APL-2018-00108
New York County Clerk's Index No. 157486/16

Court of Appeals

of the

STATE OF NEW YORK

DANIEL COLLAZO ET. AL,

Plaintiffs-Appellants,

v.

NETHERLAND PROPERTY ASSETS LLC and

PARKOFF OPERATING CORP.,

Defendants-Respondents.

BRIEF OF *AMICI CURIAE* CONSUMER ADVOCACY ORGANIZATIONS IN SUPPORT OF PLAINTIFFS-APPELLANTS URGING REVERSAL

Carolyn E. Coffey
Evan Denerstein
Of counsel to Jeanette Zelhof, Esq.
Mobilization for Justice, Inc.
100 William St., 6th Fl.
New York, NY 10038
(212) 417-3760

Matthew Schedler
CAMBA Legal Services, Inc.
885 Flatbush Ave., 2nd Fl.
Brooklyn, NY 11226
(718) 940-6311

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF INTEREST OF *AMICI CURIAE*

Those who appear as *amici curiae* in support of Plaintiffs-Appellants are non-profit legal services programs, private consumer attorneys, and law schools. They include Brooklyn Bar Association Volunteer Lawyers Project, CAMBA, Legal Services, Inc., Community Development Project at Urban Justice Center, DC 37 Municipal Employees Legal Services, The Law Office of Ahmad Keshavarz, The Legal Aid Society, Legal Services of the Hudson Valley, Legal Services NYC, Mobilization for Justice, Inc., New York Legal Assistance Group, Queens Volunteer Lawyers Project, Inc., St. Vincent de Paul Legal Program, Inc., and The Western New York Law Center.

All *amici* share a mission of protecting the rights of New York City consumers and tenants and curbing unfair, deceptive, and abusive practices by various businesses, including landlords, sellers, and lenders. The various *amici* provide legal advice and representation to low-income people in New York City. They represent defendants in consumer debt collection cases; they represent tenants in Housing Court actions; they represent tenants in affirmative cases challenging unlawful landlord conduct; and they participate in legislative, educational, and other advocacy efforts to protect tenants' and consumers' rights. All *amici* have seen firsthand abusive and deceptive landlord conduct and the effects of such conduct on their clients.

PRELIMINARY STATEMENT

Plaintiffs-Appellants Daniel Collazo and 18 other residents of a 67-unit apartment building in the Bronx filed the underlying lawsuit alleging that their landlord and management company had been charging illegally high rent for years. Plaintiffs asserted claims for rent overcharge under the Rent Stabilization Law and Code and for deceptive business acts and practices under General Business Law § 349 ("GBL § 349").

The Supreme Court dismissed the GBL § 349 claims, relying on *Aguaiza v. Vantage Properties LLC*, 69 A.D.3d 422 (App. Div. 1st Dept. 2010) in finding that "private disputes between landlords and tenants, are 'not consumer-oriented conduct aimed at the public at large.'" *Collazo v Netherland Property Assets LLC*, No. 157486/2016, 2017 WL 947618, at *1 (Sup. Ct. Mar. 07, 2017). The Appellate Division affirmed, also citing *Aguaiza*. *Collazo v. Netherland Prop. Assets LLC*, 155 A.D.3d 538 (N.Y. App. Div. 2d Dep't 2017).

Although GBL § 349's plain language does not contain a consumer-oriented requirement, the Court of Appeals has implied one in unusual, one-off cases that fall well outside the ambit of a consumer transaction. This consumer-oriented requirement is meant only to exclude practices that could not conceivably harm consumers; it does not exempt entire sectors of the economy. Only a narrow requirement would be consistent with the legislature's intent that GBL § 349 be a

broad remedial statute protecting consumers from far-ranging and unforeseeable misconduct, as confirmed by the legislative history.

Aguaiza, and by extension the lower courts in this case, have strayed from this intent in expanding the once-narrow exception to include all landlord-tenant transactions. They reasoned that because landlord-tenant relationships only involve individual contracts, any and all deceptions perpetuated by landlords invariably do not affect consumers at large. 69 A.D. 3d at 422.

Yet, there is nothing unique to the landlord-tenant transaction that should distinguish it from other consumer transactions, all of which are private contract disputes. GBL § 349 originated from Section 5 of the Federal Trade Commission Act, 15 U.S.C.A. § 45(a)(1) (FTCA) and analogous state statutes; courts and the Federal Trade Commission (FTC) have repeatedly confirmed that those statutes cover landlord misconduct.

If anything, given the central importance of housing in the lives of most consumers, particularly the indigent, it is especially important that tenants be protected from landlords who engage in deceptive acts and practices. For this reason, the decision below relying on *Aguaiza* to exempt landlord deception from GBL § 349 improperly deprives New Yorkers of an important tool to deter and stop deceptive conduct.

I. THE LEGISLATIVE HISTORY OF GENERAL BUSINESS LAW § 349 DEMONSTRATES THE LEGISLATURE'S INTENT THAT IT APPLY TO ALL ECONOMIC ACTIVITY, INCLUDING HOUSING-RELATED ACTIVITY

GBL § 349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state," and allows "any person who has been injured" to bring a lawsuit. As discussed below, the Legislature intended the law, from its inception in 1970, to cover *all* economic activity within the ambit of business, trade, commerce, or furnishing of any service. Like the federal statute on which it is modeled, the FTCA, the Legislature intended for courts to interpret GBL § 349 broadly in order to protect the public, particularly the indigent, from varied and constantly changing forms of deceptive conduct. The addition of a private right of action in 1980 arose from the Legislature's desire to further deter bad practices and to encourage members of the public to act as private attorneys general, and to bring New York in alignment with the majority of states that had already passed similar statutes.

A. Enactment of Original 1970 Bill

GBL § 349 was enacted in 1970 to fill important gaps in New York State's consumer protection laws. *See* Memorandum for the Governor Re Senate 953-B from Louis J. Lefkowitz, Attorney General, State of New York Department of Law (February 18, 1970) (contained in ch. 43 1970 N.Y. Laws) ("1970 Attorney General Memorandum"); Letter to Gov. Rockefeller in Support of Consumer

Protection Legislation Senate 953-B from Antitrust Law Section of the New York State Bar Association (February 10, 1970) (contained in ch. 43 1970 N.Y. Laws). The initial bill was introduced at the request of the New York State Department of Law based on a recommendation of the Committee on New York State Antitrust Law of the Antitrust Section of the New York State Bar Association ("the Committee") and its report and accompanying study. 1970 Attorney General Memorandum.

The Committee found that the diffuse compendium of consumer protection statutes, including provisions in criminal statutes, which were limited to very specific types of prohibited conduct, were "too narrow to meet deception of the consumer in its many varied forms," and left consumers vulnerable to myriad forms of deceptive acts and practices employed by bad actors to defraud and deceive the public. Report of the Committee on New York State Antitrust Law of the Antitrust Law Section of the New York State Bar Association: A Proposed New State Law Making Deceptive Acts or Practices Unlawful, 1968 N.Y. St. B.A. Antitrust L. Symp. 114, 117-118 (CCH ed.) ("Report"); *see also* Governor's Mem. on Approval of ch. 43, N.Y. Laws (Sept. 1, 1970), reprinted in 1970 N.Y. LEGIS. ANN. 472-73. The Committee cited a prior Special Committee finding from 1959, which made the point that none of the existing laws "gets at the root of the problem of unfair competition, which takes many more forms and reaches many more

aspects of business operations" than what was already covered. Study by the Committee on New York Antitrust Law of the Antitrust Section of the New York State Bar Association in Support of its Report Dated December 31, 1967 Proposing a New State Law Making Deceptive Acts or Practices Unlawful, 1970 N.Y. St. B.A. ANTITRUST L. SYMP. 71, 91-93 (CCH ed. 1970) ("Study").

In evaluating the relevant criminal statutes, the Committee determined that they were not fully effective "to guard adequately the public interest," because they did not cover "the gamut of acts and practices which can and have been employed to deceive the public, but rather are limited to certain false and deceptive acts and practices." Report at 118. The Committee also noted that criminal sanctions were inappropriate because the standard of proof is too strict. Study at 92. The Committee proposed a new law with two goals: "to make unlawful any 'deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this State,'" and to give the attorney general power to obtain injunctive relief. Report at 115.

The proposed statute was purposefully broad to contend with evolving and unforeseeable deceptive practices that could potentially harm consumers at the time and in the future. N.Y. Dept. of Law, Mem to Governor, 1963 N.Y. LEGIS. ANN. at 105 (stating that the statute "provide[s] needed authority to cope with the numerous, ever-changing types of false and deceptive business practices which

plague consumers in our State.").The statute was drafted "to include all economic activity." Report at 114, 121. Importantly, the Committee considered, but rejected, a proposed bill that bill contained 11 provisions prohibiting specific types of conduct, and a 12th provision prohibiting "other conduct which similarly creates a likelihood of confusion or of misunderstanding." Report at 114, 128. The Committee found that the rejected statute would fail to address "new and varied forms of consumer deception." Report at 114, 129.

Like similar state statutes, GBL § 349 is modeled on the FTCA. Report at 114, 124. The Committee made explicit its intention to draft a corollary state law based on the federal law and the federal interpretation of deceptive acts and practices, including "policy statements, advisory opinions, and guides" by the FTC. Report at 114, 124, 128. The Committee noted, in particular, the flexibility afforded by the FTCA, which states that "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful." 15 U.S.C.A. § 45(a)(1); Report at 114, 129. Notably, the statute provides no carve-out for any particular business, with the exception of the exemptions now contained in subsection (e) of GBL § 349, a provision intended to insulate media outlets from being held responsible for

deceptive acts by persons or businesses through their platforms.[1] Memorandum of New York State Attorney General, reprinted in 1970 N.Y. LEGIS ANN. 92.

The Committee noted that a number of other states had already passed legislation with broad prohibitions against deceptive acts and practices, which similarly filled important gaps in the consumer protection statutes of their states. Report at 114, 129. Memos in support of the bill noted it would bring New York in line with the consumer protection statutes in other states. *See, e.g.,* Letter to Hon. Nelson A. Rockefeller from Seymour D. Lewis, Chairman of the Antitrust Law Section of the NYS Bar Association, contained in ch. 43 1970 N.Y. Laws.

In enacting the bill, the Governor noted that it was an important statute because: "[c]onsumers have the right to an honest market place where trust prevails." 1970 N.Y. Legis. Ann., at 472. The Governor also made clear that the bill would allow the Attorney General to deal "more effectively with the neverending stream of . . . fraudulent operators, whose principal victims are the poor." *Id*. at 472–473.

B. Enactment of Amended 1980 Bill

After GBL § 349 was enacted in 1970, it became clear that the "broad scope" of the law and the limited resources of the Attorney General necessitated an

[1] "Nothing in this section shall apply to any television or radio broadcasting station or to any publisher or printer of a newspaper, magazine or other form of printed advertising, who broadcasts, publishes, or prints the advertisement." N.Y. Gen. Bus. Law § 349(e).

amendment to allow consumers to protect themselves through a private right of action. Mem of Assemblyman Strelzin, L 1980, ch. 346, § 1, 1980 N.Y. LEGIS. ANN., at 146 ("Mem of Assemblyman Strelzin"); Governor's Memorandum on Approval of chs. 345 & 346 1980 N.Y. Laws (June 19, 1980), reprinted in 1980 N.Y. LEGIS. ANN. 147.

The Assembly sponsor of the amendment stated that a private right of action was an essential component to allow consumers to protect themselves. Mem of Assemblyman Strelzin at 146. Supporters felt that the amendment was particularly vital in order to level the playing field between consumers and businesses and protect indigent victims of fraud.[2] *See* Press Release, State Consumer Protection Board (May 20, 1980) (in ch. 346 1980 N.Y. Laws) ("We expect this bill to help balance the bargaining power of buyer and merchant."). The proposed amendment also included the award of attorney's fees to a successful plaintiff. Special Committee on Consumer Affairs Association of the Bar of the City of New York, "Private Right of Action" Proposals (May 22, 1980) (contained in ch. 346 1980 N.Y. Law) ("Attorneys' fees for prevailing consumer plaintiffs are necessary to encourage impecunious victims."). The inclusion of attorney's fees in the

[2] Since its enactment, courts have similarly interpreted the Legislature's intent. *See, e.g., Teller v. Bill Hayes, Ltd*., 213 A.D.2d 141, 148, 630 N.Y.S.2d 769, 774 (App. Div. 2d Dep't 1995) ("The statute was intended to empower consumers; to even the playing field in their disputes with better funded and superiorly situated fraudulent businesses.").

amendment also would "encourage and enable the private bar to become more active in the plight of consumer fraud victims." Mem. from N.Y. State Dept. of Law to Gov. (June 10, 1980) (in ch. 346 1980 N.Y. Laws).

In amending the statute to add a private right of action, the Legislature declined to amend the rest of the statute, for example, by narrowing the scope of its applicability or adding exceptions. In fact, the Legislature again stressed the broad scope of the law, stating that a deceptive business practice is "any action that will mislead the consumer." Leg. Proc. — Assembly, May 5, 1980, 4426 (legislative debates). The Senate Standing Committee on Consumer Protection noted in its letter in support that the bill represented "years of negotiation and compromise by business and consumer groups in pursuing a "private right of action"" and that "a fair balance" had been struck. Letter to Gov. Carey from Joseph Bruno (May 23, 1980) (contained in ch. 346 1980 N.Y. Law).

The FTC worked closely with the staff of the Assembly and Senate Consumer Protection Committees in crafting the bill, and shared information about similar laws in other states. Letter to Gov. Carey from FTC re: A7223-B (May 29, 1980) (contained in ch. 346 1980 N.Y. Law). The Assembly sponsor's memorandum in support of the 1980 amendment stated that 40 states already had statutes that granted consumers a private right of action in cases based on deceptive acts and practices. Mem. of Assemblyman Strelzin at 146. The debate on the floor

of the Assembly included numerous comparisons of GBL § 349 to the analogous state statutes. Leg. Proc. — Assembly, May 5, 1980, 4369-4446 (legislative debates). Thus, the Legislators, like the Committee that drafted the original 1970 bill, viewed GBL § 349 as an extension of the FTCA and in line with similar state statutes.

The legislative history of GBL § 349 establishes that it was to be interpreted broadly and cover all economic activity. It was not intended to only fill in the gaps left incomplete by the legislative scheme at the time, but was to provide an all-inclusive mechanism for addressing future, unforeseeable deceptive conduct. For these reasons, along with FTC and sister state interpretations of deceptive practices acts, there is no basis for arguing that that the drafters or signatories of GBL § 349 and its amendment intended for housing-related activities and landlord-tenant transactions to be exempt from the reach of GBL § 349.

II. GBL § 349 APPLIES TO ALL ECONOMIC ACTIVITY

From its inception, the Legislature intended GBL § 349 to apply to all economic activity and for interpretation of the statute to evolve along with new and unforeseeable deceptive practices that deprive the public, in particular the poor, from an honest marketplace. A private right of action was added in 1980 to allow private consumers to step into the shoes of the Attorney General and protect the public interest from any business activity that deceives consumers and harms the

public interest. Without this broad reach, the Legislature would be forced to address new scams as they pop up, leaving already-harmed consumers with no redress. For these reasons, New York courts have historically applied the statute broadly. *See, e.g., Karlin v. IVF America, Inc.*, 93 N.Y.2d 282, 290 (1999).

Indeed, the statute has been applied to deceptive practices in all sorts of areas, including the sale of baldness products (*Mountz v. Global Vision Products, Inc.*, 3 Misc.3d 171 (Sup. Ct. N.Y. County 2012)), counterfeit wine (*Koch v. Greenberg*, 14 F.Supp.3d 247 (S.D.N.Y. 2014)), matchmaking services (*Rodriguez v. It's Just Lunch International*, 300 F.R.D. 125 (S.D.N.Y. 2014)), pet breeding (*People v. Imported Quality Guard Dogs, Inc.*, 88 A.D. 3d 800 (App. Div. 2nd Dep't. 2011)), auto sales (*Ramirez v. National Cooperative Bank*, 91 A.D. 3d 204, (App. Div. 1st Dep't. 2011)), the sale of furniture (*Colon v. Rent-A-Center, Inc.*, 276 A.D. 2d 58, 716 N.Y.S. 65 2d 7 (App. Div. 1st Dept. 2000)), equipment leases (*Sterling National Bank v. Kings Manor Estates*, 9 Misc.3d 1116 (Sup. Ct. N.Y. County 2005)), the leasing of cars (*Marshall v. Hyundai Motor America*, 51 F. Supp. 3d 451 (S.D.N.Y. 2014)), the sale of homes (*Barkley v. Olympia Mortgage Co.*, 2010 WL 3709278 (E.D.N.Y. Sept. 13, 2010)), and mortgage lending (*Ng v. HSBC Mortgage Corp.*, 2010 WL 889256 (E.D.N.Y. March 10, 2010)).

Although not explicitly in the text of the statute, the Court of Appeals in *Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A.,* 85

N.Y. 20 (1995) held that GBL § 349 applies only to deceptive conduct that is consumer oriented. *Id*. at 23-24. The Court based its decision on the statute's public focus and the fact that the original law vested enforcement in the Attorney General, a state body that advocates on behalf of the public. *Id*. at 25. The Court also relied on the legislative history and the statute's goal of ensuring consumers an honest market. *Id*. With this in mind, the Court defined consumer-oriented conduct broadly, holding that it did not necessarily require repetition or a pattern of deceptive behavior or recurring conduct. *Id*.

To help define the standard, the court in *Oswego* cited an example, *Genesco Entertainment, a Division of Lymutt Industries, Inc. v. Koch*, 593 F. Supp. 743 (S.D.N.Y. 1984), of the type of conduct that is not consumer oriented. In *Genesco*, a concert promoter alleged that it had an oral contract with New York City to rent Shea Stadium for a concert, but that the City kept demanding more money and eventually cancelled the concert. *Id* at 747. The court dismissed the GBL § 349 claim because the rental of Shea Stadium was not a consumer transaction and because government deception in stadium rentals is not the type of conduct that harms consumers. *Id* at 752. The court emphasized that the transaction involved "complex arrangements, knowledgeable and experienced parties and large sums of money," which is "different in kind and degree from those that confront the average consumer." *Id* at 752.

The Court of Appeals has applied this broad approach to the consumer-oriented prong since *Oswego*. In addressing what constitutes consumer-oriented conduct, this Court has construed the term broadly, focusing on the statute's history of vesting enforcement in the Attorney General to determine whether the conduct affects the public interest in New York. For example, in one case, a buyer for New York University's ("NYU") bookstore – in league with a clothing merchandizer – falsified order forms, receipts, and shipping documents as part of a scheme to bill NYU for merchandise it never received, costing NYU $1.6 million. *New York University v. Continental Insurance Company*, 87 N.Y.2d 308 (1995). NYU's insurance company refused to cover the loss and NYU sued, including a claim under GBL § 349. *Id*. The Court rejected the GBL § 349 claim because the conduct did not satisfy the consumer-oriented requirement. *Id* at 771. In evaluating this requirement, the Court looked to the nature of the transaction: a customized insurance policy tailored to the needs of a large university; and the conduct: coverage for theft of commercial goods. *Id* at 770-771. The Court stated that neither the transaction nor the conduct implicated consumers. *Id*. By definition consumers are not covered by commercial theft language in insurance contracts and an insurance company's choice about how to interpret that language could likewise never be the type of conduct faced by a consumer.

The Court used the same reasoning, though this time reaching a different result, in *Gaidon v. Guardian Life Ins. Co. of America*, 94 N.Y.2d 330 (1999). In *Gaidon*, two classes of insurance policy holders sued their insurer under GBL § 349 for falsely representing that out-of-pocket premium payments would stop after a set period of time. *Id*. In deciding whether this conduct was consumer oriented, the Court looked to the history of GBL § 349, and, specifically, the historic role of the Attorney General, and held the insurance company's deceptive marketing scheme was consumer oriented, in contrast to the one-off private dispute about commercial theft insurance coverage at issue in *New York University*. *Id.*

The Court again addressed the consumer-oriented standard in *City of New York v. Smoke-Spirits.Com, Inc*., 12 N.Y. 3d 616 (2009), an action by New York City against an online tobacco retailer that sold cigarettes without charging taxes. The court dismissed the GBL § 349 claim because it was seeking relief for a derivative injury – loss of taxes to New York City. *Id*. In reaffirming that GBL § 349 does not apply to derivative injuries, the Court reiterated the consumer-oriented standard, citing with approval a Second Circuit decision that "private commercial disputes" are not covered by GBL § 349. *Id.* (citing *Securitron Magnalock Corp. v. Schnabolk*, 65 F.3d 256 at 265 (2d Cir.1995)).

Simply put, the Court of Appeals has been consistent in broadly applying GBL § 349 to conduct directed at consumers, only excluding conduct that could not implicate the interests of consumers.

III. GBL § 349 APPLIES TO LANDLORD-TENANT ACTIVITY

A. States, Including New York, Have Modeled Their Deceptive Practices Acts on the FTCA and Applied Their Laws in the Housing Context

As discussed in Section I, the Legislature intended GBL § 349 to walk in the footprints of the FTCA. *See State by Lefkowitz v. Colorado State Christian Coll. of Church of Inner Power, Inc.*, 76 Misc.2d 50, 54, (N.Y. Cty. Sup. Ct. 1973). The purpose of the FTCA is to protect the public, which includes halting deception at its incipiency. *Regina Corp. v. F.T.C.*, 322 F.2d 765, 768 (3d Cir. 1963) (*citing Gimbel Bros. v. F.T.C.*, 116 F.2d 578, 579 (2d Cir. 1941) and *Progress Tailoring Co. v. F.T.C.*, 153 F.2d 103, 105 (7th Cir. 1946)). Congress, like the NYS Legislature, considered, and rejected, limiting or delineating the conduct proscribed by the FTCA. *See, e.g., F.T.C. v. Sperry & Hutchinson Co*., 405 U.S. 233, 239-40 (1972). In enacting the FTCA, the House Conference Report explained that "[i]t is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field." *Id.* (*citing* H.R. Conf. Rep. No. 1142, 63d Cong., 2d Sess., 19 (1914)). Following this reasoning, the U.S. Supreme Court held that the FTC does not exceed its authority if it

"considers public values beyond simply those enshrined in the letter or encompassed in the spirit of the antitrust laws." 405 U.S. at 244.

The FTC's position is that housing-related activities and landlord-tenant transactions fall under the ambit of the FTCA and similar state statutes. In fact, the FTC filed an *amicus curiae* brief in support of the Commonwealth of Pennsylvania's position that deceptive acts by landlords fall squarely under Pennsylvania's consumer protection law. *Com., by Creamer v. Monumental Properties, Inc.,* 459 Pa. 450, 465, 329 A.2.d 812, 819 (1974). In ruling on the matter, the Pennsylvania Supreme Court cited the FTC's brief, which stressed that the FTCA has been given a broad and flexible interpretation. 459 Pa. at 461-466, 329 A.2.d at 817-820 (1974). The court also noted that the FTC interprets the FTCA, upon which Pennsylvania's Consumer Protection Act was modeled, as covering the leasing of residential housing. 459 Pa. at 462, 329 A.2.d at 818-819. The court grounded its decision in part on the state legislature's intention to equalize the bargaining position between consumer and seller and the view that renters are consumers of housing and landlords are sellers. *Id.* 459 Pa. at 467-468, 329 A2d at 820-821. It also considered that a contrary interpretation would "needlessly insulate a great percentage of market transactions" from the law's protections. *Id.*

In addition to Pennsylvania, many other states have also modeled their deceptive practices acts on the FTCA, a fact of which both the Committee drafters of GBL § 349 and the Legislature were keenly aware. *See* Section I, *supra*. New York's highest court has never had occasion to rule specifically on whether GBL § 349 applies to housing-related conduct. However, several other states' highest courts, pursuant to FTC guidance, have concluded that their own consumer protection laws apply to landlord-tenant relations. *See, e.g., Conaway v. Prestia*, 191 Conn. 484, 464 A.2d 847 (Conn. 1983) (holding that landlords violated Connecticut Unfair Trade Practices Act by collecting rent without certificates of occupancy); *McGrath v. Mishara*, 386 Mass. 74, 78, 434 N.E.2d 1215, 1219 (1982) (finding that three deceptive notices to quit constituted an unfair, deceptive, or unreasonable attempt to collect a debt); *Thueson v. Swinger*, 2006 MT 250N, ¶ 7, 149 P.3d 912 (Table), 2006 WL 2847244, at *2 (applying the Montana consumer protection statute to landlord-tenant issues); and *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 465, 329 A.2.d 812, 819 (1974) (holding that Pennsylvania's Consumer Protection Act covers the leasing of residential housing). In addition, many states' appellate courts have reached the same conclusion. *See 49 Prospect St. Tenants Ass'n v Sheva Gardens, Inc*., 227 N.J. Super 449, 465, 547 A2d 1134, 1141-42 (N.J. Super Ct. App. Div. 1988) ("[A] landlord of a 55-unit, four-story apartment building, as well as several other

apartment buildings, are obviously engaged in a commercial enterprise with the tenants as consumers"); *Burbach v. Investors Mgmt. Corp*., 326 S.C. 492, 484 S.E.2d 119 (S.C. Ct. App. 1997) (finding that South Carolina's Unfair Trade Practices Act applies to residential leases); *Love v. Amsler*, 441 N.W.2d 555, 559, 1989 WL 61469 (Minn. Ct. App. 1989) (finding that residential leases are covered by Minnesota's consumer fraud act); *Hernandez v. Stabach*, 193 Cal. Rptr. 350, 352, 145 Cal. App. 3d 309, 314, (Cal. Ct. App. 1983) (holding that illegal housing court actions violated unfair trade practices law); *Love v. Pressley*, 34 N.C. App. 503, 239 S.E.2d 574 (1977) (holding that leasing of residential housing constitutes "trade or commerce" for purposes of North Carolina unfair trade practices statute).

Other states have also considered the public ramifications of excluding landlord-tenant transactions from consumer protections statutes and reached the conclusion that unfair and deceptive practices by landlords affect the public at large. The South Carolina Court of Appeals specifically rejected a landlord's argument that the state's Unfair Trade Practices Act did not apply to the breach of a private contract between a landlord and tenant. *Burbach*, 326 S.C. 492, 497, 484 S.E.2d 119, 121. The court reasoned that residential leases directly affect the general public, and while landlord-tenant transactions are typically governed by contract, landlords still have statutory duties to protect the public interest. *Id.* The commission of unfair or deceptive acts by landlords, which are also capable of

repetition, affects the public interest. *Id*. The Minnesota Court of Appeals, in applying the state's Prevention of Consumer Fraud Act took into account "[t]he lack of affordable residential housing and the inequality of the bargaining power between residential landlords and tenants, particularly low and moderate income tenants . . . ." *Love v. Amsler*, 441 N.W.2d 555, 559, 1989 WL 61469 (Minn. Ct. App. 1989). The court further reasoned that the inclusion of "residential leases would provide a mechanism to halt the use of deceptive landlord practices which take advantage of an already unequal bargaining position." *Id.* The Connecticut Supreme Court held that a landlord's collection of rent without a certificate of occupancy met the required "nexus with the public interest" because the landlord's actions offended public policy. *Conaway*, 191 Conn. 484, 852, 464 A.2d 847, 852.

FTC interpretations of the FTCA and other state appellate courts' rulings on analogous state deceptive practices acts have determined that to be effective the statutes need to be applied broadly, to all economic activity. Consistent with this, the FTC and state appellate courts have applied these statutes to conduct involving residential leases.

B. The New York State Attorney General Has Applied GBL § 349 to the Housing Context

The NYS Attorney General has a long history of fighting deceptive landlord conduct, as evidenced by the actions it files and the information it disseminates to

the public, which may be used as a barometer of whether conduct is consumer oriented.

The Attorney General has brought numerous enforcement actions based on conduct by landlords. *See, e.g., State by Abrams v. Winter*, 121 A.D.2d 287 (App. Div. 1st Dep't 1986) (action against a landlord for rent overcharge, failure to timely offer leases, failure to provide rent histories, and charging illegal fees among other violations); *State v. Wolowitz*, 96 A.D.2d 47 (App. Div. 2nd Dep't. 1983) (action against a landlord for abusive lease terms); *The People of the State of New York v. Marolda Properties, et al.*, Index No. 452118/2016 (Sup. Ct. N.Y. Cty. 2016) (action against a landlord for sending baseless notices to terminate and bringing eviction proceedings based on those notices, overcharging tenants, demanding rent that had already been paid, and other deceptive practices); *The People of the State of New York v. Ram Cohen*, Index No. 452037/18 (Sup. Ct. N.Y. Cty. 2018) (action against a landlord for rent overcharges, illegally deregulating buildings with a 421-a tax abatement, and illegally evicting tenants).

Specific to the claims in this case, the Attorney General's website includes information about rent overcharges and how to address other landlord abuses, and it promotes housing issues as a category of enforcement under the Bureau of Consumer Fraud and Protection. *See* https://ag.ny.gov/consumer-frauds/housing-issues.

Finally, after its own investigation into Vantage Properties – the same defendant in *Aguaiza*, the case on which the Appellate Division here relied in dismissing the Appellants' GBL § 349 claim – the Attorney General entered into a settlement agreement to rectify the same conduct as alleged in *Aguaiza*. In the Matter of the Investigation of Andrew M. Cuomo, Attorney General of the State of New York, of Vantage Properties, LLC and Vantage Management Services, LLC, AOD No. 10-016, *available at* https://ag.ny.gov/sites/default/files/press-releases/archived/Vantage_AOD.pdf. Vantage's actions included engaging in a pattern of unlawful conduct to force residents out of their rent-regulated apartments so that Vantage could raise rents, filing frivolous eviction proceedings, and failing to properly track rental payments. *Id*. The settlement included practice changes by Vantage, which were intended by the Attorney General to set a new best practices standard in the industry. *See* Press Release, New York State Attorney General (Feb. 11, 2010) *available at* https://ag.ny.gov/press-release/new-york-state-attorney-general-andrew-m-cuomo-announces-1-million-settlement-new-york. Numerous members of the Legislature lauded the settlement specifically because of its broad impact on landlord-tenant relations for New Yorkers. *Id*.

C. Transactions Between Low-Income Tenants and Landlords are Precisely the Type of Economic Activity That GBL § 349 is Intended to Cover

Despite the broad reach of GBL § 349, the lower court here ruled that the most financially significant consumer transaction that many New Yorkers ever enter – the residential landlord tenant relationship – is not within the ambit of the State's consumer protection statute. *Collazo*, 155 A.D.3d at 538. At 46 percent, almost half of New York State residents are renters, and 67 percent of New York City residents are renters. U.S. Census, American Community Survey (2017). Renters include many of society's most vulnerable members: the majority of poor renters devote over half their income to housing costs, and in New York City the median income for renters is about half of that of homeowners. Matthew Desmond, *Unaffordable America: Poverty, housing, and eviction*, Fast Focus, Institute for Research on Poverty, 22 (2015); New York City Housing and Vacancy Survey (2017).

A recent multi-part investigation by *The New York Times* found that large, corporate "mega-landlords" in New York City exploit a broken regulatory system and overburdened housing courts in order to wrongly evict rent-regulated tenants or otherwise harass them into leaving their rent-regulated apartments, such as by conducting illegal, disruptive repairs. Kim Barker, *Behind New York's Housing*

Crisis: Weakened Laws and Fragmented Regulation, N.Y. Times, May 20, 2018;[3] Kim Barker, et al., *The Eviction Machine Churning Through New York City*¸ N.Y. Times, May 20, 2018.[4] The *Times* reviewed thousands of pages of court records and building permits, examined in detail more than 1,000 housing court cases, and analyzed a database of more than one million housing court cases. *Id*. The *Times* found that because the state and city governments' diffuse regulatory system is unable to effectively oversee New York City's massive housing market, the system essentially relies on an honest marketplace, which large, corporate landlords, who control an increasing amount of the market share, exploit. *Id*. In addition, because New York City's overburdened housing courts are overrun with eviction suits, the *Times* found that mega-landlords, who, unlike tenants, are almost always represented by an attorney, are using the court system as an "eviction machine," where their "errors often go uncaught and dubious allegations go unquestioned." *The Eviction Machine*, N.Y. Times, May 20, 2018. The investigation found that 232,000 cases were filed against tenants last year, which is approximately one case for every 10 rental units in New York City, often using "cookie-cutter" petitions that appeared not to have been reviewed by attorneys. *Id*. In many of the cases,

[3] *Available at https://www.nytimes.com/interactive/2018/05/20/nyregion/affordable-housing-nyc.html.*
[4]*Available at https://www.nytimes.com/interactive/2018/05/20/nyregion/nyc-affordable-housing.html.*.

tenants were sued for money they did not owe, either because faulty rent ledgers did not accurately reflect payments or because the landlords were suing for amounts that were to be paid by government agencies. *Id*. In essence, the *Times* investigation revealed that many landlords throughout the city have the same modus operandi – forcing rent-regulated tenants out of their homes via filing mass, often frivolous, lawsuits, and engaging in other forms of harassment, including illegal repairs that disturb the quiet enjoyment of rent-regulated tenants. *Id*.

Rent overcharges have a particularly pernicious effect on consumers. Not only do they cause pecuniary harm to those who can least afford it, they can lead to baseless evictions, which may force tenants to the street or homeless shelters. Baseless evictions can also take a devastating personal toll on tenants beyond just the loss of housing, including, negative health effects, the removal of children from their schools, and long term material hardship beyond the loss of housing. Desmond, Matthew, and Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, Social Forces (2015).

Rent overcharges also place financial costs and a regulatory burden on the State, particularly its underfunded New York State Homes and Community Renewal (HCR) which is responsible for investigating tenants' rent overcharge complaints. According to *The New York Times* investigation, complaints filed in 2015 took two years to resolve on average. *Behind New York's Housing Crisis*,

N.Y. Times, May 20, 2018. In part because of its outdated, 1980s technology and its small staff, HCR is unable to check whether a landlord that overcharges one tenant regularly does so to other tenants—not even tenants in the same building. *Id*.

Finally, the preservation of housing was also a specific goal of the Legislature in enacting GBL § 349. The statute has two damages provisions: GBL § 349(h), which sets out the general damages available; and GBL § 349-c, which provides heightened penalties for deceptive conduct directed at the elderly. GBL § 349-c(2) provides a list of bad conduct for determining whether the supplemental penalty should be applied, including "Whether the defendant's conduct caused an elderly person or persons to suffer severe loss or encumbrance of a primary residence." GBL § 349-c(b)(2). The argument that deceptive landlord conduct is not covered under the statue not only contravenes the case law, but is directly contradicted by the statutory language which makes preservation of housing an explicit purpose.

D. The Lower Court's Reliance On *Aguaiza*, Which Misinterprets The Consumer-Oriented Conduct Prong Of GBL § 349, Creates An Arbitrary And Artificial Exception

In dismissing Plaintiffs' GBL § 349 claim the lower court relied on *Aguaiza v. Vantage Properties LLC,* 69 A.D. 3d 422. In that case, the rent-stabilized tenants were low-income immigrants of color with limited English proficiency and persons of color who were subjected to deceptive acts by their landlord, whom

they alleged to have: (1) commenced baseless eviction proceedings; and (2) refused to accept or credit rent payments. A copy of the *Aguaiza* Complaint is attached as Exhibit [A]. The Plaintiffs alleged that Vantage engaged in this conduct to force them out of their apartments so it could raise rents. *Id*. As discussed above, this practice is endemic in New York City, where landlords reap substantial profit if they can avoid being bound by rent stabilization laws and charge higher, illegal rents.

In affirming the trial court's dismissal of the plaintiff's GBL § 349 claim., the First Department addressed GBL § 349 only briefly, stating that the allegations were private disputes between landlords and tenants and not conduct aimed at the public at large. 69 A.D. 3d at 422. (citing *City of New York v. Smokes Spirits.Com*, Inc., 12 N.Y.3d 616, 621 (2009)). In so doing, the Appellate Division misinterpreted and misapplied the consumer-oriented prong, which is not dependent on whether the underlying transaction was between two parties, as almost every consumer transaction is. Instead, courts must question whether the deceptive conduct is similar in nature to conduct faced by other consumers and whether it could occur in other instances. *See Werner Inc. v. L&B Madison, Inc,* NYLJ, Feb. 9, 2000, at 26 col. 3 (Sup. Ct. N.Y. County). This misapplication has resulted in a rule that can be used to dismiss any case involving an individual consumer that has a contract at its center, and it is impossible to apply uniformly.

The decision in *Aguaiza* strays from this Court's precedent in determining whether a deceptive act is consumer oriented. Instead of looking to the plain language of the statute, the legislative history, the role of the Attorney General, and whether the type of conduct at issue is the type faced by consumers generally, the *Aguaiza* court dismissed the action on the basis that the underlying matter involved private disputes between landlords and tenants. 69 A.D. 3d at 422. But this interpretation fundamentally misunderstands the type of private disputes that courts have previously found to be excluded from consumer-oriented conduct.

While it is true that cases evaluating the consumer-oriented requirement often distinguish between private contract disputes that are not consumer oriented and actions that impact consumers broadly, it is important to understand what a private dispute means in the GBL § 349 context. As discussed above, when the Court of Appeals has termed something a private dispute between parties, the deceptive conduct involved has always been the type that could never impact consumers: the misrepresentations of a stadium rental in *Genseco*; the coverage of commercial theft insurance policies in *New York University*; or the failure to pay New York City tax revenue from cigarette sales at issue in *Smoke-Spirits.com*. Many consumer transactions are contracts in which an individual consumer is deceived by a seller or other contracting party, but the consumer's status as an individual does not mean GBL § 349 does not apply. On the contrary, a GBL §

349 claim will generally be available to an individual consumer who falls victim to a misrepresentation by a seller. A lease between a landlord and a tenant is no different than a lease for a car, or a contract to buy a sofa, or a mortgage contract.

In sum, the lower court's reliance on *Aguaiza* and its similarly flawed interpretation that GBL § 349 does not apply to deceptive conduct by a landlord should be reversed. Barring landlord abuses is an explicit goal of GBL § 349, it is the type of abuse the Attorney General has sought to stop, and there is nothing about the individual nature of a residential landlord tenant lease that affects the application of GBL § 349. If the decision is allowed to stand, tenants will be deprived of their best tool for deterring and stopping deceptive practices by bad actors.

IV. CONTRARY TO WHAT DEFENDANTS-RESPONDENTS ARGUE, GBL § 349 COVERS DECEPTIVE PRACTICES EVEN WHEN OTHER STATUTES MAY APPLY

It is axiomatic that any course of bad conduct may give rise to multiple statutory or common law claims, and often the facts and elements of these claims will overlap. GBL § 349 is meant to empower consumers to recover for themselves, and to secure broad injunctive relief for others. GBL § 349(h). If they seek such relief, they are not precluded from bringing claims under other statutes that address the same or similar wrong. In the rent overcharge context consumers may not just vindicate their own rights, but those of similarly situated tenants.

This is the very reason the statute was amended: consumers are meant to stand in the shoes of the Attorney General and combat scams and bad practices that would otherwise go unaddressed.

CONCLUSION

For all of the above reasons, this Court should reverse the order and judgment of the Appellate Division below.

Dated: December 26, 2018
New York, NY

By: _____/s/_____
Evan Denerstein
Carolyn E. Coffey
Of counsel to Jeanette Zelhof, Esq.
MOBILIZATION FOR JUSTICE
100 William Street, 6th Floor
New York, NY 10038
Tel: (212) 417-3760
Email: ccoffey@mfjlegal.org
edenerstein@mfjlegal.org

Matthew Schedler
CAMBA Legal Services, Inc.
885 Flatbush Ave.
Brooklyn, NY 11226
Tel: (718) 940-6311
Email: MatthewSc@camba.org

Certificate of Compliance

I hereby certify pursuant to 22 NYCRR § 500.13(c)(1) that the foregoing brief was prepared on a computer using Microsoft Word. A proportionally spaced certified typeface was used.

Font: Times New Roman

Point: 14

Line Spacing: Double

Word Count: The total number of words in the body of the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents and certificate of compliance, and any authorized addendum is 6860.

APL-2018-00108
New York County Clerk's Index No. 157486/16

Court of Appeals

of the

STATE OF NEW YORK

DANIEL COLLAZO, ET AL.,

Plaintiffs-Appellants,

v.

NETHERLAND PROPERTY ASSETS LLC and

PARKOFF OPERATING CORP.,

Defendants-Respondents.

EXHIBIT A

to

BRIEF OF *AMICI CURIAE* BROOKLYN BAR ASSOCIATION VOLUNTEER LAWYERS PROJECT, ET AL.

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

----------x

JOSE RICARDO AGUAIZA; NELIS FUENTES; LAURO GUAMAN; JORGE ORREGO; JANICE WILLIAMS; and BUENAVENTURA ZARATE

Index No.

Plaintiffs,

VERIFIED COMPLAINT

- against -

VANTAGE PROPERTIES, LLC; VANTAGE MANAGEMENT SERVICES, LLC; QPI-IX LLC, QPI-XIII LLC; QPI-XXIII LLC; QPI-XXVI LLC; NEIL RUBLER; and ROBERT JON ODELL

JURY TRIAL DEMANDED

Defendants.

----------x

FILED
APR 10 2008
COUNTY CLERK'S OFFICE
NEW YORK
08105197

Plaintiffs, by their attorneys Catholic Migration Office, Queens Legal Services Corporation, and The Legal Aid Society, as and for their Verified Complaint against the Defendants, allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs are all rent stabilized tenants residing in various apartments owned and/or managed by Defendant Vantage Properties, LLC in New York City. Plaintiffs are primarily low-income, Spanish-speaking immigrants with limited English proficiency.

2. Plaintiffs allege that Defendants have made false, deceptive and misleading representations to them in verbal and written communications, including rent bills, rent demand notices, termination notices, notices of lease non-renewal, Housing Court petitions, and correspondence. Defendants have engaged in deceptive practices in violation of the New York Consumer Protection Law, General Business Law Art. 22-A, Section 349.

3. Plaintiffs seek a declaration that Defendants' conduct is illegal and deceptive. Plaintiffs request an injunction on behalf of themselves and other consumers who have been, or

might be, subject to defendants' illegal and deceptive practices. Finally, Plaintiffs ask for actual damages, statutory damages, and an award of reasonable attorney's fees.

PARTIES

4. Plaintiff Jose Ricardo Aguaiza is a rent stabilized tenant at [redacted] Woodside, New York 11377. He has lived at this address since approximately 1994.

5. Plaintiff Nelis Fuentes is a rent stabilized tenant at [redacted] Jackson Heights, New York 11372. She has lived at this address since approximately 1987.

6. Plaintiff Lauro Guaman is a rent stabilized tenant at [redacted], Woodside, New York 11377. He has lived at this address since approximately 1995.

7. Plaintiff Jorge Orrego is a rent stabilized tenant at [redacted] Woodside, NY 11377. He has lived at this address since approximately 1984.

8. Plaintiff Janice Williams is a rent stabilized tenant at [redacted], Sunnyside, New York 11104. She has lived at this address since approximately 2005.

9. Plaintiff Buenaventura Zarate is a rent stabilized tenant at [redacted] Woodside, New York 11377. He has lived at this address since approximately 1993.

10. Defendant Vantage Properties, LLC (hereinafter "Vantage Properties") is a domestic limited liability company registered with the New York State Department of State. Its principal place of business is [redacted] New York, New York 10022. Defendant is engaged in the business of, inter alia, owning, managing, renting and/or operating numerous residential real estate properties including the above referenced buildings.

11. Defendant Vantage Management Services, LLC (hereinafter "Vantage Management") is a domestic limited liability company registered with the New York State Department of State. Its principal place of business is [redacted] New

York, New York 10022. Defendant Vantage Management is an affiliate of Defendant Vantage Properties.

12. Defendant QPI-IX LLC (hereinafter "QPI-IX") is a domestic limited liability company registered with the New York State Department of State. Its principal place of business is [redacted] New York, New York 10022. Defendant is the owner of property located at [redacted] Woodside, New York 11377 where Plaintiffs Jose Ricardo Aguaiza, Lauro Guaman, and Buenaventura Zarate reside.

13. Defendant QPI-XIII LLC (hereinafter "QPI-XIII") is a domestic limited liability company registered with the New York State Department of State. Its principal place of business is [redacted] New York, New York 10022. Defendant is the owner of property located at [redacted] Woodside, New York 11377 where Plaintiff Jorge Orrego resides.

14. Defendant QPI-XXIII LLC (hereinafter "QPI-XXIII") is a domestic limited liability company registered with the New York State Department of State. Its principal place of business is [redacted] New York, New York 10022. Defendant is the owner of property located at [redacted], Sunnyside, New York 11104 where Plaintiff Janice Williams resides.

15. Defendant QPI-XXVI LLC (hereinafter "QPI-XXVI") is a domestic limited liability company registered with the New York State Department of State. Its principal place of business is [redacted] New York, New York 10022. Defendant is the owner of property located at [redacted] Jackson Heights, NY 11378 where Plaintiff Nelis Fuentes resides.

16. Defendant Neil Rubler is founder, president and chief executive officer of Vantage Properties; president of Vantage Management; and president of QPI-IX, QPI-XIII, QPI-XXIII, and QPI-XXVI.

17. Defendant Robert Jon Odell is director and general counsel of Vantage Management and, according to the New York City Department of Housing Preservation and Development, a registered officer of corporate entities responsible for the buildings in which Plaintiffs reside.

VENUE

18. Venue is properly placed in the County of New York pursuant to Civil Practice Law and Rules Section 503(c) as Defendants' principal place of business is located in this county.

RELEVANT STATUTORY AND REGULATORY SCHEME

New York State's Consumer Protection Statute

19. New York's Consumer Protection from Deceptive Acts and Practices statute, General Business Law Section 349(a) states:

> Deceptive 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.

20. Section 349(h) states:

> In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

New York State Debt Collection Procedures

21. New York's Debt Collection Procedures, General Business Law Section 601, states that it is unlawful for any principal creditor or his agent to:

> (2) Knowingly collect, attempt to collect, or assert a right to any collection fee, attorney's fee, court cost or expense unless such changes [sic] are justly due and legally chargeable against the debtor; or...
> (6) Communicate with the debtor or any member of his family or household with such frequency or at such unusual hours or in such a manner as can reasonably be expected to abuse or harass the debtor; or
> (7) Threaten any action which the principal creditor in the usual course of his business does not in fact take; or
> (8) Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist... .

New York City Rent Stabilization Law and Code

22. The purpose of the New York City Rent Stabilization Law, as set forth in RSL §§ 26-501 and 26-502, is to protect tenants from landlords who might charge unjust, unreasonable and oppressive rents. RSL § 26-501 states in relevant part that

> [t]he council hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons within the city of New York...; that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents;...that [regulatory] action is necessary in order to prevent exactions of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices....
>
> RSL § 26-502 reaffirms RSL § 26-501 as follows:
>
> The council hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons within the City of New York and will continue to exist on and after April first, two thousand six and hereby affirms and repromulgates the findings and declaration set forth in section 26-501 of this title.

23. Under the New York City Rent Stabilization Code, 9 N.Y.C.R.R. § 2525.5, it is unlawful for a person to

> engage in any course of conduct (including but not limited to interruption or discontinuance of required services, or unwarranted or baseless court proceedings) which interferes with, or disturbs, or is intended to interfere with or

> disturb, the privacy, comfort, peace, repose or quiet enjoyment of the tenant in his or her use or occupancy of the housing accommodation, or is intended to cause the tenant to vacate such housing accommodation or waive any right afforded under this Code.

24. Under the NYC Rent Stabilization Code, 9 N.Y.C.R.R. § 2523.5(a):

> every owner...shall...offer to renew the lease or rental agreement at the legal regulated rent permitted for such renewal lease and otherwise on the same terms and conditions as the expiring lease.

STATEMENT OF FACTS

25. Plaintiffs are rent stabilized tenants residing in various buildings owned and managed by defendants and located in the neighborhoods known as Sunnyside, Woodside, Jackson Heights and Elmhurst, in the borough of Queens.

26. Plaintiffs are consumers of housing services provided by defendants.

27. Defendant Vantage Properties is a privately held property investment firm founded in or about January 2006 that pursues investments in multi-family and office properties. Vantage Properties owns rent regulated properties in Harlem, Washington Heights, and Queens.

28. Upon information and belief, Vantage Properties has spent over $1 billion in the acquisition of rent regulated housing in New York City.

29. Upon information and belief, Vantage Properties' residential real estate acquisitions are funded through a combination of "private equity" financing from a limited number of individuals seeking above market returns on investment and borrowing from international financial institutions such as Credit Suisse and Prudential.

30. Upon information and belief, the private equity funds are provided by Apollo Real Estate Partners, an international investment firm, and the loans subsequently made to Vantage Properties are securitized and sold to institutional investors. Upon information and

belief, the value of the security stream is based on the projected income of the rental buildings that Vantage Properties acquires through use of the borrowed funds.

31. Certain terms and conditions of Vantage Properties' debt obligations are stated in documents filed with the United States Securities and Exchange Commission. These documents reveal that Vantage Properties' acquisition of approximately 9,200 rent regulated apartments in New York City over the past two years is intended to yield unprecedented profits through a "recapturing" strategy. According to these and other materials, Vantage expects to vacate 20-30% of the apartments within the first year following acquisition of certain buildings, substantially renovate the vacant units and "[raise] rents to market levels" (see, Collateral and Structural Term Sheet, http://www.sec.gov/Archives/edgar/data/1396399/000104746907002841/a2177197zfwp.txt).

32. Upon information and belief, the vacancy rate in most of Vantage's buildings is 1% at the time of acquisition (see, Collateral and Structural Term Sheet, http://www.sec.gov/Archives/edgar/data/1396399/ 000104746907002841/a2177197zfwp.txt).

33. Upon information and belief, the New York City Rent Guidelines Board estimates that the typical annual vacancy rate in rent regulated buildings is 5.6%.

34. Upon information and belief, Vantage Properties' delivery of its projected returns on private equity investment and satisfaction of its debt obligations depend largely, if not entirely, on its ability to rapidly displace thousands of rent regulated tenants such as Plaintiffs from their homes.

35. Rent regulated tenants in New York City have a statutory right to the renewal of their leases and the continued occupancy of their apartments.

36. In October 2006, Defendants purchased approximately 30 large, rent regulated apartment buildings in Queens containing 2,124 apartments, including the various apartments in which Plaintiffs reside, from Nathan Katz Realty. Vantage Properties has titled this group of buildings "Queens Portfolio I" or "QPI".

37. On or about October 5, 2006, Vantage Properties created Defendants QPI-IX, QPI-XIII, QPI-XXIII, and QPI-XXVI which own the properties located at [redacted], Woodside, New York 11377; [redacted] Woodside, New York 11377; 43-23 [redacted], Sunnyside, New York 11104; and [redacted] Jackson Heights, NY 11372, respectively. Defendant Neil Rubler is the president of Vantage Properties and of each "QPI" entity. The "QPI" entities are controlled by Vantage Properties and their properties are managed by Vantage Management Services.

38. Upon information and belief, since acquiring its "Queens Portfolio I", Vantage Properties has, through summary proceedings in housing court and other means, evicted over 25% of the tenants previously living in certain of these buildings.

39. Upon information and belief, Vantage Properties succeeded in removing multiple apartments within "Queens Portfolio I" from rent stabilization by raising the rent over $2,000 after having evicted tenants from the apartments.

40. Upon information and belief, a search of the New York City Civil Court records for all summary proceedings initiated by Defendants against tenants in Queens County Housing Court indicates a high volume of holdover and non-payment petitions since November 2006. The Queen County Housing Court Clerk's case information terminal reports that Vantage Properties has, through its related corporate entities, brought approximately 965 summary proceedings against tenants in the "QPI" portfolio since November 2006.

41. On or about January 15, 2008, Vantage Properties purchased an additional 50 large rent regulated apartment buildings located in the same neighborhoods throughout Queens and containing approximately 2,200 apartments. Vantage Properties has titled this group of buildings "Queens Portfolio II" or "QPII". Upon information and belief, since acquiring the "QPII" buildings, Vantage Properties has served hundreds of tenants with termination notices indicating its intention to commence summary eviction proceedings.

42. Altogether, in the past two years Vantage Properties has acquired approximately 80 large, rent regulated buildings in Queens containing approximately 4,000-4,500 apartments. As stated above, the financial backing for this massive acquisition is premised upon Vantage Properties' projected ability to displace a substantial number of the tenants living in these buildings.

43. Upon information and belief, Vantage Properties has sought to obtain these vacancy rates and profits by repeatedly commencing meritless summary proceedings against Plaintiffs and other tenants in housing court based on notices and pleadings that contain false, deceptive and misleading representations.

44. All of the proceedings that Defendants have commenced against Plaintiffs have been premised on false allegations, including but not limited to:

a. claims that Plaintiffs Aguaiza, Guaman, Williams, and Zarate had not paid their rent, when in fact they had tendered their rent to Defendants and Defendants had returned or failed to cash such payments;

b. claims that Plaintiffs Aguaiza, Fuentes, Guaman, and Williams had violated a substantial obligation of their leases and tenancies by not using the subject

apartments as their primary residences, when in fact Plaintiffs had uniformly resided exclusively in the subject apartments for many years; and

c. claims that Plaintiff Orrego had illegally sublet his apartment to as many as seven people, when in fact Plaintiff Orrego was residing in the apartment with only his girlfriend and roommate.

45. The cases brought by Defendants upon these false claims have all been discontinued or dismissed, or remain pending.

46. In December 2007, the New York State Division of Housing and Community Renewal (hereinafter "DHCR") cautioned Defendants against 1) initiating a non-payment proceeding against a tenant when Defendants have already received rent payments upon which the proceeding is premised and 2) initiating holdover proceedings based on non-primary residence allegations unless Defendants have proof that the tenant does not live at the premises and there is evidence that the tenant lives at another known address.

47. Defendants have initiated as many as three successive, baseless summary proceedings within an eight-month period against certain Plaintiffs.

48. Defendants, directly and/or through their agents, have made deceptive and misleading verbal statements to Plaintiffs, including but not limited to false statements that Plaintiffs do not maintain the subject apartments as their primary residences, that Plaintiffs are living in the subject apartments with 20 people, and that Plaintiffs are required to show New York State driver's licenses in order to establish their tenancy rights.

49. The tenants in Vantage Properties' buildings are, like Plaintiffs, predominantly immigrants with limited English language skills and largely unable to afford private counsel for the purpose of defending against summary proceedings in housing court.

Plaintiff Jose Ricardo Aguaiza

50. Plaintiff Jose Ricardo Aguaiza has resided at [redacted] Woodside, New York 11377 for approximately 14 years, or since about 1994. He lives there with his wife, Cruz L. Pozo Monar, and his 5-year-old son, [redacted]

51. Mr. Aguaiza is the named leaseholder to his apartment and is registered with the DHCR as the tenant of record.

52. From the beginning of his tenancy in 1994 until October 2006, the building in which Mr. Aguaiza resides was owned by Nathan Katz Realty.

53. Mr. Aguaiza was never sued by Nathan Katz Realty.

54. However, since Vantage Properties acquired his building in October 2006, Mr. Aguaiza has been sued in three separate Housing Court proceedings, including two non-payment proceedings and a holdover proceeding. These proceedings were all commenced by QPI-IX within an eight-month period, from July 2007 through February 2008.

55. On or about June 8, 2007, Mr. Aguaiza sent a money order for his June rent. Mr. Aguaiza later obtained confirmation from the United States Postal Service that this money order was cashed on or about June 13, 2007.

56. Mr. Aguaiza nevertheless received a Rent Demand Notice dated June 21, 2007 alleging, inter alia, that he owed $962.91 for June's rent.

57. On or about July 5, 2007, Mr. Aguaiza went to the Vantage Management office at [redacted], Elmhurst, New York 11373, and asked about his June rent payment. Mr. Aguaiza was told that his payment had not been received, but that the office would look into it.

58. In early July 2007, Mr. Aguaiza sent a money order for his July rent. Mr. Aguaiza subsequently received this money order back in the mail, along with a letter from Vantage Management dated July 11, 2007 stating that his money order was being returned to him because of pending legal action.

59. Mr. Aguaiza was then served with a non-payment petition dated July 10, 2007. The petition alleged, inter alia, that Mr. Aguaiza owed rent arrears for June and July. Mr. Aguaiza appeared in court *pro se* for the non-payment proceeding and entered into a stipulation wherein he agreed, inter alia, to pay rent for the months of June and July by August 26, 2007.

60. Mr. Aguaiza first sent personal checks from his joint account with his wife as payment for his June, July and August rent, but these checks were returned to him with a letter from Vantage Management stating that "[t]he name and signature on the check/money order is different from the name on the executed lease/tenant of record." On or about August 24, 2007, Mr. Aguaiza sent money orders totaling $2891.37 as rent payments for the months of June, July and August.

61. Then, in September 2007, Mr. Aguaiza obtained confirmation from the United States Postal Service that the money order he had originally mailed to QPI-IX on or about June 8, 2007 for June's rent had been cashed on or about June 13, 2007, prior to QPI-IX's commencement of the non-payment proceeding against him in July 2007.

62. By early October 2007, Mr. Aguaiza also had not yet received a renewal lease though his lease was due to expire on October 31, 2007. Therefore, on or about October 11, 2007, Mr. Aguaiza called Vantage Management to ask that his renewal lease be sent to him.

63. During this telephone conversation, Vantage Management employee Catherine McGovern told Mr. Aguaiza that she did not believe he was who he claimed to be and that he

would have to come to her office with identification from the Department of Motor Vehicles in order to obtain a renewal lease.

64. Mr. Aguaiza then filed a lease non-renewal and harassment complaint with the DHCR.

65. Mr. Aguaiza timely sent separate money orders for his September, October, and November rent, respectively. His money orders for his September and October rent were not returned to him. However, Mr. Aguaiza received his money order for his November rent back in the mail, along with a letter from Vantage Management dated November 16, 2007 stating that his money order was being returned to him because of pending legal action.

66. In November 2007, QPI-IX commenced its second summary proceeding, a holdover proceeding, against Mr. Aguaiza. The holdover petition stated that Mr. Aguaiza's lease had expired October 31, 2007 and alleged that "[a]t least 90-150 days before the expiration of the written rental agreement between the parties, petitioner served respondent with notice of non-renewal of lease (golub notice) and intention to terminate tenancy..." Similarly, in a letter to the DHCR dated December 7, 2007, Defendant Robert Jon Odell stated that QPI-IX had "served [Mr. Aguaiza] with a 'Golub' termination notice in a timely manner in July 2007."

67. However, the Affidavit of Service for said notice alleges that service was purportedly made on August 16, 2007, less than 90 days before Mr. Aguaiza's lease had expired on October 31, 2007, and not in July 2007, as Mr. Odell had represented to the DHCR.

68. The Affidavit of Service further alleges substituted service on an individual named "Maria Aguaiza." However, Mr. Aguaiza does not know anyone named Maria Aguaiza.

69. In fact, Mr. Aguaiza was never served with a "Golub" notice. However, through a DHCR administrative proceeding, Mr. Aguaiza obtained a copy of a Combined Notice of

Intention Not to Renew Lease Due to Non-Primary Residence and Notice of Termination signed by Defendant Robert Jon Odell and purportedly served in August 2007. The combined notice alleged the following: "Tenant maintains his or her primary residence at an abode other than the Premises; and/or Upon information and belief, Tenant slept at the premises less than 183 days within the past year; and/or Upon information and belief, Tenant maintains a different address (unknown to the Landlord) as his or her primary residence."

70. On or about December 17, 2007, following a conference attended by Mr. Aguaiza and an attorney for Vantage Management, Ilene Sussman, the DHCR:

a) Instructed Vantage Management to provide Mr. Aguaiza with a renewal lease in both Mr. Aguaiza's name and his wife's name and to discontinue the holdover proceeding against Mr. Aguaiza;

b) Confirmed that Vantage Management had agreed to apply Mr. Aguaiza's extra rent payment for June 2007 toward his January 2008 rent;

c) Cautioned Vantage Management against initiating non-payment proceedings where the tenant has proof that payment has already been made before the action is commenced; and

d) Warned that Vantage Management should not initiate holdover proceedings based on non-primary residence allegations unless it had proof that the tenant does not live at the premises and there is evidence that the tenant lives at another known address.

71. On or about December 20, 2007, Mr. Aguaiza and his wife met with Catherine McGovern and signed a two-year renewal lease. At this meeting, Mr. Aguaiza also provided Ms. McGovern with a copy of the confirmation from the United States Postal Service that the money

order he had sent as payment for his June rent had been cashed on or about June 13, 2007, and asked that this payment be credited to his account. Ms. McGovern said that she would look into it.

72. At this same meeting, Ms. McGovern also asked him about rent for the months of November and December. Mr. Aguaiza gave her the money order for November's rent that he had received back in the mail, and showed her receipts for the money order he had sent as payment for his December rent.

73. Nevertheless, Mr. Aguaiza subsequently received a Rent Demand Notice dated January 25, 2008 alleging that he owed rent arrears for the months of December, January, and part of November.

74. On or about February 14, 2008, Mr. Aguaiza met with Ms. McGovern to discuss the Rent Demand Notice that he had received. At this meeting, Ms. McGovern again asked Mr. Aguaiza about rent for the months of November and December. Mr. Aguaiza told her that he had given her his November rent payment at their previous meeting on December 20, 2007, and, again—as he had done at their meeting on December 20, 2007—showed her his receipts for the money order he had sent to QPI-IX as payment for December's rent. At this February 14th meeting, Ms. McGovern also asked Mr. Aguaiza about January's rent. He told her that Defendants were supposed to apply his extra June rent payment toward his January rent.

75. Mr. Aguaiza was then served by QPI-IX with papers for a second non-payment proceeding. This proceeding is pending.

76. Upon information and belief, Defendants have also failed to credit Mr. Aguaiza's October 2007 rent payment to his account and is charging him illegal late fees and legal fees.

77. Mr. Aguaiza has missed multiple days of work and suffered ongoing emotional distress as a result of Defendants' deceptive actions.

Plaintiff Nelis Fuentes

78. Plaintiff Nelis Fuentes has resided in her rent-stabilized apartment at [redacted] Jackson Heights, New York 11372 for approximately 21 years, or since about 1987. Mrs. Fuentes is 75 years old and speaks little English.

79. Mrs. Fuentes is registered with the DHCR as the tenant of record.

80. Mrs. Fuentes first moved into her apartment on or about May 1, 1987 with her husband, Jose Marcelo Fuentes. Mr. and Mrs. Fuentes took possession of the apartment subject to a written lease in Mr. Fuentes' name. However, for more than 10 years, Mrs. Fuentes has regularly paid the rent by personal checks bearing her name only.

81. Mrs. Fuentes' husband left her in approximately 2003 and, upon information and belief, currently resides in Chile.

82. From approximately 1990 until October 2006, the building in which Mrs. Fuentes resides was owned by Nathan Katz Realty.

83. Mrs. Fuentes was never served with any predicate notices or sued by Nathan Katz Realty.

84. After Vantage Properties acquired the building in October 2006, Mrs. Fuentes continued to pay her rent by personal checks bearing her name only.

85. Mrs. Fuentes' current lease is due to expire on April 30, 2008. In January 2008, Mrs. Fuentes met with Ms. McGovern of Vantage Management to ask about her renewal lease and to request that her name added to the lease. At this meeting, she provided proof of her marriage and Ms. McGovern agreed to add Mrs. Fuentes' name to the lease.

86. In January 2008, Mrs. Fuentes was served with a purported Combined Notice of Termination and Notice of Intention to Not Renew Lease Due to Non-Primary Residence. The combined notice alleged the following: "Tenant maintains his or her primary residence at an abode other than the Premises; and/or Upon information and belief, Tenant slept at the Premises less than 183 days within the past year; and/or Upon information and belief, Tenant maintains [redacted] Miami, FL as his or her primary residence (property believed to be owned by Tenant Jose Fuentes); and/or Upon information and belief, the residential telephone listing at [redacted] Miami, FL [redacted] is in the name of Tenant Jose Fuentes."

87. Mrs. Fuentes subsequently filed a lease non-renewal complaint against Vantage Management with the DHCR. On March 27, 2008, Mrs. Fuentes was informed by the DHCR that her complaint against Vantage Management would be conditionally dismissed because she had received a notice of lease non-renewal, or a "Golub" notice, prior to her filing of the complaint.

88. Mrs. Fuentes also contacted New York State Senator John D. Sabini's office for assistance with obtaining her renewal lease. Senator Sabini's office sent a letter advising Vantage Management to comply with the law and provide Mrs. Fuentes with a renewal lease.

89. Mrs. Fuentes' daughter also met with Ms. McGovern to ask about the combined notice. Ms. McGovern told Mrs. Fuentes' daughter that the combined notice was routine practice and not to worry.

90. Mrs. Fuentes' daughter was further told that Mrs. Fuentes would need to provide the following documents in order to prove that the apartment was her primary residence: 1) a valid driver's license or state identification; 2) tax returns for 2004, 2005 and 2006; 3) bank

statements; 4) voting records; 5) current bills referencing the apartment; and/or 6) car insurance or registration.

91. Mrs. Fuentes' daughter told Ms. McGovern that her father, Jose Marcelo Fuentes, did not reside in Florida and asked Ms. McGovern to state the basis for Vantage Management's allegations that the "Jose Fuentes" who purportedly owned property at [redacted] Miami, Florida, and who was purportedly listed as having the Miami, Florida telephone number [redacted] was the same Jose Fuentes as her father. Mrs. Fuentes' daughter did not receive any response.

92. Upon information and belief, numerous individuals named Jose Fuentes reside in Miami, Florida.

93. To date, Mrs. Fuentes has not received a renewal lease from Defendants.

94. Mrs. Fuentes has suffered ongoing emotional distress as a result of Defendants' deceptive actions.

Plaintiff Lauro Guaman

95. Plaintiff Lauro Guaman has resided at [redacted] Woodside, New York 11377 for approximately 13 years, or since about 1995. Mr. Guaman became the named leaseholder in approximately 1998 and is registered with the DHCR as the tenant of record. He lives in his apartment with his sister, Rosa Guaman, the previous named leaseholder, and her husband and son.

96. Since the beginning of his residence in this apartment, Mr. Guaman has maintained the apartment as his primary residence and maintains no other residences.

97. From the beginning of his tenancy until October 2006, the building in which Mr. Guaman resides was owned by Nathan Katz Realty.

98. Mr. Guaman was never sued by Nathan Katz Realty and regularly received his renewal lease forms from Nathan Katz Realty.

99. Since Vantage Properties acquired his building in October 2006, Mr. Guaman has been sued twice, once in a non-payment proceeding and once in a holdover proceeding.

100. In 2007, Vantage Management held and did not cash two months' worth of rent payments from Mr. Guaman and then proceeded, through its agent QPI-IX, to commence a non-payment proceeding against him, alleging that he was in rent arrears.

101. Mr. Guaman answered the non-payment petition, presented proof that he had mailed the rent payments at issue, and the case was discontinued.

102. After the case was discontinued, counsel for QPI-IX told Mr. Guaman that he knew that 20 people were living in Mr. Guaman's apartment, that he wanted Mr. Guaman out of the apartment, and that he would come back after Mr. Guaman.

103. In September 2007, Mr. Guaman was served with a Combined Notice of Termination and Notice of Intention to Not Renew Lease Due to Non-Primary Residence dated September 7, 2007 and signed by Defendant Robert Jon Odell. This combined notice alleged the following: "Tenant maintains his or her primary residence at an abode other than the Premises; and/or Upon information and belief, Tenant slept at the Premises less than 183 days within the past year; and/or Upon information and belief, Tenant maintains [redacted], Bronx, NY as his or her primary residence."

104. As stated above, Mr. Guaman maintains no other primary residence other than [redacted] Woodside, New York 11377. Furthermore, Mr. Guaman has never resided at the address [redacted], Bronx, New York.

105. In November 2007, Mr. Guaman sent a letter dated November 8, 2007 to Vantage Management requesting his renewal lease.

106. To date, Vantage Management has failed to provide Mr. Guaman with a renewal lease. Mr. Guaman's lease expired on December 31, 2007.

107. In January 2008, Mr. Guaman received his money order for his January rent back in the mail from Vantage Management, along with a letter dated January 22, 2008 stating that the money order was being returned to him because of pending legal action.

108. In January 2008, QPI-IX again sued Mr. Guaman, this time commencing a holdover proceeding against Mr. Guaman, though he is named in the notice of petition and petition as "Laura Guaman." The petition is dated January 16, 2008.

109. Mr. Guaman has missed multiple days of work and suffered ongoing emotional distress as a result of Defendants' deceptive actions.

Plaintiff Jorge Orrego

110. Plaintiff Jorge Orrego has resided at [redacted], Woodside, New York 11377 for approximately 24 years, or since about 1984.

111. Mr. Orrego's apartment is a two-bedroom, rent-stabilized apartment. He shares his apartment with his girlfriend and a roommate.

112. From the beginning of his tenancy in 1984 until October 2006, the building in which Mr. Orrego resides was owned by Nathan Katz Realty.

113. Mr. Orrego was never served with any predicate notices or sued by Nathan Katz Realty.

114. Since Vantage Properties acquired the building in October 2006, Mr. Orrego has been served with two predicate notices and sued in a holdover proceeding.

115. In May 2007, Mr. Orrego received a "Notice to Cure" from Vantage Management alleging that Mr. Orrego had violated a substantial obligation of his lease and tenancy by subletting his apartment to "John and Jane Doe 1-7" without the written permission of the landlord. This notice further alleged that Mr. Orrego had approximately seven persons living in his apartment, and alleged that his apartment contained only one bedroom and measured a total of 650 square feet of living space.

116. In June 2007, Mr. Orrego received a "Notice Terminating Tenancy, Occupancy, and Lease" from Vantage Management. This notice repeated the same allegations as the previous Notice to Cure and further alleged that Mr. Orrego was "charging subtenants or assignees...amounts of rent greater than that lawfully permissible in the subletting of a rent stabilized apartment... ."

117. Mr. Orrego's roommate in fact paid less than half the rent for the apartment.

118. Upon information and belief, no city or state agency has ever placed any violations for overcrowding in Mr. Orrego's apartment. The placing of such violations is a prerequisite to the commencement of a holdover proceeding based on allegations of overcrowding.

119. In July 2007, Mr. Orrego received a marshal's notice indicating that QPI-XIII had obtained a default judgment against him in a holdover proceeding, though Mr. Orrego had never been served with a notice of petition or petition for a holdover proceeding. Mr. Orrego subsequently appeared in the holdover proceeding *pro se* and moved to vacate the default judgment by Order to Show Cause.

120. On the return date for Mr. Orrego's Order to Show Cause, counsel for QPI-XIII requested and was granted an adjournment to September 13, 2007. However, on September 13,

2007, counsel for QPI-XIII requested a second adjournment on the ground that September 13, 2007 was a religious holiday, and was granted a second adjournment to September 27, 2007. On September 27, 2007, counsel for QPI-XIII stated to the court that Defendant was not ready to proceed, and the case against Mr. Orrego was dismissed.

121. Mr. Orrego missed several days of work because of his court appearances in the holdover proceeding and has suffered ongoing emotional distress as a result of Defendants' deceptive actions.

Plaintiff Janice Williams

122. Plaintiff Janice Williams has resided at [redacted], Sunnyside, New York 11104 for nearly three years, or since July 2005.

123. In July 2005, Ms. Williams executed a one-year lease for her apartment with then-owner Nathan Katz Realty. On September 12, 2005, Ms. Williams obtained a New York State driver's license and registered to vote using her address of [redacted] Sunnyside, New York 11104.

124. In 2006, Ms. Williams executed a one-year renewal lease with Nathan Katz Realty.

125. Ms. Williams was never served with any predicate notices or sued by Nathan Katz Realty.

126. Since Vantage Properties acquired her building in October 2006, Ms. Williams has been served with at least one predicate notice threatening a holdover proceeding and sued in a non-payment proceeding.

127. In April 2007, Ms. Williams requested a renewal lease. She was told that her lease would not be renewed because she was not using the apartment as her primary residence and that a termination notice had been sent to her.

128. However, as of April 30, 2007, Ms. Williams had not received any termination notice. On that same date, Ms. Williams filed a lease non-renewal complaint against Vantage Management with the DHCR.

129. Through the subsequent DHCR administrative proceeding, Ms. Williams received a copy of a Combined Notice of Intention Not to Renew Lease Due to Non-Primary Residence and Notice of Termination dated March 8, 2007, which Vantage Management claimed to have served on Ms. Williams on March 14, 2007. This combined notice alleged the following: "Tenant maintains his or her primary residence at an abode other than the Premises; and/or Upon information and belief, Tenant slept at the Premises less than 183 days within the past year; and/or Upon information and belief, Tenant maintains [redacted] Greenwich CT as his or her primary residence; and/or Upon information and belief, Tenant has a Connecticut state driver's license from [redacted] Greenwich, CT; and or Upon information and belief, Tenant is registered to vote from [redacted] Greenwich, CT, NY [sic]."

130. As stated above, Ms. Williams has had a New York state driver's license and has been registered to vote at the subject apartment address in New York City since September 12, 2005. Ms. Williams previously resided at [redacted] in Greenwich, Connecticut, but has not lived there since 2004.

131. In July 2007, while the DHCR administrative proceeding was still pending, Ms. Williams received her check for July's rent back in the mail, along with a letter stating that the enclosed rent payment was being returned to her because of pending legal action. However, as

of her receipt of this letter, Ms. Williams had not been served with any notice of a legal action against her, nor, upon information and belief, had QPI-XXIII yet commenced any legal action against Ms. Williams.

132. On August 1, 2007, the DHCR ordered Vantage Management to provide Ms. Williams with a renewal lease. Ms. Williams subsequently executed a renewal lease for her apartment.

133. Ms. Williams timely paid her rent for the months of August, September, October, and November 2007. Her checks for August, September, and October 2007 rent were all cashed on the same day, on or about October 23, 2007. However, Ms. Williams then received a Five Day Notice dated November 8, 2007 alleging that she had not paid her rent for October and November.

134. Ms. Williams immediately sent an e-mail to Ms. McGovern of Vantage Management asking about the Five Day Notice, stating that she had paid her rent for both October and November, and inquiring as to her July rent payment.

135. On November 21, 2007, Ms. Williams received a reply e-mail from Ms. McGovern stating that Ms. Williams should "reissue the check for July rent and send back November along with it" and that Ms. McGovern would send Ms. Williams a receipt showing a zero balance through November.

136. However, Ms. Williams subsequently received her November rent check back in the mail, along with a letter dated November 20, 2007 stating that the enclosed rent check was being returned to her because of pending legal action. On or about November 28, 2007, Ms. Williams was served with a non-payment petition, which bore an endorsement by counsel for Vantage dated November 20, 2007.

137. On or about November 30, 2007, Ms. Williams re-sent her July and November rent checks to Vantage.

138. Ms. Williams, by her attorneys Catholic Migration Office, answered the non-payment petition. On or about January 25, 2008, the non-payment petition was discontinued.

139. Ms. Williams has suffered loss of work time ongoing emotional distress as a result of Defendants' deceptive actions.

Plaintiff Buenaventura Zarate

140. Plaintiff Buenaventura Zarate and his wife, Alejandrina Zarate, have resided at [redacted] Woodside, New York for approximately 15 years, or since approximately 1993. They live with their two children, ages 14 and 21. Mr. Zarate and his wife speak little English.

141. Mr. Zarate and his wife took possession of their current residence in 1993 subject to a written lease in both of their names. Mr. Zarate is registered with the DHCR as the tenant of record.

142. From the beginning of their tenancy in approximately 1993 until October 2006, the building in which Mr. Zarate and his wife reside was owned by Nathan Katz Realty.

143. From the beginning of their tenancy, Mr. Zarate and his wife paid their rent to Nathan Katz Realty with personal checks from their joint account. The checks bore the names Buenaventura Zarate and Alejandrina M. Zarate.

144. Mr. Zarate was never sued by Nathan Katz Realty.

145. After Vantage Properties acquired their building in about October 2006, Mr. Zarate and his wife continued to pay their rent by personal checks from their joint account bearing the names Buenaventura Zarate and Alejandrina M. Zarate.

146. In November 2007, Mr. Zarate and his wife sent a personal check from their joint account as payment for their November rent.

147. On or about November 16, 2007, Mr. Zarate and his wife received their November rent check back in the mail, along with a letter asking them to contact Ms. McGovern at Vantage Management.

148. Upon contacting Ms. McGovern, Mr. Zarate was told that the building management believed that he was overcrowding his apartment with as many as 15 people and that they would need to inspect his apartment. Mr. Zarate told Ms. McGovern that this was completely false and that he would not permit Vantage to inspect his apartment on this ground.

149. In December 2007, Mr. Zarate and his wife sent two certified checks to Vantage as payment for their November rent and their December rent, respectively. The certified checks bore the name "Zarate-Morales, B." Mr. Zarate's mother's maiden name is Morales. In Latin American culture, it is customary for an individual's last name to include both their father's and mother's family names.

150. Mr. Zarate and his wife subsequently received both of their checks back in the mail, along with a letter dated December 12, 2007 stating that the checks was being returned to them because "[t]he name and signature on the check/money order is different from the name on the executed lease/tenant of record."

151. QPI-IX proceeded to commence a non-payment proceeding against Mr. Zarate and his wife with a petition dated December 13, 2007 alleging that Mr. Zarate and his wife owed $2,117.44 – $1,817.44 in rent arrears for the months of November and December, plus $265.00 in legal and late fees.

152. On or about January 2, 2008, Mr. Zarate answered the non-payment petition *pro se*, and was given a court date of January 9, 2008.

153. On about January 2, 2008, Mr. Zarate and his wife sent a certified check for January's rent of $908.72 to Vantage. However, Mr. Zarate and his wife subsequently received their check for January's rent back in the mail, along with a letter dated January 9, 2008 stating that the check was being returned to them because of pending legal action.

154. On January 9, 2008, Mr. Zarate went to court for the non-payment proceeding. At court, he was approached by a man who identified himself as counsel for the petitioner and requested Mr. Zarate's identification. When Mr. Zarate asked why, the man stated that he did not believe that Mr. Zarate was who he claimed he was. Mr. Zarate refused to show his identification.

155. Mr. Zarate then made his appearance in the non-payment proceeding *pro se*.

156. Through a court-provided Spanish interpreter, Mr. Zarate entered into a stipulation of settlement drafted by counsel for QPI-IX. The stipulation provided that: 1) the non-payment petition was amended to include January rent, bringing the total amount sought in the petition to $2,726.26; 2) Mr. Zarate was to pay this total of $2,726.26 within nine days, or by January 18, 2008; and 3) QPI-IX agreed to make various repairs to the Zarates' apartment.

157. On January 17, 2008, Mr. Zarate timely sent his payment of $2,726.26 to QPI-IX. He did not receive this payment back in the mail.

158. However, as of January 18, 2008, QPI-IX had not made the repairs agreed upon in the stipulation of settlement. Mr. Zarate subsequently made multiple requests to Vantage Management and enlisted the assistance of a local community group, Woodside On the Move, in

contacting Vantage Management and insisting that it fulfill its obligation to repair the Zarates' apartment. Vantage Management eventually performed the agreed-upon repairs.

159. In early February 2008, Mr. Zarate and his wife received lease renewal documents from Vantage Management. On or about February 14, 2008, Mr. Zarate sent the signed lease renewal documents to Vantage Management by certified mail with return receipt requested, and subsequently received a return receipt signed by "E. Jimenez" and dated February 15, 2008.

160. However, Mr. Zarate and his wife then received a letter dated March 3, 2008 from Vantage Management stating that it had yet to receive a signed renewal lease from Mr. Zarate and his wife and that if they did not send it back by April 30, 2008, legal proceedings would be commenced against them.

161. Mr. Zarate and his wife's current lease is due to expire on April 30, 2008.

162. Mr. Zarate has suffered ongoing emotional distress as a result of Defendants' deceptive actions.

AS AND FOR A FIRST CAUSE OF ACTION

163. Plaintiffs repeat and re-allege each and every allegation contained in paragraph 1 through 162.

164. The above mentioned conduct constitutes deceptive business practices in violation of General Business Law, Article 22-A.

165. Defendants knowingly and/or willfully violated the law.

166. Plaintiffs are entitled to a judgment declaring that Defendants' conduct as described herein is false, deceptive and misleading and that it violates GBL § 349.

167. In addition, plaintiffs are acting as private attorneys general as authorized by GBL § 349(h).

168. As private attorneys general, Plaintiffs are entitled to seek and obtain injunctive relief barring Defendants from engaging in the false, deceptive and misleading conduct described in paragraph 1 through 162 to the extent that such conduct is, or has been, directed at them or other consumers in New York State.

169. Plaintiffs seek an injunction requiring Defendants to cease from engaging in the false deceptive and misleading conduct described in paragraph 1 through 162 to the extent that such conduct is, or has been, directed at them or other consumers in New York State.

170. Furthermore, each plaintiff is entitled to actual damages and/or statutory damages up to and including $1,000 for Defendants' conduct, and payment of court costs and reasonable attorneys' fees.

REQUEST FOR RELIEF

Wherefore, Plaintiffs respectfully request the following relief:

a) a declaratory judgment from this Court declaring that Defendants' actions are unlawful deceptive practices in violation of Section 349 of the General Business Law;

b) a permanent injunction requiring Defendants to cease their unlawful deceptive practices;

c) award damages in an amount to be determined by the trier of fact;

d) award reasonable attorney's fees to Catholic Migration Office and The Legal Aid Society;

e) award costs and disbursements of this action; and

f) such other relief as may be just.

Dated: April 10, 2008
Queens, New York

Respectfully submitted,

Robert McCreanor, Esq.
Sadia Rahman, Esq.
Catholic Migration Office
Immigrant Tenant Advocacy Project
47-01 Queens Boulevard, Suite 203B
Sunnyside, New York 11104
(347) 472-3500
ATTORNEYS FOR PLAINTIFFS JANICE WILLIAMS AND JORGE ORREGO

Edward Josephson, Esq.
Howard Hua, Esq.
Rachel Sun, Esq.
Queens Legal Services Corporation
89-00 Sutphin Boulevard, Suite 206
Jamaica, New York 11435
(718) 657-8611
ATTORNEYS FOR PLAINTIFFS NELIS FUENTES AND BUENAVENTURA ZARATE

Steven Banks, Attorney-in-Chief
The Legal Aid Society
April Newbauer, of Counsel
Susan Shin, of Counsel
120-46 Queens Boulevard, 3rd floor
Kew Gardens, New York 11415
(718) 286-2450
ATTORNEYS FOR PLAINTIFFS LAURO GUAMAN AND JOSE RICARDO AGUAIZA