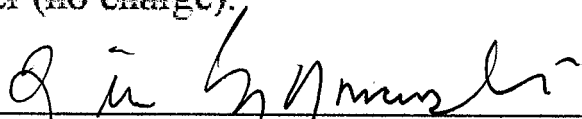
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).



Tenant's Signature

Date

MARCH 27, 2017

**VI. IMPORTANT INFORMATION:**

**Time to File** This form must be received at the offices of the City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612 within the time limit for filing a petition set out in the Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22. Board Staff cannot grant an extension of time to file your petition by phone. For more information, please call: (510) 238-3721.

THE DOCUMENTARY EVIDENCE WILL BE SENT AFTER THE MANAGEMENT HAS HAD ANOTHER WEEK TO COMPLETE THE EMAIL LIST SENT TO THEM BEFORE MARCH 22 2017. TEAM WALKED THROUGH UNIT FRI 24 MARCH AFTER NO SERIOUS REPAIRS DONE SINCE TAKING OVER LEASE.

SEE 3 PAGES OF EMAIL TO TWO MANAGERS & THREE OTHER ROOM MATES. 000062

**Subject:** Connie, Ziaa's 5 page Petition & 3 pages of work orders not completed Re: Tenant Petition  
**From:** ziaa@interfacing.com  
**Date:** 3/27/2017 2:56 PM  
**To:** "Taylor, Connie" <crtaylor@oaklandnet.com>  
**BCC:** Ziaa <Ziaa@InterFarFacing.com>

Ref: **Ziaa Szymanski's 5 page Petition & 3 pages of work orders not completed Re: Tenant Petition**

**Connie,**

It took a while as they came out a bit small and I had to create the 5 pages a different way for print out. I hope I filled them in correctly. I would be happy to do it again for you if you find something wrong.

Page 1 See attachment  
Page 2 See attachment  
Page 3 See attachment  
Page 4 See attachment  
Page 5 See attachment

**ADDITIONAL**

I will wait one week too give you photos etc as MPF maintenance took a look at the unit last Friday, the day after the call from Martina. Not everything will be fixed and we've had leaks in many places over many years that led to flooding last month due to not making correction repairs.

Below, find the 3 page email of non completed work orders mostly needed since taking over the unit last year and when I lived here 6 years prior as a sub Tenant:

----- Forwarded Message -----

**Subject:** THESE THINGS HAVE NOT BEEN TAKEN CARE OF Re: UPDATED March 22 2017 List of WORK ORDERS SINCE TAKING OVER LEASE April 18th 2016 & Living in Same Unit for 6 years before.

**Date:** Wed, 22 Mar 2017 15:11:23 -0700

**From:** ziaa@interfacing.com

**To:** Elecia Holland <elecia@mpfcorp.com>, Barbara Turner <barbara@mpfcorp.com>

**CC:** Hendrix, Shelby J BM3 <Shelby.J.Hendrix@uscg.mil>, Zack Stockman <zstockman@gmail.com>, Sam Fuller <samtfuller@gmail.com>, Ziaa <Ziaa@InterFarFacing.com>

Elecia

You said below: Most of this stuff has been taken care of.

Also, you have not been in this unit for a very long time to check things yourself.

**These things have NOT been taken care of..**

If they had --they would not have been put on this updated list. Somethings need a re- repair as they have failed again.

**Thanks in Advance**


**Ziaa**

Ziaa Szymanski  
Vulcan Lofts #21  
Managing Co-Tenant & Original Tenant for Lease  
Phone: 510 434 1077  
Text: 510- 479-4792

On 3/22/2017 1:13 PM, Elecia Holland wrote:

000063

T18-0460 RC ~~DA~~ SK

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED For date stamp OAKLAND RENT ARBITRATION PROGRAM 2018 AUG 31 AM 11:29
	<b>TENANT PETITION</b>	

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

Please print legibly

Your Name Helena Martin	Rental Address (with zip code) 4401 San Leandro #2 Oakland CA 94601	Telephone: 510 219 6523
Your Representative's Name	Mailing Address (with zip code)	E-mail: mshelenamartin@gmail.com Telephone:
Property Owner(s) name(s) JOHN PROTOPAPPAS VULCAN LOFTS LLC & Vulcan Loft's Management Co.	MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 Email: John@mpfcorp.com
Property Manager or Management Co Madison Park Financial LLC Barbara Turner MPF 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 EXT 21 Email: Barbara@mpfcorp.com

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**L. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. I (We) contest one or more rent increases on one or more of the following grounds:

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and I

Rev. 3/1/17

For more information phone (510) 238-3721.

T20000647  
 PETITION



<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\*  
\*

SEE A PAGE ATTACHMENT TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: May 2007 Initial Rent: \$ 2250 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
7/28/18	9/01/2018	\$ 2757	\$ 3005	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4/01/17	5/01/2017	\$ 2676	\$ 2757	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
1/5/16	05/01/2016	\$ 2433	\$ 2676	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/01/2014	01/01/2015	\$ <del>2387</del>	\$ 2433	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/01/2012	01/01/2013	\$ 2317	\$ 2387	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

HM

AND ALL PREVIOUS RENT INCREASES

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

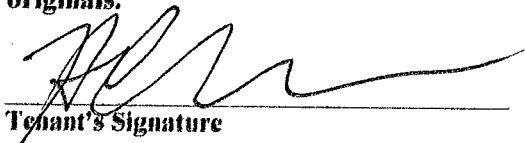
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

8/30/2018  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_


**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

08/30/2018  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

### **File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- \_\_\_\_\_ Printed form provided by the owner
- \_\_\_\_\_ Pamphlet distributed by the Rent Adjustment Program
- \_\_\_\_\_ Legal services or community organization
- \_\_\_\_\_ Sign on bus or bus shelter
- \_\_\_\_\_ Rent Adjustment Program web site
- Other (describe): OTHER TENANT

## Attachment One to Petition: Legal Issues

1. The rent program has jurisdiction to hear claims of fraud and mistake in previously issued certificates of exemption

The Ordinance and Regulations clearly provide jurisdiction to the Rent Adjustment Program and the Rent Board to hear claims of fraud and/or mistake in the issuance of certificates of exemption. Although they are "permanent", a certificate of exemption can be rescinded if it was issued as a result of fraud or mistake:

For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption...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.* (Emphasis added) (OMC 8.22.030.B.1.b)

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.* The burden of proving such fraud or mistake is on the tenant. (Emphasis added) (OMC 8.22.030.B.1.c)

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. (Emphasis added) (Regulation No. 8.22.030C.2)

These regulations clearly provide for challenge to a *previously issued* certificate of exemption, to provide the tenant an opportunity to show that the certificate was obtained through fraud or mistake.

2. The property's exempt status was based upon fraud and mistake.

To be exempt under the "new construction" provisions of the Ordinance, the property must have been 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.” (OMC 8.22.030.A.5)

The owners of the property obtained exempt status as a result of the case *Vidor v. Orten*, T05-019. The First District Court of Appeal upheld that decision in its unpublished opinion, *Vidor v. City of Oakland Community and Economic Development Agency*, (2009) Cal. App. Unpub. Lexis 8016. The tenants in this case assert that the exempt status conferred by that case<sup>1</sup> was obtained by fraud or mistake.

Tenants at this formerly industrial property have recently obtained information and evidence showing extensive residential occupation of the property from at least 1969 onward.

2. The *Vidor* decision does not preclude tenants who were not parties in that case from bringing petitions challenging the exemption

The *Vidor* case could not have *res judicata* or collateral estoppel effect on claims by tenants who were not parties in the *Vidor* case. In order to bar litigation under the doctrines of *res judicata* and collateral estoppel, a case must be between *the same parties* that participated in the original case. The *Vidor* case was brought by tenants of only four units at the property. The *Vidor* case cannot be used to bar other claimants, who did not participate in that case.

---

<sup>1</sup>The Hearing Officer and courts found that, even though the then-owners may not have obtained a certificate of occupancy, this was possibly due to Building Dept. error. Therefore the finalization of the building permit was deemed “equivalent” to a certificate of occupancy. But, it appears that the owners have never obtained an actual certificate of exemption.

3. Even a tenant that was a party in the *Vidor* case may bring a case for fraud and mistake now, as this petition raises a different claim

The original determination made in a landlord's petition for a certificate of exemption based on new construction may be challenged for fraud by *the same tenant* who lost at the original hearing. In a recent Superior Court case, the Rent Board has taken the position that a tenant's opposition to the initial issuance of a certificate of exemption is a *different claim* from the tenant's subsequent challenge based upon fraud or mistake.

In *Michelsen v. Sherman* L13-0054, the owners filed a petition for a certificate of exemption for the tenant's rental unit and won. The tenant's appeals to Rent Board, the Superior Court and the Court of Appeals were all unsuccessful. *Sherman v. City of Oakland*, Alameda County Superior Court No. RG15785257; First District Court of Appeal No. A147769 The landlords obtained their certificate of exemption.

The tenant subsequently filed a petition challenging the certificate of exemption, asserting that it was obtained through fraud and mistake. His petition was dismissed administratively, for lack of jurisdiction and based upon *res judicata*. *Sherman v. Michelsen* T16-0258. When the tenant filed a writ petition with the Superior Court, the Rent Board, after a closed hearing, acknowledged that a mistake had been made and requested the court remand the matter for hearing on the merits. *Sherman v. City of Oakland (Rent Board)* Alameda County Superior Court, RG16-843773. After consideration of the matter, the Rent Board decided that the tenant's writ petition had merit. The City made a motion to the court to remand the matter back to the Board, stating:

...the Rent Board agrees with the basic premise in [the Tenant's] writ petition – he was denied due process....[The tenant] requests a remand to an administrative hearing officer. The Rent Board agrees that this is the correct result.

*Sherman v. City of Oakland (Rent Board) Alameda County Superior Court, No. RG 16843773, City of Oakland's Reply In Support of Motion to Remand and Dismiss or, in the Alternative, Remand and Stay, Filed 7/12/2017.*

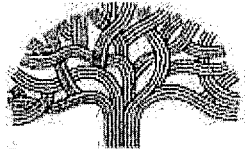
The Court remanded the matter back to the Rent Board which remanded it to a Hearing Officer for a hearing on the merits.

4. The *Vidor* case is not a bar to a subsequent petition seeking to rescind the certificate of exemption base on fraud and/or mistake

The essential facts of the Sherman case are applicable here. The tenant has filed a petition to rescind a previously issued certificate of exemption which was obtained through fraud or mistake. The tenant should be allowed to present evidence demonstrating that the property was previously used residentially and that the owners who obtained the exemption status were aware of that prior residential use. The Rent Board has recognized that such claims, which cannot even be asserted until a certificate has been issued, are not barred by the prior proceeding granting the exemption.

T18-0461 RC/DASK

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
For date stamp:

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	2018 AUG 31 AM 11:29  <b>TENANT PETITION</b>
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**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed.

**Please print legibly**

Your Name SARA LECORNEC AMY WIELICZKA ANOREA (UES) HALEY WILSON	Rental Address (with zip code) #3 VULCAN LOFTS 4401 SAN LEANARD ST. OAKLAND CA. 94601	Telephone: 206 235 8998 541 852 2775 E-mail:	AI HW
Your Representative's Name	Mailing Address (with zip code)	Telephone: DREA LUSION @ gmail.com YOUR FRIEND HALEY @ gmail.com E-mail:	AI HW
Property Owner(s) name(s) JOHN PROTOPAPPAS VULCAN LOFTS LLC & Vulcan Loft's Management Co.	MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 Email: John@mpfcorp.com	
Property Manager or Management Co. Madison Park Financial LLC Barbara Turner MPF 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 EXT 21 Email: Barbara@mpfcorp.com	

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **1 (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.



(d) No written notice of Rent Adjustment Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)  
 (e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).  
 (f) The rent increase notice(s) was (were) not given to me in compliance with State law.  
 (g) The increase I am contesting is the second increase in my rent in a 12-month period.  
 (h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)  
 (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)  
 (j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.  
 (k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).  
 (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)  
 (m) The owner did not give me a summary of the justification(s) for the increase despite my written request.  
 (n) The rent was raised illegally after the unit was vacated as set forth under OMC 8.22.080.



SEE 4 PAGE ATTACHMENT TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: NOV 6 2014 Initial Rent: \$ 2,987 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
7/25/18	9/1/18	\$ 3456	\$ 3577	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3/23/17	5/1/17	\$ 3356	\$ 3456	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/27/15	3/1/16	\$ 3136	\$ 3356	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

N/A

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

Yes  No

Have you lost services originally provided by the owner or have the conditions changed?

Yes  No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

8/28/18  
\_\_\_\_\_  
Date

**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

8/28/18  
\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

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- Printed form provided by the owner
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- Other (describe): \_\_\_\_\_

## Attachment One to Petition: Legal Issues

1. The rent program has jurisdiction to hear claims of fraud and mistake in previously issued certificates of exemption

The Ordinance and Regulations clearly provide jurisdiction to the Rent Adjustment Program and the Rent Board to hear claims of fraud and/or mistake in the issuance of certificates of exemption. Although they are "permanent", a certificate of exemption can be rescinded if it was issued as a result of fraud or mistake:

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Tenants at this formerly industrial property have recently obtained information and evidence showing extensive residential occupation of the property from at least 1969 onward.

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<sup>1</sup>The Hearing Officer and courts found that, even though the then-owners may not have obtained a certificate of occupancy, this was possibly due to Building Dept. error. Therefore the finalization of the building permit was deemed “equivalent” to a certificate of occupancy. But, it appears that the owners have never obtained an actual certificate of exemption.

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...the Rent Board agrees with the basic premise in [the Tenant's] writ petition -- he was denied due process....[The tenant] requests a remand to an administrative hearing officer. The Rent Board agrees that this is the correct result.

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T18-0462 RC/DK SK

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: AMT: 30
	<b>TENANT PETITION</b>	

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

Please print legibly

Your Name <b>BRIANNE CASTREE</b> ET AL	Rental Address (with zip code) #5 <b>VULCAN LOFTS</b> <b>4401 SAN LEANDRO ST.</b> <b>OAKLAND CA. 94601</b>	Telephone: <b>415-205-3219</b>
Your Representative's Name	Mailing Address (with zip code)	E-mail: <b>briTREE@gmail.com</b>
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS</b> <b>VULCAN LOFTS LLC</b> <b>&amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL</b> <b>JOHN PROTOPAPPAS, MPF</b> Lake Merritt Tower <b>155 Grand Avenue, Suite 950</b> <b>Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b>
Property Manager or Management Co. <b>Madison Park Financial LLC</b> <b>Barbara Turner MPF</b> B.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge. Co <b>155 Grand Avenue, Suite 950</b> <b>Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b>
		E-mail: <b>Barbara@mpfcorp.com</b>

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. I (We) contest one or more rent increases on one or more of the following grounds:

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) gr
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from Program for such an increase and the rent increase exceeds the CPI Adjustment and the rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

Tenant  
000080  
petition





\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

Yes  No

Have you lost services originally provided by the owner or have the conditions changed?

Yes  No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

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- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

Brian Custer

Tenant's Signature

8/29/18

Date

[Empty rectangular box for additional information]

[Empty rectangular box for additional information]

**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

Brian Carter  
Tenant's Signature

8/29/18  
Date

**VI. IMPORTANT INFORMATION:**

**Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

**File Review**

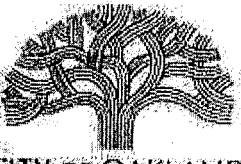
Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

**VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): another tenant

T18-0463 RC/DK SK

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

 CITY OF OAKLAND	<b>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: 2010 AUG 31 AM 11:30
	<b>TENANT PETITION</b>	

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name LIA WALKER	Rental Address (with zip code) 4401 SAN LEANDRO ST #8 OAKLAND CA. 94601	Telephone: (415) 244-5591 E-mail: LIAWALKER@LIVE.COM
Your Representative's Name	Mailing Address (with zip code)	Telephone:  E-mail:
Property Owner(s) name(s) JOHN PROTOPAPPAS VULCAN LOFTS LLC & Vulcan Loft's Management Co.	MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 Email: John@mpfcorp.com
Property Manager or Management Co. Madison Park Financial LLC Barbara Turner MPF 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 EXT 21 Email: Barbara@mpfcorp.com

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

000084  
TENANT  
PETITION

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.



SEE 4 PAGE ATTACHMENT RELATED TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 3/1/2012 Initial Rent: \$ 500 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
8/1/18	9/1/18	\$ 725-	\$ 790-	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3/23/17	5/1/17	\$ 625-	\$ 725-	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
1/1/16	3/1/16	\$ 500-	\$ 625-	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

N/A

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No  
Have you lost services originally provided by the owner or have the conditions changed?  Yes  No  
Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

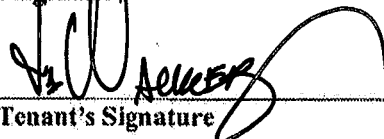
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).


Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

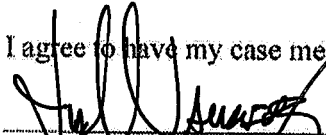
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

8/26/18  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

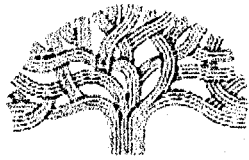
### **File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- \_\_\_\_\_ Printed form provided by the owner
- \_\_\_\_\_ Pamphlet distributed by the Rent Adjustment Program
- \_\_\_\_\_ Legal services or community organization
- \_\_\_\_\_ Sign on bus or bus shelter
- \_\_\_\_\_ Rent Adjustment Program web site
- \_\_\_\_\_ Other (describe): \_\_\_\_\_

T18-0464 Rejected SK



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**  
P.O. Box 70243  
Oakland, CA 94612-0243  
(510) 238-3721

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2018 AUG 31 AM 11:31

**TENANT PETITION**

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

<b>Your Name</b> DAVID BERNBAUM	<b>Rental Address (with zip code)</b> 4401 San Leandro St. #12 Oakland, CA 94601	<b>Telephone:</b> (510) 356-7855 <b>E-mail:</b> threeballsfalling@hotmail.com
<b>Your Representative's Name</b>	<b>Mailing Address (with zip code)</b>	<b>Telephone:</b>  <b>E-mail:</b>
<b>Property Owner(s) name(s)</b> JOHN PROTOPAPPAS VULCAN LOFTS LLC & Vulcan Loft's Management Co.	<b>MADISON PARK FINANCIAL</b> JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	<b>Telephone:</b> (510) 452-2944 <b>Email:</b> John@mpfcorp.com
<b>Property Manager or Management Co.</b> Madison Park Financial LLC Barbara Turner MPF 8.1.18 Ex Res. Mge. Elecia Holland	<b>Mailing Address (with zip code)</b> Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	<b>Telephone:</b> (510) 452-2944 EXT 21 <b>Email:</b> Barbara@mpfcorp.com

Number of units on the property: 56 Units + 2 Business

<b>Type of unit you rent (check one)</b>	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
<b>Are you current on your rent? (check one)</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **1 (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

000088

TENANT



<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\* SEE A PAGE ATTACHMENT RELATED TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: August 15, 2011 Initial Rent: \$ 1,150.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
7/28/2018	9/1/2018	\$ 1,438	\$ 1,567	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4/1/2017	5/1/2017	\$ 1,370	\$ 1,438	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
11/27/2015	3/1/2016	\$ 1,245	\$ 1,370	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/1/2014	1/1/2015	\$ 1,185	\$ 1,245	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/1/2012	1/1/2013	\$ 1,150	\$ 1,185	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

Yes  No

Have you lost services originally provided by the owner or have the conditions changed?

Yes  No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:


- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

Tenant's Signature 

8/29/2018  
Date

\_\_\_\_\_

\_\_\_\_\_

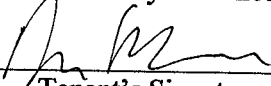
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**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

8/29/2018  
\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

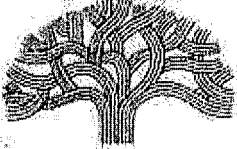
### **File Review**

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## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): Neighbors

T18-0465 ~~RECEIVED~~ SK

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED CITY OF OAKLAND FOUNDATION PROGRAM 2018 AUG 31 AM 11:31 <b>TENANT PETITION</b>
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**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name <b>ANDREW PULKRABEK</b>	Rental Address (with zip code) <b>4401 SAN LEANDRO ST # 18</b> <b>OAKLAND CA 94601</b>	Telephone: <b>206-427-4560</b> E-mail: <b>andrew.pulkrabek@gmail.com</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone: E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS</b> <b>VULCAN LOFTS LLC</b> <b>&amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL</b> <b>JOHN PROTOPAPPAS, MPF</b> Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: <b>(510) 452-2944</b> Email: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC</b> <b>Barbara Turner MPF</b> 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) <b>Barbara Turner</b> <b>Madison Park Financial Mge. Co</b> 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: <b>(510) 452-2944 EXT 21</b> Email: <b>Barbara@mpfcorp.com</b>

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

000092427  
RE 2/2/18

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\*

\* See 4 Page attachment for figure "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 11/1/11 Initial Rent: \$ 2500 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

Last 2 increases

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
8/1/18	9/1/18	\$ 3064	\$ 3217	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4/1/17	5/1/17	\$ 2974	\$ 3064	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
1/1/16	3/1/16	\$ 2704	\$ 2874	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/1/14	1/1/15	\$ <del>2575</del> 2575	\$ 2704	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:


- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

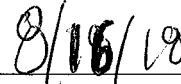
Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

  
\_\_\_\_\_  
Date

Empty rectangular box for additional information or notes.

Empty rectangular box for additional information or notes.

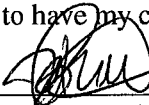
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).



Tenant's Signature

8/18/18

Date

**VI. IMPORTANT INFORMATION:**

**Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

**File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

**VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_

## Attachment One to Petition: Legal Issues

1. The rent program has jurisdiction to hear claims of fraud and mistake in previously issued certificates of exemption

The Ordinance and Regulations clearly provide jurisdiction to the Rent Adjustment Program and the Rent Board to hear claims of fraud and/or mistake in the issuance of certificates of exemption. Although they are "permanent", a certificate of exemption can be rescinded if it was issued as a result of fraud or mistake:

For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption...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.* (Emphasis added) (OMC 8.22.030.B.1.b)

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.* The burden of proving such fraud or mistake is on the tenant. (Emphasis added) (OMC 8.22.030.B.1.c)

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. (Emphasis added) (Regulation No. 8.22.030C.2)

These regulations clearly provide for challenge to a *previously issued* certificate of exemption, to provide the tenant an opportunity to show that the certificate was obtained through fraud or mistake.

2. The property's exempt status was based upon fraud and mistake.

To be exempt under the "new construction" provisions of the Ordinance, the property must have been 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.” (OMC 8.22.030.A.5)

The owners of the property obtained exempt status as a result of the case *Vidor v. Orten*, T05-019. The First District Court of Appeal upheld that decision in its unpublished opinion, *Vidor v. City of Oakland Community and Economic Development Agency*, (2009) Cal. App. Unpub. Lexis 8016. The tenants in this case assert that the exempt status conferred by that case<sup>1</sup> was obtained by fraud or mistake.

Tenants at this formerly industrial property have recently obtained information and evidence showing extensive residential occupation of the property from at least 1969 onward.

2. The *Vidor* decision does not preclude tenants who were not parties in that case from bringing petitions challenging the exemption

The *Vidor* case could not have *res judicata* or collateral estoppel effect on claims by tenants who were not parties in the *Vidor* case. In order to bar litigation under the doctrines of *res judicata* and collateral estoppel, a case must be between *the same parties* that participated in the original case. The *Vidor* case was brought by tenants of only four units at the property. The *Vidor* case cannot be used to bar other claimants, who did not participate in that case.

---

<sup>1</sup>The Hearing Officer and courts found that, even though the then-owners may not have obtained a certificate of occupancy, this was possibly due to Building Dept. error. Therefore the finalization of the building permit was deemed “equivalent” to a certificate of occupancy. But, it appears that the owners have never obtained an actual certificate of exemption.

3. Even a tenant that was a party in the *Vidor* case may bring a case for fraud and mistake now, as this petition raises a different claim

The original determination made in a landlord's petition for a certificate of exemption based on new construction may be challenged for fraud *by the same tenant* who lost at the original hearing. In a recent Superior Court case, the Rent Board has taken the position that a tenant's opposition to the initial issuance of a certificate of exemption *is a different claim* from the tenant's subsequent challenge based upon fraud or mistake.

In *Michelsen v. Sherman* L13-0054, the owners filed a petition for a certificate of exemption for the tenant's rental unit and won. The tenant's appeals to Rent Board, the Superior Court and the Court of Appeals were all unsuccessful. *Sherman v. City of Oakland*, Alameda County Superior Court No. RG15785257; First District Court of Appeal No. A147769 The landlords obtained their certificate of exemption.

The tenant subsequently filed a petition challenging the certificate of exemption, asserting that it was obtained through fraud and mistake. His petition was dismissed administratively, for lack of jurisdiction and based upon *res judicata*. *Sherman v. Michelsen* T16-0258. When the tenant filed a writ petition with the Superior Court, the Rent Board, after a closed hearing, acknowledged that a mistake had been made and requested the court remand the matter for hearing on the merits. *Sherman v. City of Oakland (Rent Board)* Alameda County Superior Court, RG16-843773. After consideration of the matter, the Rent Board decided that the tenant's writ petition had merit. The City made a motion to the court to remand the matter back to the Board, stating:

...the Rent Board agrees with the basic premise in [the Tenant's] writ petition -- he was denied due process....[The tenant] requests a remand to an administrative hearing officer. The Rent Board agrees that this is the correct result.

*Sherman v. City of Oakland (Rent Board)* Alameda County Superior Court, No. RG 16843773, City of Oakland's Reply In Support of Motion to Remand and Dismiss or, in the Alternative, Remand and Stay, Filed 7/12/2017.

The Court remanded the matter back to the Rent Board which remanded it to a Hearing Officer for a hearing on the merits.

4. The *Vidor* case is not a bar to a subsequent petition seeking to rescind the certificate of exemption base on fraud and/or mistake

The essential facts of the Sherman case are applicable here. The tenant has filed a petition to rescind a previously issued certificate of exemption which was obtained through fraud or mistake. The tenant should be allowed to present evidence demonstrating that the property was previously used residentially and that the owners who obtained the exemption status were aware of that prior residential use. The Rent Board has recognized that such claims, which cannot even be asserted until a certificate has been issued, are not barred by the prior proceeding granting the exemption.

T18-0466 Re/DASK

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED CITY OF OAKLAND RENT ADJUSTMENT PROGRAM For date stamp 2018 AUG 31 AM 11:31
	<b>TENANT PETITION</b>	

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name ANN MARIE BUSTAMANTE et al	Rental Address (with zip code) 4401 SAN LEANDRO ST #19	Telephone: 707 246 1468 E-mail: SUMMERSEW17@gmail.com
Your Representative's Name	Mailing Address (with zip code)	Telephone: E-mail:
Property Owner(s) name(s) JOHN PROTOPAPPAS VULCAN LOFTS LLC & Vulcan Loft's Management Co.	MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 Email: John@mpfcorp.com
Property Manager or Management Co. Madison Park Financial LLC Barbara Turner MPF 8.1.18 Ex Res. Mge. Elicia Holland	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 EXT 21 Email: Barbara@mpfcorp.com

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721

000100  
 TENANT  
 107-1720

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input checked="" type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\*

\*

SEE 4 PAGE ATTACHMENT RELATED TO REG. "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 11/6/17 Initial Rent: \$3,200.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
<u>7/25/18</u>	<u>8/25/18</u>	<u>\$ 3,200</u>	<u>\$ 3,312</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:


- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.



Tenant's Signature

08/16/18

Date

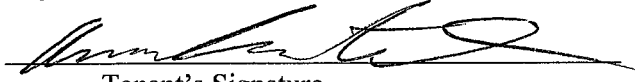
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

08/16/18  
\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

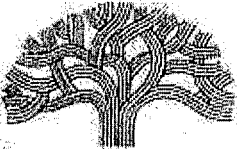
### **File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- \_\_\_\_\_ Printed form provided by the owner
- \_\_\_\_\_ Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- \_\_\_\_\_ Sign on bus or bus shelter
- \_\_\_\_\_ Rent Adjustment Program web site
- \_\_\_\_\_ Other (describe): \_\_\_\_\_

T18-0467 RC/DK SK

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED CITY OF OAKLAND For date stamp RENT ADJUSTMENT PROGRAM 2018 AUG 31 AM 11:31 <b>TENANT PETITION</b>
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**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name <b>ROSS CLARK</b>	Rental Address (with zip code) <b>UNIT # 23</b> 4401 San Leandro St, #23 Oakland, CA 94601	Telephone: 510-289-3254 E-mail: DAGGLER@HOTMAIL.COM
Your Representative's Name	Mailing Address (with zip code)	Telephone: E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS</b> <b>VULCAN LOFTS LLC</b> <b>&amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL</b> <b>JOHN PROTOPAPPAS, MPF</b> <b>Lake Merritt Tower</b> 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 Email: John@mpfcorp.com
Property Manager or Management Co. <b>Madison Park Financial LLC</b> <b>Barbara Turner MPF</b> 8.1.18 Ex Res. Mge. Elicia Holland	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 EXT 21 Email: Barbara@mpfcorp.com

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

TENANT  
000104  
PETITION



	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
✓	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
* ✓	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\* see 4 page attachment related to item "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 5/6/2007 Initial Rent: \$ 2153.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?	Y	MAX
		From	To				
8/1/2018	9/1/2018	\$ 2714	\$ 2850	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	5.0	3.4
2/1/2017	3/1/2017	\$ 2635	\$ 2714	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	3.0	2.3
2/1/2016	3/1/2016	\$ 2395	\$ 2635	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	10.0	2.0
2015	2015	\$ 2281	\$ 2395	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	5.0	1.7
2014	2014	\$ 2216	\$ 2281	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	2.9	1.9
2013	2013	\$	\$ 2216	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	2.9	2.1

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

**Decreased or inadequate housing services are considered an increase in rent.** If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No  
Have you lost services originally provided by the owner or have the conditions changed?  Yes  No  
Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

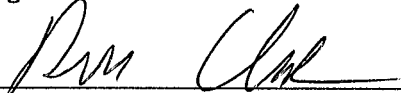
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

8/19/2018  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** . For more information, please call: (510) 238-3721.

### **File Review**

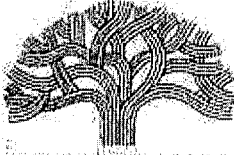
Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_

T18-0468 RC/DK SK

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp 2018 AUG 31 AM 11:32
	<b>TENANT PETITION</b>	

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name Ross Clark	Rental Address (with zip code) <sup>UNIT # 24</sup> 4401 San Leandro St., #24 Oakland, CA 94601	Telephone: 510-289-3254 E-mail: DAGGLER@HOTMAIL.COM
Your Representative's Name:	Mailing Address (with zip code)	Telephone: E-mail:
Property Owner(s) name(s) JOHN PROTOPAPPAS VULCAN LOFTS LLC & Vulcan Loft's Management Co.	MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 Email: John@mpfcorp.com
Property Manager or Management Co. Madison Park Financial LLC Barbara Turner MPF 8.1.18 Ex Res. Mge. Elicia Holland	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 EXT 21 Email: Barbara@mpfcorp.com

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

TENANT  
000108,  
PETITION

	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
✓	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
* ✓	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\* See 4 page attachment related to item "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 3/4/2005 Initial Rent: \$ 2356.12 /month  
24 (6 D)

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?	%	MAX
		From	To				
8/1/2018	9/1/2018	\$ 3288	\$ 3399	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	3.1	3.4
2/1/2017	3/1/2017	\$ 3144	\$ 3288	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	4.6	2.3
2/1/2016	3/1/2016	\$ <del>2828</del> .47	\$ 3144	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	11.2	2.0
2015	2015	\$ <del>2695</del> .47	\$ 2828.47	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	4.9	1.7
2014	2014	\$ 2619.47	\$ 2695.47	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	2.9	1.9
2013	2013	\$ 2539.47	\$ 2619.47	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	3.2	2.1

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No  
Have you lost services originally provided by the owner or have the conditions changed?  Yes  No  
Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

8/19/2018  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** . For more information, please call: (510) 238-3721.

### **File Review**

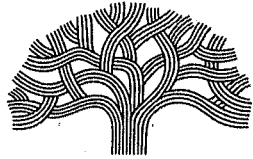
Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_

T18-0469 R/DA SK

RECEIVED  
CITY OF OAKLAND  
REGISTRATION PROGRAM



CITY OF OAKLAND

**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
P.O. Box 70243  
Oakland, CA 94612-0243  
(510) 238-3721

For date stamp  
2010 AUG 31 AM 11:32

**TENANT PETITION**

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name Lucid Dream Lounge, Inc. W. Breanna Leslie Myles Faigin Jakob Valvo	Rental Address (with zip code) 4401 San Leandro St. #25 Oakland, CA 94601	Telephone: 917.603.0057
		E-mail: theluciddreamlounge@gmail.com
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s) John Protopappas Vulcan Lofts, LLC & Vulcan Loft's Management Co.	Mailing Address (with zip code) Madison Park Financial John Protopappas, MPF Lake Merritt Tower 155 Grand Ave, Suite 950 Oakland, CA 94612	Telephone: 510.452.2944
		Email:
Property Manager or Management Co. (if applicable) Madison Park Financial LLC Barbara Turner MPF Elicia Holland Ex. Res Mgr 8/1/18	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge Co. Lake Merritt Tower 155 Grand Ave, Suite 950 Oakland, CA 94612	Telephone: 510.452.2944 Ext 21
		Email: Barbara@mfpcorp.com

Number of units on the property: 56 includes 2 Businesses

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input type="checkbox"/> Apartment, Room, or <b>Live-Work</b>
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitable unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more of the following grounds:**

*TENANT  
PETITION*

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.



<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\* \* \*

\* See 4 Page attachment related to fig, "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 4/2006 Initial Rent: \$ 2562.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
11/19/2012	1/1/2013	\$ 2652.00	\$ 2732.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2014	2015	\$ 2732.00	\$ 2869.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/27/2015	3/01/2016	\$ 2869.00	\$ 3156.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3/23/2017	5/1/2017	\$ 3156.00	\$ 3251.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7/25/18	9/01/2018	\$ 3251.00	\$ 3365.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?  Yes  No  
Have you lost services originally provided by the owner or have the conditions changed?  Yes  No  
Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:


- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

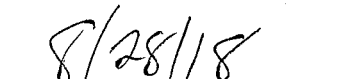
Please attach documentary evidence if available. Please see attached copy of Letter dropped in person at MPF Office 9/08/14

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
Tenant's Signature

  
Date

[Empty rectangular box]

[Empty rectangular box]

**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

Tenant's Signature

Date

**VI. IMPORTANT INFORMATION:**

**Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

**File Review**

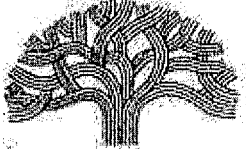
Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

**VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization.
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): Community Member

T18-0470 RC/DK SK

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: 2018 AUG 31 AM 11:33
	<b>TENANT PETITION</b>	

**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed.

**Please print legibly**

Your Name DARIN MARSHALL	Rental Address (with zip code) #26 4401 SAN LEANDRO ST OAKLAND CA 94601	Telephone: 415-218-1597 E-mail: darinmarshall@me.com
Your Representative's Name	Mailing Address (with zip code)	Telephone:  E-mail:
Property Owner(s) name(s) JOHN PROTOPAPPAS VULCAN LOFTS LLC & Vulcan Loft's Management Co.	MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 Email: John@mpfcorp.com
Property Manager or Management Co. Madison Park Financial LLC Barbara Turner MPF 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 EXT 21 Email: Barbara@mpfcorp.com

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

TENANT  
000116  
PETITION

(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)  
 (e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).  
 (f) The rent increase notice(s) was (were) not given to me in compliance with State law.  
 (g) The increase I am contesting is the second increase in my rent in a 12-month period.  
 (h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)  
 (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)  
 (j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.  
 (k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).  
 (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)  
 (m) The owner did not give me a summary of the justification(s) for the increase despite my written request.  
 (n) The rent was raised illegally after the unit was vacated as set forth under OMC 8.22.080.

\* SEE 4 PAGE ATTACHMENT RELATED TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 1995 Initial Rent: \$ 1600 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
7/25/2018	9/1/2018	\$2616	\$2705	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3/23/2017	5/1/2017	\$2540	\$2616	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/27/2015	3/1/2016	\$2309	\$2540	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
INCREASES BACK TO START OF FIRST INCREASE SINCE MOVING IN		\$	\$	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

W/A

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

Dain

Tenant's Signature

8/26/18

Date

[Empty rectangular box]

[Empty rectangular box]

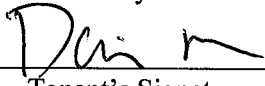
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

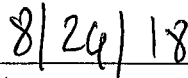
Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).



Tenant's Signature



Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

### **File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): FRIEND

T18-0471 REJ DAT SK



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**  
P.O. Box 70243  
Oakland, CA 94612-0243  
(510) 238-3721

RECEIVED  
For date stamp  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2018 AUG 31 AM 11:33  
**TENANT PETITION**

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name <b>Deborah Weber</b>	Rental Address (with zip code) <b>4401 San Leandro St., #31 Oakland, Ca 94601-4457</b>	Telephone: <b>(510) 289-5002</b> E-mail: <b>turtlegirl1899@gmail.com</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone:  E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS VULCAN LOFTS LLC &amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b> Email: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC Barbara Turner MPF</b>  8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) <b>Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b> Email: <b>Barbara@mpfcorp.com</b>

Number of units on the property: **56 Units + 2 Business**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

TENANT  
PETITION  
000120



<input checked="" type="checkbox"/>	(d) No written notice of Rent program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised illegally after the unit was vacated as set forth under OMC 8.22.080.

\*  
 ↓  
 \* = SEE A PAGE ATTACHMENT RELATED TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: July 2003 Initial Rent: \$ 1,100 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
7/25/18	9/1/18	\$ 1,655	\$ 1804	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3/23/17	5/1/17	\$ 1,607	\$ 1655	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/27/15	3/1/16	\$ 1,461	\$ 1607	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$ 1,391	\$ 1461	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
11/19/12	1/1/13	\$ 1,350	\$ 1391	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
10/25/11	1/1/12	\$ 1,312	\$ 1350	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

AND ALL RENT INCREASES FROM JULY 2003 ONWARD... Thankyou!  
 Rev. 7/31/17 For more information phone (510) 238-3721.

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other-relevant Petitions:

N/A

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

Yes  No

Have you lost services originally provided by the owner or have the conditions changed?

Yes  No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.



Tenant's Signature

8/16/18  
Date

\_\_\_\_\_

\_\_\_\_\_

**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

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**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).



Tenant's Signature

8/16/18  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

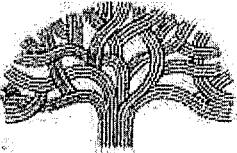
### **File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_

T18-0473 KC/DK SK

 CITY OF OAKLAND	CITY OF OAKLAND <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED CITY OF OAKLAND For date stamp RENT ADJUSTMENT PROGRAM 2018 AUG 31 AM 11:34
	<b>TENANT PETITION</b>	

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name <i>Matthew Hudson</i>	Rental Address (with zip code) <i>4401 San Leandro #36 Oakland, CA 94601</i>	Telephone: <i>206-251-8719</i>
Your Representative's Name	Mailing Address (with zip code)	E-mail: <i>mahudson@gmail.com</i>
Property Owner(s) name(s) JOHN PROTOPAPPAS VULCAN LOFTS LLC & Vulcan Loft's Management Co.	MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944
Property Manager or Management Co. Madison Park Financial LLC Barbara Turner MPF 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 EXT 21
		E-mail: Barbara@mpfcorp.com

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

TENANT  
000124  
P.O. Box

(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)  
 (e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).  
 (f) The rent increase notice(s) was (were) not given to me in compliance with State law.  
 (g) The increase I am contesting is the second increase in my rent in a 12-month period.  
 (h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)  
 (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)  
 (j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.  
 (k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).  
 (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)  
 (m) The owner did not give me a summary of the justification(s) for the increase despite my written request.  
 (n) The rent was raised illegally after the unit was vacated as set forth under OMC 8.22.080.

\* SEE A PAGE ATTACHMENT TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 6/23/09 Initial Rent: \$ 1100 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
<u>7/25/18</u>	<u>9/1/18</u>	\$ <u>1882</u>	\$ <u>2051</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<u>3/23/17</u>	<u>5/1/17</u>	\$ <u>1827</u>	\$ <u>1882</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<u>12/27/15</u>	<u>3/1/16</u>	\$ <u>1661</u>	\$ <u>1827</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
<u>And All Increases Before</u>		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

Yes  No

Have you lost services originally provided by the owner or have the conditions changed?

Yes  No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

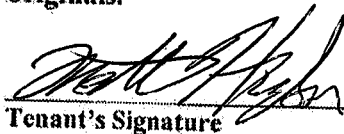
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

8-29-18  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

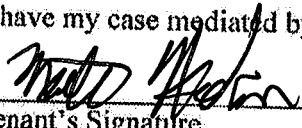
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

9/29/18  
\_\_\_\_\_  
Date

**VI. IMPORTANT INFORMATION:**

**Time to File**

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

**File Review**

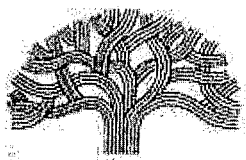
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**VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- \_\_\_\_\_ Printed form provided by the owner
- \_\_\_\_\_ Pamphlet distributed by the Rent Adjustment Program
- \_\_\_\_\_ Legal services or community organization
- \_\_\_\_\_ Sign on bus or bus shelter
- Rent Adjustment Program web site
- \_\_\_\_\_ Other (describe): \_\_\_\_\_

T18-0474 RC ~~DA~~ SK

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
For date stamp.

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	2010 AUG 31 AM 11:34
	<b>TENANT PETITION</b>	

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name WOODRUFF BURLEY & ET AL	Rental Address (with zip code) #39 VULCAN LOFTS 4401 SAN LEANDRO ST OAKLAND CA. 94601	Telephone: 415 728 1037 E-mail: woody.burley@gmail.com
Your Representative's Name	Mailing Address (with zip code)	Telephone:  E-mail:
Property Owner(s) name(s) JOHN PROTOPAPPAS VULCAN LOFTS LLC & Vulcan Loft's Management Co.	MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 Email: John@mpfcorp.com
Property Manager or Management Co. Madison Park Financial LLC Barbara Turner MPF 8.1.18 Ex Res. Mge. Elicia Holland	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 EXT 21 Email: Barbara@mpfcorp.com

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

TENANT  
000128  
petition



<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
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<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\* SEE 4 PAGE ATTACHMENT RELATED TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 6/30/18 - original lease November 2006 Initial Rent: \$ 2379 / ? @ 2006 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
<u>7/25/18</u>	<u>9/1/18</u>	<u>\$ 2379</u>	<u>\$ 2498</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:


- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

8/16/18  
\_\_\_\_\_  
Date

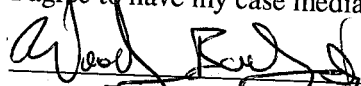
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**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

8/16/18  
\_\_\_\_\_  
Date

**VI. IMPORTANT INFORMATION:**

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- \_\_\_\_ Printed form provided by the owner
- \_\_\_\_ Pamphlet distributed by the Rent Adjustment Program
- \_\_\_\_ Legal services or community organization
- \_\_\_\_ Sign on bus or bus shelter
- \_\_\_\_ Rent Adjustment Program web site
- Other (describe): Neighbors

B/F Issues H & I For UNIT #39

H & I NO WATER HEATER IN UNIT

H & I FIRE EXTINGUISHER SERVICE TAKEN AWAY

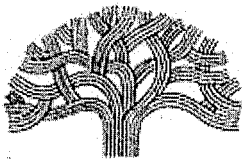
H & I Violation by Management of *The Just Cause Ordinance*

I Seven Months Loss of use of 1 of only 4 washing machines  
for a building of over 200 people--Only Just Repaired

I SAFETY PROBLEM: OUTSIDE DOORS BROKEN BY REGULAR ASSAULT  
By homeless/ street people. Need to have locks properly reinforced  
/replaced / repaired correctly for this type of behavior.

I Auto Gate 45 Ave is dangerous, broken sensor, hits people, animals & cars

T18-0475 RC/DK SK



CITY OF OAKLAND

**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
 P.O. Box 70243  
 Oakland, CA 94612-0243  
 (510) 238-3721

For date stamp  
 RECEIVED  
 CITY OF OAKLAND  
 RENT ADJUSTMENT PROGRAM  
 2010 AUG 31 AM 11:35  
**TENANT PETITION**

**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed.

**Please print legibly**

Your Name <b>Ian Nathan</b>	Rental Address (with zip code) <b>4401 San Leandro St. Apt 40 Oakland, CA 94601</b>	Telephone: <b>540-392-9490</b>
		E-mail: <b>ian.s.nathan@gmail.com</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS VULCAN LOFTS LLC &amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b>
		E-mail: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC Barbara Turner MPF</b>  8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) <b>Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b>
		E-mail: <b>Barbara@mpfcorp.com</b>

Number of units on the property: **56 Units + 2 Business**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

*TENANT  
 PE 000133-2*

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\*

\* SEE 4 PAGE ATTACHMENT RELATED TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 9/1/17 Initial Rent: \$ 2900 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
<u>7/25/18</u>	<u>9/1/18</u>	<u>\$ 2900</u>	<u>\$ 3161</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

Yes

No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

←X→

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

Yes  No

Have you lost services originally provided by the owner or have the conditions changed?

Yes  No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

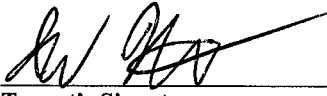
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

8/25/18  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

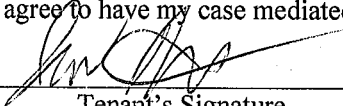
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

8/25/18  
\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

### **File Review**

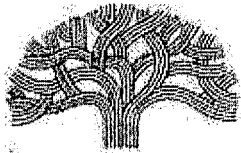
Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- \_\_\_\_\_ Printed form provided by the owner
- \_\_\_\_\_ Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- \_\_\_\_\_ Sign on bus or bus shelter
- \_\_\_\_\_ Rent Adjustment Program web site
- \_\_\_\_\_ Other (describe): \_\_\_\_\_



T18-0476 KC/DK SK

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED CITY OF OAKLAND RENT ADJUSTMENT PROGRAM For date stamp 2018 AUG 31 AM 11:35
	<b>TENANT PETITION</b>	

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name Daniel Wang	Rental Address (with zip code) 4401 San Leandro St, oakland, CA 94601, unit 41	Telephone: (927) 267-8805 E-mail: needsteeP456@gmail.com
Your Representative's Name:	Mailing Address (with zip code)	Telephone: E-mail:
Property Owner(s) name(s) JOHN PROTOPAPPAS VULCAN LOFTS LLC & Vulcan Loft's Management Co.	MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 Email: John@mpfcorp.com
Property Manager or Management Co. Madison Park Financial LLC Barbara Turner MPF 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: (510) 452-2944 EXT 21 Email: Barbara@mpfcorp.com

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. I (We) contest one or more rent increases on one or more of the following grounds:

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

TENANT  
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 PETITION

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\* See 4 pages Attachment Related to Figure 2

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 9/1/2016 Initial Rent: \$ 1,599.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?	
		From	To		Yes	No
<u>01/30/2018</u>	<u>4/1/2018</u>	<u>\$ 1,879.00</u>	<u>\$ 1,830.00</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<u>03/23/2017</u>	<u>5/1/2017</u>	<u>\$ 1,599.00</u>	<u>\$ 1,679.00</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

N/A

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

*Dum word*  
Tenant's Signature

8/16/18  
Date

[Empty rectangular box]

[Empty rectangular box]

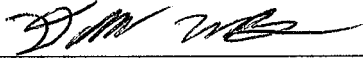
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).



Tenant's Signature

8/16/18

Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

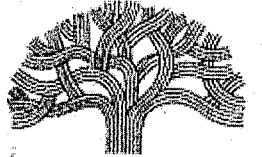
### **File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_

T18: 0477 RC/DASK

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED CITY OF OAKLAND RENT ADJUSTMENT PROGRAM For date stamp: 2018 AUG 31 AM 11:35
	<b>TENANT PETITION</b>	

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name <b>EZRA EISMONT</b>	Rental Address (with zip code) <b>4401 SAN LEANDRO ST.                  #46 OAKLAND CA                  94601</b>	Telephone: <b>510-534-3708</b> E-mail: <b>EZRALI@EZRALI.COM</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone: E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS                  VULCAN LOFTS LLC                  &amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL                  JOHN PROTOPAPPAS, MPF                  Lake Merritt Tower                  155 Grand Avenue, Suite 950                  Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b> Email: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC                  Barbara Turner MPF</b> 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) <b>Barbara Turner                  Madison Park Financial Mge. Co                  155 Grand Avenue, Suite 950                  Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b> Email: <b>Barbara@mpfcorp.com</b>

Number of units on the property: **56 Units + 2 Business**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval for such an increase and the rent increase exceeds the CPI Adjustment rent increase.

TENANT  
 P000141

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
* <input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\* SEE 4 PAGE ATTACHMENT TO PG L.

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: JUNE 1 1998 Initial Rent: \$ 840 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
07/28/2018	09/01/2018	\$1,697	\$1,849	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
04/01/2017	05/01/2017	\$1,648	\$1,697	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
01/05/2016	03/01/2016	\$1,498	\$1,648	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/01/2014	01/01/2015	\$1,427	\$1,498	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/01/2012	01/01/2013	\$1,359	\$1,427	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
AND ALL	PREVIOUS	\$RENT	\$INCREASES	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

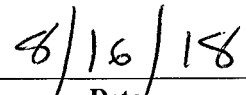
Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

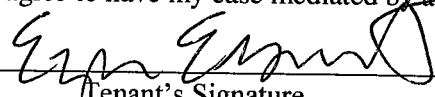
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

8/16/18  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

### **File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- \_\_\_\_\_ Printed form provided by the owner
- \_\_\_\_\_ Pamphlet distributed by the Rent Adjustment Program
- \_\_\_\_\_ Legal services or community organization
- \_\_\_\_\_ Sign on bus or bus shelter
- \_\_\_\_\_ Rent Adjustment Program web site
- Other (describe): NEIGHBOR



T18-0478 REC/DAT SK



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
P.O. Box 70243  
Oakland, CA 94612-0243  
(510) 238-3721

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

For date stamp  
2018 AUG 31 AM 11:36

**TENANT PETITION**

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name <b>MATTHEW MARTIN</b>	Rental Address (with zip code) <b>4401 SAN LEANDRO ST. OAKLAND, CA 94601 #58</b>	Telephone: <b>510 504 1907</b> E-mail: <b>MELLOWMAN720@gmail.com</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone:  E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS VULCAN LOFTS LLC &amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b> Email: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC Barbara Turner MPF</b> 8.1.18 Ex Res. Mge. Elicia Holland	Mailing Address (with zip code) <b>Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b> Email: <b>Barbara@mpfcorp.com</b>

Number of units on the property: **56 Units + 2 Business**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

000145  
TENANT  
PETITION

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\*

\* SEE 4 Page Attachment Related to fig. "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: Sept 2015 Initial Rent: \$ 1615 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
7/25/2018	9/1/2018	\$ 1779	\$ 1939	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2/1/2017	4/1/2017	\$ 1685	\$ 1779	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2/1/2016	4/1/2016	\$ 1615	\$ 1685	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

Yes

No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

Yes  No

Have you lost services originally provided by the owner or have the conditions changed?

Yes  No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

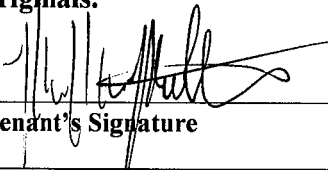
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

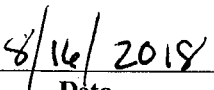
Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

  
\_\_\_\_\_  
Date

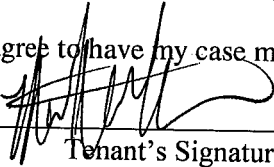
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

8/16/2018  
\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

### **File Review**

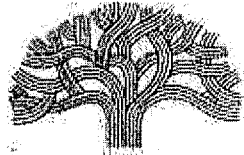
Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_

T18-0479

RC/DK SK



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**  
P.O. Box 70243  
Oakland, CA 94612-0243  
(510) 238-3721

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
For date stamp

2008 AUG 31 AM 11:36

**TENANT PETITION**

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name <b>COLIN SULLIVAN</b>	Rental Address (with zip code) <b>4401 SAN LEANDRO ST. Unit 53 OAKLAND, CA 94601</b>	Telephone: <b>203 415 9606</b>
		E-mail: <b>COLINSULE@GMAIL.COM</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS VULCAN LOFTS LLC &amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b>
		Email: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC Barbara Turner MPF</b>  8.1.18 Ex Res. Mge. Elicia Holland	Mailing Address (with zip code) <b>Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b>
		Email: <b>Barbara@mpfcorp.com</b>

Number of units on the property: **56 Units + 2 Business**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

*TE-00049  
Petition*

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\* See 4 PAGE ATTACHMENT PLACED TO FIG "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: May 2012 Initial Rent: \$1,486.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
01/01/2016	03/01/2016	\$1,608.00	\$1,769.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
07/15/2018	09/01/2018	\$1,822.00	\$1,986.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

- Yes
- No

Have you lost services originally provided by the owner or have the conditions changed?

- Yes
- No

*CS*

Are you claiming any serious problem(s) with the condition of your rental unit?

- Yes
- No

*CS*

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:


- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

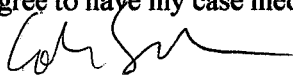
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You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

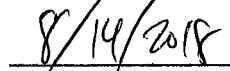
Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).



Tenant's Signature



Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

### **File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): tenants union



T18-0498 RC/SK

 <b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED CITY OF OAKLAND RENT ADJUSTMENT PROGRAM For date stamp 2018 SEP 19 AM 11:07
	<b>TENANT PETITION</b>

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name <b>JOSHUA R. MILLER</b>	Rental Address (with zip code) #59 <b>4401 SAN LEONARDO ST.          OAKLAND CA. 94601</b>	Telephone: <b>510 827 8433</b> E-mail: <i>millersemailaddress@gmail.com</i>
Your Representative's Name	Mailing Address (with zip code)	Telephone: E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS          VULCAN LOFTS LLC          &amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL          JOHN PROTOPAPPAS, MPF          Lake Merritt Tower          155 Grand Avenue, Suite 950          Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b> Email: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC          Barbara Turner MPF</b> 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) <b>Barbara Turner          Madison Park Financial Mge. Co          155 Grand Avenue, Suite 950          Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b> Email: <b>Barbara@mpfcorp.com</b>

Number of units on the property: **56 Units + 2 Business**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment.

Rev. 7/31/17

For more information phone (510) 238-3721

*Tenant  
 Petition  
 000153*

<input type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\* \* \*

\* SEE A PAGE ATTACHMENT RELATED TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: 4/1/2012 Initial Rent: \$ 1675.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
01/01/2018	09/01/2018	\$ 2092	\$ 2192	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
03/23/2017	05/01/2017	\$ 1992	\$ 2092	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/27/2015	03/01/2016	\$ 1811	\$ 1992	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
11/20/2014	01/01/2015	\$ 1725	\$ 1811	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
11/19/2012	01/01/2013	\$ 1675	\$ 1725	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

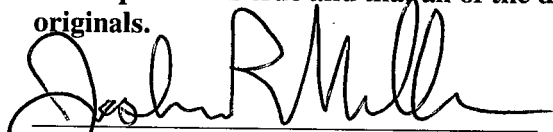
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

8.20.18  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

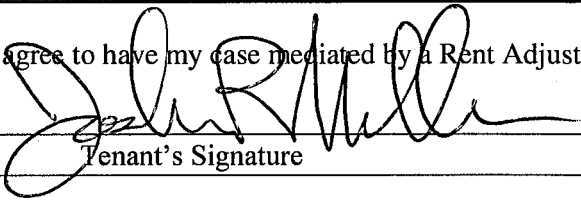
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

8.20.18  
Date

**VI. IMPORTANT INFORMATION:**

**Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

**File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

**VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_

T18-0499 R/SK



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
 P.O. Box 70243  
 Oakland, CA 94612-0243  
 (510) 238-3721

RECEIVED  
 For date stamp  
 CITY OF OAKLAND  
 RENT ADJUSTMENT PROGRAM  
 2010 SEP 19 AM 11:06  
**TENANT PETITION**

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name <b>TZONG ROGERS</b>	Rental Address (with zip code) # 52 <b>VULCAN LOFTS</b> <b>4401 SAN LEANDRO ST</b> <b>OAKLAND CA. 94601</b>	Telephone: <b>415-663-6893</b> E-mail: <b>TZROGERS@madison.com</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone:  E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS</b> <b>VULCAN LOFTS LLC</b> <b>&amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL</b> <b>JOHN PROTOPAPPAS, MPF</b> <b>Lake Merritt Tower</b> <b>155 Grand Avenue, Suite 950</b> <b>Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b> Email: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Finacial LLC</b> <b>Barbara Turner MPF</b> 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) <b>Barbara Turner</b> <b>Madison Park Financial Mge. Co</b> <b>155 Grand Avenue, Suite 950</b> <b>Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b> Email: <b>Barbara@mpfcorp.com</b>

Number of units on the property: **56 Units + 2 Business**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
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<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustme rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

TENANT  
 PETITION 000487



\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

Yes  No

Have you lost services originally provided by the owner or have the conditions changed?

Yes  No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

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- 3) when you notified the owner of the problem(s); and
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Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

Tenant's Signature



Date

9-6-18

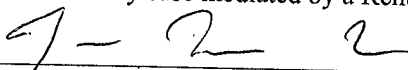
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**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_

Tenant's Signature

9-6-18  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

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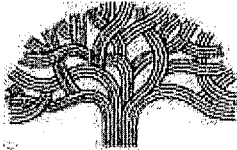
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- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_



T18.0500 RCL/SK

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
For date stamp.  
2010 SEP 19 AM 11:04

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	<b>TENANT PETITION</b>

**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed.

Please print legibly

Your Name <b>MILES ROSS</b>	Rental Address (with zip code) #14 <b>VULCAN LOFTS</b> <b>4401 SAN LEANDRO ST</b> <b>OAKLAND CA 94601</b>	Telephone: USE EMAIL <b>530.913.4443</b> E-mail: <b>mross30@yahoo.com</b>
Your Representative's Name:	Mailing Address (with zip code)	Telephone:  E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS</b> <b>VULCAN LOFTS LLC</b> <b>&amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL</b> <b>JOHN PROTOPAPPAS, MPF</b> <b>Lake Merritt Tower</b> <b>155 Grand Avenue, Suite 950</b> <b>Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b> Email: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC</b> <b>Barbara Turner MPF</b> 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) <b>Barbara Turner</b> <b>Madison Park Financial Mge. Co</b> <b>155 Grand Avenue, Suite 950</b> <b>Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b> Email: <b>Barbara@mpfcorp.com</b>

Number of units on the property: 56 Units + 2 Business

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

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<input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment a rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

TENANT  
160001612

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

\* → SEE 4 PAGE ATTACHMENT RELATED TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: SEPT 14, 2009 Initial Rent: \$ 1,975.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
7.25.2018	9.01.18	\$ 2494	\$ 2618	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12.27.2015	3.01.16	\$ 2267	\$ 2494	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ES ALL	RENT INCREASES BEFORE.			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

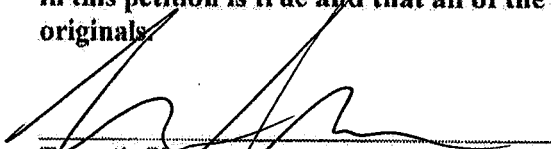
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

9/9/18  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

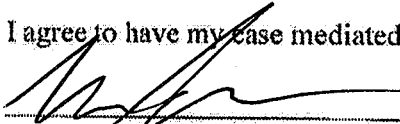
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

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Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

9/9/18  
\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

### **File Review**

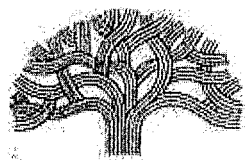
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## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- \_\_\_\_\_ Printed form provided by the owner
- \_\_\_\_\_ Pamphlet distributed by the Rent Adjustment Program
- \_\_\_\_\_ Legal services or community organization
- \_\_\_\_\_ Sign on bus or bus shelter
- \_\_\_\_\_ Rent Adjustment Program web site
- Other (describe): Vulcan Tenants Union

T18.0501 PC/SK

RECEIVED  
CITY OF OAKLAND  
REGISTRATION PROGRAM  
For date stamp.

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	2018 SEP 19 AM 11:05
	<b>TENANT PETITION</b>	

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name <b>DAVID KESSLER</b> <b>SARINA KIRK</b> <b>SARAH RUND</b> <b>EZRA UNTERSEHER</b>	Rental Address (with zip code) <b># 17</b> <b>4401 SAN LEONARD ST. OAK CA.</b> E-mail: <b>S.KLISE.DJ@gmail.com</b> E-mail: <b>EZRA.UNTERSEHER@gmail.com</b>	Telephone: <b>510 508 9244</b> <b>530 521 2588</b> <b>781 929 8357</b> <b>509 378 2548</b> E-mail: <b>DBKES@gmail.com</b> <b>SARINAROSEART@gmail.com</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone: E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS</b> <b>VULCAN LOFTS LLC</b> <b>&amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL</b> <b>JOHN PROTOPAPPAS, MPF</b> Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: <b>(510) 452-2944</b> Email: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC</b> <b>Barbara Turner MPF</b> 8.1.18 Ex Res. Mge. Elicia Holland	Mailing Address (with zip code) <b>Barbara Turner</b> Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612	Telephone: <b>(510) 452-2944 EXT 21</b> Email: <b>Barbara@mpfcorp.com</b>

PK  
SK  
SR  
EU  
DK  
ST

Number of units on the property: **56 Units + 2 Business**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (i
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

TENANT  
PETITION  
000165



\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No  
Have you lost services originally provided by the owner or have the conditions changed?  Yes  No  
Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

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Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

Jarena Kirk  
Tenant's Signature

9/16/18  
Date

\_\_\_\_\_

\_\_\_\_\_

**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

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**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

Jarena Plisk  
Tenant's Signature

9/16/18  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

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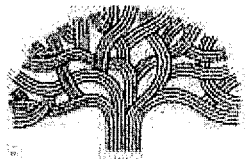
## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): VTU



T19-0021 RC/SKEL

RECEIVED  
CITY OF OAKLAND

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp 2010 OCT 17 AM 10:50 <b>TENANT PETITION</b>
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**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

# 54

Your Name <b>REBECCA COTTON</b>	Rental Address (with zip code) <b>4401 SAN LEANDRO ST                  OAKLAND CA 94601                  VULCAN LOFTS</b>	Telephone: <b>510 967-9323</b> E-mail: <b>BEXTRASANDY@AOL.COM</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone: E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS                  VULCAN LOFTS LLC                  &amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL                  JOHN PROTOPAPPAS, MPF                  Lake Merritt Tower                  155 Grand Avenue, Suite 950                  Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b> Email: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC                  Barbara Turner MPF</b> 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) <b>Barbara Turner                  Madison Park Financial Mge. Co                  155 Grand Avenue, Suite 950                  Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b> Email: <b>Barbara@mpfcorp.com</b>

Number of units on the property: **56 Units + 2 Business**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated
<input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received a p/ Program for such an increase and the rent increase exceeds the CPI Adjust rent increase.

Rev. 7/31/17

For more information phone (510) 238-372

TENANT  
PETITION

000169

(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)  
 (e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).  
 (f) The rent increase notice(s) was (were) not given to me in compliance with State law.  
 (g) The increase I am contesting is the second increase in my rent in a 12-month period.  
 (h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)  
 (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)  
 (j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.  
 (k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).  
 (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)  
 (m) The owner did not give me a summary of the justification(s) for the increase despite my written request.  
 (n) The rent was raised illegally after the unit was vacated as set forth under OMC 8.22.080.

\*  
↓  
\*

SEE A PAGE ATTACHMENT TO "L"

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: JULY 1996 Initial Rent: \$ 1200.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
7/28/18	9/01/2018	\$2303 -	\$2418 -	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4/01/17	5/01/2017	\$2236 -	\$2303 -	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/27/15	3/01/2016	\$2033 -	\$2236 -	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

↓  
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Ⓞ

CONTESTING ALL PAST RENT INCREASES

Rev. 7/31/17

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Have you ever filed a petition for this rental unit?

Yes I AM SUBMITTING ANOTHER RAP PET THRU VULCAN TENANTS UNION ~  
 No SEE ENCLOSED "SHERMAN CASE" NOTES - 4 PAGES ATTACHED ON FRAUD + MISTAKE  
SEE ESP. PAGE 2 # 2 OF ATTACHMENT

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

CASE # T05-0146

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

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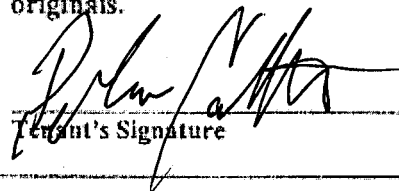
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**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
\_\_\_\_\_  
Tenant's Signature

OCT 9, 2018  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

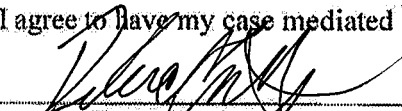
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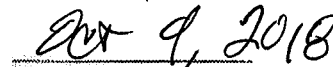
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**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

  
\_\_\_\_\_  
Date

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### **Time to File**

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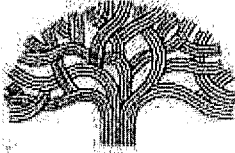
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- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_

T19-0022 RC/SK EL

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED CITY OF OAKLAND RENT ADJUSTMENT ARBITRATION PROGRAM For date stamp 2018 OCT 17 AM 10:49 <b>TENANT PETITION</b>
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**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

# 4 B

Your Name <b>CHARLES LONG</b>	Rental Address (with zip code) <b>VULCAN LOFTS                  4401 SAN LEANDRO ST                  OAKLAND CA 94601</b>	Telephone: <b>415 850 1862</b> E-mail: <b>SONIC.BUDHA@gmail.com</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone: E-mail:
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS                  VULCAN LOFTS LLC                  &amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL                  JOHN PROTOPAPPAS, MPF                  Lake Merritt Tower                  155 Grand Avenue, Suite 950                  Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b> Email: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC                  Barbara Turner MPF</b> 8.1.18 Ex Res. Mge. Elecia Holland	Mailing Address (with zip code) <b>Barbara Turner                  Madison Park Financial Mge. Co                  155 Grand Avenue, Suite 950                  Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b> Email: <b>Barbara@mpfcorp.com</b>

Number of units on the property: **56 Units + 2 Business**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.



\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

  N/A  

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?  Yes  No  
Have you lost services originally provided by the owner or have the conditions changed?  Yes  No  
Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

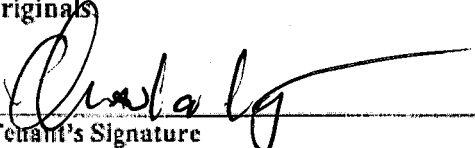
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals

  
Tenant's Signature

  10/18/15    
Date

\_\_\_\_\_

\_\_\_\_\_

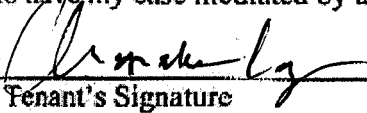
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

12/16/13  
\_\_\_\_\_  
Date

**VI. IMPORTANT INFORMATION:**

**Time to File**

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

**File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

**VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_



T19-0023 Re/SK

RECEIVED

For date stamp CITY OF OAKLAND RENT ARBITRATION PROGRAM

2018 OCT 17 AM 10:50

**TENANT PETITION**



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
 P.O. Box 70243  
 Oakland, CA 94612-0243  
 (510) 238-3721

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

Please print legibly

#43

Your Name <b>Randall SPENCER</b>	Rental Address (with zip code) <b>VULCAN LOFTS 4401 San Leandro St</b>	Telephone: <b>773-451-5892</b>
Your Representative's Name	Mailing Address (with zip code)	E-mail: <b>randallspencer@gmail.com</b>
Property Owner(s) name(s) <b>JOHN PROTOPAPPAS VULCAN LOFTS LLC &amp; Vulcan Loft's Management Co.</b>	<b>MADISON PARK FINANCIAL JOHN PROTOPAPPAS, MPF Lake Merritt Tower 155 Grand Avenue, Suite 950 Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944</b> E-mail: <b>John@mpfcorp.com</b>
Property Manager or Management Co. <b>Madison Park Financial LLC Barbara Turner MPF</b>	Mailing Address (with zip code) <b>Barbara Turner Madison Park Financial Mge. Co 155 Grand Avenue, Suite 950 Oakland, CA 94612</b>	Telephone: <b>(510) 452-2944 EXT 21</b> E-mail: <b>Barbara@mpfcorp.com</b>

8.1.18 Ex Res. Mge. Elecia Holland

Number of units on the property: **56 Units + 2 Business**

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available rent increase.

Rev. 7/31/17

For more information phone (510) 238-3721.

TENANT PETITION 000172

(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
(g) The increase I am contesting is the second increase in my rent in a 12-month period.
(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III, on following page)
(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/> (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: AUGUST 15 2008 Initial Rent: \$ 2,875.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

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- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

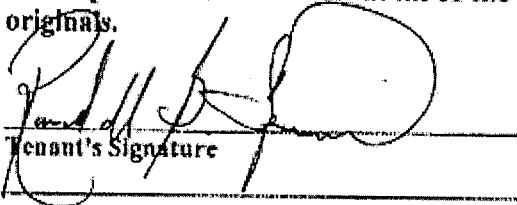
- 1) a list of the lost housing service(s) or problem(s);
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Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

  
Tenant's Signature

10-3-2018  
Date

\_\_\_\_\_

\_\_\_\_\_

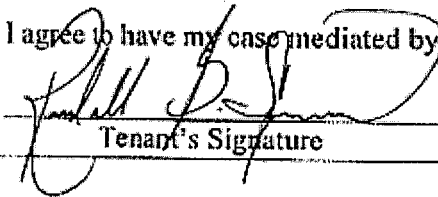
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature

10-3-2018  
Date

## VI. IMPORTANT INFORMATION:

### Time to File

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** Mail to: Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; In person: Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; RAP Online Petitioning System: <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

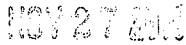
### File Review

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?

- \_\_\_\_\_ Printed form provided by the owner
- \_\_\_\_\_ Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- \_\_\_\_\_ Sign on bus or bus shelter
- \_\_\_\_\_ Rent Adjustment Program web site
- \_\_\_\_\_ Other (describe): \_\_\_\_\_

49.0013 PC/SK

<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          250 Frank H. Ogawa Plaza, Suite 2013          Oakland, CA 94612          (510) 238-3721</p>	<p>For date stamp.    <b>LANDLORD PETITION</b>  <b>FOR CERTIFICATE OF EXEMPTION</b>          (OMC §8.22.030.B)</p>
--	---

**Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.**

**Section 1. Basic Information**

Your Name Vulcan Lofts, LLC		Complete Address (with zip code) 155 Grand Avenue #950 Oakland, CA 94612	Telephone Day: _____
Your Representative's Name Lerna Kazazic Pahl & McCay		Complete Address (with zip code) 225 W. Santa Clara Street, #1500 San Jose, CA 95113	Telephone Day: (408) 286-5100
Property Address 4401 San Leandro Street Oakland, CA 94601		Total number of units in bldg or parcel. 59	
Type of units (circle one)	Single Family Residence (SFR)	Condominium	Apartment or Room
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes	No
Assessor's Parcel No. 034226500404			

**Section 2. Tenants.** You must attach a list of the names and addresses, with unit numbers, of all tenants residing in the unit/building you are claiming is exempt.

**Section 3. Claim(s) of Exemption:** A Certificate of Exemption may be granted **only** for dwelling units that are **permanently** exempt from the Rent Adjustment Ordinance.

**New Construction:** This may apply to individual units. The unit was newly constructed and a certification of occupancy was issued for it on or after January 1, 1983.

**Substantial Rehabilitation:** This applies only to entire buildings. An owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. The average basic cost for new construction is determined using tables issued by the Chief Building Inspector applicable for the time period when the Substantial Rehabilitation was completed.

~~Single Family or Condominium~~ **Single Family or Condominium (Costa-Hawkins):** Applies to Single Family Residences and condominiums only. If claiming exemption under the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.), please answer the following questions on a separate sheet:

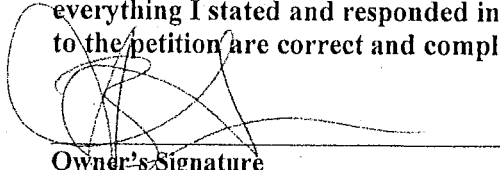
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being a notice of rent increase under Civil Code Section 827?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building, housing, fire, or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the current tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?
8. When did the tenant move into the unit?

**I (We) petition for exemption on the following grounds (Check all that apply):**

<input checked="" type="checkbox"/>	New Construction
<input type="checkbox"/>	Substantial Rehabilitation
<input type="checkbox"/>	Single Family Residence or Condominium (Costa-Hawkins)

**Section 4. Verification** Each petitioner must sign this section.

**I declare under penalty of perjury pursuant to the laws of the State of California that everything I stated and responded in this petition is true and that all of the documents attached to the petition are correct and complete copies of the originals.**

  
\_\_\_\_\_  
Owner's Signature

1/18/2019  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

**Important Information**

**Burden of Proof** 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.

**File Review** Your tenant(s) will be given the opportunity to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the tenant's Response. Copies of attachments to the Response form will not be sent to you. However, you may review any attachments in the Rent Program Office. Files are available for review by appointment only. For an appointment to review a file, call (510) 238-3721. Please allow six weeks from the date of filing for notification processing and expiration of the tenant's response time before scheduling a file review.



**PAHL & McCAY**  
A Professional Law Corporation

Stephen D. Pahl  
Karen K. McCay  
Fenn C. Horton  
Catherine S. Robertson  
Servando R. Sandoval  
Ginger L. Sotelo  
Theresa C. Becerra

Sonia S. Shah  
Helene A. Simvoulakis-Panos  
John A. List  
Eric J. Stephenson  
Lerna Kazazic  
Stephanie Drell  
Monisha Oshtory

Sarahann Shapiro  
*Special Counsel*

225 West Santa Clara St., Suite 1500, San Jose, California 95113-1752 • Tel: 408-286-5100 • Fax: 408-286-5722

2530 Wilshire Blvd., Suite 200, Santa Monica, California 90403-4663 • Tel: 424-217-1830 • Fax: 424-217-1854

Reply to: San Jose Office  
Sender's Direct Dial No.: (408) 918-2831  
Sender's Email Address: lkazazic@pahl-mccay.com

November 20, 2018

**RECEIVED**

**NOV 27 2018**

**RENT ADJUSTMENT PROGRAM  
OAKLAND**

Oakland City Hall  
The Oakland Rent Adjustment Program  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612

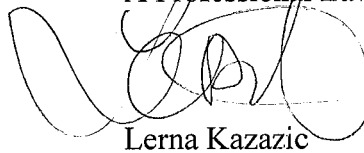
Re: **Madison Park Financial/Vulcan Lots**

To Whom It May Concern:

In addition to the revised documents which were submitted on August 22, 2018, we are also providing the Landlord Petition for Certificate of Exemption, in the above-referenced matter.

Sincerely,

PAHL & McCAY  
A Professional Law Corporation

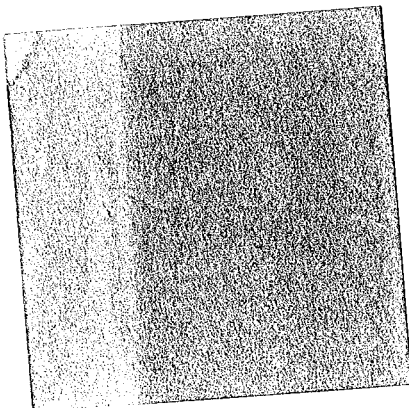


Lerna Kazazic

LK/ec

Enclosures

\*4693/001 - 00657477.DOCX.1



**000183**

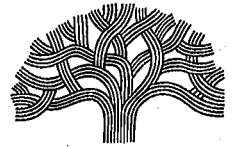




19	<b>Takehito Etani</b> <b>Ross Duncan</b> <b>Harel Meri</b> <b>Hadas Teitel</b> Annmarie Bustamante
20	Josh Bettenhausen
21	Zach Stockman John Goda Ziaa Szymanski Arthur Cardenas
22	Austin Maples-Fleck
23	<b>Ross Clark</b>
24	<b>Ross Clark</b>
25	The Lucid Dream Lounge,
26	Darin Marshall Beau Woodson Brittany Valdez
27	Brandon Mullins
28	Marshal Lane
29	Amelia Adams <b>Michael Cavanaugh</b>
30	<b>Eric Wilson</b>
31	Deborah Weber
32	Susannah Israel
33	Dani Reagan Kelley Halvorson
34	Jeff Maloney
35	Susan Leffingwell, Juliana * Juliana Broek Rigel Juratovac
36	Matthew Hudson
37	Mark Leavitt Fred Gromadski
38	Kevin Baldwin Chris Keller Mael Ryckeboer
39	Lia Walker

	Woodruff Burley Jeremy Gage Darius Todar Garth Ferris <b>Sarah Jane Paturzo</b>
40	Ian S. Nathan <b>Delila Santos</b>
41	<b>Michael Mann</b> Torey Broderson Danny Wang Joseph Robertson
42	Michael Parker
43	Randall Spencer Pamela Mangan Kyle Charleton Tiana Fraser Genevieve Busby <b>Martha Fehrman</b> Mikhail Lapin
45	Robert Jacobs Leah Samelson Lael Eisenlohr
46	Ezra Eismont
47A	Rachel Cole-Jansen Jeremy Croxton
48	<b>Noel Rolden-Yee</b> Matthew Graham Robert Hart
49	Michael Blodgett  Gary Prince
51	<b>Aldo Rossetto</b>
52	Catherine McKenny Tzong Bryan Kitchens Troy Clancy TzongTzu Rogerts
53	Colin Sullivan Kathryn Stewart Geneva Harrison Sandra Lawson
54	Rebecca Burnett Alfonso Kellenberger
55	<b>Serge Beaulieu Yelena</b> <b>Yelena Filipchuck</b>
56	Stephanie Kavrakis

	Jared Kadish	
57	<b>Efrem Rensi</b> <b>Reuben Tomar</b>	
58	Matthew Martin	
59	Joshua Miller	



Housing and Community Development Department  
Rent Adjustment Program

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

**ORDER REGARDING ISSUANCE OF SUBPOENAS**

RE: CASE NUMBERS: T17-0237; L19-0013; T18-0460-T18-0471; T18-0473 –  
T18-0479; T18-0498 – T18-0501; T19-0021 – T19-0023

PROPERTY ADDRESS: 4401 San Leandro Street, Oakland, CA  
DATE OF HEARING: April 15, 2019

The undersigned received a request on behalf of tenants' dated April 5, 2019, to determine whether good cause existed for the issuance of the requested subpoenas.

**GOOD CAUSE IS SHOWN** that the subpoena listed below is relevant to the determination of whether the subject unit is new construction pursuant to the Rent Adjustment Ordinance.

1. Subpoena of Chris Vivona, the construction foreman on the Vulcan project from 1985 to 1986.

**GOOD CAUSE IS NOT SHOWN** for the remaining witnesses listed in the tenant's request because the witnesses requested are not relevant to the issue of residential use of the subject property prior to January 1, 1983.

**IT IS FURTHER ORDERED**, that the testimony of Chris Vivona be taken by deposition, at a mutually agreeable date and time of the parties with the certified transcript submitted for consideration in this matter, in lieu of his testimony at the hearing.

Dated: April 16, 2019

Elan Consuella Lambert  
Administrative Hearing Officer  
Rent Adjustment Program

**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**

Notice of Hearing

**Owner**

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

**Owner Representative**

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

**Tenant Attorneys**

Hasmik Geghamyan, Esq.  
1736 Franklin Street, Suite 400  
Oakland, CA 94612

Leah Hess Esq.  
610 16<sup>th</sup> Street  
Oakland, CA 94612

**Tenant**

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

**Tenant**

Aldo Rossetto  
4401 San Leandro Street #51  
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**

Amy Wieliczka  
4401 San Leandro Street #3  
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**

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

**Tenant**

Arthur Cardenas  
4401 San Leandro Street #21  
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**

Beau Woodson  
4401 San Leandro Street #26  
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**

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

**Tenant**

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

**Tenant**

Catherine McKenny-Tzong  
4401 San Leandro Street #52  
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**

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**

David Kessler  
4401 San Leandro Street #17  
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**

Elicia Holland  
4401 San Leandro Street  
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 Unter Unnterseher  
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**

Ganeshan Sumati  
4401 San Leandro Street #17  
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**

Hadas Teitel  
4401 San Leandro Street #19  
Oakland, CA 94601

**Tenant**

Haley Wilson  
4401 San Leandro Street #3  
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 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 Croxton  
4401 San Leandro Street #47A  
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**

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**

Juliana Broek  
4401 San Leandro Street #35  
Oakland, CA 94601

**Tenant**

Juliana S Leffingwell  
4401 San Leandro Street #35  
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**

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**

Lia Walker  
4401 San Leandro Street #39  
Oakland, CA 94601

**Tenant**

Lia Walker  
4401 San Leandro Street #8  
Oakland, CA 94601

**Tenant**

Mael Ryckeboer  
4401 San Leandro Street #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**

Melissa Lareau  
4401 San Leandro Street #17  
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**

Mikhail Lapin  
4401 San Leandro Street #44  
Oakland, CA 94601

**Tenant**

Miles Ross  
4401 San Leandro Street #14  
Oakland, CA 94601

**Tenant**

Myles Faigin  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**

Nick Negusse  
4401 San Leandro Street #6  
Oakland, CA 94601

**Tenant**

Noel Rolden-Yee  
4401 San Leandro Street #48  
Oakland, CA 94601

**Tenant**

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

**Tenant**

PeBenito Dezirae  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Rachel C 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**

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**

Sara Le Cornec  
4401 San Leandro Street #3  
Oakland, CA 94601

**Tenant**

Sarah J Paturzo  
4401 San Leandro Street #39  
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**

Serge B Yelena  
4401 San Leandro Street #55  
Oakland, CA 94601

**Tenant**

Stephanie Kavakis  
4401 San Leandro Street #56  
Oakland, CA 94601



**Tenant**

Susannah Israel  
4401 San Leandro Street #32  
Oakland, CA 94601

**Tenant**

Suwapan Surasanpredee  
4401 San Leandro Street #9  
Oakland, CA 94601

**Tenant**

Takehito Etani  
4401 San Leandro Street #19  
Oakland, CA 94601

**Tenant**

Terry Sarver  
4401 San Leandro Street #4A  
Oakland, CA 94601

**Tenant**

The Lucid Dream Lounge  
4401 San Leandro Street #25  
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**

Williams Huggins  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Woodruff Burley  
4401 San Leandro Street #39  
Oakland, CA 94601

**Tenant**

Yelena Phillipchuck  
4401 San Leandro Street #55  
Oakland, CA 94601

**Tenant**

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

**Tenant**

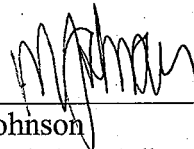
Ziaa Szymanski  
4401 San Leandro Street #21  
Oakland, CA 94601

**Tenant Representative**

Hasmik Geghamyan  
1736 Franklin St., Suite 400  
Oakland, CA 94612

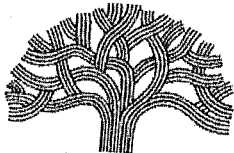
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first 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 **March 02, 2019** in Oakland, CA.



---

Nia Johnson  
Oakland Rent Adjustment Program



CITY OF OAKLAND

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 MAR 26 PM 2:36

RC/EL

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>SUSAN Lettingwell Rigel Juratovac</b>	Complete Address (with Zip Code) <b>4401 SAN LEANDRO ST. APT 35</b>	Telephone <b>(510) 379-0628</b>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: 1  
The unit I rent is: \_\_\_ a house  an apartment \_\_\_ a condo

#### Rental History:

Date you entered into the Rental Agreement for this unit: August, 2000  
Date you moved into this unit: August 2000

Are you current on your rent?  Yes \_\_\_ No \_\_\_ Lawfully Withholding Rent  
If you are lawfully withholding rent, attach a written explanation of the circumstances.

#### Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.  
Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

Program (RAP Notice):

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
Uncertain		\$	\$	Yes	No
Can be provided if need be.		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No

**Verification**

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

SUSAN LEFFINWELL

Susan Leffinwell  
Tenant's Signature

March 20, 2019  
Date

Rigel Juratovac  
Tenant's Signature

March 20, 2019  
Date

**Important Information**

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment ONLY.

For an appointment to review a file call (510) 238-3721.

**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, 5<sup>th</sup> Floor, Oakland, California 94612.

Today, I served the attached **TENANT RESPONSE** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5<sup>th</sup> Floor, Oakland, California, addressed to:

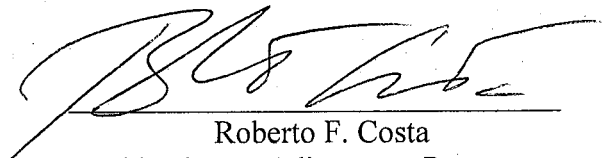
Vulcan Lofts, LLC  
155 Grand Avenue #950  
Oakland, CA 94612

Lerna Kazazic  
225 West Santa Clara Street, Suite 1500  
San Jose, CA 95113

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 13, 2019 in Oakland, California.

*Per Unit #6*

  
Roberto F. Costa  
Oakland Rent Adjustment Program



CITY OF OAKLAND

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:08

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>MICHAEL ROBINSON</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit #1 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>510 613 5103</b>
Your Representative's Name <b>N/A</b>	Complete Address (with Zip Code) <b>N/A</b>	Telephone <b>N/A</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units  
The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: July 27 2015

Date you moved into this unit: MAY 2014

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

**000206**

Attachment to Tenant's Response to Landlord's Petition for Exemption

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

2. Vidor Case: No Preclusive Effect

The owners of the property are advancing *Vidor v. City of Oakland Community and Economic Development Agency* 2009 Cal.App. (Unpublished) Lexis 8016 in support of their current

---

<sup>1</sup>See, e.g. *Michelsen v. Sherman* L13-0054, in which the Board suspended proceedings to give notice to all other tenants who had not been previously notified, to hold a hearing with regard to other units at the property.

<sup>2</sup>Many of the original habitability issues, remain today.

assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

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2019 MAR 28 AM 10:10



CITY OF OAKLAND

**RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

**TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION**

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>HELENA MARTIN</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit #2 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>510 219 6523</b>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) <b>1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612</b>	Telephone <b>CELL 818.590.0070 415.867.5548</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units  
The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: MAY 2007

Date you moved into this unit: MAY 2007

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.  
Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**



**Attachment to Tenant's Response to Landlord's Petition for Exemption**

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

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assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

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CITY OF OAKLAND

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:12

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

## TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name	Complete Address (with Zip Code)	Telephone
ANDREA IVES	VULCAN LOFTS Unit # 3 4401 San Leandro Street Oakland CA 94601	206.235.8998
HALEY WILSON		541.852.2775
Your Representative's Name	Complete Address (with Zip Code)	Telephone
HASMIK GEGAMYAN	1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

#### Rental History:

Date you entered into the Rental Agreement for this unit: 11/6/2014 ANDREA & HALEY \*

Date you moved into this unit: \* ENTERED TENANCY <sup>AE</sup> HW 8/1/2012  
2013

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

#### Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.  
Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

SEE ATTACHMENT

000214

#

Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit # 3  
Fees + W. 1/304

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

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3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

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# RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2019 MAR 28 AM 10:10

CASE NUMBER L19-0013

## TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name SARA LE CORNEC	Complete Address (with Zip Code) VULCAN LOFTS Unit #3 4401 San Leandro Street Oakland CA 94601	Telephone 510-502-1684
AMY WIELICZKA		913-908-6963
Your Representative's Name HASMIK GEGAMYAN	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  LIVE-WORK UNIT

### Rental History:

Date you entered into the Rental Agreement for this unit: REQUESTED - RENTALY DELAYED: 8/13/18 & 10/11/18

Date you moved into this unit: SARA MARCH 2017 & AMY MARCH 2018

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

### Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect. Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

SEE ATTACHMENT

000218

#3

**Attachment to Tenant's Response to Landlord's Petition for Exemption**

UNIT #3  
LeCorney + Wieliczka

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CITY OF OAKLAND

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RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:11

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.**

Your Name <i>Charles Long</i>	Complete Address (with Zip Code) VULCAN LOFTS Unit <i>#4B</i> 4401 San Leandro Street Oakland CA 94601	Telephone <i>415 850 1862</i>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 9/11/1998

Date you moved into this unit: 10/11/1998

Are you current on your rent?  Yes  No  **\* Lawfully Withholding Rent**

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase and decrease in services

000222

Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit # 48

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

2. Vidor Case: No Preclusive Effect

The owners of the property are advancing *Vidor v. City of Oakland Community and Economic Development Agency* 2009 Cal.App. (Unpublished) Lexis 8016 in support of their current

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<sup>1</sup>See, e.g. *Michelsen v. Sherman* L13-0054, in which the Board suspended proceedings to give notice to all other tenants who had not been previously notified, to hold a hearing with regard to other units at the property.

<sup>2</sup>Many of the original habitability issues, remain today.

assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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<sup>3</sup>Claim preclusion applies only when a second suit involves the same cause of action between the same parties. *DKN Holdings, LCC v. Faerber* (2016) 61 Cal.4th 813, 824. Issue preclusion prevents “relitigation of previously decided issues,” rather than causes of action as a whole. (*Ibid.*) It applies only when there has been a final adjudication of an *identical* issue against one who was a party in the first suit. (*Id.*, at p. 825.) Neither type of preclusion applies to the tenants here.

While Rebecca Cotton-Burnet was one of the *Vidor* tenants, her claim here presents a different issue and a different cause of action than the prior case. She asserts that the initial exemption was based upon “fraud or mistake.” This is a viable challenge to a previously determined exemption. The primary differences between her case and the other tenants is that she must prove fraud and mistake and she bears the burden of proof.



4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

5. The Exemption of the Four Units Resulted from Fraud or Mistake

The owners of the Vulcan, at the time of the *Vidor* petitions, were aware of the rental history of the property. They knew that most of the units were rented to residents well prior to issuance of any Certificates of Occupancy or finalizations of building permits. Yet they presented the matter as if those "interim" tenancies did not exist. They presented differing documents as to when all units were "completed" (e.g. Recorded Notice of Completion date of 6/12/1987 for all buildings, Certificates of Occupancy for Buildings A and B in 10/87, Building C still obtaining temporary Certificates of Occupancy in 2/88, Certificate of Complete Building Rehabilitation in 1987", asserting that the conversion to live-work occurred from 1985 until 4/87, signed by Orton, dated January 17, 1997).

This and other evidence will demonstrate the owners intent to obfuscate the prior residential use of the property and to hide the fact that tenants resided at the property well before any of these dates.



CITY OF OAKLAND

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:13

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name BRIANNE CRABTREE	Complete Address (with Zip Code) VULCAN LOFTS Unit #5 4401 San Leandro Street Oakland CA 94601	Telephone 415-205-3219
Your Representative's Name HASMIK GEGAMYAN	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  LIVE-WORK UNIT

#### Rental History:

Date you entered into the Rental Agreement for this unit: JUNE 1, 2012

Date you moved into this unit: 4/1/2011

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

#### Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

SEE ATTACHMENT

000226

Unit #5

Attachment to Tenant's Response to Landlord's Petition for Exemption

1. The Owners Cannot Demonstrate Entitlement to Exemption

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b. 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.)

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assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

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CITY OF OAKLAND

RENT ADJUSTMENT PROGRAM  
RENT ARBITRATION PROGRAM

2019 MAR 28 AM 10:13

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>LIA WALKER</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit # 8 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>415 244 5591</b>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) <b>1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612</b>	Telephone <b>CELL 818.590.0070 415.867.5548</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 3/1/2012

Date you moved into this unit: 3/1/2012

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

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The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

**Attachment to Tenant's Response to Landlord's Petition for Exemption**

1. **The Owners Cannot Demonstrate Entitlement to Exemption**

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

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CITY OF OAKLAND

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RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:14

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>SARENA KIRK</b>	Complete Address (with Zip Code) VULCAN LOFTS Unit #17 4401 San Leandro Street Oakland CA 94601	Telephone 530-521-2588
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 6/11/2014 (NEW AGREEMENT) 2/21/19

Date you moved into this unit: 2/15/18

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

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SEE ATTACHMENT

000234

Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit #17  
Kirk

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4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

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CITY OF OAKLAND

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:14

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>SAVANNAH CRESPO</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit # 17 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>828-450-4727</b>
Your Representative's Name <b>HASMIK GEGAMYAN *</b>	Complete Address (with Zip Code) <b>1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612</b>	Telephone <b>CELL 818.590.0070 415.867.5548</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

#### Rental History:

Date you entered into the Rental Agreement for this unit: 6/11/2014 (NEW AGREEMENT) 2/21/

Date you moved into this unit: 1/15/19

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

#### Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.  
Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

SEE ATTACHMENT

\* REPRESENTS CLIENT ON RENT CONTROL RESPONSE # L19-0013  
TO CHALLENGE CERTIFIC. OF EXEMPTION. 000238

Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit #17  
Cresgo

1. The Owners Cannot Demonstrate Entitlement to Exemption

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b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

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CITY OF OAKLAND

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RENT ARBITRATION BOARD

2019 MAR 28 AM 10:14

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>SARAH RUND</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit #17 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>707 742 3378</b>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) <b>1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612</b>	Telephone <b>CELL 818.590.0070 415.867.5548</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 6/11/2014 (NEW AGREEMENT 2/21/19)

Date you moved into this unit: 5/1/18

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

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Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

SEE ATTACHMENT

000242

Unit #17  
Rund

Attachment to Tenant's Response to Landlord's Petition for Exemption

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CITY OF OAKLAND

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:15

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>EZRA UNTERSEHER</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit # 17 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>509.378.2548</b>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) <b>1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612</b>	Telephone <b>CELL 818.590.0070 415.867.5548</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

Rental History:

Date you entered into the Rental Agreement for this unit: 6/11/2014 (NEW AGREEMENT) 2/21/19

Date you moved into this unit: 7/1/2018

Are you current on your rent?      Yes      No      Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

Exemption Contested:

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SEE ATTACHMENT

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Unit #17  
Untersetter

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To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

5. The Exemption of the Four Units Resulted from Fraud or Mistake

The owners of the Vulcan, at the time of the *Vidor* petitions, were aware of the rental history of the property. They knew that most of the units were rented to residents well prior to issuance of any Certificates of Occupancy or finalizations of building permits. Yet they presented the matter as if those "interim" tenancies did not exist. They presented differing documents as to when all units were "completed" (e.g. Recorded Notice of Completion date of 6/12/1987 for all buildings, Certificates of Occupancy for Buildings A and B in 10/87, Building C still obtaining temporary Certificates of Occupancy in 2/88, Certificate of Complete Building Rehabilitation in 1987", asserting that the conversion to live-work occurred from 1985 until 4/87, signed by Orton, dated January 17, 1997).

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CITY OF OAKLAND

2019 MAR 28 AM 10:15

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

**CASE NUMBER L19-0013**

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

<b>Your Name</b> ANDREW PULKRABEK	<b>Complete Address (with Zip Code)</b> VULCAN LOFTS Unit # 18 4401 San Leandro Street Oakland CA 94601	<b>Telephone</b> 206-427-4560
<b>Your Representative's Name</b> HASMIK GEGAMYAN	<b>Complete Address (with Zip Code)</b> 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	<b>Telephone</b> CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 11/1/2011

Date you moved into this unit: 11/1/2011

Are you current on your rent?  Yes  No  \* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase and decrease in services

000250

**Attachment to Tenant's Response to Landlord's Petition for Exemption**

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

2. Vidor Case: No Preclusive Effect

The owners of the property are advancing *Vidor v. City of Oakland Community and Economic Development Agency* 2009 Cal.App. (Unpublished) Lexis 8016 in support of their current

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<sup>1</sup>See, e.g. *Michelsen v. Sherman* L13-0054, in which the Board suspended proceedings to give notice to all other tenants who had not been previously notified, to hold a hearing with regard to other units at the property.

<sup>2</sup>Many of the original habitability issues, remain today.

assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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While Rebecca Cotton-Burnet was one of the *Vidor* tenants, her claim here presents a different issue and a different cause of action than the prior case. She asserts that the initial exemption was based upon “fraud or mistake.” This is a viable challenge to a previously determined exemption. The primary differences between her case and the other tenants is that she must prove fraud and mistake and she bears the burden of proof.

4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

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CITY OF OAKLAND

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:16

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

<b>Your Name</b> ANNMARIE BUSTAMANTE	<b>Complete Address (with Zip Code)</b> VULCAN LOFTS Unit #19 4401 San Leandro Street Oakland CA 94601	<b>Telephone</b> 707.246.1468
<b>Your Representative's Name</b> HASMIK GEGAMYAN	<b>Complete Address (with Zip Code)</b> 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	<b>Telephone</b> CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  LIVE-WORK UNIT

#### Rental History:

Date you entered into the Rental Agreement for this unit: 11/6/17

Date you moved into this unit: 11/6/17

Are you current on your rent?  Yes  No \* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

#### Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

SEE ATTACHMENT

\* Portion of Rent withheld due to challenged Rent increase and decreased services

000254

Unit #19

**Attachment to Tenant's Response to Landlord's Petition for Exemption**

1. **The Owners Cannot Demonstrate Entitlement to Exemption**

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

2. **Vidor Case: No Preclusive Effect**

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<sup>1</sup>See, e.g. *Michelsen v. Sherman* L13-0054, in which the Board suspended proceedings to give notice to all other tenants who had not been previously notified, to hold a hearing with regard to other units at the property.

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assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

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3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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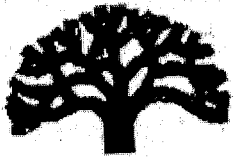
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CITY OF OAKLAND

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:17

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in  
Your response being rejected or delayed.

Your Name <b>ZACK</b>	Complete Address (with Zip Code) VULCAN LOFTS Unit #21 4401 San Leandro Street Oakland CA 94601	Telephone 206-491-6151
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: 52 Live-Work & 5 Business Units  
The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

Rental History:

Date you entered into the Rental Agreement for this unit: 11/1/2016

Date you moved into this unit: 11/1/2016

Are you current on your rent?  Yes  No  \* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.  
Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase and decrease in service:

000258

Unit #21  
Zack

**Attachment to Tenant's Response to Landlord's Petition for Exemption**

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CITY OF OAKLAND

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RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:16

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

**CASE NUMBER L19-0013**

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely. Failure to provide needed information may result in  
Your response being rejected or delayed.**

Your Name  <b>ZIAA SZYMANSKI</b>	Complete Address (with Zip Code)  VULCAN LOFTS Unit #21 4401 San Leandro Street Oakland CA 94601	Telephone  510.434.1077 Text 510 479.4792
Your Representative's Name  <b>LEAH HESS</b>	Complete Address (with Zip Code)  610 16th Street Suite M - 8 Oakland CA 94612	Telephone  510.451.3103

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: I agreed terms 3/21/16. Signed Lease 4/18/16 \*

Date you moved into this unit: \* ENTERED TENANCY 2011

Are you current on your rent?  Yes  No \*\* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

\*\* Portion of Rent withheld due to challenged Rent increase and decrease in services

000262

Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit # 21  
SZYMAUSKI

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

2. Vidor Case: No Preclusive Effect

The owners of the property are advancing *Vidor v. City of Oakland Community and Economic Development Agency* 2009 Cal.App. (Unpublished) Lexis 8016 in support of their current

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<sup>1</sup>See, e.g. *Michelsen v. Sherman* L13-0054, in which the Board suspended proceedings to give notice to all other tenants who had not been previously notified, to hold a hearing with regard to other units at the property.

<sup>2</sup>Many of the original habitability issues, remain today.

assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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<sup>3</sup>Claim preclusion applies only when a second suit involves the same cause of action between the same parties. *DKN Holdings, LCC v. Faerber* (2016) 61 Cal.4th 813, 824. Issue preclusion prevents “relitigation of previously decided issues,” rather than causes of action as a whole. (*Ibid.*) It applies only when there has been a final adjudication of an *identical* issue against one who was a party in the first suit. (*Id.*, at p. 825.) Neither type of preclusion applies to the tenants here.

While Rebecca Cotton-Burnet was one of the *Vidor* tenants, her claim here presents a different issue and a different cause of action than the prior case. She asserts that the initial exemption was based upon “fraud or mistake.” This is a viable challenge to a previously determined exemption. The primary differences between her case and the other tenants is that she must prove fraud and mistake and she bears the burden of proof.



4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

5. The Exemption of the Four Units Resulted from Fraud or Mistake

The owners of the Vulcan, at the time of the *Vidor* petitions, were aware of the rental history of the property. They knew that most of the units were rented to residents well prior to issuance of any Certificates of Occupancy or finalizations of building permits. Yet they presented the matter as if those "interim" tenancies did not exist. They presented differing documents as to when all units were "completed" (e.g. Recorded Notice of Completion date of 6/12/1987 for all buildings, Certificates of Occupancy for Buildings A and B in 10/87, Building C still obtaining temporary Certificates of Occupancy in 2/88, Certificate of Complete Building Rehabilitation in 1987", asserting that the conversion to live-work occurred from 1985 until 4/87, signed by Orton, dated January 17, 1997).

This and other evidence will demonstrate the owners intent to obfuscate the prior residential use of the property and to hide the fact that tenants resided at the property well before any of these dates.



CITY OF OAKLAND

RENT ADJUSTMENT PROGRAM  
RENT ARBITRATION PROGRAM

2019 MAR 28 AM 10:17

**RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

**CASE NUMBER L19-0013**

**TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION**

**Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.**

Your Name <b>ROSS CLARK</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit #23 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>510-289-3254</b>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) <b>1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612</b>	Telephone <b>CELL 818.590.0070 415.867.5548</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 5/6/2007

Date you moved into this unit: 5/6/2007

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

000266

Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit # 23

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

2. Vidor Case: No Preclusive Effect

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<sup>1</sup>See, e.g. *Michelsen v. Sherman* L13-0054, in which the Board suspended proceedings to give notice to all other tenants who had not been previously notified, to hold a hearing with regard to other units at the property.

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assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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While Rebecca Cotton-Burnet was one of the *Vidor* tenants, her claim here presents a different issue and a different cause of action than the prior case. She asserts that the initial exemption was based upon “fraud or mistake.” This is a viable challenge to a previously determined exemption. The primary differences between her case and the other tenants is that she must prove fraud and mistake and she bears the burden of proof.

4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

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The owners of the Vulcan, at the time of the *Vidor* petitions, were aware of the rental history of the property. They knew that most of the units were rented to residents well prior to issuance of any Certificates of Occupancy or finalizations of building permits. Yet they presented the matter as if those "interim" tenancies did not exist. They presented differing documents as to when all units were "completed" (e.g. Recorded Notice of Completion date of 6/12/1987 for all buildings, Certificates of Occupancy for Buildings A and B in 10/87, Building C still obtaining temporary Certificates of Occupancy in 2/88, Certificate of Complete Building Rehabilitation in 1987", asserting that the conversion to live-work occurred from 1985 until 4/87, signed by Orton, dated January 17, 1997).

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CITY OF OAKLAND

RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:17

**RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

**TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION**

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>ROSS CLARK</b>	Complete Address (with Zip Code) <b>VULCANLOFTS Unit #24 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>510-289-3254</b>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) <b>1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612</b>	Telephone <b>CELL 818.590.0070 415.867.5548</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 3/4/2005

Date you moved into this unit: 3/4/2005

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

**Attachment to Tenant's Response to Landlord's Petition for Exemption**

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

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CITY OF OAKLAND

RENT ADJUSTMENT PROGRAM  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:19

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.**

Your Name <i>W. Breanna Leslie</i>	Complete Address (with Zip Code) VULCAN LOFTS Unit #25 4401 San Leandro Street Oakland CA 94601	Telephone <i>408-663-0795</i>
<i>Lucid Dream Lounge, Inc</i>		
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 4/2006

Date you moved into this unit: 4/2006

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

SEE ATTACHMENT

000274

Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit #25  
Leslie

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

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In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

---

<sup>3</sup>Claim preclusion applies only when a second suit involves the same cause of action between the same parties. *DKN Holdings, LCC v. Faerber* (2016) 61 Cal.4th 813, 824. Issue preclusion prevents “relitigation of previously decided issues,” rather than causes of action as a whole. (*Ibid.*) It applies only when there has been a final adjudication of an *identical* issue against one who was a party in the first suit. (*Id.*, at p. 825.) Neither type of preclusion applies to the tenants here.

While Rebecca Cotton-Burnet was one of the *Vidor* tenants, her claim here presents a different issue and a different cause of action than the prior case. She asserts that the initial exemption was based upon “fraud or mistake.” This is a viable challenge to a previously determined exemption. The primary differences between her case and the other tenants is that she must prove fraud and mistake and she bears the burden of proof.

4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

5. The Exemption of the Four Units Resulted from Fraud or Mistake

The owners of the Vulcan, at the time of the *Vidor* petitions, were aware of the rental history of the property. They knew that most of the units were rented to residents well prior to issuance of any Certificates of Occupancy or finalizations of building permits. Yet they presented the matter as if those "interim" tenancies did not exist. They presented differing documents as to when all units were "completed" (e.g. Recorded Notice of Completion date of 6/12/1987 for all buildings, Certificates of Occupancy for Buildings A and B in 10/87, Building C still obtaining temporary Certificates of Occupancy in 2/88, Certificate of Complete Building Rehabilitation in 1987", asserting that the conversion to live-work occurred from 1985 until 4/87, signed by Orton, dated January 17, 1997).

This and other evidence will demonstrate the owners intent to obfuscate the prior residential use of the property and to hide the fact that tenants resided at the property well before any of these dates.

# THIRTY-DAY NOTICE OF CHANGE OF MONTHLY RENT

The Lucid Dream Lounge, Inc.

TO:

All Residents (tenants and subtenants) in possession (full name) and all others in possession

of the premises located at:

4401 San Leandro Street, Unit # (if applicable) 25  
(Street Address)  
Oakland, CA 94601  
(City) (Zip)

You are hereby notified, in accordance with Civil Code Section 827, that 30 days after service upon you of this Notice, or 9/01/2018, whichever is later, your monthly rent which is payable in advance on or before the 1<sup>st</sup> day of each month, will be the sum of \$ 3,365.00, instead of \$ 3,251.00, the

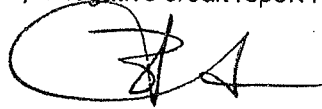
current monthly rent.

Except as herein provided, all other terms of your tenancy shall remain in full force and effect.

If you fail to fulfill the terms of your credit obligations, a negative credit report may be submitted to a credit reporting agency.

7/25/18

Date



Owner/Agent For Vulcan Lofts, LLC

Dear Resident(s):

Having regard for current rent levels and increased building operating costs, an adjustment to your rent is considered necessary.

We value you as a Resident and appreciate your understanding.

Sincerely,

Madison Park Financial Corp.

For Vulcan Lofts, LLC



U9.0013 PC/SK

<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          250 Frank H. Ogawa Plaza, Suite 5313          Oakland, CA 94612          (510) 238-3721</p>	<p>For date stamp.</p> <p style="text-align: center;">NOV 27 2015</p> <p style="text-align: center;"><b>LANDLORD PETITION</b>  <b>FOR CERTIFICATE OF EXEMPTION</b>          (OMC §8.22.030.B)</p>
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**Please Fill Out This Form Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.

**Section 1. Basic Information**

Your Name Vulcan Lofts, LLC	Complete Address (with zip code) 155 Grand Avenue #950 Oakland, CA 94612	Telephone Day: _____	
Your Representative's Name Lerna Kazazic Pahl & McCay	Complete Address (with zip code) 225 W. Santa Clara Street, #1500 San Jose, CA 95113	Telephone Day: (408) 286-5100	
Property Address 4401 San Leandro Street Oakland, CA 94601		Total number of units in bldg or parcel. 59	
Type of units (circle one)	Single Family Residence (SFR)	Condominium	Apartment or Room
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes	No
Assessor's Parcel No. 034226500404			

**Section 2. Tenants.** You must attach a list of the names and addresses, with unit numbers, of all tenants residing in the unit/building you are claiming is exempt.

**Section 3. Claim(s) of Exemption:** A Certificate of Exemption may be granted **only** for dwelling units that are **permanently** exempt from the Rent Adjustment Ordinance.

**New Construction:** This may apply to individual units. The unit was newly constructed and a certification of occupancy was issued for it on or after January 1, 1983.

**Substantial Rehabilitation:** This applies only to entire buildings. An owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. The average basic cost for new construction is determined using tables issued by the Chief Building Inspector applicable for the time period when the Substantial Rehabilitation was completed.

Single-Family or Condominium (Costa-Hawkins): Applies to Single Family Residences and condominiums only. If claiming exemption under the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.), please answer the following questions on a separate sheet:

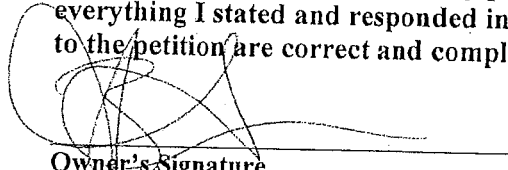
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being a notice of rent increase under Civil Code Section 827?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building, housing, fire, or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the current tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?
8. When did the tenant move into the unit?

**I (We) petition for exemption on the following grounds (Check all that apply):**

<input checked="" type="checkbox"/>	New Construction
<input type="checkbox"/>	Substantial Rehabilitation
<input type="checkbox"/>	Single Family Residence or Condominium (Costa-Hawkins)

**Section 4. Verification** Each petitioner must sign this section.

I declare under penalty of perjury pursuant to the laws of the State of California that everything I stated and responded in this petition is true and that all of the documents attached to the petition are correct and complete copies of the originals.

  
\_\_\_\_\_  
Owner's Signature

11/8/2019  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

**Important Information**

**Burden of Proof** 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.

**File Review** Your tenant(s) will be given the opportunity to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the tenant's Response. Copies of attachments to the Response form will not be sent to you. However, you may review any attachments in the Rent Program Office. Files are available for review by appointment only. For an appointment to review a file, call (510) 238-3721. Please allow six weeks from the date of filing for notification processing and expiration of the tenant's response time before scheduling a file review.





CITY OF OAKLAND

RENT ADJUSTMENT PROGRAM  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:19

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>Jakob Valvo</i>	Complete Address (with Zip Code) VULCAN LOFTS Unit #25 4401 San Leandro Street Oakland CA 94601	Telephone <i>510.828.9683</i>
<i>Myles Fair</i>		<i>917.603.0554</i>
Your Representative's Name  HASMIK GEGAMYAN	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Buisness Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 4/2006

Date you moved into this unit: 4/2006

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

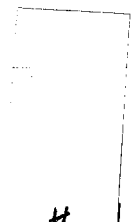
**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

SEE ATTACHMENT



000281

Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit # 25  
Valvo

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

2. Vidor Case: No Preclusive Effect

The owners of the property are advancing *Vidor v. City of Oakland Community and Economic Development Agency* 2009 Cal.App. (Unpublished) Lexis 8016 in support of their current

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<sup>1</sup>See, e.g. *Michelsen v. Sherman* L13-0054, in which the Board suspended proceedings to give notice to all other tenants who had not been previously notified, to hold a hearing with regard to other units at the property.

<sup>2</sup>Many of the original habitability issues, remain today.

assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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<sup>3</sup>Claim preclusion applies only when a second suit involves the same cause of action between the same parties. *DKN Holdings, LCC v. Faerber* (2016) 61 Cal.4th 813, 824. Issue preclusion prevents “relitigation of previously decided issues,” rather than causes of action as a whole. (*Ibid.*) It applies only when there has been a final adjudication of an *identical* issue against one who was a party in the first suit. (*Id.*, at p. 825.) Neither type of preclusion applies to the tenants here.

While Rebecca Cotton-Burnet was one of the *Vidor* tenants, her claim here presents a different issue and a different cause of action than the prior case. She asserts that the initial exemption was based upon “fraud or mistake.” This is a viable challenge to a previously determined exemption. The primary differences between her case and the other tenants is that she must prove fraud and mistake and she bears the burden of proof.

4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

5. The Exemption of the Four Units Resulted from Fraud or Mistake

The owners of the Vulcan, at the time of the *Vidor* petitions, were aware of the rental history of the property. They knew that most of the units were rented to residents well prior to issuance of any Certificates of Occupancy or finalizations of building permits. Yet they presented the matter as if those "interim" tenancies did not exist. They presented differing documents as to when all units were "completed" (e.g. Recorded Notice of Completion date of 6/12/1987 for all buildings, Certificates of Occupancy for Buildings A and B in 10/87, Building C still obtaining temporary Certificates of Occupancy in 2/88, Certificate of Complete Building Rehabilitation in 1987", asserting that the conversion to live-work occurred from 1985 until 4/87, signed by Orton, dated January 17, 1997).

This and other evidence will demonstrate the owners intent to obfuscate the prior residential use of the property and to hide the fact that tenants resided at the property well before any of these dates.

# THIRTY-DAY NOTICE OF CHANGE OF MONTHLY RENT

The Lucid Dream Lounge, Inc.

TO:

All Residents (tenants and subtenants) in possession (full name) and all others in possession

of the premises located at:

4401 San Leandro Street, Unit # (if applicable) 25  
(Street Address)  
Oakland, CA 94601  
(City) (Zip)

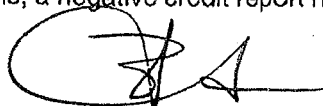
You are hereby notified, in accordance with Civil Code Section 827, that 30 days after service upon you of this Notice, or 9/01/2018, whichever is later, your monthly rent which is payable in advance on or before the 1st (Date) day of each month, will be the sum of \$ 3,365.00, instead of \$ 3,251.00, the current monthly rent.

Except as herein provided, all other terms of your tenancy shall remain in full force and effect.

If you fail to fulfill the terms of your credit obligations, a negative credit report may be submitted to a credit reporting agency.

7/25/18

*Date*



Owner/Agent For Vulcan Lofts, LLC

Dear Resident(s):

Having regard for current rent levels and increased building operating costs, an adjustment to your rent is considered necessary.

We value you as a Resident and appreciate your understanding.

Sincerely,

Madison Park Financial Corp.

For Vulcan Lofts, LLC

California Apartment Association Approved Form  
www.caa.org  
Revised 1/06 — © 2006 — All Rights Reserved

UNAUTHORIZED REPRODUCTION  
OF BLANK FORMS IS ILLEGAL



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<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          250 Frank H. Ogawa Plaza, Suite 5313          Oakland, CA 94612          (510) 238-3721</p>	<p>For date stamp.</p> <p style="text-align: center;">NOV 27 2011</p> <p style="text-align: center;"><b>LANDLORD PETITION</b>  <b>FOR CERTIFICATE OF EXEMPTION</b>          (OMC §8.22.030.B)</p>
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**Please Fill Out This Form Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.

**Section 1. Basic Information**

Your Name Vulcan Lofts, LLC	Complete Address (with zip code) 155 Grand Avenue #950 Oakland, CA 94612	Telephone Day: _____	
Your Representative's Name Lerna Kazazic Pahl & McCay	Complete Address (with zip code) 225 W. Santa Clara Street, #1500 San Jose, CA 95113	Telephone Day: (408) 286-5100	
Property Address 4401 San Leandro Street Oakland, CA 94601		Total number of units in bldg or parcel. 59	
Type of units (circle one)	Single Family Residence (SFR)	Condominium	Apartment or Room
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes	No
Assessor's Parcel No. 034226500404			

**Section 2. Tenants.** You must attach a list of the names and addresses, with unit numbers, of all tenants residing in the unit/building you are claiming is exempt.

**Section 3. Claim(s) of Exemption:** A Certificate of Exemption may be granted **only** for dwelling units that are **permanently** exempt from the Rent Adjustment Ordinance.

**New Construction:** This may apply to individual units. The unit was newly constructed and a certification of occupancy was issued for it on or after January 1, 1983.

**Substantial Rehabilitation:** This applies only to entire buildings. An owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. The average basic cost for new construction is determined using tables issued by the Chief Building Inspector applicable for the time period when the Substantial Rehabilitation was completed.

Single-Family or Condominium (Costa-Hawkins): Applies to Single Family Residences and condominiums only. If claiming exemption under the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.), please answer the following questions on a separate sheet:

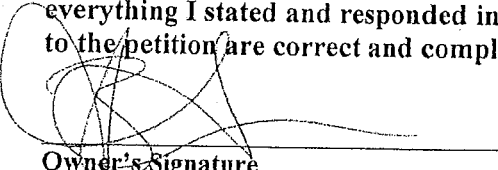
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being a notice of rent increase under Civil Code Section 827?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building, housing, fire, or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the current tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?
8. When did the tenant move into the unit?

**I (We) petition for exemption on the following grounds (Check all that apply):**

<input checked="" type="checkbox"/>	New Construction
<input type="checkbox"/>	Substantial Rehabilitation
<input type="checkbox"/>	Single Family Residence or Condominium (Costa-Hawkins)

**Section 4. Verification** Each petitioner must sign this section.

I declare under penalty of perjury pursuant to the laws of the State of California that everything I stated and responded in this petition is true and that all of the documents attached to the petition are correct and complete copies of the originals.

  
Owner's Signature

1/18/2019  
Date

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

**Important Information**

**Burden of Proof** 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.

**File Review** Your tenant(s) will be given the opportunity to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the tenant's Response. Copies of attachments to the Response form will not be sent to you. However, you may review any attachments in the Rent Program Office. Files are available for review by appointment only. For an appointment to review a file, call (510) 238-3721. Please allow six weeks from the date of filing for notification processing and expiration of the tenant's response time before scheduling a file review.



CITY OF OAKLAND

### RENT ADJUSTMENT PROGRAM

250 Frank H. Oguwa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

RENT ADJUSTMENT  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 MAR 28 AM 10:19

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely.

Failure to provide needed information may result in  
Your response being rejected or delayed.

Your Name <b>DARIN MARSHALL</b>	Complete Address (with Zip Code) VULCAN LOFTS Unit #26 4401 San Leandro Street Oakland CA 94601	Telephone 415 218 1597
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo

**LIVE-WORK UNIT**

Rental History:

Date you entered into the Rental Agreement for this unit: 1995

Date you moved into this unit: 1995

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect. Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

SEE ATTACHME



Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit #26

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

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The owners of the property are advancing *Vidor v. City of Oakland Community and Economic Development Agency* 2009 Cal.App. (Unpublished) Lexis 8016 in support of their current

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assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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<sup>3</sup>Claim preclusion applies only when a second suit involves the same cause of action between the same parties. *DKN Holdings, LCC v. Faerber* (2016) 61 Cal.4th 813, 824. Issue preclusion prevents “relitigation of previously decided issues,” rather than causes of action as a whole. (*Ibid.*) It applies only when there has been a final adjudication of an *identical* issue against one who was a party in the first suit. (*Id.*, at p. 825.) Neither type of preclusion applies to the tenants here.

While Rebecca Cotton-Burnet was one of the *Vidor* tenants, her claim here presents a different issue and a different cause of action than the prior case. She asserts that the initial exemption was based upon “fraud or mistake.” This is a viable challenge to a previously determined exemption. The primary differences between her case and the other tenants is that she must prove fraud and mistake and she bears the burden of proof.

4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

5. The Exemption of the Four Units Resulted from Fraud or Mistake

The owners of the Vulcan, at the time of the *Vidor* petitions, were aware of the rental history of the property. They knew that most of the units were rented to residents well prior to issuance of any Certificates of Occupancy or finalizations of building permits. Yet they presented the matter as if those "interim" tenancies did not exist. They presented differing documents as to when all units were "completed" (e.g. Recorded Notice of Completion date of 6/12/1987 for all buildings, Certificates of Occupancy for Buildings A and B in 10/87, Building C still obtaining temporary Certificates of Occupancy in 2/88, Certificate of Complete Building Rehabilitation in 1987", asserting that the conversion to live-work occurred from 1985 until 4/87, signed by Orton, dated January 17, 1997).

This and other evidence will demonstrate the owners intent to obfuscate the prior residential use of the property and to hide the fact that tenants resided at the property well before any of these dates.

2019 MAR 28 AM 10:08



CITY OF OAKLAND

**RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

**TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION**

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>DANIEL PARKS</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit #30 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>714.423.5855</b>
Your Representative's Name <b>N/A</b>	Complete Address (with Zip Code) <b>N/A</b>	Telephone <b>N/A</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

Rental History: LEASE HOLDER

Date ~~you~~ entered into the Rental Agreement for this unit: 6/9/11

Date you moved into this unit: 5/18/2013

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

SEE ATTACHMENT

000292

Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit # 30

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

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<sup>1</sup>See, e.g. *Michelsen v. Sherman* L13-0054, in which the Board suspended proceedings to give notice to all other tenants who had not been previously notified, to hold a hearing with regard to other units at the property.

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assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

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The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

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To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

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CITY OF OAKLAND

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:20

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

**CASE NUMBER L19-0013**

## TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.**

Your Name <i>Deborah Weber</i>	Complete Address (with Zip Code) VULCAN LOFTS Unit #3/ 4401 San Leandro Street Oakland CA 94601	Telephone <i>(510) 289-5002</i>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

*(updated email)*  
*ryningwyld@hotmail.com*

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

#### Rental History:

Date you entered into the Rental Agreement for this unit: 6/18/2003

Date you moved into this unit: 7/5/2003

Are you current on your rent?  Yes  No  **Lawfully Withholding Rent**

If you are lawfully withholding rent, attach a written explanation of the circumstances.

#### Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase and decrease in services



Program (RAP Notice):

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
7/25/18	9/1/18	\$ 1,655	\$ 1,804	Yes	No ✓
3/23/17	5/1/17	\$ 1,607	\$ 1,655	Yes	No ✓
12/27/15	3/1/16	\$ 1,461	\$ 1,607	Yes	No ✓
11/19/2012	1/1/13	\$ 1,391	\$ 1,461	Yes	No ✓
10/25/11	1/1/12	\$ 1,350	\$ 1,391	Yes	No ✓
		\$ 1,312	\$ 1,350	Yes	No ✓
		\$	\$ 1,312	Yes	No ✓

~ And, all rent increases from July 2003 onward, initial rent for \$1,100.<sup>00</sup>

**Verification**  
I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

Tenant's Signature \_\_\_\_\_  
N/A

Tenant's Signature \_\_\_\_\_

3/21/19  
Date \_\_\_\_\_

N/A  
Date \_\_\_\_\_

**Important Information**  
This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Daiziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-3721.  
You cannot get an extension of time to file your Response by telephone.

**File Review**  
You should have received with this letter a copy of the landlord petition.  
Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment ONLY.  
For an appointment to review a file call (510) 238-3721.

Attachment to Tenant's Response to Landlord's Petition for Exemption

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

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CITY OF OAKLAND

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 MAR 28 AM 10:20

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

**CASE NUMBER L19-0013**

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>Matthew Hicks</i>	Complete Address (with Zip Code) VULCAN LOFTS Unit #35 4401 San Leandro Street Oakland CA 94601	Telephone 206 251-8719
Your Representative's Name HASMIK GEGAMYAN	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units  
The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rents History:**

Date you entered into the Rental Agreement for this unit: 7-22-09

Date you moved into this unit: 8-1-09

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

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Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase and dec services

000301

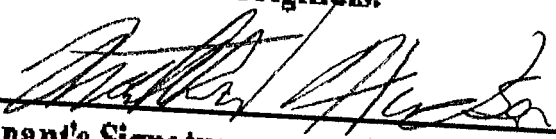
**Program (RAP Notice):**

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
7/25/18	9/1/18	\$ 1882	\$ 2057	Yes	No <input checked="" type="checkbox"/>
3/23/17	5/1/17	\$ 1827	\$ 1882	Yes	No <input checked="" type="checkbox"/>
12/27/15	3/1/16	\$ 1661	\$ 1827	Yes	No <input checked="" type="checkbox"/>
11/20/14	1/1/15	\$ 1582	\$ 1661	Yes	No <input checked="" type="checkbox"/>
11/19/12	1/1/13	\$ 1536	\$ 1582	Yes	No <input checked="" type="checkbox"/>
10/25/11	1/1/12	\$ 1492	\$ 1536	Yes	No <input checked="" type="checkbox"/>
		\$	\$	Yes	No

**Verification**

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

  
 \_\_\_\_\_  
 Tenant's Signature

3-21-19  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Tenant's Signature

\_\_\_\_\_  
 Date

**Important Information**

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**You cannot get an extension of time to file your Response by telephone.**

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You should have received with this letter a copy of the landlord petition.

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For an appointment to review a file call (510) 238-3721.

Attachment to Tenant's Response to Landlord's Petition for Exemption1. The Owners Cannot Demonstrate Entitlement to Exemption

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Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

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The owners of the property are advancing *Vidor v. City of Oakland Community and Economic Development Agency* 2009 Cal.App. (Unpublished) Lexis 8016 in support of their current

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3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

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While Rebecca Cotton-Burnet was one of the *Vidor* tenants, her claim here presents a different issue and a different cause of action than the prior case. She asserts that the initial exemption was based upon "fraud or mistake." This is a viable challenge to a previously determined exemption. The primary differences between her case and the other tenants is that she must prove fraud and mistake and she bears the burden of proof.



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The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

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CITY OF OAKLAND

2019 MAR 28 AM 10:21

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.**

Your Name Woodruff Burley	Complete Address (with Zip Code) VULCAN LOFTS Unit #39 4401 San Leandro Street Oakland CA 94601	Telephone 415-728-1837
Jeremy Guse		775-443-6654
Your Representative's Name HASMIK GEGAMYAN	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

#### Rental History:

Date you entered into the Rental Agreement for this unit: 6/30/17

Date you moved into this unit: 6/30/17

Are you current on your rent?  Yes  No  \* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

#### Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase and decrease is \_\_\_\_\_

000306

Unit # 39  
Borley

**Attachment to Tenant's Response to Landlord's Petition for Exemption**

1. The Owners Cannot Demonstrate Entitlement to Exemption

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CITY OF OAKLAND

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 MAR 28 AM 10: 21

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in  
Your response being rejected or delayed.

Your Name Garth Ferris	Complete Address (with Zip Code) VULCAN LOFTS Unit #39 4401 San Leandro Street Oakland CA 94601	Telephone 510-387-5297
Darius Todor		707-296-0979
Your Representative's Name HASMIK GEGAMYAN	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

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**SEE ATTACHMENT**

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000310

Unit #39  
Ferris

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CITY OF OAKLAND

2019 MAR 28 AM 10: 21

**RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

**CASE NUMBER L19-0013**

**TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION**

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>Ian Nathan</i>	Complete Address (with Zip Code) VULCAN LOFTS Unit #40 4401 San LEandro Street Oakland CA 94601	Telephone <i>540.392.9490</i>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Buisness Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

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**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase and decrease in services

Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit #40

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4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

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CITY OF OAKLAND

RENT ADJUSTMENT PROGRAM  
RENT ARBITRATION BOARD

2019 MAR 28 AM 10: 22

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>Daniel Wang</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit #41 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>(927) 267-8805</b>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) <b>1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612</b>	Telephone <b>CELL 818.590.0070 415.867.5548</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units  
The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

Rental History:

Date you entered into the Rental Agreement for this unit: 9/1/2016  
Date you moved into this unit: 9/1/2016

Are you current on your rent?  Yes  No  \* Lawfully Withholding Rent  
If you are lawfully withholding rent, attach a written explanation of the circumstances.

Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.  
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**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase and decrease in services **000318**

Attachment to Tenant's Response to Landlord's Petition for Exemption

Unit #41

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

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assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

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2019 MAR 28 AM 10:22



CITY OF OAKLAND

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

<b>Your Name</b> RANDALL SPENCER	<b>Complete Address (with Zip Code)</b> VULCAN LOFTS Unit #43 4401 San Leandro Street Oakland CA 94601	<b>Telephone</b> 777-451-5892
<b>Your Representative's Name</b> HASMIK GEGAMYAN	<b>Complete Address (with Zip Code)</b> 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	<b>Telephone</b> CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units  
The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: August 15, 2018

Date you moved into this unit: 8/15/18

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.  
Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

SEE ATTACHMENT

Attachment to Tenant's Response to Landlord's Petition for Exemption

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CITY OF OAKLAND

RENTAL  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 MAR 28 AM 10:22

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

## TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>PAM MANGAN</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit #43 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>(310) 623-2448</b>
Your Representative's Name <b>N/A</b>	Complete Address (with Zip Code) <b>N/A</b>	Telephone <b>N/A</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

#### Rental History:

Date you entered into the Rental Agreement for this unit: August 15, 2018

Date you moved into this unit: 8/15/18

Are you current on your rent?  Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

#### Exemption Contested:

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**SEE ATTACHMENT**

000326

Unit #43  
Mangan

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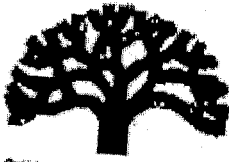
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RENT ADJUSTMENT PROGRAM

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### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>EZRA EISMONT</b>	Complete Address (with Zip Code) VULCAN LOFTS Unit #46 4401 San Leandro Street Oakland CA 94601	Telephone 510.534.3708
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

#### Rental History:

Date you entered into the Rental Agreement for this unit: \_\_\_\_\_

Date you moved into this unit: JUNE 1, 1998

Are you current on your rent?  Yes  No \* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

#### Exemption Contested:

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.  
Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase and decrease in services

000330

Attachment to Tenant's Response to Landlord's Petition for Exemption

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

2. Vidor Case: No Preclusive Effect

The owners of the property are advancing *Vidor v. City of Oakland Community and Economic Development Agency* 2009 Cal.App. (Unpublished) Lexis 8016 in support of their current

<sup>1</sup>See, e.g. *Michelsen v. Sherman* L13-0054, in which the Board suspended proceedings to give notice to all other tenants who had not been previously notified, to hold a hearing with regard to other units at the property.

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assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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While Rebecca Cotton-Burnet was one of the *Vidor* tenants, her claim here presents a different issue and a different cause of action than the prior case. She asserts that the initial exemption was based upon “fraud or mistake.” This is a viable challenge to a previously determined exemption. The primary differences between her case and the other tenants is that she must prove fraud and mistake and she bears the burden of proof.

4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

5. The Exemption of the Four Units Resulted from Fraud or Mistake

The owners of the Vulcan, at the time of the *Vidor* petitions, were aware of the rental history of the property. They knew that most of the units were rented to residents well prior to issuance of any Certificates of Occupancy or finalizations of building permits. Yet they presented the matter as if those "interim" tenancies did not exist. They presented differing documents as to when all units were "completed" (e.g. Recorded Notice of Completion date of 6/12/1987 for all buildings, Certificates of Occupancy for Buildings A and B in 10/87, Building C still obtaining temporary Certificates of Occupancy in 2/88, Certificate of Complete Building Rehabilitation in 1987", asserting that the conversion to live-work occurred from 1985 until 4/87, signed by Orton, dated January 17, 1997).

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CITY OF OAKLAND

2019 MAR 28 AM 10:25

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Your Name <i>Tzong Tzu Rogers</i>	Complete Address (with Zip Code) VULCAN LOFTS Unit #52 4401 San Leandro Street Oakland CA 94601	Telephone 415-663-6893
Your Representative's Name HASMIK GEGAMYAN	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 11/01/2011

Date you moved into this unit: 11/01/2011

Are you current on your rent?  Yes  No  **\* Lawfully Withholding Rent**

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

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3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

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RENT ADJUSTMENT PROGRAM

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250 Frank H. Ogawa Plaza, Suite 5313  
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(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>BRYAN KITCHENS</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit #52 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>415.314.2227</b>
Your Representative's Name <b>N/A</b>	Complete Address (with Zip Code) <b>N/A</b>	Telephone <b>N/A</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

#### Rental History:

Date you entered into the Rental Agreement for this unit: July 2015

Date you moved into this unit: JUNE 2014

Are you current on your rent?  Yes  No  \* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

#### Exemption Contested:

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000338

Unit # 52  
Bryan

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CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

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Your Name <b>TROY CLANCY</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit #52 4401 San Leandro Street Oakland CA 94601</b>	Telephone <b>510.688.5509</b>
Your Representative's Name <b>N/A</b>	Complete Address (with Zip Code) <b>N/A</b>	Telephone <b>N/A</b>

Number of Units on the parcel: 52 Live-Work & 5 Buisness Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: SEPT 2015

Date you moved into this unit: APRIL 2013

Are you current on your rent?  Yes  No  \* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

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Unit #52  
Clancy

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3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

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The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was "formerly entirely non-residential". To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

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CITY OF OAKLAND

2019 MAR 23 AM 10:26

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

<b>Your Name</b> Colin Sullivan	<b>Complete Address (with Zip Code)</b> VULCAN LOFTS Unit # 53 4401 San Leandro Street Oakland CA 94601	<b>Telephone</b> 2034159806
<b>Your Representative's Name</b> HASMIK GEGAMYAN	<b>Complete Address (with Zip Code)</b> 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	<b>Telephone</b> CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 01/01/2016

Date you moved into this unit: May 2012

Are you current on your rent?  Yes  No  \* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent and decrease in services

000346

Unit #53  
Sullivan

**Attachment to Tenant's Response to Landlord's Petition for Exemption**

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

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CITY OF OAKLAND

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.**

<b>Your Name</b> Kai Stewart	<b>Complete Address (with Zip Code)</b> VULCAN LOFTS Unit # 53 4401 San Leandro Street Oakland CA 94601	<b>Telephone</b> (831) 239-6720
<b>Your Representative's Name</b> HASMIK GEGAMYAN	<b>Complete Address (with Zip Code)</b> 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	<b>Telephone</b> CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Buisness Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 01/01/2016

Date you moved into this unit: Feb 2015

Are you current on your rent?  Yes  No  **\* Lawfully Withholding Rent**

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

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**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase a [ ] ease in services

000350

Unit # 53  
Stewart

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CITY OF OAKLAND

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.**

<b>Your Name</b> Geneva Harrison	<b>Complete Address (with Zip Code)</b> VULCAN LOFTS Unit # 53 4401 San Leandro Street Oakland CA 94601	<b>Telephone</b> 404-643-9292
<b>Your Representative's Name</b> HASMIK GEGAMYAN	<b>Complete Address (with Zip Code)</b> 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	<b>Telephone</b> CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Buisness Units  
The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 04/01/2017  
July 1 2016

Date you moved into this unit: \_\_\_\_\_

Are you current on your rent?  Yes  No \* **Lawfully Withholding Rent**

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To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

5. The Exemption of the Four Units Resulted from Fraud or Mistake

The owners of the Vulcan, at the time of the *Vidor* petitions, were aware of the rental history of the property. They knew that most of the units were rented to residents well prior to issuance of any Certificates of Occupancy or finalizations of building permits. Yet they presented the matter as if those "interim" tenancies did not exist. They presented differing documents as to when all units were "completed" (e.g. Recorded Notice of Completion date of 6/12/1987 for all buildings, Certificates of Occupancy for Buildings A and B in 10/87, Building C still obtaining temporary Certificates of Occupancy in 2/88, Certificate of Complete Building Rehabilitation in 1987", asserting that the conversion to live-work occurred from 1985 until 4/87, signed by Orton, dated January 17, 1997).

This and other evidence will demonstrate the owners intent to obfuscate the prior residential use of the property and to hide the fact that tenants resided at the property well before any of these dates.



CITY OF OAKLAND

2019 MAR 28 AM 10:27

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 231-3721

**CASE NUMBER L19-0013**

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.**

<b>Your Name:</b> REBECCA COTTON	<b>Complete Address (with Zip Code):</b> VOLCANO APTS Unit #54 4401 San Leandro Street Oakland CA 94601	<b>Telephone:</b> 510.967.9323
<b>Your Representative's Name:</b> HASMIK GEGAMYAN	<b>Complete Address (with Zip Code):</b> 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	<b>Telephone:</b> CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units  
The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: July 1996

Date you moved into this unit: July 1996

Are you current on your rent?  Yes  No  \* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent Increase and decrease in \$ \_\_\_\_\_

000358

Rebecca Cotton-Burnett Attachment 2

While Rebecca Cotton-Burnett was one of the *Vidor* tenants, her claim here presents a different issue and involves a different cause of action than in the *Vidor* case. She asserts that the initial exemption was based upon "fraud or mistake."

The Regulations provide for rescission of previously issued exemptions:

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

For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption...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.* (Emphasis added) (OMC 8.22.030.B.1.b)

These regulations clearly provide for challenge to a *previously issued* certificate of exemption, to provide the tenant an opportunity to show that the certificate was obtained through fraud or mistake. In Ms. Cotton-Burnett's case, the Owners did not seek a exemption certificate respecting her rental unit. She should not, however, be deprived of remedy. The Regulations respecting rescission should apply to her claim of fraud or mistake.

The Board itself has determined that an action to rescind a certificate of exemption based on fraud or mistake is *not* the same cause of action or issue as the proceeding in which exemption was initially determined:

That intent is emphasized again by the position taken by the Rent Board when it sought a remand from the Court so that a challenge to an exemption petition could be heard on the merits:

A hearing on the 2016 tenant's petition *will not* re-litigate whether the property is exempt....Instead, the hearing will examine whether there was "fraud or mistake" in the underlying facts that led to the Hearing Officer's or the Rent Board's ultimate finding that the property was exempt. The tenant] has the burden of proof on the latter issue. The parties have never litigated the latter issue involving "fraud of mistake."

Alameda County Superior Court *Sherman v. Oakland Rent Board* RG1578525, City of Oakland Motion For Remand, Rent Board's Reply to Owner's Opposition to Motion to for Remand, p. 2:5-10.

The Board's interpretation of the Ordinance respecting fraud and mistake should be given deference here. The intent is clearly to prevent fraud or mistake in the granting of exemptions.

**Attachment to Tenant's Response to Landlord's Petition for Exemption**

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

2. Vidor Case: No Preclusive Effect

The owners of the property are advancing *Vidor v. City of Oakland Community and Economic Development Agency* 2009 Cal.App. (Unpublished) Lexis 8016 in support of their current

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assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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While Rebecca Cotton-Burnet was one of the *Vidor* tenants, her claim here presents a different issue and a different cause of action than the prior case. She asserts that the initial exemption was based upon “fraud or mistake.” This is a viable challenge to a previously determined exemption. The primary differences between her case and the other tenants is that she must prove fraud and mistake and she bears the burden of proof.

4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

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CITY OF OAKLAND

DATE: 09/26/15 TIME: 27

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

**Please Fill Out This Form Completely.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>MATTHEW MARTIN</b>	Complete Address (with Zip Code) VULCAN LOFTS Unit #58 4401 San Leandro Street Oakland CA 94601	Telephone <b>510 504 1907</b>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) 1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612	Telephone CELL 818.590.0070 415.867.5548

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

**Rental History:**

Date you entered into the Rental Agreement for this unit: 9/16/2015

Date you moved into this unit: 9/16/2015

Are you current on your rent?  Yes  No  \* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested:**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

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Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment

**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase and decrease in services

**Attachment to Tenant's Response to Landlord's Petition for Exemption**

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

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3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

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CITY OF OAKLAND

### RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

CASE NUMBER L19-0013

### TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <b>JOSHUA R. MILLER</b>	Complete Address (with Zip Code) <b>VULCAN LOFTS Unit #59 4401 San LEandro Street Oakland CA 94601</b>	Telephone <b>510 827 8433</b>
Your Representative's Name <b>HASMIK GEGAMYAN</b>	Complete Address (with Zip Code) <b>1736 FRANKLIN STREET SUITE 400 OAKLAND CA 94612</b>	Telephone <b>CELL 818.590.0070 415.867.5548</b>

Number of Units on the parcel: 52 Live-Work & 5 Business Units

The unit I rent is: N/A a house N/A an apartment N/A a condo  **LIVE-WORK UNIT**

#### Rental History:

Date you entered into the Rental Agreement for this unit: 04/01/2012

Date you moved into this unit: 04/01/2012

Are you current on your rent?  Yes  No  \* Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

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**SEE ATTACHMENT**

\* Portion of Rent withheld due to challenged Rent increase and decrease in services

000367

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To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

5. The Exemption of the Four Units Resulted from Fraud or Mistake

The owners of the Vulcan, at the time of the *Vidor* petitions, were aware of the rental history of the property. They knew that most of the units were rented to residents well prior to issuance of any Certificates of Occupancy or finalizations of building permits. Yet they presented the matter as if those "interim" tenancies did not exist. They presented differing documents as to when all units were "completed" (e.g. Recorded Notice of Completion date of 6/12/1987 for all buildings, Certificates of Occupancy for Buildings A and B in 10/87, Building C still obtaining temporary Certificates of Occupancy in 2/88, Certificate of Complete Building Rehabilitation in 1987", asserting that the conversion to live-work occurred from 1985 until 4/87, signed by Orton, dated January 17, 1997).

This and other evidence will demonstrate the owners intent to obfuscate the prior residential use of the property and to hide the fact that tenants resided at the property well before any of these dates.



RENT ARBITRATION BOARD  
2019 MAR 29 PM 3:19

**Attachment to Tenant's Response to Landlord's Petition for Exemption**

1. The Owners Cannot Demonstrate Entitlement to Exemption

The current owners of the property seek a certificate of exemption during and in the midst of the filing of some two dozen tenant petitions challenging rent increases. Here, the landlord seeks exemption of all units. The language of the Ordinance, and prior Board actions,<sup>1</sup> demonstrate that each unit requires that a *separate* determination be made.

b. 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.)

With respect to the determination to be made, the Ordinance provides the definition of "New Construction":

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. (OMC 8.22.030.A.5)

Critical to the determination in this case, is the phrase "formerly entirely non-residential." Interpreting a similar ordinance relating to new construction, the California Court of Appeals has determined that converting *illegal* residential units, lacking a certificate of occupancy into legal units with a certificate of occupancy does not qualify as "new construction", as it does not add to the existing housing stock. *Da Vinci Group v. San Francisco Residential Rent Board* (1992) 5 Cal.App.4th 24, 30.

The tenants here will produce witnesses and evidence demonstrating that for almost two years prior to obtaining certificates of occupancy or finalization of building permits, the owners rented out residential units. In addition to lacking proper documentation, the units lacked essential elements of habitability.<sup>2</sup>

2. Vidor Case: No Preclusive Effect

The owners of the property are advancing *Vidor v. City of Oakland Community and Economic Development Agency* 2009 Cal.App. (Unpublished) Lexis 8016 in support of their current

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<sup>1</sup>See, e.g. *Michelsen v. Sherman* L13-0054, in which the Board suspended proceedings to give notice to all other tenants who had not been previously notified, to hold a hearing with regard to other units at the property.

<sup>2</sup>Many of the original habitability issues, remain today.

assertion that the entire property is exempt. Despite the narrow ruling in *Vidor*, the owners imply that *Vidor* precludes further tenant petitions. A case exempting only four units cannot preclude other tenants from petitioning for exemption.<sup>3</sup>

In addition to the lack of any preclusive effect of *Vidor*, the tenants in the present case raise a different set of issues and fact. They do not argue the existence of certificates of occupancy and/or final Building Permit approval which was the central issue in *Vidor*. Instead, they will submit new evidence of extensive prior residential use, sufficient to establish that the buildings fall outside the parameters of new construction, as defined in the Ordinance and case law.

3. The Landlords Cannot Demonstrate that the Rental Units Are New Construction Within the Meaning of the Ordinance

The Tenants here do not dispute that the former owners purchased the Vulcan Foundry in December 1985. They do not dispute that foundry was divided into the roughly 59 live-work units which today comprise the Vulcan Lofts. What they dispute, however, is any assertion that the rental units were never used as residential property prior to the issuance of certificates of occupancy or the finalization of building permits. Rather, after buying the property, the owners almost immediately began filling crudely roughed-out living spaces with tenants.

Buildings A and B received certificates of occupancy on October 12, 1987. Building C received a series of temporary certificates of occupancy, the last of which was signed off on February 3, 1988. All of these buildings were housing tenants prior to those dates.

The tenants here assert that, correctly interpreting the Ordinance, an owner who rented spaces in buildings for almost two years prior to issuance of a certificate of occupancy or the finalization of a building permit, cannot claim that the property was “formerly entirely non-residential”. To hold otherwise, is antithetical to the purposes of, not only the Rent Ordinance, but to City and State laws enacted to protect the safety of residents and of others who might be on the property.

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<sup>3</sup>Claim preclusion applies only when a second suit involves the same cause of action between the same parties. *DKN Holdings, LCC v. Faerber* (2016) 61 Cal.4th 813, 824. Issue preclusion prevents “relitigation of previously decided issues,” rather than causes of action as a whole. (*Ibid.*) It applies only when there has been a final adjudication of an *identical* issue against one who was a party in the first suit. (*Id.*, at p. 825.) Neither type of preclusion applies to the tenants here.

While Rebecca Cotton-Burnet was one of the *Vidor* tenants, her claim here presents a different issue and a different cause of action than the prior case. She asserts that the initial exemption was based upon “fraud or mistake.” This is a viable challenge to a previously determined exemption. The primary differences between her case and the other tenants is that she must prove fraud and mistake and she bears the burden of proof.

4. The Ordinance Term "Formerly non-Residential" Must Be Narrowly Construed

The Ordinance term, "formerly non-residential" is ambiguous in that it is reasonably capable of differing interpretations. Does the word "formerly" apply to the date of first enactment of the statute, the date an owner purchased it, or to the date the certificate of occupancy/final permit was obtained?

"Exceptions to the general rule of a statute are to be strictly construed." *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767. The Ordinance provision exempting newly constructed rental units is just such an exception to the general rule imposing rent control over rental property. Therefore, the term "formerly" should be interpreted to mean before obtaining a certificate of occupancy/permit approval.

To hold otherwise creates absurd results. If it refers to the date of enactment of the statute, or to the date of purchase of the property, owners are encouraged to rent unsafe units, lacking formal approval, until such time as they choose to legalize their property. Indeed, this is precisely what happened in *Da Vinci*. At the time of the purchase of the property in 1980, the property was a multi-tenant warehouse with no certificate of occupancy. After the building was flagged by the city the owner made improvements and received a certificate of occupancy in 1986. The appellate court ruled that obtaining the certificate of occupancy created legal residential units where there were illegal ones before. Legalizing the units did not create a larger housing stock. Similarly here, the owners enjoyed the benefits of renting unlawful units for nearly two years before obtaining a certificate of occupancy/final permit. They have now operated the property as if it were free of rent control for more than three decades.

5. The Exemption of the Four Units Resulted from Fraud or Mistake

The owners of the Vulcan, at the time of the *Vidor* petitions, were aware of the rental history of the property. They knew that most of the units were rented to residents well prior to issuance of any Certificates of Occupancy or finalizations of building permits. Yet they presented the matter as if those "interim" tenancies did not exist. They presented differing documents as to when all units were "completed" (e.g. Recorded Notice of Completion date of 6/12/1987 for all buildings, Certificates of Occupancy for Buildings A and B in 10/87, Building C still obtaining temporary Certificates of Occupancy in 2/88, Certificate of Complete Building Rehabilitation in 1987", asserting that the conversion to live-work occurred from 1985 until 4/87, signed by Orton, dated January 17, 1997).

This and other evidence will demonstrate the owners intent to obfuscate the prior residential use of the property and to hide the fact that tenants resided at the property well before any of these dates.



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**Tenants' Exhibit List**

<b><u>Exhibits</u></b>	<b><u>Declarations</u></b>	<b><u>Bates #:</u></b>
1.	Declaration of Karen Beck	T0787 – T0788
2.	Declaration of Susan Bloomquist (with lease)	T000962 – T000971
3.	Declaration of Todd Boekelheide	T0791
4.	Declaration of Gayle Bryan	T0792 – T0793
5.	Declaration of Wayne Campbell	T0794 – T0796
6.	Declaration of David Cheek	T0797 – T0802
7.	Declaration of Allison A. Davis	T0803 – T0804
8.	Declaration of Paul Howard	T0805
9.	Declaration of Randy Hussong	T0806 – T0807
10.	Declaration of Peter Mars (Smith) (& addendum)	T0808- T0809 T00958 – T00961
11.	Declaration of Llewellyn Moreno	T0810
12.	Declaration of Elizabeth Ross	T0811
13.	Declaration of Valerie Steel	T0812 – T0815
14.	Declaration of Chris Vivona	T0816 – T0821

<b><u>Exhibits</u></b>	<b><u>Oakland Building/City Records</u></b>	<b><u>Bates #:</u></b>
15.	Certificate of Occupancy, Building A	T0823 – T0824
16.	Certificate of Occupancy, Building B	T0825 – T0826
17.	Temporary Certificate of Occupancy, Building C, Units 1 – 49	T0827
18.	Letter dated 2/5/88 issuing Temporary Certificate of Occupancy for Units 50, 51 & 52	T0828
19.	Certificate of Occupancy, Unit 50	T0829
20.	Certificate of Occupancy, Units 51 & 52	T0830
21.	Maps of the Units	T0831 – T0832

<b><u>Exhibits</u></b>	<b><u>Common Area Photographs</u></b>	<b><u>Bates #</u></b>
22.	Common Area Photographs of Conditions	T0834 – T0884

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Gedhamyan  
Law  
Office 4/10



<u>Exhibits</u>	<u>Tenants' Documents Relating to Individual Units</u>	<u>Bates #</u>
23.	<u>Unit 3</u> <u>Re: <i>Le Cornec v. Vulcan Lofts, LLC</i>, Case No: T18-0461</u>	
	23-A: Lease	T0002-T0014
	23-B: Correspondence between tenant and landlord/management (re: habitability issues)	T0015-T0017
	23-C Photographs of conditions in Unit 3	T0018-T0019
24.	<u>Unit 4-B</u> <u>Re: <i>Long v. Vulcan Lofts, LLC</i>, Case no: T19-0022</u>	
	24- A Lease	T0021-T0048
	24 -B Correspondence between tenant and landlord/management (re: habitability issues) & photographs	T0049-T0062
	24 -C Rent Payments	T-000935-T-000936
25.	<u>Unit 17</u> <u>Re: <i>Kessler v. Vulcan Lofts, LLC</i>, Case No: T18-0501</u>	
	25-A Lease	T0064-T0097 T-000916-T-000919 T-000923-T-000933
	25-B Correspondence between tenant and landlord/ management (Lease & roommate replacement)	T000888-000915
	25-C Rent Payments	T-000920-T-000922
26.	<u>Unit 18</u> <u>Re: <i>Walker v. Vulcan Lofts, LLC</i>, Case No: T18-0463</u>	
	26 Lease	T0099-T011
27.	<u>Unit 19</u> <u>Re: <i>Bustamante v. Vulcan Lofts, LLC</i>, Case no: T18-0466</u>	
	27-A Lease	T0112-T0146
	27-B Photographs of defects in unit	T0147-T0152

*Tenants v. Vulcan Lofts, LLC, Consolidated Cases & Vulcan Lofts, LLC v. Tenants*, No. L19-0013  
 4401 San Leandro Street, Oakland, CA 94606

<b>Exhibits</b>	<b>Tenants' Documents Relating to Individual Units</b>	<b>Bates #</b>
28.	<b><u>Unit 21</u></b> <b><u>Re: <i>Szymanski v. Vulcan Lofts, LLC</i>, Case No.: T17-0237</u></b>	
	28-A      Lease	T0426 T0754-T0780 T0781-T0784
	28-B      Documents (re: Lease issues)	T0401 T0730-T0733 T0749-T0751 T0785
	28-C      Correspondence between tenant & landlord (re: habitability issues)	T0403-T0404 T0407-T0412 T0428-T0485 T0516 T0519-T0728
	28-D      Complaints to City of Oakland (re: code violations)	T0402
	28-E      Photographs of defects in unit & unfinished construction	T0413-T0425 T0486-T0491
29.	<b><u>Unit 23</u></b> <b><u>Re: <i>Clark v. Vulcan Lofts, LLC</i>, Case no: T18-0467</u></b>	
	Lease	T0154-T0181
30.	<b><u>Unit 24</u></b> <b><u>Re: <i>Clark v. Vulcan Lofts, LLC</i>, Case No.: T18-0468</u></b>	
	30-A      Lease	T0183-T0214
	30-B      Letter to tenants (re: Transfer of Ownership)	T0215
31.	<b><u>Unit 26</u></b> <b><u>Re: <i>Marshall v. Vulcan Lofts, LLC</i>, Case No.: T18-0470</u></b>	
	Cease and Desist Tenant Harassment Letter	T000954-956
32.	<b><u>Unit 39</u></b> <b><u>Re: <i>Burley v. Vulcan Lofts, LLC</i>, Case No: T18-0474</u></b>	

Tenants v. Vulcan Lofts, LLC, Consolidated Cases &  
Vulcan Lofts, LLC v. Tenants, No. L19-0013  
4401 San Leandro Street, Oakland, CA 94606  
Lease

T0217 – T0242

<u>Exhibits</u>	<u>Tenants' Documents Relating to Individual Units</u>	<u>Bates #</u>
33.	<u>Unit 43</u> <u>Re: <i>Spencer v. Vulcan Lofts, LLC</i>, Case No. T19-0023</u>	
	Lease	T0244 – T0279
34.	<u>Unit 46</u> <u>Re: <i>Eismont v. Vulcan Lofts, LLC</i>, Case No: T18-0477</u>	
	34-A      Signature page of lease	T0281
	34-B      Correspondence between tenant and landlord / management (re: habitability issues)	T0282-T0284
	34-C      Photographs of defects in unit	T0285-T0296
35.	<u>Unit 52</u> <u>Re: <i>Rogers v. Vulcan Lofts, LLC</i>, Case No: T18-0499</u>	
	Lease	T0298-T0324
36.	<u>Unit 53</u> <u>Re: <i>Sullivan v. Vulcan Lofts, LLC</i>, Case No: T18-0479</u>	
	36-A      Chronology (re: tenancy & habitability issues)	T0326-T0328
	36-B      Signature page of lease	T0329
	36-C      Correspondence between tenant and landlord/management (re: lease & habitability issues)	T0330-T0366
37.	<u>Unit 58</u> <u>Re: <i>Martin v. Vulcan Lofts, LLC</i>, Case. No. T18-0478</u>	
	37-A      Lease	T0368-T0394
	37-B      Photographs of conditions in unit	T0395-T0397
	37-C      Letter from tenant Matthew Martin in Unit#58 to Landlord/Management (re: Habitability issues, Rent increase, & Roommate Replacement)	T0398-T0399
38.	<u>Unit 59</u> <u>Re: <i>Miller v. Vulcan Lofts, LLC</i>, Case No.: T-180479</u>	
	38-A      Lease	T000938 – T000951
	38-B      Photograph of the fire escape	T000952

*Tenants v. Vulcan Lofts, LLC, Consolidated Cases &*  
*Vulcan Lofts, LLC v. Tenants*, No. L19-0013  
4401 San Leandro Street, Oakland, CA 94606

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Tenants v. Vulcan Lofts, LLC, Consolidated Cases &  
Vulcan Lofts, LLC v. Tenants, No. L-19-0013

Tenants' Witness List

a. Former Residents

1. Karen Beck
2. Susan Bloomquist
3. Todd Boekelheide
4. Gayle Bryan
5. Wayne Campbell
6. Allison A. Davis
7. Paul Howard
8. Randy Hussong
9. Peter Mars (formerly known as Peter Smith)
10. Llewellyn Moreno
11. Elizabeth Ross
12. Valerie Steel

b. Construction Workers & Investigator

1. David Cheek
2. Chris Vivona
3. Michael Joffe

c. Former Owner

1. J.R. "Eddie" Orton, III

d. Current Tenants (other occupants of the rental units may testify in addition or in lieu of the named tenants)

1. Charles Long, Unit 4-B
2. Andrea Ives, Unit 3
3. Brianna Crabtree, Unit 5
4. Martin, Helena, Unit 2
5. Lia Walker, Unit 8
6. Sarena Kirk, Unit 17
7. Ezra Untersetter, Unit 17
8. Andrew Pulkrabek, Unit 18
9. Annmarie Bustamante, Unit 19
10. Ziaa Szymanski, Unit 21
11. Clark, Ross (Unit #23 and #24)
12. W. Breanna, Leslie, Unit 25

13. Marshall, Darin Unit #26
14. Hudson, Matthew, #35
15. Weber, Deborah, #31
16. Woodruff, Burley, #39
17. Nathan, Ian, #40
18. Wang, Daniel, #41
19. Spencer, Randall, #43
20. Eismont, Ezra, #46
21. Rogers, Tzong Tzu, Unit 52
22. Sullivan, Colin, #53
23. Cotton, Rebecca, #54
24. Martin, Mathew #58
25. Miller, Joshua, #59

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**PAHL & McCAY**  
A Professional Law Corporation  
**Lerna Kazazic, Esq.** (State Bar No. 306207)  
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Facsimile: (408) 286-5722  
Email: [lkazazic@pahl-mccay.com](mailto:lkazazic@pahl-mccay.com)

Attorneys for Petitioner  
VULCAN LOFTS LLC

**CITY OF OAKLAND**

**RENT ADJUSTMENT PROGRAM**

In re: VULCAN LOFTS LLC,  
Petitioner.

) Case Nos. T17-0237; T-18-0460-T18-0471;  
) T18-0473-T18-0479; T18-0498-T18-0501;  
) T19-0021-T19-0023; L-19-0013

) **PETITIONER VULCAN LOFTS LLC'S**  
) **AMENDED WITNESS LIST**

Petitioner VULVAN LOFTS LLC's ("Petitioner"), hereby submits its Amended Witness

List as follows:

- 1. J.R. "Eddie" Orton, III

DATED: April 12, 2019

PAHL & McCAY  
A Professional Law Corporation

By: /s/ Lerna Kazazic  
Lerna Kazazic, Esq.

Attorneys for Petitioner  
VULCAN LOFTS LLC

*PAHL & McCAY*  
*4/12*

-----  
WITNESS LIST

**Pahl & McCay**  
A Professional Corp.  
225 W. Santa Clara  
Suite 1500  
San Jose, CA 95113  
(408) 286-5100

\*4693/003 -  
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Re: Tenants v. Vulcan Lofts, LLC, Consolidated Cases & Vulcan  
Lofts, LLC v. Tenants, No. L19-0013  
Address: 4401 San Leandro Street, Oakland, CA 94606 Hearing  
Date: April 15, 2019

FILED  
CITY OF OAKLAND  
KENT BARTON, CLERK  
2019 APR -8 PM 2:13

**AMENDED WITNESS DECLARATIONS (continued) April 8, 2019**

- 1. Declaration Addendum - Peter Mars**
- 2. Declaration of Susan Bloomquist (the previous version did not have the lease attached)**

L19-0013  
TENANTS'  
WITNESS 080384/10/19



## DECLARATION ADDENDUM - PETER MARS

I, Peter Mars, declare:

1. I have personal knowledge of the facts stated in this declaration and, if called as a witness, I could competently testify thereto.
2. This declaration is an addendum to my declaration submitted in this matter, dated March 26, 2019.
3. I have reviewed a page from a building permit application that I filed with the city of Oakland, which is dated 04/13/1987. This document is attached as EXHIBIT A. I can verify that I filed this document and my signature is on it. At that time, my legal name was Peter Smith. I legally changed my name to Peter Mars in 2001-2002. This document shows that the address of my residence was 4401 San Leandro St. #5, Oakland, CA 94601. The building permit was to construct a storage loft above the bathroom in the live area of my existing live-work studio.
4. The storage loft described in the 04/13/1987 building permit application was a separate loft from the one that functioned as my residence while I lived at the Vulcan property. The residence loft was installed prior to my arrival by the property owners Jim Alexander and Eddie Orton.
5. I had already resided at the Vulcan property for some time when this permit application was prepared. On reflection, I believe that I was there spring-summer 1986 because I remember displaying a motorcycle racing trophy in my motorcycle shop there. This trophy was memorable because it was for the first one that I ever was awarded for racing motorcycles. The race was in early 1986.
6. I filed a business license with the city of Oakland for my business "Performance and Design". There may be a document on file with the city that shows I was licensed to operate this business at the Vulcan property. Additionally "Performance and Design" had been issued a Sellers Permit by the Board of Equalization.
7. I recall registering with the city of Oakland to establish use of 925 45<sup>th</sup> Avenue as the address for my motorcycle shop, "Performance and Design". "Performance and Design" operated out of the work area of 4401 San Leandro St #5. The shop faced the 45<sup>th</sup> Ave. side and the new Vulcan Studio live/work unit addresses on 45<sup>th</sup> Ave. were not recognized by the city at that time. There may be a document on file with the City of

Oakland reflecting this.

I declare under penalty of perjury of the laws of California that the forgoing facts are known to me personally and that they are true and correct, and that this declaration was executed in OAKLAND, California on MARCH 29, 2019.

P MARS  
PETER MARS

# **EXHIBIT A**

THIS IS YOUR PERMIT WHEN PROPERLY FILLED OUT, SIGNED, VALIDATED & FEES PAID.

BUILDING ADDRESS: 4901 SAN LEONARD ST. #5  
TRACT: BLOCK PAGE: LOT PARCEL:

NAME: JULIAN PROPERTIES  
Permit No: 48701052

ADDRESS: 4901 SAN LEONARD ST. #5, 6600  
Call for Inspection: 273-3444

CITY: OAKLAND, CALIF. 94601  
DATE ISSUED: DATE FILED: 4-13-87

REMARKS NAME AND TELEPHONE NUMBER IF APPLICABLE: PETER SMITH 536-8959  
NEW REPAIR ADDITION  
MOVE ALTERATION DEMOLITION

NAME: PETER SMITH  
ADDRESS: ADDRESS: CITY: CITY

I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code and my license is in full force and effect.

LICENSE AND CLASS: CITY BUSINESS TAX

CONTRACTOR NAME: ADDRESS: CITY: ZIP: PHONE:

SIGNATURE: DATE:

I hereby affirm that I am exempt from the Contractor's License Law for the following reasons: (Sec. 7001.5 Business and Professions Code) ...

I, as owner of the property, am exempt from the Contractor's License Law for the following reasons: (Sec. 7002 Business and Professions Code) ...

I, as owner of the property, am exempt from the Contractor's License Law for the following reasons: (Sec. 7003 Business and Professions Code) ...

I am exempt under Sec. 7001.5 Business and Professions Code. Signature: P. Smith 4/13/87

I hereby affirm that I have read and understand the provisions of the Contractors' License Law and the provisions of the Contractors' License Law and the provisions of the Contractors' License Law.

I certify that in the performance of the work for which this permit is issued, no person in any manner so as to be in violation of the provisions of the Contractors' License Law.

NOTICE TO APPLICANT: If after making this Certificate of Exemption you are subject to the Workers' Compensation provisions of the California Labor Code, you must comply with such provisions of the permit shall be deemed to be done.

I hereby affirm that there is a construction agreement in force and effect for which this permit is issued. (Sec. 7007)

I CERTIFY THAT I HAVE READ THIS APPLICATION AND STATE THAT I AM NOT AWARE OF ANY VIOLATION OF ANY STATE LAW OR LOCAL ORDINANCE RELATING TO BUILDING CONSTRUCTION AND THAT THIS STATEMENT IS MADE UNDER PENALTY OF PERJURY. I HEREBY AUTHORIZE REPRESENTATIVES OF THIS CITY TO ENTER UPON THE ABOVE MENTIONED PROPERTY FOR INSPECTION PURPOSES. NOTICE: THIS PERMIT WILL EXPIRE BY LIMITATION OF WORK IS NOT STARTED IN 90 DAYS OR WHICH IS ABANDONED FOR MORE THAN 180 DAYS. DO NOT CONSIDER CONSTRUCTION OF THIS PERMIT AS INSPECTED AND THE INSPECTION IS REQUIRED ON THE BACK OF THE PERMIT. YOU MUST NOT ALL INSPECTION REQUESTS ARE RECEIVED 30 DAYS IN ADVANCE OF THE PERMIT.

I hereby agree to accept, maintain and defend against the City in the event of any claim or action against the City in consequence of the filing of this permit or the occupancy of any sidewalk, street or public place, or in consequence of any violation of any ordinance, statute or law, or in consequence of any violation of any ordinance, statute or law, or in consequence of any violation of any ordinance, statute or law.

Authorized Agent for: Contractor [ ] Owner [x] Signature: PETER SMITH 4/13/87

Address of Agent: ADDRESS: CITY: ZIP: PHONE:

DESCRIBE BRIEFLY ALL PROPOSED CONSTRUCTION WORK

CONSTRUCTION OF STORAGE LEFT ABOVE EXISTING EXISTING LIVE-WORK STUDIO

Plan Filed: Survey filed: No. of Stories: Height of Highest Point:

Size of Bldg: Number of Units: Proposed Use of Bldg: Present Use of Bldg:

Number of Bldgs on lot: Use of lot: TYPE OF BUILDING: OCCUPANCY GROUP: FIRE SPRINKLERS: SPECIAL INSPECTION REQUIRED: ZONING: Real Conversion: Exterior Wall:

Valuation of Proposed Work: \$5000

Valuation of Proposed Work includes all labor and materials of lighting, heating, ventilation, air conditioning, plumbing, electrical, fire alarm, and other equipment, fixtures and finishes.

OFFICIAL USE ONLY

VALUE: City Fee \$ 25.00, Planning Fee \$ 13.00, N.P. Fee \$, P.P. Fee \$, TOTAL \$ 38.00

ADDITIONAL COST: Address Fee \$, TOTAL \$, Date: Publ. Fee \$, Add'l Ch. Fee \$, Add'l State Regs \$, Add'l Sur \$, Add'l SWIP \$, TOTAL \$

LICENSE OWNER VERIFICATION: ZONING & PLANNING NO, FIRE MARSHAL, HEALTH DEPT, PORT OF OAKLAND, HOUSING CONSERVATION, MOVING PERMIT NO, SPECIAL ACTIVITY NO, BE&A ITEM NO, H&A&B RES NO, HANDICAP APPEALS, OTHER

APPROVED BY: DATE: PLAN CHECKED BY: DATE: PERMIT ISSUED BY: DATE:

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PERMIT NO: DISTRICT NO: 7 ADDRESS: 44401 San Leandro St #5 DATE FILED: 4-13-87

EXPIRED Tenant Exhibit A

Page 1 of 1

Declaration of Susan Bloomquist

I, Susan Bloomquist, declare:

1. I have personal knowledge of the facts stated in this declaration and, if called as a witness, I could competently testify thereto.
2. My current address is 208 Wild Tiger Road, Boulder, Colorado, 80302
3. I resided at the property then known as Vulcan Foundry, located at 4401 San Leandro Street, Oakland, California from March or April 1986 until 1992. At the time, my name was Susan Nickel.
4. I initially moved into Unit 43, along with a roommate named Suzanne Lang. Suzanne was the master tenant and I subleased and paid rent through her. The owners knew of this arrangement and approved.
5. Both Ms. Lang and I were painters and we needed a space large enough for both of us to live and work in. The owners were renting the units to artists as live-work space. We moved into Unit 43. I lived in Unit 43 for approximately a year and a half.
6. Unit 43 had a large studio on the ground floor. It had hot and cold running water and regular trash disposal service. The unit had a stairway leading to a loft area which contained a bathroom, with sink, toilet, shower and bathtub. The loft had a kitchen which had a sink, and hookups for a stove and a refrigerator. We were required to provide and install our own stove and refrigerator. We also had to clean and scrub the floors at the time we moved in, as they were covered with heavy black soot.
7. Owner Eddie Orton was at the property at least once a week when I lived in unit 43, overseeing the ongoing construction. When we discussed the issues described above with him, he simply replied, "I never promised you a rose garden."
8. Unit 43 opened onto a courtyard. Several other units opened onto the same courtyard.
9. At the time I moved into the property, there was a building across the parking lot on the south side of the property which had a café in it. All the units in that building already had residents living there. No units were available for rent in that building at the time I moved into Unit 43.
10. Valerie Steel lived in a rental unit at the property with her husband when we moved into Unit 43. She lived there with her husband. She was a picture framer. She later became the live-in manager.
11. Some of the other residents whose names I knew (and can still remember) were Kenny Jackson, Max Gardner, Llewellyn Hilliard, and Tom O'Hara. Tom was a painter. He also made paper sculptures.

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12. Mr. Hilliard resided in Unit 31 at the time I moved into the property. He told me that, when he moved in, the soot was so bad inside the unit that he had to power wash it. Mr. Hilliard did a lot of work, building out his rental unit and finishing it very skillfully.

13. When Mr. Hilliard moved out in 1988, I took over Unit 31, signing a lease on April 1, 1988. A true and correct copy of that lease is attached to this declaration. Although the lease was termed a "Standard Industrial Lease" I rented and used Unit 31 as live-work space, with Mr. Orton's full knowledge and approval.

14. Like Unit 43, Unit 31 had a downstairs studio and a stairway leading to a loft which contained a full bath (sink, toilet, shower and tub), and a kitchen. The kitchen had a stove and sink. I had to buy my own refrigerator.

15. To my knowledge, all or almost all, of the apartments at the property were being built, rented and used as living space. By the end of 1987, the property was almost completely occupied as live-work space.

I declare under penalty of perjury that the forgoing statement is true and correct.

Executed in Boulder, Colorado on March 14, 2019.

*Susan Bloomquist*

# **EXHIBIT A**

AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION



1. Parties. This Lease, dated, for reference purposes only, APRIL 1, 1988, is made by and between VULCAN PROPERTIES and JUSAN NICKEL (herein called "Lessor")

2. Premises. Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all of the conditions set forth herein, that certain real property situated in the County of ALAMEDA State of CALIFORNIA commonly known as 4401 SAN LEONARD ST., OAKLAND, CA 94601 UNIT 31 and described as \_\_\_\_\_

Said real property including the land and all improvements therein, is herein called "The Premises".

3. Term. 3.1 Term. The term of this Lease shall be for THREE YEARS WITH A TWO YEAR OPTION commencing on 4/1/88 and ending on 3/31/91 unless sooner terminated pursuant to any provision hereof.

3.2 Delay in Possession. Notwithstanding said commencement date, if for any reason Lessor cannot deliver possession of the Premises to Lessee on said date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Lessee hereunder or extend the term hereof, but in such case, Lessee shall not be obligated to pay rent until possession of the Premises is tendered to Lessee; provided, however, that if Lessor shall not have delivered possession of the Premises within sixty (60) days from said commencement date, Lessee may, at Lessee's option, by notice in writing to Lessor within ten (10) days thereafter, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder; provided further, however, that if such written notice of Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease hereunder shall terminate and be of no further force or effect.

3.3 Early Possession. If Lessee occupies the Premises prior to said commencement date, such occupancy shall be subject to all provisions hereof, such occupancy shall not advance the termination date, and Lessee shall pay rent for such period at the initial monthly rates set forth below.

4. Rent. Lessee shall pay to Lessor as rent for the Premises, monthly payments of \$ 615.00, in advance, on the FIRST day of each month of the term hereof. Lessee shall pay Lessor upon the execution hereof \$ 575 as rent for APRIL, 1988.

Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof \$ 880.00 as security for Lessee's faithful performance of Lessee's obligations hereunder. If Lessee fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Lessor may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Lessor may become obligated by reason of Lessee's default, or to compensate Lessor for any loss or damage which Lessor may suffer thereby. If Lessor so uses or applies all or any portion of said deposit, Lessee shall within ten (10) days after written demand therefor deposit cash with Lessor in an amount sufficient to restore said deposit to the full amount hereinabove stated and Lessee's failure to do so shall be a material breach of this Lease. If the monthly rent shall, from time to time, increase during the term of this Lease, Lessee shall thereupon deposit with Lessor additional security deposit so that the amount of security deposit held by Lessor shall at all times bear the same proportion to current rent as the original security deposit bears to the original monthly rent set forth in paragraph 4 hereof. Lessor shall not be required to keep said deposit separate from its general accounts. If Lessee performs all of Lessee's obligations hereunder, said deposit, or so much thereof as has not theretofore been applied by Lessor, shall be returned, without payment of interest or other increment for its use, to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest hereunder) at the expiration of the term hereof, and after Lessee has vacated the Premises. No trust relationship is created herein between Lessor and Lessee with respect to said Security Deposit.

6. Use. 6.1 Use. The Premises shall be used and occupied only for ARTIST STUDIO

or any other use which is reasonably comparable and for no other purpose.

6.2 Compliance with Law. (a) Lessor warrants to Lessee that the Premises, in its state existing on the date that the Lease term commences, but without regard to the use for which Lessee will use the Premises, does not violate any covenants or restrictions of record, or any applicable building code, regulation or ordinance in effect on such Lease term commencement date. In the event it is determined that this warranty has been violated, then it shall be the obligation of the Lessor, after written notice from Lessee, to promptly, at Lessor's sole cost and expense, rectify any such violation. In the event Lessee does not give to Lessor written notice of the violation of this warranty within six months from the date that the Lease term commences, the correction of same shall be the obligation of the Lessee at Lessee's sole cost. The warranty contained in this paragraph 6.2 (a) shall be of no force or effect if, prior to the date of this Lease, Lessee was the owner or occupant of the Premises, and, in such event, Lessee shall correct any such violation at Lessee's sole cost.

(b) Except as provided in paragraph 6.2(a), Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the use by Lessee of the Premises. Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance or, if there shall be more than one tenant in the building containing the Premises, shall tend to disturb such other tenants.

6.3 Condition of Premises. (a) Lessor shall deliver the Premises to Lessee clean and free of debris on Lease commencement date (unless Lessee is already in possession) and Lessor further warrants to Lessee that the plumbing, lighting, air conditioning, heating, and loading doors in the Premises shall be in good operating condition on the Lease commencement date. In the event that it is determined that this warranty has been violated, then it shall be the obligation of Lessor, after receipt of written notice from Lessee setting forth with specificity the nature of the violation, to promptly, at Lessor's sole cost, rectify such violation. Lessee's failure to give such written notice to Lessor within thirty (30) days after the Lease commencement date shall cause the conclusive presumption that Lessor has complied with all of Lessor's obligations hereunder. The warranty contained in this paragraph 6.3(a) shall be of no force or effect if prior to the date of this Lease, Lessee was the owner or occupant of the Premises.

(b) Except as otherwise provided in this Lease, Lessee hereby accepts the Premises in their condition existing as of the Lease commencement date or the date that Lessee takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Lessee's business.

7. Maintenance, Repairs and Alterations. 7.1 Lessor's Obligations. Subject to the provisions of Paragraphs 6, 7.2, and 9 and except for damage caused by any negligent or intentional act or omission of Lessee, Lessee's agents, employees, or invitees in which event Lessee shall repair the damage, Lessor, at Lessor's expense, shall keep in good order, condition and repair the foundations, exterior walls and the exterior roof of the Premises. Lessor shall not, however, be obligated to paint such exterior, nor shall Lessor be required to maintain the interior surface of exterior walls, windows, doors or plate glass. Lessor shall have no obligation to make repairs under this Paragraph 7.1 until a reasonable time after receipt of written notice of the need for such repairs. Lessee expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Premises in good order, condition and repair.

7.2 Lessee's Obligations. (a) Subject to the provisions of Paragraphs 6, 7.1 and 9, Lessee, at Lessee's expense, shall keep in good order, condition and repair the Premises and every part thereof (whether or not the damaged portion of the Premises or the means of repairing the same are reasonably or readily accessible to Lessee) including, without limiting the generality of the foregoing, all plumbing, heating, air conditioning. (Lessee shall procure and)

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maintain, at Lessee's expense, an air conditioning system maintenance contract) ventilating, electrical and lighting facilities and equipment within the Premises; fixtures, interior walls and interior surface of exterior walls, ceilings, windows, doors, plate glass, and skylights, located within the Premises, and all landscaping, driveways, parking lots, fences and signs located in the Premises and all sidewalks and parkways adjacent to the Premises.

(b) If Lessee fails to perform Lessee's obligations under this Paragraph 7.2 or under any other paragraph of this Lease, Lessor may at Lessor's option enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf and put the Premises in good order, condition and repair, and the cost thereof together with interest thereon at the maximum rate then allowable by law shall be due and payable as additional rent to Lessor together with Lessee's next rental installment.

(c) On the last day of the term hereof, or on any sooner termination, Lessee shall surrender the Premises to Lessor in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Lessee shall repair any damage to the Premises occasioned by the installation or removal of its trade fixtures, furnishings and equipment. Notwithstanding anything to the contrary otherwise stated in this Lease, Lessee shall leave the air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing on the premises in good operating condition.

#### 7.3 Alterations and Additions.

(a) Lessee shall not, without Lessor's prior written consent make any alterations, improvements, additions, or Utility Installations in, on or about the Premises, except for nonstructural alterations not exceeding \$2,500 in cumulative costs during the term of this Lease. In any event, whether or not in excess of \$2,500 in cumulative cost, Lessee shall make no change or alteration to the exterior of the Premises nor the exterior of the building(s) on the Premises without Lessor's prior written consent. As used in this Paragraph 7.3 the term "Utility Installation" shall mean carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing, and fencing. Lessor may require that Lessee remove any or all of said alterations, improvements, additions or Utility Installations at the expiration of the term, and restore the Premises to their prior condition. Lessor may require Lessee to provide Lessor, at Lessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Lessor against any liability for mechanic's and materialmen's liens and to insure completion of the work. Should Lessee make any alterations, improvements, additions or Utility Installations without the prior approval of Lessor, Lessor may require that Lessee remove any or all of the same.

(b) Any alterations, improvements, additions or Utility Installations in, or about the Premises that Lessee shall desire to make and which requires the consent of the Lessor shall be presented to Lessor in written form, with proposed detailed plans. If Lessor shall give its consent, the consent shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner.

(c) Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend itself and Lessor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises, upon the condition that if Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to such contested lien claim or demand indemnifying Lessor against liability for the same and holding the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorneys fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

(d) Unless Lessor requires their removal, as set forth in Paragraph 7.3(a), all alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Lessee), which may be made on the Premises, shall become the property of Lessor and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this Paragraph 7.3(d), Lessee's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Lessee and may be removed by Lessee subject to the provisions of Paragraph 7.2(c).

#### 8. Insurance; Indemnity.

8.1 Liability Insurance - Lessee. Lessee shall, at Lessee's expense, obtain and keep in force during the term of this Lease a policy of Combined Single Limit Bodily Injury and Property Damage Insurance insuring Lessee and Lessor against any liability arising out of the use, occupancy or maintenance of the Premises and all other areas appurtenant thereto. Such insurance shall be in an amount not less than \$500,000 per occurrence. The policy shall insure performance by Lessee of the indemnity provisions of this Paragraph 8. The limits of said insurance shall not, however, limit the liability of Lessee hereunder.

8.2 Liability Insurance - Lessor. Lessor shall obtain and keep in force during the term of this Lease a policy of Combined Single Limit Bodily Injury and Property Damage Insurance, insuring Lessor, but not Lessee, against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto in an amount not less than \$500,000 per occurrence.

8.3 Property Insurance. Lessor shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, but not Lessee's fixtures, equipment or tenant improvements in an amount not to exceed the full replacement value thereof, as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood (in the event same is required by a lender having a lien on the Premises) special extended perils ("all risk", as such term is used in the insurance industry) but not plate glass insurance. In addition, the Lessor shall obtain and keep in force, during the term of this Lease, a policy of rental value insurance covering a period of one year, with loss payable to Lessor, which insurance shall also cover all real estate taxes and insurance costs for said period.

#### 8.4 Payment of Premium Increases.

(a) Lessee shall pay to Lessor, during the term hereof, in addition to the rent, the amount of any increase in premiums for the insurance required under Paragraphs 8.2 and 8.3 over and above such premiums paid during the Base Period, as hereinafter defined, whether such premium increase shall be the result of the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of a mortgage or deed of trust covering the Premises, increased valuation of the Premises, or general rate increases. In the event that the Premises have been occupied previously the words "Base Period" shall mean the last twelve months of the prior occupancy. In the event that the Premises have never been previously occupied, the premiums during the "Base Period" shall be deemed to be the lowest premiums reasonably obtainable for said insurance assuming the most nominal use of the Premises. Provided, however, in lieu of the Base Period, the parties may insert a dollar amount at the end of this sentence which figure shall be considered as the insurance premium for the Base Period: \$ \_\_\_\_\_ In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$1,000,000 procured under paragraph 8.2.

(b) Lessee shall pay any such premium increases to Lessor within 30 days after receipt by Lessee of a copy of the premium statement or other satisfactory evidence of the amount due. If the insurance policies maintained hereunder cover other improvements in addition to the Premises, Lessor shall also deliver to Lessee a statement of the amount of such increase attributable to the Premises and showing in reasonable detail, the manner in which such amount was computed. If the term of this Lease shall not expire concurrently with the expiration of the period covered by such insurance, Lessee's liability for premium increases shall be prorated on an annual basis.

(c) If the Premises are part of a larger building, then Lessee shall not be responsible for paying any increase in the property insurance premium caused by the acts or omissions of any other tenant of the building of which the Premises are a part.

8.5 Insurance Policies. Insurance required hereunder shall be in companies holding a "General Policyholders Rating" of at least B plus, or such other rating as may be required by a lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide". Lessee shall deliver to Lessor copies of policies of liability insurance required under Paragraph 8.1 or certificates evidencing the existence and amounts of such insurance. No such policy shall be cancellable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to Lessor. Lessee shall, at least thirty (30) days prior to the expiration of such policies, furnish Lessor with renewals or "binders" thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee upon demand. Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in Paragraph 8.3.

8.6 Waiver of Subrogation. Lessee and Lessor each hereby release and relieve the other, and waive their entire right of recovery against the other for loss or damage arising out of or incident to the perils insured against under paragraph 8.3, which perils occur in, on or about the Premises, whether due to the negligence of Lessor or Lessee or their agents, employees, contractors and/or invitees. Lessee and Lessor shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

8.7 Indemnity. Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Premises, or from the conduct of Lessee's business or from any activity, work or things done, permitted or suffered by Lessee in or about the Premises or elsewhere and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any negligence of the Lessee, or any of Lessee's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel satisfactory to Lessor. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause and Lessee hereby waives all claims in respect thereof against Lessor.

8.8 Exemption of Lessor from Liability. Lessor hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, invitees, customers, or any other person in or about the Premises, nor shall Lessor be liable for injury to the person of Lessee, Lessee's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the building in which the Premises are located.

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9. Damage or Destruction.

9.1 Definitions.

(a) "Premises Partial Damage" shall herein mean damage or destruction to the Premises to the extent that the cost of repair is less than 50% of the fair market value of the Premises immediately prior to such damage or destruction. "Premises Building Partial Damage" shall herein mean damage or destruction to the building of which the Premises are a part to the extent that the cost of repair is less than 50% of the fair market value of such building as a whole immediately prior to such damage or destruction.

(b) "Premises Total Destruction" shall herein mean damage or destruction to the Premises to the extent that the cost of repair is 50% or more of the fair market value of the Premises immediately prior to such damage or destruction. "Premises Building Total Destruction" shall herein mean damage or destruction to the building of which the Premises are a part to the extent that the cost of repair is 50% or more of the fair market value of such building as a whole immediately prior to such damage or destruction.

(c) "Insured Loss" shall herein mean damage or destruction which was caused by an event required to be covered by the insurance described in paragraph 8.

9.2 Partial Damage — Insured Loss. Subject to the provisions of paragraphs 9.4, 9.5 and 9.6, if at any time during the term of this Lease there is damage which is an Insured Loss and which falls into the classification of Premises Partial Damage or Premises Building Partial Damage, then Lessor shall, at Lessor's sole cost, repair such damage, but not Lessee's fixtures, equipment or tenant improvements, as soon as reasonably possible and this Lease shall continue in full force and effect.

9.3 Partial Damage — Uninsured Loss. Subject to the provisions of Paragraphs 9.4, 9.5 and 9.6, if at any time during the term of this Lease there is damage which is not an Insured Loss and which falls within the classification of Premises Partial Damage or Premises Building Partial Damage, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may at Lessor's option either (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after the date of the occurrence of such damage of Lessor's intention to cancel and terminate this Lease, as of the date of the occurrence of such damage. In the event Lessor elects to give such notice of Lessor's intention to cancel and terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's intention to repair such damage at Lessee's expense, without reimbursement from Lessor, in which event this Lease shall continue in full force and effect, and Lessee shall proceed to make such repairs as soon as reasonably possible. If Lessee does not give such notice within such 10-day period this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

9.4 Total Destruction. If at any time during the term of this Lease there is damage, whether or not an Insured Loss, (including destruction required by any authorized public authority), which falls into the classification of Premises Total Destruction or Premises Building Total Destruction, this Lease shall automatically terminate as of the date of such total destruction.

9.5 Damage Near End of Term.

(a) If at any time during the last six months of the term of this Lease there is damage, whether or not an Insured Loss, which falls within the classification of Premises Partial Damage, Lessor may at Lessor's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within 30 days after the date of occurrence of such damage.

(b) Notwithstanding paragraph 9.5(a), in the event that Lessee has an option to extend or renew this Lease, and the time within which said option may be exercised has not yet expired, Lessee shall exercise such option, if it is to be exercised at all, no later than 20 days after the occurrence of an Insured Loss falling within the classification of Premises Partial Damage during the last six months of the term of this Lease. If Lessee duly exercises such option during said 20 day period, Lessor shall, at Lessor's expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option during said 20 day period, then Lessor may at Lessor's option terminate and cancel this Lease as of the expiration of said 20 day period by giving written notice to Lessee of Lessor's election to do so within 10 days after the expiration of said 20 day period, notwithstanding any term or provision in the grant of option to the contrary.

9.6 Abatement of Rent; Lessee's Remedies.

(a) In the event of damage described in paragraphs 9.2 or 9.3, and Lessor or Lessee repairs or restores the Premises pursuant to the provisions of this Paragraph 9, the rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for abatement of rent, if any, Lessee shall have no claim against Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence such repair or restoration within 90 days after such obligations shall accrue, Lessee may at Lessee's option cancel and terminate this Lease by giving Lessor written notice of Lessee's election to do so at any time prior to the commencement of such repair or restoration. In such event this Lease shall terminate as of the date of such notice.

9.7 Termination — Advance Payments. Upon termination of this Lease pursuant to this Paragraph 9, an equitable adjustment shall be made concerning advance rent and any advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's security deposit as has not theretofore been applied by Lessor.

9.8 Waiver. Lessor and Lessee waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

10. Real Property Taxes.

10.1 Payment of Tax Increase. Lessor shall pay the real property tax, as defined in paragraph 10.3, applicable to the Premises, provided, however, that Lessee shall pay, in addition to rent, the amount, if any, by which real property taxes applicable to the Premises increase over the fiscal real estate tax year 1987-1988. Such payment shall be made by Lessee within thirty (30) days after receipt of Lessor's written statement setting forth the amount of such increase and the computation thereof. If the term of this Lease shall not expire concurrently with the expiration of the tax fiscal year, Lessee's liability for increased taxes for the last partial lease year shall be prorated on an annual basis.

10.2 Additional Improvements. Notwithstanding paragraph 10.1 hereof, Lessee shall pay to Lessor upon demand thereof the entirety of any increase in real property tax assessed solely by reason of additional improvements placed upon the Premises by Lessee or at Lessee's request.

10.3 Definition of "Real Property Tax". As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Premises by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Lessor in the Premises or in the real property of which the Premises are a part, as against Lessor's right to rent or other income therefrom, and as against Lessor's business of leasing the Premises. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinbefore included within the definition of "real property tax," or (iii) which is imposed or a service or right not charged prior to June 1, 1978, or, if previously charged, has been increased since June 1, 1978, or (iv) which is imposed as a result of a transfer, either partial or total, of Lessor's interest in the Premises or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (v) which is imposed by reason of this transaction, any modifications or changes hereto, or any transfers hereto.

10.4 Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the real property taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 Personal Property Taxes.

(a) Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor.

(b) If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities. Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion to be determined by Lessor of all charges jointly metered with other premises.

12. Assignment and Subletting.

12.1 Lessor's Consent Required. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in this Lease or in the Premises, without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Lessor shall respond to Lessee's request for consent hereunder in a timely manner and any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void, and shall constitute a breach of this Lease.

12.2 Lessee Affiliate. Notwithstanding the provisions of paragraph 12.1 hereof, Lessee may assign or sublet the Premises, or any portion thereof, without Lessor's consent, to any corporation which controls, is controlled by or is under common control with Lessee, or to any corporation resulting from the merger or consolidation with Lessee, or to any person or entity which acquires all the assets of Lessee as a going concern of the business that is being conducted on the Premises, provided that said assignee assumes, in full, the obligations of Lessee under this Lease. Any such assignment shall not, in any way, affect or limit the liability of Lessee under the terms of this Lease even if after such assignment or subletting the terms of this Lease are materially changed or altered without the consent of Lessee, the consent of whom shall not be necessary.

12.3 No Release of Lessee. Regardless of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Lessee or any successor of Lessee, in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of exhausting remedies against said assignee. Lessor may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Lessee, without notifying Lessee, or any successor of Lessee, and without obtaining its or their consent thereto and such action shall not relieve Lessee of liability under this Lease.

12.4 Attorney's Fees. In the event Lessee shall assign or sublet the Premises or request the consent of Lessor to any assignment or subletting or if Lessee shall request the consent of Lessor for any act Lessee proposes to do then Lessee shall pay Lessor's reasonable attorneys fees incurred in connection therewith, such attorneys fees not to exceed \$350.00 for each such request.

Initials:

53. Defaults, Remedies.

13.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

- (a) The vacating or abandonment of the Premises by Lessee.
(b) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of three days after written notice thereof from Lessor to Lessee.
(c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in paragraph (b) above, where such failure shall continue for a period of 30 days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than 30 days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said 30-day period and thereafter diligently prosecutes such cure to completion.
(d) (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days. Provided, however, in the event that any provision of this paragraph 13.1(d) is contrary to any applicable law, such provision shall be of no force or effect.

(e) The discovery by Lessor that any financial statement given to Lessor by Lessee, any assignee of Lessee, any subtenant of Lessee, any successor in interest of Lessee or any guarantor of Lessee's obligation hereunder, and any of them, was materially false.

13.2 Remedies. In the event of any such material default or breach by Lessee, Lessor may at any time thereafter, with or without notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Premises; expenses of retreating, including necessary renovation and alteration of the Premises, reasonable attorney's fees, and any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided; that portion of the leasing commission paid by Lessor pursuant to Paragraph 15 applicable to the unexpired term of this Lease.

(b) Maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located. Unpaid installments of rent and other unpaid monetary obligations of Lessee under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

13.3 Default by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Lessee in writing, specifying wherein Lessor has failed to perform such obligation; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to 6% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessee will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of rent, then rent shall automatically become due and payable quarterly in advance, rather than monthly, notwithstanding paragraph 4 or any other provision of this Lease to the contrary.

13.5 Impounds. In the event that a late charge is payable hereunder, whether or not collected, for three (3) installments of rent or any other monetary obligation of Lessee under the terms of this Lease, Lessee shall pay to Lessor, if Lessor shall so request, in addition to any other payments required under this Lease, a monthly advance installment, payable at the same time as the monthly rent, as estimated by Lessor, for real property tax and insurance expenses on the Premises which are payable by Lessee under the terms of this Lease. Such fund shall be established to insure payment when due, before delinquency, of any or all such real property taxes and insurance premiums. If the amounts paid to Lessor by Lessee under the provisions of this paragraph are insufficient to discharge the obligations of Lessee to pay such real property taxes and insurance premiums as the same become due, Lessee shall pay to Lessor, upon Lessor's demand, such additional sums necessary to pay such obligations. All moneys paid to Lessor under this paragraph may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a default in the obligations of Lessee to perform under this Lease, then any balance remaining from funds paid to Lessor under the provisions of this paragraph may, at the option of Lessor, be applied to the payment of any monetary default of Lessee in lieu of being applied to the payment of real property tax and insurance premiums.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the building on the Premises, or more than 25% of the land area of the Premises which is not occupied by any building, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing only within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area of the building taken bears to the total floor area of the building situated on the Premises. No reduction of rent shall occur if the only area taken is that which does not have a building located thereon. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any award for loss of or damage to Lessee's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of severance damages received by Lessor in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall pay any amount in excess of such severance damages required to complete such repair.

15. Broker's Fee.

(a) Upon execution of this Lease by both parties, Lessor shall pay to NONE

\_\_\_\_\_ Licensed real estate broker(s), a fee as set forth in a separate agreement between Lessor and said broker(s), or in the event there is no separate agreement between Lessor and said broker(s), the sum of \$ \_\_\_\_\_ for brokerage services rendered by said broker(s) to Lessor in this transaction.

(b) Lessor further agrees that if Lessee exercises any Option as defined in paragraph 39.1 of this Lease, which is granted to Lessee under this Lease, or any subsequently granted option which is substantially similar to an Option granted to Lessee under this Lease, or if Lessee acquires any rights to the Premises or other premises described in this Lease which are substantially similar to what Lessee would have acquired had an Option herein granted to Lessee been exercised, or if Lessee remains in possession of the Premises after the expiration of the term of this Lease after having failed to exercise an Option, or if said broker(s) are the procuring cause of any other lease or sale entered into between the parties pertaining to the Premises and/or any adjacent property in which Lessor has an interest, then as to any of said transactions, Lessor shall pay said broker(s) a fee in accordance with the schedule of said broker(s) in effect at the time of execution of this Lease.

(c) Lessor agrees to pay said fee not only on behalf of Lessor but also on behalf of any person, corporation, association, or other entity having an ownership interest in said real property or any part thereof, when such fee is due hereunder. Any transferee of Lessor's interest in this Lease, whether such transfer is by agreement or by operation of law, shall be deemed to have assumed Lessor's obligation under this Paragraph 15. Said broker shall be a third party beneficiary of the provisions of this Paragraph 15.

16. Estoppel Certificate.

(a) Lessee shall at any time upon not less than ten (10) days' prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any; and (ii) acknowledging that there are no, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

(b) At Lessor's option, Lessee's failure to deliver such statement within such time shall be a material breach of this Lease or shall be conclusive upon Lessee (i) that this Lease is in full force and effect, without modification except as may be represented by Lessor, (ii) that there are no uncured defaults in Lessor's performance, and (iii) that not more than one month's rent has been paid in advance or such failure may be considered by Lessor as a default by Lessee under this Lease.

Initials: [Signature]

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee hereby agrees to deliver to any lender or purchaser designated by Lessor such financial statements of Lessee as may be reasonably required by such lender or purchaser. Such statements shall include the past three years' financial statements of Lessee. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Lessor's Liability.** The term "Lessor" as used herein shall mean only the owner or owners at the time in question of the fee title or a lessee's interest in a ground lease of the Premises, and except as expressly provided in Paragraph 15, in the event of any transfer of such title or interest, Lessor herein named (and in case of any subsequent transfers then the grantor) shall be relieved from and after the date of such transfer of all liability as respects Lessor's obligations thereafter to be performed, provided that any funds in the hands of Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Lessor shall, subject as aforesaid, be binding on Lessor's successors and assigns, only during their respective periods of ownership.

18. **Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Interest on Past-due Obligations.** Except as expressly herein provided, any amount due to Lessor not paid when due shall bear interest at the maximum rate then allowable by law from the date due. Payment of such interest shall not excuse or cure any default by Lessee under this Lease. Provided, however, that interest shall not be payable on late charges incurred by Lessee nor on any amounts upon which late charges are paid by Lessee.

20. **Time of Essence.** Time is of the essence.

21. **Additional Rent.** Any monetary obligations of Lessee to Lessor under the terms of this Lease shall be deemed to be rent.

22. **Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither the real estate broker listed in Paragraph 15 hereof nor any cooperating broker on this transaction nor the Lessor or any employees or agents of any of said persons has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety Health Act, the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease except as otherwise specifically stated in this Lease.

23. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Lessee or to Lessor at the address noted below the signature of the respective parties, as the case may be. Either party may by notice to the other specify a different address for notice purposes except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice purposes. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by notice to Lessee.

24. **Waivers.** No waiver by Lessor or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to, or approval of any act, shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

25. **Recording.** Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes.

26. **Holding Over.** If Lessee, with Lessor's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Lessee, but all options and rights of first refusal, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions.** Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

29. **Binding Effect; Choice of Law.** Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of Paragraph 17, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State wherein the Premises are located.

30. **Subordination.**

(a) This Lease, at Lessor's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgage, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Lessee, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

(b) Lessee agrees to execute any documents required to effectuate an attornment, a subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Lessee's failure to execute such documents within 10 days after written demand shall constitute a material default by Lessee hereunder, or, at Lessor's option, Lessor shall execute such documents on behalf of Lessee as Lessee's attorney-in-fact. Lessee does hereby make, constitute and irrevocably appoint Lessor as Lessee's attorney-in-fact and in Lessee's name, place and stead, to execute such documents in accordance with this paragraph 30(b).

31. **Attorney's Fees.** If either party or the broker named herein brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party as fixed by the court. The provisions of this paragraph shall inure to the benefit of the broker named herein who seeks to enforce a right hereunder.

32. **Lessor's Access.** Lessor and Lessor's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part as Lessor may deem necessary or desirable. Lessor may at any time place on or about the Premises any ordinary "For Sale" signs and Lessor may at any time during the last 120 days of the term hereof place on or about the Premises any ordinary "For Lease" signs, all without rebate of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.

34. **Signs.** Lessee shall not place any sign upon the Premises without Lessor's prior written consent except that Lessee shall have the right, without the prior permission of Lessor to place ordinary and usual for rent or sublet signs thereon.

35. **Merger.** The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, or a termination by Lessor, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subtenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all of such subtenancies.

36. **Consents.** Except for paragraph 33 hereof, wherever in this Lease the consent of one party is required to an act of the other party, such consent shall not be unreasonably withheld.

37. **Guarantor.** In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Lessee under this Lease.

38. **Quiet Possession.** Upon Lessee paying the rent for the Premises and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease. The individuals executing this Lease on behalf of Lessor represent and warrant to Lessee that they are fully authorized and legally capable of executing this Lease on behalf of Lessor and that such execution is binding upon all parties holding an ownership interest in the Premises.

39. **Options.**

39.1 **Definition.** As used in this paragraph the word "Options" has the following meaning: (1) the right or option to extend the term of this Lease or to renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (2) the option or right of first refusal to lease the Premises or the right of first offer to lease the Premises or the right of first refusal to lease other property of Lessor or the right of first offer to lease other property of Lessor; (3) the right or option to purchase the Premises, or the right of first refusal to purchase the Premises, or the right of first offer to purchase the Premises or the right or option to purchase other property of Lessor, or the right of first refusal to purchase other property of Lessor or the right of first offer to purchase other property of Lessor.

39.2 **Options Personal.** Each Option granted to Lessee in this Lease are personal to Lessee and may not be exercised or be assigned, voluntarily or involuntarily, by or to any person or entity other than Lessee, provided, however, the Option may be exercised by or assigned to any

Initials: 

Lessee Affiliate as defined in paragraph 12.2 of this Lease. The Options herein granted to Lessee are not assignable and apart from this Lease.

39.3 Multiple Options. In the event that Lessee has any multiple options to extend or renew this Lease, a multiple option cannot be exercised unless the prior option to extend or renew this Lease has been so exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option, notwithstanding any provision in the grant of Option to the contrary, (i) during the time commencing from the date Lessor gives to Lessee a notice of default pursuant to paragraph 13.1(b) or 13.1(c) and continuing until the default alleged in said notice of default is cured, or (ii) during the period of time commencing on the day after a monetary obligation to Lessor is due from Lessee and unpaid (without any necessity for notice thereof to Lessee) continuing until the obligation is paid, or (iii) at any time after an event of default described in paragraphs 13.1(a), 13.1(d), or 13.1(e) (without any necessity of Lessor to give notice of such default to Lessee), or (iv) in the event that Lessor has given to Lessee three or more notices of default under paragraph 13.1(b), where a late charge becomes payable under paragraph 13.4 for each of such defaults, or paragraph 13.1(c), whether or not the defaults are cured, during the 12 month period prior to the time that Lessee intends to exercise the subject Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of paragraph 39.4(a)

(c) All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and during the term of this Lease, (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of 30 days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee), or (ii) Lessee fails to commence to cure a default specified in paragraph 13.1(c) within 30 days after the date that Lessor gives notice to Lessee of such default and/or Lessee fails thereafter to diligently prosecute said cure to completion, or (iii) Lessee commits a default described in paragraph 13.1(a), 13.1(d) or 13.1(e) (without any necessity of Lessor to give notice of such default to Lessee), or (iv) Lessor gives to Lessee three or more notices of default under paragraph 13.1(b), where a late charge becomes payable under paragraph 13.4 for each such default, or paragraph 13.1(c), whether or not the defaults are cured.

40. Multiple Tenant Building. In the event that the Premises are part of a larger building or group of buildings then Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, care, and cleanliness of the building and grounds, the parking of vehicles and the preservation of good order therein as well as for the convenience of other occupants and tenants of the building. The violations of any such rules and regulations shall be deemed a material breach of this Lease by Lessee

41. Security Measures. Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of Lessee, its agents and invitees from acts of third parties.

42. Easements. Lessor reserves to itself the right, from time to time, to grant such easements, rights and dedications that Lessor deems necessary or desirable, and to cause the recordation of Parcel Maps and restrictions, so long as such easements, rights, dedications, Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of Lessor and failure to do so shall constitute a material breach of this Lease.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

44. Authority. If Lessee is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity. If Lessee is a corporation, trust or partnership, Lessee shall, within thirty (30) days after execution of this Lease, deliver to Lessor evidence of such authority satisfactory to Lessor

45. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Addendum. Attached hereto is an addendum or addenda containing paragraphs 47 through 53 which constitutes a part of this Lease.

47. Lessee shall pay common area fee of \$15/mo April-May, 1988. Lessee shall pay common area fee of \$16/mo. for the next year. Common area fee shall increase \$1/yr thereafter.

48. Lessee shall pay proportionate share of hot water, water, gas + garbage.

49. Omitted

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKER OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

The parties hereto have executed this Lease at the place on the dates specified immediately adjacent to their respective signatures.

Executed at 4401 S. Leandro -  
on April 1, 1988  
Address 4401 S. Leandro St.  
Oakland, Ca 94611

By [Signature]  
By \_\_\_\_\_  
"LESSOR" (Corporate seal)

Executed at 4401 San Leandro  
on April 1, 1988  
Address 4401 San Leandro  
Oakland CA 94601

By Dwan H Nickel  
By \_\_\_\_\_  
"LESSEE" (Corporate seal)

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ADDENDUM TO LEASE DATED 4/1/88  
UNIT # 3, VULCAN PROPERTIES

50. RENT INCREASES. Rent in the first year shall be \$ 615.00, and rent shall be adjusted annually. Each year thereafter, rent shall increase a minimum of 5%. If the California Consumer Price Index (CPI) (or if there is no California Consumer Price Index (CPI), the National Consumer Price Index) exceeds 7%, rent shall increase from the prior year by 5% plus the difference between the CPI and 7%.

51. HIRE OAKLAND FIRST. In the event Lessee seeks employment in the City of Oakland or seeks to employ people to work in the premises, Lessee shall exercise best effort to use the free services of the Hire Oakland First job referral program.

52. OPTION. Lessee shall have the option of extending this lease two years.

53. Rent for April, May, June, 1988 shall be \$575./mo.

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Attorneys for Tenants

**City of Oakland  
Rent Adjustment Program**

Martin, et al.,

Tenants/Petitioners,

v.

Vulcan Lofts, LLC., et al.

Landlord/Respondents.

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

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

**Brief  
from  
Vulcan  
Rec'd 4/17**

**RENT ADJUSTMENT PROGRAM  
OAKLAND**

**APR 17 2019**

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## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. STATEMENT OF FACTS	2
A. <u>Construction of Rental Units at the Property</u>	2
B. <u>The Prior Rent Program Case (<i>Vidor</i>)</u>	4
C. <u>The Current Consolidated Cases</u>	5
III. LEGAL ARGUMENT	6
A. <u>The New Construction Provisions of the Rent Ordinance</u>	6
B. <u>Rules of Statutory Construction and Case Law Require         Narrow Interpretation of Exemptions to Rent Control</u>	7
1. <u>Statutory Construction</u>	7
2. <u>Case Law Requires that Exemptions to Rent Control Be             Narrowly Construed</u>	8
3. <u>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</u>	11
4. <u>The Regulations for Permanent Exemption Hearings             Demonstrate That Caution Should Be Exercised In Granting             Certificates of Exemption</u>	13
5. <u>Public Policy Disfavors Granting Exemptions to Landlords             Who Lease Residential Rental Units Prior to the Issuance of             Final Permits and Certificates of Occupancy</u>	14
IV. CONCLUSION	15



## TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases:</u>	
<i>Barnes v. Chamberlain</i> (1983) 147 Cal.App.3d 762 [195 Cal. Rptr. 417]	2, 8
<i>Burien, LLC v. Wiley</i> (2014) 230 Cal.App.4th 1039	8, 10-13
<i>Carter v. Cohen</i> (2010) 188 Cal.App.4th 1038	14
<i>City of Los Angeles v. Los Olivos Mobile Home Park</i> (1989) 213 Cal.App.3d 1427	8
<i>Da Vinci Group v. San Francisco Residential Rent Board</i> (1992) 5 Cal.App.4th 24	2, 8, 9, 12, 13
<i>Doe v. Brown</i> (2009) 177 Cal.App.4th 408	7
<i>Gruzen v. Henry</i> (1978) 84 Cal.App.3d 515	14
<i>Lungren v. Deukmejian</i> (1988) 45 Cal.3d 727	8
<i>Pacific Sunwear, Inc. v. Olaes Enterprises, Inc.</i> (2008) 167 Cal. App.4th 466	8
<u>Statutes:</u>	
California Building Code § 110.1 <i>et seq</i>	14
California Building Code § 101.3	14
California Civil Code Section 1954.52	6, 10
<u>Local Ordinances:</u>	
City of Oakland Municipal Code §15.08.150	14

City of Oakland Rent Ordinance Regulation No. 8.22.010	7, 12
City of Oakland Rent Ordinance Regulation No. 8.22.030	7
City of Oakland Rent Ordinance Regulation No. 8.22.030 (B)(2)(a)(iv)	12
City of San Francisco Rent Stabilization and Arbitration Board, Rules and Regulations, Regulation Section 1.17 (g)	12

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

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

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

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

4 In this brief, the tenants discuss the factors in this case which compel a narrow  
5 interpretation of the new construction exemption. Such factors include case law examples of  
6 application of strict construction to rent control exemptions, the ambiguity inherent in Oakland's  
7 exemption provisions as written, the ordinance's Regulations designed to protect against  
8 erroneous determination of new construction petitions, the fact that the owner's practice of leasing  
9 property prior to issuance of final permits and certificates of occupancy was unlawful and unsafe,  
10 and the inherent undermining of public policy when landlords who engage in such practices are  
11 rewarded with certificates of exemption.  
12  
13

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

18 **II. STATEMENT OF FACTS**

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

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

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

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

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

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

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

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

---

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

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

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

6 B. The Prior Rent Program Case (Vidor)

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

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

---

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

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

1 The Hearing Officer concluded:

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

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

10 C. The Current Consolidated Cases

11 Tenants of 28 rental units at the property have brought the petitions objecting to  
12 rent increases and raising issues of lack of service of RAP notices and decreased services.  
13 The owners have answered those cases and have filed a landlord petition for exemption  
14 based upon the *Vidor* case. Records from the Oakland Building Department have been  
15 submitted as exhibits by both landlords and tenants.<sup>5</sup>  
16

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

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

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

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

7  
8 III. LEGAL ARGUMENT

9 A. The New Construction Provisions of the Rent Ordinance

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

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

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

19 The Regulations for the Ordinance further define the exemption:

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

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

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

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



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

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

5 OMC 8.22.010, Regulation No. 8.22.030

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

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

21 1. Statutory Construction

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

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

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

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

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

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

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

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

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

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

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

12  
13  
14  
15 Noting that the new construction exemption's purpose was to ease the housing  
16 shortage by creation of new units, the appellate court commented, " The 1986 certificate of  
17 occupancy in this case created legal residential units where there were illegal ones before.  
18 Legalizing de facto residential use does not enlarge San Francisco's housing stock." *Id.* at  
19 p. 30.  
20  
21

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

26 *Id.* at p. 30

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

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

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

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

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

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

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

14 *Burien* at p. 1049.

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

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

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

---

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

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

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

10 The Oakland Ordinance and Regulations are silent as to when, precisely, prior  
11 residential use defeats a later claim of exemption. The Ordinance is ambiguous in that it is  
12 capable of more than one construction. It could mean residential use prior to 1983. It could  
13 mean residential use prior to the issuance of the certificate of occupancy. The latter  
14 interpretation furthers the purpose of the Ordinance by preserving affordable housing and  
15 limiting rent increases for existing tenants.(OMC 8.22.010. A and 8.22.010.C-Findings  
16 and Purpose) The former interpretation widens the scope of the new construction  
17 exemption provisions of the Ordinance. Per *Da Vinci* and *Burien*. exemption must be  
18 strictly construed. Further, per the language of the Regulations, Section 8.22.030  
19 (B)(2)(a)(iv) which states that “newly constructed units include *legal conversions of*  
20 *uninhabited spaces not used by Tenants*” also supports the latter interpretation. Not only  
21 must the conversion be from entirely commercial use, the new units cannot be inhabited  
22  
23  
24  
25  
26  
27  
28

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

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

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

15 C. Certificates of Exemption

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

- 18 a. The petition cannot be decided on a summary basis and may only be  
19 decided after a hearing on the merits;  
20 b. Staff may intervene in the matter for the purpose of better ensuring that  
21 all facts relating to the exemption are presented to the Hearing Officer;  
22 c. In addition to a party’s right to appeal, Staff or the Hearing Officer may  
23 appeal the decision to the Rent Board; and,  
24 d. A Certificate of Exemption shall be issued in the format specified by  
25 Government Code Section 27361.6 for purposes of recording with the County  
26 Recorder.  
27

28 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.





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

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

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

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

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

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

3  
4 IV CONCLUSION.

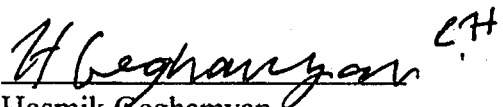
5 The tenants respectfully request that the Landlord petition be denied and that the  
6 Landlord's defense of "new construction" in answer to the Tenant petitions be stricken.

7  
8 Dated: April 14, 2019

9 Respectfully submitted,

10 

11  
12 Leah Hess  
13 Attorney at Law

14 

15 Hasmik Geghamyan  
16 Attorney at Law  
17  
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Account Number: 21203784  
 Capture Date: April 17, 2019  
 Item Number: 5250029429076  
 Posted Date: April 17, 2019  
 Posted Item Number: 52529076  
 Serial Number: 2786  
 Amount: 6,018.00

VULCAN LOFTS, LLC  
 155 GRAND AVE SUITE # 950  
 OAKLAND CA 94612-3819

THIS CHECK IS PROTECTED BY A VOID PANTOGRAPH, MICROPRINT SIGNATURE LINE AND A HEAT SENSITIVE PADLOCK ICON. ADDITIONAL SECURITY FEATURES ARE LISTED ON BACK.

**VULCAN LOFTS, LLC**  
 P.O. BOX 687  
 OAKLAND, CA 94604  
 (510) 452-2944

**CATHAY BANK**  
 710 WEBSTER STREET  
 OAKLAND, CA 94607  
 (510) 208-3700  
 16-395/1222

2786

PAY  
 TO THE  
 ORDER OF  
 TO THE  
 ORDER OF

\*\*\*\* SIX THOUSAND EIGHTEEN AND 00/100 DOLLARS DATE

AMOUNT

04/15/2019

¥6,018.00\*\*\*

City of Oakland  
 250 Frank Ogawa Plaza  
 Oakland, CA 94612

# 00210764

*[Handwritten Signature]*  
 AUTHORIZED SIGNATURE



**D**

↑ THIS AREA CONTAINS COIN REACTIVE INK. WHEN RUBBED WITH THE EDGE OF A COIN THE WORD 'VOID' APPEARS IN GRAY.

SECURITY FEATURES MAY INCLUDE:

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 CATHAY BANK  
 Business Flexibility Dept. Cathay

Check # 00210764 DATE 04/15/19  
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 RESERVE BANK OF CALIFORNIA SUBSTITUTION USE ONLY 15/19

Check 6018.00

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Account Number: 21203784  
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 Posted Date: April 17, 2019  
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 (510) 452-2944

**CATHAY BANK**  
 710 WEBSTER STREET  
 OAKLAND, CA 94607  
 (510) 208-3700  
 18-395/1222

2785

**PAY**  
 TO THE  
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\*\*\*\* SIX THOUSAND EIGHTEEN AND 00/100 DOLLARS

DATE: 04/15/2019      AMOUNT: \$6,018.00\*\*\*\*

City of Oakland  
 250 Frank Ogawa Plaza  
 Oakland, CA 94612

# 00210764

*[Signature]*  
 AUTHORIZED SIGNATURE



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CITY OF OAKLAND ORDER OF  
 CATHAY BANK  
 Business Fax: 510-208-3700  
 Rep: Garbage

CHECK DEPOSITED BY THE ENDORSEMENT DATE  
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 RESERVED FOR BANK OF AMERICA INSTITUTION USE ONLY 15/1/19

Check: 6018.00

000420

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14 Attorneys for Tenants

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

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

23 Elan Consuella Lambert  
24 Hearing Officer

25 INTRODUCTION

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

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

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

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

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

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

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

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

6  
7 EVIDENCE PRESENTED

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

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

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

16 Testimony

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

22  
23 “At the last minute” the former owners asked to lease the foundry back so they could  
24 finish some contracts. He agreed. (40:32-41:05) It was “a six month deal”. (1:09:46)

25  
26  
27 

---

<sup>1</sup>This 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).  
4

5 Mr. Orten identified building permit applications for the three buildings at the  
6 property, certificates of occupancy for Buildings A and B, Temporary certificates of  
7 occupancy for Building C, a Notice of Completion , and a Certificate of Complete Building  
8 Rehabilitation, (Owner Exhs. B - G) largely by reading from them.<sup>2</sup> In summary, the  
9 certificates of occupancy [Building A (Units 1 through 16)], and B (Units 17-26)] were  
10 issued October 12, 1987, and reference a “completion date” of May 27, 1987. The building  
11 permit for Building C did not list unit numbers. It noted final inspections on May 22, 1987.  
12 A series of three applications for three “temporary certificates of occupancy” for 18 units  
13 in Building C received final approvals in May 1987 (Units 28-45, and 47-49) January 13,  
14 1988 (units 51 and 52) and February 3, 1988 (Unit 50). None of the temporary certificates  
15 of occupancy made mention of Units 53-59. (Landlord’s Exhs. B-G)  
16  
17  
18  
19  
20

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  
24

---

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



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

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

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

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

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

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

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

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

2  
3 Discussion of Orten's testimony

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 17 LEGAL ANALYSIS OF THE NEW CONSTRUCTION EXEMPTION

### 18 Introduction

19  
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.<sup>3</sup> 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  
25  
26

---

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

1 “formerly entirely non-residential.”

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

12           The owners here take the position that the term “formerly entirely non-residential” means  
13 that there was no residential use of the property prior to 1983. Tenants assert that the term refers,  
14 not to the January 1983 date, but to the date upon which the certificate of occupancy/final permit  
15 was obtained. There was indisputably prior residential use of the rental units at the property prior  
16 to that date. Nonetheless, if the owners’ interpretation of the Ordinance is correct, it would not  
17 matter when they first rented out the units. Alternatively, if the Tenants’ interpretation is correct,  
18 then the property cannot be exempt, as it was used residentially prior to the issuance of documents  
19 finalizing the new construction. The resolution of this issue is a question of statutory construction.  
20  
21  
22  
23  
24

---

25  
26           <sup>4</sup>The certificates of occupancy were issued on October 12, 1987. Building C had a “Final”  
27 building permit signed off on May 22, 87. This “final” permit is hard to understand or to believe in  
28 light of Mr. Orten’s testimony that construction in that building dragged on into 1988 and in light of the  
series of “temporary” certificates of occupancy issued for Building C

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

3 1. Statutory Construction

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

8 First, of course, the intent of the legislative body must be determined, so as to construe the  
9 statute to effect that purpose. *Doe v. Brown* (2009) 177 Cal.App.4th 408, 417. The basic purposes  
10 of the rent ordinance are to preserve safe affordable housing for tenants and promote investment in  
11 such housing. (OMC 8.22.010) Rewarding Owners who fail to follow building and housing codes  
12 by renting out property without final sign offs, does not encourage providing safe housing. Nor  
13 does it promote new creation of safe and legal housing.  
14

16 Words used in the statute should be given their ordinary meaning. If the language is clear  
17 and unambiguous, there is no need for construction. *San Jose Unified School District v. Santa*  
18 *Clara County Office of Education*, 7 Cal.App. 5<sup>th</sup> 967, 982.  
19

20 The language in the Ordinance is ambiguous. There are two alternative interpretations.  
21 Standing alone, the word "formerly" could refer to either January 1, 1983 or to the date of the  
22 certificate of occupancy/final permit. The ordinance does not state a specific time period during  
23 which prior residential use must have occurred to disqualify the property from exemption.  
24

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

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

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

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

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

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

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

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

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

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

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

---

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



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

6 *Id.* at p. 30.  
7

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

16  
17 In *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, a landlord sought to take advantage  
18 of the exemption provisions of the Costa-Hawkins Act. (Civ. Code § 1954.52) The landlord  
19 converted a rent-controlled apartment building, which had a 1972 certificate of occupancy, to  
20 condominiums. He obtained a new certificate of occupancy in 2009, based on the change in use,  
21 and raised the rent. When an existing tenant objected, the landlord sought a declaration from the  
22 court that the unit was exempt from the Los Angeles Rent Stabilization Ordinance under  
23 provisions of the Costa-Hawkins Act which exempts units that have a certificates of occupancy  
24 issued after 1995. Despite the post-1995 certificate of occupancy, the trial court found that the rent  
25 raise violated the ordinance.  
26  
27  
28

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

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

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

14 In this case, Tenant's unit is not exempt under [Costa-Hawkins] because the tenant  
15 occupied the unit prior to the issuance of the 2009 certificate of occupancy. *The 2009*  
16 *certificate of occupancy did not precede the residential use of the property.*  
(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 1978<sup>6</sup>, unless the building was first occupied  
13 residentially *prior* to October 1978. (See, *Burien v. Wiley, supra.* at p. 1048.) This is the  
14 construction of the Oakland ordinance that the Owners urge in this petition.  
15

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

---

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

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

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

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

1 C. Certificates of Exemption

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

- 4 a. The petition cannot be decided on a summary basis and may only be  
5 decided after a hearing on the merits;  
6 b. Staff may intervene in the matter for the purpose of better ensuring that  
7 all facts relating to the exemption are presented to the Hearing Officer;  
8 c. In addition to a party's right to appeal, Staff or the Hearing Officer may  
9 appeal the decision to the Rent Board; and,

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

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

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

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

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

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

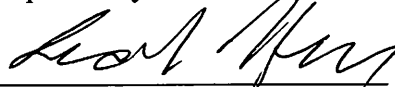
3  
4 A landlord is not entitled to collect rent if a property lacks a certificate of occupancy  
5 required by law. Without a certificate of occupancy, a lease is an illegal transaction and thus  
6 void. *Gruzen v. Henry* (1978) 84 Cal.App.3d 515, 519. However, the tenant of such a unit is  
7  
8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

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

18 CONCLUSION

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

22 Respectfully submitted,

23 

24 Leah Hess  
25 Attorney at Law  
26  
27  
28

Addendum to Tenants' Hearing Brief:

Timeline, Chart Summary of Documents

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



VULCAN TIMELINE EVENTS

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

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

**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:

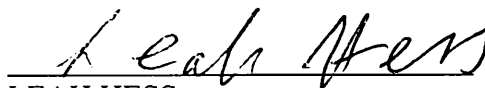
Robert F. Costa  
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Servando R. Sandoval  
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Lena Kazazic  
[lkazazic@pahl-mccay.com](mailto:lkazazic@pahl-mccay.com)

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

**Case Number L19-0013, T17-0237, TIS-0460 thru TIS-0479, TIS-0498, TIS-0499, TIS-0500, TIS-0501, T19-0021 thru 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 by placing a true copy in the mail in**

**Documents Included:** Tenants' Hearing Brief

**Owner Representative (electronic copy only served on 09/13/2021)**

Lerna Kazazic ([lkazazic@pahl-mccay.com](mailto:lkazazic@pahl-mccay.com))

Servando Sandoval ([ssandoval@pahl-mccay.com](mailto:ssandoval@pahl-mccay.com))

Lerna Kazazic, Pahl and McCay

225 W. Santa Clara Street, Suite 1500

San Jose, CA 95113

**Rent Adjustment Program (electronic copy only served on 9/13/2021)**

Hearing Officer Lambert

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

Rent Adjustment Program

250 Frank Ogawa Plaza, Suite 5313

Oakland, California 94612

**TENANTS**

Resident  
4401 San Leandro Street #4A  
Oakland, CA 94601

Denise Marie Kennedy  
4401 San Leandro Street #6  
Oakland, CA 94601

Kathleen Callahan and other residents  
4401 San Leandro Street #8  
Oakland, CA 94601

Resident  
4401 San Leandro Street #9  
Oakland, CA 94601

Jeremy Simmons  
4401 San Leandro Street #10  
Oakland, CA 94601

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

David Bembaum  
Yasmin Salem  
4401 San Leandro Street #12  
Oakland, CA 94601

Jennifer Jennings  
Gabriel Penifield  
Hanna Tatar  
4401 San Leandro Street #13  
Oakland, CA 94601

Krystal Bell  
Ian Fernandez  
4401 San Leandro Street #14  
Oakland, CA 94601

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Kristi Walker  
4401 San Leandro Street #20  
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Austin Maples-Fleck  
Lili Thomas-Brummer  
4401 San Leandro Street #22  
Oakland, CA 94601

Brandon Mullins  
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Amelia Adams  
4401 San Leandro Street #29  
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Susannah Israel and other residents  
4401 San Leandro Street #32  
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Kelley Halvorson  
Dani Reagan  
4401 San Leandro Street #33  
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Susan Leffingwell  
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Kevin Baldwin  
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Tiana Fraser  
Kyle Charleton  
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4401 San Leandro Street #44  
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Rachel C Jansen  
Aimee Seaver  
Jeremy Croxton  
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Robert Hart and other residents  
4401 San Leandro Street #48  
Oakland, CA 94601

Michael Glodgett & other residents  
4401 San Leandro Street, Unit 49  
Oakland, CA 94601

Aldo Rossetto  
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Oakland, CA 94601

Alfonso Kellenberger  
4401 SanLeandro Street #54  
Oakland, CA 94601

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Julian Vielva  
Other Residents  
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Jared Kadish  
4401 San Leandro Street #56  
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Reuben Tomar  
Efrem Rensi  
4401 San Leandro Street #57  
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**Electronic Service to Represented Units**

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Andrea Ives  
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Ezra Unterseher  
Sarah Rund  
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Hadas Teitel  
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Ross Clark  
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Marshall Lane  
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Thelma Andree  
4401 San Leandro Street, #36  
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Garth Ferris  
Jeremy Gage  
Sarah J. Paturzo

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Brittany Valdez  
4401 San Leandro Street, #46  
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Loreley Bunoan  
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Cassie McKenney  
Troy Clancy  
Tzong Tzu Rogerts  
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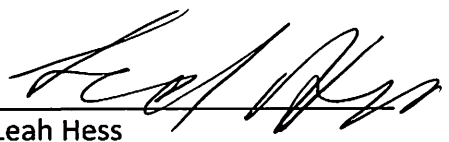
Colin Sullivan  
Geneva Harrison  
Kathryn Stweart  
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April Miller  
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Joshua Miller  
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Oakland, California 94601

I declare under penalty of perjury under the laws of the state of California that  
the above is true and correct. Executed on **September 14, 2021** in Oakland,

  
Leah Hess

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Case Name: Martin, et al. v. Vulcan Lofts, LLC, Madison Park Financial

Case Nos.: T18-0460-63; T18-0460-65-69; T18-0460-71; T18-0460-73-79;  
T18-0499-501; T19-0021-0023, consolidated case T17-  
0237, and L19-0013

December 31, 2021

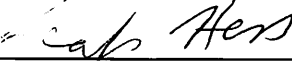
Dear Hearing Officer Lambert,

We are writing on behalf of tenant petitioners to request that the parties be provided with a list of the exhibits which have currently been admitted into evidence in this matter. When we made this request at the September hearing you indicated that we should obtain the information from the recordings on file.

However, the recorded hearings span many hours. Tenants' attorneys have each reviewed the recordings at least three times. Nonetheless, the audio recordings are not clear respecting which of the numerous documents were actually admitted, and how they were designated in the record. We would be most grateful if you would resolve this dilemma by providing us with an Exhibit Log. It is our understanding, from the Hearing Officer Policies and Procedures Manual that the Hearing Officer keeps such a log. Providing us a copy now would prevent confusion and minimize undue consumption of time at the next hearing.

Very truly yours,

Law Office of Leah Hess  
Law Office of Hasmik Geghamyan  
Attorneys for Tenants

  
\_\_\_\_\_  
Leah Hess

c.c Servando Sandoval; Lerna Kazazic

000453

**From:** [Leah Hess](#)  
**To:** [Costa, Robert](#)  
**Cc:** [Hasmik Geghamyan](#); [Servando R. Sandoval](#); [Lerna Kazazic](#)  
**Subject:** Letter to Hearing Officer Lambert re Ms. Kazazic's request for Decision  
**Date:** Monday, January 17, 2022 4:01:44 PM

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[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Dear Mr. Costa,

Please provide Hearing Officer Lambert with the following as soon as possible.

Thank you,

Leah Hess

\*\*\*\*\*

Dear Hearing Officer Lambert,

My co-counsel Hasmik Geghamyan and I were disturbed to see Landlord Attorney Lerna Kazazic's recent email to Mr. Costa requesting a "status update as to this hearing decision," "As there are no upcoming hearings and we have nothing further to submit, we anticipate that a hearing decision should be coming soon."

This statement does not accord with the last hearing. At that hearing, we viewed the Registrar of Voters report respecting voters registered at the property during the period designated in the subpoena. We understood you to say that there would be a future hearing, that you would be providing us with proposed future Monday dates available for that hearing, and that the parties should agree upon one of the dates provided. We do not recall you saying that the proceedings were closed. We anticipate that there will be evidentiary and procedural issues to be discussed and/or determined at the hearing.

Please let us know if our understanding accords with your instructions at the last hearing. Thank you for your attention to this matter.

Very truly yours,  
Leah Hess  
Attorney at Law

000454

122203950

\*\*\*\* FIVE THOUSAND NINE HUNDRED FIFTY NINE AND 00/100 DOLLARS

04/15/2021

\$5,959.00\*\*\*

City of Oakland  
250 Frank Ogawa Plaza  
Oakland, CA 94612

NON-NEGOTIABLE

DATE:04/15/2021 CK#:3365 TOTAL:\$5,959.00\*\*\* BANK:Cathay Checking(vul-cb)  
PAYEE:City of Oakland(comisc)

Property	Account	Invoice - Date	Description	Amount
vul	6465-0000	00089452_vul - 04/01/20	2021 RAP fees	5,959.00
				5,959.00

DATE:04/15/2021 CK#:3365 TOTAL:\$5,959.00\*\*\* BANK:Cathay Checking(vul-cb)  
PAYEE:City of Oakland(comisc)

Property	Account	Invoice - Date	Description	Amount
vul	6465-0000	00089452_vul - 04/01/20	2021 RAP fees	5,959.00
				5,959.00

000455



# CITY OF OAKLAND

Finance Department  
Revenue Management Bureau  
250 Frank H. Ogawa Plaza, Suite 1320 Oakland, CA 94612  
(510) 238-3704 TDD (510) 238-3254  
<https://ltss.oaklandnet.com>  
[btwebsupport@oaklandca.gov](mailto:btwebsupport@oaklandca.gov)



VULCAN LOFTS LLC  
PO BOX 687  
OAKLAND, CA 94604-0687

ACCOUNT NUMBER
00089452
RATE TYPE
N - COMMERCIAL RENTAL PROPERTY
PAYMENT DUE DATE
04/15/2021

BUSINESS ADDRESS: 4401 SAN LEANDRO ST

April 02, 2021

Dear Business Owner/Operator:

According to our records, your account has a balance of \$5,959.00. This amount was calculated as follows:

Charges	Amount
2021 RAP Rent Adjustment Program (M)	\$5,959.00

**Total Due:** \$5,959.00

The amount due stated on this invoice was calculated using the **Invoice Date** noted at the top of this form. The principal balance may accrue additional penalties and interest per Oakland's Municipal Code.

YOU CAN NOW PAY YOUR INVOICE ONLINE!  
LOG ONTO [HTTPS://LTSS.OAKLANDNET.COM](https://ltss.oaklandnet.com)  
ACCOUNT #: **00089452** PIN: **1244742**

**COMPLETE AND RETURN  
WITH YOUR PAYMENT TO:**

City of Oakland  
250 Frank H. Ogawa Plaza Suite 1320  
Oakland, CA 94612-2011

MD

**000456**





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Account # 00089452  
VULCAN LOFTS LLC

**Business License Online Renewal** Secure

[PRINT THIS PAGE FOR YOUR RECORD](#)

The business tax license renewal has been submitted. Business tax certificates will be emailed 2 to 5 days after successfully renewing account. For questions, please contact the Business Tax office at (510) 238-3704 or btwebsupport@oaklandca.gov. Thank you, City of Oakland - Business Tax

Submission Date 2/24/2022  
Confirmation # 325485

**Account Information**

Account # 00089452  
Expire Date 12/31/2022  
Name VULCAN LOFTS LLC  
Address 4401 SAN LEANDRO ST  
City OAKLAND  
Phone (510) 452-2944

**Summary**

	Input	Amount
<b>Tax Calculation</b>		
Enter 2021 Gross Receipts *(Enter estimated 2022 Gross Receipts if business started in Oakland in 2021)*	1,648,117.31	\$22,991.24
BT SB1186 (AB1379)	1	\$4.00
BT Recordation and Tech	1	\$4.50
<b>Rent Adjustment Program (RAP) Calculation - only use whole numbers below</b>		
a. Total # of units per Alameda County Records:	59	\$5,959.00
<b>Total Due</b>		<b>\$28,958.74</b>
<b>Payment Information</b>		
Payment Amount		\$28,958.74

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**For Assistance**

Email: btwebsupport@oaklandca.gov  
Phone: (510) 238-3704

City of Oakland

25 Have a question?  
Oa.

**000457**

**Hours:**

8:00 AM-4:00 PM

Monday, Tuesday, Thursday, Friday

9:30 AM-4:00 PM Wednesdays.

Have a question?



# ZACKS, FREEDMAN & PATTERSON

A PROFESSIONAL CORPORATION

**RECEIVED**

JUL 20 2022

July 18, 2022

OAKLAND RENT  
ADJUSTMENT PROGRAM

Manager  
City of Oakland Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
[hearingsunit@oaklandca.gov](mailto:hearingsunit@oaklandca.gov)

Via Certified Mail, US Mail and Email

RE: 4401 San Leandro Avenue--Landlord Petition NO. L19-0013 and Related Tenant Petitions

To whom this may concern:

This office has been retained by Vulcan Lofts, LLC regarding the Oakland RAP's delay in the adjudication of the above matters. A Landlord Petition for Exemption was filed in early 2018 and multiple tenant responses followed. An initial hearing was scheduled in April of 2019 with multiple additional hearings having been conducted thereafter. We understand there is at least one further hearing contemplated, but it has not been calendared as of this date. It has now been more than 3 and a half years since the filing of the original landlord petition and, even though the issue presented is simple and straightforward, the Oakland RAP has still not decided the petition.

In 2009, the First District Court of Appeal decided *Vidor v City of Oakland Community and Economic Development Agency, RPI Vulcan Properties, LLP* Case No. A120973. In *Vidor*, a RAP hearing officer found that our client's predecessor "had 'proven by a preponderance of the evidence that the tenants' units 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.'" That finding was made after the hearing officer conducted an independent review of Oakland Building Services records related to the property. The finding was upheld by Oakland's Rent Board on appeal, an Alameda County Superior Court Judge, and the California Court of Appeal for the First District. The finding of the RAP hearing officer is now final and binding on the City of Oakland under principles of administrative collateral estoppel or issue preclusion. That finding directly addresses and determines the issues presented by the above referenced petitions: The prior petition determined that subject rental units "were created from space that was formerly entirely non-residential..." See *Vidor*. This issue is "identical" in all matters and "was actually litigated and determined" in the prior proceeding. Thus, the Oakland RAP is bound by the prior adjudication and must find in favor of Vulcan Lofts, LLC as a matter of law.

Oakland City Ordinance No. 8.22.110 governs hearing procedures for the Oakland Rent

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San Francisco | 601 Montgomery Street, Suite 400, San Francisco, CA 94111 • Tel: (415) 956-8100 • Fax: (415) 288-9755

Oakland | 1970 Broadway, Suite 1270, Oakland, CA 94612 • Tel: (510) 469-0555

Soquel | 2805 Porter Street, Soquel, CA 95073 • Tel: (831) 309-4010

(Please respond to San Francisco Office) | [www.zfplaw.com](http://www.zfplaw.com)

**000459**

Adjustment Program. 8.22.110 (d)(1) & (2) sets forth that:

1. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.
2. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later. The decision shall be issued in writing.

8.22.110 (F)(1) states: "if any of the following conditions exist, a hearing may not be scheduled, and a hearing officer may issue a decision without a hearing:

- a) The petition or response forms have not been properly completed or submitted;
- b) The petition or response forms have not been filed in a timely manner;
- c) The required prerequisites to filing a petition or response have not been met; or
- d) Conclusive proof of exemption has been provided and is not challenged by the tenant.

Based on the available information provided to our office, a hearing has not been scheduled within the 60-day "goal" outlined by the Oakland City Ordinance. It does not appear from the case file, or the records contained on the City of Oakland Rent Adjustment program website that there is any defect in the petition that would affect the ability of the present hearing officer to decide whether to accept and grant the petition. Thus, it is likely that the Rent Adjustment Program is violating their duty to schedule and hold a hearing on the application based on the long duration that has passed since the petition was filed.

A party seeking to challenge agency action satisfies the exhaustion of administrative remedies prerequisite to judicial review only after "termination of all available, nonduplicative administrative review procedures (*See California Correctional Peace Officers Ass'n v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1150.) One exception to the exhaustion of administrative remedies requirement is when the party is faced with inadequate remedies, including when the agency action is delayed, or the agency took no action. (*See In re Hudson* (2006) 143 Cal.App.4th 1, 6 [agency took no action on appeal, so remedy treated as having been exhausted]; *Hollon v. Pierce* (1967) 257 Cal.App.2d 468, 475 [exhaustion excused where agency proceedings had come to a halt]; *Kirkpatrick v. City of Oceanside* (1991) 232 Cal.App.3d 267, 279 [Rent Control Board's stonewalling on Landlords' application for a permissive rent increase adjustment excuses their further compliance with the Board's administrative remedies].) When an administrative agency is empowered to decide a factual issue in the first instance and it erroneously fails or refuses to do so, either administrative or ordinary mandate is available to compel the agency to hold a hearing. (*See Fascination v. Hoover* (1952) 39 Cal.2d 260)

Based upon the foregoing analysis, an exception to exhaustion of administrative remedies requirement currently applies and Vulcan Lofts, LLC intends to petition the superior court for a writ of mandate, administrative mandate and/or declaratory judgment to compel the Oakland Rent Adjustment Program to conduct a hearing and approve Vulcan Lofts, LLC's Landlord Petition for Certificate of Exemption. Oakland City Ordinance No. 8.22.110 provides the time period of 60 days for a hearing to be heard on a petition. Considerable time has passed since the petition was filed (far exceeding the goal of 60 days) and the hearing has yet to be scheduled. The Rent Adjustment Program's failure to finalize the hearing proceedings on the petitions supports the issuance of a writ of administrative mandate or ordinary mandate to compel the agency to hold a hearing on the petition. The *Vidor* decision is binding on the RAP and compels

City of Oakland  
July 18, 2022  
Page 3

the granting of the landlord petition and denial of the tenants' petitions. Alternatively, our client will seek the assistance of the Superior Court requesting that it issue a declaratory judgment adjudicating the above rights and duties accordingly.

There is no evidence of residential use prior to 4401 San Leandro Ave. prior to 1983. But even if there was such evidence, the RAP is bound by the findings of its own hearing officer which were upheld by the Superior Court and the Court of Appeal. The RAP should immediately schedule a hearing on all remaining tenant petitions and deny them summarily. If the RAP does not properly decide the remaining petitions on or before August 19, 2022, our client intends to seek all available judicial remedies.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC

/s/ Andrew Zacks  
Andrew M. Zacks

cc: Oakland City Attorney

000461

Law Office of Leah Hess  
Attn: Hess, Leah  
1736 Franklin Street  
10th Floor  
Oakland, CA 94612\_\_\_\_

City of Oakland

---

**Superior Court of California, County of Alameda  
Hayward Hall of Justice**

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Sherman  <p style="text-align: right;">Plaintiff/Petitioner(s)</p> VS.  City of Oakland  <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG16843773</u>  Order  Motion To Remand and Dismiss Granted
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The Motion To Remand and Dismiss was set for hearing on 07/12/2017 at 09:00 AM in Department 511 before the Honorable Kimberly E. Colwell. The Tentative Ruling was published and has not been contested.

**IT IS HEREBY ORDERED THAT:**

The tentative ruling is affirmed as follows: The motion of the Coty of Oakland to remand and dismiss the case is **GRANTED**.

Petitioner Sherman asserts that on 7/25/16 the Hearing Officer issued an administrative decision without providing a hearing and that on 9/28/16 the Rent Board issued a final decision again without providing a hearing. The City's motion asserts that it was an error to dismiss petitioner's claim without a hearing and seeks a court order remanding the matter so that the Rent Board can revisit the matter. Petitioner does not oppose the motion.

It is **ORDERED** that that 7/25/16 decision of the Hearing Officer and the 9/28/16 decision of the Rent Board are **VACATED**. The court remands the matter to the Rent Board. The court does not direct or constrain the Rent Board's discretion regarding the conduct of further proceedings. (CCP 1094.5(f).)

If after further administrative proceedings the Rent Board issues another decision, then a challenge to any such administrative decision should be made in a new case before this court.

The court enters **JUDGMENT** in favor of Petitioner Sherman. The case is **DISMISSED**.

Dated: 07/12/2017



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Judge Kimberly E. Colwell



1 petition is unnecessary because Mr. Sherman and the Rent Board agree, at this early juncture in  
2 the case, that remand is necessary to afford the parties with due process.

3 In the 2016 tenant's petition, Mr. Sherman challenges the Rent Board's prior decision  
4 finding his unit exempt from the City's Rent Ordinance. The basis for the challenge is that there  
5 was "fraud or mistake" in the finding. A hearing on the 2016 tenant's petition *will not* re-litigate  
6 whether the property is exempt as Ms. Michelsen argues. Instead, the hearing will examine  
7 whether there was "fraud or mistake" in the underlying facts that led to the hearing officer's or  
8 Rent Board's ultimate finding that the property was exempt. Ms. Michelsen had the burden of  
9 proof on the former issue; Mr. Sherman has the burden of proof on the latter issue. The parties  
10 have never litigated the latter issue involving "fraud or mistake."

11 The distinction between the two issues is arguably difficult to understand at first glance.  
12 Neither the hearing officer nor the City's Rent Program staff fully appreciated the difference in  
13 2016. However, the Rent Board now understands that denying a hearing on the issue of "fraud or  
14 mistake" denied both Mr. Sherman and Ms. Michelsen due process to litigate the issue. The  
15 principles of *res judicata* and *collateral estoppel* *are not* triggered in this writ because, although  
16 "fraud or mistake" was raised, it was not litigated and there is no final Rent Board decision on the  
17 issue.

18 Although the hearing officer had discretion to hold a hearing and chose not to, the Rent  
19 Board did not review her decision. The Rent Program – the Rent Board's administrative staff –  
20 administratively dismissed the appeal to the Rent Board before the appeal reached the Rent Board  
21 for consideration and a vote. While the Rent Board understands how this happened given the  
22 years Mr. Sherman and Ms. Michelsen have been in dispute, the administrative dismissal was  
23 improper in this situation. The 2016 tenant's petition raised a new issue, the issue was  
24 sufficiently pled, Mr. Sherman appealed the hearing officer's dismissal, and the Rent Board had  
25 jurisdiction over the petition. The Rent Board, however, did not consider the arguments of either  
26 party before the *Rent Program* dismissed the tenant's petition.

27 An evidentiary hearing will not disturb the California Court of Appeal decision finding the  
28 unit is exempt. As the City's Rent Ordinance states, a certificate of exemption is a final



1 determination. However, the Rent Ordinance also clearly states that the exemption is final *absent*  
2 *fraud or mistake*. The Rent Board simply requests that the Court remand the 2016 tenant's  
3 petition to the Rent Board for a hearing. Regardless of whether the instant writ is decided on the  
4 motion to remand or after full briefing on the merits, the outcome will be the same. The parties  
5 were denied due process because the Rent Program's staff – not the Rent Board –  
6 administratively dismissed the petition prior to the Rent Board's consideration.

## 7 II. LEGAL ARGUMENT

### 8 A. The Rent Board has administrative jurisdiction to adjudicate tenant petitions.

9 Ms. Michelsen argues that the 2016 tenant's petition did not sufficiently plead "fraud or  
10 mistake" as the basis for challenging the exemption and did not specifically describe the "fraud or  
11 mistake" alleged. The 2016 tenant's petition is the standard form used by tenants to challenge the  
12 terms of their tenancy. (Jefferson Decl., Ex. A.) Simply "checking the box" on the first page  
13 indicating that the tenant seeks to contest an exemption is sufficient to trigger the "fraud or  
14 mistake" standard of review in OMC § 8.22.030(B)(1)(b) and (c). Although helpful, the Rent  
15 Program did not require any additional pleading in Mr. Sherman's tenant petition.

16 The hearing officer used her discretion to dismiss Mr. Sherman's tenant petition under  
17 OMC § 8.22.110(F). While the Rent Board does not have jurisdiction to *sua sponte* review the  
18 hearing officer's decision, it has jurisdiction for appellate review if a party submits an appeal.  
19 Mr. Sherman appealed the hearing officer's decision. However, the Rent Program's  
20 administrative staff reviewed the appeal and improperly determined that the Rent Program did not  
21 have jurisdiction and, therefore, the Rent Board would not hear the appeal. Contrary to Ms.  
22 Michelsen's argument, the *Rent Board* did not affirm the hearing officer's decision. The Rent  
23 Board never heard arguments from the parties, did not consider whether the hearing officer's  
24 decision was correct, and did not vote on the appeal.

### 25 B. Due process requires an evidentiary hearing because "fraud or mistake" has not been 26 previously litigated.

27 The Rent Board concedes that due process requires remanding Mr. Sherman's 2016 tenant  
28 petition for an evidentiary hearing. Due process requires giving Mr. Sherman an opportunity to

1 present evidence demonstrating that there was "fraud or mistake" in granting the exemption and  
2 giving Ms. Michelsen an opportunity to respond to Mr. Sherman's arguments. The principles of  
3 res judicata and collateral estoppel are not triggered as Ms. Michelsen argues because this issue  
4 has not been litigated and the Rent Board did not issue a final decision on the merits.

5 Although Ms. Michelsen argues that the California Court of Appeal decision finally  
6 decided that the exemption finding was proper, Mr. Sherman's tenant petition argues something  
7 different – there was "fraud or mistake" in the facts leading to the underlying finding. The  
8 evidence and declarations that Mr. Sherman initially presented to the hearing officer in 2014 and  
9 2015 were designed to refute Ms. Michelsen's claim that the property was exempt. The  
10 California Court of Appeal decision reviewed Mr. Sherman's evidence on this ground only. Even  
11 if Mr. Sherman offers similar evidence in the instant tenant's petition, he now does so in an  
12 attempt to prove a different theory, with a different legal standard, and having the burden of  
13 proof. Although the outcome may ultimately be the same, due process requires giving Mr.  
14 Sherman an opportunity to present evidence and argue his case.

15  
16 **C. The Court has authority to remand the tenant's petition.**

17 The Rent Board recognizes that there were procedural errors when the tenant's petition  
18 was administratively dismissed. The Rent Board met in closed session to consider how to correct  
19 the errors. The Rent Board agreed that the best course of action was to request that the Court  
20 remand the tenant's petition. Ms. Michelsen now argues that the Court does not have authority to  
21 remand the petition before the parties fully brief the merits of the petition. However, Ms.  
22 Michelsen dismisses the fact that Mr. Sherman – the party bringing the petition – does not oppose  
23 the motion to remand. Mr. Sherman supports the Rent Board's motion and agrees that it is  
24 essentially the relief he seeks in the petition. The Rent Board is the responding party and agrees  
25 that Mr. Sherman is entitled to the relief he seeks.

26 In general, California Civil Code § 1094.5(e) authorizes the Court to remand a petition to  
27 the administrative agency for further review or proceedings. The Rent Board simply asks for this  
28 relief in a more expedited – but noticed – manner, given agreement from the petitioner, Mr.


1 Sherman. The Court can dismiss the writ petition and allow the parties to conclude  
 2 administrative proceedings. The Court can also stay the writ petition and allow an amended writ  
 3 petition, should it be necessary, after the parties conclude administrative proceedings. In either  
 4 situation, the Court is authorized to grant the relief that the Rent Board is requesting.

5 **III. CONCLUSION**

6 The Rent Board requests that the Court remand the tenant's petition to the Rent Board for  
 7 an evidentiary hearing. The Rent Board also requests that the Court dismiss or, in the alternative,  
 8 stay the instant writ until the administrative process is completed.

9  
 10 Dated: July 10, 2017

11 BARBARA J PARKER, City Attorney  
 12 OTIS McGEE, Jr., Chief Assistant City Attorney  
 13 JAMILAH A. JEFFERSON, Deputy City Attorney

14 By:   
 15 Attorneys for Respondent  
 16 CITY OF OAKLAND, et al.

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**PROOF OF SERVICE**  
*Sherman v. City of Oakland.*  
**Alameda County Superior Court Case No. RG16843773**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within documents:

**REPLY IN SUPPORT OF MOTION TO REMAND AND DISMISS OR, IN THE ALTERNATIVE, REMAND AND STAY**

- VIA ELECTRONIC MAIL: I attached a true and correct copy thereof in PDF format to an electronic mail message transmitted to the electronic mail address indicated below.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below.
- by causing personal delivery by messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing such envelope to be sent via overnight delivery by Federal Express/ Express Mail.

Leah Hess, Esq.  
Law Office of Leah Hess  
1736 Franklin Street, 10<sup>th</sup> Floor  
Oakland, CA 94612

Harold and Diane Michelsen  
P.O. Box 6363  
Moraga, CA 94570  
Email: [diane@lodm.com](mailto:diane@lodm.com)

Telephone: 510-451-3103  
Fax: 510-444-1704  
Email: [leahhess2@sbcglobal.net](mailto:leahhess2@sbcglobal.net)

***Real Parties In Interest (In Pro Per)***

***Attorney for Petitioner, Mark Sherman***

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with 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 foregoing is true and correct.

Executed on July 10, 2017, at Oakland, California.

  
\_\_\_\_\_  
Elizabeth Ferrel

Leah Hess  
Attorney at Law  
P.O. Box 8867  
Emeryville, CA 94662-0067  
Tel: (510) 922-1428  
*leahhess2@sbcglobal.net*

Hasmik Geghamyan  
Geghamyan Law Office  
1720 Broadway, Suite 430  
Oakland, CA 94612  
Tel. (510) 857-5548  
Fax: (415) 688-2102  
*geghamyanlaw@gmail.com*

Attorneys for Tenants

CITY OF OAKLAND  
Rent Adjustment Program

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

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

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

**I. INTRODUCTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

## 2. Owners’ Documentary Evidence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **LEGAL ARGUMENT**

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

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

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

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

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

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

1. Statutory Construction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

*Burien* at p. 1049.

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

Nevertheless, the appellate court reasoned:

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

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

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

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

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

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

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

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

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

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

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

C. Certificates of Exemption

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

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

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

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

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

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

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

**C.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### CONCLUSION

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

Respectfully Submitted,



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Leah Hess  
Hasmik Geghamyan  
Attorneys for Tenants



# **ADDENDUM A**

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

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

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

# **ADDENDUM B**

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

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

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



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

## PROOF OF SERVICE

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

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

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

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

Documents Included:

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

City of Oakland - Rent Adjustment Program - electronic service only

Hearing Officer Lambert  
Robert Costa, Rent Adjustment Program Analyst  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, California 94612  
[RCosta@oaklandca.gov](mailto:RCosta@oaklandca.gov)  
[hearingsunit@oaklandca.gov](mailto:hearingsunit@oaklandca.gov)

Owner Representatives - electronic service only

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

Andrew Zacks, Zacks, Freedman & Patterson  
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Sent via USPS for Tenants not represented by Hasmik Geghamyan and Leah Hess:

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Michael Lichen  
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Oakland, California 94601

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Nick Negusse  
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Jeremy Simmons  
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(served via e-mail)

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Megan Girart  
Martin Laurent  
Helena Stoddard  
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Sarah Noelle  
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John Goda  
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Ross Clark  
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W. Breanne Leslie, Lucid Dream Lounge, Inc.  
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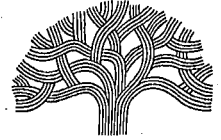
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Joshua R Miller  
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Oakland, CA 94601

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 9, 2022 in Oakland, California.

  
\_\_\_\_\_  
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 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: Anmarie Bustamante, Ross Duncan, Takehito Etani, Harel Meri, and Hadas Teitel.  
Unit #21: Ziaa Szymanski, Arthur Cardenas, John Goda, and Zach Stockman.  
Unit #23, Unit #24: Ross Clark.  
Unit #25: Leslie W. Breanna, Myles Faigin, W. Breanne Leslie, Lucid Dream Lounge, Inc., and Jakob Valvo.  
Unit #26: Darin Marshall and Brittany Valdez.  
Unit #31: Deborah Weber.  
Unit #36: Thelma Andree and Matthew Hudson.  
Unit #39: Woodruff Burley, Garth Ferris, Jeremy Gage, Sarah J Paturzo, Eric Thorsen, and Darius Todar.  
Unit #40: Ian Nathan, and Delila Santos.  
Unit #41: Torey Broderson, Michael Mann, Joseph Robertson, and Daniel Wang.  
Unit #43: Pamela Mangan and Randall Spencer.  
Unit #46: Ezra Eismont.  
Unit #52: Troy Clancy, Bryan Kitchens, Cassie McKenney, and Tzong Rogers.  
Unit #53: Colin Sullivan, Geneva Harrison, Sandra Lawson, and Kathryn Stewart.  
Unit #54: Rebecca Burnett, and Alfonso Kellenberger.  
Unit #58: Justin Archer, Christian Eichelberger, Bolton Littlefield, Matthew Martin, and April Miller  
Unit #59: Joshua R Miller.

Unrepresented Tenants:

Unit #1: Michael Robinson, Cassie Stuurman, and Michael Lichen.  
Unit #6: Denise Marie Kennedy and Nick Negusse.  
Unit #10: Jeremy Simmons.  
Unit #11: Stephanie Kavrakis and Barbara Rodgers.

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

### **PROCEDURAL BACKGROUND/INTRODUCTION**

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

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### Bifurcation

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

### Motion in Limine

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

### Stipulated Exhibits

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

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

### Pre-Hearing Argument

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

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

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

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

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

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

### Document Deadlines

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

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

### Brooke Rollo

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

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

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

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

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

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### Property Condition at Time of Purchase

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

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

### Pre-purchase Due Diligence

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

### Lease-back Agreement

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

### Property Use at Time of Purchase

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

### Conversion to Live/Work Units

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



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

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

### Certificates of Occupancy

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

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

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

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

### Tenants

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

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

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

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

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

#### Tenant Complaint Request

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

#### Property Sold Date

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

#### Exhibits<sup>2</sup>

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

#### Exhibit A

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

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

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

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

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

Exhibit B

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

Exhibit G

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

Exhibit 15

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

Exhibit 16

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

Exhibit 17

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

Exhibit 18

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

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Exhibit 19

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

Exhibit 20

Temporary certificate of occupancy for units 51 and 52.

**Appearances: June 10, 2019**

Attorneys for Owners:

Servando Sandoval, Lerna Kazazic

Attorneys for the represented tenants: Leah Hess, Hasmik Geghamyan

Represented tenants:

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

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

Unit #4b: Charles Long.

Unit #5: Bryanne Crabtree.

Unit #8 Kathleen Callahan and Lia Walker.

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

Unit #18: Aileen Lawlor.

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

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

Unit #23, Unit #24: Ross Clark.

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

Unit #26: Darin Marshall and Brittany Valdez.

Unit #31: Deborah Weber.

Unit #36: Thelma Andree and Matthew Hudson.

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

Unit #40: Ian Nathan, and Delila Santos.

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

Unrepresented Tenants:

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

- Unit #49: Michael Blodgett.
- Unit #50: Loreley Bunoan and Gary Prince.
- Unit #51: Gregg Martinez.
- Unit #55: Yelena Phillipchuck, Julian Vielva, and Serge B Yelena.
- Unit #56: Stephanie Kavakis and Jared Kadish.
- Unit #57: Efrem Rensi, and Reuben Tomar.

## **PROCEDURAL BACKGROUND/INTRODUCTION**

### Pre-Hearing Argument

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

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

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

### Counsel for Represented Tenants Attachment

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

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

### Unrepresented Tenants Petitions

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

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

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

### Subpoena to the Registrar of Voters

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

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

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

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

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

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

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

## Witness Subpoenas

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

## Declarations and Prior Tenant Interviews

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

## Exhibits

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

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

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

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

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

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

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



## EVIDENCE: JUNE 10, 2019

### Michael Joffe

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

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

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

### Contacting Prior Tenants

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

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

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

### Certificates of Occupancy

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

### Telephone Communications

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

### Telephone, In-person Communications

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

#### Paul Howard

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

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

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

#### Todd Bucklehide

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

#### Karen Beck

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

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

<sup>11</sup> Exhibit 52.

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

### David Cheek

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

### Peter Mars

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

### Peter Mars

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

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

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

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

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

### Construction

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

### Unit #5

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

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

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

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

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

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

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

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

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<sup>13</sup> Exhibit 53.

<sup>14</sup> Exhibit A.

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

### Valerie Steel

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

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

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

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

### Unit #23

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

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

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

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

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

### Tenants

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

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

She recalled the tenants who lived at the property: Gayle and Patrick Bryan, Denise Owens, Donna 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.<sup>15</sup>

### Ms. Lang's Occupancy

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

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

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

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

### Llewellyn Moreno

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

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

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

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<sup>15</sup> Exhibit 55.

### Unit #31

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

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

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

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

Susan Nickel took over the Unit in April 1988.

### Tenants

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

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

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

### Owners

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

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Occupancy Permit

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

**Appearances: December 18, 2019**

Attorneys for Owners: Servando Sandoval, Lerna Kazazic

Attorneys for the represented tenants: Leah Hess, Hasmik Geghamyan

Represented tenants:

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

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 Mikhail Lapin.

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

Unit #46: Brooke Rollo.

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

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

Unit #49: Michael Blodgett.

Unit #50: Loreley Bunoan and Gary Prince.

Unit #51: Gregg Martinez.

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

Unit #56: Stephanie Kavakis and Jared Kadish.

Unit #57: Efrem Rensi, and Reuben Tomar.

## PROCEDURAL BACKGROUND/INTRODUCTION

### Subpoena

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

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

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

### Permanent and Temporary Certificates of Occupancy

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

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

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

## Conclusion

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

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

## **EVIDENCE: DECEMBER 18, 2019**

### **Christoper Vivona**

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

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

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

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

### **Crew**

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

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

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



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

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

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

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

#### Unit Completion

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

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

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

#### Unit Habitability

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

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

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

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

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

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

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

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

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

### Art Gallery

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

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

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

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

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

### Documentation

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

### Declaration

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

### Randy Hussong

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

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

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

### Unit #18

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

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

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

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<sup>18</sup> The declaration was not admitted, however, the attachments were admitted with no objection.

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

Unit #18 was fifty yards away from the foundry.

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

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

### Voter Registration

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

### Employment

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

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

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

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

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

### Tenants

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

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

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

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

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

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

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

#### Foundry Operation Dates

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

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

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

## Building A

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

## Construction

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

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

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

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

## Vulcan Café

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

## Gallery 44

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

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

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

Mr. Vivona's Testimony

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

Building Permit Application

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

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

Elizabeth Ross

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

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

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

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

Unit #54

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

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

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<sup>19</sup> Exhibit B.

## Tenants

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

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

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

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

## Gayle Bryan

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

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

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

## Unit #21

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

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

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

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



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

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

Her Unit experienced flooding often.

#### Owners

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

#### Tenants

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

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

#### Foundry

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

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

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

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

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Mr. Bryan

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

Registered Voter

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

Continued Construction

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

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

Allison Davis

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

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

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

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

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

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

## Unit

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

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

## Tenants

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

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

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

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

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

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

## Gallery 44

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

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

The gallery operated for a short period of time.

### Voter Registration

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

### Foundry

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

### Education

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

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

### Karen Beck

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

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

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

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

### Unit #5

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

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

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

#### Voter Registration

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

#### Tenants

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

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

She did not recall Randy Hussong and Chris Vivonna.

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

#### Vulcan Café

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

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

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

#### Foundry

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

She does not recall seeing workers near the foundry area.

**Appearances: September 20, 2021**

**PARTIES:**

Attorneys for Owners: Servando Sandoval, Lerna Kazazic

Attorneys for the represented tenants: Leah Hess, Hasmik Geghamyan

Represented tenants:

- Unit #2: Helena Martin, Gary Doyle, Megan Girart, Martin Laurent, and Helena Stoddard.
- Unit #3: Andrea Ives, Sara Le Cornec, Sarah Noelle, Amy Wieliczka, and Haley Wilson.
- Unit #4b: Charles Long.
- Unit #5: Bryanne Crabtree.
- Unit #8 Kathleen Callahan, and Lia Walker.
- Unit #17: Savannah Crespo, Pamela Hearne, Angeline Huang, Serena Kirk, Adam Rebellion, Sarah Rund, and Ezra Unterseher.
- Unit #18: Aileen Lawlor.
- Unit #19: Annmarie Bustamante, Ross Duncan, Takehito Etani, Harel Meri, and Hadas Teitel.
- Unit #21: Ziaa Szymanski, Arthur Cardenas, John Goda, and Zach Stockman.
- Unit #23, Unit #24: Ross Clark.
- Unit #25: Leslie W. Breanna, Myles Faigin, W. Breanne Leslie, Lucid Dream Lounge, Inc., and Jakob Valvo.
- Unit #26: Darin Marshall and Brittany Valdez.
- Unit #31: Deborah Weber.
- Unit #36: Thelma Andree and Matthew Hudson.
- Unit #39: Woodruff Burley, Garth Ferris, Jeremy Gage, Sarah J Paturzo, Eric Thorsen, and Darius Todar.
- 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 Document<sup>20</sup>

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

#### Document Details

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

#### Registration Date Column Header

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

#### 1982 Registration Date

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

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

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

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



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

Temporary Certificate of Occupancy

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

**Appearances: March 7, 2022**

Attorneys for Owners: Servando Sandoval, Lerna Kazazic

Attorneys for the represented tenants: Leah Hess, Hasmik Geghamyan

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.  
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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 Graham, Robert Hart, and Noel Rolden.  
Unit #49: Michael Blodgett.  
Unit #50: Loreley Bunoan and Gary Prince.

Unit #51: Gregg Martinez.

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

Unit #56: Stephanie Kavakis and Jared Kadish.

Unit #57: Efrem Rensi, and Reuben Tomar.

## PROCEDURAL BACKGROUND/INTRODUCTION

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

### Exhibit AA

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

### Exhibit BB

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

### Submitted by Owner

Exhibits A through J

### Submitted by Tenants

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

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

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## Tenant Brief

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

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

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

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

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

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

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

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

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

<sup>21</sup> O.M.C. § 8.22.030(A)(5)

<sup>22</sup> O.M.C. § 8.22.030(A)(5)

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

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

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

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

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

### **ORDER**

1. Petition L19-0013 is granted.

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

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

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

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



Dated: April 30, 2023

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Elan 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  
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Oakland, CA 94601

**Tenant**

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

**Tenant**

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

**Tenant**

Ross Duncan  
4401 San Leandro Street #19  
Oakland, CA 94601

**Tenant**

Sandra Lawson  
4401 San Leandro Street #53  
Oakland, CA 94601

**Tenant**

Sarah J Paturzo  
4401 San Leandro Street #39  
Oakland, CA 94601

**Tenant**

Sarah Noelle  
4401 San Leandro Street Unit # 3  
Oakland, CA 94601

**Tenant**

Sarah Rund  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Savannah Crespo  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Serena Kirk  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Serge B Yelena  
4401 San Leandro Street #55  
Oakland, CA 94601

**Tenant**

Stephanie Kavakis  
4401 San Leandro Street #56  
Oakland, CA 94601

**Tenant**

Stephanie Kavrakis  
4401 San Leandro Street Unit # 11  
Oakland, CA 94601

**Tenant**

Susan Leffingwell  
4401 San Leandro Street #35  
Oakland, CA 94601

**Tenant**

Susannah Israel  
4401 San Leandro Street #32  
Oakland, CA 94601

**Tenant**

Takehito Etani  
4401 San Leandro Street #19  
Oakland, CA 94601

**Tenant**

The Lucid Dream Lounge  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**

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

**Tenant**

Thelma Andree  
4401 San Leandro Street Unit 36  
Oakland, CA 94601

**Tenant**

Thurman Adam Lorick III  
4401 San Leandro Street Unit # 17  
Oakland, CA 94601

**Tenant**

Tiana Fraser  
4401 San Leandro Street #44  
Oakland, CA 94601

**Tenant**

Torey Broderson  
4401 San Leandro Street #41  
Oakland, CA 94601

**Tenant**

Troy Clancy  
4401 San Leandro Street #52  
Oakland, CA 94601

**Tenant**

Tzong Tzu Rogerts  
4401 San Leandro Street #52  
Oakland, CA 94601

**Tenant**

Woodruff Burley  
4401 San Leandro Street #39  
Oakland, CA 94601

**Tenant**

Yasmine Salem  
4401 San Leandro Street Unit # 12  
Oakland, CA 94601

**Tenant**

Yelena Phillipchuck  
4401 San Leandro Street #55  
Oakland, CA 94601

**Tenant**

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

**Tenant**

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**

Serrvando Sandoval, Pahl & McCay  
225 W Santa Clara Street #1500  
San Jose, CA 95113

**Tenant**

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

**Tenant**

Lia Walker  
4401 San Leandro Street #8  
Oakland, CA 94601

Tenant

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

Tenant

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

Tenant

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

**Manager**

Barbara Turner, Madison Park Financial LLC  
155 Grand Avenue Suite 950  
Oakland, CA 94612

Tenant

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

**Tenant**

Jakob Valvo  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**

Myles Faigin  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**

W. Breanne Leslie, Lucid Dream Lounge, Inc.  
4401 San Leandro Street #25  
Oakland, CA 94601

Tenant

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

Tenant

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



**Tenant**

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

Tenant

Woodruff Burley  
4401 San Leandro Street #39  
Oakland, CA 94601

Tenant

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

Tenant

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

Tenant

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

**Tenant**

Matthew Martin  
4401 San Leandro Street #58  
Oakland, CA 94601

Tenant

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

Tenant

Joshua R Miller  
4401 San Leandro Street #59  
Oakland, CA 94601

Tenant

Tzong Rogers  
4401 San Leandro Street #52  
Oakland, CA 94601

Manager

Barbara Turner, Madison Park Financial LLC  
155 Grand Avenue Suite 950  
Oakland, CA 94612

Tenant  
Miles Ross  
4401 San Leandro Street #14  
Oakland, CA 94601

**Tenant**  
Ezra Unter 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 Spender  
4401 San Leandro Street #43  
Oakland, CA 94601

**Owner**  
John Protopappas, Madison Park  
155 Grand Avenue Suite 950  
Oakland, CA 94612

**Tenant**  
John Reed  
1943 Tyler Street  
San Pablo, CA 94806

**Tenant**

John Reed  
1080 23rd Avenue Unit 104  
Oakland, CA 94606

**Tenant**

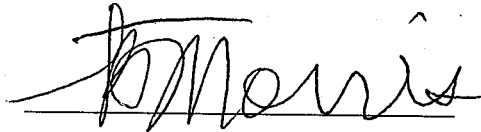
Keiko Steimetz  
1943 Tyler Street  
San Pablo, CA 94806

**Tenant**

Keiko Steimetz  
1080 23rd Avenue Unit 104  
Oakland, CA 94606


I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

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



Teresa Brown-Morris

Oakland Rent Adjustment Program

 <p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>  250 Frank H. Ogawa Plaza, Suite 5313  Oakland, CA 94612-0243  (510) 238-3721  CA Relay Service 711  <a href="http://www.oaklandca.gov/RAP">www.oaklandca.gov/RAP</a></p>	For Rent Adjustment Program date stamp.

## APPEAL

<b>Appellant's Name</b> Helena Martin, Ziaa Szymanski, et. al.		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 4401 San Leandro Street, Oakland, California		<b>Represented Units: 2, 3, 4B, 5, 8, 17, 18, 19, 21, 23, 24, 25, 26, 31, 36, 39, 40, 41, 43, 46, 52, 53, 54, 58, 59</b>	
<b>Appellant's Mailing Address (For receipt of notices)</b> 4401 San Leandro Street, Oakland, California (see pg.6 of the <b>Proof of Service</b> for the names of all represented tenants and their unit numbers)		<b>Case Number</b> L19-0013 (bifurcated from the rest): T17-0237, T18-0460-0471, T18-0473-T18-0479 T18-0498-0499, T18-0500-0501, T19-0021-0023, T19-0236	
		<b>Date of Decision appealed</b> Issued April 30, 2023 and Served on May 23, 2023	
<b>Name of Representative (if any)</b> Leah Hess  Hasmik Geghamyan		<b>Representative's Mailing Address (For notices)</b> Law Office of Leah Hess, PO Box 8867, Emeryville, CA 94662-8867 Geghamyan Law Office, 1720 Broadway, Suite 430, Oakland, 94612	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board.** *(In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  **The decision is inconsistent with decisions issued by other Hearing Officers.** *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  **The decision raises a new policy issue that has not been decided by the Board.** *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  **The decision violates federal, state, or local law.** *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  **The decision is not supported by substantial evidence.** *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on the Owner's investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Supporting documents (in addition to this form) must **not** exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 24.

• You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on June 7, 2023, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows as well as served electronically to the opposing counsel only:

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

See the Proof of Service Attachment for List of Unrepresented Tenants

<u>M. Leghanyan</u>	<u>06/07/2023</u>
---------------------	-------------------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

## ADDENDUM TO THE APPEAL FORM

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

### **2) Appealing the decision for one of the grounds below (required):**

**a) X The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board.** *(In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)*

The Decision is inconsistent with OMC §8.22.010 C.; OMC §8.22.030 A.5 and RAP rules and regulations §8.22.020 B. The language of §8.22.030(B)(1)(b) is ambiguous. The Decision fails to recognize the ambiguity and adopts an arbitrary interpretation of OMC 8.20.030(B)(1)(b) that ignores the beneficial purposes of the Ordinance as set out in §8.22.010. [See Tenants' Memorandum]

**b) X The decision is inconsistent with decisions issued by other Hearing Officers.** *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*

Armory v. Green Sage, LLC T18-0372, with the Corrected Remand Hearing Decision issued on 12/9/2022 deals with the precise question raised in this brief (interpretation of new construction provision of Ordinance and reaches a conclusion that the subject building in that case was not exempt. Tenants seek finding consistent with Armory case. [See Tenants' Memorandum]

**c) X The decision raises a new policy issue that has not been decided by the Board.** *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*

While the Armory v. Green Sage, LLC T18-0372 Corrected Remand Hearing Decision resulted from instructions to the Hearing Officer from the Board, the Corrected Remand Hearing Decision was not appealed, so it is not a formal Board decision. A Board decision adopting the conclusions of Armory would result in consistent guidance for such cases in the future. [See Tenants' Memorandum]

**d) X The decision violates federal, state, or local law.** *(In your explanation, you must provide a detailed statement as to what law is violated.)*

The Hearing Officer interpretation of the law is in conflict with Cal. Building Code and Oakland's Building codes, both of which require Certificates of Occupancy and final permits prior to occupancy. [See Tenants' Memorandum]

**e) X The decision is not supported by substantial evidence.** *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

While the Hearing Officer finds the testimonies of prior residents credible as well as the registration records confirming prior residency before Certificate of Occupancy, she still decides in favor of the Landlord despite the substantial evidence presented. [See Tenants' Memorandum].

**h) X Other.** *(In your explanation, you must attach a detailed explanation of your grounds for appeal.)*

The Decision is not supported by the findings and findings are not supported by the evidence. [See Hearing Decision, pgs. 50-51, Tenants' Memorandum]

## **IMPORTANT INFORMATION:**

**This Appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.**

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- **Any response to the appeal by the responding party must be received by the Rent Adjustment Program, along with a proof of service on appealing party, within 15 days of service of the service of the appeal if the party was personally served. If the responding party was served the appeal by mail, the party must file the response within 20 days of the date the appeal was mailed to them.**
- There is no form for the response, but the entire response is limited to 25 pages or less.
- The Board will not consider new claims. All claims, except jurisdictional issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings that you want the Board to review must be pre-designated to Rent Adjustment Staff.

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Attorneys for Tenants/Appellants  
Helena Martin, Ziaa Szymanski, et.al.

**OAKLAND RENT ADJUSTMENT BOARD  
CITY OF OAKLAND**

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

Case Number(s): L19-0013 (Bifurcated) with T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464, T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18-0470, T18-0471, T18-0473, T18-0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498,

**MEMORANDUM IN SUPPORT OF APPEAL OF TENANT-APPELLANTS  
HELENA MARTIN, ZIAA SZYMANKSI, ET. AL. V. VULCAN LOFTS, LLC.**

**INTRODUCTION**

Tenant/Appellants appeal the decision finding that their dwelling units at the Vulcan Foundry in East Oakland are exempt from the RAP as new construction.

The Vulcan Foundry, located at 4401 San Leandro Street, Oakland, was purchased in 1985 by developers Eddie Orten and James Alexander who converted it to live-work units primarily resided by artists. They obtained building permits for each of the three buildings and eventually created 59 rental units. Construction took over two years, during which time the Owners unlawfully leased rental units to tenants between 1986



and 1987, before any legal conversion took place. There were Temporary Certificates of Occupancy issued before the building permits for some units in Building C which became void soon after issuance. The permits were not finalized until May of 1987 and Certificates of Occupancy for most of the units were not issued until October of 1987 (to this day, there is no evidence of Certificates of Occupancy of finalized permits specifically sought for Building C, units 27, 46 or 53-59). Now, some 36 years later, the current owner has petitioned to have the property exempted from the Rent Adjustment Program as “new construction.”

This matter hinges upon statutory construction of the elements that a landlord must prove to demonstrate entitlement to a new construction Certificate of Exemption from rent control. These elements are that the property was “newly constructed and received a certificate of occupancy on or after January 1, 1983” and that the property was “formerly entirely non-residential.” (OMC 8.22.030A.5). The Regulations provide further guidance “Newly constructed units include *legal conversions* (emphasis added) of uninhabited spaces not used by Tenants, such as...iv. Spaces that were formerly entirely commercial”. (OMC 8.22.B.5). No specific date or event is provided to illuminate the meaning of “formerly entirely non-residential.” The Owners interpret “formerly entirely non-residential” to mean before 1983 regardless of when or for how long it was rented.

The Tenants assert that, for a conversion to be legal, it must at a minimum require owners to refrain from renting out residential units prior to finalization of permits and Certificates of Occupancy. They also assert that the term “formerly entirely non-residential” means that there was no residential use of a property prior to the issuance of a Certificate of Occupancy.

The Hearing Decision does not address these questions. The Decision simply presumes that residential occupancy must have occurred prior to 1983 to prevent issuance of a Certificate of Exemption from rent control. It states:

The testimony and evidence established by a preponderance that the subject property was newly constructed after the purchase of the property in December 1985. Likewise, overwhelming evidence established that the subject property was not residential before the purchase in 1985.1 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 ResidentPial Rent Board* (1992) 5 Cal.App.4th 24,27 and *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, illustrate the s



sort of strict construction applied to local rent laws which provide exemptions for newly constructed rental units.

In *Da Vinci Group*, the owner purchased a multi-apartment warehouse with no and continued to rent units to tenants. After the city flagged the building for changing to apartments without a permit, the owner made improvements and obtained a Certificate of Exemption. He then claimed exemption from the local rent ordinance, which exempted "rental units located in a structure for which a was first issued after the effective date of this ordinance." At the time, the San Francisco Ordinance lacked a provision barring exemption for units which had previously been used residentially. Nonetheless, the appellate court looked beyond the bare language of the Ordinance to the Board's regulations, which added the element that new construction exemptions applied "only where there has been no residential use since the enactment of the Ordinance." *Da Vinci Group, Id.* at 29. Noting that the new construction exemption's purpose was to ease the housing shortage by creation of new units, the appellate court commented, "Legalizing de facto residential use does not enlarge San Francisco's housing stock." *Id.* at p. 30.

This case is similar to *Da Vinci*. The owners chose to put the property to residential use prior to final approvals. They nonetheless assert that they are entitled to an exemption because the prior residential use did not occur before 1983. However, nowhere in the Oakland Ordinance does it state that the term "formerly entirely non- residential" applies only to such occupancy if it occurred before January 1, 1983.

In *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, a landlord sought to take advantage of the provisions of the Costa-Hawkins Act. (Civ. Code§ 1954.52) The

landlord converted a rent-controlled apartment building, with a 1972 Certificate of Occupancy to condominiums. In 2009, he obtained a new Certificate of Occupancy based upon the change in use. When a tenant challenged a rent raise, the landlord sought a declaration from the court that the unit was exempt from the Los Angeles rent Ordinance under provisions of the Costa-Hawkins Act which exempts units that have certificates of occupancy issued after 1995. The landlord appealed a trial court finding that the rent raise violated the Ordinance. In affirming the trial court decision, the appellate court concluded:

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

*Burien* at p. 1049.

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

Nevertheless, the appellate court reasoned:

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

A construction of the Ordinance that gives landlord permission to rent out unit uninspected and potentially unsafe dwellings is absurd. Exemption should not be granted.

b) **The Hearing Decision Conflicts with State and Local Laws Prohibiting Residential Occupancy Prior to Obtaining a Certificate of Occupancy**

Both the Oakland Municipal Code and state law require issuance of both a permit and a Certificate of Occupancy before a building can be occupied. (California Building

Code§110.1 et seq.; Oakland Municipal Code §15.08.150)

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

The former Owners rented out units for over two years before issuance of Certificates of Occupancy. Such practices are unlawful and unsafe. The undermine they important public policies upon which building codes and housing law are based. Permitting the Vulcan owners to obtain an exemption under these circumstances rewards their wrongful conduct.

**Appeal Form 2b: The Decision is Inconsistent with Decisions Issued by Other Hearing Officers.**

**a) The Hearing Decision Directly Conflicts with *Armory v. Green Sage, LLC* (2022), T18-0372, et al.**

Armory v. Green Sage, LLC (2022) T-18-0372 et al. reached a conclusion which directly conflicts with the Hearing Decision in this case. Armory concerned two buildings at a former cannery which was converted to artists' live-work units. The Hearing Decision granted exemption for one building based upon proof of residential occupancy prior to 1983 but denied exemption for the other. Tenants at the other building appealed. In that building tenants of two units had entered tenancies in 2009 while the Certificate of Occupancy had issued in 2011.

The Board remanded the case for reevaluation in light of the “the lack of temporal limitation on residential use prior to conversion...”). Eventually, a Corrected Remand Hearing Decision was issued, finding the building to not be exempt from the Ordinance. After reviewing the Board’s discussion at the Appeal Hearing, the Hearing Officer articulated that “the subject property is not exempt as new construction if there was residential use prior to the issuance of the Certificate of Occupancy *even if* the property was newly constructed and received the Certificate of Occupancy after January 1, 1983.” (pg. 2 of the Corrected Remand Hearing Decision) The Order stated: “Per the Board’s instruction, the units at [the subject building] are not exempt from the Rent Adjustment Ordinance because there was residential use prior to issuance of the Certificate of Occupancy.” (pg. 7 of the Corrected Remand Hearing Decision)

The simple formula set out in Armory solves many problems inherent in new construction cases. It promotes stable housing and affordable rents. It protects tenants, many of whom have resided for decades in their rental units from sudden rent raises, and potentially losing their housing. It avoids the absurdity of the “lack of temporal limitation on residential use prior to conversion.”

**Appeal Form 2(c): The Decision Raises a New Policy Issue that Has Not been Decided by the Board.**

While the Armory v. Green Sage LLC T180372 Decision resulted from instructions to the Hearing Officer from the Board, the Corrected Remand Hearing Decision was not appealed, so it is not a formal Board decision. A Board decision adopting the conclusions of Armory would result in consistent guidance for cases in the future.

## CONCLUSION

For the reasons set forth in this Memorandum, the Tenants respectfully request a decision denying the Landlord's petition, stating that all residential units at 4401 San Leandro Street are not exempt from the Oakland Rent Adjustment Program.

Dated: June 7, 2023

LAW OFFICE OF LEAH HESS  
GEGHAMYAN LAW OFFICE

A handwritten signature in blue ink, appearing to read "M. Geghamyan", is written over a horizontal line.

Leah Hess  
Hasmik Geghamyan  
Attorney for Tenants/Appellants

# **EXHIBIT A**

**TENANT-APPELLANTS MARTIN, ET.AL. v. VULCAN LOFTS, LLC  
EVIDENCE OF RESIDENTIAL USE OF THE PROPERTY PRIOR TO LEGAL CONVERSION - SUMMARY**

Unit #	Reg #	Date	Evidence of Early Residential Occupancy
1	F870498	09/08/1982	A •Voter registration (pre-1/1/83)
2	G987540	06/09/1986	A •Voter registration
5	H204832 G511489	11/25/1986 9/17/ 1984	A •Voter Registrations  •Witness testimony Peter Mars (formerly Peter Smith), (6/10/19 Hearing) Lived in Unit 5 with Karen Beck. (2:18:01- 1/18/06; 2/17/11-2/17/39). (2:18:07-2:24:56)  •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)  Karen Beck(formerly Karen Smith) (12/16/19 Hearing) •Beck testified to moving into Unit 5 with husband Peter Smith in 1985 or 1986. She moved out in January '88. (12/16/19 Hearing. (4:37:24-53; 4:38:59-4:00)
6	G865845	06/02/1986	A •Voter Registration
10	H257469	08/22/1987	A •Voter Registration
11	G771855	09/19/1986	A •Voter Registration

14	X426298	05/29/1987	A	<p>• Voter Registration</p> <p>Witness <u>Todd Boekelheide</u> (6/10/19 Hmg)</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>• Corroboration: 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> <p>• No Unit Number Stated in Voter Registration Records. However, see notes below (Unit 18) person at the property registering to vote on the same day: 10/06/1986</p>
	H099880	10/06/1986	?	



18	X489752	10/06/1986	B	<p>• Voter Registration</p> <p><u>Witness Randy Hussong (12/16/19 Hrng)</u></p> <p>Hussong testified that he worked at the property as a painter before he and his wife moved into Unit 18 in 1985. (1:21:43-1:22:33) Voter</p> <p>• Registration Record shows person living there in 1986.</p> <p>He stated that David Cheek worked on the painting crew, and David's sister Allison lived at the property. (1:29:53-1:30:04)</p> <p>Stated he was one of the initial tenants at the Vulcan. Tenants started moving into building A as units became available. He named other tenants: Allison Cheek, Ric Tingali, Jonathan Garrett, Bob Drecco and Tod Boekelheide but did not recall when they moved in. He estimated that construction was finished "sometime in 1986". He moved from the property at the end of October 1989. He remembers because he was there during the 1989 Loma Prieta earthquake (1:38:15-1:40:21)</p> <p><u>David Cheek Sworn Declaration:</u></p> <p>Carpenter David Cheek testified that Randy Hussong and his wife Tracy McBride resided at the Vulcan when Cheek started working there in 1986. Randy worked on the construction crew with Cheek as a painter. (¶¶ 3, 8)</p> <p>• Voter Registration</p>
19	G267674 G267675	05/07/1984 05/07/1984	B	<p>• Voter Registration</p>

21	H074029 H074030	09/25/1986	B	<ul style="list-style-type: none"> <li>• Voter Registrations</li> <li>• <u>Witness Gayle Bryan</u> (12/16/19 Hrng)</li> </ul> <p>Ms. Bryan testified that she moved into Unit 21 with her husband, Patrick Bryan, in '86 or '87. Could have been '85. She lived there for 3 years. (3:42:59-3:45:26)(3:56:30-3:57:05)</p> <p>She knows the approximate date of their move-in because they were living there when he graduated in from Holy Names in. 1987. (4:00:44-4:01:12)</p> <p>Valerie Steel and her husband moved in across the hall about a month after she moved in. (3:46:01-3:46:44)</p> <p>Many other artists were moving into the Vulcan when she moved in. Rental units were still being built. People moved in immediately after the units were built. (3:58:23-3:58:44)</p> <ul style="list-style-type: none"> <li>• Corroborating: Valerie Steel testified to moving into Unit 23 with her husband in late '86.</li> </ul>
22	H105022	10/03/1986	B	<ul style="list-style-type: none"> <li>• Voter Registration</li> </ul>

23

H191495

04/28/1987

B

• Voter Registration

• Witness Valerie Steel [6/10/19 Hrng.]

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)

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 Dreago 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)

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)

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)

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)

See witness Gayle Bryan testimony above re: Steel move into the property.

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 bedrooms. The owners rented the spaces as residences. (¶ 5)</p> <p>His sister, Allison Davis, resided at the property in Unit 25 with her husband Rick Tringali. Cheek was working on units at the property prior to her moving in. He worked on construction of her unit.</p>
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25	H121814	02/20/1987	B	<ul style="list-style-type: none"> <li>•See above re testimony of Allison Davis,</li> <li>•Declaration of her brother David Cheek.</li> </ul>
31	None		C	<ul style="list-style-type: none"> <li>•<u>Witness Llewellyn Moreno</u> (formerly, Llewellyn Hilliard</li> </ul> <p>Mr. Moreno testified that he moved into Unit 31 “no later” than March or April 1987—it could have been several months earlier. He did extensive work on his rental unit prior to move in but he had been living in the unit for some time when he was informed that his father had been hospitalized in early June (5:24:43–5:37:18)</p> <p>He lived at the Vulcan for approximately one year. (5:41:57–5:42:31)</p> <p>He was the first tenant in his unit. There were “several generations of tenants” because the property had developed in stages. His unit and other units available at the same time were the third stage of development of the property. There were people at the property who were “quite well settled” by the time he was there. (5:38:58–5:39:42)</p> <p>When he moved in, there were “quite a number” of people already living at the Vulcan. (5:40:20–5:40:41)</p>

43	H262087	09/28/1987	C	<p>•Voter Registration</p> <p><u>Witness Susan Bloomquist, formerly Susan Nickel.</u></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>W/The 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>Witness Paul Howard sworn declaration (Exh. 8) stated that his mother Rhoda Lee London 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>Postcard attached to Howard Declaration: Stamped &amp; postmarked in France. Postcard from "Barb &amp; Chuck" to Mark &amp; Rhoda Seymour, 4401 San Leandro # 8 (Exh iii)</p>
54			C	<p><u>Witness Elizabeth Ross</u></p> <p>Ms Ross testified that she moved into Unit 54 in "Fall of '87". Unsure whether it was October or November. She believes that she was not the first tenant in the unit because there were items from the previous tenant.</p> <p>Items found in apartment indicated that she was not the first tenant at that unit. She understood that tenants were required to provide their own stoves and refrigerator. Unit four came with a pink refrigerator. (3:25:17-3:28:08)</p>
57	H214660	06/12/1987	C	<ul style="list-style-type: none"> <li>• Voter Registration</li> </ul>
57	H214001	06/12/1987	C	<ul style="list-style-type: none"> <li>• Voter Registration</li> </ul>

## PROOF OF SERVICE

**Case Appeal Name: Tenant-Appellants Martin, Szymanski, et al. v. Vulcan Lofts, LLC**

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

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

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

- **Appeal Form (with Addendum)**
- **Memorandum in Support of Tenant-Appellants Helena Martin, et.al. vs. Vulcan Lofts, LLC**
- **Additional Documents (9 pages)**
- **Proof of Service**

**To each opposing party, whose names and addresses are listed below, by one of the following means (check one):**

X **USPS Mail.** I enclosed the documents in a sealed envelope or package addressed to the persons listed below and at the addresses below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

X **By Electronic Mail.** Electronic mail to Landlords' Counsel Only (in addition to USPS Mail)

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

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Rigel Juratovac  
Susan Leffingwell  
4401 San Leandro Street #35  
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4401 San Leandro Street #42  
Oakland, CA 94601

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Leah Samelson  
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Robert Hart  
Noel Rolden  
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Michael Blodgett  
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Yelena Phillipchuck  
Julian Vielva  
Serge B Yelena  
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Stephanie Kavakis  
Jared Kadish  
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Efrem Rensi  
Reuben Tomar  
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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  
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Oakland, CA 94601

Andrea Ives  
Sara Le Cornec  
Sarah Noelle  
Amy Wieliczka  
Haley Wilson  
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Oakland, CA 94601

Charles Long  
4401 San Leandro Street #4B  
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Brianne Crabtree  
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Kathleen Callahan  
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Savannah Crespo  
Pamela Hearne  
Angeline Huang  
Serena Kirk  
Adam Rebellion  
Sarah Rund  
Ezra Unter Unterseher  
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Aileen Lawlor  
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Leslie W. Breanna  
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4401 San Leandro Street #26  
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Thelma Andree  
Matthew Hudson  
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Woodruff Burley  
Garth Ferris  
Jeremy Gage  
Sarah J Paturzo  
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Darius Todar  
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Michael Mann  
Joseph Robertson  
Daniel Wang  
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Pamela Mangan  
Randall Spencer  
4401 San Leandro Street #43  
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Ezra Eismont  
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Troy Clancy  
Bryan Kitchens  
Cassie McKenney  
Tzong Rogers  
4401 San Leandro Street #52  
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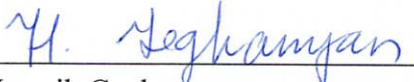
Colin Sullivan  
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Matthew Martin  
April Miller  
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 7, 2023 in Oakland, California.

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



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6 Attorneys for Petitioner  
VULCAN LOFTS LLC

7  
8 **CITY OF OAKLAND**

9 **RENT ADJUSTMENT PROGRAM**

10 In re: VULCAN LOFTS LLC, )  
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Case Nos. 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

**RESPONSE OF PETITIONER VULCAN  
LOFTS LLC TO TENANTS APPEAL TO  
HEARING OFFICER'S DECISION**

18 Petitioner VULCAN LOFTS LLC's ("Landlord") hereby submits the following response  
19 to the appeal filed by various tenants with respect to the Final Decision issued by the Hearing  
20 Office in the above-referenced cases, on April 30, 2023.

21 **I.**

22 **INTRODUCTION**

23 The Hearing Officer, following **six days** of hearing, properly granted Petitioner's Petition  
24 finding that the property located at 4401 San Leandro Street, Oakland, California (the "Property")  
25 is exempt from the Oakland Rent Adjustment Ordinance on the grounds that the Property is  
26 "newly constructed" as defined by the Ordinance. Petitioner submitted a plethora of evidence  
27 demonstrating that the Property was formerly used as a foundry. The uncontradicted evidence  
28 also showed that the Property was purchased in 1985, while it was still being operated as a

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1 was entirely non-residential prior to 1983. One of the tenants, Ziaa Symanski, submitted her first  
2 petition in 2018, which was rejected and appealed. During the appeal hearing, Ms. Symanski's  
3 attorney represented to the Rent Appeal Board that the reason they were appealing the decision  
4 was based on evidence they discovered that there was residential use prior to 1983. Based on this  
5 allegation, the Rent Appeal Board granted Ms. Symanski's appeal and remanded the matter for  
6 further hearing.

7 It should be noted that notwithstanding the representation made at hearing on the first  
8 appeal, there was absolutely no evidence submitted during this long and protracted proceed, which  
9 has been pending since 2019, to show there was any residential use prior to 1983. In the end, this  
10 matter was remanded for further hearing based on a misrepresentation during the prior appeal  
11 hearing.

12 **III.**  
13 **LEGAL ARGUMENT**

14 **I. THE NEW CONSTRUCTION EXEMPTION OF THE RENT CONTROL  
ORDINANCE**

15 The Oakland Rent Control Ordinance (the "Ordinance") allows certain exemptions from  
16 rent control to different types of dwelling units. One of those exemptions is for "[d]welling units  
17 which were newly constructed and received a certificate of occupancy on or after January 1, 1983.  
18 [...]. To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly  
19 constructed or created from a space that was formerly entirely non-residential." The Regulations  
20 for the Ordinance further expands on this definition by explaining that newly constructed units  
21 include legal conversions of uninhabited spaces not used by tenants.

22 It is clear from the plain reading of these provisions of the Ordinance and Regulations that  
23 the terms read together mean that there was no residential use at an exempt property prior to 1983.  
24 The Tenants are attempting to interpret these provisions to mean that there may be no residential  
25 use prior to the issuance of the certificate of occupancy – which would in turn, make the 1983  
26 obsolete and without purpose.

27 ///

28 ///

1 IV.

2 **THE LANGUAGE OF THE ORDINANCE IS NOT VAGUE**

3 The Tenants argue that the language of the Ordinance is vague and open to multiple  
4 interpretations and that the ambiguity must be interpreted. The Tenants provide examples of other  
5 local rent control laws that were interpreted by Courts when there was ambiguity in the language.

6 One of these examples stems from the San Francisco rent control ordinance, which  
7 provided an exemption for “rental units located in a structure for which a certificate of occupancy  
8 was first issued after the effective date of this ordinance.” The regulations in support of the San  
9 Francisco ordinance provided further guidance for this exemption in that there may not have been  
10 any residential use since the enactment of the Ordinance. Da Vinci Group v. San Francisco  
11 Residential Rent Board, 5 Cal.App.4th 24, 29 (1992). In that case, it was abundantly clear from  
12 the express regulations in the Da Vinci Group case that any residential use prior to the issuance of  
13 a certificate of occupancy, would invalidate a landlord’s exemption to the rent control ordinance.  
14 In the present case, however, Oakland Ordinance is completely lacking of any express language  
15 that would invalidate the exemption under the circumstances of this case. Thus, the Da Vinci  
16 Group case is completely inapplicable to the present case.

17 The Tenants would argue that the Da Vinci Group case and this present case are  
18 “remarkably similar.” This is dramatically incorrect. In the Da Vinci Group case, a warehouse was  
19 converted into live-work units without any permitting, and was cited a year after the conversion by  
20 the City of San Francisco. Following the citation by the City, the landlords obtained the necessary  
21 permits, made additional improvement, and finally received a certificate of occupancy some five  
22 years later. Meaning that residents were living in that property for approximately six years before  
23 the certificate was obtained and since the construction work was performed without any permits.  
24 In that case, the court concluded that the property was subject to rent control because obtaining a  
25 certificate following illegal conversion did not create new housing in the City, which in turn did  
26 not further the purpose of the ordinance. Rather, the landlord simply made previously available  
27 illegal units legal.

28 ///

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1 Vulcan Lofts, on the other hand, were legally built with all required permits, received all  
2 required sign offs, and were legally occupied following their completion of each unit. The  
3 testimony and evidence provided to date is clear that this is what transpired. Unlike Da Vinci  
4 Group, the new ownership created nearly four dozen new units and helped expand the housing  
5 market, which were ultimately approved by the City. More importantly, the court in this case  
6 stated the following:

7 The board's original and consistent determination that this  
8 exemption includes only "newly constructed" rental units is worthy  
9 of judicial deference because it comports with the Ordinance's  
major goal of easing the housing shortage by encouraging creation  
of new residential rental units where there were none before.

10 Da Vinci Group, supra at 30. This issue has been previously adjudicated many times and  
11 numerous hearing officers and the Appeal Board that has heard the plethora of Vulcan Lofts cases  
12 have consistently determined that the Property is not subject to rent control based on the newly  
13 constructed exemption. The new legal theory does not change the end result.

14 A second example provided by the Tenants is Burien, LLC v. Wiley, 230 Cal.App.4th  
15 1039 (2014), where the Second District Court of Appeal interpreted the Costa Hawkins exemption  
16 to the Los Angeles Rent Control Ordinance in a case involving a property that received two  
17 separate certificates of occupancy based on a change of use of the property from residential  
18 condominiums to residential apartments.

19 There, the court concluded that since the first certificate of occupancy was issued prior to  
20 the operative date of 1995, under a Costa-Hawkins exemption, the date of the second certificate of  
21 occupancy that was simply issued for a change in type of residential property was of no  
22 importance. The court based this decision on the fact that the change in type of residential property  
23 did not further the ordinance's goal in enlarging the supply of housing. The court further goes on  
24 to discuss the Los Angeles Rent Control Ordinance and makes it clear that even if there is no  
25 certificate of occupancy issued following the operative date and there is residential use, unless the  
26 landlord can demonstrate that there was no residential use prior to the operative date. The court  
27 then compares this Los Angeles ordinance to the Oakland Ordinance, stating that it provides a  
28 "similar exemption." Burien, LLC v. Wiley, Id at 1048.

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1 Tenants again try to compare the facts of Vulcan Lofts to the previously discussed case by  
2 arguing that the Certificates of Occupancy were not obtained until after there was residential use at  
3 the Property. One very important distinction that the Tenants fail to mention is that the  
4 conversions or changes in use of residential housing in the Burien case were *prior to* the operative  
5 dates of the ordinance exemption. That is not the case with Vulcan Lofts as all of the conversions  
6 occurred after the operative date of the Oakland ordinance.

7 **2. THE ORDINANCE SETS A CLEAR DATE BEFORE WHICH**  
8 **RESIDENTIAL OCCUPANCY MUST NOT HAVE OCCURRED IN ORDER**  
9 **FOR THE PROPERTY TO BE EXEMPT**

10 The Tenants try to argue that the Ordinance did not provide a specific date during which  
11 prior residential use must have occurred to disqualify a property from an exemption. The Tenants  
12 use the Los Angeles ordinance that was discussed above as an example of an ordinance with a  
13 specific date. Ironically, this is the same ordinance that the court in the above-discussed case  
14 stated was similar to the Oakland Ordinance. It is further abundantly clear, just based on the  
15 reading of the Ordinance itself, that the operative date is 1983. The Ordinance provides and  
16 exemption for “[d]welling units which were newly constructed and received a certificate of  
17 occupancy on or after January 1, 1983.” As stated above, “to qualify as a newly constructed  
18 dwelling unit, the dwelling unit must be entirely newly constructed or created from a space that  
19 was formerly entirely non-residential.” Meaning, the property must have been created from a  
20 space that was formerly entirely non-residential after 1983 and received a certificate of occupancy  
21 after 1983. There is no ambiguity, nor any other interpretation that would make any logical sense.

22 **3. THE VIDOR COURT HAS CONFIRMED THE LANDLORD’S**  
23 **INTERPRETATION**

24 As has been previously addressed in this petition process, the subject property has been  
25 found to be exempt from rent control by the Alameda County Superior Court, Case No.  
26 RG06287844. A group of tenants, unhappy with both the administrative decision and the Court’s  
27 decision, appealed the case to the Court of Appeal, further arguing that the Property is subject to  
28 rent control. The Court concluded that the evidence presented may have supported an inference  
that on some date prior to April 1987, the property may have been used for residential purposes.

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1 The Court went on to state, “that is of no consequence [...] [e]vidence of residential use prior to  
2 April 1987, does not defeat the trial court’s conclusion that the purchase was entirely  
3 nonresidential before it was purchased and remodeled in 1987.” Vidor vs. Oakland Community  
4 and Economic Development Agency, A120973 (2009).

5 The Hearing Officer, Rent Control Appeal Board, Alameda Superior Court, and Court of  
6 Appeals all agreed with the same, only logical, interpretation of the Ordinance, to mean that the  
7 only operative date from the plain reading of the Ordinance in 1983, and that the only way to  
8 defeat that exemption is evidence of residential use prior to 1983.

9 **4. TENANTS HAVE OFFERED NO EVIDENCE OF RESIDENTIAL USE**  
10 **PRIOR TO 1983.**

11 More troubling that the Tenant’s interpretation of the Ordinance is the numerous  
12 misstatements that were made to the City in the petitions and the previous appeal hearing. As  
13 stated above, Tenant Ms. Symanski’s attorney represented to the Rent Board, on appeal, that she  
14 had evidence of residential use prior to 1983. No such evidence has been presented,  
15 notwithstanding that there were six more days of hearing on remand. To be clear, there is no  
16 evidence of any residential use of the Property prior to 1983.

17 If that was not enough, each of the tenants who filed a petition in this matter submitted a  
18 document entitled “Attachment One to Petition: Legal Issues”. In that Attachment, each tenant  
19 stated that “[T]enants at this formerly industrial property have recently obtained information and  
20 evidence showing extensive residential occupation of the property from at least 1969 onward.”  
21 Notwithstanding that each petition was signed under penalty of perjury, there was absolutely no  
22 evidence presented during the six days of hearing of any residential use prior to 1985, let alone  
23 “extensive residential occupation.”

24 ///  
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V.

CONCLUSION

Based on the plain reading of the Ordinance, it is clear that the Ordinance intended that properties that were entirely non-residential prior to 1983, are exempt from Oakland Rent Adjustment Ordinance. Tenants have submitted no evidence to contradict the evidence recited by the Hearing Office in the Final Decision. Their attempts to create an entirely new interpretation of the Ordinance that has never been used by both the City, nor the courts, is not legally supported and should not be allowed. Accordingly, the Final Decision must be upheld.

DATED: June 28, 2023

PAHL & McCAY  
A Professional Law Corporation

By: \_\_\_\_\_  
Servando R. Sandoval

Attorneys for Petitioner  
VULCAN LOFTS LLC

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1 **Vulcan Lofts LLC v. Tenants**

2 **Case Number(s): L19-0013, T17-0237, T18-0460, T18-0461, T18-0462, T18-0463, T18-0464,**  
3 **T18-0465, T18-0466, T18-0467, T18-0468, T18-0469, T18- 0470, T18-0471, T18-0473, T18-**  
4 **0474, T18-0475, T18-0476, T18-0477, T18-0478, T18-0479, T18-0498, T18-0499, T18-0500,**  
5 **T18-0501, T19- 0021, T19-0022, T19-0023, T19-0236**

4 **PROOF OF SERVICE**

5 State of California )  
6 County of Santa Clara ) xx

7 I am a citizen of the United States and an employee of the County aforesaid. I am  
8 over the age of eighteen years and not a party to the within action. My business address is 225  
9 West Santa Clara Street, Suite 1500, San Jose, California 95113-1752. On the date mentioned  
10 below, I caused a true copy(ies) of the following document(s) to be served on the parties below  
11 using the method(s) checked:

- 10 • ***RESPONSE OF PETITIONER VULCAN LOFTS LLC TO TENANTS APPEAL TO***  
11 ***HEARING OFFICER'S DECISION***

12 On the Addressee(s) below named in said action by:

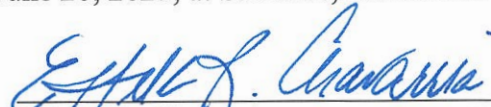
- 13  First Class Mail. I am familiar with the regular mail collection and processing  
14 practices of the business. The mail will be deposited with the United States  
15 Postal Service on the same day following ordinary business practices. I enclosed  
16 the above-mentioned document(s) in a sealed envelope with postage thereon  
17 fully prepaid in the United States Post Office mail box at San Jose, California.
- 18  Facsimile at the fax numbers shown after each name below.
- 19  By Personal Delivery.
- 20  By Federal Express pursuant to Code of Civil Procedure § 1005.
- 21  By Electronic Mail.

20 **Addressee(s):**

21 City of Oakland  
22 Rent Adjustment Program  
23 250 Frank H. Ogawa Plaza, Suite 5313  
24 Oakland, CA 94612-0243  
25 [www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

24 **SEE ATTACHED SERVICE LIST**

25 I declare under penalty of perjury, under the laws of the State of California, that the  
26 foregoing is true and correct. Executed on June 28, 2023, at San Jose, California.

27   
28 \_\_\_\_\_  
Estella R. Chavarria

**Owner Representative**

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Zacks, Freedman & Patterson  
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Oakland, CA 94612  
[az@zfplaw.com](mailto:az@zfplaw.com)

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**Tenant**

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Efrem Rensi  
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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**

Mikhall Lapin  
4401 San Leandro Street #44  
Oakland, CA 94601

**Tenant**

Miles Ross  
4401 San Leandro Street #14  
Oakland, CA 94601

**Tenant**

Nick Negusse  
4401 San Leandro Street #6  
Oakland, CA 94601

**Tenant**

Noel Rolden  
4401 San Leandro Street #48  
Oakland, CA 94601

**Tenant**

Pamela Hearne  
4401 San Leandro Street Unit # 17  
Oakland, CA 94601

**Tenant**

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

**Tenant**

Rachel Cole-Jansen  
4401 San Leandro Street #47A  
Oakland, CA 94601

**Tenant**

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

**Tenant**

Rebecca Burnett  
4401 San Leandro Street #54  
Oakland, CA 94601

**Tenant**

Resident  
4401 San Leandro Street #26  
Oakland, CA 94601

**Tenant**

Resident  
4401 San Leandro Street #9  
Oakland, CA 94601

**Tenant**

Resident  
4401 San Leandro Street #4A  
Oakland, CA 94601

**Tenant**

Reuben Tomar  
4401 San Leandro Street #57  
Oakland, CA 94601

**Tenant**

Rigel Juratovac  
4401 San Leandro Street #35  
Oakland, CA 94601

**Tenant**

Robert Hart  
4401 San Leandro Street #48  
Oakland, CA 94601

**Tenant**

Robert Jacobs  
4401 San Leandro Street #45  
Oakland, CA 94601

**Tenant**

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

**Tenant**

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

**Tenant**

Ross Duncan  
4401 San Leandro Street #19  
Oakland, CA 94601

**Tenant**

Sandra Lawson  
4401 San Leandro Street #53  
Oakland, CA 94601

**Tenant**

Sarah J Paturzo  
4401 San Leandro Street #39  
Oakland, CA 94601

**Tenant**

Sarah Noelle  
4401 San Leandro Street Unit # 3  
Oakland, CA 94601

**Tenant**

Sarah Rund  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Savannah Crespo  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Serena Kirk  
4401 San Leandro Street #17  
Oakland, CA 94601

**Tenant**

Serge B Yelena  
4401 San Leandro Street #55  
Oakland, CA 94601

**Tenant**

Stephanie Kavakis  
4401 San Leandro Street #56  
Oakland, CA 94601

**Tenant**

Stephanie Kavrakis  
4401 San Leandro Street Unit # 11  
Oakland, CA 94601

**Tenant**

Susan Leffingwell  
4401 San Leandro Street #35  
Oakland, CA 94601

**Tenant**

Susannah Israel  
4401 San Leandro Street #32  
Oakland, CA 94601

**Tenant**

Takehito Etani  
4401 San Leandro Street #19  
Oakland, CA 94601

**Tenant**

The Lucid Dream Lounge  
4401 San Leandro Street #25  
Oakland, CA 94601

**Tenant**

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

**Tenant**

Thelma Andree  
4401 San Leandro Street Unit 36  
Oakland, CA 94601

**Tenant**

Thurman Adam Lorick III  
4401 San Leandro Street Unit # 17  
Oakland, CA 94601

**Tenant**

Tiana Fraser  
4401 San Leandro Street #44  
Oakland, CA 94601

**Tenant**

Torey Broderson  
4401 San Leandro Street #41  
Oakland, CA 94601

**Tenant**

Troy Clancy  
4401 San Leandro Street #52  
Oakland, CA 94601

**Tenant**

Tzong Tzu Rogerts  
4401 San Leandro Street #52  
Oakland, CA 94601

**Tenant**

Woodruff Burley  
4401 San Leandro Street #39  
Oakland, CA 94601

**Tenant**

Yasmine Salem  
4401 San Leandro Street Unit # 12  
Oakland, CA 94601



**Tenant**

Yelena Phillipchuck  
4401 San Leandro Street #55  
Oakland, CA 94601

**Tenant**

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

**Tenant**

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

**Tenant Representative**

Hasmik Geghamyan  
1736 Franklin Street Suite 400  
Oakland, CA 94612

**Tenant Representative**

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

**Owner**

John Protopassas  
Madison Park Financial  
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

**Tenant**

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

**Tenant Representative**

Leah Hess  
Law Office of Leah Hess  
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**Owner**

Vulcan Lofts LLC & Vulcan Loft's Management  
Company  
155 Grand Avenue Suite 950  
Oakland, CA 94612

**Tenant**

Helena Martin  
4401 San Leandro Street #2  
Oakland, CA 94601

**Tenant Representative**

Hasmik Geghamyan  
Geghamyan Law Office  
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[geghamyanlaw@gmail.com](mailto:geghamyanlaw@gmail.com)

**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

**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

**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



## MEMORANDUM

**Date:** August 21, 2023

**To:** Members of the Housing, Rent Residential & Relocation Board (HRRRB)

**From:** Kent Qian, Deputy City Attorney

**Re:** Appeal Recommendation in L19-0013 et al., Vulcan Lofts , LLC v. Tenants

**Appeal Hearing Date:** August 24, 2023

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Property Address: 4401 San Leandro Street, Oakland, CA

### **BACKGROUND**

From August 2018 to October 2018, tenants in various units of the property (Vulcan Lofts) filed petitions challenging rent increases and alleging decreased housing services. They also contest exemption from the Rent Adjustment Ordinance on the basis of fraud or mistake. A prior ruling from the Rent Board concluded that four units of the property were exempt from the Rent Adjustment Ordinance on the basis of new construction. One tenant appealed that ruling, and the California Court of Appeal upheld the Rent Board's ruling in 2009 in *Vidor v. City of Oakland*.

On November 27, 2018, the owner filed a petition seeking a certificate of exemption on the basis of new construction for units located at 4401 San Leandro Street. Tenants, some represented by counsel, filed responses contesting the exemption claims. The tenants mainly argue that the ordinance does not grant exemptions to properties where there were residential use prior to the issuance of certificate of occupancy, and residential use existed before issuance of certificate of occupancy in 1987.

The tenant petitions and owner petition were consolidated for hearing.

## **RULING ON THE CASE**

On April 30, 2023, the Hearing Officer issued a Hearing Decision granting the owner petition and dismissing the tenant petitions. The Hearing Officer found that 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 in 1985. The Hearing Officer also found that the residential occupancy started at the property after the purchase in 1985, and a Certificate of Occupancy issued by the City for the residential use of the property was finalized on October 12, 1987.

From these findings, the hearing decision concluded that the owner met its 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.

## **GROUNDINGS FOR APPEAL**

On June 7, 2023, the tenants appealed the Hearing Decision. The tenants argue that:

1. The hearing officer failed to address the primary legal question of whether any residential use prior to the issuance of certificate of occupancy counts as prior residential use for the purpose of the new construction exemption, or if only residential use before January 1, 1983 mattered.
2. Because exemptions are narrowly construed, post-1983 residential use occurring before certificate of occupancy means that the units were not exempt as new construction under the Rent Adjustment Ordinance, and evidence in the record shows residential use since at least June 1986, before the certificate of occupancy was issued in 1987. This case is similar to *DaVinci* where the court held that even though the ordinance did not have a provision barring exemption for units that had previously used residentially, the court agreed with the San Francisco's Rent Board's conclusion that the legalizing existing residential units did not qualify for exemption.
3. *Vidor v. City of Oakland* does not control here because that decision only applied to four units on the property, and the exemption decision can be overturned upon a showing of fraud or mistake.

The owner submitted a response, contending that:

1. Unlike San Francisco's law interpreted in *DaVinci*, Oakland law does not expressly provide that any residential use prior to the issuance of certificate of occupancy vitiates an exemption claim based on new construction. For residential use to preclude a new construction exemption, the residential use must have occurred prior to January 1, 1983.

2. Past cases holding that Vulcan Lofts units were exempt should be given deference.

### **ISSUES**

1. If a unit receives a Certificate of Occupancy on or after January 1, 1983, as result of being created from conversion from existing building space, does the unit qualify for the new construction exemption so long as the former space was not used residentially (a) prior to January 1, 1983, or (b) prior to conversion?
2. Did the Hearing Decision adequately connect the findings to the ultimate conclusion that the property was exempt?

### **APPLICABLE LAW AND PAST BOARD DECISIONS**

- I. O.M.C. Section 8.22.030.A.5
  - A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this Chapter, Article I only (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article II)) have different exemptions):

...

5. Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. This exemption does not apply to a vehicular residential facility, or any newly constructed dwelling units that replace covered units withdrawn from the rental market in accordance with O.M.C. 8.22.400, et seq. (Ellis Act Ordinance). 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.

- II. Vidor v. City of Oakland, 2009 WL 3182549 (Cal. Ct. App. Oct. 6, 2009)

In *Vidor v. City of Oakland*, Vidor's petition and similar petitions from other tenants that altogether comprised of four units in Building C of the subject property challenged rent increases. The primary issue was whether the units were exempt as newly constructed. The tenants submitted evidence that a building permit was submitted by Peter Smith in April 1987 which proposed work in an "existing live-work studio." The hearing officer concluded that the property was exempt because the landlord had applied for building permits in 1985 and made a finding that it was more likely than not that a Certificates of Occupancy were issued for the units in question, and a finalized permit was the legal equivalent of a certificate of occupancy. T05-0110, etc., Peacock, Vidor, Mignaud & Cotton-Burnett v. Vulcan Props. LP. The Rent Board upheld the hearing decision.

Tenant Vidor appealed the decision to the superior court and finally to the California Court of Appeal, and the Court of Appeal affirmed the Rent Board's decision. The relevant portion of the court's opinion on prior residential use is below:

As to prior nonresidential use, Vidor argues the hearing officer's conclusion was flawed because it was inconsistent with a document he submitted that showed on April 13, 1987, a tenant at the property named Peter Smith filed an application for a building permit to perform work on an "existing live-work studio." The evidence Vidor cites does support an inference that on some date prior to April 1987 the property may have been used for residential purposes. But that is of no consequence. Evidence of residential use prior to April 1987 does not defeat the trial court's conclusion that the property was entirely nonresidential before it was purchased and renovated by Vulcan in December 1985. Again, the hearing officer's conclusion is supported by substantial evidence even though there is other evidence in the record that might have supported a different result.

*Vidor*. 2009 WL 3182549, at \*4. Because *Vidor* is an unpublished case from the California Court of Appeal, it may not be cited as precedent in court.

III. T18-0372 et al., Armory et al. v. Green Sage (Feb. 24, 2022)

In this case, the hearing officer decided that the property was exempt on the basis of new construction because a Certificate of Occupancy was issued in 2011, and there was no evidence of residential use prior to January 1, 1983. On February 24, 2022, the Board remanded the hearing decision in part for reevaluation in light of the lack of temporal limitation on residential use prior to conversion.

IV. Da Vinci Group v. S.F. Residential Rent Stabilization & Arbitration Board, 5 Cal. App. 4th 24 (1992).

The *Da Vinci* court found renovated units to be within the coverage of the San Francisco rent ordinance because the renovation was a conversion of existing residential space. In the case, a warehouse was used residentially as live/work units without a certificate of occupancy and in an unpermitted manner since 1980. After the owner was cited for the illegal conversion of the warehouse to apartments in 1981 and then applied to legally convert the units to bring them into code compliance, the owner received a certificate of occupancy in 1986. The San Francisco Rent Board passed a regulation that provided that converted warehouses satisfy the new construction exemption only if there has been no residential use since the enactment of the rent ordinance in 1979. The court opined, quoting the SF Rent Board, that "[c]onversion through the permit process of illegal units to legal units by landlords who allowed the illegal residential use in the first place" cannot be used as a tool to defeat the purpose of the SF Rent Ordinance. *Id* at 30.

While *Da Vinci* is primarily about whether or not an agency's interpretive regulations of an ordinance exceeded their permissible scope, the Court's reasoning that the Board's efforts furthered those of the legislature addressed the purpose in general of a rent stabilization exemption for new construction. In interpreting San Francisco's ordinance, which centers on the date of issuance of a certificate of occupancy, the Court reasoned, "The Board's original and consistent determination that this exemption includes only "newly constructed" rental units is worthy of judicial deference because it comports with the Ordinance's major goal of easing the housing shortage by encouraging creation of new residential rental units where there were none before. 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.* The Court further reasoned, "While restructuring a nonresidential warehouse for live-work use creates new residential units, i.e., additional housing, remodeling a warehouse already inhabited, albeit illegally, by residential tenants does not." *Id.*

### **RECOMMENDED OUTCOME**

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, Armory et al. v. Green Sage that there is no temporal limitation on residential use prior to conversion.