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

PEOPLE OF THE STATE OF NEW YORK, by BARBARA D. UNDERWOOD, Attorney General of the State of New York, Petitioner, - against - RAM COHEN, ELDAD COHEN, ERC HOLDING, LLC, Respondents.	**VERIFIED PETITION** Index No. IAS Part

The People of the State of New York, by their attorney Barbara D. Underwood, Attorney General of the State of New York, as and for her Petition, respectfully allege:

1. Brothers Ram Cohen and Eldad Cohen—New York City landlords and real estate developers— engaged in a years-long scheme of fraud and illegality in the course of developing and managing the residential apartment building located at 71-44 160th Street, in Fresh Meadows, Queens ("the Building"). The Cohens' scheme included, inter alia: misrepresenting to the New York City Department of Housing Preservation and Development ("HPD") that the Building was a condominium in order to receive a property tax abatement; deceiving regulating agencies about the rents charged and leases issued to tenants; increasing their profits by holding out false rents for the apartments to the eventual purchaser of the Building; and repeatedly and persistently defrauding their tenants and third parties.

2. The Attorney General began conducting an investigation into Ram and Eldad Cohen, and their company ERC Holding, LLC (collectively, "Respondents") in 2016, after learning that they had violated the rules governing the property tax exemption program under

Section 421-a of the N.Y. Real Property Tax Law ("421-a exemption") by illegally and fraudulently renting out apartments at the Building without affording tenants the protections of Rent Stabilization.[1] After taking testimony of five witnesses and reviewing thousands of documents, the Office of the Attorney General ("OAG") has concluded that, between 2009 and continuing through December 2015, Respondents illegally avoided $479,666.99 in property taxes under the 421-a program. The OAG has further determined that Respondents created fake leases to deceive government agencies and third parties, so as to perpetuate their fraudulent scheme, then illegally evicted tenants in violation of Rent Stabilization regulations and the Martin Act. The OAG has also determined that Respondents repeatedly violated New York security deposit laws by intermingling security deposits with their own funds.

3. The OAG has additionally discovered in the course of its investigation that Ram and Eldad Cohen have engaged in persistent fraud to avoid tax obligations and other legal obligations as employers. They have created a shell corporation called CMYF Corp. in the name of the Cohens' employee, David Medrano, which they use to pay wages to Mr. Medrano and Respondents' other employees. This scheme continues to this day.

4. Respondents' many violations of City and State law include the following:

a. Violation of the rules governing the 421-a tax exemption pursuant to Section 421-a of the N.Y. Real Property Tax Law, 28 R.C.N.Y. § 6-02(g)(2), § 6-05(d)(1)(iii)(A), by misrepresenting that the building was a condominium and failing to comply with Rent Stabilization;

b. Violation of Rent Stabilization laws and regulations, Rent Stabilization Law § 26-517, Rent Stabilization Code, 9 N.Y.C.R.R. § 2521.1(g), §

[1] The term "Rent Stabilization" is used in this petition to refer to the system of rent regulation enacted in 1969 governing tenancies in multi-family New York City buildings, generally of six or more units.

2522.5(a), (b), (c), § 2524.1, by failing to register rents with the New York State Division of Housing and Community Renewal ("DHCR"), giving tenants unregulated leases, listing illegal rents on those leases, and terminating tenancies without cause;

c. Deceptive business practices, N.Y. General Business Law § 349, by compelling tenants to sign false and illegal leases, deceiving tenants about the legal regulated rents for their apartments and about their rights, and deceiving the purchaser of 71-44 160th Street about the rent roll for the Building;

d. Fraud, N.Y. Executive Law § 63(12) by repeatedly misrepresenting the rent roll for the Building to the purchaser, and State and City agencies, by providing false leases to State and City agencies, including the Office of the Attorney General, misrepresenting to tenants the terms of their tenancies and their tenancy rights, and by deceiving third parties about the employment relationship between Respondents and their employees through the use of a shell corporation;

e. Violations of security deposit laws, 9 N.Y.C.R.R. § 2525.4, N.Y. General Obligations Law § 7-103, by repeatedly failing to place tenants' security deposits in trust accounts, and comingling tenants' security deposits with Respondents' general funds; and

f. Violations of the Martin Act, N.Y. General Business Law § 352-eeee, by causing tenants to surrender their tenancies after an offering plan was submitted to the OAG for conversion of the building to a

condominium and by engaging in tenant harassment as defined under the Martin Act.

PARTIES

5. Petitioner is the People of the State of New York, by its attorney, Barbara D. Underwood, the Attorney General of the State of New York.

6. Respondent Eldad Cohen is an individual residing in and conducting business in New York City.

7. Respondent Ram Cohen is an individual residing in Massachusetts and conducting business in New York City. He owns, uses, and possesses real property in New York City.

8. Respondent ERC Holding, LLC is a domestic company with its principal office and place of business in New York City, from which it has transacted business at all times mentioned herein. From April 4, 2006 to January 12, 2016, ERC Holding, LLC was the sole owner of the real property located at 71-44 160th Street, Queens, New York. Ram Cohen is a manager of ERC Holding, LLC, and his company RC Funding, LLC, is a member. From 2005 to 2009 both Eldad Cohen and Ram Cohen were managers and members of ERC Holding, LLC.

JURISDICTION AND VENUE

9. The Attorney General brings this action on behalf of the People of the State of New York under the New York State Executive Law, General Business Law, and General Obligations Law.

10. Under the Executive Law, the Attorney General is authorized to bring a special proceeding in this Court seeking injunctive relief, restitution, damages, disgorgement, and costs on behalf of the People of the State of New York "[w]henever any person shall engage in

repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business." N.Y. Exec. Law § 63(12).

11. Under the General Business Law, the Attorney General is authorized to bring a special proceeding in this Court seeking injunctive relief and restitution on behalf of the People of the State of New York "[w]henever . . . any person, firm, corporation or association or agent or employee thereof has engaged in or is about to engage in" any deceptive acts or practices in the conduct of business. N.Y. Gen. Bus. Law § 349.

12. Under the Martin Act, codified in the General Business Law, the Attorney General is authorized to bring a special proceeding in this Court seeking injunctive relief, restitution, damages, disgorgement, penalties and costs on behalf of the People of the State of New York "[w]henever . . . any person, partnership, corporation, company, trust or association has engaged in . . fraudulent practices." N.Y. Gen. Bus. Law § 353(1).

13. Under the General Obligations Law, the Attorney General is authorized to bring a special proceeding in this Court seeking injunctive relief and costs in the name of the People of the State of New York "[i]f it appears . . . that any person, association, or corporation has violated or is violating any of the provisions" of Title 1 of the General Obligations Law, which governs money deposited as security to be held in trust. N.Y. Gen. Obl. Law § 7-109.

14. Petitioner has served Respondents with a pre-litigation notice as required by General Business Law § 349(c).

15. Venue is properly laid in New York County because the Attorney General has her principal office in New York County.

16. The Court may exercise personal jurisdiction over Respondent Eldad Cohen because he resides in New York City.

17. The Court may exercise personal jurisdiction over Respondent Ram Cohen because he transacts business in New York City and because he owns, uses, and possesses real property situated within New York City.

18. The Court May exercise personal jurisdiction over ERC Holding, LLC because it is a domestic corporation with its principal office and place of business in New York City.

INVESTIGATION

19. In 2016 the Attorney General began investigating ERC Holding, LLC, the owner of the Building and the sponsor of two condominium offering plans that had been submitted to the OAG. Ram and Eldad Cohen are principals of ERC Holding, LLC.

20. The OAG had had concerns about the Building since 2014, when the OAG learned that Respondents had been receiving a 421-a tax exemption and had represented to HPD that the Building was a condominium when, in fact, it was a rental. The OAG further learned that Respondents had never registered the apartments in the Building with the DHCR, as required by the 421-a rules. The OAG had, in 2014, directed Respondents to comply with the rules governing the 421-a tax exemption program, and Respondents represented that they would.

21. On February 26, 2016, the OAG received a complaint from the last remaining tenant in the Building, alleging that the new owner was telling him he had to move. After receiving this complaint, and conducting an investigation, the OAG learned that Respondents had not complied with the rules governing the 421-a tax exemption program notwithstanding their commitment two years earlier. Although Respondents pretended to get into compliance with the program, in fact they continued to perpetrate their fraudulent scheme.

22. For example, Respondents submitted rent registrations to the DHCR; however, those registrations listed illegal and falsely inflated rents for each unit in the Building. In

addition, Respondents forced tenants to execute leases that purported to extend Rent Stabilization benefits to the tenants; however, these leases also listed illegal, inflated rents, and their terms did not comply with the Rent Stabilization Code. Further, throughout the year in 2015, Respondents told tenants living in the Building that they had to vacate and surrender their apartments because the Building was being sold. This caused all but one tenant to vacate before the sale of the Building in January 2016.

23. Subsequent investigation into ERC Holding, LLC confirmed that Respondents were collecting far less than the monthly rents listed on the leases provided to the OAG and registered with the DHCR. Interviews with former tenants in the Building also confirmed that the rents listed on the leases provided to the OAG and registered with the DHCR were not the actual rents that had been paid by the tenants.

24. Pursuant to General Business Law § 352 and Executive Law § 63(12), in 2017 the Attorney General issued a subpoena for documents from ERC Holding, LLC and subpoenas for the testimony of Ram Cohen and Eldad Cohen.

25. Respondents produced responsive documents to the OAG on June 16, 2017, June 29, 2017, and March 5, 2018. Respondent Ram Cohen submitted an affidavit with each production swearing that the productions and responses submitted to the OAG were complete and correct to this best of his knowledge, and that no responsive documents or information were withheld.

26. The OAG reviewed the documentary evidence produced by Respondents and obtained from other sources, including but not limited to business records, public records, submissions to City and State agencies, and financial records. The OAG also issued subpoenas

to and took sworn testimony from the following additional witnesses: David Medrano, Rene Medrano, and Sharon Mohammed.

27. The Attorney General's investigation revealed that Respondents engaged in repeated and persistent illegal and fraudulent conduct in the course of owning, managing, and selling the Building, and that they have fraudulently created a company in the name of their employee David Medrano to deceive third parties about the employment relationship between Respondents and their employees.

28. The Attorney General instituted this proceeding to obtain injunctions directing Respondents to cease their illegal and fraudulent behavior, prohibiting Respondents from engaging in any securities-related business or activity and from offering for sale to the public within the State any securities constituting participation interests or investments in real estate in New York, and prohibiting Respondents from directly or indirectly engaging in any business or activity related to real estate development, real estate finance, construction, property development, or the transaction of interest in real estate in New York. The Attorney General additionally seeks disgorgement of all property taxes Respondents illegally avoided and profits realized from the sale of the building, statutory penalties, and all other and further relief that the Court deems proper.

FACTUAL ALLEGATIONS

Background

29. Respondents Ram Cohen and Eldad Cohen formed ERC Holding, LLC in 2005 for the purpose of developing the property at 71-44 160th Street, Fresh Meadows, New York into a condominium. For approximately three years, between 2006 and 2009, they supervised construction of a 10-unit building on the property.

30. In 2006, Respondents applied to HPD for a 421-a tax exemption. The program as it existed at the time granted 15-year property tax exemptions to owners of new construction multiple dwellings, both rentals and condominiums, in certain New York City neighborhoods. When such multiple dwellings are rentals, the owner is required to keep the rentals affordable by complying with Rent Stabilization regulations, including setting a legal regulated rent which can only be increased as provided in the regulations, affording tenants the right to periodic lease renewals, and including lease terms that give tenants additional protections.

31. Respondents represented to HPD in 2006 that the Building was to be a condominium. On November 13, 2008, HPD issued a Preliminary Certificate of Eligibility for the 421-a program based upon the representations in the application.

32. In 2007, while construction was ongoing, Respondents submitted to the OAG an offering plan for the Building, which they called Meadows Tower Condominium, in order to begin the process of selling the Building's apartments. Under Section 352-e of the General Business Law, developers are required to submit an offering plan to the OAG before selling interests in real estate, such as units in a condominium.

33. In January 2008, the OAG accepted the Meadows Tower Condominium offering plan for filing, which enabled Respondents to establish the condominium and begin selling units.

34. Respondents declared the Meadows Tower Condominium offering plan effective in August 2008, meaning that Respondents had represented that they had entered into contracts of sale for at least fifteen percent of units in the Building. However, Respondents never made any sales. Respondent ERC Holding, LLC held title to the Building exclusively until the sale of the entire property in 2016. As discussed in greater detail below, the Building, therefore, was never "owned as a condominium" under the Rent Stabilization Code, and, accordingly,

Respondents were required by the 421-a program rules to comply with Rent Stabilization when renting apartments.

35. Instead of selling the apartments as condominium units, Respondents rented them to tenants beginning in August 2009. This act alone was a violation of OAG regulations because there had been no sales of any units to outside purchasers.

36. Respondents provided tenants with unregulated leases entitled "Lease of Condominium Unit." These leases explicitly provided by rider that "the Tenant has no Rent Stabilization or Rent Control rights."

37. On September 3, 2009, Respondents applied to HPD for a final Certificate of Eligibility for the 421-a exemption, in which Respondents represented that construction of the Building was complete, and willfully misrepresented that "[a]ll information previously submitted [to HPD] remains true and accurate," and that "[a]ll the units in the above building/s will be registered with the NYS Division of Housing and Community Renewal as they become occupied." Despite the fact that none of these representations were truthful, Respondents' certification provided the basis for Respondents' continuing receipt of 421-a tax exemption for 15 years.

38. In 2011, after Respondents had rented all remaining apartments to tenants using unregulated leases, Respondents submitted to HPD a revised application for a final Certificate of Eligibility and again willfully misrepresented that "[a]ll information previously submitted [to HPD] remains true and accurate," which, of course, included the claim that the Building was a condominium. Nowhere did Respondents disclose that the Building was operating as a rental. Respondents did not provide evidence that they had registered the units in the Building with the DHCR because, indeed, they had not done so.

39. On October 5, 2011, HPD issued a Final Certificate of Eligibility for the tax exemption. Having received no information about the true status of the Building, HPD noted on the Certificate that the building was a condominium.

40. The New York City Department of Finance credited Respondents a total of $479,666.99 in property tax exemptions between 2006 and 2015 under the 421-a tax exemption program.

Respondents Required That Tenants Execute Illegal Leases from 2009 to 2014

41. All of the leases issued to tenants in the Building between 2009 and 2014 failed to comply with the Rent Stabilization Law and Rent Stabilization Code.

42. During this time period, Respondents offered tenants of the Building at least 15 unregulated leases entitled "Lease of a Condominium Unit" that were for terms of one year, renewable at Respondents' option. The leases stated in several places that Respondents could terminate the tenancies at their discretion after notice to the tenants. The leases provided that tenants were required to vacate the apartment at the end of the lease. Riders attached to the leases provided that the tenancies were not subject to rent stabilization or rent control.

43. Every lease that Respondents issued to tenants between 2009 and 2014 also listed an illegal rent. As the Rent Stabilization Code sets the "initial legal regulated rent" for units in Buildings receiving the 421-a exemption at the "initial adjusted monthly rent charged and paid," 9 N.Y.C.R.R. § 2521.1(g), the rents that the first tenants of the Building were actually charged paid became as the legal regulated rents for such units as a matter of law. These initial legal regulated rents set the baseline for all subsequent rent adjustments for each unit.

44. Rather than listing the initial legal regulated rent on each lease, Respondents' scheme was to list an inflated rent on the first page of each lease and simultaneously issue a lease

rider to each tenant which set a lower rent. While this practice of reserving a "preferential rent," or lower rent, is legal in the context of some rent-stabilized and unregulated tenancies, it was illegal here because 9 N.Y.C.R.R. § 2521.1(g) explicitly sets the legal rent at the adjusted rent charged and paid by the tenant.

45. Respondents knew that the lease riders were illegal, and so they kept them secret. They did not disclose the existence of the lease riders setting lower rents to HPD, the OAG, or the DHCR; and Respondents did not provide these riders to Hudson Valley Bank to secure a $1,900,000 construction loan in 2010.

46. In the case of Apartment 2A, Respondents set an inflated rent on the first page of the lease at $2,100 per month. Respondents also executed a lease rider with the tenant, entitled "Attachment A," which provided that the tenant would be credited $600 each month, for a total actual rent of $1,500. The tenant was charged and paid $1,500 per month. The tenant was never charged nor paid $2,100 to Respondents in any given month. Therefore, $1,500 was the initial legal regulated rent for Apartment 2A.

47. In the case of Apartment 2B, Respondents asked the tenant to sign a 2009 lease for an inflated rent of $2,100, but then they had him execute an additional agreement for a lower rent of $1,500. Eldad Cohen told this tenant that the inflated rent was "for some paperwork that they needed," but that his rent would stay $1,500. The tenant was charged and paid $1,500 per month for his entire tenancy in Apartment 2B. Therefore, $1,500 was the initial legal regulated rent for Apartment 2B.

48. The first lease for Apartment 3B set the rent at $2,100 per month on its first page; however, that was not the initial legal regulated rent, as the first tenants were charged and paid

$1,550. Respondents executed a secret rider which provided that the tenants would pay $1,550 per month.

49. When a new tenant later occupied Apartment 3B, Respondents set an inflated rent on the first page of a 2012 lease of $2,100 per month. Respondents also executed a secret rider which provided that the tenant would be credited $525 each month, for a total actual rent of $1,575. The tenant was charged and paid $1,575 per month. The tenant was never charged nor paid $2,100 to Respondents in any given month.

50. The first lease for Apartment 1B set the rent at $2,200 per month on its first page; however, that was not the initial legal regulated rent, as the first tenants were charged and paid $1,800. Respondents executed a secret rider which provided that the tenants would pay $1,800 per month.

51. The first lease for Apartment 3A set the rent at $2,100 per month on its first page; however, that was not the initial legal regulated rent, as the first tenants were charged and paid $1,500. Respondents executed a secret rider which provided that the tenants would pay $1,500 per month.

52. The first lease for Apartment 4A set the rent at $2,100 per month on its first page; however, that was not the initial legal regulated rent, as the first tenants were charged and paid $1,650. Respondents executed a secret rider which provided that the tenants would pay $1,650 per month.

53. In 2011, Respondents agreed to further reduce the rent for Apartment 4A to $900 so that the tenants could qualify for the Family Eviction Prevention Supplement, a Public Assistance rent subsidy administered by the New York City Human Resources Administration ("HRA"). Respondents continued charging and accepting this lower rent until 2014, and over

the years accepted a total of $23,625 in rent subsidies from HRA. In November 2013, in order to continue receiving this subsidy, Ram Cohen wrote to HRA that the tenants' "monthly rent is nine hundred dollars ($900.00).

54. Just three months before making this representation to HRA, in August 2013, Ram Cohen had falsely represented in an affidavit submitted to the OAG that the monthly rent for Apartment 4A was $2,100.

55. The first lease for Apartment 4B set the rent at $2,200 per month on its first page; however, that was not the initial legal regulated rent, as the first tenant was charged and paid $1,550. Respondents executed a secret rider which provided that the tenant would pay $1,550 per month.

56. The first lease for Apartment 5A set the rent at $2,050 per month on its first page; however, that was not the initial legal regulated rent, as the first tenants were charged and paid $1,250. Respondents executed a secret rider which provided that the tenants would pay $1,250 per month.

57. The first lease for Apartment 5B set the rent at $2,050 per month on its first page; however, that was not the initial legal regulated rent, as the first tenant was charged and paid $1,300. Respondents executed a secret rider which provided that the tenant would pay $1,300 per month.

58. Sharon Mohammed, an employee of Respondents who worked in the Building and performed clerical work related to the Building and other businesses of Respondents, confirms that all of the unregulated leases offered to tenants came with a rider setting a lower rent than that listed on the first page of the lease. Respondents Eldad Cohen and Ram Cohen did not rebut this statement in their sworn testimony before the OAG.

59. Respondents uniformly collected a security deposit that was equivalent to the lower, actual monthly rent paid. Sharon Mohammed has testified that, for all tenants in the building, the amount for the security deposit listed on the first page of the unregulated lease was the actual rent that was paid. Indeed, the first month's rent paid by tenants always matched the security deposit paid.

60. The scheme of listing inflated rents on the first pages of the leases, while giving tenants a secret rider memorializing a lower rent, was perpetuated to make it appear to lenders, prospective purchasers, and others that the building carried a greater rent roll than it did. This repeated practice not only enabled Respondents to evade the requirements of the Rent Stabilization Code, but was critical to Respondents' fraudulent scheme.

Respondents Failed to Register the Building's Apartments with the DHCR

61. Between 2009 and June 2014, while Respondents were receiving 421-a tax exemption and renting out units using the scheme described above, they did not register or attempt to register the units as rent-stabilized with the DHCR, as required by Rent Stabilization Law § 26-517.

Respondents Failed to Notify Tenants of the Bank Holding Their Security Deposits and Illegally Intermingled Security Deposits with Their Own Funds

62. The unregulated leases executed between 2009 and 2014 listed the security deposits received by Respondents from each tenant and provided on page 1, paragraph 6 of each lease that such security was deposited in a bank, the name and address of which would be provided to the tenant. In fact, Respondents never notified tenants where their security deposits were held.

63. Eldad Cohen said in sworn testimony before the OAG that he gave all the security deposits collected from tenants to Ram Cohen and that he did not remember what happened to them.

64. Ram Cohen testified that, contrary to paragraph 6 of the lease, he held the security deposits in ERC Holding LLC's accounts to be applied as a last month's rent. Account records, however, confirm that tenants had the practice of paying both last month's rent and security at the inception of their tenancies, and that they earmarked their payments to distinguish the security from the last month's rent. Nevertheless, Respondents regularly deposited both security and last month's rent in the same ERC Holding, LLC account.

65. When tenants sought return of their deposits, Respondents refunded them ad hoc from the businesses' various bank accounts. Sharon Mohammed recalled the case of one tenant in Apartment 4B who approached her seeking the return of a security deposit after moving out. This tenant had paid $1,600 for a security deposit. Ms. Mohammed recalled that "Eldad told me to tell [the tenant], come back on X day, and I think it was like two days after she left. She said she needed the money for something, and he g[a]ve it to her." Bank records show that Respondents refunded to this tenant $1,600 in security from ERC Holding LLC's business account on August 31, 2015.

66. In another instance, Respondents returned the $1,650 security deposit tenant S. Mehrinejad had made for Apartment 3A by writing a check from an ERC Holding checking account on August 5, 2013. This was the exact amount deposited into ERC Holding LLC's account on September 28, 2012 and earmarked for security.

67. Respondents never issued any notice, letter, or statement informing tenants of the financial institution holding their security deposits or the amount of deposit.

68. Respondents never refunded to tenants the accrued interest on their security deposits.

Respondents Force Tenants in the Building to Sign Leases with Inflated Rents

69. In or around August and September 2014, the OAG confronted Respondents with the fact that they had been receiving the 421-a tax exemption without complying with 421-a rules. In order to continue their fraudulent scheme, Respondents made some superficial gestures to make it appear that they were treating tenants as rent-stabilized.

70. Beginning in 2014, Respondents issued knew leases that gave the appearance of being compliant with Rent Stabilization but were, in fact, illegal. Although the leases recited the protections afforded by Rent Stabilization, they misrepresented the legal regulated rent for each unit and failed to give the tenants the option of a one- or two-year term. Instead of listing the legal regulated rent under 9 N.Y.C.R.R. § 2521.1(g), Respondents continued their practice of listing an inflated, illegal rent on the first page of each lease. Instead of giving the tenants an option of a one- or two-year lease, as they were required to do pursuant to 9 N.Y.C.R.R. § 2522.5(a), Respondents offered only the option of a one-year lease.

71. Two of the leases offered to tenants in 2014, those for Apartment 3B and Apartment 4B, were never executed. Respondents' counsel informed the OAG that the reason they were unexecuted was both that the two units were vacant as of September 2014 and that "the tenant is still contemplating occupancy." In fact, neither representation by counsel was true.

72. One of the units subject to this representation was Apartment 3B. S. Turgeman was residing in Apartment 3B pursuant to a lease and rider setting the rent at $1,575. The apartment was not vacant in September 2014, as counsel represented to the OAG. Indeed, in February 2015, Respondent ERC Holdings, LLC commenced a summary proceeding seeking the

tenant's eviction for unpaid rent and alleging occupancy since 2011 and a monthly rent of $1,575 pursuant to a lease rider.

73. In the case of Apartment 4B, the other unit subject to this representation, the unsigned lease submitted to the OAG ran from September 1, 2014 through August 31, 2015 and stated that the monthly legal regulated rent was $2,200. In fact, Y. Cho paid $1,600 per month and the legal regulated rent for the unit was only $1,550 per month, because it had never been legally increased from the initial legal regulated rent in 2009. Moreover, the apartment was not vacant in September 2014, as counsel represented to the OAG. Y. Cho stayed in occupancy until August 2015, when Respondents refunded the security deposit he had made and that they had illegally intermingled with their own funds.

74. All leases offered to tenants in 2014 uniformly listed the false, inflated rent that Respondents had listed on previous leases. None of the 2014 leases listed the true, legal regulated rent of the units discussed above, and none of them reflected the actual rent tenants were charged and were paying. Instead, those tenants that did sign the rent-stabilized lease forms maintained side deals with Respondents where Respondents agreed to charge and accept the lower rent that tenants had been paying all along.

75. For example, Rene Medrano, Respondents' employee who was living in 1B in 2014, signed a lease in 2014 agreeing to an inflated rent of $2,200. Rene Medrano knew, however, that the rent set by Respondents was really $1,750, because Eldad Cohen explicitly told him that he would "pay one thing, but the contract will say another [rent]."

76. A similar side deal existed with Apartment 5B. In December 2014, just three months after the tenant signed a false lease listing a rent of $2,050, the tenant paid his actual rent of $1,350 as usual.

77. Sharon Mohammed, Respondents' employee who filled in the rent-stabilized lease forms pursuant to Eldad Cohen's instructions, recalled that Eldad Cohen instructed her to listed the higher, inflated rent on the rent-stabilized lease forms rather than the actual rent that the tenants were paying.

78. All leases offered to tenants in August and September 2014 failed to comply with 9 N.Y.C.R.R. § 2522(a)(1) because they failed to give tenants the option of a one- or two-year term. Rather, the leases were pre-filled to offer only a one-year lease term. Sharon Mohammed recalls that when she filled out the rent-stabilized lease forms in 2014 pursuant to Eldad Cohen's instructions, she offered only a one-year lease term.

79. Respondents' counsel submitted the fraudulent leases to the OAG in September 2014 and represented that they were in compliance with Rent Stabilization. In fact, all leases were sham leases designed to deceive the OAG so that it would "complete [its] investigation" of the matter. Eldad Cohen admitted in his sworn testimony before the OAG that Respondents prepared these leases and forced tenants to sign them under the impression that the only basis for offering such lease was an "order" from the Attorney General. He communicated to tenants that they must "cooperate[] and sign the new lease."

80. Even after 2014, Respondents continued their fraud by entering into at least one rider attached to a rent-stabilized lease. The April 2015 lease for Apartment 5B to A. Levy stated on the first page that it was a rent-stabilized lease and that the monthly rent was $2,050 per month. Respondents, however, attached a rider to that lease entitled "Preferential Rent Rider" for Condominium Unit 5B. That rider set a lower rent of $1,400 per month. Respondents did not provide this rider to the OAG in response to its subpoena demand, and Respondents hid the existence of this rider from HPD and the DHCR.

81. This rider also noted that the tenant had paid a $1,400 security deposit. Indeed, the tenant made such payment by check, earmarked for security. Respondents did not deposit that check into its own interest-bearing account, and Respondents did not inform the tenant of the account holding his security deposit.

Respondents File Multiple False Rent Registrations with the DHCR beginning in 2014 and continuing in 2015 and Submit a False Affidavit to HPD to Continue Receiving the 421-a Tax Exemption

82. In July 2014, after the OAG directed Respondents to get into compliance with the 421-a exemption program and Rent Stabilization, Respondents submitted initial rent registrations to the DHCR for the years 2010 through 2014. These registrations were fraudulent because they misrepresented the legal regulated rents for all units in the Building. Moreover, these registrations were submitted to DHCR without Respondents offering current tenants leases that complied with Rent Stabilization.

83. For example, Respondents represented to the DHCR that the legal regulated rent for Apartment 2A was $2,100 in 2009. Respondents did not indicate that there was a lower rent paid. Indeed, as discussed in paragraph 46, supra, the tenant of Apartment 2A had a rent rider setting his rent at $1,500 per month. Under 9 N.Y.C.R.R. § 2521.1(g), $1,500 was the legal regulated rent, yet Respondents hid that fact from the DHCR. Respondents similarly inflated the legal regulated rents for the years 2010 through 2015. Any rent increases should have been based on the initial legal regulated rent of $1,500 per month.

84. Similarly, in July 2014 Respondents represented to the DHCR that the legal regulated rent for Apartment 2B was $2,100 per month pursuant to a lease beginning 8/1/09 and ending 7/31/10. Respondents did not indicate that there was a lower preferential rent or actual rent paid. Indeed, as discussed in paragraph 47, supra, the tenant of Apartment 2B paid $1,500

per month. Under 9 N.Y.C.R.R. § 2521.1(g), $1,500 was the legal regulated rent, yet Respondents hid that fact from the DHCR. Respondents similarly inflated the legal regulated rents for the years 2010 through 2015. Any rent increases should have been based on the initial legal regulated rent of $1,500 per month.

85. Respondents represented to the DHCR that the legal regulated rent for Apartment 4A was $2,100 per month. The year before, Ram Cohen had also sworn in an affidavit submitted to the OAG that the tenant's monthly rent was $2,100. The affidavit noted that the rent regulated status for all apartments in the Building was "None."

86. In November 2013, however, in order to continue receiving the FEPS rent subsidy, Respondent Ram Cohen wrote to HRA that the tenants' "monthly rent is nine hundred dollars ($900.00)." Bank records confirm that Respondents did not charge any more than $900 per month for Apartment 4A from 2011 to 2014.

87. The rent registrations that Respondents filed with the DHCR in 2014 uniformly and for all apartments listed a false, inflated rent rather than the actual legal regulated rent.

88. In June 2015, Respondent Ram Cohen submitted a false affidavit to HPD in order to continue receiving the 421-a tax exemption. In this affidavit, Ram Cohen swore that Respondents had "charged" the inflated rents that had been registered with the DHCR retroactively from April 1, 2009, and continuing until April 1, 2015. Respondent Ram Cohen enclosed a chart that mirrored the rents registered with DHCR for 2011 to 2014, claimed that Respondents had charged tenants the higher, inflated rents registered with DHCR, and failed to disclose the lower legal rents that the tenants had been charged and paying all along. This affidavit did not disclose that Respondents had represented to HRA that the tenants of 4A had a monthly rent of $900 from 2011 to 2014.

89. Ram Cohen also falsely swore in this affidavit that "the tenants were provided rent-stabilized leases." In fact, it was not until around August or September 2014 that Respondents began offering tenants leases that were drawn on a form which recited the protections afforded by Rent Stabilization; but, even then, as discussed above, such leases were illegal.

90. In July 2015, Respondents submitted an annual rent registration to the DHCR. This registration, like the 2014 registration, falsely listed inflated rents as the legal regulated rents. In addition, this registration falsely represented that there were leases in effect for some apartments which did not have leases. For example, the registration stated that the tenants of 3B and 4B had leases in effect that ran from September 1, 2014 through August 31, 2015. In fact, as discussed above, the tenants never signed those leases. Further, the registration falsely represented that Unit 5B was vacant when, in fact, Respondents had executed a lease with A. Levy starting in April 2015. A. Levy was still occupying that apartment and paying a $1,400 monthly rent in July 2015.

After Submitting an Offering Plan for Condominium Conversion, Respondents Illegally Pressure Tenants to Surrender and Vacate their Apartments

91. In May 2015, after falsely representing to the OAG and DHCR that they had come into compliance with Rent Stabilization, Respondents submitted to the OAG a new proposed offering plan for the Building to be converted to a condominium under G.B.L. § 352-eeee.

92. While the 2007 offering plan for Meadows Tower Condominium was filed under 13 N.Y.C.R.R. Part 20, applicable to newly-constructed and vacant condominiums, the new offering plan was filed under 13 N.Y.C.R.R. Part 23, as an occupied property converting to condominium ownership. This provision contains additional protections for tenants in place.

93. The project was entitled Fresh Meadows Tower, and the sponsor of the offering plan was Respondent ERC Holding, LLC. The offering plan listed Respondent Ram Cohen as principal of ERC Holding, LLC. The plan was a non-eviction plan, meaning that tenants could not be evicted by reason of conversion to condominium ownership. The plan was eventually rejected by the OAG on April 14, 2016.

94. Before the plan was rejected, and pursuant to the requirements of the Martin Act, Respondents allegedly served all tenants with the offering plan on May 11, 2015. This action commenced the "red-herring period," which is the period between when tenants are notified of the conversion to condominium and before the plan is accepted for filing by the OAG, at which time sales can begin. OAG policy prohibits sponsors of such buildings from securing buyouts or other surrenders of rent-stabilized tenancies during the red-herring period until the offering plan is accepted by the OAG for filing. The Martin Act protects tenants in buildings undergoing conversion to condominium or cooperative ownership from harassment, deterioration of services, and threats of imminent eviction during the red-herring period and after.

95. As the plan was never accepted for filing, there was never a period during which Respondents could permissibly secure tenancy surrenders between May 2015 and April 2016, when the plan was rejected. Nevertheless, from May 2015 through January 2016, Respondents caused tenants of all units except Apartment 2A to vacate their apartments.

96. In June 2015, Respondents sent seven tenants in the Building renewal lease forms, which offered tenants the option of renewing their leases at inflated, illegal rents. These lease renewal offers were fraudulent, deceptive, and illegal because they demanded more than the legal regulated rent for each unit. Respondents used them as a mechanism by which to secure tenants' surrenders.

97. For example, Respondents offered David Medrano, their employee and the tenant of Apartment 2B, a renewal lease offering a one-year lease extension at $2,120 per month or a two-year lease extension at $2,157.75 per month. The legal regulated rent for this unit was actually $1,500 per month, as the initial legal regulated rent was $1,500 in 2009 under 9 N.Y.C.R.R. § 2521.1(g), and the rent was never legally increased between 2009 and 2015. Therefore, the proposed increase of $620 for a one-year leases and $675.75 for a two-year lease was illegal.

98. Eldad Cohen advised David Medrano that if he did not sign the renewal lease form offered to him, he had to leave. David Medrano testified under oath that he moved out of the Building because Eldad Cohen told him he had to leave.

99. The tenant of Apartment 4B also received a fraudulent, deceptive and illegal renewal lease. Although the legal regulated rent for Apartment 4B was $1,550 per month, as the initial legal regulated rent was $1,550 in 2009 under 9 N.Y.C.R.R. § 2521.1(g) and the rent was never legally increased between 2009 and 2015, the renewal lease form offered a one-year extension at $2,222 per month or a two-year extension at $2,260.50 per month. The tenant of 4B, who had been paying $1,600 per month in rent, was therefore faced with the choice of agreeing to a $622 rent increase or vacating the apartment. In August 2015 the tenant vacated.

Respondents Enter into a Contract to Sell the Building in September 2015 and Increase the Pressure on Tenants to Surrender and Vacate

100. On September 30, 2015—less than five months after allegedly serving the red herring on tenants—Respondents entered into a contract of sale with Vincent Wu to sell him the Building for $3,750,000. In this contract, Respondents promised that they would "make diligent efforts to deliver at least 5 Units (whether residential and/or commercial) vacant at Closing."

101. Despite Martin Act protections afforded to the tenants and Rent Stabilization's prohibition against eviction without cause, between September 2015 and January 2016, Respondents continued their concerted effort to cause tenants to leave their apartments. They informed tenants still living in the Building that they were required to vacate the Building because of the impending sale.

102. In October 2015, Respondents forced the tenants of Apartment 3A—the Grinfelds— to abandon their tenancy rights. First, in June they offered the Grinfelds an illegal renewal lease. Although the legal regulated rent for Apartment 3A was $1,500 per month, as the initial legal regulated rent was $1,500 in 2009 under 9 N.Y.C.R.R. § 2521.1(g) and the rent was never legally increased between 2009 and 2015, the renewal lease form offered a one-year extension at $2,121 per month or a two-year extension at $2,157.75 per month. The tenants, who were paying $1,500, were therefore faced with the choice of agreeing to a $621 rent increase or vacating the apartment.

103. Ram Cohen confirmed in testimony given under oath to the OAG that the tenants of Apartment 3A were instructed by Eldad Cohen that, if they did not agree to sign the renewal lease, they were required to leave.

104. Then, in October 2015, Eldad Cohen increased the pressure for the Grinfelds to vacate. Sharon Mohammed recalled that they were crying when they were told they had to move out. The Grinfelds, who had a young baby, could not afford an apartment for more than $1,500 per month. They retained a real estate agent to help them find another apartment in the same neighborhood.

105. That agent, Mary Elizabeth Smith, recalls that the Grinfelds approached her and sought her assistance finding a new apartment after Respondents told them they must surrender

and vacate their unit at the Building. She eventually found them another apartment and recalls that Respondents paid her broker's fee.

106. By text message to Sharon Mohammed, Ram Cohen authorized payment to the Grinfelds of $1,650 and $320 from ERC Holdings LLC for their moving expenses. On October 30, 2015, Sharon Mohammed texted Eldad Cohen the Grinfeld's phone number in order to arrange for payment of moving expenses.

107. Rene Medrano, Respondents' employee and the tenant of Apartment 1B, testified to the OAG that Eldad Cohen came to his apartment in or around November 2015 and told him that he had to move out because the Building was going to be sold. Mr. Medrano was able to remain in the apartment for a short time because the new owner agreed to let him stay for $1,900 per month.

108. Sharon Mohammed recalls that Eldad Cohen spoke to all tenants and told them that they had to leave because the building was being sold.

109. In January 2016, Respondents paid $2,500 in "moving expenses" to the tenants of Apartment 5A in order to ensure the surrender of their tenancy.

110. All tenants except the tenant of Apartment 2A moved out before Respondents transferred title of the Building to the new owner. The tenant of Apartment 2A, who did not wish to vacate his rent-stabilized apartment, was initially unwilling to move. For this reason, Respondents agreed to assist the purchaser in securing his eviction, and Eldad Cohen appeared in Housing Court to prosecute a nonpayment action.

Respondents Commit Repeated Fraud in the Course of Selling the Building

111. Respondents repeatedly deceived Vincent Wu, the eventual purchaser of the Building, in the several months leading up to transfer of title.

112. During negotiations with Vincent Wu for the sale of the Building, Respondents did not disclose that tenants were paying less than the inflated rents registered with DHCR and listed on the first pages of the leases.

113. In the September 30, 2015 contract of sale between Respondent ERC Holding, LLC and Vincent Wu, Respondents again misrepresented the rents of all apartments and the security deposits for all apartments. This misrepresentation was intentional. Schedule E of the contract of sale contained a rent schedule. Respondents falsified the rents by listing the higher, inflated rents rather than the actual legal regulated rents. Just as Respondents had falsified the rents to the DHCR, Respondents falsified the rents in the contract of sale. This lie made it appear that the Building's rent roll was higher than it was, and this served Respondents by giving the impression that the Building was more valuable that it was.

114. In a second rider appended to the contract of sale, Respondents represented that the Schedule E was 'the accurate rent roll" as of the date the contract was executed and "that no tenant is in default in the performance of the lease and that all rents or charge[s] have been collected up to date of Contract." In fact, such representation was knowingly false. None of the tenants ever paid in any given month the higher, false rent listed on the Schedule E.

115. The OAG learned about these misrepresentations in the 2015 contract of sale on June 16, 2017, when Respondents produced a copy of the contract of sale to the OAG in response to a subpoena demand.

116. Between execution of the contract of sale on September 30, 2015 and transfer of title on January 12, 2016, Respondents continued to represent to the seller that the false, inflated rent roll was the actual rent roll for the Building.

117. Respondents transferred title to the Building to WFG LLC, an entity controlled by Vincent Wu, on January 12, 2016. The purchase price was $3,750,000.

Respondents Create a Shell Company to Pass Through Wages to Employees

118. David Medrano, who was a tenant at the Building for many years, was hired by Ram Cohen and Eldad Cohen in 2012 to act as manager of a building they own and operate located at 114-05 170th Street in St. Albans, Queens. He is listed a managing agent of that building in HPD's Building Registration Summary Report. Respondents Ram and Eldad Cohen had previously employed Mr. Medrano to help construct the Building.

119. As a condition of his employment, Ram Cohen and Eldad Cohen insisted that Mr. Medrano set up a corporation in his name. That corporation is CMYF Corp. CMYF Corp., while nominally associated with David Medrano, is actually an entity controlled by Ram Cohen.

120. Ram Cohen has made virtually all decisions and prepared all documents on behalf of CMYF Corp. from its creation. Ram Cohen prepared all the documents in order to register the corporation with the New York Department of State. Ram Cohen presented all corporate documents to David Medrano for his signature, but David Medrano did not know what he was signing. Ram Cohen reported to the New York Department of State that the service of process address was Apartment 1B at the Building.

121. Ram Cohen personally prepared the annual tax returns for CMYF Corp. until 2017, and the cover page for such returns shows an IP address associated with Ram Cohen's home computer. To prepare the tax returns, Ram Cohen would itemize expenses for CMYF Corp. without consulting with Mr. Medrano.

122. Ram Cohen used his own insurance broker, Teitelbaum Insurance Company, to take out workers compensation and liability insurance policies for CMYF Corp. Ram Cohen

filled out all documents necessary to keep the insurance policies active. Ram Cohen pays for these policies. Teitelbaum Insurance Company is Ram Cohen's preferred insurance broker, and Teitelbaum has been in contact with the insurance company, Wesco Insurance, regarding the CMYF policies.

123. All documents associated with CMYF Corp. are kept in the offices of 114-05 170th Street, the building owned by Eldad and Ram Cohen.

124. Ram Cohen also used CMYF Corp.'s name to pay other employees, including Sharon Mohammed, Alcides Guano and Carmen Ramirez. Ram Cohen reimburses CMFY Corp. for all payments to these employees.

125. The two instances in which David Medrano has interjected his voice in decisions concerning the formation and operation of CMYF Corp. are: (1) when he chose to open the corporate bank account at TD Bank; and (2) when he chose get a new accountant in 2017.

126. Although the TD Bank account for CMYF was opened by Mr. Medrano, Ram Cohen regularly makes deposits into the account. Indeed, all income paid to CMYF comes from Ram Cohen, Eldad Cohen, and their various entities and corporations.

127. Ram and Eldad Cohen pay Mr. Medrano $1,000 per week by deposit into CMYF Corp.'s account. Eldad and Ram Cohen do not withhold payroll taxes from their pay to Mr. Medrano. Since 2012, Eldad and Ram Cohen have paid Mr. Medrano approximately $340,000 and have paid no payroll taxes.

128. Sharon Mohammed began working for Respondents Ram Cohen and Eldad Cohen in 2002. Respondents Ram and Eldad Cohen refer to her as Susan, as that is her middle name and the name she commonly uses. Eldad Cohen initially hired her to do administrative work connected with his business as a real estate developer. Eventually she began working for

Ram Cohen as well, performing administrative tasks connected with both brothers' real estate businesses.

129. In 2012, Respondents moved her office location to the Building's basement, where there was a small space with filing cabinets and a desk. Ms. Mohammed remained there until 2015, when Ram and Eldad Cohen moved her office to their property at 114-05 170th Street.

130. From at least 2012, and continuing to today, Ms. Mohammed has been the employee of Eldad Cohen and Ram Cohen, though her pay comes from CMYF Corp., which, as discussed above, is the corporation created by Ram Cohen in the name of David Medrano in order to pay Respondents' employees' salaries.

131. Ram Cohen communicates with Ms. Mohammed by text and by email on a nearly daily basis. Ram Cohen regularly texts Ms. Mohammed instructions such as "[p]lease check the status of odyssey and cmyf insurance that we are up to date with payment," and "[p]lease send me cash expenses from 7/1/2016 to 7/31/17," and "scan all material receipts and email to me once a month." Ram Cohen also asks Ms. Mohammed to return phone calls from his business associates. Ram Cohen directs Ms. Mohammed about paying various bills from his businesses' accounts.

132. Respondents Eldad and Ram Cohen pay Ms. Mohammed a flat salary of $300 per week for her work. Ms. Mohammed initially received this weekly payment in cash from David Medrano, and David Medrano was reimbursed by deposits by Ram Cohen into the CMYF account.

133. Around the time that the OAG issued investigatory subpoenas on Respondents, Ram and Eldad Cohen directed David Medrano to begin paying Ms. Mohammed's salary by

check issued by CMYF Corp. Though the funds for Ms. Mohammed come nominally from the CMYF account, Ram Cohen and Eldad Cohen replenish those funds from their own accounts. In fact, Ram Cohen makes direct deposits into the CMYF account from his home in Massachusetts. CMYF has not spent any of its own funds on Ms. Mohammed's salary—all funds are from Respondents and passed through the CMYF account.

134. Ms. Mohammed does no work for the benefit of CMYF or David Medrano.

135. Eldad and Ram Cohen do not withhold payroll taxes from their pay to Ms. Mohammed.

FIRST CAUSE OF ACTION

Illegal Acts to Cause Tenants to Vacate During Condominium Conversion Violations of the Martin Act, G.B.L. § 352-eeee

136. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-135.

137. Petitioner asserts the First Cause of Action against all Respondents.

138. The purpose of the Martin Act is to protect tenants in buildings undergoing conversion to condominium or cooperative ownership from harassment, deterioration of services, and threats of imminent eviction. See 1982 N.Y. Laws, ch. 555, § 1; see also Park W. Village Assocs. v. Nishoika, 187 Misc. 2d 243, 244-45 (1st Dep't 2000) ("overarching purpose" of G.B.L. § 352-eeee is to "protect tenancies during the cooperative and condominium conversion process"). Under the Martin Act, rent-stabilized tenants in occupancy when the offering plan is submitted to the OAG are doubly protected by both Rent Stabilization's prohibitions on terminations of tenancies without cause and the Martin Act's requirement that tenants be offered an exclusive right to purchase their unit for a period of ninety days after the plan is accepted. Sponsors, therefore, may not terminate these tenancies nor offer to compensate tenants for

surrendering their tenancies ("buyout offers") until after the offering plan is accepted for filing. Moreover, sponsors may not harass tenants under G.B.L. § 352-eeee(4).

139. Respondent ERC Holding, LLC was the sponsor of the condominium conversion plan submitted to the OAG in May 2015. Respondents Ram Cohen and Eldad Cohen are principals of ERC Holding, LLC.

140. Between May 2015, after the offering plan for condominium conversion was submitted to the OAG, and continuing until January 2016, the "red-herring period," Respondents caused the rent-stabilized tenants living in the Building to surrender and vacate their apartments through the following acts, among others:

a. Telling tenants that they were required to vacate because the Building was being sold;

b. Offering to pay moving expenses for tenants to leave, including broker's fees; and

c. Offering all tenants renewal leases which contained illegal rent increases above and beyond the legal regulated rent for each unit.

141. Respondents' conduct caused all but one tenant of the Building to leave before title transferred to the new owner in January 2016. The tenants who left surrendered valuable rent-stabilized tenancies for little to no consideration.

142. By causing these tenants to vacate and surrender their tenancies after the offering plan was submitted to the OAG and before the offering plan was accepted for filing, Respondents violated the Martin Act.

SECOND CAUSE OF ACTION

Illegal Terminations of Rent-Stabilized Tenancies – N.Y. Exec. Law § 63(12)
Violations of 9 N.Y.C.R.R. § 2524.1

143. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-135.

144. Petitioner asserts the Second Cause of Action against all Respondents.

145. Executive Law § 63(12) authorizes the Attorney General to bring a special proceeding when any person or entity engages in repeated illegal acts or persistent illegality in the conducting of business.

146. Under the Rent Stabilization Code, owners may not remove or exclude rent-stabilized tenants from possession or "attempt such removal or exclusion from possession" except based on one or more of the grounds specified in the Rent Stabilization Code. 9 N.Y.C.R.R. § 2524.1. These grounds include various wrongful acts of tenants, 9 N.Y.C.R.R. § 2524.3, and occupancy by the owner or owner's family, recovery by a not-for-profit institution, and a court determination that a tenant is not using the accommodation as her primary residence, 9 N.Y.C.R.R. § 2524.4.

147. Respondent ERC Holding, LLC was the owner of the Building until January 12, 2016. Respondent Ram Cohen is and was a member of ERC Holding, LLC, and Respondent Eldad Cohen is and was a principal of ERC Holding, LLC. They were both managing the Building at the time of the events described herein.

148. Respondents removed and attempted to remove all tenants from possession of their rent-stabilized apartments between May 2015 and January 2016 without any basis set forth in 9 N.Y.C.R.R. § 2524.3. Respondents told tenants that they were required to leave their apartments because of the impending sale. Respondents also offered tenants renewal leases at inflated, illegal rents in order to cause them to surrender their apartments. Respondents also offered at least three tenants—the Grinfelds, who lived in Apartment 3A, and S. Mesilati, who

lived in Apartment 5A—moving costs and a broker's fee in order to secure their surrender of tenancy rights. Respondents illegally removed and attempted to remove theses rent-stabilized tenants from possession in part so as to comply with their promise to the prospective purchaser that they would "make diligent efforts to deliver at least 5 Units (whether residential and/or commercial) vacant at Closing."

149. By engaging in repeated conduct that violated 9 N.Y.C.R.R. § 2524.1, Respondents engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

THIRD CAUSE OF ACTION

Noncompliance with 421-a Exemption Program Rules – N.Y. Exec. Law § 63(12) Violations of 28 R.C.N.Y. § 6-02(g)(2), § 6-05(d)(1)(iii)(A)

150. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-135.

151. Petitioner asserts the Third Cause of Action against all Respondents.

152. Executive Law § 63(12) authorizes the Attorney General to bring a special proceeding when any person or entity engages in repeated illegal acts or persistent illegality in the conducting of business.

153. Under Title 28, Chapter 6 of the Rules of the City of New York, entities that receive the tax exemption pursuant to § 421-a of the Real Property Tax Law must comply with rent regulatory requirements. These requirements include that "the rents of a unit shall be fully subject to regulation under [local rent stabilization laws] unless exempt under such [laws] by reason of the cooperative or condominium status of the unit," 28 R.C.N.Y. § 6-02(g)(2). In order to obtain a final certificate of eligibility from HPD, entities must provide HPD with "[e]vidence satisfactory to [HPD] . . . that the owner of rental dwelling units has registered the building and

any occupied units with the New York State Division of Housing and Community Renewal." 28 R.C.N.Y § 6-05(d)(1)(iii)(A).

154. Respondents obtained the benefits of the tax exemption without complying with the program requirements, and they were able to do so by misrepresenting to HPD the Building's status as a rental. Respondents failed to comply with rent regulatory requirements from 2009, when they first began renting units, until the sale of the building in January 2016. Respondents issued unregulated leases, listed rents that were higher than the legal regulated rents for the units, and did not give tenants the right to renew their leases. Respondents therefore repeatedly violated 28 R.C.N.Y. § 6-02(g)(2).

155. When they applied to HPD for a final certificate of eligibility, Respondents did not provide HPD with evidence that they had registered the building and occupied units with the DHCR because, in fact, they had not. Respondents instead falsely represented to HPD that the Building was not rental building, but rather a condominium, so as to avoid this requirement. By failing to submit to HPD proof that they had registered the Building and occupied units with the DHCR, and therefore receiving tax benefits to which they were not entitled, Respondents repeatedly violated 28 R.C.N.Y. § 6-05(d)(1)(iii)(A).

156. Respondents failed to register the rents for each unit with the DHCR until July 2014 and, even then, they registered false rents.

157. In June 2015, Ram Cohen affirmatively and willfully misrepresented to HPD the rents charged to and collected from the tenants at the Building in order to continue receiving the 421-a exemption.

158. By engaging in repeated conduct that violated 28 R.C.N.Y. § 6-02(g)(2) and § 6-05(d)(1)(iii)(A), Respondents engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

FOURTH CAUSE OF ACTION

Failure to Register Rents with DHCR – N.Y. Exec. Law § 63(12)
Violations of Rent Stabilization Law § 26-517

159. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-135.

160. Petitioner asserts the Fourth Cause of Action against all Respondents.

161. Executive Law § 63(12) authorizes the Attorney General to bring a special proceeding when any person or entity engages in repeated illegal acts or persistent illegality in the conducting of business.

162. Under Section 26-517(c) of the Rent Stabilization Law, owners of rent-stabilized housing accommodations must register those accommodations with the DHCR within 90 days after those accommodations become subject to Rent Stabilization.

163. The apartments in the Building became subject to Rent Stabilization from the moment they were rented to the first tenants. Therefore, Respondents were obligated to register the apartments with the DHCR within ninety days after each apartment was rented. Respondents did not submit the first registration to the DHCR until July 2014. Therefore, Respondents violated RSL § 26-517(c) every year from 2009 to 2014.

164. Respondents continued to repeatedly violate RSL § 26-517(c) even after registering the apartments with the DHCR because the registrations in July 2014 and July 2015 were false. Every registration Respondents submitted to the DHCR from July 2014 and after failed to list the actual rent charged to each tenant and inflated the legal regulated rent.

165. By engaging in repeated conduct that violated RSL § 26-517(c), Respondents engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

FIFTH CAUSE OF ACTION

Illegal Initial Rents – N.Y. Exec. Law § 63(12)
Violations of 9 N.Y.C.R.R. § 2521.1(g)

166. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-135.

167. Petitioner asserts the Fifth Cause of Action against all Respondents.

168. Executive Law § 63(12) authorizes the Attorney General to bring a special proceeding when any person or entity engages in repeated illegal acts or persistent illegality in the conducting of business.

169. Section 2521.1(g) of the Rent Stabilization Code provides that "[t]he initial legal regulated rent for a housing accommodation constructed pursuant to 421-a of the Real Property Tax Law shall be the initial adjusted monthly rent charged and paid but not higher than the rent approved by HPD pursuant to such section . . . ." As there were no HPD-approved rents for the Building when Respondents began renting them to tenants, the initial legal regulated rents for the apartments in the Building were the initial rents charged and paid by the first tenants.

170. Respondents listed illegal initial rents on the unregulated leases provided to tenants between 2009 and 2014. The rents listed on the first pages of those leases were not the "adjusted monthly rent charged and paid," but rather an inflated figure that had no relationship to the actual rents paid by the tenants, which were most often, if not always, memorialized in a rider attached to each lease. Respondents repeatedly violated 9 N.Y.C.R.R. § 2524.1(g) every time they listed illegal rents on the first page of the unregulated leases.

171. In July 2014, Respondents registered with DHCR initial legal regulated rents for the year 2010 that were higher than the monthly rents charged to and paid by the tenants. By setting the initial legal regulated rents artificially high, and by continuing to register those illegal rents with the DHCR until 2015, Respondents violated 9 N.Y.C.R.R. § 2521.1(g).

172. By engaging in repeated conduct that violated 9 N.Y.C.R.R. § 2521.1(g). Respondents engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

SIXTH CAUSE OF ACTION

Illegal Leases – N.Y. Exec. Law § 63(12)
Violations of 9 N.Y.C.R.R. § 2522.5

173. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-135.

174. Petitioner asserts the Sixth Cause of Action against all Respondents.

175. Executive Law § 63(12) authorizes the Attorney General to bring a special proceeding when any person or entity engages in repeated illegal acts or persistent illegality in the conducting of business.

176. Section 2522.5 of the Rent Stabilization Code sets forth the obligations of owners of rent stabilized accommodations with respect to issuing leases and lease renewals. Owners must provide rent-stabilized tenants the option of a one-year or two-year lease both upon issuing the initial vacancy lease and upon renewal of that lease. 9 N.Y.C.R.R. § 2522.5(a)(1), (b)(1). Owners may not issue an initial vacancy lease with a rent that is more than the legal regulated rent plus all authorized increases. 9 N.Y.C.R.R. § 2522.5(a)(1). All rent-stabilized leases must be accompanied by a rider describing the rights and duties of owners and tenants under Rent Stabilization. 9 N.Y.C.R.R. § 2522.5(c).

177. Respondents repeatedly failed to comply with 9 N.Y.C.R.R. § 2522.5 when issuing every lease to every tenant in the Building.

178. Beginning in 2014 and continuing until the issuance of the April 2015 lease for Apartment 5B to A. Levy, Respondents issued illegal leases which, though drawn on a form that recited the protections afforded by Rent Stabilization, did not comply with Rent Stabilization. These leases also listed illegal rents and failed to give the tenant the option of a one- or two-year term. The leases were exclusively for a one-year term.

179. In June 2015, Respondents sent seven tenants illegal renewal lease forms which listed illegal rents and offered only a one-year term.

180. By engaging in repeated conduct that violated 9 N.Y.C.R.R. § 2522.5 Respondents engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

SEVENTH CAUSE OF ACTION

Security Deposits
N.Y. Gen. Oblig. Law § 7-103

181. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-135.

182. Petitioner asserts the Seventh Cause of Action against all Respondents.

183. New York General Obligations Law § 7-109 authorizes the Attorney General to bring a special proceeding whenever it appears to the Attorney General that any person has violated any of the provisions of the General Obligations Law pertaining to money deposited for rental of real property. N.Y. Gen. Oblig. Law §§ 7-101 to 7-109.

184. Under the General Obligations Law, a landlord must not commingle a tenant's security deposit with the landlord's own money, and must provide written notice to the tenant

that indicates the name and address of the bank in which the security deposit is located and the amount of the deposit. N.Y. Gen. Oblig. Law § 7-103(1)-(2). Whenever the security deposit is for the rental of property containing six or more family dwelling units, the landlord must deposit it in an interest bearing account. Id. at § 7-103(2-a).

185. Respondents collected security deposits for the rental of a property that contained six or more residential apartments, to wit, the Building.

186. Respondents failed to place any such security deposits in interest-bearing accounts.

187. Respondents also commingled such security deposits with their own funds.

188. Respondents also failed to notify tenants of the name and location of the banks holdings such deposits.

189. By reason of the conduct alleged above, Respondents have engaged in violations of Section 7-103 of the New York General Obligations Law.

EIGHTH CAUSE OF ACTION

Security Deposits – N.Y. Exec. Law § 63(12)
Violation of 9 N.Y.C.R.R. § 2525.4

190. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-135.

191. Petitioner asserts the Eighth Cause of Action against all Respondents.

192. Executive Law § 63(12) authorizes the Attorney General to bring a special proceeding when any person or entity engages in repeated illegal acts or persistent illegality in the conducting of business.

193. Under the New York Rent Stabilization Code, an owner of a housing accommodation must not commingle a tenant's security deposit with the landlords' own money,

must keep such deposit in an interest-bearing account, and must provide written notice to the tenant that indicates the name and address of the bank in which the security deposit is located and the amount of the deposit. 9 N.Y.C.R.R. § 2525.4.

194. The Respondents collected security deposits for the rental of housing accommodations subject to the New York Rent Stabilization Code.

195. Respondents repeatedly failed to place any such security deposit in an interest-bearing account.

196. Respondents instead repeatedly commingled such security deposits with their own funds.

197. Respondents also repeatedly failed to notify the tenants of the name and location of the banks holding such security deposits.

198. By reason of the conduct alleged above, Respondents have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

NINTH CAUSE OF ACTION

Statutory Fraud – N.Y. Exec. Law § 63(12)

199. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-135.

200. Petitioner asserts the Ninth Cause of Action against all Respondents.

201. Executive Law § 63(12) authorizes the Attorney General to bring a special proceeding when any person or entity engages in repeated fraudulent acts or persistent fraud in the operation of a business.

202. Fraud under Executive Law § 63(12) is broadly defined to include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions."

203. Respondents have engaged in repeated and persistent fraud in the operation of their real-estate business.

204. Respondents repeatedly and persistently misrepresented the rental status of the Building to HPD when applying for, securing, and maintaining the 421-a tax exemption. This fraudulent scheme began as early as September 2009, when Respondents concealed from HPD that the Building was operating as a rental Building and falsely stated that nothing had changed impacting the Building's eligibility for a tax exemption, and the fraudulent scheme continued until December 2015, when Respondents continued to benefit from the 421-a tax exemption after misrepresenting the rent roll of the Building by way of Ram Cohen's June 2015 affidavit submitted to HPD.

205. Respondents repeatedly and persistently misrepresented the legal regulated rents and vacancy of units to the DHCR when Respondents finally began submitted rent registrations to that agency. This fraudulent scheme began in 2014 and lasted until January 2016, when Respondents sold the Building.

206. Respondents repeatedly and persistently deceived Vincent Wu, the individual whose company purchased the Building on January 12, 2016, about the rent roll for the Building. Respondents misrepresented the rent roll in the course of negotiating the sale price of the Building before September 2015.

207. Respondents repeatedly and persistently deceived tenants in the Building about their tenancy rights and the legal rents for their apartments.

208. Respondents repeatedly and persistently concealed to the OAG the true legal regulated rents for each unit and the rents collected from each tenant.

209. Respondents Ram Cohen and Eldad Cohen repeatedly and persistently perpetrated a scheme that had the capacity and tendency to deceive by concealing their employment relationships with individuals including Sharon Mohammed and David Medrano. They maintained an atmosphere conducive to fraud by creating a corporation in the name of David Medrano called CMYF Corp. and using that corporation to pay their employees' wages. Respondent Ram Cohen has continued to operate CMYF Corp. as his own corporation by filing tax returns for the corporation, making deposits into its account, arranging for insurance for the corporation, and directing David Medrano to pay the Cohens' employees.

210. By reason of the conduct alleged above, Respondents have engaged in repeated and persistent fraudulent conduct in violation of Executive Law § 63(12).

TENTH CAUSE OF ACTION

Common Law Fraud – N.Y. Exec. Law § 63(12)

211. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-135.

212. Petitioner asserts the Tenth Cause of Action against all Respondents.

213. The essential elements of common law fraud in New York are false representation of a material fact, scienter, deception, and injury. See Channel Master Corp. v. Aluminum Ltd. Sales, Inc., 4 N.Y.2d 403, 407 (1958).

214. Respondents have engaged in repeated and persistent common law fraud in the operation of their real-estate business.

215. All of the fraudulent acts actionable under Executive § 63(12) as statutory fraud in relation to the operation of the Building also meet the elements of common law fraud.

216. From 2009 to 2015, Respondents repeatedly and persistently materially misrepresented the rental status of the Building to HPD when applying for, securing, and maintaining the 421-a tax exemption. Respondents knew the representations to HPD were false, these representations were intended to induce reliance, HPD relied on those representations, and HPD and the City of New York suffered injury by way of abated real estate taxes.

217. Respondents repeatedly and persistently materially misrepresented the legal rents, lease terms, and occupancy status of each apartment in the Building from 2009 to 2015 to DHCR. Respondents knew the representations to DHCR were false, these representations were intended to induce reliance, DHCR relied on those representations, and DHCR suffered injury by an impairment to its regulatory function.

218. Respondents repeatedly and persistently materially deceived tenants in the Building about their tenancy rights and the legal rents for their apartments by offering illegal leases from 2009 to 2014 which provided that the apartments were not subject to Rent Stabilization. Respondents knew the representations to the tenants in the leases and lease riders offered to them were false, these representations were intended to induce reliance on the terms of the illegal leases and lease riders, the tenants relied on the representations in those leases and lease riders, and the tenants suffered injuries including vacating their apartments prematurely and unnecessarily.

219. Respondents repeatedly and persistently materially deceived Vincent Wu about the rent roll of the Building, including by making misrepresentations in the contract of sale on June 30, 2015. Respondents knew the representations to Vincent Wu were false, these

representations were intended to induce reliance on the part of Vincent Wu, Vincent Wu relied on the representations in the contract of sale, and Vincent Wu suffered injuries.

220. Respondents repeatedly and persistently materially misrepresented to the OAG the value of rents charged to the tenants and that the Building was in compliance with Rent Stabilization. Respondents knew the representations to the OAG were false, these representations were intended to induce reliance, OAG relied on those representations, and the OAG suffered injury by way of impaired regulatory function.

221. By reason of the conduct alleged above, Respondents have engaged in repeated and persistent fraudulent conduct, meeting the elements of common law fraud, in violation of Executive Law § 63(12).

ELEVENTH CAUSE OF ACTION

Deceptive Business Practices – N.Y. Exec. Law § 63(12)
Violation of New York General Business Law § 349

222. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-135.

223. Petitioner asserts the Eleventh Cause of Action against all Respondents.

224. Under the New York General Business Law, "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful." N.Y. Gen. Bus. Law § 349(a).

225. Respondents have engaged in deceptive and misleading consumer-directed conduct.

226. Respondents have issued prospective tenants and in-place tenants illegal and unconscionable leases.

227. Respondents have commingled security deposits with their own funds.

228. Respondents have misled prospective tenants and in-place tenants by deceiving them about the regulated status of their apartments.

229. Respondents have mislead and deceived Vincent Wu, the purchaser of the Building, by misrepresenting the rent roll of the building.

230. By reason of the conduct alleged above, Respondents have engaged in repeated and persistent deceptive acts and practices in the conduct of business in violation of G.B.L. Article 22-A § 349.

PRAYER FOR RELIEF

Wherefore, it is respectfully requested that the Court issue an order and judgment as follows:

A. Permanently enjoining all Respondents from further engaging in the fraudulent and unlawful acts and practices alleged herein, pursuant to N.Y. Executive Law § 63(12), and N.Y. General Business Law §§ 349 and 353;

B. Permanently enjoining Respondents Ram Cohen and Eldad Cohen from directly or indirectly engaging in the issuance, offering for sale, promotion, negotiation, advertisement, sale or distribution of securities in or from the State of New York as governed by Article 23-A of the N.Y. General Business Law, pursuant to N.Y. Executive Law § 63(12) and N.Y. General Business Law § 353;

C. Permanently enjoining Respondents Ram Cohen and Eldad Cohen from directly or indirectly engaging in any business or activity related to real estate development, real estate finance, construction, property development, or transactions of interest in real estate in the State of New York, pursuant to N.Y. Executive Law § 63(12) and the inherent equitable powers of this Court;

D. Directing Respondents to disgorge the illegal profits and unjust enrichment resulting from the sale of the Building, in an amount to be determined by the Court after an accounting, pursuant to N.Y. Executive Law § 63(12), N.Y. General Business Law § 353, and the inherent equitable powers of this Court;

E. Directing Respondents to disgorge $479,666.99 in property tax abatements obtained fraudulently and illegally, pursuant to N.Y. Executive Law § 63(12) and the inherent equitable powers of this Court;

F. Directing each Respondent to pay a civil penalty of $5,000 for each violation of N.Y. General Business Law § 349, pursuant to N.Y. General Business Law § 350-d;

G. Directing each Respondent to pay a civil penalty of $2,000, pursuant to C.P.L.R. § 8303(a)(6);

H. Directing each Respondent to pay the State of New York all interest owed and all monies converted in violation of Section 103 of Article 7 of the N.Y. General Obligations Law so that the true owners of such monies and interest can be ascertained;

I. Awarding Petitioner costs against each Respondent pursuant to C.P.L.R. § 8303(a)(6) and N.Y. General Business Law § 7-109; and

J. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 22, 2018

Respectfully submitted,

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Attorney General of the State of New York
Attorney for Petitioner
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New York, New York 10005
(212) 416-8122

By: _____

BRENT MELTZER
Bureau Chief
Real Estate Finance Bureau

LOUIS SOLOMON
Chief of Enforcement
Real Estate Finance Bureau

RACHEL HANNAFORD
Senior Enforcement Counsel
Real Estate Finance Bureau

VERIFICATION

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

RACHEL HANNAFORD, being duly sworn, deposes and says:

I am Senior Enforcement Counsel in the office of Barbara D. Underwood, Attorney General of the State of New York, and am duly authorized to make this verification.

I have read the foregoing petition and know the contents thereof, which are to my knowledge true, except as to matters stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds for my beliefs as to all matters stated upon information and belief are investigatory materials contained in the files of the Real Estate Finance Bureau in the New York State Office of the Attorney General.

The reason this verification is not made by the Petitioner is that the Petitioner is a body politic and the Attorney General is its duly authorized representative.

RACHEL HANNAFORD

Sworn to before me this
22nd day of October, 2018

NOTARY PUBLIC

NICHOLAS J. MINELLA
NOTARY PUBLIC-STATE OF NEW YORK
No. 02MI6137743
Qualified in Westchester County
My Commission Expires 12-05-2021

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

PEOPLE OF THE STATE OF NEW YORK, by BARBARA D. UNDERWOOD, Attorney General of the State of New York, Petitioner, - against - RAM COHEN, ELDAD COHEN, ERC HOLDING, LLC, Respondents.	**MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION** Index No. IAS Part

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Petitioner, the People of the State of New York, by Barbara D. Underwood, Attorney General of the State of New York, submits this Memorandum of Law in support of the Verified Petition.

PRELIMINARY STATEMENT

Brothers Ram Cohen and Eldad Cohen—New York City landlords and real estate developers—engaged in a years-long scheme of fraud and illegality in the course of developing and managing the residential apartment building located at 71-44 160th Street, in Fresh Meadows, Queens ("the Building"). The Cohens' scheme included, inter alia: misrepresenting to the New York City Department of Housing Preservation and Development ("HPD") that the Building was a condominium in order to receive a property tax abatement; deceiving regulating agencies about the rents charged and leases issued to tenants; increasing their profits by holding out false rents for the apartments to the subsequent purchaser of the Building; and repeatedly and persistently defrauding their tenants and third parties.

Ram and Eldad Cohen, through their company ERC Holding, LLC, ran the Building from 2009 to January 2016 without regard for the many housing laws governing its operation. They benefited from substantial property tax savings—$479,666.99 to be exact—while illegally depriving their tenants of the rights guaranteed to them by Rent Stabilization. They compelled these tenants to sign false leases with illegal terms. When they were ready to sell the Building, they told tenants they had to leave their homes, even though the tenants had a right to remain under both the Rent Stabilization laws and the Martin Act. They repeatedly and willfully gave false information to HPD, the New York State Division of Housing and Community Renewal ("DHCR"), and the Office of the Attorney General ("OAG")—first, asserting that the Building was a condominium instead of a rental and, second, falsely claiming that tenants were paying

rents far in excess of the actual legal rents for their apartments. When the OAG confronted Respondents in 2014 and asked them to cease their illegal operations, they did not do so but, rather, submitted sham leases to the OAG and registered false rents with the DHCR.

This scheme culminated in the sale of the Building in January 2016. To facilitate the sale, Respondents knowingly and willfully lied to the purchaser about the Building's rent roll. Respondents also told all tenants to leave their rent-stabilized apartments, even though they knew tenants had a right to stay under rent regulation and a pending condominium conversion plan. Due to these misrepresentations and the illegal pressure they put on tenants, Respondents reaped a substantial profit from the sale.

In the course of their fraudulent scheme, Respondents Ram Cohen and Eldad Cohen also carried out a fraudulent plan to set up a corporation in the name of their employee, David Medrano, and used the corporation to pay the wages of their employees, including Mr. Medrano himself. They have done this in order to avoid tax obligations and other obligations as employers. This fraud was carried out in the course of operating the Building, and it continues to this day.

In 2016, the Attorney General launched an investigation into Respondents' practices. The investigation has confirmed that Respondents engaged in an illegal and fraudulent scheme in which they gained $479,666.99 in wrongfully abated property taxes and additional gains from the sale of the Building under false pretenses. This scheme also subjected tenants to unlawful eviction, left them in ignorance of their rights as rent-stabilized tenants, and deprived them of accrued interest on their security deposits, among other losses. Respondents' many repeated and persistent violations of City and State law include the following:

a. Violation of the rules governing the 421-a tax exemption pursuant to 421-a of the N.Y. Real Property Tax Law, 28 R.C.N.Y. § 6-02(g)(2), § 6-05(d)(1)(iii)(A), by misrepresenting that the building was a condominium and failing to comply with Rent Stabilization;

b. Violation of Rent Stabilization laws and regulations, Rent Stabilization Law § 26-517, Rent Stabilization Code, 9 N.Y.C.R.R. § 2521.1(g), § 2522.5(a), (b), (c), § 2524.1, by failing to register rents with the DHCR, giving tenants unregulated leases, listing illegal rents on those leases, and terminating tenancies without cause;

c. Deceptive business practices, N.Y. General Business Law § 349, by compelling tenants to sign false and illegal leases, deceiving tenants about the legal regulated rents for their apartments and about their rights, and deceiving the purchaser of the Building about its rent roll;

d. Fraud, N.Y. Executive Law § 63(12) by repeatedly misrepresenting the rent roll for the Building to the purchaser and State and City agencies, providing false leases to State and City agencies, including the Office of the Attorney General, misrepresenting to tenants the terms of their tenancies and their tenancy rights, and deceiving third parties about the employment relationship between Respondents and their employees through the use of a shell corporation;

e. Violations of security deposit laws, 9 N.Y.C.R.R. § 2525.4, N.Y. General Obligations Law § 7-103, by repeatedly failing to place tenants' security deposits in trust accounts and comingling tenants' security deposits with Respondents' general funds; and

f. Violations of the Martin Act, N.Y. General Business Law § 352-eeee, by causing tenants to surrender their tenancies after an offering plan was submitted to OAG for

conversion of the Building to condominium and by engaging in tenant harassment as defined under the Martin Act.

Accordingly, for the reasons set forth in this Memorandum of Law, the Verified Petition, the Affirmation of Senior Enforcement Counsel Rachel Hannaford ("Hannaford Aff."), and the exhibits and affidavits cited therein, the Attorney General requests that the Court (a) permanently enjoin Respondents from further engaging in the fraudulent and illegal acts and practices alleged herein; (b) permanently enjoin Ram Cohen and Eldad Cohen from directly or indirectly engaging in the issuance, offering for sale, promotion, negotiation, advertisement, sale or distribution of securities in or from the State of New York; (c) permanently enjoin Ram Cohen and Eldad Cohen from directly or indirectly engaging in any business or activity related to real estate development, real estate finance, construction, property development, property management or the transactions of interest in real estate; (d) direct Respondents to disgorge the illegal profits and unjust enrichment resulting from the sale of the Building, in an amount to be determined by the Court after an accounting; (e) direct Respondents to disgorge $479,666.99 in property tax abatements obtained fraudulently and illegally; (f) direct each Respondent to pay a civil penalty of $5,000 for each violation of General Business Law § 349; (g) direct each Respondent to pay a civil penalty of $2,000 pursuant to C.P.L.R § 8303(a)(6); (h) direct Respondents to pay to the State of New York all interest owed and all monies converted in violation of Section 103 of Article 7 of the General Obligations Law, in an amount to be determined by the Court after an accounting; (i) awarding Petitioner costs against each Respondent pursuant to C.P.L.R. § 8303(a)(6) and G.B.L. § 7-109; and (j) granting such other and further relief as the Court may deem just and proper.

SUMMARY PROCEEDING UNDER NEW YORK EXECUTIVE LAW § 63(12)

New York Executive Law § 63(12) empowers the Attorney General to bring a special proceeding for permanent injunctive relief, restitution, damages, disgorgement, and civil penalties whenever a person or business engages in "repeated or persistent fraud or illegality." A special proceeding under Section 63(12) is "an expeditious means for the Attorney General to prevent further injury and seek relief for the victims of business fraud." People v. Apple Health & Sports Clubs, Ltd., 206 A.D.2d 266, 268 (1st Dep't 1994) (citation omitted); see also David D. Siegel, N.Y. Practice §§ 547 943 (5th ed. 2011) (a special proceeding is "plenary as an action, culminating in a judgment, but is brought on with the ease, speed and economy of a mere motion.").

A special proceeding goes right to the merits. The Court is required to make a summary determination upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised. C.P.L.R. § 409(b). Accordingly, a special proceeding brought pursuant to Executive Law § 63(12) is the functional equivalent of a motion for summary judgment, with the same standards and rules of decision. See Karr v. Black, 55 A.D.3d 82, 86 (1st Dep't 2008); Lefkowitz v. McMillen, 57 A.D.2d 979 (3d Dep't), appeal denied, 42 N.Y.2d 807 (1977); State v. Midland Equities, 117 Misc. 2d 489, 492 (Sup. Ct. N.Y. Cnty. 1982). On summary judgment, the movant "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986) (citations omitted). Once this showing has been made, "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." Id. (citation omitted). "[B]are allegations or conclusory

assertions are insufficient to create genuine, bona fide issues of fact necessary to defeat such a motion." Matter of Rehab. Of Fin. Guar. Ins. Co., 39 Misc. 3d 208, 210 (Sup. Ct. N.Y. Cnty. 2013) (citation omitted).

STATEMENT OF FACTS

There is overwhelming, undisputed evidence of Respondents' illegal and fraudulent practices, carried out from the moment they began renting units at the Building to tenants in 2009 and continuing until the sale of the Building in 2016. With respect to the fraud and illegality perpetrated as employers, that scheme continues to this day. As set forth in the Hannaford Affirmation and exhibits thereto, the evidence obtained by the OAG includes admissions, made under oath, by Respondents, their tenants, and their employees.[1] It also includes leases issued to tenants, submissions to State and City agencies, bank records, documents memorializing the sale of the Building in 2016, and substantial additional documentary evidence.

I. Respondents Constructed the Building, Applied for a Property Tax Exemption Based on Misrepresentations that the Building was a Condominium, and Illegally Rented out Apartments to Tenants.

Respondents Ram Cohen and Eldad Cohen formed ERC Holding, LLC in 2005 for the purpose of developing the property at 71-44 160th Street, Fresh Meadows, New York into a condominium. Ex. 3 (R. Cohen Tr. I at 23:23-25).[2] For approximately three years, between 2006 and 2009, they supervised construction of a 10-unit residential building on the property.

Respondents availed themselves of the tax exemption program under 421-a of the Real Property Tax Law ("421-a program"), which allows developers of multi-family housing to avoid

[1] The Attorney General has the authority under N.Y. Executive Law § 63(12) and the Martin Act, G.B.L. § 352, to issue investigatory subpoenas for documents and testimony to determine whether to bring a special proceeding.
[2] All exhibits referenced in this Memorandum are attached to the Hannaford Affirmation.

property taxes for up to 18 years on newly-constructed projects in certain geographic areas. The program is administered by HPD. Respondents applied to HPD in 2006 and received a three-year construction benefit starting in the 2006/2007 tax year and ending in the 2008/2009 tax year. Ex. 11. Beginning in 2009, the Building became subject to a 15-year completion benefit, and such tax exemption period is scheduled to expire in 2024. Id.

While both rental buildings and condominiums can qualify for tax exemption under the 421-a program, owners of rental buildings have an obligation under the 421-a rules to ensure that tenants are given the protections of Rent Stabilization, which, in New York City, are vast. Respondents, in their 2006 application to HPD for a 421-a tax exemption, represented that the Building was to be a condominium. Ex. 6 at 2. On November 13, 2008, HPD issued a Preliminary Certificate of Eligibility for the 421-a program based upon the representations in the application. Ex. 7.

In 2007, while construction of the Building was ongoing, Respondents submitted to the OAG an offering plan for a project entitled Meadows Tower Condominium in order to begin the process of selling the Building's apartments. Ex. 4. The offering plan was the prerequisite under Section 352-e of the General Business Law for offering for sale securities constituted of participation interest or investments in real estate.

In January 2008, the OAG accepted the Meadows Tower Condominium offering plan for filing, which enabled Respondents to establish the condominium and begin selling units. Respondents declared the offering plan effective in August 2008, meaning that Respondents represented that they had entered into contracts of sale for at least fifteen percent of units in the Building. Ex. 5. However, Respondents had made no sales and instead began renting units prior to consummation, in violation of OAG regulations. Ex. 3 (R. Cohen Tr. I at 145:13-19).

Respondent ERC Holding, LLC held title to the Building exclusively until the sale of the entire property in 2016. Ex. 75.

Because no units of the Building were ever sold, the Building was never "owned as a condominium" under the Rent Stabilization Code and, accordingly, Respondents were required by the 421-a program rules to comply with Rent Stabilization when renting apartments. See 28 R.C.N.Y § 6-02(g)(2) (requiring that rental buildings receiving a 421-a tax exemption subject their apartments to rent regulation "unless exempt under [local rent regulation laws] from regulation by reason of the cooperative or condominium status of the unit"); 9 N.Y.C.R.R. § 2520.11(l) (exempting from Rent Stabilization housing accommodations contained in buildings "owned as cooperatives or condominiums"); see also 13 N.Y.C.R.R. § 20(c)(6) (defining "consummation of the [condominium offering] plan" as "filing the declaration and the first transfer of title to a condominium unit to at least one purchaser under the plan . . . .").

In violation of the 421-a rules and Rent Stabilization regulations, when Respondents began renting units to tenants in August 2009, they did not treat tenancies as rent-stabilized. Rather, Respondents provided incoming tenants with unregulated leases entitled "Lease of Condominium Unit." Exs. 12, 15, 16. These leases explicitly and illegally provided by rider that "the Tenant has no Rent Stabilization or Rent Control rights." Ex. 13 at 1. Respondents did not inform HPD, DHCR or the OAG that they had commenced unregulated rentals at the Building.

On September 3, 2009, Respondents applied to HPD for a final Certificate of Eligibility for the 421-a exemption, in which Respondents represented that construction of the Building was complete, and willfully misrepresented that "[a]ll information previously submitted [to HPD] remains true and accurate," and that "[a]ll the units in the above building/s will be registered with the NYS Division of Housing and Community Renewal as they become occupied." Ex. 8.

Despite the fact that none of these representations was truthful, Respondents' certification provided the basis for Respondents' continuing receipt of 421-a tax exemption for 15 years.

In 2011, after Respondents had rented all remaining apartments to tenants using unregulated leases, Respondents submitted to HPD a revised application for a final Certificate of Eligibility and again willfully misrepresented that "[a]ll information previously submitted [to HPD] remains true and accurate," which, of course, included the claim that the Building was a condominium. Ex. 9. Nowhere did Respondents disclose that the Building was a rental. Respondents did not provide evidence that they had registered the units in the Building with the DHCR because, indeed, they had not done so.

On October 5, 2011, HPD issued a Final Certificate of Eligibility for the tax exemption. Having received no information about the true status of the Building, HPD noted on the Certificate that the Building was a condominium. Ex. 10.

The New York City Department of Finance credited Respondents a total of $479,666.99 in property tax exemptions between 2006 and 2015 under the 421-a tax exemption program. Ex. 11. For that entire period of time, Respondents were violating 421-a program rules and fraudulently obtaining property tax exemptions without providing the required rent-stabilized housing.

II. Respondents Implemented a Plan to Deceive Tenants and Government Agencies about the Rents and Regulated Status of Apartments at the Building.

Respondents used illegal and false leases to carry out their scheme to rent the Building's units to tenants in violation of the rules governing the 421-a program and Rent Stabilization.

From 2009 to 2014, Respondents offered incoming tenants at least 15 unregulated leases entitled "Lease of a Condominium Unit" that were for terms of one year, renewable at

Respondents' option.[3] Exs. 12, 15, 16. The leases stated in several places that Respondents could terminate the tenancies at their discretion, after notice to the tenants. The leases provided that the tenants were required to vacate the apartments at the end of the lease. Id. at ¶ 31. These terms were contrary to the protections afforded to every tenancy under Rent Stabilization.[4]

These leases also gave the false impression that the Building had a high rent roll, which made the Building appear more valuable to prospective purchasers and lenders. In order to create this false impression, all of the leases issued by Respondents in this period listed an inflated rent on the first page that was typically $500 to $600 higher than the rent actually paid by the tenants. Exs. 20, 44, 53-59; Hannaford Aff. at ¶ 62. When Respondents issued these leases, they simultaneously had the tenants sign lease riders which listed the lower, actual rent that each tenant was required to pay.

This practice of reserving a "preferential rent," or a lower rent, while legal in the context of some rent-stabilized and unregulated tenancies, was illegal here because the Building was subject to 421-a rules. The Rent Stabilization Code is clear that the initial legal regulated rent[5] for units receiving the 421-a exemption is the rent that is charged to and paid by the tenant. It states:

> The initial legal regulated rent for a housing accommodation constructed pursuant to section 421-a of the Real Property Tax Law shall be the **initial adjusted monthly rent charged and paid** but not higher than the rent approved by HPD pursuant to such section for the housing accommodation or the lawful rent charged and paid on April 1, 1984, whichever is later.

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[3] Respondents should have provided tenants with rent-stabilized leases pursuant to the specifications contained in 9 N.Y.C.R.R. § 2522.5, as every tenancy was protected by Rent Stabilization.

[4] Respondents additionally repeatedly violated 9 N.Y.C.R.R. § 2525.4(a) and N.Y. Gen. Oblig. L. § 7-103 by failing to segregate tenants' security deposits from their own funds, failing to provide written notices to the tenants indicating the names and addresses of the banks in which the security deposits were located and the amounts of the deposits, and failing to repay many tenants the amount of the deposit, in addition to accrued interest, at the end of their tenancies. See Hannaford Aff. at ¶¶ 39-48.

[5] The value of the initial legal regulated rent is critical to establishing the basis for subsequent guidelines increases and other increases authorized by law. See 9 N.Y.C.R.R. § 2522.1 et seq.

9 N.Y.C.R.R. § 2521.1(g) (emphasis added).

In their sworn testimony before the OAG, Respondents Eldad Cohen and Ram Cohen did not deny that every lease issued between 2009 and 2014 listed a higher rent on the first page than the rent memorialized by rider. Ex. 3 (R. Cohen Tr. I at 167:9-168:8). Respondents did not dispute that tenants uniformly paid the lower rent memorialized by rider rather the higher rent listed on the lease. Hannaford Aff. at ¶ 35.

There is evidence, too, that Respondents knew that these lease riders violated Rent Stabilization requirements. In an effort to hide their actions from regulating agencies, Respondents did not disclose the existence of the lease riders either to the OAG or the DHCR. Exs. 25, 26, 38, 52. Nor did Respondents produce these lease riders to the OAG in response to a subpoena issued in the course of this investigation demanding all leases and riders. Hannaford Aff. at ¶¶ 26, 33. Ram Cohen nevertheless swore in no less than three affidavits that no documents had been withheld from the OAG and that the responses to the OAG's subpoena demanding all leases and riders were complete and correct to the best of his knowledge. Exs. 22, 23, 24.

Nor did Respondents disclose to the OAG representations they had made to other individuals and agencies holding out different rents than those memorialized by lease and by rider. For example, in November 2013, in order to continue receiving the Family Eviction Prevention Supplement, a Public Assistance rent subsidy issued to Respondents on behalf of the tenants of Apartment 4A, Respondent Ram Cohen wrote to the New York City Human Resources Administration ("HRA") that the tenants' "monthly rent is nine hundred dollars ($900.00)." Ex. 47. Just three months before making this representation to HRA, Ram Cohen

had affirmed in an affidavit submitted to the OAG that the same tenants' monthly rent was $2,100. Ex. 48.

In January 2016, this fraudulent scheme of inflating the Buildings' rent roll paid off, as Respondents sold the Building based on a false rent roll which matched the higher, inflated rents listed on every lease.

III. After Being Confronted about their Illegal Operation of the Building by the Office of the Attorney General in 2014, Respondents Continued their Illegal and Fraudulent Scheme Secretly.

A. Respondents Issued Sham Leases to Tenants to Deceive the OAG.

In or around August and September 2014, the OAG confronted Respondents with the fact that they had been receiving the 421-a tax exemption without complying with 421-a rules. In order to continue their fraudulent scheme, Respondents made some superficial gestures to make it appear that they were treating their tenants as rent-stabilized. Thus began a period during which Respondents went through the motions of complying with the 421-a program rules and Rent Stabilization, all the while willfully violating those very laws.

Beginning in 2014, Respondents issued leases that gave the appearance of being compliant with Rent Stabilization but were, in fact, illegal. Although the leases recited the protections of Rent Stabilization, they misrepresented the legal regulated rent for each unit and failed to give the tenants the option of a one- or two-year term. Instead of listing the legal regulated rent under 9 N.Y.C.R.R. § 2521.1(g), which was the rent that tenants were actually paying, Respondents continued their practice of listing an inflated, illegal rent on the first page of each lease. Ex. 61. Instead of giving the tenants an option of a one- or two-year lease, as they were required to do pursuant to 9 N.Y.C.R.R. § 2522.5(a), Respondents offered only a one-year lease. Id.; Ex. 32 (Mohammed Tr. at 63:20-64:22).

Respondents obtained tenants signatures on these sham leases by promising tenants that they would not have to pay the inflated rents listed on the leases. Rene Medrano, a tenant in Apartment 1B, recalled that he agreed to sign a 2014 lease listing an inflated rent of $2,200 when he was actually paying $1,750 because Eldad Cohen explicitly told him that he would "pay one thing, but the contract will say another [rent]." Ex. 27 (R. Medrano Tr. at 27:9-17).

Eldad Cohen admitted in his sworn testimony that Respondents advised tenants that the Attorney General "ordered" preparation and signature of these new leases. He communicated to tenants that they must "cooperate[] and sign the new lease," Ex. Ex. 14 (E. Cohen Tr. at 125:9), though they were sham leases. Hannaford Aff. at ¶ 70.

Even after 2014, Respondents entered into at least one additional rider memorializing a lower rent for Apartment 5B than the inflated rent listed on the first page of the lease. Ex. 63. Respondents failed to produce this rider to the OAG in response to its subpoena demanding all leases and lease riders. Hannaford Aff. at ¶ 71.

B. Respondents Filed False Rent Registrations with the DHCR and Submitted a False Affidavit to HPD.

In July 2014, after the OAG had directed Respondents to get into compliance with the 421-a exemption program and Rent Stabilization, Respondents submitted initial rent registrations to the DHCR for the years 2010 through 2014. Exs. 38, 52. These registrations were fraudulent because they misrepresented the legal regulated rents for all units in the Building. Moreover, these registrations were submitted to DHCR without Respondents offering current tenants leases that complied with Rent Stabilization.

Respondents chose to hide the actual, lower rents that tenants were paying and instead represented to DHCR that the legal regulated rents for the units were the inflated rents listed on the first page of each lease (which rents the tenants had never paid). This false registration

perpetuated Respondents' scheme to give the impression that the Building's rent roll was higher than it actually was, which made the Building appear more valuable to purchasers and appraisers.

The rent registrations that Respondents filed with the DHCR in 2014 uniformly and for all apartments listed a false, inflated rent rather than the actual legal regulated rent. Ex. 52.

In June 2015, Respondent Ram Cohen submitted a false affidavit to HPD in order to continue receiving the 421-a tax exemption. In this affidavit, Ram Cohen swore that Respondents had "charged" the inflated rents that had been registered with the DHCR retroactively from April 1, 2009, and continuing until April 1, 2015. Ex. 65. Respondent Ram Cohen enclosed a chart that mirrored the rents registered with DHCR for 2011 to 2014, falsely claimed that Respondents had charged tenants the higher, inflated rents registered with DHCR, and failed to disclose the lower legal rents that the tenants had been charged and paying all along. Id. This affidavit did not disclose that Respondents had represented to HRA from 2011 to 2014 that the monthly rent for Apartment 4A was $900.

Ram Cohen also falsely swore in this affidavit that "the tenants were provided rent-stabilized leases." Id. In fact, it was not until around August or September 2014, after the OAG directed them to do so, that Respondents began offering tenants leases that were drawn on a form which recited the protections afforded by Rent Stabilization; but, even then, as discussed above, the actual leases provided contained false information.

In July 2015, Respondents submitted an annual rent registration to the DHCR. Ex. 66. This registration, like the 2014 registration, falsely listed inflated rents as the legal regulated rents. In addition, this registration falsely represented that there were leases in effect for some apartments which did not have leases.

IV. Respondents Illegally Vacated the Building of Tenants Starting in June 2015 and Continuing Until January 2016, When the Building Was Sold After Providing a False Rent Roll to the Purchaser.

A. The Submission of a New Offering Plan for Condominium Conversion Triggered Additional Tenant Protections which Respondents Ignored.

Between May 2015 and January 2016, Respondents continued to operate the Building without regard to their legal obligations, including the new legal obligations imposed by the Martin Act.

In May 2015, after falsely representing to the OAG and DHCR that they had come into compliance with Rent Stabilization, Respondents submitted to the OAG a new proposed offering plan for the Building to be converted to a condominium under N.Y. G.B.L. § 352-eeee.

While the 2007 offering plan for Meadows Tower Condominium was filed under 13 N.Y.C.R.R. § 20, applicable to newly-constructed and vacant condominiums, the new offering plan was filed under 13 N.Y.C.R.R. § 23, as an occupied property converting to condominium ownership. This provision contains additional protections for tenants in place.

The project was entitled Fresh Meadows Tower, and the sponsor of the offering plan was, again, Respondent ERC Holding, LLC. The offering plan listed Respondent Ram Cohen as principal of ERC Holding, LLC. The plan was a non-eviction plan, meaning that tenants could not be evicted by reason of conversion to condominium ownership. The plan was eventually rejected by the OAG on April 14, 2016.

Before the plan was rejected, and pursuant to the requirements of the Martin Act, Respondents allegedly served all tenants with the preliminary offering plan on May 11, 2015. This event commenced the "red-herring period," which is the period between when tenants are notified of the conversion to condominium and before the plan is accepted for filing by the OAG, at which time sales can begin. OAG policy, consistent with the Martin Act's protection against

tenant harassment during conversions to cooperative and condominium ownership, prohibits sponsors of buildings converting to cooperatives or condominiums from securing buyouts or other surrenders of rent-stabilized tenancies during the red-herring period. The Martin Act protects tenants in buildings undergoing conversion to condominium or cooperative ownership from harassment, deterioration of services, and threats of imminent eviction during the red-herring period and after.

As the offering plan for the Building was never accepted for filing, there was never a period during which Respondents could permissibly secure tenancy surrenders between May 2015 and April 2016, when the plan was rejected. Nevertheless, from May 2015 through January 2016, Respondents caused tenants of all units except Apartment 2A to vacate their apartments.

In June 2015, Respondents sent seven tenants in the Building renewal lease forms, which offered tenants the option of renewing their leases at inflated, illegal rents. Ex. 69. These lease renewal offers were fraudulent, deceptive, and illegal because they demanded more than the legal regulated rent for each unit authorized under the Rent Stabilization laws. Respondents used the inflated lease demands as a mechanism by which to secure tenants' surrender of their apartments.

B. After Executing a Contract of Sale with Vincent Wu, Respondents Increased Pressure on Tenants to Vacate.

On September 30, 2015—less than five months after allegedly serving the red herring on tenants—Respondents entered into a contract of sale with Vincent Wu to sell him the Building for $3,750,000. In this contract, Respondents promised that they would "make diligent efforts to deliver at least 5 Units (whether residential and/or commercial) vacant at Closing." Ex. 71 at Rider at 3.

Despite Martin Act protections afforded to the tenants and Rent Stabilization's prohibition against eviction without cause, between September 2015 and January 2016, Respondents continued their concerted effort to cause tenants to leave their apartments. They informed tenants still living in the Building that they were required to vacate the Building because of the impending sale. Ex. 27 (R. Medrano Tr. at 49:7-12); Ex. 32 (Mohammed Tr. at 97:11-13). This was blatantly false, as landlords may not terminate rent-stabilized tenancies simply because of an impending sale. 9 N.Y.C.R.R. § 2524.1. In the case of the Grinfelds, tenants of Apartment 3A, Respondents forced them to leave their apartment in October 2015 and paid their broker's fee and moving expenses. Hannaford Aff. at ¶¶ 85-89; Exs. 72, 73. Sharon Mohammed recalls that the Grinfelds were distraught by the forced move. Ex. 32 (Mohammed Tr. at 95:14). In January 2016, Respondents paid $2,500 in "moving expenses" to the tenants of Apartment 5A in order to ensure the surrender of their tenancy. Ex. 90.

C. Respondents Committed Repeated Fraud in the Course of Selling the Building.

Respondents repeatedly deceived Vincent Wu, the eventual purchaser of the Building, in the several months leading up to transfer of title.

In the September 30, 2015 contract of sale between Respondent ERC Holding, LLC and Vincent Wu, Respondents misrepresented the rents of all apartments and the security deposits for all apartments. Ex. 71. This misrepresentation was intentional. Schedule E of the contract of sale contained a rent schedule. Respondents falsified the rents by listing the higher, inflated rents rather than the actual legal regulated rents. Just as Respondents had falsified the rents to the DHCR, Respondents falsified the rents in the contract of sale. This lie made it appear that the Building's rent roll was higher than it was, and this served Respondents by giving the impression

that the Building was more valuable that it was, allowing them to secure a $3,750,000 purchase price.

In a second rider appended to the contract of sale, Respondents represented that the Schedule E was 'the accurate rent roll" as of the date the contract was executed and "that no tenant is in default in the performance of the lease and that all rents or charge[s] have been collected up to date of Contract." Id. at "Second Rider" at ¶ 1. This representation was knowingly false. None of the tenants ever paid in any given month the higher, false rent listed on the Schedule E.

Between execution of the contract of sale on September 30, 2015 and transfer of title on January 12, 2016, Respondents continued to represent to the purchaser that the false, inflated rent roll was the actual rent roll for the Building.

V. Respondents Create a Shell Company to Pass Through Wages to Employees.

Respondents continue to engage in additional persistent fraud relating to how they pay their employees. In order to deceive taxing authorities, their insurers, and other third parties, they use a corporation nominally owned by David Medrano to pay their employees' wages.

David Medrano, who was a tenant at the Building for many years, was hired by Ram Cohen and Eldad Cohen in 2012 to act as property manager of a building the Cohens own and manage at 114-05 170th Street, in St. Albans, Queens. Exs. 76, 77 (D. Medrano Tr. II at 19:9-15). As a condition of his employment, Ram Cohen and Eldad Cohen insisted that Mr. Medrano set up a corporation in his name. Id. (D. Medrano Tr. II at 12:6-13:5). That corporation is CMYF Corp. While nominally associated with David Medrano, CMYF Corp. is actually an entity controlled by Ram Cohen.

Ram Cohen has made virtually all decisions and prepared all corporate documents on behalf of CMYF Corp. from its creation. Ram Cohen prepared all the documents in order to register the corporation with the New York Department of State. Ram Cohen presented all corporate documents to David Medrano for his signature, but David Medrano did not know what he was signing. Ex. 77 (D. Medrano Tr. II at 25:25-26:25). Ram Cohen reported to the New York Department of State that the service of process address was Apartment 1B at the Building. Ex. 78.

Ram Cohen personally prepared the annual tax returns for CMYF Corp. until 2017, and the cover page for each return shoes an IP address associated with Ram Cohen's home computer. Ex. 79 at 1. To prepare the tax returns, Ram Cohen would itemize expenses for CMYF Corp. without consulting with Mr. Medrano. Ex. 77 (D. Medrano Tr. II at 55:18-57:10).

Ram Cohen used his own insurance broker, Teitelbaum Insurance Company, to take out workers compensation and liability insurance policies for CMYF Corp. Ex. 77. Ram Cohen filled out all documents necessary to keep the insurance policies active. Ex. 80. Ram Cohen pays for these policies. Ex. 83. Teitelbaum Insurance Company is Ram Cohen's preferred insurance broker, and Teitelbaum has been in contact with the insurance company, Wesco Insurance, regarding the CMYF policies. Ex. 81.

All documents associated with CMYF Corp. are kept in the offices of 114-05 170th Street, the building owned by Eldad and Ram Cohen. Although the TD Bank account for CMYF was opened by Mr. Medrano, Ram Cohen regularly makes deposits into the account. Indeed, all income paid to CMYF comes from Ram Cohen, Eldad Cohen, and their various business entities.[6] Exs. 77 (D. Medrano Tr. II at 11:5-16, 24:22-25:3), 82, 84.

[6] The OAG has identified over 12 limited liability companies and other corporations controlled by Ram Cohen concerning real estate.

Ram Cohen and Eldad Cohen have paid David Medrano his $1,000 weekly salary by depositing it in the CMYF Corp. account. Ex. 77 (D. Medrano Tr. II at 24:22-25:3). Exs. 82, 84. Ram Cohen also uses CMYF Corp. to pay other employees, including Sharon Mohammed, Alcides Guano and Carmen Ramirez. Ex. 77 (D. Medrano Tr. II at 61:20-63:14). Respondents do not withhold payroll taxes from these wages.

With respect to Sharon Mohammed, although she has worked for Eldad Cohen and Ram Cohen since 2012, including at the Building, her pay comes from CMYF Corp. because Ram and Eldad Cohen have directed David Medrano to pay her $300 each week, though she does not work for him. Prior to the OAG's investigation, David Medrano would pay Ms. Mohammed in cash and then be reimbursed by Ram Cohen and Eldad Cohen. Ex. 32. (Mohammed Tr. 23:23-25:25). After the investigation began, Ram and Eldad Cohen directed David Medrano to pay Ms. Mohammed's wages by check. To replenish these funds, Ram Cohen makes direct deposits into the CMYF account from his home in Massachusetts. Ex. 82. CMYF has not spent any of its own funds on Ms. Mohammed's wages—all funds come from Respondents through CMYF.

ARGUMENT

I. Respondents Engaged in Repeated and Persistent Illegality Under New York Executive Law § 63(12).

Pursuant to Executive Law § 63(12), the Attorney General may use a special proceeding to enjoin and obtain relief from an entity engaged in repeated or persistent illegality or fraud in the conduct of business. A violation of a federal, state, or local law constitutes "illegality" within the meaning of Executive Law § 63(12). See, e.g., State v. Princess Prestige Co., Inc., 42 N.Y.2d 104, 107 (1977) (violation of Personal Property Law); People v. Empyre Inground Pools, Inc., 227 A.D.2d 731, 733 (3d Dep't 1996) (violations of Lien Law and home-improvement contract provisions of General Business Law); State v. Winter, 121 A.D.2d 287, 287-88 (1st

Dep't 1986) (violation of New York City Rent Stabilization Law and Code); Wiener v. Abrams, 119 Misc. 2d 970 (Sup. Ct. Kings Cnty. 1983) (same).

The statute defines "repeated" as "repetition of any separate and distinct fraudulent or illegal act" or "conduct which affects more than one person." Exec. Law § 63(12); State v. Wilco Energy Corp., 284 A.D.2d 469, 473 (2d Dep't 2001). "Persistent" is defined as "continuance or carrying on of any fraudulent or illegal act or conduct." Exec. Law § 63(12). Courts have found that under these definitions, the Attorney General is not required to establish that a large percentage of the person's or business's transactions were fraudulent or illegal. See, e.g., Princess Prestige Co., 42 N.Y.2d at 107 (finding 16 out of 3,600 total transactions sufficient to state a claim under § 63(12)). Further, Respondents who have discontinued the illegal or fraudulent conduct may still be held liable under Executive Law § 63(12) for their former actions and enjoined from resuming such conduct in the future. See People v. Gen. Elec. Co., 302 A.D.2d 314, 316 (1st Dep't 2003); State v. Person, 75 Misc. 2d 252, 253 (Sup. Ct. N.Y. Cnty. 1973).

Respondents have repeatedly violated the rules governing the 421-a program, Rent Stabilization laws, the General Business Law, among others, and thus are liable under Executive Law § 63(12)'s illegality prong.

A. Respondents Repeatedly and Persistently Violated the Rules Governing the 421-a Program.

Title 28, Chapter 6 of the Rules of the City of New York, contains the rules governing the 421-a program. They provide that entities seeking the tax exemption must apply to HPD so that it may determine eligibility under the program. First, the applicant seeks a preliminary certificate of eligibility from HPD, submitting an application containing, inter alia, construction plans for the building. 28 R.C.N.Y § 6-05(b). At this stage, the applicant also indicates whether

the building is to be a rental or to be owned as a condominium. Id. at § 6-05(b)(2). Next, in order to obtain a final certificate of eligibility, owners of rental buildings must provide HPD with a schedule of proposed initial rents and provide "[e]vidence satisfactory to [HPD] . . . that the owner of rental dwelling units has registered the building and any occupied units with the New York State Division of Housing and Community Renewal." Id. at § 6-05(d)(1)(iii)(A). If the building is "to be owned and operated as a cooperative or a condominium," the owner must also state that if the condominium plan is not declared effective fifteen months after the issuance of a final certificate of eligibility, the owner will register the rental units with the DHCR within fifteen days. Id. at § 6-05(d)(1)(iii)(B).

1. The Building Was Never Exempt From Rent Stabilization as a Condominium.

To determine whether a rental unit in a building receiving a 421-a tax exemption must comply with rent regulation, the 421-a program rules refer to the Rent Stabilization laws applicable in the building's jurisdiction. See 28 R.C.N.Y § 6-02(g)(2) (requiring that rental buildings receiving a 421-a tax exemption subject their apartments to rent regulation "unless exempt under [local rent regulation laws] from regulation by reason of the cooperative or condominium status of the unit"). In New York City, where the Building is located, the Rent Stabilization Code applies. Under the Code, housing accommodations are exempt from Rent Stabilization when they are "owned as cooperatives or condominiums." 9 N.Y.C.R.R. § 2520.11(l).

Here, neither the Building itself nor any unit in the Building was "owned as a condominium." Respondent ERC Holding, LLC held title to the entire property, including all apartments within the Building, from 2005 until 2016. Although Respondents had submitted a condominium offering plan to the OAG alleging their intent to sell off ownership rights to

condominium units, there were never any sales. Thus, the offering plan was never consummated. See 13 N.Y.C.R.R. § 20(c)(6) (defining "consummation of the [condominium offering] plan" as "filing the declaration and the first transfer of title to a condominium unit to at least one purchaser under the plan . . . .").

Given that the Building was never owned as a condominium, once Respondents began renting units to tenants, Respondents were required under 421-a Rules and Rent Stabilization Law § 26-517 to report the rental status of the building to HPD, along with the initial rents, register all units with the DHCR, and comply with Rent Stabilization, including offering rent-stabilized leases to tenants. They did not do so.

2. The Building was Ineligible for 421-a Benefits from 2009 through 2015; Yet, Respondents' Fraud Ensured the Building Continued to Receive Them.

The 421-a program rules condition eligibility for the tax exemption on meeting the rental requirements set forth in 28 R.C.N.Y § 6-02(g). See id. ("To be eligible for partial tax exemption the land upon which the eligible project is located must meet the following letting, rental and occupancy requirements . . . ."); § 6-02(g)(2) (requiring that rental units be subject to Rent Stabilization). As Respondents never subjected their units to Rent Stabilization, the project was ineligible for the tax exemption.

Nevertheless, HPD granted the project a final certificate of eligibility in October 2011 because Respondents had affirmatively misrepresented earlier that year that "[a]ll information previously submitted [to HPD] remains true and accurate," Ex. 9, including the professed status of the Building as a condominium. Nowhere had Respondents disclosed that the Building was actually a rental and that the rents charged to tenants were not registered with the DHCR. But for Respondents' misrepresentations to HPD, the Building would not have received the tax exemption.

In 2014, once confronted by the OAG about the rental status of the Building and Respondents' failure to comply with 421-a program rules, Respondents went about taking steps to make it appear that they were honoring their obligation to treat tenants as rent-stabilized; however, in fact, they were not "fully" subjecting the tenancies to Rent Stabilization, as required by 28 R.C.N.Y. § 6-02(g)(2). Rather, as discussed in Argument Section I.B.2, below, Respondents submitted false rent registrations to the DHCR, issued leases that were not in compliance with Rent Stabilization, and threatened to terminate tenancies on grounds other than those explicitly permitted by the Rent Stabilization Code.

In June 2015, in order to continue to receive the 421-a tax exemption in light of the agency's discovery than the Building was a rental, Ram Cohen affirmatively and willfully misrepresented to HPD in an affidavit that Respondents had "charged" the inflated rents that had been registered with the DHCR retroactively from July 1, 2009, and continuing until April 1, 2015. Ex. 65. Thus, he established impermissibly high legal regulated rents for the apartment that would be used for future rent calculations. Ram Cohen enclosed a chart that mirrored the rents registered with DHCR for 2010 to 2014, falsely claimed that Respondents had charged tenants the higher, inflated rents registered with DHCR, and failed to disclose the lower legal rents that the tenants had been charged and paying all along. Id.

Ram Cohen also falsely swore in this affidavit that "the tenants were provided rent-stabilized leases." Ex. 65. In fact, it was not until around August or September 2014, after the OAG directed them to do so, that Respondents began offering tenants leases that were drawn on a form which recited the protections afforded by Rent Stabilization; but, even then, such leases were illegal.

Had HPD known at any time that Respondents were misrepresenting the Building's status in their applications for certificates of eligibility or in Ram Cohen's 2015 affidavit, the agency would have revoked the tax benefit. See 28 R.C.N.Y. § 39-02 (providing that HPD may revoke a tax benefit for cause); § 39-01 (defining "cause" as "any Violation, Misrepresentation, Omission, Failure, or Discrimination, without regard to the date upon which HPD discovers such Violation, Misrepresentation, Omission, Failure, or Discrimination").

The New York City Department of Finance credited Respondents a total of $479,666.99 in property tax exemptions between 2006 and 2015 under the 421-a program.[7] Ex. 11. As Respondents obtained this tax relief despite the repeated and persistent violations of 421-a program rules, in violation of Executive Law § 63(12), the Court should order Respondents to disgorge $479,666.99, in addition to other appropriate relief. See People v. Applied Card Sys., Inc., 11 N.Y.3d 105, 125 (2008) (recognizing the Attorney General's authority to obtain "disgorgement--an equitable remedy distinct from restitution--of profits").

B. Respondents Repeatedly and Persistently Violated Rent Stabilization Laws and Regulations.

As discussed above, rental apartments in buildings receiving the 421-a exemption are subject to Rent Stabilization. 28 R.C.N.Y. § 6-02(g)(2). In the case of the instant Building, whether or not Respondents actually acknowledged their obligations as owners of rent-stabilized housing, the Rent Stabilization Law and Rent Stabilization Code afforded tenants living there a panoply of rights as a matter of law. In the course of their more than six years as landlords of rent-stabilized apartments, Respondents repeatedly, persistently, and willfully ignored their obligations under these laws at every opportunity, depriving every tenant of their statutory rights.

[7] Although the Building still receives a tax exemption, since 2016 that benefit accrues to the new owner, who has complied with 421-a program rules.

1. Before 2014, Respondents Ran the Building as if it Were Unregulated.

Beginning in 2009, and every year thereafter until 2014, Respondents gave at least 15 tenants moving into the Building unregulated leases entitled "Lease of a Condominium Unit" that were for terms of one-year, to be renewed at Respondents' option. The leases reiterated in several places that Respondents could terminate the lease term at their discretion after notice to the tenant. The leases provided that the tenant was required to vacate the apartment at the end of the lease term. Exs. 12, 15, 16.

The issuance of every one of these leases violated Section 2522.5 of the Rent Stabilization Code. In addition to the leases stating on their face that the tenancies were leases of condominium units as opposed to rent regulated accommodations, the leases had illegal terms. They did not provide tenants the option of a one-year or two-year lease, as required by 9 N.Y.C.R.R. § 2522.5(a)(1), (b)(1). They were not accompanied by riders describing the rights and duties of owners and tenants under Rent Stabilization, as required by 9 N.Y.C.R.R. § 2522.5(c). The terms that the leases did contain were contrary to Rent Stabilization—most significantly, the leases' provision that Respondents could terminate the lease term at their discretion.

The leases also listed rents that were illegal rents, which were not in compliance with 9 N.Y.C.R.R. § 2521.1(g). That provision of the Code provides that "[t]he initial legal regulated rent for a housing accommodation constructed pursuant to 421-a of the Real Property Tax Law shall be the initial adjusted monthly rent charged and paid but not higher than the rent approved by HPD pursuant to such section . . . ." As HPD had not approved any rents and, indeed, did not know the Building was a rental, the initial legal regulated rents for the apartments in the Building were the initial rents charged and paid by the initial tenants. Those initial legal regulated rents

ranged from $1,250 to $1,800 per month, see Hannaford Aff. at ¶ 62, though every unregulated lease issued at the time listed an inflated rent on the first page that was never actually paid by the tenant. The memorialization of false, inflated rents as the initial rents for each unit additionally rendered all the leases issued at that time illegal.

In addition to repeatedly and persistently issuing illegal leases, from 2009 through 2014, Respondents violated the Rent Stabilization Law by failing to register the apartments with DHCR. Under Section 26-517(c) of the Rent Stabilization Law, owners of rent-stabilized housing accommodations must register those accommodations with the DHCR within 90 days after those accommodations become subject to Rent Stabilization. The 421-a rules additionally required Respondents to register occupied units with the DHCR. 28 R.C.N.Y § 6-05(d)(1)(iii)(A). It was not until July 2014 that Respondents first registered the apartments with DHCR (and then only because OAG had caught Respondents violating the law). The repeated and persistent failure, year after year, to comply with R.S.L. § 26-517(c), is undisputed.

2. After the OAG Confronted Respondents in 2014, Respondents Continued to Violate Rent Stabilization Laws and Rules Secretly.

Though the OAG directed Respondents in a 2014 letter to come into compliance with Rent Stabilization, Respondents failed to do so. Respondents took only superficial steps to make it appear that they were in compliance, such as registering illegal rents with DHCR and issuing illegal leases to tenants. These gestures were mere sleight of hand, however, because Respondents' persistent illegal conduct continued throughout 2014, 2015, and until the sale of the Building in January 2016.

First, Respondents continued to violate 9 N.Y.C.R.R. § 2522.5 multiple times by issuing illegal leases. Beginning in 2014 and continuing until the issuance of the April 2015 lease for Apartment 5B to A. Levy, Respondents issued illegal leases which, though drawn on a form that

recited the protections afforded by Rent Stabilization, did not comply with Rent Stabilization because, inter alia, they failed to give the tenant the option of a one- or two-year term. Rather, Respondents offered tenants only a one-year lease term.

Second, Respondents continued to violate 9 N.Y.C.R.R. § 2521.1(g) after 2014 in that the leases listed inflated, illegal rents. As the initial legal regulated rent for each apartment was the rent charged to and paid by the first tenant in occupancy, the 2014 leases, which listed the inflated rents that had never been charged or paid by tenants, were grossly above the legal regulated rent for each unit. For instance, Rene Medrano, a tenant in Apartment 1B, recalled that he agreed to sign a 2014 list listing an inflated rent of $2,200 when he was actually paying $1,750 because Eldad Cohen explicitly told him that he would "pay one thing, but the contract will say another [rent]." Ex. 27 (R. Medrano Tr. at 27:9-17). Sharon Mohammed, Respondents' employee who filled in the rent-stabilized lease forms pursuant to Eldad Cohen's instructions, recalled that Eldad Cohen instructed her to list the higher, inflated rent on the rent-stabilized lease forms rather than the actual rent that the tenants were paying. Ex. 32 (Mohammed Tr. at. 62:7-63:8). This practice meant that the rents listed in the 2014 leases were $400 to $600 higher than the legal regulated rents for each unit.

Third, Respondents continued to repeatedly violate R.S.L. § 26-517(c) because, although they registered the apartments with DHCR in July 2014 and July 2015, such registrations were false. As discussed in the Hannaford Affirmation, ¶¶ 59-62, 76, every registration Respondents submitted to the DHCR from July 2014 through 2015 failed to list the actual rent charged to each tenant and claimed false, inflated rents.

Finally, Respondents repeatedly and persistently violated 9 N.Y.C.R.R. § 2524.1. Under that provision of the Rent Stabilization Code, owners may not remove or exclude rent-stabilized

tenants from possession or "attempt such removal or exclusion from possession" except based on one or more of the grounds specified in the Rent Stabilization Code. These grounds include various wrongful acts of tenants, 9 N.Y.C.R.R. § 2524.3, and occupancy by the owner or owner's family, recovery by a not-for-profit institution, and a court determination that a tenant is not using the accommodation as her primary residence, 9 N.Y.C.R.R. § 2524.4.

In knowing violation of this regulation, Respondents repeatedly removed and attempted to remove all tenants from possession of their rent-stabilized apartments between May 2015 and January 2016. Respondents told tenants that they were required to leave their apartments because of the impending sale. Respondents also offered tenants renewal leases at inflated, illegal rents in order to cause them to surrender their apartments. Respondents also offered at least two tenants, the Grinfelds, who lived in Apartment 3A, moving costs and a broker's fee in order to help facilitate their surrender of tenancy rights without cause. Respondents illegally removed and attempted to remove these rent-stabilized tenants from possession in part so as to comply with their promise to the prospective purchaser that they would "make diligent efforts to deliver at least 5 Units (whether residential and/or commercial) vacant at Closing."

C. Respondents Repeatedly and Persistently Engaged in Deceptive Conduct in Violation of General Business Law § 349.

General Business Law § 349(a) states that "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful." G.B.L. § 349 is "intended to be broadly applicable, extending far beyond the reach of common law fraud." New York v. Feldman, 210 F. Supp. 2d 294, 301 (S.D.N.Y. 2002). The statute "appl[ies] to virtually all economic activity, and [its] application has been correspondingly broad." Karlin v. IVF Am., Inc., 93 N.Y.2d 282, 290 (1999) (emphasis added).

Numerous courts have held that G.B.L. § 349's broad prohibition on deceptive practices applies to housing-related transactions. In Buyers & Renters United to Save Harlem v. Pinnacle Group NY LLC, 575 F. Supp. 2d 499, 504, 512 (S.D.N.Y. 2008), for example, the court held that plaintiffs stated a claim under G.B.L. § 349 where they alleged that their landlord commenced baseless eviction cases, threatened to collect rent in amounts not permitted under the law, sent tenants false predicate notices, and engaged in other conduct intended to cause rent-regulated tenants to vacate their apartments. See also David v. #1 Mtkg. Serv., Inc., 113 A.D.3d 810, 811-12 (2d Dep't 2014) (tenants stated § 349 claim against landlords who operated "three-quarters houses," a form of unregulated, transitional rental housing); Lozano v. Grunberg, 195 A.D. 2d 308 (1st Dep't 1993) (deceptive dispossess notices for late rent payments can violate G.B.L. § 349); Meyerson v. Prime Realty Servs., LLC, 7 Misc. 3d 911, 919-20 (Sup. Ct. N.Y. Cnty. 2005) (plaintiff stated claim against owners of rent-regulated apartments for using misleading lease renewal form). Accord Travesio v. Gutman, Mintz, Baker & Sonnenfeldt, P.C., No. 94-CV-5756 (JBW), 1995 U.S. Dist. LEXIS 17804, at *19 (E.D.N.Y. Nov. 16, 1995) (New York courts, interpreting consumer protection statutes, give tenants private rights of action against their landlords) (collecting cases)); cf. Polonetsky v. Better Homes Depot, Inc., 97 N.Y.2d 46, 54 (2001).[8]

Here, Respondents engaged in materially misleading and deceptive conduct, including: (1) between 2009 and 2014 issuing tenants misleading unregulated leases with inflated rents listed on the first page and actual rents memorialized by rider, see Statement of Facts, Section II,

[8] While some courts have rejected G.B.L. § 349 claims against landlords, these have all involved private plaintiffs. Further, courts in these cases have focused on the contractual nature of the parties' underlying relationship and the limited scope of the dispute and impact of any resolution to those parties. E.g., Aguaiza v. Vantage Props., LLC, 69 A.D.3d 422, 423 (1st Dep't 2010). Here, by contrast, the Attorney General is not in privity with the Respondents and Respondents' conduct is part of a broad, systematic pattern to deceive tenants, prospective tenants, and the agencies regulating such tenancies.

supra; (2) in 2014 and 2015 issuing tenants misleading leases that, while purporting to be rent-stabilized, actually listed illegal rents, and then verbally promising tenants such as Rene Medrano that their lower, actual rents would continue to be honored, see Statement of Facts, Section III.A, supra; and (3) telling tenants that they had to move out of their apartments because of the impending sale of the Building, and simultaneously deceiving them about their rights under Rent Stabilization, see Statement of Facts, Section IV.B, supra.

This conduct on the part of the Respondents was designed to deceive tenants about the terms of their tenancies and, ultimately, to cause them to relinquish their homes when it suited Respondents. This sort of deception was critical to Respondents' business plan—they operated the Building at their whim, obscuring the truth from tenants and regulating agencies, and operating in disregard of the law. When the time came for Respondents to vacate the Building for the new owner, the years of deceptive practices directed at their tenants enabled them to terminate tenancies swiftly and without any legal basis.

II. Respondents Engaged in Repeated and Persistent Fraud under New York Executive Law § 63(12).

In addition to repeated and persistent illegality, Executive Law § 63(12) prohibits repeated and persistent fraud in the carrying on, conducting or transaction of business. The statute defines "fraud" and "fraudulent" as "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise, or unconscionable contractual provisions. Exec. Law § 63(12).

A. Respondents Committed Repeated and Persistent Statutory Fraud.

Consistent with the plain language of and legislative intent behind Executive Law § 63(12), courts have taken a broad view of what constitutes fraudulent and deceptive conduct in proceedings brought by the Attorney General. See Lefkowitz v. Bull Inv. Grp., Inc., 46 A.D.2d

25, 28 (3d Dep't 1974); People v. 21st Century Leisure Spa Int'l, Ltd., 153 Misc. 2d 938, 943 (Sup. Ct. N.Y. Cnty. 1991). Thus, to establish statutory fraud under Executive Law § 63(12), the Attorney General does not have to make a showing as to the traditional elements of common law fraud, such as reliance or intent to deceive. See Apple Health & Sports Clubs, Ltd., 206 A.D.2d at 267, 21st Century Leisure Spa, 153 Misc. 2d at 944; State v. Ford Motor Co., 136 A.D.2d 154, 158 (3d Dep't 1988), aff'd, 74 N.Y.2d 495 (1989).

The standard for fraudulent conduct under Executive Law § 63(12) is whether the act "has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." In re People v. Applied Card Sys., Inc., 27 A.D.3d 104, 106 (3d Dep't 2005), aff'd on other grounds, 11 N.Y.3d 105 (2008); People v. Gen. Elec. Co., 302 A.D.2d 314 (1st Dep't 2003). Executive Law § 63(12) thus protects the credulous and unthinking as well as the cynical and the intelligent, the trusting as well as the suspicious. See Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 273 (1977); Applied Card Sys., 27 A.D.3d at 106; Gen. Elec., 302 A.D.2d at 314.

Respondents' many fraudulent practices falling within the definition of statutory fraud under Executive Law § 63(12) include the following.

1. Respondents Repeatedly Made False Representations to HPD to Maintain the 421-a Exemption.

As described in the Statement of Facts, Section I, supra, Respondents made numerous misrepresentations to HPD between 2009 and through 2015 in order to receive, and then maintain, the 421-a tax exemption. Though there were no sales of any condominium units, and Respondents had for several years operated the building as a rental, in order to get a final certificate of eligibility, Respondents deceptively assured HPD that "[a]ll information previously submitted [to HPD] remains true and accurate," Ex. 9, including that the building was a condominium. From 2009 to 2014, despite renting all of the units to tenants and effectively

abandoning any plan to offer condominium units for sale, Respondents never once disclosed to HPD the true status of the Building.

The scheme to deceive HPD continued even after the OAG confronted Respondents with the illegal operation of the Building in 2014. In June 2015, Ram Cohen submitted a false affidavit to HPD stating that Respondents had "charged" the false, inflated rents that Respondents had registered with the DHCR retroactively from July 1, 2009, and continuing until April 1, 2015. Ex. 65. Ram Cohen also falsely swore in this affidavit that "the tenants were provided rent-stabilized leases." Id. In fact, it was not until around August or September 2014 that Respondents began offering tenants leases that were drawn on a form which recited the protections afforded by Rent Stabilization; but, even then, as discussed above, such leases were illegal. Ram Cohen never corrected this affidavit, and HPD allowed the tax exemption to continue, relying on these false statements.

The repeated and persistent false submissions to HPD, and the failure to correct these misrepresentations while receiving the tax exemption every month through December 2015, constituted fraudulent and deceptive conduct actionable under Executive Law § 63(12).

2. Respondents Repeatedly Submitted False Rent Registrations to the DHCR.

Once confronted by the OAG about their illegal operation of the Building, Respondents submitted deceptive and false rent registrations to the DHCR in 2014 and 2015. As discussed in the Statement of Facts, Section III.B, supra, in 2014 Respondents submitted initial rent registrations and annual rent registrations for every year from 2010 to 2014. In these registrations, Respondents hid the actual, lower rents that tenants were paying and instead represented to DHCR that the legal rents for the units were the inflated rents listed on the first page of each lease. Respondents did not disclose any preferential rents or lower rents. The rents

registered with DHCR were not the legal rents because under 9 N.Y.C.R.R. § 2521.1(g), Respondents were required to set the legal rents at the rents actually charged to and paid by the tenants. Moreover, these registrations were submitted to DHCR without Respondents offering current tenants leases that complied with Rent Stabilization. A chart summarizing the discrepancies in rents registered with the DHCR and the actual, legal rents can be found in Paragraph 62 of the Hannaford Affirmation.

The July 2015 registrations submitted by Respondents to DHCR also falsely listed inflated rents as the legal regulated rents. In addition, the registration misrepresented the lease terms of various apartments and misrepresented that Apartment 5B was vacant. These false submissions, and the failure to correct them, which lasted until December 2015, constituted fraudulent and deceptive conduct actionable under Executive Law § 63(12).

3. Respondents Concealed the Legal, Actual Rent Roll from Vincent Wu in Order to Sell the Building.

Respondents misrepresented the rent roll of the Building to Vincent Wu in the September 30, 2015 contract of sale and continuing thereafter until the sale of the Building in January 2016. As discussed in the Statement of Facts, Section IV.C, supra, the Schedule E attached to the contract of sale contained a false rent schedule that listed the higher, inflated rents rather than the actual legal regulated rents. In a second rider appended to the contract of sale, Respondents represented that the Schedule E was "the accurate rent roll" as of the date the contract was executed and "that no tenant is in default in the performance of the lease and that all rents or charge[s] have been collected up to date of Contract." Ex. 71. In fact, such representation was knowingly false. None of the tenants ever paid in any given month the higher, false rent listed on the Schedule E.

Between execution of the contract of sale on September 30, 2015 and transfer of title on January 12, 2016, Respondents continued to represent to the seller that the false, inflated rent roll was the actual rent roll for the Building. This continuing deception directed at the Building's purchaser constituted fraudulent and deceptive conduct actionable under Exec. Law § 63(12).

4. Respondents Deceived Tenants in the Building and Entered into Sham Leases with Them.

As discussed in the Statement of Facts, Section II and III.A, supra, and in the Argument, Section I.C, supra, Respondents offered tenants false and illegal leases that deceived tenants about their rights and the legal rents for their units. This created an atmosphere of fraud concerning the legal rents for the apartments. Between 2009 and 2014, these leases listed inflated rents on the first page and actual rents memorialized by rider, and they misrepresented the regulated status of the apartments. Between 2014 and 2015, Respondents switched their methods by offering leases that, while purporting to be rent-stabilized, actually listed illegal rents and were for terms of only one year. These leases were the key to Respondents' scheme to defraud, as Respondents used them to convince government agencies that tenants were paying rents that they were not actually paying.

In addition to offering tenants fraudulent leases, Respondents made repeated unwritten representations to tenants that were deceptive, adding to the atmosphere of fraud. For example, upon issuing him a new lease in 2014, Respondents promised tenant Rene Medrano that he would not have to pay the rent listed on the lease but could pay the lower rent he had always paid. In 2015, Respondents told tenants, including the Grinfelds and David Medrano, that if they did not sign the illegal renewal leases offered to them, they would have to vacate the Building. These representations deceived tenants about their rights under Rent Stabilization.

5. Respondents Made False Representations to the OAG and Submitted False Leases to Perpetuate their Fraud.

Beginning in 2013, and continuing through the present investigation, Respondents have misrepresented facts and submitted false documents to the OAG. Initially this fraud was to cause the OAG to discontinue its inquiry into the operations of the Building. Eventually, Respondents continued to make false statements and submit false documents in an attempt to stymie the law enforcement investigations into their activities.

An affidavit submitted to the OAG along with the Ninth Amendment to the offering plan for Meadows Towers Condominium was full of lies. There, Ram Cohen listed the inflated, illegal rents assigned to each apartment in the Building rather than the actual, legal rents charged to and paid by the tenants. He falsely affirmed that the rents listed were accurate. Ex. 48. In fact, all of the rents listed in that affidavit were false and were in keeping with the scheme of fraudulently inflating the rents in the Building.

In September 2014, after the OAG confronted Respondents with their illegal operation of the Building and inquired whether Respondents had issued the tenants rent-stabilized leases, Respondents' counsel submitted the fraudulent leases to the OAG and represented that they were in compliance with Rent Stabilization. Ex. 60. In fact, all leases were sham leases designed to deceive the OAG so that it would "complete [its] investigation" of the matter. Id. Respondents have never once corrected their misrepresentations and have continued to conceal the truth even throughout the OAG's investigation into their activities.

This pattern of repeated deception, concealment, and dishonesty before the OAG constitutes fraud under Executive Law § 63(12).

6. Respondents Conceal their Employment Relationships with Sharon Mohammed and David Medrano.

Respondent Ram Cohen incorporated CMYF Corp., personally prepared its tax returns until 2017, bought a workers compensation policy through his own insurance broker, prepared tax documents, makes deposits into the CMYF Corp. account and directs CMYF Corp. to pay his and Eldad Cohen's employees. Ram Cohen requested that his employee David Medrano lend his name to this corporation so as to create the false impression that it is Medrano's company. In fact, this company is no more than a shell corporation used by Ram and Eldad Cohen to evade their legal obligations as employers.

As discussed in the Statement of Facts, Section V, supra, this fraudulent scheme persists to this day. In fact, once the OAG began its investigation into Respondents, Ram Cohen used CMYF Corp. to pay his employee Sharon Mohammed by check, to give the false appearance that she was employed by David Medrano. This persistent and continuing fraud is actionable under Executive Law § 63(12) as it "has the capacity or tendency to deceive, [and] creates an atmosphere conducive to fraud." In re People v. Applied Card Sys., Inc., 27 A.D.3d at 106.

B. Respondents Committed Repeated and Persistent Common Law Fraud.

The above fraudulent practices concerning the Building, actionable as statutory fraud as defined by Executive Law § 63(12), also meet the elements of common law fraud. These elements include false representation of a material fact, scienter, deception, and injury. See Channel Master Corp. v. Aluminum Ltd. Sales, Inc., 4 N.Y.2d 403, 407 (1958). In State of New York v. Cortelle Corp., 38 N.Y.2d 83, 87 (1975), the Court of Appeals recognized that contained within the scope of frauds actionable under Executive Law 63(12) are "classic wrong[s] on a common-law theory of promissory fraud." See also People v. Trump Entrepreneur Initiative LLC, 2014 N.Y. Misc. LEXIS 464, *7 (Sup. Ct. N.Y. Cnty. Jan. 30, 2014) (citing Cortelle Corp.

for the proposition that common law fraud claims are incorporated in and actionable under Executive Law § 63(12)).

1. Respondents Made False Representations of Material Facts.

For the reasons discussed in the Argument Section II.A, supra, and by the undisputed evidence set forth in the Hannaford Affirmation, including attached exhibits, Respondents falsely represented the following material facts in the course of operating the Building, inter alia: (1) the status of the Building as a condominium (to HPD); (2) the legal rents, lease terms, and occupancy status of each apartment in the Building from 2009 to 2015 (to DHCR); (3) the legal rents for each apartment and regulatory status of each apartment in the Building (to the tenants); (4) the rent roll for the Building (to Vincent Wu); and (5) the rents charged to tenants and that the Building was in compliance with Rent Stabilization (to the OAG).

2. Respondents Knowingly Misrepresented these Facts.

Respondents knew that these representations were false. Respondents knew that the Building was not a condominium when they repeatedly represented to HPD that it was. As managers of the Building, they knew that the units were rented to tenants and that the condominium offering plan was never consummated because there were no sales. Yet, Respondents continued to tell HPD that all prior statements about the status of the Building were accurate.

Respondent Ram Cohen executed every lease with every tenant at the Building, and therefore personally knew the terms of each tenancy, including the rents charged. He also prepared and executed the riders attached to every lease memorializing a lower, actual rent. Therefore, when he represented to tenants and regulatory agencies false rents, he did this after

having entered secretive arrangements with each tenant to pay less than the lease amount and fully aware that Respondents never received in any given month those inflated rent figures.

Respondents knowingly lied when they represented in the September 30, 2015 contract of sale that the rent roll attached as Schedule E was accurate. Indeed, that rent roll, like the rent registrations submitted to the DHCR and to the OAG, was fictitious and comprised of inflated monthly rents that no tenant had ever paid. Instead, Respondents had been accepting lower monthly rents, memorialized in lease riders, since 2009. Respondents made this misrepresentation to Vincent Wu knowing that an inflated rent roll would increase the value of the property in Wu's estimation and result in an artificially high purchase price of $3,750,000.

Moreover, when Respondents submitted false leases to the OAG and represented to the OAG that they were in compliance with Rent Stabilization, Respondents knew that the leases were fake and that they were not in compliance. Respondents purposefully and consciously withheld from the OAG the rent riders to each lease, which provided for lower rents than the inflated rent listed on the first pages. They provided these false leases and reassured the OAG, through counsel, that they were in compliance with Rent Stabilization so that the OAG would "complete [its] investigation" into Respondents' illegal acts. Ex. 60.

3. These Misrepresentations Deceived Third Parties.

These misrepresentations deceived the tenants living at the Building and agencies awarding Respondents the benefits they sought. For example, some tenants, like the Grinfelds, Rene Medrano, and David Medrano, were deceived into believing that they had to give up their apartments merely because Respondents wanted to vacate the Building. Tenants, like Rene Medrano, were deceived by Eldad Cohen into believing that the false lease offered to him in

2014 was merely paperwork. All tenants were deceived between 2009 and 2014 into believing that their units were unregulated, and that they had to abide by the terms of illegal leases.

Also, agencies were deceived by Respondents. HPD incorrectly believed that the Building had no renters and was a condominium and accordingly issued a Final Certificate of Eligibility allowing Respondents to obtain a property tax exemption without providing Rent Stabilization protection to tenants. DHCR was ignorant of the true rents charged to all the tenants in the Building. The OAG was temporarily deceived by the representation that the Building was in compliance with Rent Stabilization.

4. These Misrepresentations Caused Third Parties Injury.

Respondents caused injury to the City and State agencies by way of their fraud. New York City exempted Respondents from $479,666.99 in property taxes as a result of the fraud upon HPD. The regulatory functions of the DHCR and OAG were stymied.

The tenants who were deceived by Respondents' fraud were injured insofar as they surrendered possession of valuable rent-stabilized tenancies without knowing their rights and forfeited any opportunity to question the legality of the rents charged for their units. In the case of the Grinfelds, this resulted in the arduous tasks of finding a real estate broker and moving to a new apartment, thereby disrupting their lives. This caused them anguish, observed by Ms. Mohammed. Other tenants, too, were forced to relocate and leave their homes.

For the foregoing reasons, Respondents have perpetrated repeated and persistent fraud, meeting the elements of common law fraud, in violation of Executive Law § 63(12).

The Court should exercise its broad equitable authority and grant the Attorney General injunctive relief prohibiting Ram and Eldad Cohen from engaging in any business related to real estate in the State of New York, and order disgorgement of all illegal profits and unjust

enrichment obtained by Respondents from the sale of the building. See People v. Helena VIP Pers. Introduction Servs. of N.Y., Inc., 199 A.D.2d 186 (1st Dep't 1993) (affirming an order granting a permanent injunction to the Attorney General); Empyre Inground, 227 A.D.2d at 732 (affirming an order permanently enjoining a respondent from engaging in the home improvement and door-to-door sales businesses in New York); Midland Equities, 117 Misc. 2d at 208 (permanently enjoining respondents from engaging in the business of mortgage foreclosure consultation); see also Applied Card Sys., Inc., 11 N.Y.3d at 125 (recognizing the Attorney General's authority to obtain disgorgement of profits).

III. Respondents Violated the Martin Act.

The Martin Act, New York General Business Law Article 23-A, grants the OAG investigatory and enforcement powers to enjoin fraudulent practices in the marketing of securities within or from New York State. These securities include securities in real estate, such as cooperative or condominium offerings.

When an occupied building is converted to cooperative or condominium ownership, the Martin Act imposes strict requirements on the sponsor of the conversion with respect to those tenants in occupancy. See G.B.L. § 352-eee (applicable to conversions in Nassau, Westchester and Rockland Counties); G.B.L. § 352-eeee (applicable to conversions in New York City). For example, the Martin Act gives tenants in occupancy an exclusive right to buy the unit they occupy (or the shares allocated to that unit) for a period of ninety days from the date the offering plan is accepted for filing by the OAG. See G.B.L. §§ 352-eee(2)(d)(ix); 352-eeee(2)(d)(ix); 13 N.Y.C.R.R. § 23.3(n)(i). And, when the conversion plan is a non-eviction plan, the Martin Act provides that sponsors may not evict "non-purchasing" tenants, or tenants who elect not to buy their unit, "for failure to purchase or any other reason applicable to expiration of tenancy . . . ."

G.B.L. § 352-eeee(2)(c)(ii). Similarly, sponsors may not interfere with the comfort, repose and peace of any tenant to force them to abandon their tenancies. See G.B.L. § 352-eeee(4).

The purpose of the Martin Act in this respect is to promote home ownership "while at the same time, protecting tenants in possession who" do not purchase their units. 1982 N.Y. Laws, ch. 555, § 1; see also Park W. Village Assocs. v. Nishoika, 187 Misc. 2d 243, 244-45 (1st Dep't 2000) ("overarching purpose" of G.B.L. § 352-eeee is to "protect tenancies during the cooperative and condominium conversion process"). The OAG has long enforced this stated purpose by prohibiting tenants from accepting offers to surrender their tenancies in exchange for money ("buyout offers") until the plan is accepted for filing by the OAG. See Memorandum, State of N.Y. Dept. of Law, "Buy-out Offers" (July 9, 1986), Memorandum, State of N.Y. Dept. of Law, "Tenant Buyouts" (July 9, 2015), attached to Hannaford Affirmation as Exhibits 86, 87. See also State v. Herzog, Index No. 43106/87 (Sup. Ct. N.Y. Co.), aff'd, 164 A.D.2d 793 (1st Dep't 1990); Abrams v. Long Beach Oceanfront Assocs., 136 Misc. 2d 137, 151 (Sup. Ct .N.Y. Cnty. 1987) (noting that the Appellate Division, First Department, upheld the OAG authority to prohibit buyouts during the red herring period) (citing 490 Ocean Assocs. v. Abrams, Index No. 16351/86 (Sup. Ct. N.Y. Cnty.), aff'd, 128 A.D. 2d 1027 (1st Dep't 1987)).

Rent-stabilized tenants in occupancy when the offering plan is submitted to the OAG are doubly protected by both Rent Stabilization's prohibitions on terminations of tenancies without cause and the Martin Act's requirement that tenants be offered an exclusive right to purchase their unit for a period of ninety days after the plan is accepted. Thus, any acts on the part of a sponsor of a cooperative or condominium conversion before the offering plan is accepted for filing by the OAG to cause rent-stabilized tenants to vacate their units, voluntarily or involuntarily, violates the Martin Act.

In the case here, ERC Holding, LLC was the sponsor of a May 2015 offering plan submitted to the OAG under 13 N.Y.C.R.R. § 23, for the Building to convert to condominium ownership in a project called Fresh Meadows Tower. The offering plan listed Respondent Ram Cohen as principal of ERC Holding, LLC. The plan was a non-eviction plan, and therefore tenants were protected by both Rent Stabilization and the provisions of G.B.L. § 352-eeee(2)(c).

Respondents allegedly served all tenants with the offering plan on May 11, 2015. This action commenced the "red-herring period." As the plan was never accepted for filing, there was never a period during which Respondents could permissibly secure tenancy surrenders after submission of the plan, either through buyouts or other means. Nevertheless, from May 2015 through January 2016, Respondents caused tenants of all units except Apartment 2A to vacate.

Respondents told Rene Medrano and David Medrano that they had to leave because the Building was to be sold. Respondents told the Grinfelds that they had to leave as well, and in October 2015 they paid the broker's fee and the Grinfelds moving expenses. Respondents also paid the tenants of Apartment 5A paid $2,500 in moving expenses to secure their surrender. In addition to these tenants, Respondents' practices, including issuing illegal renewal leases and Eldad informing tenants that they were required to leave, Ex. 32 (Mohammed Tr. at 97:11-13), resulted in a near-empty building by the time it was sold in January 2016. Indeed, the contract of sale between Respondents and Vincent Wu required that they "make diligent efforts to deliver at least 5 Units (whether residential and/or commercial) vacant at Closing." Ex. 71 at Rider at 3. Respondents did exactly that.

Respondents violated the Martin Act, New York General Business Law Article 23-A, by causing tenants at the Building to surrender their apartments after submission of the offering plan for condominium conversion to the OAG in May 2015. Accordingly, the Court should

permanently enjoin Ram and Eldad Cohen from directly or indirectly engaging in the issuance, offering for sale, promotion, negotiation, advertisement, sale or distribution of securities in or from the State of New York. See G.B.L. § 353(1) (authorizing the Attorney General to seek a permanent injunction from selling or offering for sale to the public securities issued or to be issued).

IV. Respondents Repeatedly and Persistently Violated 9 N.Y.C.R.R. § 2525.4 and General Obligations Law Art. 7.

Under New York law, a tenant's security deposit, and the interest accruing thereon, remain the property of the tenant, and the landlord is obliged to hold the funds in trust for the tenant. N.Y. Gen. Oblig. L. § 7-103(1).

Article 7 of the General Obligations Law imposes a "fiduciary duty" on landlords who accept security deposits from their tenants. Tappan Golf Dr. Range, Inc. v. Tappan Prop., Inc., 68 A.D.3d 440, 441 (1st Dep't 2009). As part of the duty owed to the tenants, landlords must not commingle tenant funds with the landlords' own money and must provide written notices to the tenants indicating the names and addresses of the banks in which the security deposits are located and the amounts of the deposits. N.Y. Gen. Oblig. Law § 7-103(1)-(2). If a landlord fails to segregate tenant security deposits from its own funds, the landlord has committed an illegal conversion of tenant property, entitling the tenant to an immediate return of the funds; a failure to provide the requisite written notice permits an inference of commingling. See Dan Klores Assocs. v. Abramoff, 288 A.D.2d 121, 121-22 (1st Dep't 2001).

Landlords of buildings containing six or more units and landlords of rent-stabilized apartments are further required to place all security deposits in interest-earning bank accounts in New York State. N.Y. Gen. Oblig. Law § 7-103 (2-a); 9 N.Y.C.R.R. § 2525.4(a). The interest rate on such accounts must be at the prevailing rate, and accrued interest must be paid to each

tenant upon surrendering possession of his or her apartment. N.Y. Gen. Oblig. Law § 7-103 (1)-(2-a). State law explicitly grants the OAG the authority to commence an action or proceeding against any person, association or corporation who violates the state security-deposit laws. N.Y. Gen. Oblig. Law § 7-109.

As detailed in the Hannaford Affirmation, ¶¶ 39-48, in knowing and repeated violation of their statutory duties, Respondents deposited their tenants' security deposits in their general bank accounts, which were not interest bearing, and they failed to provide tenants with any notice of the location or balance of their deposits. Moreover, upon repaying security deposits to the few tenants who were repaid, Respondents failed to pay any accrued interest.

Ram Cohen admitted under oath in testimony before the OAG that he placed tenants' security deposits in his own accounts. In response to the OAG's subpoena requesting documents sufficient to identify the accounts used to hold security deposits made by tenants of the Building, Respondents produced no documents. The Court should direct Respondents to pay the State of New York all interest owed and all monies illegally converted so that the true owners of such monies and interest can be ascertained.

V. Ram Cohen and Eldad Cohen, and their Company ERC Holding, LLC, are Liable for Respondents' Repeated and Persistent Illegal and Fraudulent Acts.

Executive Law § 63(12) provides for liability against "any person" who engages in repeated fraudulent or illegal acts. It is well settled that this broad language provides not only for liability against corporations, but also for individual liability against corporate officers and directors who personally participate in or have actual knowledge of illegal and fraudulent acts. See State v. Frink Am. Inc., 2 A.D.3d 1379, 1381 (4th Dep't 2003) ("[T]here is no impediment to imposing personal liability against a corporate officer [under § 63(12)] . . . if it is established that he personally participated in or had actual knowledge of the fraud or illegality."); Apple

Health & Sports Clubs, 206 A.D.2d at 267 (holding corporate officer individually liable in claim against health club for failure to post bond where officer had knowledge of poor financial condition of business and personally decided not to post the bond).

Liability in this case extends not only to ERC Holding, LLC, which was owner of the Building, sponsor of the offering plans submitted to the OAG, and lessor of apartments, but it also extends to Ram Cohen and Eldad Cohen, who personally participated in and had knowledge of Respondents' illegal and fraudulent conduct.

Ram Cohen is the manager of ERC Holding, LLC. He was personally a member of ERC Holding, LLC until 2009, when he assigned RC Funding, LLC to be a member. He is the sole manager of RC Funding, LLC. He is principal of the sponsor of the offering plans for both Meadows Tower Condominium and Fresh Meadows Tower. He personally signed every single lease on behalf of ERC Holding, LLC. He also is a hands-on manager, though living in Boston. He submitted all documentation discussed herein to HPD, DHCR, HRA, and the OAG. He frequently affirmed facts in affidavits submitted to regulating agencies. He signed the September 30, 2015 contract of sale on behalf of ERC Holdings, LLC. With respect to his role as employer of Sharon Mohammed and David Medrano, he incorporated CMYF Corp. personally and prepared all of its tax returns personally until 2017. He frequently made, and still makes, deposits into its accounts to reimburse the corporation for his employees' wages. He is in regular communication with Sharon Mohammed, giving her instructions for operating his businesses.

Eldad Cohen was the day-to-day property manager at the Building. He is principal of the sponsor of Meadows Tower Condominium. He was manager and member of ERC Holding, LLC until 2009. According to Ms. Mohammed, "Eldad is the one who [gave] orders" about the

business of ERC Holding, LLC, Ex. 32 (Mohammed Tr. at 55:22-23), including instructions about filling out leases offered to tenants and collecting rent. He personally had conversations with the tenants, including the Grinfelds, Rene Medrano and David Medrano, about their leases, terms of their tenancies, and surrendering their apartments.

In sum, Ram Cohen and Eldad Cohen personally participated in the illegal and fraudulent scheme perpetrated from 2009 to 2016, and they should be held liable for all such conduct.

CONCLUSION

For the foregoing reasons, the Court should make a summary determination in Petitioner's favor on all causes of action and grant injunctive relief, restitution, damages, disgorgement, civil penalties, and costs, as requested in the Verified Petition.

Dated: New York, New York
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by BARBARA D. UNDERWOOD, Attorney General of the State of New York,	
Petitioner,	**AFFIRMATION IN SUPPORT OF VERIFIED PETITION**
- against -	
RAM COHEN, ELDAD COHEN, and ERC HOLDING, LLC,	Index No. IAS Part
Respondents.	

RACHEL HANNAFORD, an attorney duly admitted to practice in the courts of the State of New York, under penalty of perjury, affirms:

1. I am Senior Enforcement Counsel in the Office of the Attorney General of the State of New York ("OAG"), 28 Liberty Street, New York, New York 10005, counsel for Petitioner. I make this Affirmation in support of the Verified Petition and annexed Memorandum of Law.

2. I am familiar with the facts and circumstances of this proceeding. The facts set forth in this Affirmation are based upon information contained in the investigative files of the OAG.

3. The OAG brings this special proceeding against the above-named Respondents pursuant to New York Executive Law § 63(12), New York General Business Law § 349(b), New York General Business Law § 353, New York General Obligations Law § 7-109, and Article 4 of the New York Civil Practice Law and Rules seeking injunctive relief, disgorgement, restitution, and civil penalties for repeated and persistent illegality and fraud in the transaction of business in

the State of New York. As landlords of a multi-family residential property located at 71-44 160th Street, Fresh Meadows, Queens ("the Building"), Respondents carried out a years-long scheme to defraud their tenants, State and City agencies, and the prospective purchaser of the Building. Respondents' scheme included, inter alia: misrepresenting to the New York City Department of Housing Preservation and Development ("HPD") that the Building was a condominium in order to receive a property tax abatement; deceiving regulating agencies about the rents charged and leases issued to tenants; increasing their profits by holding out false rents for the apartments to the eventual purchaser; and repeatedly and persistently defrauding their tenants and third parties. By way of this scheme, Respondents illegally avoided $479,666.99 in property taxes between 2009 and December 2015, and they sold the Building for a substantial profit in January 2016.

PARTIES

4. Petitioner, Barbara D. Underwood, the Attorney General of the State of New York, is empowered under New York Executive Law § 63(12), General Business Law § 349, General Business Law § 353, and the General Obligations Law to seek, on behalf of the People of the State of New York, injunctive relief, restitution, disgorgement and damages for repeated and persistent illegality and fraud in the transaction of business in the State of New York. The Attorney General has her principal office in New York County.

5. Respondent Ram Cohen is a manger and principal of ERC Holdings, LLC, which was the owner and operator of the Building until January 2016. Respondent Ram Cohen is the brother of Respondent Eldad Cohen. Respondent Ram Cohen is a resident of Massachusetts who conducts business in New York State and owns, uses and possesses real property in New York State.

6. Respondent Eldad Cohen was a manger and member of ERC Holdings, LLC from 2005 until 2009. Thereafter, Respondent Eldad Cohen acted as manager of the Building owned by ERC Holding, LLC until January 2016. Eldad Cohen is the brother of Ram Cohen and is a resident of New York who conducts business in New York State.

7. ERC Holdings, LLC is a domestic limited liability with is principal place of business in New York City, from which it has transacted business at all times mentioned herein. In 2005, the operating agreement governing ERC Holdings, LLC stated that Ram Cohen and Eldad Cohen where the managers and members of that entity. Ex. 1.[1] In 2009, Ram Cohen remained a manger of ERC Holding, LLC, but his limited liability company RC Funding, LLC took on 99.9% interest in the company. Ex. 2.

FACTS

1. Initial Condominium Offering, Failure to Consummate, and Tax Exemption

8. Respondents Ram Cohen and Eldad Cohen formed ERC Holding, LLC in 2005 for the purpose of developing the property at 71-44 160th Street, Fresh Meadows, New York. Ex. 3 (R. Cohen Tr. I at 23:23-25). For approximately three years, between 2006 and 2009, they supervised construction of a 10-unit building on the property.

9. In 2007, while construction was ongoing, Respondents submitted to the OAG an offering plan for Meadows Tower Condominium. In January 2008, the OAG accepted the Meadows Tower Condominium offering plan for filing. Ex. 4.

[1] References to "Ex." refer to the Exhibits filed contemporaneously with this Affirmation. Due to the high volume of exhibits, they have been e-filed in groups of ten PDF files. These exhibits are true and correct copies of the documents relied upon by the Attorney General in this special proceeding, and they include documents produced by Respondents and third parties as part of this investigation, transcripts of subpoena hearings conducted pursuant to Executive Law § 63(12) and G.B.L.§ 352, affidavits, publicly available documents, and other documents from the Attorney General's investigative file.

10. Meadows Tower Condominium was declared effective in August 2008 after Respondents allegedly executed purchase agreements for two of the ten units. Ex. 5. Despite these alleged agreements, there were no sales. Ex. 3 (R. Cohen Tr. I at 145:9-12). In light of the failure to transfer title on a single condominium unit, Respondents made the decision to operate the entire building as a rental. Id. at 145:13-19. It is in the course of operating the building as a rental that the fraud and illegality described herein arose.

11. In 2006, Respondents applied to the New York City Department of Housing Preservation and Development ("HPD") for a property tax exemption under 421-a of the Real Property Tax Law ("421-a exemption"). Ex. 6. They represented to HPD that the Building was to be a condominium. Id. at 2. On November 13, 2008, HPD issued a Preliminary Certificate of Eligibility based upon the representations in the application, including that the Building was a condominium. Ex. 7.

12. On September 3, 2009, after Respondents had rented several apartments to tenants using unregulated leases commencing August 1, 2009, Respondents applied to HPD for a final Certificate of Eligibility, representing that the Building was complete, that "[a]ll information previously submitted [to HPD] remains true and accurate," and that "[a]ll the units in the above building/s will be registered with the NYS Division of Housing and Community Renewal as they become occupied." Ex. 8. Respondents did not inform HPD that the Building was a rental, and, contrary to its representation, the Respondents did not register the units in the Building with the New York State Division of Housing and Community Renewal ("DHCR") as they became occupied.

13. In 2011, after Respondents had rented all remaining apartments to tenants using unregulated leases, Respondents submitted to HPD a revised application for a final Certificate of

Eligibility and again represented that "[a]ll information previously submitted [to HPD] remains true and accurate." Ex. 9. Nowhere did Respondents disclose that the Building was operating as a rental. On October 5, 2011, HPD issued a Final Certificate of Eligibility. Having received no information about the true status of the Building, HPD noted on the Certificate that the building was a condominium. Ex. 10.

14. Under the Real Property Tax Law, apartments in buildings receiving the 421-a exemption which are owned as rental buildings are subject to Rent Stabilization. Because Respondents owned the Building as a rental, having failed to sell any of the units offered in the Meadows Tower Condominium offering plan, each tenant in each apartment rented by Respondents was entitled to the protections of the Rent Stabilization Law and Code.

15. The New York City Department of Finance credited Respondents a total of $479,666.99 in property tax exemptions between 2006 and December 2015. Ex. 11. Had Respondents been truthful to HPD that the Building was a rental and that Respondents were not complying with Rent Stabilization, they would not have been eligible for the 421-a exemption and would not have received this windfall.

2. Respondents Repeatedly Violated Rent Stabilization Laws

16. From the moment they began operating the Building as a rental rather than a condominium, the Rent Stabilization laws and regulations imposed three distinct requirements on Respondents applicable here: (a) it controlled the terms of each tenancy, including, inter alia, protecting tenants from eviction without cause, offering them the option of a one- or two-year lease, and informing tenants, via lease rider, of their rights under Rent Stabilization, 9 N.Y.C.R.R. § 2522.5(a), (c); (b) it capped the initial legal regulated rent for each unit at the rent "charged and paid" for each unit, 9 N.Y.C.R.R. § 2521.1(g); and (c) it imposed upon the

Respondents the obligation to register all rents annually with the DHCR, RSL § 26-517. Respondents failed to comply with all of these requirements repeatedly and for every single tenancy in the Building until the sale of the Building in January 2016.

a. Respondents Provided Tenants Unregulated Leases

17. Beginning in 2009 and continuing through 2014, Respondents uniformly and without exception provided tenants leases that failed to comply with the Rent Stabilization Code. In fact, annexed to these leases were riders that explicitly stated that the units were not subject to Rent Stabilization.

18. These leases were entitled "Lease of a Condominium Unit." One of the first of these leases was executed by Ram Cohen and the tenant of Apartment 2A on July 31, 2009. Ex. 12. This lease, and all other leases issued in 2009 and 2010, was for a term of one-year, to be renewed at Respondents' option. This lease, like all others at the time, did not contain the rider mandated by 9 N.Y.C.R.R. § 2522.5(c). Instead, a rider attached to this lease and all leases stated that "the Tenant has no Rent Stabilization or Rent Control rights." Ex. 13 at 1.

19. This lease and all others at the time reiterated in several places that Respondents could terminate the lease term at their discretion after notice to the tenant. Ex. 12 at ¶¶ 17, 23, 48. The lease provided that the tenant was required to vacate the apartment at the end of the lease term. Id. at ¶ 31.

20. Eldad Cohen has admitted in sworn testimony to the OAG that Respondents exclusively offered tenants these unregulated leases until 2014. Ex. 14 (E. Cohen Tr. at 106:11-15 ("[I]n the beginning, when just rented, we didn't use rent stabilize, because the recommend for rent stabilize came later on. So different for rent stabilization.")). Respondents issued at least 15 such leases between 2009 and 2014. Exs. 12, 15, 16.

21. Even the rent-stabilized leases offered to tenants from 2014 through 2016 violated applicable regulations, as discussed in detail below.

b. Respondents Entered into Leases for Rents Higher than the Legal Regulated Rents

22. From 2009 until Respondents sold the Building in January 2016, Respondents issued leases to tenants that listed illegal rents. These rents were not the actual rents charged and paid by the tenants, which the Rent Stabilization Code set at the legal regulated rents. Rather, the rents listed on the leases were inflated. The scheme of listing inflated rents on the leases was perpetuated to make it appear to lenders, prospective purchasers, and others that the building carried a greater rent roll than it did.

23. For example, as early as 2010, Respondents used these leases with inflated rents to misrepresent the rent roll for the building to Hudson Valley Bank in order to secure a construction loan. Respondents applied to Hudson Valley Bank for a loan of $1,900,000. Ex. 17. Liberty Appraisal Services conducted an appraisal of the building as part of the loan qualification process, and Respondents provided to the appraiser a pro forma listing the inflated rents, rather than the actual, legal rents, of the apartments. Ex. 18. Respondents also provided the appraiser the illegal leases so that the building appeared to have a higher income stream. The appraiser noted that, in light of the unusual fact that the security deposits listed on the leases were lower than the monthly rents, the leases were "suspicious/questionable." Ex. 17 at 53.

24. Indeed, those leases were illegal. Between 2009 and mid-2014, every lease Respondents offered to tenants listed a monthly rent on the first page that was higher than the actual rent charged and paid for each apartment. In order to memorialize the lower, actual rent, Respondents appended to the each lease a rider giving a monthly rent credit. While this practice may be legal in the context of other tenancies, here this practice directly violated 9 N.Y.C.R.R. §

2521.1(g), which caps the legal regulated rent for each apartment in 421-a buildings at the rent charged and paid.

25. For example, in the case of Apartment 2A, Respondents set an inflated rent on the first page of the lease at $2,100 per month. Ex. 12. Respondents also executed a lease rider with the tenant, entitled "Attachment A," which provided that the tenant would be credited $600 each month, for a total actual rent of $1,500. Ex. 19. The tenant was charged and paid $1,500 per month, even after the initial lease term expired. Ex. 20. Throughout his entire tenancy, the tenant of Apartment 2A was never charged nor paid $2,100 to Respondents in any given month.

26. Respondents tried to hide the existence of this rider from the OAG. In response to a subpoena demand that Respondents produce "[c]omplete copies of all leases and all lease riders offered to all tenants in the Building from 2009 to the present," Ex. 21 at ¶ 13, Respondents produced only the first four pages of the lease and other inapplicable riders, but not the Attachment A. Nevertheless, Ram Cohen submitted three affidavits to the OAG in which he swore that no documents had been withheld from the OAG and that the responses were complete and correct to the best of his knowledge. Ex. 22, 23, 24.

27. Respondents also hid the existence of this rider from the DHCR, when eventually they registered the rents with that agency in 2014. Respondents registered the rent for Apartment 2A as $2,100 per month from 2010 through 2015. Ex. 25. In 2015, Respondent Ram Cohen falsely swore in an affidavit to HPD that the monthly rent "charged" to the tenant of Apartment 2A was $2,100. Ex. 26.

28. In the case of Apartment 2B, Respondents asked the tenant to sign a 2009 lease for an inflated rent of $2,100, but then they had him execute an additional agreement for a lower rent of $1,500. Ex. 27 (R. Medrano Tr. at 19:10-17). Eldad Cohen told this tenant that the

inflated rent was "for some paperwork that they needed," but that his rent would stay $1,500. Id. at 20. The tenant was charged $1,500 per month for his entire tenancy in Apartment 2B, and he paid that amount or less every month. Ex. 28.

29. Respondents hid the existence of this separate contract from the OAG. In response to a subpoena demand that Respondents produce "[c]omplete copies of all leases and all lease riders offered to all tenants in the Building from 2009 to the present," Ex. 21 at ¶ 13, Respondents produced only the first four pages of the lease reflecting a rent of $2,100 and other inapplicable riders. Ex. 15. Nevertheless, Ram Cohen submitted three affidavits to the OAG in which he swore that no documents had been withheld from the OAG and that the responses were complete and correct to the best of his knowledge. Ex. 22, 23, 24.

30. Respondents also hid the existence of this rider from the DHCR, when eventually they registered the rents with that agency in 2014. Respondents registered the rent for Apartment 2B as $2,100 per month from 2010 through 2013. Ex. 25. In 2015, Respondent Ram Cohen falsely swore in an affidavit to HPD that the monthly rent "charged" to the tenant of Apartment 2B was $2,100. Ex. 26.

31. In the case of Apartment 3B, Respondents set an inflated rent on the first page of a 2012 lease of $2,100 per month. Ex. 15. Respondents also executed a rider which provided that the tenant would be credited $525 each month, for a total actual rent of $1,575. Ex. 29. The tenant was charged and paid $1,575 per month. Ex. 30. The tenant was never charged nor paid $2,100 to Respondents in any given month.

32. The first lease for Apartment 3B also set the rent at $2,100 per month; however, that was not the legal rent. Respondents executed a rider which provided that the tenant would pay $1,550 per month. Ex. 31.

33. Respondents tried to hide the existence of these riders from the OAG. In response to a subpoena demand that Respondents produce "[c]omplete copies of all leases and all lease riders offered to all tenants in the Building from 2009 to the present," Ex. 21 at ¶ 13, Respondents produced only the first four pages of the first lease and not the rider. Ex. 15. Respondents similarly did not produce the rider appended to the 2012 lease. Nevertheless, Ram Cohen submitted three affidavits to the OAG in which he swore that no documents had been withheld from the OAG and that the responses were complete and correct to the best of his knowledge. Ex. 22, 23, 24.

34. Respondents also hid the existence of these riders from the DHCR, when eventually they registered the rents with that agency in 2014. Respondents registered the rent for Apartment 3B as $2,100 per month from 2010 through 2014. Ex. 25. In 2015, Respondent Ram Cohen falsely swore in an affidavit to HPD that the monthly rent "charged" to the tenant of Apartment 3B was $2,100. Ex. 26.

35. This pattern was true for all nine residential apartment in the Building. Sharon Mohammed,[2] an employee of Respondents who worked in the Building and performed clerical work related to the Building and other real estate businesses of Respondents, confirms that all of the unregulated leases offered to tenants came with a rider setting a lower rent than that listed on the first page of the lease. Ex. 32 (Mohammed Tr. at 21:12-22:13 (testifying that a preferential rent rider was something that was attached to every "condo lease"); 81:22-82:5 (testifying that in every lease she filled out, she attached a preferential rent rider)). Respondents produced none of these riders in response to the OAG subpoena. In testimony, Ram Cohen swore under oath that

[2] Ms. Mohammed's full name is Sharon Susan Walker Mohammed. Ex. 32 (Mohammed Tr. at 40:24-41:4). Respondents Ram and Eldad Cohen refer to her as Susan, as that is the name she commonly uses. Id. at 41:14-17.

he could not remember whether all leases contained a rider giving ever tenant a rent credit, though he admitted it was possible. Ex. 3 (R. Cohen Tr. I at 167:9-168:8).

36. Respondents uniformly collected a security deposit that was equivalent to the lower, actual monthly rent paid. Ex. 15. Sharon Mohammed has testified that, for all tenants in the building, the amount for the security deposit listed on the first page of the unregulated lease was the actual rent that was paid. Ex. 32 (Mohammed Tr. at 80:17-20). Indeed, the first month's rent paid by tenants always matched the security deposit paid. Compare Ex. 15 (leases) with Ex. 33 (Apartment 3A security); 34 (Apartment 5B security); 35 (Apartment 4B security); 36 (Apartment 3A security); 37 (Apt. 5B security in 2015).

37. The 2010 appraisal by Liberty Appraisal Services confirmed that it was "highly unusual" that the security deposits for all apartments were substantially less than the reported monthly rents. In the view of the appraiser, this rendered the leases "suspicious/questionable." Ex. 17 at 53. Indeed, they were.

c. Respondents Failed to Register the Building's Units with the DHCR

38. Between 2009 and 2014, while Respondents were receiving a 421-a tax exemption and renting out units using the scheme described above, they did not register or attempt to register the units as rent-stabilized with the DHCR, as required by RSL § 26-517. Respondents registered the units for the first time in 2014 by filing an initial registration for every apartment. Ex. 38. As discussed in Section 5 below, through Ram Cohen swore in an affidavit that "[e]very statement [submitted to the DHCR] is complete and accurate" in those registrations, id., Respondents in fact submitted false registrations.

3. Respondents Violated Security Deposit Laws

39. Respondents systematically failed to hold tenant security deposits in escrow accounts and comingled security deposits with their own monies.

40. The unregulated leases executed between 2009 and 2014 listed the security received by Respondents from each tenant and provided on page 1, paragraph 6, and stated that such security was deposited in a bank, the name and address of which would be provided to the tenant. Ex. 15. Respondents, however, never notified tenants where their security deposits were held.

41. Eldad Cohen testified that he gave all the security deposits collected from tenants to Ram Cohen and that he did not remember what happened to them. Ex. 14 (E. Cohen Tr. at 58:15-20, 122:5-17).

42. Ram Cohen testified that, contrary to paragraph 6 of the form lease, he held the security deposits in ERC Holding LLC's accounts to be applied as a last month's rent. Ex. 39 (R. Cohen Tr. II at 234:3-7). Account records, however, confirm that Respondents deposited security deposits into ERC Holding LLC's account that were earmarked as security, and not for last month's rent. Ex. 33-37. Indeed, when tenants intended to pay Respondents in advance of the last month's rent, they so earmarked their payments. Exs. 40 ("Last month Rent"), 41 ("Last month's rent . . . Apt. 3A").

43. Ram Cohen could not explain under oath why, given his allegation that Respondents applied security deposits to last months' rent, ERC's bank records contained checks refunding security deposits to tenants in some instances. Ex. 3 (R. Cohen Tr. I at 196:18-198:15; Ex. 39 (R. Cohen Tr. II at 255:20-256:8).

44. Indeed, when tenants sought return of their deposits, Respondents refunded them ad hoc from the businesses' various bank accounts. Sharon Mohammed recalled the case of one

tenant of Apartment 4B who approached her seeking the return of his security deposit after moving out. This tenant had paid $1,600 for a security deposit. Ms. Mohammed recalled that "Eldad told me to tell [the tenant], come back on X day, and I think it was like two days after she left. She said she needed the money for something, and he g[a]ve it to her." Ex. 32 (Mohammed Tr. at 99:15-21). Bank records confirm that Respondents refunded to this tenant $1,600 in security from ERC Holding LLC's business account on August 31, 2015. Ex. 42.

45. In another instance, Respondents returned the $1,650 security deposit tenant S. Mehrinejad had made for Apartment 3A by writing a check from an ERC Holding checking account on August 5, 2013. Ex. 43. This was the exact amount deposited into ERC Holding LLC's account on September 28, 2012 and earmarked for security. Ex. 36.

46. In response to a demand in the OAG subpoena requesting copies of "Documents sufficient to identify the accounts used to hold security deposits made by tenants of the Building," Ex. 21 at ¶ 10, Respondents produced no documents. Nevertheless, Ram Cohen submitted three affidavits to the OAG in which he swore that no documents had been withheld from the OAG and that the responses were complete and correct to the best of his knowledge. Ex. 22, 23, 24.

47. Respondents never issued any notice, letter, or statement informing tenants of the financial institution holding their security deposits or the amount of deposit.

48. Respondents never refunded to tenants the accrued interest on their security deposits.

4. Respondents Hid the $900 Rent for Apartment 4A from DHCR, HPD and OAG

49. When Joseph and Miryam Lider moved into Apartment 4A of the Building, Defendants offered them an unregulated lease that provided on the first page the rent for the

apartment was $2,100 per month. Ex. 16. As was the case for all other apartments, Respondents agreed to charge and accept less than the inflated rent listed on the lease—in this case, $1,650. Ex. 44.

50. In 2011, when the tenants could no longer afford the lower rent promised to them by Respondents, Respondents agreed to further lower their rent to $900 so that they would be eligible for the Family Eviction Prevention Supplement ("FEPS") program administered by the New York City Human Resources Administration ("HRA"). In order to be eligible for FEPS in 2011, FEPS rules provided that the monthly rent for the apartment could not exceed $900, as that was the maximum rent allowable under the HRA regulations for a family with two eligible household members.[3] The maximum rent subsidy that would be issued to the landlord by HRA was $750.

51. Respondents represented to HRA that the Liders' monthly rent was $900 per month in 2011. Ex. 45. Accordingly, Respondents began receiving $750 monthly in rent subsidy from HRA on behalf of the Liders, and the Liders paid $150 per month by money order, to bring the rent to $900. Ex. 46.

52. In November 2013, in order to continue receiving the FEPS rent subsidy, Ram Cohen wrote to HRA to verify that the Liders were tenants of apartment 4A in the Building and that the Liders' "monthly rent is nine hundred dollars ($900.00)." Ex. 47.

53. Respondents did not disclose to HPD nor DHCR that the rent for Apartment 4A was $900 per month. In fact, Respondents have maintained to both agencies, in sworn statements, that the rent for Apartment 4A is $2,100, even between 2011 and 2014, when they lowered the rent to $900 to get the FEPS subsidy. Ex. 26, 38, 52.

[3] Joseph Lider was no longer in the household at this time, and Miryam Lider's family had two public assistance-eligible household members at the time—her two children.

54. In August 2013, three months before the letter to HRA stating that the Liders' rent was $900 per month, Ram Cohen swore in an affidavit submitted to the OAG that Miryam Lider's monthly rent was $2,100. Ex. 48. This affidavit was submitted with the Ninth amendment to the condominium's offering plan. The affidavit noted that the rent regulated status for all apartments in the Building was "None." Id.

55. Respondents continued to make the false representation that the Liders' rent was $2,100 many times since 2013, including to the subsequent purchaser of the Building, as discussed in Section 7 below.

56. Respondents received $23,625 of Public Assistance rent subsidies between 2011 and 2014 based on the representation that the rent for Apartment 4A was $900 per month. Ex. 49.

5. Respondents Lied to DHCR, HPD and OAG in 2014 and 2015, Continued to Violate Rent Stabilization Laws, and Overcharged Tenants Who Signed Unregulated Vacancy Leases.

57. In 2014, OAG learned that the Respondents were not operating the Building as a condominium and were receiving a 421-a tax exemption without treating tenants as rent-stabilized. By April 2014 letter, the OAG notified ERC Holding, LLC that it had failed to comply with 28 R.C.N.Y. § 6-02(g)(3) and § 6-05(d)(1)(iii)(A) by failing to register the units with the New York State Division of Housing and Community Renewal ("DHCR"). Ex. 50. The OAG directed ERC Holding, LLC to comply with the New York City Rent and Eviction Regulations and further notified it that "Section 421-a mandates revocation of benefits for non-compliance with its provisions and authorizes the recovery of benefits from their inception if an on-going pattern of non-compliance is found to exist." Id. at 3.

58. In response to this notice from the OAG, Respondents terminated the declaration for Meadows Tower Condominium in July 2014. Ex. 51. Respondents also represented to the OAG and other agencies that they came into compliance with Rent Stabilization laws; however, these representations were false.

a. Respondents Filed False Initial Rent Registrations with DHCR

59. In July 2014, in order to make it appear to the OAG and other agencies as though they were getting into compliance with Rent Stabilization, Respondents submitted initial rent registrations to the DHCR for the years 2010 through 2014. Exs. 38, 52. These registrations were fraudulent because they misrepresented the legal regulated rents for all units in the building. Moreover, these registrations were submitted to DHCR without Respondents offering current tenants leases that complied with Rent Stabilization.

60. For example, Respondents represented to the DHCR that the legal regulated rent for Apartment 2A was $2,100 in 2009. Ex. 52. Respondents did not indicate that there was a lower preferential rent or actual rent paid. Indeed, as discussed supra, paragraph 25, the tenant of Apartment 2A had a rent rider setting his rent at $1,500 per month. Ex. 19. Under 9 N.Y.C.R.R. § 2521.1(g), $1,500 was the legal regulated rent for that apartment, yet Respondents hid that fact from the DHCR.

61. Similarly, in July 2014 Respondents represented to the DHCR that the legal regulated rent for Apartment 2B was $2,100 per month pursuant to a lease beginning 8/1/09 and ending 7/31/10. Ex. 52. Respondents did not indicate that there was a lower preferential rent or actual rent paid. Indeed, as discussed supra, paragraph 28, the tenant of Apartment 2B paid $1,500 per month. Ex. 28. Under 9 N.Y.C.R.R. § 2521.1(g), $1,500 was the legal regulated rent for that apartment, yet Respondents hid that fact from the DHCR.

62. Respondents uniformly registered false rents with the DHCR. Below is a summary of these false registrations filed in July 2014:

Apartment Number	False 2010 Registration	False 2011 Registration	False 2012 Registration	False 2013 Registration	False 2014 Registration
1B	$2,200 (Legal regulated rent was really $1,800). Ex. 53.	$2,200 (Legal regulated rent was really $1,800)	$2,200 (Legal regulated rent was really $1,800)	$2,200 (Legal regulated rent was really $1,800)	$2,200 (Legal regulated rent was really $1,800)
2A	$2,100 (Legal regulated rent was really $1,500). Ex. 20.	$2,100 (Legal regulated rent was really $1,500)	$2,100 (Legal regulated rent was really $1,500)	$2,100 (Legal regulated rent was really $1,500)	$2,100 (Legal regulated rent was really $1,500)
2B	$2,100 (Legal regulated rent was really $1,500). Ex. 54.	$2,100 (Legal regulated rent was really $1,500)	$2,100 (Legal regulated rent was really $1,500)	$2,100 (Legal regulated rent was really $1,500)	N/A (vacant)
3A	Falsely registered as vacant when legal regulated rent was really $1,500). Ex. 55.	$2,100 (Legal regulated rent was really $1,500)	$2,100 (Legal regulated rent was really $1,500)	$2,100 (Legal regulated rent was really $1,500)	$2,100 (Legal regulated rent was really $1,500)
3B	$2,100 (Legal regulated rent was really $1,550). Ex. 56.	$2,100 (Legal regulated rent was really $1,550)	$2,100 (Legal regulated rent was really $1,550	$2,100 (Legal regulated rent was really $1,550)	$2,100 (Legal regulated rent was really $1,550)
4A	$2,100 (Legal regulated rent was really $1,650). Ex. 44.	$2,100 (Legal regulated rent was really $1,650); Ram Cohen told HRA that rent was $900.	$2,100 (Legal regulated rent was really $1,650); Ram Cohen told HRA that rent was $900.	$2,100 (Legal regulated rent was really $1,650); Ram Cohen told HRA that rent was $900.	$2,100 (Legal regulated rent was really $1,650); Ram Cohen told HRA that rent was $900.
4B	$2,200 (Legal regulated rent was really $1,550). Ex. 57.	$2,200 (Legal regulated rent was really $1,550)	$2,200 (Legal regulated rent was really $1,550)	$2,200 (Legal regulated rent was really $1,550)	$2,200 (Legal regulated rent was really 1,550)
5A	$2,050 (Legal regulated rent was really $1,250). Ex. 58.	$2,050 (Legal regulated rent was really $1,250)	$2,050 (Legal regulated rent was really $1,250)	$2,050 (Legal regulated rent was really $1,250)	$2,050 (Legal regulated rent was really $1,250)
5B	$2,050 (Legal regulated rent was really $1,300). Ex. 59.	$2,050 (Legal regulated rent was really $1,300)	$2,050 (Legal regulated rent was really $1,300)	$2,050 (Legal regulated rent was really $1,300)	$2,050 (Legal regulated rent was really $1,300)

b. Respondents Force Tenants in the Building to Sign Leases with Inflated Rents

63. In or around August and September 2014, after OAG inquired whether the tenants at the Building had been provided with rent-stabilized leases, Ex. 60, Respondents approached tenants and offered them new leases. These leases were drawn on a form which recited the protections afforded by Rent Stabilization, but the leases were illegal. Ex. 61. First, the leases misrepresented the legal regulated rent for each unit. Instead of listing the legal regulated rent under 9 N.Y.C.R.R. § 2521.1(g), Respondents continued their practice of listing an inflated, illegal rent on the first page of each lease. Id. Second, instead of giving the tenants an option of a one- or two-year lease, as they were required to do pursuant to 9 N.Y.C.R.R. § 2522.5(a), Respondents only offered the option of a one-year lease by filling out the lease form for a term of one year. Id.

64. Two of the leases offered to tenants in 2014, those for Apartment 3B and Apartment 4B, were never executed. Id. Respondents' counsel informed the OAG that the reasons that they were unexecuted were that the two units were vacant as of September 2014 and that "the tenant is still contemplating occupancy." Ex. 60 at 1. In fact, this representation by counsel was not true.

65. One of the units subject to this representation was Apartment 3B. S. Turgeman was residing in Apartment 3B pursuant to a lease and rider setting the rent at $1,575. Ex. 29. The apartment was not vacant in September 2014, as counsel represented to the OAG. Indeed, five months later, in February 2015, ERC Holdings, LLC commenced a summary proceeding seeking the tenant's eviction for unpaid rent and alleging continuous occupancy since 2011. Id.

66. In the case of Apartment 4B, the other unit subject to this representation, the unsigned lease submitted to the OAG ran from September 1, 2014 through August 31, 2015 and

stated that the monthly legal regulated rent was $2,200. Ex. 61. In fact, Y. Cho paid $1,600 per month, Ex. 40, and the legal regulated rent for the unit was only $1,550 per month. Moreover, the apartment was not vacant in September 2014, as counsel represented to the OAG. Y. Cho stayed in occupancy from May 2012, Ex. 40, until August 2015, when Respondents refunded the security deposit he had made and that they had illegally intermingled with their own funds, Ex. 42.

67. All leases offered to tenants in 2014 uniformly listed the false, inflated rent that Respondents had listed on previous leases. Ex. 61. None of the 2014 leases listed the true, legal regulated rents of the units discussed above, and none of them reflected the actual rent tenants were charged and were paying. Instead, those tenants that did sign the rent-stabilized lease forms maintained side deals with Respondents where Respondents agreed to charge and accept the lower rent that tenants had been paying all along. For example, Rene Medrano, Respondents' employee who was living in 1B in 2014, signed a lease in 2014 agreeing to an inflated rent of $2,200. Ex. 61. Rene Medrano knew, however, that the rent set by Respondents was really $1,750, because Eldad Cohen explicitly told him that he would "pay one thing, but the contract will say another [rent]." Ex. 27 (R. Medrano Tr. at 27:9-17). A similar side deal existed with Apartment 5B. In December 2014, just three months after the tenant signed a false lease listing a rent of $2,050, Ex. 61, the tenant paid his actual rent of $1,350 as usual. Ex. 62.

68. Sharon Mohammed, Respondents' employee who filled in the rent-stabilized lease forms pursuant to Eldad Cohen's instructions, Ex. 32 (Mohammed Tr. at 55:21-56:3), recalled that Eldad Cohen instructed her to listed the higher, inflated rents on the rent-stabilized lease forms rather than the actual rents that the tenants were paying. Id. at 62:7-63:8.

69. All leases offered to tenants in August and September 2014 failed to comply with 9 N.Y.C.R.R. § 2522(a)(1) because they failed to give tenants the option of a one- or two-year term. Rather, the leases were pre-filled to offer only a one-year lease term. Sharon Mohammed recalls that when she filled out the rent-stabilized lease forms in 2014 pursuant to Eldad Cohen's instructions, she only offered a one-year lease term. Ex. 32 (Mohammed Tr. at 63:20-64:22). Indeed, even the two unsigned leases for Apartments 3B and 4B only offer the option of a one-year term, which proves that this term was pre-determined by Respondents. Ex. 61.

70. Respondents' counsel submitted the fraudulent leases to the OAG in September 2014 and represented that they were in compliance with Rent Stabilization. Ex. 60. In fact, all leases were sham leases designed to deceive the OAG so that it would "complete [its] investigation" of the matter. Id. Eldad Cohen admitted in his testimony that Respondents prepared these leases and forced tenants to sign them under the impression that the only basis for offering such lease was an "order" from the Attorney General. He communicated to tenants that they must "cooperate[] and sign the new lease." Ex. 14 (E. Cohen Tr. at 125:9).

71. The fraud did not stop there. Respondents continued their fraud by entering into at least one secret preferential rent rider attached to a rent stabilized lease. In April 2015, Respondents offered a lease for Apartment 5B to A. Levy. The lease stated on the first page that it was a rent-stabilized lease and that the monthly rent was $2,050 per month. Ex. 63. Respondents, however, attached a rider to that lease entitled "Preferential Rent Rider" for Condominium Unit 5B. Ex. 64. That rider set a lower rent of $1,400 per month. Respondents did not provide this rider to the OAG in response to its subpoena demand, and Respondents hid the existence of this rider from HPD and the DHCR.

72. This rider also noted that the tenant had paid a $1,400 security deposit. Ex. 64. Indeed, the tenant made such payment by check, earmarked for security. Ex. 37. Respondents did not deposit that check into its own interest-bearing account, and Respondents did not inform the tenant of the account holding his security deposit.

73. Ram Cohen falsely affirmed to the DHCR that Apartment 5B was vacant during this time period and that the legal regulated rent for the apartment was $2,050 per month. Ex. 66.

c. Respondents Submitted a False Affidavit to HPD to Continue Receiving the 421-a Tax Exemption and Another False Rent Registration to DHCR

74. In June 2015, after the OAG and HPD had discovered the building was operating as a rental and not a condominium, Respondents submitted documents to HPD in order to continue receiving the 421-a tax exemption. One of these documents was a false affidavit from Respondent Ram Cohen. Ex. 65. In this affidavit, Ram Cohen swore that Respondents had "charged" the inflated rents that had been registered with the DHCR retroactively from July 1, 2009, and continuing until April 1, 2015. Ram Cohen enclosed a chart that mirrored the rents registered with DHCR for 2010 to 2015, claimed that Respondents had charged tenants the higher, inflated rents registered with DHCR, and failed to disclose the lower legal rents that the tenants had been charged and paying all along. This affidavit did not disclose that Respondents had charged Miryam Lider a monthly rent of $900 from 2011 to 2014 or that A. Levy had just signed a lease with a rider setting the rent at $1,400 per month; rather it listed Apartment 5B as vacant.

75. Ram Cohen also falsely swore in this affidavit that "the tenants were provided rent-stabilized leases" from 2009 to 2015. Id. In fact, it was not until around August or

September 2014 that Respondents began offering tenants leases that were drawn on a form which recited the protections afforded by Rent Stabilization; but, even then, as discussed above, such leases were illegal.

76. In July 2015, Respondents submitted to DHCR an annual rent registration for each unit. Ex. 66. This registration, like the 2014 registration, falsely listed inflated rents as the legal regulated rents. In addition, this registration falsely represented that there were leases in effect for some apartments which did not have leases. For example, the registration stated that the tenants of 3B and 4B had leases in effect that ran from September 1, 2014 through August 31, 2015. In fact, as discussed above, the tenants never signed those leases. Ex. 61. Further, the registration falsely represented that Unit 5B was vacant when, in fact, Respondents had offered lease to A. Levy starting in April 2015. Ex. 63. A. Levy was still occupying that apartment and paying a $1,400 monthly rent in July 2015. Ex. 37.

6. Respondents Violated the Martin Act and Rent Stabilization Laws by Demanding that Tenants Surrender Their Apartments After Service of the Red Herring

77. In May 2015, after misrepresenting to the OAG and DHCR that they had come into compliance with Rent Stabilization, Respondents submitted to the OAG a new proposed offering plan for the Building to be converted to a condominium under G.B.L. § 352-eeee. Ex. 67. This plan was a non-eviction plan, meaning that tenants could not be evicted by reason of conversion from rental to condominium ownership. Id. The plan was eventually rejected by the OAG in 2016.

78. Before the plan was rejected, and pursuant to the requirements of the Martin Act, Respondents allegedly served all tenants with the offering plan on May 11, 2015. Ex. 68. This action commenced the "red-herring period." The Martin Act protects tenants in buildings

undergoing conversion to condominium or cooperative ownership from harassment, deterioration of services, and threats of imminent eviction. OAG policy prohibits sponsors of such buildings from securing buyouts or other surrenders of rent stabilized tenancies during the red-herring period until the offering plan is accepted by the OAG for filing. As the plan was never accepted for filing, there was never a period during which Respondents could permissibly secure tenancy surrenders after May 2015. Nevertheless, from June 2015 through January 2016, Respondents caused tenants of all units except Apartment 2A to vacate their apartments.

79. In June 2015, Respondents sent seven tenants in the Building renewal lease forms, which offered tenants the option of renewing their leases at inflated, illegal rents. Ex. 69. These lease renewal offers were illegal because they demanded more than the legal regulated rent for each unit. Respondents used them as a mechanism by which to secure tenants' surrenders.

80. For example, Respondents offered David Medrano, their employee and the tenant of Apartment 2B, a renewal lease offering a one-year lease extension at $2,120 per month or a two-year lease extension at $2,157.75 per month. Id. at 3. The legal regulated rent for this unit was actually $1,500 per month, as that the initial legal regulated rent was $1,500 in 2009 under 9 N.Y.C.R.R. § 2521.1(g), Ex. 54, and the rent was never legally increased between 2009 and 2015. Therefore, the proposed increase of $620 for a one-year leases and $675.75 for a two-year lease was illegal.

81. Eldad Cohen advised David Medrano that if he did not sign the renewal lease form offered to him, he had to leave. Ex. 39 (R. Cohen Tr. II at 243:20-45-11). David Medrano testified under oath that he moved out of the Building because Eldad Cohen told him he had to leave. Ex. 70 (D. Medrano Tr. I at 18:2-11).

82. The tenant of Apartment 4B also received an illegal renewal lease. Although the legal regulated rent for Apartment 4B was $1,550 per month, as that the initial legal regulated rent was $1,550 in 2009 under 9 N.Y.C.R.R. § 2521.1(g) and the rent was never legally increased between 2009 and 2015, the renewal lease form offered a one-year extension at $2,222 per month or a two-year extension at $2,260.50 per month. Ex. 69. The tenant of 4B, who had been paying $1,600 per month in rent, Ex. 40, was therefore faced with the choice of agreeing to a $622 rent increase or vacating the apartment. In August 2015 the tenant vacated. Ex. 35.

83. Beginning in late September 2015, Respondents put additional pressure on tenants to vacate because they decided not to proceed with condominium conversion and instead to sell the Building as a rental after the red herring was submitted to OAG. On September 30, 2015—less than five months after allegedly serving the red herring on tenants—Respondents entered into a contract of sale with Vincent Wu to sell him the Building for $3,750,000. Ex. 71. In this contract, Respondents promised that they would "make diligent efforts to deliver at least 5 Units (whether residential and/or commercial) vacant at Closing." Id. at Rider at 3.

84. Despite Martin Act protections afforded to the tenants and Rent Stabilization's prohibition against eviction without cause, between September 2015 and January 2016, Respondents carried out a concerted effort to make good on that promise in the contract and cause tenants to leave their apartments. They threatened tenants with illegal rent increases in order to cause them to leave, and in some cases they informed tenants living in the Building that they were required to vacate the Building because of the impending sale.

85. In October 2015, Respondents forced the tenants of Apartment 3A—the Grinfelds— to abandon their tenancy rights. First, in June they offered the Grinfelds an illegal renewal lease. Ex. 69. Although the legal regulated rent for Apartment 3A was $1,500 per

month, as that the initial legal regulated rent was $1,500 in 2009 under 9 N.Y.C.R.R. § 2521.1(g) and the rent was never legally increased between 2009 and 2015, the renewal lease form offered a one-year extension at $2,121 per month or a two-year extension at $2,157.75 per month. Id. The tenants, who were paying $1,500, Ex. 32 (Mohammed Tr. at 95:17-19), were therefore faced with the choice of agreeing to a $621 rent increase or vacating the apartment.

86. Ram Cohen confirmed in testimony given under oath to the OAG that the tenants of Apartment 3A were instructed by Eldad Cohen that, if they did not agree to sign the renewal lease, they were required to leave. Ex. 39 (R. Cohen Tr. II at 257:6-58:3).

87. In October 2015, Eldad Cohen ramped up the pressure for the Grinfelds to vacate. Sharon Mohammed recalled that they were crying when they were told they had to move out. Ex. 32 (Mohammed Tr. at 95:14). The Grinfelds, who had a young baby, could not afford an apartment for more than $1,500 per month. Id. They retained a real estate agent to help them find another apartment in the same neighborhood.

88. That agent, Mary Elizabeth Smith, recalls that the Grinfelds approached her and sought her assistance finding a new apartment after Respondents told them they must surrender and vacate their unit at the Building. Ex. 72 ¶ 4. She eventually found them another apartment and recalls that Respondents paid her broker's fee. Id. at ¶ 9.

89. Ram Cohen authorized payment to the Grinfelds of $1,650 and $320 from ERC Holdings LLC for their moving expenses. Ex. 73. On October 30, 2015, Sharon Mohammed texted Eldad Cohen the Grinfelds' phone number in order to arrange for payment of moving expenses. Ex. 74.

90. Rene Medrano, Respondents' employee and the tenant of Apartment 1B, testified to the OAG that Eldad Cohen came to his apartment in or around November 2015 and told him

that he had to move out because the Building was going to be sold. Ex. 27 (R. Medrano Tr. at 49:7-12). Mr. Medrano was able to remain in the apartment for a short time because the new owner agreed to let him stay for $1,900 per month. Id. at 49:17-50:6.

91. Sharon Mohammed recalls that Eldad Cohen spoke to all tenants and told them that they had to leave because the building was being sold. Ex. 32 (Mohammed Tr. at 97:11-13).

92. In January 2016, Respondents paid $2,500 in "moving expenses" to the tenants of Apartment 5A in order to ensure the surrender of their tenancy. Ex. 90.

93. All tenants except the tenant of Apartment 2A moved out before Respondents transferred title of the Building to the new owner. Ex. 27 (R. Medrano Tr. at 50:10); Ex. 39 (R. Cohen Tr. II at 306:11-309:17). The tenant of Apartment 2A, who did not wish to vacate his rent-stabilized apartment, was initially unwilling to move. Ex. 27 (R. Medrano Tr. at 50:10-15); Ex. 39 (R. Cohen Tr. II at 306:10-16). For this reason, Respondents agreed to assist the purchaser in securing his eviction, and Eldad Cohen appeared in Housing Court to prosecute a nonpayment action. Ex. 14 (E. Cohen Tr. at 159:15-60:6).

7. Respondents Repeatedly Deceived the Purchaser and Misrepresented the Rent Roll in the Course of Selling the Building

94. During negotiations with Vincent Wu for the sale of the Building, Respondents did not disclose that tenants were paying less than the inflated rents registered with DHCR and listed on the first pages of the leases. Ex. 71. The OAG first learned about Respondents' misrepresentations to Vincent Wu when it received the 2015 contract of sale on June 16, 2017, in response to a subpoena demand.

95. The September 30, 2015 contract of sale between Respondent ERC Holding, LLC and Vincent Wu misrepresented the rents of all apartments and the security deposits for all apartments. Id. This misrepresentation was intentional.

96. Schedule E of the contract of sale contained a rent schedule. Respondents falsified the rents by listing the higher, inflated rents rather than the actual legal regulated rents. Id. at Schedule E. Just as Respondents had falsified the rents to the DHCR, Respondents falsified the rents in the contract of sale. This lie made it appear that the Building's rent roll was higher than it was, and this served Respondents by giving the impression that the Building was more valuable that it was.

97. In a second rider appended to the contract of sale, Respondents represented that the Schedule E was 'the accurate rent roll" as of the date the contract was executed and "that no tenant is in default in the performance of the lease and that all rents or charge[s] have been collected up to date of Contract." Id. at "Second Rider" at ¶ 1. In fact, such representation was false. None of the tenants ever paid in any given month the higher, false rent listed on the Schedule E.

98. Respondents transferred title to the Building to WFG LLC, an entity controlled by Vincent Wu, on January 12, 2016. Ex. 75. The purchase price was $3,750,000. Exs. 71, 75.

8. Respondents Pay Their Employees Using a Fraudulent Scheme

David Medrano

99. David Medrano, who was a tenant at the Building for many years, was hired by Ram Cohen and Eldad Cohen in 2012 to act as manager of a building they own and operate located at 114-05 170th Street, in St. Albans, Queens. He is listed as managing agent of that building in HPD's Building Registration Summary Report. Ex. 76. Ram and Eldad Cohen had previously employed Mr. Medrano to help construct the Building. Ex. 77 (D. Medrano Tr. II at 19:9-15).

100. As a condition of his employment, Ram Cohen and Eldad Cohen insisted that Mr. Medrano set up a corporation in his name in order to receive his wages. Ex. 77 (D. Medrano Tr. II at 12:6-13:5). That corporation is CMYF Corp. That corporation, while nominally associated with David Medrano, is actually an entity controlled by Ram Cohen.

101. Ram Cohen has made virtually all decisions and prepared all documents on behalf of CMYF Corp. from its creation. Ram Cohen prepared all the documents in order to register the corporation with the New York Department of State. Ex. 77 (D. Medrano Tr. II at 25:25-26:25). Ram Cohen presented all corporate documents to David Medrano for his signature, but David Medrano did not know what he was signing. Id. Ram Cohen reported to the New York Department of State that the service of process address was Apartment 1B at the Building. Ex. 78.

102. Ram Cohen personally prepared the tax returns annually for CMYF Corp. until 2017, Ex. 77 (D. Medrano Tr. II at 54:2-9), and the cover page for such returns bears an IP address from Ram Cohen's home computer, Ex. 79 at 1. To prepare the tax returns, Ram Cohen would itemize expenses for CMYF Corp. without consulting with Mr. Medrano. Ex. 77 (D. Medrano Tr. II at 55:18-57:10).

103. Ram Cohen used his own insurance broker, Teitelbaum Insurance Company, to take out workers compensation and liability insurance policies for CMYF Corp. Ex. 77 (D. Medrano Tr. II at 59:10-19), Ex. 83. Ram Cohen filled out all documents necessary to keep the insurance policies active, including preparing an audit in David Medrano's name and e-mailing it directly to Teitelbaum Insurance Company for CMYF Corp's policy. Ex. 80. Ram Cohen pays for these policies. Ex. 83. Teitelbaum Insurance Company is Ram Cohen's preferred insurance broker, Ex. 3 (R. Cohen Tr. I at 147:11-13) ("I dealt with Tietelbaum, he finds insurance

company. He is not the insurance company, he is the agent."), and Teitelbaum has been in contact with the insurance company, Wesco Insurance, regarding the CMYF policy. Ex. 81.

104. All documents associated with CMYF Corp. are kept in the offices at 114-05 170th Street, which is owned by Eldad and Ram Cohen. Ex. 77 (D. Medrano Tr. II at 11:5-16).

105. Ram Cohen also uses CMYF Corp.'s name to pay his own employees. This occurs with Sharon Mohammed, as discussed below, and also with Alcides Guano and Carmen Ramirez. Mr. Guano was a maintenance worker at 114-05 170th Street who Ram and Eldad Cohen had hired before David Medrano started working there. Ex. 77 (D. Medrano Tr. II at 61:20-62:13). The Cohens instructed David Medrano to pay Mr. Guano via the CMYF account, and they reimbursed him. Id. CMYF also paid Carmen Ramirez, who also works from Ram and Eldad Cohen at 114-05 170th Street, and Ram Cohen reimbursed CMYF for these payments. Ex. 77 (D. Medrano Tr. II at 63:6-14).

106. The two instances in which David Medrano has interjected his voice in decisions concerning the formation and operation of CMYF Corp. are: (1) when he chose to open the corporate bank account at TD Bank; and (2) when he chose get a new accountant in 2017. As to the latter choice, Mr. Medrano chose to hire an independent accountant for his 2017 tax returns because he was unhappy with Ram Cohen's preparation of CMYF's tax returns. Ex. 77 (D. Medrano Tr. II at 11:17-21). As to the former choice, Mr. Medrano chose to open an account at TD Bank because of the convenience. Ex. 77 (D. Medrano Tr. II at 25:4-10).

107. Although the TD Bank account for CMYF was opened by Mr. Medrano, Ram Cohen regularly makes deposits into the account, even to this day. Exs. 82, 84. Indeed, all income paid to CMYF comes from Ram Cohen, Eldad Cohen, and their various entities and

corporations, including companies Ram Cohen owns called Odyssey Systems and Star One Realty. Id.

108. Ram and Eldad Cohen pay David Medrano $1,000 per week by depositing this sum in CMYF's account. Ex. 77 (D. Medrano Tr. II at 24:22-25:3). Exs. 82, 84.

109. Eldad and Ram Cohen do not withhold payroll taxes from their pay to Mr. Medrano. Id.

Sharon Mohammed

110. Sharon Mohammed began working for Respondents Ram Cohen and Eldad Cohen in 2002. Respondents Ram and Eldad Cohen refer to her as Susan, as that is her middle name and the name she commonly uses. Ex. 32 (Mohammed Tr. at 41:2-4). Eldad Cohen initially hired her to do administrative work connected with his business as a real estate developer. Eventually she began working for Ram Cohen as well, performing administrative tasks connected with both brothers' businesses. Id. at 40:4-23.

111. Ram Cohen communicates with Ms. Mohammed by text and by email on a nearly daily basis. Ram Cohen regularly texts Ms. Mohammed instructions such as "[p]lease check the status of odyssey and cmyf insurance that we are up to date with payment," Ex. 83, and "[p]lease send me cash expenses from 7/1/2016 to 7/31/17," Ex. 84, and "scan all material receipts and email to me once a month," Ex. 85.

112. With respect to work at the Building, Ms. Mohammed filled out leases and collected rent from the tenants at the Building. Ex. 32 (Mohammed Tr. at 55:21-56:20). Ms. Mohammed interacted with the tenants regularly. Id. at 96:2-23. When the Building was going to be sold, Eldad Cohen instructed her not to tell the tenants. Id.

113. Eldad and Ram Cohen pay Ms. Mohammed a flat salary of $300 per week for her work; however, they have attempted to disguise their payment of her salary by passing it through CMYF Corp. They began this fraud by directing Mr. Medrano to pay Ms. Mohammed in cash, after which they would reimburse him for the payments. Ex. 32. (Mohammed Tr. 23:23-25:25). Around the time that the OAG issued investigatory subpoenas on Respondents, Ram and Eldad Cohen directed David Medrano to begin paying Ms. Mohammed's salary by check issued by CMYF Corp. Id. Though Ms. Mohammed's wages come nominally from the CMYF account, Ram Cohen and Eldad Cohen replenish those funds from their own account. Ex. 77 (D. Medrano Tr. II at 52:7-16). In fact, Ram Cohen makes direct deposits into the CMYF account from his home in Massachusetts. Ex. 82. CMYF has not spent any of its own funds on Ms. Mohammed's salary—all funds are from Respondents and passed through the CMYF account. Ex. 77 (D. Medrano Tr. II at 52:20-25).

114. Eldad and Ram Cohen do not withhold payroll taxes from their pay to Ms. Mohammed.

115. The OAG first learned of the illegal and fraudulent conduct described herein after receiving a complaint dated February 26, 2016, from the last remaining tenant in the Building. Ex. 89. As a result of that complaint, the OAG began investigating Respondents' conduct, including prior representations to the OAG, HPD, and DHCR. The OAG issued an investigatory subpoena to ERC Holding, LLC on April 24, 2017. Ex. 21. Respondents produced documents to the OAG in response to this subpoena on June 16, 2017, June 29, 2017, and March 5, 2018. Along with each production, Respondents submitted to the OAG an affidavit of Ram Cohen swearing that no documents had been withheld from the OAG and that the responses were complete and correct to the best of his knowledge. Ex. 22, 23, 24.

116. On September 12, 2018, the OAG served Respondents with a pre-litigation notice as required by General Business Law § 349(c). Ex. 88.

Dated: New York, New York
October 22, 2018

Rachel Hannaford
Senior Enforcement Counsel