

At an IAS Part of the Supreme Court of the State of New York County of New York, at the Courthouse, 80 Centre Street, Room 308, Borough of Manhattan, City of New York, on the 29th day of March, 2018.

PRESENT: Hon. Carmen V. St. George
Justice, Supreme Court

In the Matter of the Application of

GLADYS ORDONEZ, and NELSON A. HENAO,

Petitioners,

-against-

THE CITY OF NEW YORK,

Respondent.

N.Y. Sup. Index # _____/2018

NOTICE OF PETITION

For a Judgment Pursuant to Article 78 and
§§ 3001, 6301 of the Civil Practice Law and Rules

PLEASE TAKE NOTICE upon the annexed affirmation of **KAT MEYERS** dated January 18, 2018, the affidavits of **GLADYS ORDONEZ**, and **NELSON A. HENAO**, sworn to on January 16, 2018, the declaration of **OKSANA MIRONOVA** sworn to on January 18, 2018, the declaration of **RENAE WIDDISON** sworn to on January 17, 2018, and upon all the exhibits, pleadings and proceedings in this matter, the undersigned shall move this court on March 29, 2018, at 9:30 AM or as soon thereafter as counsel may be heard, at Part 34 located at New York County Supreme Court, 80 Centre Street, New York, New York, room 308 for an Order:

(a) Declaring that Respondents' Environmental Impact Statement for the proposed East Harlem rezoning, certified on September 19, 2017, is null and void, pursuant to Article 78 of the CPLR; and/or,

(b) Declaring the City Environmental Quality Review Technical Manual null and void as an improperly promulgated rule, pursuant to CPLR § 3001; and/or

(c) Staying the development or rezoning of any project that was approved or is being approved using standards contained in the CEQR Technical Manual pending the promulgation of the CEQR Technical Manual according to the City Administrative Procedure Act, pursuant to CPLR § 6301; and/or

(d) Awarding costs and disbursements against the government Respondents pursuant to CPLR § 8101; and/or

(e) Granting such other and further relief as the Court may deem just and proper.

Dated: January 18, 2018
New York, New York

Respectfully submitted,
/s/ Kat Meyers

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**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: IAS PART 34**

In the Matter of the Application of

GLADYS ORDONEZ, and NELSON A. HENAO

N.Y. Sup. Index # _____/2018

Petitioners,

PETITION

-against-

THE CITY OF NEW YORK,

Respondent.

For a Judgment Pursuant to Article 78 and
§§ 3001, 6301 of the Civil Practice Law and Rules

Petitioners, by their attorneys, for their Verified Petition, allege:

I

PRELIMINARY STATEMENT

1. All land use decisions in the City of New York are required to be evaluated for their potential environmental impacts pursuant to state and city law. Environmental impacts include impacts on socioeconomic conditions such as direct and indirect residential displacement. The methodology used to determine displacement is set forth in the City's Environmental Quality Review Technical Manual (CEQR Technical Manual). The CEQR Technical Manual's method for estimating potential displacement is flawed in its underlying assumption that rent regulated units are not vulnerable to displacement. This assumption underpins the environmental analysis in two ways. First, it assumes that rent regulated housing is not vulnerable to development and therefore undercounts the potential for direct displacement. Second, it skews the analysis of indirect residential displacement by underestimating the potential for gentrification in neighborhoods with majority-regulated units.

Because of the CEQR Technical Manual's flawed methodology, City Respondents failed to properly assess the potential displacement of tenants in rent regulated apartments which would take place as a result of the rezoning and development of East Harlem.

2. Further, the Manual used to make this assessment, and the rules contained therein, were not properly promulgated pursuant to the City Administrative Procedure Act (CAPA). This failure to promulgate the CEQR Technical Manual as a rule renders the City's environmental review process immune from effective scrutiny. The Manual sets forth bright line rules that are applied to all land use decisions with real consequences. As such, it is a "rule" within the meaning of the CAPA and should be subject to CAPA's notice and comment requirements.

RELIEF SOUGHT

3. Petitioners seek an Order declaring that Respondents' Environmental Impact Statement (EIS) for the proposed rezoning, certified on September 19, 2017, is null and void due to the failure to assess potential indirect displacement of tenants from rent regulated apartments.

4. Petitioners also seek an Order declaring the CEQR Technical Manual null and void as a rule that was improperly promulgated under CAPA, and an Order enjoining the City of New York from implementing any zoning or development plans that were, or are, being approved pursuant to the procedure outlined in the CEQR Technical Manual until the Manual has been properly promulgated.

II

PARTIES

5. Petitioner Gladys Ordonez is a tenant in apartment 2N at 1662 Park Avenue. Petitioner Ordonez has resided in this rent stabilized unit for over 22 years. 1662 Park Avenue is within the study area assessed in the EIS.

6. Petitioner Nelson A. Henao is a tenant in apartment 3S at 1662 Park Avenue. Petitioner Henao has resided in this rent stabilized unit for over 10 years. 1662 Park Avenue is within the study area assessed in the EIS.

7. Respondent City of New York is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain promulgate environmental regulations governing land use actions in the City of New York.

III

JURISDICTION AND VENUE

8. This Court has jurisdiction over Respondents pursuant to CPLR § 7801, § 3001, and § 6301.

9. Pursuant to CPLR § 506(b), CPLR § 7804(b), and CPLR § 503 venue is proper in this county in regard to the City of New York, and all Respondents have their principal offices in this county and listed an address in this county on the certified EIS.

IV

LEGAL FRAMEWORK

The State Environmental Quality Review Act and Regulations

3. In 1975, the State Environmental Quality Review Act (SEQRA) was enacted. NY Env'tl. Conserv. Law § 8-0101 et seq. The State Environmental Quality Review Act ("SEQRA") requires agencies in New York State to incorporate social, economic and environmental factors into their planning processes.

4. Under SEQRA, an Environmental Impact Statement (EIS) must be prepared for all state actions that may have a "significant effect on the environment." NY Env'tl. Conserv. Law § 8-0109(2).

5. If an EIS is required, based on a preliminary determination that the contemplated action will have a "significant effect on the environment" the EIS must contain, at least a statement of 1) the environmental impact of the proposed action including short-term and long-term effects; 2) any adverse environmental effects which cannot be avoided should the proposal be implemented; 3) alternatives to the proposed action; and 4) mitigation measures proposed to minimize the environmental impact. NY Env'tl. Conserv. Law § 8-0109.

6. "The purpose of an [EIS] is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action." NY Env'tl. Conserv. Law § 8-0109(2).

7. Accordingly, where at all possible, agencies are required to "use all practicable means to ... choose alternatives which ... to the maximum extent practicable, minimize or avoid

adverse environmental effects, including effects revealed in the [EIS].” NY Env’tl. Conserv. Law § 8-0109(1).

8. Under the Statute, the Commissioner of the State Department of Environmental Conservation, was required to “adopt rules and regulations implementing [SEQRA]” after consultation with state and local agencies and after “conducting public hearings and review of any comments submitted.” NY Env’tl. Conserv. Law § 8-0113(1).

9. These promulgated rules were required to contain, at least:

- a. Criteria for determining whether or not a proposed action may have a significant effect on the environment, taking into account social and economic factors to be considered in determining the significance of an environmental effect. NY Env’tl. Conserv. Law § 8-0113(2)(b).
- b. Identification on the basis of such criteria of:
 - i. Actions or classes of actions that are likely to require preparation of environmental impact statements;
 - ii. Actions or classes of actions which have been determined not to have a significant effect on the environment and which do not require environmental impact statements under this article. In adopting the rules and regulations, the commissioner shall make a finding that each action or class of actions identified does not have a significant effect on the environment. NY Env’tl. Conserv. Law § 8-0113(2)(c).
- c. Typical associated environmental effects, and methods for assessing such effects, of actions determined to be likely to require preparation of

environmental impact statements. NY Evtl. Conserv. Law § 8-0113(2)(d).

d. Form and content of and level of detail required for an environmental impact statement. NY Evtl. Conserv. Law § 8-0113(2)(h).

e. A model assessment form to be used during the initial review to assist an agency in its responsibilities under this article. NY Evtl. Conserv. Law § 8-0113(2)(l).

10. Local agencies were also required, “after public hearing [to] adopt such additional procedures as may be necessary for the implementation by them of [SEQRA].” NY Evtl. Conserv. Law § 8-0113(3).

11. In accordance with SEQRA, the State promulgated regulations that include: procedural requirements for compliance with the law; criteria to determine whether a proposed action may have a significant adverse impact on the environment; model environmental assessment forms to aid in determining whether an action may have a significant adverse impact on the environment; and examples of actions and classes of actions which are likely to require an EIS. 6 NYCRR § 617.1(e).

The History of Environmental Review in New York City

12. The City began conducting environmental reviews of discretionary government actions pursuant to Executive Order No. 87, issued in 1973. Executive Order No. 87 was issued to bring New York City’s environmental review procedures of City agency action in line with the National Environmental Policy Act (NEPA), 42 USC § 4321, et seq. (1969).

13. In 1977, in response to the enactment of SEQRA, Mayoral Executive Order 91 was issued, supplanting Executive Order 87, in requiring City agencies to assess the environmental

impacts of their actions.

14. In 1989, the New York City Charter was amended to empower the Department of City Planning to “establish by rule procedures for environmental reviews of proposed actions by the city where such reviews are required by law.” New York City Charter §194(e).

15. In 1991, the Department of City Planning codified Executive Order 91 in Title 62, Chapter 5 of the New York City Rules and Regulations (CEQR Rules). The CEQR Rules require city agencies to assess, disclose and mitigate to the greatest extent practicable the significant environmental consequences of their decisions to fund, directly undertake, or approve a project. The evaluation must include an assessment of the social and economic impacts of the proposed project. 43 RCNY 6-09.

16. The CEQR Rules, however, are devoid of substantive standards to be used in evaluating the environmental impacts of a proposed action. Those standards are all contained in the CEQR Technical Manual (the Manual). Unlike the CEQR Rules, the CEQR Technical Manual was never subject to public notice and comment and was not promulgated in manner required by CAPA. Rather, it is unilaterally issued by the New York City’s Mayor’s Office of Environmental Coordination.

The CEQR Technical Manual

17. The initial determination that is required of a lead agency when undertaking an environmental review is whether the proposed action will have a “significant effect on the environment.” NY Evtl. Conserv. Law § 8-0109(2). If so, the applicant or agency will be required to prepare and submit an EIS, the goal of which is to determine environmental impacts, consider alternatives, and propose mitigation. NY Evtl. Conserv. Law § 8-0109.

18. In New York City, the applicant or agency starts the process by filing an

Environmental Assessment Form (EAS). The EAS identifies areas of environmental concern and sets forth the criteria that will be used to determine whether an EIS will be required.

19. The contents of the EAS are derived entirely from the CEQR Technical Manual which lays out the procedures and standards for determining whether an action is likely to have a “significant impact on the environment. A full EIS is required by law only if the proposed action is likely to have a significant impact on the environment, but the law contains no standards for determining whether that threshold has been met. 43 RCNY 6-05(b).

20. A detailed analysis of the environmental effects of direct displacement will be required only if the project has the potential to displace 500 residents, those residents represent at least 5% of the study area population, and the residents to be displaced have incomes that are markedly less than the average incomes of the study area population. CEQR Technical Manual p. 5-6.

21. The potential for direct displacement is assessed by identifying “soft sites” in the study area. “Soft sites” are those that are likely to be developed based on zoning, real estate trends, lot size, and ownership. CEQR Technical Manual pp. 2-6 – 2-10.

22. Rent regulated buildings are excluded from the soft site analysis because rent stabilized buildings are “difficult to legally demolish because of tenant relocation requirements.” CEQR Technical Manual pp. 2-7, 2-10.

23. The CEQR Technical Manual also describes the manner in which indirect displacement will be evaluated. “The objective of the indirect residential displacement analysis is to determine whether the proposed project may either introduce a trend, or accelerate a trend of changing socioeconomic conditions that may potentially displace a vulnerable population [...]” CEQR Technical Manual, p. 5-7.

24. According to the CEQR Technical Manual,

an indirect residential displacement analysis is conducted only in cases in which the potential impact may be experienced by renters living in privately held units unprotected by rent control, rent stabilization, or other government regulations restricting rents, or whose incomes or poverty status indicate that they may not support substantial rent increases.

CEQR Technical Manual, p. 5-7.

25. A preliminary assessment is triggered when a project is expected to introduce 200 or more new dwelling units into an area. CEQR Technical Manual p. 5-2 - 5-3; *see also* Dept. of City Planning Environmental Assessment Form.¹ If that threshold is met, the applicant or agency will be required to undertake a three step inquiry to determine whether a detailed assessment is required. CEQR Technical Manual p. 5-8.

26. Step one is to determine whether the project is likely to introduce a higher income population into the study area. If so, step two is to determine whether the higher income population is expected to exceed 5% of the study area population. If so, step 3 is to analyze neighborhood trends. If the observable trend in the neighborhood is already one of increasing rents, a detailed analysis will not be required. If, on the other hand, step 2 reveals that the study area population will be increased by more than 10%, a detailed analysis will be required regardless of neighborhood trends. CEQR Technical Manual p. 5-8. The more detailed analysis assumes that only tenants in unregulated buildings are at risk of displacement. CEQR Technical Manual, pp. 5-15 – 5-16.

27. The failure to consider the potential direct or indirect displacement of tenants in rent regulated apartments is an error. Rent regulation does not protect a tenant from displacement. Rising rents due to vacancy bonuses, the rescission of preferential rents, the resulting high rent

¹ An electronic version of the Assessment Form available here: http://www.nyc.gov/html/oec/downloads/pdf/ceqr/2010_ceqr_eas_full_form.pdf.

vacancy deregulation of rent stabilized units, and the proliferation of tenant harassment subjects tenants to the same market influences as those in unregulated apartments.

The City Administrative Procedure Act

28. The City Administrative Procedure Act governs the promulgation of local rules. Rules are defined to include “the whole or part of any statement or communication of general applicability that implements or applies law or policy.” N.Y.C. Charter § 1041(5). Specifically, CAPA applies to any statement or communication that prescribes “standards for the disposition of public property.” N.Y.C. Charter § 1041(5)(a).

29. Rules subject to CAPA must be promulgated pursuant to the rulemaking regulations delineated in the New York City Charter. This procedure includes notice and publication of the proposed rule to the public, review of agency authority to establish the proposed rule, and the opportunity agency and public comment.

30. An analysis of CEQR applications considered since 2014, shows that the CEQR Technical Manual is followed like a blueprint in each case. And, in virtually every case, ultimately it is found that there is no significant adverse impact on the neighborhood’s character as the result of displacement, based on one of the bright line rules in the Manual. *See* Meyers Dec. ¶ 8.

V

FACTS

East Harlem Rezoning Plan

31. In 2016 the New York City Department of City Planning and the Department of Housing Preservation and Development proposed to rezone an approximately 95-block area in East Harlem. Final Scope of Work (FSOW) dated May 19, 2017.²

32. Because the proposed project exceeds the threshold of 200 units, with the projected net increase of residential units estimated to be 3,500, a full EIS was required. See FSOW at p. 41. The determination of significance stated: “the actions, as proposed, may result in significant adverse impacts related to socioeconomic conditions in the vicinity of the affected areas with respect to [...] indirect residential displacement” and “**an environmental impact statement will be required.**” Department of City Planning Environmental Assessment and Review Division’s Determination of Significance.³

33. Further, because the East Harlem Rezoning project involves conversion of land use, and special permits, among others, the application requires following the Uniform Land Use Review Procedure (“ULURP”), in which the Community Board and Borough President provide recommendations prior to a vote by the City Planning Commission and ultimately the City Council.

34. On November 10, 2016, The Department of City Planning (DCP) assumed the role of lead agency for the application. Lead Agency Letter dated Nov. 10, 2016.⁴ On November 10,

² An electronic version of the Final Scope of Work is available at: https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/GetFile?fileName=17DCP048M_Final_Scope_of_Work.pdf_04212017&fileExt=.pdf&ceqrNum=17DCP048M&latestMS=Final%20Scope%20of%20Work&token=674da1b1-1c85-4979-9256-52ff026f4a8a.

³ An electronic version of Determination available here: <https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/ProjectDetail/12370-17DCP048M#b>.

⁴ An electronic version of the Lead Agency Letter is available at: https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/GetFile?fileName=17DCP048M_Lead_Agency_Letter_1_11102016&f

2016, DCP issued an Environmental Assessment Statement (“EAS”)⁵ outlining the proposal for conducting an Environmental Impact Statement (“EIS”).

35. On April 21, 2017, DCP issued a Draft Environmental Impact Statement (“DEIS”)⁶, and the public hearing procedure commenced pursuant to CEQR, which was conducted simultaneously with the application being reviewed pursuant to ULURP.

36. The DEIS “study area” in regard to socioeconomic conditions was bordered by 96th Street on the south, 145th Street to the north, Frederick Douglass boulevard on the west, and the East River on the east. The analysis revealed that the project was anticipated to introduce higher income households into the neighborhood, and that the population increase will be greater than 5% in the study subarea of “Mid-East Harlem,” but that the Proposed Action would not result in significant adverse impacts because the area has already experienced a readily observable trend toward increasing housing prices and no further analysis is warranted. DEIS pp. 3-18 – 3-25.

37. On May 16, 2017 and June 20, 2017, Community Board 11 (CB11) held public hearings on the East Harlem Neighborhood Rezoning. After participating in a two-year process with the East Harlem Neighborhood Plan Steering Committee and the CB11 Rezoning Task Force, the Board voted to disapprove the application. The Board’s vote on their disapproval with recommendations consisted of 32 “yes” votes, 9 “no” votes, 1 “abstention,” and 1 “no vote.” Specifically, the Board recommended that any public land be reserved for 100% affordable residential housing including any NYCHA infill, prohibition against offsetting affordable housing

ileExt=.pdf&ceqrNum=17DCP048M&latestMS=Lead%20Agency%20Letter&token=518fc884-8da7-4e91-a492-7d917dd546a4.

⁵ An electronic version of the EAS is available here: https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/GetFile?fileName=17DCP048M_EAS_11102016&fileExt=.pdf&ceqrNum=17DCP048M&latestMS=EAS&token=5e894197-2f8b-4b86-a13f-fb2e444e30eb.

⁶ An electronic version of DEIS available here: https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/GetFile?fileName=17DCP048M_DEIS_04212017&fileExt=.zip&ceqrNum=17DCP048M&latestMS=DEIS%20Placeholder%20Notice%20of%20Completion&token=f19f5744-f3be-4584-bae4-a88efd47c37f.

offsite, and the establishment of citywide Certification of No Harassment, or at least expansion of the current program to all of CD11. *See* Community Board 11 Recommendation Letter dated June 26, 2017.⁷

38. On July 13, 2017, Manhattan Borough President held a public hearing on the East Harlem Neighborhood Rezoning application. The Borough President heard testimony during the public hearing and through subsequent written testimony. The Borough President issued a recommendation that the City Planning Commission disapprove the application. In pertinent part, the Borough President recommended:

- a. more affordability in city-owned sites at tiers that are below 30% of the area median income and required entire projects to be 100 percent affordable.
- b. a commitment that strengthens the anti-harassment protections afforded to tenants in situations where bad landlords are creating unsafe conditions and trying to remove tenants to achieve higher rents. *See* Manhattan Borough President Recommendation dated August 2, 2017.⁸

39. On August 23, 2017, The City Planning Commission (“CPC”) held a public hearing. In addition to the testimony presented at the hearings, CPC considered the recommendations of the Community Board and the Borough President. Nearly two-thirds of the speakers testified in opposition to the application, raising concerns about the affordability levels of the proposed housing, the need for deeper affordability that reflects the income of the current community, preservation of rent-stabilized tenancies where increases of harassment and evictions will result of the rezoning, and failure to consider the input of the Steering Committee. *See* CPC

⁷ An electronic version of the CB11 Recommendation is available here: <https://www.dropbox.com/s/bbh5stcfc1fgqtv/CB%20Recommendation%20C%20170358%20ZMM.pdf?dl=0>.

⁸ An electronic version of the Borough President Recommendation is available here: https://council.nyc.gov/land-use/wp-content/uploads/sites/53/2017/11/MN_BP_EHrezoning_Recommendation.pdf.

Determination dated Oct. 2, 2017 at p. 50.⁹ Despite the disapprovals of both CB11 and the Borough President, CPC voted to approve the application and the related EIS.

40. DCP must review testimony submitted by the public and address the concerns in completing the Final Environmental Impact Statement (“FEIS”). On September 19, 2017, the FEIS was published.¹⁰ While acknowledging that the project would introduce a higher-income population to the study area in excess of 5% of the current population for at least one of the study subareas, the EIS determined no mitigation of potential indirect displacement was necessary because the area has already experienced a readily observable trend toward increasing housing prices in the market rate units. *See* FEIS, p. 3-24.

41. This conclusion also partially relied on the underlying assumption that the imposition of Mandatory Inclusionary Housing (MIH), requiring that 20-30% of new units meet some affordability criteria, will result in greater income diversity than if no rezoning occurred.

42. Further, consistent with the CEQR Technical Manual, the FEIS failed to consider the potential for direct displacement from rent stabilized properties that might result from the action, stating: “[b]uildings in rent stabilized units are difficult to legally demolish due to tenant re-location requirements.” FEIS, p. I-34.

43. Despite the disapproval of the application by the Community Board, the Borough President, and the community, the analysis of the potential indirect displacement in the community as a result of the proposed rezoning of East Harlem remained entirely unchanged.

44. DCP’s response to public comments about the potential indirect displacement of

⁹ An electronic version of the CPC Determination is available here:
<http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/170358.pdf>.

¹⁰ An electronic version of FEIS available here: https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/GetFile?fileName=17DCP048M_FEIS_09192017&fileExt=.zip&ceqrNum=17DCP048M&latestMS=FEIS%20Placeholder%20Notice%20of%20Completion&token=8a9843c5-51f3-4af9-9026-9bdeb61f62a4.

tenants in rent regulated apartments relied entirely on the guidance provided by the CEQR Manual, which explicitly excludes the consideration of potential displacement of tenants in rent regulated apartments. CEQR Technical Manual, p. 5-13.

45. On November 30, 2017, the City Council approved the application with modifications that, inter alia, limited maximum height of development.

Rent Stabilization and Displacement in the Study Area

46. Regulated apartments are the largest source of housing for New York's more than one million low-income households, defined as those with incomes below 200 percent of the federal poverty threshold, or about \$38,150 for a family of three (Mironova Dec. ¶11)

47. Fifty eight percent of individuals (approximately 63,500 people) in the East Harlem 10029 and 10035 zip codes have incomes below 200 percent of the poverty level. (U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates). *Id.* ¶12

48. Many low-income individuals and families in East Harlem reside in rent stabilized apartments. There are 11,846 registered and occupied rent stabilized units in the East Harlem 10029 and 10035 zip codes. Upon information and belief, this is a high concentration of rent stabilized units for a neighborhood. Neighborhoods with higher rents and higher rates of homeownership have fewer rent stabilized units. For example, Upper East Side zip codes 10065 and 10021 have 6,591 occupied and registered rent stabilized units. *Id.* ¶15

49. Rents across New York City have persistently risen faster than incomes since 2002, and households with the lowest incomes have fallen behind the most. For those households at the bottom 20 percent income level, rents have risen 30 percent faster than income. As a result, the median amount of income that low-income tenants in the private unassisted market retained

after paying rent was 8 percent lower in 2014 than it was in 2005, after adjusting for inflation. *Id.*

¶16

50. Low-income households face significant challenges in the face of these market forces. Their incomes provide less of a cushion against rent increases. Upon information and belief, they are likely in the best of times to pay rents that are far above the generally recognized affordability standard of 30 percent of income. And, while rent increases have outstripped increases in income for tenants in both rent regulated and unregulated apartments, this is more the case for regulated tenants. *Id.* ¶17

51. Rent regulation has softened the impact of New York City's permanent housing shortage on tenants, but it has not created a separate housing market that can serve as a safe harbor for tenants. Units are not permanently stabilized – many are lost to “high-rent vacancy deregulation” each year. And both vacancy increases and Major Capital Improvement (MCI) increases, each discussed below, boost rents on apartments that remain in the program to levels that are unaffordable for many low-income households. *Id.* ¶18

52. This pattern of hardship is partly driven by changes in specific neighborhoods, with rents rising fastest in neighborhoods in Upper Manhattan, brownstone Brooklyn, and western Queens. But rents and rent burdens are also rising fast in less centrally located neighborhoods where far more of the city's low-income households live. In addition to being concerned about gentrification and the market effects of local redevelopment, we should also be concerned that the city as a whole is losing its ability to accommodate the housing needs of low-income people. *Id.*

¶19

53. Rent stabilization provides a small but significant improvement in affordability for low-income New Yorkers, in addition to the benefits of a secure tenancy. But this protection

is being undermined by rent increases on regulated apartments that are far in excess of the rate of inflation, and may result in the apartments leaving the regulation system entirely. *Id.* ¶20

54. This is a particular problem for East Harlem, which, according to a 2016 study published by the Regional Plan Association, “lost nearly as many rent-stabilized units between 2007 and 2014 as it gained.” The report goes on to note that “[t]hough this may seem a close approximation of no net loss, in fact, the affordability levels of the new rent stabilized units are not as deep as in the lost rent stabilized units due to the nature of the regulation.” (Regional Plan Association, *Preserving Affordable Housing in East Harlem*, August 2016). Units that enter into rent stabilization as a result of temporary tax exemptions like J-51 or Affordable New York (formally, 421a) often have higher rents than the deregulated units. *Id.* ¶21

55. The largest contributor to rent increases in rent-stabilized apartments is the statutory vacancy allowance or “bonus” that allows an automatic increase of about 20 percent when an apartment becomes vacant and turns over to new tenants. *Id.* ¶22

56. According to Community Service Society’s estimate, the statutory vacancy allowance accounted for 48 percent of inflation adjusted rent increases on all rent-stabilized apartments between 2011 and 2014. *Id.* ¶23

57. The vacancy bonus also contributes to another weakness in the protection afforded by rent regulation, namely the setting of what is known as “preferential rent.” In many parts of the city, the observed rent increases are somewhat lower than one would expect after accounting for the combined effect of Rent Guidelines Board (RGB) and MCI increases and the vacancy bonus. This indicates that legal rents have reached levels that the market will not bear. When this happens, it creates an opportunity for landlords to give tenants leases that specify the actual rent to be paid as a temporary “preferential rent” and another, higher amount as the legal

registered rent. Under the rent stabilization laws as amended in 2003, landlords can then withdraw the preferential rent at the end of the lease and instead charge a rent based on the legal registered rent together with the currently effective Rent Guidelines Board (RGB) increase. Many tenants cannot afford to renew leases at these new rents, and either move or are evicted. This “preferential rent” practice severely undermines the protection of rent stabilization, threatening both affordability and tenants’ security of tenure. As 31.2 percent of registered rent-stabilized leases across the city have preferential rents, this is a serious and widespread problem. *Id.* ¶24

58. It is a serious problem in East Harlem as well. According to the RGB, there are approximately 4,788 apartments (40.4 percent of registered rent stabilized apartments) in the 10029 and 10035 East Harlem zip codes with preferential rents. When leases are renewed, these apartments may become unaffordable to their current occupants. *Id.* ¶25

59. Rent increases are likely not the only reason for low income tenants’ displacement. In our 2017 *Unheard Third* Survey of low-income New Yorkers, CSS asked tenants questions about landlord harassment, including shutting off heat/hot water; threats; long delays in necessary repairs; repeated efforts by landlord to pay the resident to move out; prolonged construction; and, eviction attempts. Among low-income rent regulated New Yorkers, 43.7 percent reported one or more of these forms of harassment as compared to 36.3 percent of low-income New Yorkers residing in unregulated apartments. This could indicate that landlords of rent regulated buildings are using harassment as a strategy to push out rent regulated tenants. *Id.* ¶26

60. In neighborhoods with rapidly rising rents, landlords have an incentive to encourage tenant turnover in their properties to benefit from the 20 percent vacancy bonus and

other provisions in the rent laws. Some landlords employ harassment as a strategy to speed up tenant turnover. *Id.* ¶27

61. Displacement from regulated housing is a very significant contributor to homelessness, whatever the cause. The largest share of families entering the city's shelter system, 43 percent, most recently lived in buildings containing rent-regulated apartments. (New York Independent Budget Office, *The Rising Number of Homeless Families in NYC, 2002–2012: A Look at Why Families Were Granted Shelter, the Housing They Had Lived in & Where They Came From*, Fiscal Brief, November 2014.) *Id.* ¶28.

62. As part of the East Harlem rezoning, approved on November 30, 2017, City Council adopted mandatory inclusionary housing (MIH) Options 1 and 3. Developers in the rezoning area can choose between the two Options. MIH Option 1 requires that 25 percent of residential floor area be made available to households earning 60 percent of Area Median Income (AMI), on average, and that an additional 10 percent of residential floor area be made available to households earning 40 percent of AMI, on average. MIH Option 3 requires that 20 percent of residential floor area be made available to households earning 40 percent of AMI, on average (NYC DCP, East Harlem Rezoning Proposal). *Id.* ¶13

63. In 2017, 60 percent AMI was \$51,540 for a family of three (U.S. Department of Housing and Urban Development). The majority of newly developed properties that will incorporate MIH will accordingly not be affordable to individuals whose incomes are below 200 percent of the poverty level, or approximately 58 percent of the residents of East Harlem's 10029 and 10035 zip codes. *Id.* ¶14

Petitioners

64. Petitioner Ordonez has lived in apartment 2N 1662 Park Ave for 22 years. After a recent change in ownership, Petitioner Ordonez' landlord began harassing her family in an effort to have them vacate the apartment.

65. Petitioner Nelson A. Henao has lived in apartment 3S at 1662 Park Avenue for 10 years. Petitioner Henao has also experienced persistent harassment by the landlord and their agents.

66. 1662 Park Avenue is located between East 117th and East 118th Streets in East Harlem, New York. It is within the Socioeconomic Study Area, and within Project Area for the East Harlem Neighborhood Rezoning.

67. In 2012, 1662 Park Avenue was sold to Joco Group, LLC. Shortly after the new owner purchased the building, the landlord commences a campaign of harassment designed to get long-term tenants to vacate their apartments. The harassment included, refusal to provide renewals leases as required by the Rent Stabilization Code, daily visits to the apartments to tell Petitioners to vacate their apartments, refusal to make necessary repairs, buy-out offers, attempts charge more than legally permitted.

68. When apartments were vacated, the landlord immediately renovated the vacant apartments. This has resulted in high turnover of tenants in the building.

69. Due to the combination of persistent harassment, renovations to vacant units, and high turnover of tenants, Petitioners are fearful of being displaced from their apartments.

70. There are currently 19 open violations in the building including lead paint, vermin and failure to post the individual with keys to the heating system. *See* Department of Housing Preservation and Development Building Data.

71. The landlord's refusal to make repairs is a form of tenant harassment that is

designed to encourage long term tenants in rent stabilized units to vacate their apartments.

VI

CLAIMS

AS FOR A FIRST CAUSE OF ACTION PURSUANT TO CPLR ARTICLE 78

THE EIS'S ANALYSIS OF INDIRECT DISPLACEMENT IS ARBITRARY AND CAPRICIOUS

72. Petitioners re-allege all of the paragraphs above.
73. The EIS prepared by the New York City Department of City Planning (DCP), and approved by the CPC, erroneously fails to assess potential indirect residential displacement.
74. The EIS concluded that a pre-existing trend of increasing market rate rents combined with affordability requirements that will be imposed at the result of Mandatory Inclusionary Housing requirements led to a finding that the rezoning will not have a significant effect on the environment. This is arbitrary, at the same time as acknowledging that there is a trend towards the displacement of neighborhood residents, a detailed analysis was not completed and no alternatives or mitigations were required or considered.
75. DCP arbitrarily failed to assess the risk of direct displacement from rent-regulated buildings. Consequently, the FEIS' direct displacement analysis is flawed.
76. The failure to adequately assess direct and indirect displacement of tenants in rent regulated apartments in the EIS is arbitrary and capricious and an abuse of discretion.
77. As such, the Court should declare it null and void.

AS FOR A SECOND CAUSE OF ACTION
PURSUANT TO CPLR 3001

THE CEQR MANUAL IS A COMPILATION OF RULES
SUBJECT TO THE REQUIREMENTS OF CAPA

78. Petitioners re-allege all of the paragraphs above.
79. The CEQR Technical Manual consists of rules not properly promulgated pursuant to the City Administrative Procedure Act.
80. The failure to follow the requirements of CAPA renders the CEQR Technical Manual, and any project, rezoning or development that relies upon it, null and void.

RELIEF REQUESTED

WHEREFORE Petitioner requests that this court:

- (a) Declaring that Respondents' Environmental Impact Statement for the proposed East Harlem rezoning, certified on September 19, 2017, is null and void, pursuant to Article 78 of the CPLR; and/or,
- (b) Declaring the City Environmental Quality Review Technical Manual null and void as an improperly promulgated rule, pursuant to CPLR § 3001; and/or
- (c) Staying the development or rezoning of any project that was approved or is being approved using standards contained in the CEQR Technical Manual pending the promulgation of the CEQR Technical Manual according to the City Administrative Procedure Act, pursuant to CPLR § 6301; and/or
- (d) Awarding costs and disbursements against the government Respondents pursuant to CPLR § 8101; and/or
- (e) Granting such other and further relief as the Court may deem just and proper.

Dated: January 18, 2018
New York, New York

Respectfully submitted,
/s/ Kat Meyers

KAT MEYERS, Of Counsel
Jennifer Levy, Supervising Attorney
Judith Goldiner, Attorney-in-Charge
THE LEGAL AID SOCIETY
Law Reform Unit
Civil Practice
Attorneys for Petitioner
199 Water Street, 3rd Floor
New York, New York 10038
Tel: (212) 577- 3608
Fax: (646) 449-6929

VERIFICATION

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

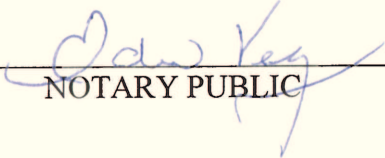
GLADYS ORDONEZ, being duly sworn, deposes and says:

1. I am the Petitioner in the within entitled proceeding.
2. The facts asserted herein are true to my own knowledge except as to matters herein stated to be alleged on information and belief, and that as to those matters I believe them to be true.



GLADYS ORDONEZ

Sworn to before me this 16 day of January, 2018.



NOTARY PUBLIC

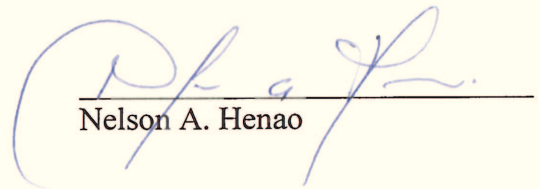
EDWIN VEGA
Notary Public, State of New York
No. 02VE6067599
Qualified in Bronx County
Commission Expires December 10, 2021

VERIFICATION

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

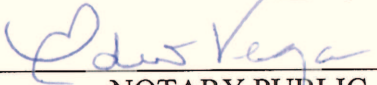
NELSON A. HENAO, being duly sworn, deposes and says:

1. I am the Petitioner in the within entitled proceeding.
2. The facts asserted herein are true to my own knowledge except as to matters herein stated to be alleged on information and belief, and that as to those matters I believe them to be true.



Nelson A. Henao

Sworn to before me this 16th day of January, 2018.



NOTARY PUBLIC

EDWIN VEGA
 Notary Public, State of New York
 No. 02VE6057589
 Qualified in Bronx County
 Commission Expires December 10, 2021

**SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: IAS PART 34**

In the Matter of the Application of

GLADYS ORDONAZ, and NELSON A. HENAO,

Petitioners,

-against-

THE CITY OF NEW YORK,

Respondents.

For a Judgment Pursuant to Article 78 and
§§ 3001, 6301 of the Civil Practice Law
and Rules

N.Y. Sup. Index # _____/2018

AFFIRMATION

KAT MEYERS, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the truth of the following under penalty of perjury:

1. I am of counsel to Judith Goldiner, Attorney in Charge, The Legal Aid Society, the attorney for Petitioners Gladys Ordonez and Hector A. Henao in this proceeding. As such, I am fully familiar with the facts of this proceeding.

2. I make this affirmation in support of Petitioners' Article 78 proceeding seeking an Order:

(a) Declaring that Respondents' Environmental Impact Statement for the proposed East Harlem rezoning, certified on September 19, 2017, is null and void, pursuant to Article 78 of the CPLR; and/or,

(b) Declaring the City Environmental Quality Review Technical Manual null and void as an improperly promulgated rule, pursuant to CPLR § 3001; and/or

(c) Staying the development or rezoning of any project that was approved or is being approved using standards contained in the CEQR Technical Manual pending the promulgation of the CEQR Technical Manual according to the City Administrative Procedure Act, pursuant to CPLR § 6301; and/or

(d) Awarding costs and disbursements against the government Respondents pursuant to CPLR § 8101; and/or

(e) Granting such other and further relief as the Court may deem just and proper.

3. Petitioners challenge the Final Environmental Impact Statement for the East Harlem Rezoning dated September 19, 2017. The determination that there is no significant impact on the environment stemming from the potential displacement of current residents of the community is arbitrary and capricious. Further, the City Environmental Quality Review Technical Manual, which was used to make that determination, contains a series of rules that were not properly promulgated pursuant to the City Administrative Procedure Act.

4. The CEQR Technical Manual assumes that rent stabilized buildings are not vulnerable to demolition and their tenants are not vulnerable to displacement. This belies the reality experienced by Petitioners.

5. Petitioners are tenants in rent stabilized apartments within the FEIS Socioeconomic Study Area, and within Project Area for the East Harlem Neighborhood Rezoning. Petitioners are threatened with being displaced from their apartments as a result of the East Harlem Rezoning. *See* Ordonez and Henao Affidavits.

6. The methodology proscribed by the CEQR Technical Manual suggests an arbitrary standard for determining whether tenants are at risk of displacement. It assumes that in

neighborhoods where there is already an increasing pressure on rents, a rezoning that will undoubtedly increase those pressures is not an action that would result in an adverse impact. This is arbitrary. *See generally* Widdison Declaration.

7. Contrary to what is stated in the FEIS, we know that rent stabilized tenants in the rezoned neighborhood are at risk of displacement, and that the imposition of Mandatory Inclusionary Housing will not address the problem, because the mandated affordable housing is not affordable to a majority of residents. *See generally* Mironova Declaration.

8. The CEQR Technical Manual's bright line rules are applied in each and every CEQR application. And, in virtually every case, based on those rules, it is ultimately found that there is no significant environmental impact likely from the action. The below chart summarizes a review of CEQR applications from 2014 to date, the analysis applied, and the basis for the finding of impact in each case.

Project Name	CEQR #	EAS										DEIS/EIS					Significant Adverse Effect
		Displace > 500 Residents	> 200 New Units	Income of new pop > existing pop	Pop Increase >5%	Existing trend to higher rents	Pop Increase >10%	>5% vulnerable pop	Displace > 500 Resident Units	Income of new pop > existing	Pop Increase >5%	Existing trend to higher rents	Pop Increase >10%	>5% vulnerable pop			
Inwood Rezoning Proposal	17DME007M	N	Y									Y	Y	Y	N - rents already rising + N - no change in income		
168th Street Garage Spofford Campus	17DME003Q 17DME001X	N	Y	N	Y										N - rents already rising		
1776 Eastchester Road Block 675 East	17DCP165X 17DCP159M	N	Y	Y	N										N - pop increase below threshold		
Sea Park North	17DCP098K	N	Y	N	Y										N - no change in income		
Ebenezer Plaza Rezoning	17DCP088K	N	Y	N	Y										N - no change in income		
Watson Avenue Rezoning	17DCP075X	N	Y	Y	N										N - no change in income		
125 Edgewater Street West 108th Street W5F5SH Development	17DCP069R 17HPD083M	N	Y	N	Y										N - no change in income		
425 Grand Concourse 1451 Franklin Avenue Rezoning	17HPD068X 17DCP067K	N	Y	N	Y										N - pop increase below threshold		
East Harlem Rezoning	17DCP048M	N	Y	Y	N										N - population set off from area		
Jerome Avenue Rezoning	17DCP019X	N	Y	Y	Y										N - no change in income		
1932 Bryant Avenue	16DCP155X	N	Y	Y	N										N - pop increase below threshold		
147th Street Rezoning 1000 Fox Street and 960 Simpson Street	16DCP154X 16HPD145X	N	Y	Y	N										N - pop increase below threshold		
147-20 94th Avenue	16HPD105Q	N	Y	N	Y										N - no change in income		
Lexington Gardens II	16HPD082M	N	Y	N	Y										N - no change in income		
One Flushing	16HPD014Q	N	Y	N	Y										N - no change in income		
Downtown Far Rockaway Redevelopment Project	16DME010Q	N	Y	Y	Y										N - rents already rising + MIH		
550 Washington Street - Special Hudson River Park	16DCP031M	N	Y												N - no change in income		
Bedford Union Armory	16DME005K	N	Y	Y	N										N - rents already rising		
The Landmark Colony	15DME006R	N	Y	N	N										N - no change in income		
Pfizer Sites Rezoning	15DCP117K	N	Y												N - rents already rising		
East New York Rezoning Proposal (FEIS, 2/11/2016)	15DCP102K	N	Y												N - rents already rising +		
Lower Concourse North	15DCP102K	N	Y	N	Y										N - incomes rising and MIH		
Meirrose Commons North	14HPD030X	N	Y	N	Y										N - no change in income		

WHEREFORE, based on the foregoing, Respondent respectfully requests that this Court enter an Order:

- (1) Granting the relief sought in the Petition; and
- (2) Granting any such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 18, 2018

Respectfully submitted,
/s/ Kat Meyers

KAT MEYERS, Of Counsel
Jennifer Levy, Supervising Attorney
Judith Goldiner, Attorney-in-Charge
THE LEGAL AID SOCIETY
Law Reform Unit
Civil Practice
Attorneys for Petitioner
199 Water Street, 3rd Floor
New York, New York 10038
Tel: (212) 577- 3608
Fax: (646) 449-6929

At an IAS Part of the Supreme Court of the State of New York County of New York, at the Courthouse, 80 Centre Street, Room 308, Borough of Manhattan, City of New York, on the 29th day of March, 2018.

PRESENT: Hon. Carmen V. St. George
Justice, Supreme Court

In the Matter of the Application of

GLADYS ORDONEZ, and NELSON A. HENAO,

Petitioners,

-against-

THE CITY OF NEW YORK,

Respondents.

N.Y. Sup. Index # _____/2018

PETITIONER'S AFFIDAVIT

For a Judgment Pursuant to Article 78 and §§ 3001, 6301 of the Civil Practice Law and Rules

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

GLADYS ORDONEZ, being duly sworn, deposes and says:

1. I am a Petitioner in the above captioned case. I make this affidavit in support of the petition.
2. I reside at 1662 Park Avenue apartment 2N New York, New York 10035.
3. I have lived in my rent stabilized apartment for over 22 years.
4. My apartment is in East Harlem.
5. During my 22 year tenancy in my apartment, I have witnessed many tenants come and go from the building.

6. Recently, a tenant on my building moved out because the rent was too high for her to afford.

7. In 2012, JOCO GROUP, LLC became the landlord and management company of my building.

8. Shortly after JOCO GROUP, LLC bought the building, the new landlord began pressuring me to move out of my apartment.

9. I was one of three remaining tenants in my six unit building, and the new landlord told me I had to move out because he was going to renovate the building.

10. My new landlord offered to pay my moving cost and one month of my rent.

11. When I refused his offer to move, my landlord began to come to my apartment or send a broker to my apartment on a daily basis to tell me to leave.

12. The landlord immediately began to renovate the three empty apartments which caused dust and debris to collect in the public hallways and to enter my apartment.

13. I have been unable to get ongoing repairs in my apartment. In or around 2013, I had numerous conditions in my apartment that needed repair including, mice, warped wood floors, lack of proper painting, defective apartment door locks, holes in the floors, defective light fixtures and faulty intercom system. I informed my landlord and made calls to 311. Despite being made aware, repairs were not done. It took over a year for the repairs to be started.

14. I believe my landlord is not making repairs so that long-term tenants, like myself, will leave their apartments.

15. The tenants in my building formed a tenants association. We filed a complaint for reduction of services with the State of New York Division of Housing and Community Renewal

("DHCR") against our landlord for failing to make repairs. It was not until we were granted rent reductions by DHCR that the landlord began making repairs in the apartments.

16. My landlord also refused to give me proper lease renewals. He routinely sends me backdated leases and with higher rents than what I pay.

17. My landlord is constantly sending me rent bills for amounts I do not owe him. I feel he is harassing me.

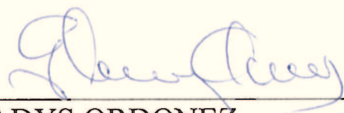
18. The Legal Aid Society has written several letters to my landlord requesting proper lease renewals for me. To this day, my landlord is reluctant to send me my lease renewals.

19. I am concerned about being displaced from my apartment, particularly if my lease is not corrected.

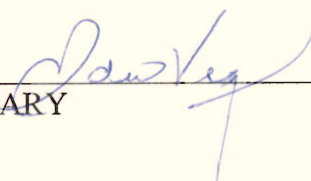
20. I worry that things will not improve with my landlord. Lately, there has been a high turnover of tenants in the building and rents have been increasing.

21. My neighborhood has changed a lot in recent years. There are a great number of newly built private homes around the block from my building. With these changes I worry that people within the community will not be able to afford to stay.

22. People I have known for years have left the community. The main reason they give is that the rent is getting to be too high.


GLADYS ORDONEZ

Sworn before me this 16 day of January 16, 2018.


NOTARY

EDWIN VEGA
Notary Public, State of New York
No. 02VE6067599
Qualified in Bronx County
Commission Expires December 10, 20 21

At an IAS Part of the Supreme Court of the State of New York County of New York, at the Courthouse, 80 Centre Street, Room 308, Borough of Manhattan, City of New York, on the 29th day of March, 2018.

PRESENT: Hon. Carmen V. St. George
Justice, Supreme Court

In the Matter of the Application of

GLADYS ORDONEZ, and NELSON A. HENAO,

N.Y. Sup. Index # _____/2018

Petitioners,

AFFIDAVIT OF TRANSLATION

-against-

THE CITY OF NEW YORK,

Respondents.

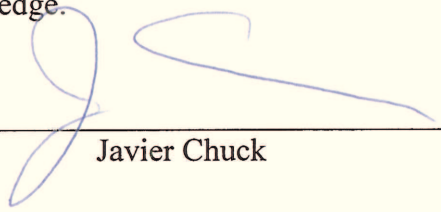
For a Judgment Pursuant to Article 78 and §§ 3001, 6301 of the Civil Practice Law and Rules

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

I, Javier Chuck, being duly sworn, depose and say:

1. I speak both English and Spanish
2. I translated a copy of the attached Petitioner's Affidavit and Verification of GLADYS ORDONEZ on January 16, 2018. She indicated that he understood its contents and that the statements were true to the best of her knowledge.

Sworn to before me this
16 day of January, 2018



Javier Chuck



NOTARY PUBLIC

EDWIN VEGA
Notary Public, State of New York
No. 02VE6067599
Qualified in Bronx County
Commission Expires December 10, 20 21

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In the Matter of the Application of

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-against-

THE CITY OF NEW YORK,

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N.Y. Sup. Index # _____/2018

PETITIONER'S AFFIDAVIT

For a Judgment Pursuant to Article 78 and §§ 3001, 6301 of the Civil Practice Law and Rules

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COUNTY OF NEW YORK) ss.:

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4. My apartment is in East Harlem.
5. During my 10 year tenancy in my apartment, I have witnessed many tenants come and go from the building.

6. Recently, a tenant on my building moved out because the rent was too high for her to afford.

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13. I have been unable to get ongoing repairs in my apartment. In or around 2013, I had numerous conditions in my apartment that needed repair including, mice, warped wood floors, lack of proper painting, defective apartment door locks, holes in the floors, defective light fixtures and faulty intercom system. I informed my landlord and made calls to 311. Despite being made aware, repairs were not done. It took over a year for the repairs to be started.

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15. The tenants in my building formed a tenants association. We filed a complaint for reduction of services with the State of New York Division of Housing and Community Renewal

("DHCR") against our landlord for failing to make repairs. It was not until we were granted rent reductions by DHCR that the landlord began making repairs in the apartments.

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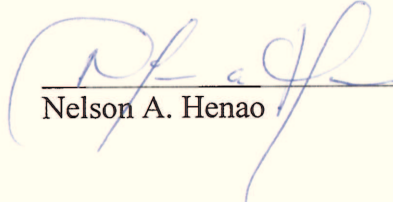
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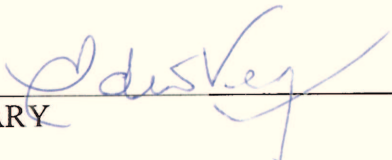
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21. People I have known for years have left the community. The main reason they give is that the rent is getting to be too high.



Nelson A. Henao

Sworn before me this 16th day of January, 2018.



NOTARY

EDWIN VEGA
Notary Public, State of New York
No. 02VE6067599
Qualified in Bronx County
Commission Expires December 10, 20 21

At an IAS Part of the Supreme Court of the State of New York County of New York, at the Courthouse, 80 Centre Street, Room 308, Borough of Manhattan, City of New York, on the 29th day of March, 2018.

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In the Matter of the Application of

GLADYS ORDONEZ, and NELSON A. HENAO,

N.Y. Sup. Index # _____/2018

Petitioners,

AFFIDAVIT OF TRANSLATION

-against-

THE CITY OF NEW YORK,

Respondents.

For a Judgment Pursuant to Article 78 and §§ 3001, 6301 of the Civil Practice Law and Rules

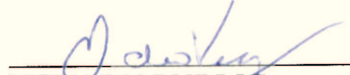
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I, Javier Chuck, being duly sworn, depose and say:


1. I speak both English and Spanish
2. I translated a copy of the attached Petitioner's Affidavit and Verification of Nelson A.

Henao on January 16, 2018. He indicated that he understood its contents and that the statements were true to the best of his knowledge.

Sworn to before me this
16 day of January, 2018



NOTARY PUBLIC



Javier Chuck

EDWIN VEGA
Notary Public, State of New York
No. 02VE6067599
Qualified in Bronx County
Commission Expires December 10, 20 21

**SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: IAS PART 34**

In the Matter of the Application of

GLADYS ORDONAZ, and NELSON A. HENAO,

N.Y. Sup. Index # _____/2018

Petitioners,

EXPERT DECLARATION

-against-

THE CITY OF NEW YORK,

Respondents.

For a Judgment Pursuant to Article 78 and
§§ 3001, 6301 of the Civil Practice Law
and Rules

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

OXSANA MIRONOVA, being duly sworn, deposes and says:

1. I am over the age of 18 years and am not a party to this proceeding.
2. I am a housing policy analyst at the Community Service Society (CSS), whose offices are located at 633 Third Avenue, New York, New York. I have worked with CSS for six months, and have worked on housing matters for more than seven years.
3. I make the following affidavit based upon my personal knowledge, and upon review of official reports and records where noted. Statements made upon information and belief are true to my knowledge.
4. CSS is a 175-year-old non-profit organization which addresses the root causes of economic disparity through research, advocacy, litigation and innovative program models, with the goal of creating opportunity, security and strength for all New Yorkers.

5. Public resources for affordable housing are shrinking, even as the need expands. CSS works to reverse this trend, by advocating for increased funding for public and affordable housing; strengthening opportunities for public housing residents; and connecting families faced with housing difficulties to resources and support.

6. CSS's Policy Department, of which I am a member, focuses on core issues affecting income disparity in New York, including housing matters. The Department engages in policy research, and issues reports highlighting its findings. Our recent reports concerning low-income housing include *Making the Rent: Tenant Conditions in New York City's Changing Neighborhoods* (May 2016), and *Taking Stock: Housing New York, Behind the Numbers* (September 2017).

7. I received a master's degree in Urban Planning from the City University of New York, Hunter College. The focus of my studies was housing and the built environment.

8. My areas of expertise include publicly subsidized, privately owned housing and current issues impacting low-income New Yorkers, including displacement, evictions and homelessness.

9. My writing about affordable housing, urban planning and public space has appeared in *Urban Omnibus*, *Metropolitics*, *Shelterforce*, and other publications.

10. Throughout my studies and professional career, I have worked closely with Tenants and Neighbors, the West Side Federation for Senior and Supportive Housing, and Enterprise Community Partners on issues related to housing policy, displacement, evictions and homelessness.

11. Regulated apartments are the largest source of housing for New York's more than one million low-income households, defined as those with incomes below 200 percent of

the federal poverty threshold, or about \$38,150 for a family of three (*Making the Rent*, May 2016).

12. Fifty eight percent of individuals (approximately 63,500 people) in the East Harlem 10029 and 10035 zip codes have incomes below 200 percent of the poverty level. (U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates).

13. As part of the East Harlem rezoning, approved on November 30, 2017, City Council adopted mandatory inclusionary housing (MIH) Options 1 and 3. Developers in the rezoning area can choose between the two Options. MIH Option 1 requires that 25 percent of residential floor area be made available to households earning 60 percent of Area Median Income (AMI), on average, and that an additional 10 percent of residential floor area be made available to households earning 40 percent of AMI, on average. MIH Option 3 requires that 20 percent of residential floor area be made available to households earning 40 percent of AMI, on average (NYC DCP, East Harlem Rezoning Proposal).

14. In 2017, 60 percent AMI was \$51,540 for a family of three (U.S. Department of Housing and Urban Development). The majority of newly developed properties that will incorporate MIH will accordingly not be affordable to individuals whose incomes are below 200 percent of the poverty level, or approximately 58 percent of the residents of East Harlem's 10029 and 10035 zip codes.

15. Many low-income individuals and families in East Harlem reside in rent stabilized apartments. There are 11,846 registered and occupied rent stabilized units in the East Harlem 10029 and 10035 zip codes. Upon information and belief, this is a high concentration of rent stabilized units for a neighborhood. Neighborhoods with higher rents and higher rates of homeownership have fewer rent stabilized units. For example, Upper East Side zip codes 10065

and 10021 have 6,591 occupied and registered rent stabilized units. (New York City Rent Guidelines Board, *Additional DHCR Data*, Memorandum, June 2017) *Note: the boundaries of the 10029 and 10035 zip codes cover a subsection of the East Harlem rezoning socioeconomic study area in the Final Environmental Impact Statement.*

16. Rents across New York City have persistently risen faster than incomes since 2002, and households with the lowest incomes have fallen behind the most. For those households at the bottom 20 percent income level, rents have risen 30 percent faster than income. As a result, the median amount of income that low-income tenants in the private unassisted market retained after paying rent was 8 percent lower in 2014 than it was in 2005, after adjusting for inflation. (*Making the Rent*, May 2016)

17. Low-income households face significant challenges in the face of these market forces. Their incomes provide less of a cushion against rent increases. Upon information and belief, they are likely in the best of times to pay rents that are far above the generally recognized affordability standard of 30 percent of income. And, while rent increases have outstripped increases in income for tenants in both rent regulated and unregulated apartments, this is more the case for regulated tenants. (*Making the Rent*, May 2016)

18. Rent regulation has softened the impact of New York City's permanent housing shortage on tenants, but it has not created a separate housing market that can serve as a safe harbor for tenants. Units are not permanently stabilized – many are lost to “high-rent vacancy deregulation” each year. And both vacancy increases and Major Capital Improvement (MCI) increases, each discussed below, boost rents on apartments that remain in the program to levels that are unaffordable for many low-income households.

19. This pattern of hardship is partly driven by changes in specific neighborhoods, with rents rising fastest in neighborhoods in Upper Manhattan, brownstone Brooklyn, and western Queens. But rents and rent burdens are also rising fast in less centrally located neighborhoods where far more of the city's low-income households live. In addition to being concerned about gentrification and the market effects of local redevelopment, we should also be concerned that the city as a whole is losing its ability to accommodate the housing needs of low-income people. (*Making the Rent*, May 2016)

20. Rent stabilization provides a small but significant improvement in affordability for low-income New Yorkers, in addition to the benefits of a secure tenancy. But this protection is being undermined by rent increases on regulated apartments that are far in excess of the rate of inflation, and may result in the apartments leaving the regulation system entirely.

21. This is a particular problem for East Harlem, which, according to a 2016 study published by the Regional Plan Association, "lost nearly as many rent-stabilized units between 2007 and 2014 as it gained." The report goes on to note that "[t]hough this may seem a close approximation of no net loss, in fact, the affordability levels of the new rent stabilized units are not as deep as in the lost rent stabilized units due to the nature of the regulation." (Regional Plan Association, *Preserving Affordable Housing in East Harlem*, August 2016). Units that enter into rent stabilization as a result of temporary tax exemptions like J-51 or Affordable New York (formally, 421a) often have higher rents than the deregulated units.

22. The largest contributor to rent increases in rent-stabilized apartments is the statutory vacancy allowance or "bonus" that allows an automatic increase of about 20 percent when an apartment becomes vacant and turns over to new tenants.

23. According to Community Service Society's estimate, the statutory vacancy allowance accounted for 48 percent of inflation adjusted rent increases on all rent-stabilized apartments between 2011 and 2014. (*Making the Rent*, May 2016)

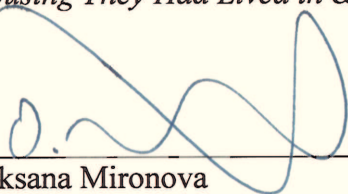
24. The vacancy bonus also contributes to another weakness in the protection afforded by rent regulation, namely the setting of what is known as "preferential rent." In many parts of the city, the observed rent increases are somewhat lower than one would expect after accounting for the combined effect of Rent Guidelines Board (RGB) and MCI increases and the vacancy bonus. This indicates that legal rents have reached levels that the market will not bear. When this happens, it creates an opportunity for landlords to give tenants leases that specify the actual rent to be paid as a temporary "preferential rent" and another, higher amount as the legal registered rent. Under the rent stabilization laws as amended in 2003, landlords can then withdraw the preferential rent at the end of the lease and instead charge a rent based on the legal registered rent together with the currently effective Rent Guidelines Board (RGB) increase. Many tenants cannot afford to renew leases at these new rents, and either move or are evicted. This "preferential rent" practice severely undermines the protection of rent stabilization, threatening both affordability and tenants' security of tenure. As 31.2 percent of registered rent-stabilized leases across the city have preferential rents, this is a serious and widespread problem. (New York City Rent Guidelines Board, *Additional DHCR Data*, Memorandum, June 2017)

25. It is a serious problem in East Harlem as well. According to the RGB, there are approximately 4,788 apartments (40.4 percent of registered rent stabilized apartments) in the 10029 and 10035 East Harlem zip codes with preferential rents. When leases are renewed, these apartments may become unaffordable to their current occupants.

26. Rent increases are likely not the only reason for low income tenants' displacement. In our 2017 *Unheard Third* Survey of low-income New Yorkers, CSS asked tenants questions about landlord harassment, including shutting off heat/hot water; threats; long delays in necessary repairs; repeated efforts by landlord to pay the resident to move out; prolonged construction; and, eviction attempts. Among low-income rent regulated New Yorkers, 43.7 percent reported one or more of these forms of harassment as compared to 36.3 percent of low-income New Yorkers residing in unregulated apartments. This could indicate that landlords of rent regulated buildings are using harassment as a strategy to push out rent regulated tenants.

27. In neighborhoods with rapidly rising rents, landlords have an incentive to encourage tenant turnover in their properties to benefit from the 20 percent vacancy bonus and other provisions in the rent laws. Some landlords employ harassment as a strategy to speed up tenant turnover.

28. Displacement from regulated housing is a very significant contributor to homelessness, whatever the cause. The largest share of families entering the city's shelter system, 43 percent, most recently lived in buildings containing rent-regulated apartments. (New York Independent Budget Office, *The Rising Number of Homeless Families in NYC, 2002–2012: A Look at Why Families Were Granted Shelter, the Housing They Had Lived in & Where They Came From*, Fiscal Brief, November 2014.)


Oksana Mironova

Sworn to before me this 18th day of January, 2018.
~~November, 2017.~~


NOTARY PUBLIC

KATHLEEN MEYERS
Notary Public, State of New York
No. 02ME6266726
Qualified in New York County
Commission Expires: August 6, 2020

**SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: IAS PART 34**

In the Matter of the Application of

GLADYS ORDENAZ, and NELSON HENAO,

Petitioners,

-against-

THE CITY OF NEW YORK,

Respondents.

N.Y. Sup. Index # _____/2018

DECLARATION

For a Judgment Pursuant to Article 78 and
§§ 3001, 6301 of the Civil Practice Law
and Rules

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

RENAE WIDDISON, being duly sworn, deposes and says:

1. I recently completed a graduate program in City and Regional Planning at Pratt Institute. I published my thesis on the City Environmental Quality Review (CEQR) Technical Manual used for Environmental Impact Statements for proposed rezoning and development projects in the City of New York.

2. For the past year I have been analyzing the text of the Technical Manual's guidance for quantifying Indirect Residential Displacement. This guidance is found in the fifth chapter of the Technical Manual, titled Socioeconomic Conditions. In addition to the Technical Manual text I have reviewed several Environmental Impact Statements analyzing neighborhood-wide rezonings that were published over the last fifteen years. One of the case studies addressed in my research is the East Harlem 2017 EIS. My understanding of the Technical Manual's methodology is a result of this year-long academic investigation. The result of my research and

analysis is a set of recommendations for improving CEQR's ability to accurately predict the incidence and scope of residential displacement, thereby improving the information available to decision makers and the public.

3. While it is true that the Technical Manual requires an analysis of indirect displacement risk, the current methodology is flawed and renders the resulting analysis wholly inadequate for understanding the risk borne by residents in rezoned neighborhoods. The failures of the Technical Manual's methodology are not simply small details with limited impact. I believe they reflect a fundamental failure in the City's ability to effectively analyze the effect of land use changes on indirect residential displacement, and consequently, to provide decision-makers with accurate information regarding people's ability to stay in their homes.

4. The methodology fails to effectively approximate the threat of indirect residential displacement by:

- A. failing to consider indirect displacement in already gentrifying neighborhoods;
- B. excluding whole categories of housing from the potentially vulnerable; and thereby
- C. potentially undercounting vulnerable residents.

5. Failing to consider indirect residential displacement in gentrifying neighborhoods is particularly critical for understanding the East Harlem 2017 EIS. As specified by the Technical Manual, EIS's go through an initial or "Preliminary Assessment" where basic threshold questions are asked. If indirect displacement cannot be ruled out, a more "Detailed Analysis" occurs, which results in an actual number of residents deemed at risk of displacement. The East Harlem EIS does not advance to the Detailed Analysis; it is found in the Preliminary Assessment

that indirect displacement is not a significant risk. To understand this finding, it is necessary to understand the third question of the Preliminary Assessment. The Technical Manual indicates that significant indirect displacement is only a possibility in neighborhoods experiencing *some* by *not widespread* gentrification. According to the Manual, if no gentrification is occurring, any new development is “stabilizing.” If widespread gentrification is occurring, the Manual indicates that the proposal is not responsible for any future displacement. Because rent cost and median household income are increasing in East Harlem, analysts conclude that widespread gentrification is occurring and therefore no significant displacement is possible.

6. No justification or explanation for the Technical Manual’s assumption about this issue is ever provided. It is, in fact, likely that the East Harlem upzoning will potentially exert more pressure on low income renters. But the Technical Manual makes an arbitrary decision that future displacement in an already gentrifying neighborhood is insignificant. This is a highly contentious claim that prevents public policy makers from understanding the potential impacts of projects assessed by CEQR.

7. Beyond this major flaw in the Preliminary Assessment, the Detailed Assessment is predicated on significant oversights that result in undercounting residents at risk of displacement. In order to determine whether tenants in an area are vulnerable to displacement, the Technical Manual directs analysts to find low-income tenants who live in housing that is not protected from rent increases. The Manual’s methodology for finding this population is simple: “the average household incomes of renter-occupied households in buildings with *fewer than 5 units* should be calculated to determine the approximate size and location of a low-income population living in unprotected units” (italics mine.) In other words, unprotected tenants—those

who are potentially vulnerable to displacement— are those who are low-income and live in residential buildings with one to four apartments.

8. The first problem with the Manual’s methodology is self-evident. The Manual calls for an analysis of residents in buildings with *fewer than* five units (one to four family buildings) but rent stabilization only potentially applies to buildings with *more than* five units (six or more.) Renters in buildings with five units are left entirely out of the equation. According to 2016 PLUTO data, there are over 18,000 households in five-unit residential buildings in New York City.

9. The second and more profound problem with this methodology is its assumption that all units in large residential buildings are rent stabilized, and that rent stabilized tenants are, by definition, protected from displacement. Both of these assumptions are problematic, for reasons explained below.

10. Finally, the reality is that many residents around the city are in technically stabilized apartments but either do not know that they have legal protections or have a landlord who doesn’t adhere to the rules of stabilization. While the exact number of these tenants is not known, it is commonly understood that it can be very difficult to ascertain if an apartment is stabilized, and if so what the legal rent should be. The necessary level of understanding about rent regulation in New York City combined with bureaucratic barriers to accessing information makes it easy for landlords to disregard rent stabilization rules and take advantage of tenants— especially for new residents of New York City. Moreover, it is important to acknowledge that, because it is so hard to find affordable housing, a tenant may choose to pay more than they should rather than risk harassment.

11. In 2014, the Independent Budget Office reported a dramatic statistic: 60 percent of the more than 75,000 families with children entering New York City's shelters listed a rent regulated apartment as their most recent address. At the same time, hundreds of thousands of households over the last several years have qualified for "one shot" emergency rental assistance, temporarily keeping a roof over their heads. While there are a variety of understandable reasons a family may find itself pushed out of their apartment, cost of living is undoubtedly a factor pushing families onto the streets. If such a significant number of people in rent regulated apartments are ending up in shelters or on the street, these regulations are not keeping tenants in their homes.

12. A recent Furman Center report gives some context to this statistic: "New York City's current housing market makes protecting the affordability of...even rent-stabilized units challenging... many neighborhoods in the city have experienced large rent increases in recent years. Rent-stabilized units are not immune from these rent increases." As this explains, it is unfair for the Technical Manual to assume that the presence of rent regulation means protection from overwhelming rent increases. For one, residents in rent stabilized units are not protected from displacement because there are legal mechanisms that allow landlords to suddenly and dramatically raise rents. A landlord is legally allowed to increase rent on a current rent stabilized tenant via capital improvements to the building. In addition, a landlord is allowed to increase rent without limit when a tenant moves out and the apartment becomes vacant. While the unit remains stabilized, the rent can increase much more dramatically than the percentage allowed by the Rent Guidelines Board. This creates a strong incentive for landlords to push out tenants paying below market rents in order to capture a higher paying tenant.

13. The Technical Manual ignores these realities and ignores the current trends in loss of affordable, rent stabilized homes. The Technical Manual guidance suggests that tenants in stabilized units are protected from displacement because they are protected from sudden rent hikes. But as has just been shown, there are a number of problems with this assumption. The motivation to increase rent of stabilized units is especially strong in gentrifying neighborhoods, where nearby apartments are capturing higher rents. As a result of nearby gentrification, many renters in stabilized apartments find themselves either subject to rent hikes that they cannot afford, or pushed out of their stabilized apartment in order to make room for a higher-paying tenant. However, the Technical Manual precludes neighborhood experiencing gentrification from analysis. If a neighborhood is currently experiencing widespread gentrification (such as East Harlem) the Technical Manual directs analysts to cease their investigation and make a finding of no significant impact.

14. While the mechanisms mentioned above can generally be considered legal avenues for dramatically increasing rents on regulated housing, it is also important to acknowledge the variety of less savory strategies employed by landlords that also result in the loss of stabilized housing. According to the Urban Land Institute, “Real estate investors seeking competitive returns increasingly view lower- and middle-income apartments as an attractive target for repositioning to serve higher-income households.” This “repositioning” often looks like some form of tenant harassment.

15. When market rates around rent stabilized units rise high enough, some landlords decide that it is worth it to remove those tenants by whatever means necessary. While city-wide studies about this practice are not yet available, anecdotes from some of the cities most contested neighborhoods are not hard to find. One example, from a family in Greenpoint, involved a

couple and their 18-month old twins. Over a ten-year tenure, the family had a good relationship with their landlords. But in 2014, renovations on one of the adjacent apartment units turned into a nightmare for the family. Their bathroom floor was destroyed from below; the family had to make do with buckets and the kitchen sink. Eventually the landlords offered the family \$50,000 to move out of the apartment. They refused, preferring to stay in their apartment and neighborhood. Soon after, the boiler and hot water system in the building were mysteriously destroyed. As a result, the family was forced to vacate by the Department of Buildings, who deemed the building uninhabitable. The tenants believe the landlord sabotaged the building in order to force them out.

16. Stories like these seem unbelievable but are increasingly common in neighborhoods with rapidly rising rents, and are a clear demonstration of how supposedly protected tenants are vulnerable to displacement. The price difference between market rate and existing rents for long-time tenants creates an incentive for unscrupulous landlords. Getting existing tenants out of their leases means bringing in new market-rate tenants—often tenants who don't know or care about the rent stabilization law. In some cases, landlords know that kicking out existing tenants means selling their building at a much higher value to potential developers. These pressures are rampant throughout the city, and are contributing to a stressful, unstable housing market for tenants—even those supposedly protected by rent regulation.

17. Harassment can take many forms. The active landlord sabotage in the example above is not always the strategy. Maintenance neglect is commonly experienced by regulated tenants. Repeated, phony eviction notices are also on the rise, and have the effect of causing severe anxiety. Unnecessary construction and its attendant impacts is also a common strategy--causing noise disturbances early in the morning and late into the night.

18. According to New York City's help line, 311, tenant harassment by landlords or owners can include:

- A. Not offering leases or lease renewals, or repeatedly trying to pay you to move out.
- B. Unjustified eviction notices or illegal lockouts.
- C. Threats and intimidation, such as late-night phone calls.
- D. Overcharging for a rent-regulated apartment.
- E. Failure to provide necessary repairs or utilities.
- F. Deliberately causing construction-related problems for tenants, such as working after hours, blocking entrances, or failing to remove excessive dust or debris.


19. While poor maintenance and repairs can be a tenant complaint in any housing market, many of these forms of harassment are specific to neighborhoods with rapidly increasing property values and poor tenant protections. Only when a financial incentive is motivating a landlord to remove rent stabilized tenants do we see the rise in unjustified evictions, attempted buyouts, and efforts to deliberately make a building unlivable with construction projects.

20. Though these trends are key to understanding and preventing indirect residential displacement in neighborhoods with new development and major land use changes, the Technical Manual ignores them.

21. The Technical Manual is supposed to guide analysts in how to conduct a thorough analysis of the indirect displacement risk caused by land use changes. It is failing to do this. A generous reading might suggest that these limitations are a product of its age: this methodology was developed in the early 1990s, when New York City housing market was crunched but prices

were not exploding. People were less likely to be forced out of their neighborhoods through sudden rent hikes; harassment and buy outs for the purposes of rent increase wasn't a widespread concern.

22. Regardless of the initial intent, the Technical Manual methodology has a bias towards finding no significant impact on indirect residential displacement in 2017. Without significant review and modification, the CEQR Technical Manual will continue to misguide City agencies and the public at large about the potential risk of indirect residential displacement in New York City.



Renae Widdison

Sworn before me this 17 day of January, 2018.



NOTARY

KATHLEEN MEYERS
Notary Public, State of New York
No. 02ME6266726
Qualified in New York County
Commission Expires: August 6, 2020