

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

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In the Matter of the Application of
JOSHUA LARKINS and LISA LARKINS,

Index No. 451238/25

Petitioners,

For a Judgment Pursuant to Articles 78 and 3001
of the Civil Practice Law and Rules.

NEW YORK CITY HOUSING AUTHORITY,
JAMIE RUBIN, in his official capacity as
Chair of the New York City Housing Authority,

-and-

DIEGO BEEKMAN MUTUAL HOUSING ASSOCIATION HDFC,

Respondents.

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PETITIONERS' REPLY MEMORANDUM OF LAW
IN SUPPORT OF PETITION AND MOTION FOR PRELIMINARY
INJUNCTION AND CLASS CERTIFICATION

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PRELIMINARY STATEMENT

Respondent Diego Beekman asks this court to disregard the interpretive December 2024 Guidance issued by the five City and State agencies charged with administration and implementation of PHFL § 610 and instead adopt Diego Beekman’s own self-serving reading of the statute. Diego Beekman’s interpretation is utterly at odds with the statute’s intent to allow landlords of some City- and State-regulated projects to receive increased income from federal and local subsidies without placing any additional financial burden on the tenants themselves. Diego Beekman’s reading of PHFL § 610 would also violate the purposes of the Rent Stabilization Law to prevent displacement of long-term tenants and the exaction of unaffordable rents. Diego Beekman’s procedural objections to the promulgation of the December Guidance are similarly without merit.

NYCHA, while acknowledging the authority of the December 2024 Guidance, wrongly insists that its contrary interpretation of the statute was “rational when made.” NYCHA’s former policy contravened the intent of both PHFL § 610 and the Rent Stabilization Law by placing hundreds of regulated tenants at danger of displacement, and violated federal law by approving rents manifestly not “reasonable” according to HUD regulations. Contrary to NYCHA’s protestations, it has both the power and the duty to correct its own errors and prevent the eviction of tenants whom it has placed in danger.

STATEMENT OF FACTS

In April 2025, Petitioners Joshua and Lisa Larkins commenced this proceeding on behalf of a proposed City-wide class consisting of all households that receive NYCHA-administered Section 8 subsidies and whose rent shares increased as a result of NYCHA's approval of a renewal lease under PHFL § 610 (the "Class"). The Class included a proposed Subclass comprised of all tenants of Diego Beekman who executed a lease in excess of the maximum permissible rent, due to a mistaken interpretation of PHFL § 610 on the part of Diego Beekman and NYCHA (the "Subclass").

In response to the Petition, Diego Beekman interposed an affirmation by a principal of its management company, Brian Leverone, attesting that there are currently three hundred forty tenants (constituting approximately one-quarter of all Diego Beekman's tenants) who, like the Larkins, are "occupying apartments that are larger than their households." See, Leverone Affirmation, Dkt No. 25, par. 19. Since rent stabilized tenants must renew their leases at least every two years, many if not most of the 340 tenants mentioned by Mr. Leverone must have had a renewal lease processed by NYCHA sometime between June 2023, when the building's regulatory agreement was amended, and December 2024, when the new PHFL § 610 Guidance was promulgated. Under NYCHA's former unlawful policy, these tenants would have had their rent shares set at unaffordable amounts far in excess of the 30% of their income they paid prior to the application of Section 610 and face likely eviction from their long-term rent stabilized homes.

Although it is now apparent that NYCHA's erroneous interpretation of PHFL § 610 may lead to massive displacement of rent stabilized tenants in the Diego Beekman houses alone, and an unknown number of evictions in the rest of the City, NYCHA insists that it has no obligation to undo the harm it has caused, absent an order from this Court. Petitioners request such an order.

ARGUMENT

I. THE MULTI-AGENCY DECEMBER 2024 GUIDANCE CONSTITUTES A CORRECT INTERPETATION OF STATE LAW.

In December 2024, the five City and State agencies entrusted with administering Section 610 of the Private Housing Finance Law jointly issued a Guidance reaffirming HPD's consistent policy that "the law allows owners of affordable housing projects with tenant- or project-based rental assistance to collect the full rental subsidy amount, even if it is above the legal rent, *without affecting the amount the tenant has to pay.*" [emphasis added]¹ See, December 2024 Guidance, Dkt No. 12.

Diego Beekman wrongly argues that the December 2024 Guidance is "at odds" with the provisions of PHFL § 610. As explained in Petitioners' initial brief, PHFL § 610 creates a limited, narrow exception to the rent limitations in the Rent Stabilization Law by giving state or local agencies discretion to permit regulated landlords to collect rents that do not exceed "the

¹ The quoted language has appeared on HPD's website since at least October 2023. See, <https://web.archive.org/web/20231003015155/https://www.nyc.gov/site/hpd/services-and-information/phfl-section-610.page>

maximum payment standard or contract rent that the rental assistance program *may provide* for such housing accommodation.” In the context of Section 8, the maximum subsidy that NYCHA “may provide” is the *lesser* of either the standard for the number of bedrooms or the standard for the household size. *See*, 24 CFR § 982.505(c)(1).

Diego Beekman contends that the intent of the statute is to provide landlords with the maximum possible subsidized rental available to the largest possible family who might live in each apartment, even if the current, long-term rent stabilized tenants must be evicted as a result. However, the statute explicitly states that the landlord must stop collecting the higher Section 610 rent if the tenant’s rental subsidy ends for any reason. *See*, PHFL § 610(2)(3). Thus, the statute protects the right of existing tenants to remain in occupancy rather than the aspirations of the landlord to collect the maximum subsidy for each unit. The statute does *not* permit the landlord to eject a family that loses its subsidy in order to replace it with a new subsidized family who could pay the maximum amount collectible under Section 610. It would be anomalous to read the statute as allowing landlords to evict tenants like the Larkins to maximize their rental income, even though they can still pay *more* than the rent stabilized rent, while requiring the landlords to accept the bare rent stabilized amount from a family that has entirely lost its subsidy.

To the extent that the statutory language could be considered ambiguous, this court should follow the interpretation of the five City and State agencies charged with its implementation and enforcement.² Although a court need not defer to an agency on questions of

² Although Respondent NYCHA now insists that it did not participate in issuing the Guidance (see, Dkt. No. 36 at 14), its name appears prominently at the top along with its four sister agencies, and the Guidance sets forth in detail the procedures for seeking PHFL § 610 from NYCHA.

pure statutory interpretation, “an administrative agency's interpretation of the statute it is charged with implementing is entitled to varying degrees of judicial deference depending upon the extent to which the interpretation relies upon the special competence the agency is presumed to have developed in its administration of the statute.” *Matter of Rosen v. Public Empl. Relations Bd.*, 72 N.Y.2d 42, 47 (1988). Further, “where the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute [and i]f its interpretation is not irrational or unreasonable, it will be upheld.” *Kurcsics v. Merchants Mut. Ins. Co.*, 49 N.Y.2d 451, 459 (1980).

Here, interpretation of Section 610 requires not merely the aid of a legal dictionary, but a knowledge of the financial structure and policy goals governing the regulated housing projects subject to the statute, the competing needs of subsidized owners and their tenants, and the interrelationship of a panoply of tax exemptions and mortgage subsidies administered by the five agencies that promulgated the December Guidance. Under *Rosen* and *Kurcsics*, therefore, deference to the agencies is clearly appropriate.

Finally, as set forth in Petitioners’ initial brief, even if the court undertakes its own independent inquiry into the statutory meaning, the legislative history makes clear that increases under Section 610 were to be paid by the subsidy programs, not by the regulated tenants whose tenancies were protected by the RSL. See, Governor’s Bill Jacket at 6, *Introducer’s Memorandum in Support*, 2022 S.B. 7235, Ch. 685 [emphasis added] (“This bill will address the need to *maximize the benefits of rental assistance* while the subsidies are available, *without diminishing the long-term affordability of the housing* under rent stabilization.”) The legislative

history is replete with similar statements reflecting a common understanding that statutory rent increases were to be covered by the tenant's subsidy. *See*, Petitioners' Memorandum of Law, Dkt. No. 7, pp. 9 -14.

Furthermore, PHFL § 610 must be read *in pari materia* with the Rent Stabilization Law to which it constitutes only a very limited and partial exception. *See, BLF Realty Holding Corp. v. Kasher*, 299 A.D.2d 87, 93 (1st Dep't 2002). The legislature could have chosen to exempt apartments subject to Section 610 from rent stabilization entirely, but chose instead to maintain the RSL's protections for these low-income families. Paramount among the purposes of the RSL is preventing the displacement long-term tenant families. *See*, NYC Admin. Code § 26-501 (“...exorbitant and unconscionable rent increases... were causing severe hardship to tenants of such accommodations and were uprooting long-time city residents from their communities...”); *CHIP v. City of New York*, 59 F.4th 540, 556 (2d Cir. 2023) (“the RSL results in significant state- and citywide benefits—including to landlords—by preventing tenant dislocation and preserving neighborhood stability.”) Indeed, in the context of succession rights, appellate courts have repeatedly emphasized the RSL's goal of preventing displacement of tenant families. *See, Jourdain v. New York State Div. of Hous. & Cmty. Renewal*, 159 A.D.3d 41, 47 (2d Dep't 2018). In *Jourdain*, the court interpreted the RSL to prevent the eviction of a remaining family member after vacatur of the tenant of record. The same logic applies here, where the tenant of record faces displacement due to the vacatur of other members of his family that reduced his voucher size.

When enacting PHFL § 610, the legislature must be assumed to have been familiar with the purposes and provisions of the Rent Stabilization Law, which it had extensively amended only three years earlier. It would be anomalous to conclude, as Diego Beekman contends, that

the legislature intended the displacement of *hundreds* of long-term tenant families from projects like Diego Beekman, the very families Rent Stabilization was intended to protect.

The language, purpose, and legislative history of both the PHFL and RSL therefore establish that the December 2024 Guidance correctly interprets Section 610, and that rent increases are not available under the statute if they have the effect of increasing the rent shares of subsidized tenants. NYCHA's former policy was therefore unlawful and incorrect, and its miscalculation of tenant rents must be set aside as arbitrary and capricious.

Finally, although NYCHA states that it is now following the December Guidance, "recognizing HPD's position as rent regulator" (see Dkt. No. 36, at 3), it still insists that its own prior interpretation of the statute was "rational when made." *Id.*, at 6-9. NYCHA's position is absurd. A statute cannot have two opposite meanings. If NYCHA recognizes HPD's interpretation of PHFL § 610 as authoritative, it cannot also maintain that the statute meant something different prior to December 2024. Similarly absurd is NYCHA's insistence that the court must "defer" to its prior interpretation of the statute. The court cannot defer to two opposite interpretations, and so must defer to the definitive interpretation adopted by five regulatory agencies, including NYCHA.

II. NYCHA HAS BOTH THE POWER AND THE LEGAL DUTY TO CORRECT TENANT RENT SHARES IT MISCALCULATED IN VIOLATION OF LAW.

Respondent NYCHA misapprehends Petitioner's request for relief against NYCHA. Petitioners seek an order from this court directing NYCHA to reverse its erroneous determination of Petitioners' rent share and the rent shares of tenants in the proposed Class. Petitioners do not seek to compel NYCHA to issue subsidy payments to Diego Beekman for the

invalid rent, in excess of the payment standard. Rather, Petitioners seek to compel NYCHA to comply with the law and set proper tenant rent shares.

In attempting to justify its prior actions, NYCHA ignores the HUD regulations that prohibit it from approving rents that are not “reasonable” in comparison to “comparable unassisted units.” 24 CFR § 982.507. HUD’s Section 8 Voucher Guidebook clarifies that “in regulated localities, rents are limited to the lesser of the PHA-determined reasonable rent or the rent controlled amount unless units leased under the voucher program are exempt from local rent control under the local rent control ordinance.” Section 8 Voucher Guidebook, Section 2.4.1, available at https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Rent%20Reasonableness_updated_Sept%202020.pdf, last visited July 2, 2025. See also, NYCHA Leased Housing Directive LHD 09-7 (“If the regulated rent (“registered rent” for rent stabilization) for new applicant or transfer rentals is less than the GOSection8 reasonable rent, the regulated rent shall be the contract rent.”)³

NYCHA wrongly suggests that federal policy promotes incentivizing tenants to move to “appropriately sized” apartments. See, NYCHA Memorandum of Law, Dkt No. 36, p. 8. However, the rent stabilization law does not permit the eviction of tenants who have more bedrooms than strictly necessary for their family size, and federal regulations permit tenants to rent apartments with additional bedrooms as long as the rent is below the payment standard for their family size. See 24 CFR 982.402(d)(2); *Jones v. Park Front Apartments, LLC* 73 A.D. 3d

³ Thus, NYCHA is wrong in claiming that reviewing the legality of proposed lease rents is “permissible but not mandatory.” See, NYCHA Memorandum of Law, Dkt No. 36, p. 5.

612 (1st Dept 2010). As in *Rosario v. Diagonal Realty LLC*, 8 N.Y.3d 755, 764 (2007), “federal law does not so occupy the field of housing law” as to divest tenants of their protections under the RSL. Indeed, NYCHA had previously set Petitioners’ rent share correctly at 30 percent of their income because the rent stabilized rent for their four-bedroom apartment was lower than the two-bedroom payment standard.

However, contrary to both federal and state law, following the enactment of PHFL § 610, NYCHA, as a pattern and practice, approved rents for rent stabilized voucher holders that exceeded the lawful rent regulated amount, but did not fall within the exception provided by the PHFL. Under federal law, such rents are not considered reasonable, and its practice of approving such rents was therefore unlawful. Statutes and regulations establishing rental amounts for Section 8 and public housing tenants are enforceable under 42 USC § 1983. *Wright v. Roanoke Redevelopment & Housing Authority*, 479 U.S. 418, 429 (1987); *DeCambre v. Brookline Hous. Auth.*, 826 F.3d 1 (1st Cir. 2016); *Johnson v. Hous. Auth. of Jefferson Parish*, 442 F.3d 356 (5th Cir. 2006). Petitioners are also entitled to mandamus relief to review and annul NYCHA’s approvals of unreasonable rents that violated state law and NYCHA’s own internal policies.⁴

NYCHA’s adoption of the December 2024 Guidance confirms that its prior practice was unlawful. NYCHA must adhere to the law, reverse its mistaken approval of unlawful contract rents and then retroactively adjust affected tenants’ Section 8 rents in conformity with federal and state law.

⁴ Contrary to NYCHA’s arguments, Petitioners would also be entitled to relief as mandamus to compel, since both PHFL § 610 and federal law give them a “clear right” to have their rents correctly calculated.

III. DIEGO BEEKMAN’S CROSS-CLAIMS MUST BE DENIED FOR FAILURE TO NAME NECESSARY PARTIES.

Respondent Diego Beekman asserts two cross-claims against NYCHA, seeking “a judgment pursuant to Article 78 of the CPLR that the PHFL § 610 Guidance is invalid.” *See*, Dkt. No. 23, pars 79 – 82. NYCHA correctly points out in its Memorandum of Law that Diego Beekman cannot maintain these claims without at a minimum joining HPD as a party, since HPD was at least the primary author of the policy, even if it was not, as NYCHA insists, its sole author. *See, Joanne S. v. Carey*, 115 A.D.2d 4, 9 (1st Dep’t 1986) (“governmental entities that are primarily responsible for the challenged policy are necessary parties”); *Mid Island Therapy Assocs., LLC v. New York State Dep’t of Educ.*, 99 A.D.3d 1082, 1083 (3d Dep’t 2012) (same).

IV. THE DECEMBER 2024 GUIDANCE WAS PROPERLY PROMULGATED.

If the court finds that HPD is not a necessary party to Diego Beekman’s cross-claims, it should still dismiss those claims because, as explained in Point I, *supra*, the December 2024 Guidance was based on a correct interpretation of the statute. Furthermore, as explained below, promulgation of the Guidance was proper in all respects.

A. The December 2024 Guidance Complied With the Public Housing Law

Diego Beekman argues that the December 2024 Guidance is invalid because NYCHA failed to file a copy with the Division of Homes and Community Renewal and obtain HCR’s approval, pursuant to Public Housing Law § 54(1). However, the December 2024 Guidance was issued not only by Respondent NYCHA, but jointly by HPD, the NYC Department of Social

Services, the NYC Housing Development Corporation, *and NYS Homes and Community Renewal (DHCR)*. See, Dkt No. 12. It would clearly exalt form over substance to require NYCHA to seek formal approval from HCR of a policy co-authored by HCR itself and of which HCR manifestly approves.

B. The December 2024 Guidance Was Not Subject to CAPA.

The City Administrative Procedure Act (CAPA) excludes from its definition of “rule” a “statement or communication of general policy, which in itself has no legal effect but is merely explanatory.” NYC Charter § 1041(5)(b). See also, State Administrative Procedure Act § 102(b)(iv). Courts find administrative directives to be interpretive statements “when they rely on and constitute reasonable interpretations of existing regulations or statutes, or merely address the type of documentation needed to establish whether a predetermined test of eligibility has been met.” *Bd. of Educ. of Kiryas Joel Vill. Union Free Sch. Dist. v. State*, 110 A.D.3d 1231, 1234 (2d Dep’t 2013). In *Kiryas Joel*, the court upheld informally promulgated Q&As defining the term “medically necessary.” Similarly, in *Elcor Health Servs., Inc. v. Novello*, 100 N.Y.2d 273, 279 (2003), the court found that certain evidentiary standards for Medicaid reimbursement were merely interpretations of existing regulations, even though they could have the effect of limiting the amount received by nursing facilities. See also, *Pharmacists Soc. of State of New York, Inc. v. Pataki*, 58 A.D.3d 924 (3d Dep’t 2009) (documentation requirement for drug reimbursements); *Cubas v. Martinez*, 8 N.Y.3d 611 (2007) (procedures for driver’s license applications). Here, as in the above cases, the 2024 Guidance simply interprets PHFL § 610 and fleshes out the bare bones requirements of the statute. The Guidance does not in any way restrict eligibility for rent

increases under Section 610, which are incorporated into landlords' regulatory agreements, but clarifies the amount that the agency "may provide" within the meaning of the statute.

Moreover, if implementation of Section 610 were required to be formally promulgated through CAPA and SAPA, then NYCHA's former policy of permitting rent increases that displace low-income families would also be a nullity, as would all rent increases approved by NYCHA pursuant to that policy. Diego Beekman would therefore be precluded from seeking more from its tenants, including the Larkins family, than the rent stabilized rents in effect prior to the first adjustment under Section 610. Diego Beekman cannot simply choose the procedure most profitable for itself, and insist that only procedures that vary from that preference must be promulgated through CAPA and SAPA.

C. HPD and its Sister Agencies Had Authority to Issue the Guidance

In issuing the December 2024 Guidance, HPD and NYCHA acted within the authority granted by the State legislature. The legislature may delegate to an administrative agency the discretion to administer the law, as long as the legislature provides standards to govern the exercise of that discretion. *See Levine v. Whalen*, 39 N.Y.2d 510, 515 (1976); *Stevens v. New York State Division of Criminal Justice Services*, 40 N.Y.3d 505 (2023). The legislature may enact statutes in "broad outline leaving to administrative officials enforcing them the duty of arranging the details." *Levine*, at 515-16 (1976) (quoting *Matter of People [International Workers Order]*, 199 Misc. 941, 972, *affd.*, 113 N.Y.S.2d 755, *affd.*, 305 N.Y. 258). In *Levine*, the Court of Appeals held that the standard created by the legislature, to protect and promote the health of New York State residents, provided enough guidance for the Department of Health to properly revoke a hospital's operating certificate. *Id.*

Similarly, here the legislature enacted Section 610 and provided standards within which the agencies may act. The legislature delegated to municipal agencies and public benefit corporations the discretion⁵ to allow owners to charge and collect a rent that “(i) does not exceed the maximum payment standard or contract rent that the rental assistance program may provide for such housing accommodation, but (ii) does exceed the legal regulated rent for the housing accommodation.” *See* PHFL § 610(1)(a). In other words, the legislature set a standard – the rent could exceed the legal regulated rent but could not exceed the maximum payment standard – within which the agencies had the discretion to act. The field in which the agencies’ discretion was to operate was appropriately limited. *See Delgado v. State* 39 N.Y. 3d 242, 253 (2012).

NYCHA is a public benefit corporation.⁶ HPD is a municipal agency. The New York City Charter explicitly authorizes the HPD to carry out the provisions of the Private Housing Finance Law. *See*, NYC Charter, Chapter 61 §1802(6)(d). The guidance issued by HPD and NYCHA does nothing more than flesh out the details of this program created by the legislature in broad strokes. HPD and NYCHA therefore acted within their authority in promulgating the December 2024 Guidance.

⁵ “... such state or municipal agency or public benefit corporation, or political subdivision of the state, *may allow* in such regulatory agreement ...” PHFL § 610(1). [emphasis added]

⁶ *See* New York City Housing Authority Annual Comprehensive Financial Report for Years Ended December 31, 2022 and 2021. Page 2. <https://www.nyc.gov/assets/nycha/downloads/pdf/NYCHA-ACFR-2022.pdf> (“The Authority, created in 1934, was chartered as a public benefits corporation under New York Public Housing Law”).

V. **THIS COURT MAY GRANT DECLARATORY AND INJUNCTIVE RELIEF IN THIS COMBINED ARTICLE 78 AND DECLARATORY JUDGMENT ACTION.**

Diego Beekman argues that this court cannot award declaratory or injunctive relief against it in this Article 78 proceeding. However, pursuant to CPLR § 103(c), “if a court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution. If the court finds it appropriate in the interests of justice, it may convert a motion into a special proceeding, or vice versa, upon such terms as may be just, including the payment of fees and costs.” Accordingly, “if it should appear that the appropriate relief may not be granted in an article 78 proceeding, the [court] has power to entertain the matter as one for a declaratory judgment.” *Concord Realty Co. v. City of New York*, 30 N.Y.2d 308, 314 (1972); *Amrhein v. Signorelli*, 153 A.D.2d 28, 31 (2d Dep’t 1989); *Application of Greene*, 88 A.D.2d 547 (1st Dep’t 1982).

In *Matter of Zuckerman v. Board of Education of City School Dist. of the City of New York*, 44 N.Y.2d 336, 343-344 (1978), the Court of Appeals stated

[a]lthough petitioners seek relief pursuant to CPLR Article 78, in this instance article 78 relief could well be inadequate and thus inappropriate ... Since they seek more than may be permitted under an article 78 proceeding (CPLR 7803), this proceeding should be and is thus converted to an action for a declaratory judgment (CPLR 103 subd. (c)) ...

Most recently, the Appellate Division in *NYCLU v. New York State Off. of Ct. Admin.*, 231 A.D.3d 549 (1st Dep’t 2024) held that

[i]n this hybrid CPLR article 78 proceeding and declaratory judgment action arising from a request for records under the Freedom of Information Law (FOIL), Supreme Court erred in denying petitioner's motion (CPLR 103 [c]). Initially,

NYCLU properly filed a notice of petition and petition/complaint, thus Supreme Court had subject matter jurisdiction over NYCLU's declaratory judgment action despite its failure to file and serve a summons (see CPLR 304 [a]). As NYCLU's timely notice of petition and petition/complaint sufficed to give notice of an intention to commence the declaratory judgment action, Supreme Court should have converted the notice of petition into a summons to permit review of NYCLU's declaratory judgment claims on the merits.

Moreover, the Court of Appeals has held that CPLR § 2001 allows courts "to correct or disregard technical defects, occurring at the commencement of an action, that do not prejudice the opposing party." *Ruffin v. Lion Corp.*, 15 N.Y.3d 578, 582 (2010). The *Ruffin* court found that the purpose of Section 2001 was "to fully foreclose dismissal of actions for technical, non-prejudicial defects." *Id.* Here, Diego Beekman was properly served with a Notice of Petition and Petition giving it notice of all claims in this proceeding,⁷ obtained a consent adjournment giving it time to answer in excess of that allowed under CPLR § 3012, and Diego Beekman in fact filed an Answer and Memorandum of Law responding to Petitioners' claims and asserting its own cross-claims. Diego Beekman thus received notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Ruffin*, 15 N.Y.3d at 582.

Diego Beekman's citation to *New York Times Co. v. City of New York Police Dep't*, 103 A.D.3d 405 (1st Dep't 2013) is not to the contrary. Although in the context of that FOIL-related litigation, the court held that the petitioners should have served a summons along with the Notice of Petition, *New York Times* must be read in harmony with the Court of Appeals' decisions in

⁷ Private corporations are proper parties to an Article 78 proceeding, thus there is no question that Petitioners obtained jurisdiction over Diego Beekman by service of the Notice of Petition and Petition. *See, Goldman v. White Plains Ctr. for Nursing Care, LLC*, 9 Misc.3d 977 (Sup. Ct. N.Y. Co. 2005) (holding that an Article 78 was proper, but converting to a plenary action in which claims can be "better resolved.")

Concord Realty and *Ruffin*, *supra*. If Petitioners, under *Concord Realty*, could serve a bare Article 78 petition yet still obtain declaratory relief, it would make no sense for such relief to be barred where the Petition pleads claims under both Article 78 and Article 30. Especially here, where there are no Statute of Limitations issues and Diego Beekman has suffered no prejudice, requiring Petitioners to file a new related plenary case against Diego Beekman would cause delay and waste judicial resources, and violate the judicial policy concerns articulated in *Ruffin*. The court should either deny Diego Beekman’s objection outright, or allow Petitioners to serve and file a summons *nunc pro tunc*.

VI. THIS COURT SHOULD CERTIFY BOTH A CITY-WIDE CLASS AND A SUBCLASS OF DIEGO BEEKMAN TENANTS.

As explained above, Diego Beekman has admitted that as many as 340 tenant families have a mismatch between their voucher size and their apartment size. Any of these families who signed renewal leases during the period June 2023 – November 2024 would have had their rents miscalculated by NYCHA. All such families now have unaffordable rent shares, and are subject to eviction in housing court either in pending proceedings, or in proceedings Diego Beekman could commence at any time. Since Diego Beekman is a private actor not subject to the government operations rule, the court should at a minimum certify a class of Diego Beekman tenants to protect these vulnerable families, most of whom would otherwise have to appear in Housing Court without counsel.

However, the court should also certify a City-wide class as requested by Petitioners. Although NYCHA asserts that it is applying the December Guidance prospectively, it has certainly “demonstrated reluctance” to correct its previous errors, even in just the Diego

Beekman project. The court cannot be assured that in the absence of a certified class, NYCHA would comb through its City-wide records to identify tenants of buildings with regulatory agreements whose Section 610 rents were miscalculated prior to December 2024.

Contrary to NYCHA's assertions, it is not necessary to join all regulated landlords in order for the Petitioner Class to obtain full relief. As explained in Point III, *supra*, NYCHA has both the power and the duty to readjust miscalculated tenant rent shares, regardless of whether the tenants' leases are amended by their landlords.

CONCLUSION

For all the above reasons, this court should grant the relief requested in the Petition, reversing NYCHA's rent determination for the named Petitioners, declaring that NYCHA's interpretation and implementation of Private Financing Housing Law Section 610 was erroneous and unlawful, certifying a class of all households that receive NYCHA-administered Section 8 subsidies and whose rent shares increased as a result of NYCHA's approval of a renewal lease under PHFL § 610, and a subclass of all class members who reside at the Diego Beekman houses, enjoining NYCHA to correct all rent determinations for the proposed Class of Section 8 voucher holders whose rent was improperly determined in violation of PHFL § 610, and issuing a declaratory judgment and an injunction requiring Diego Beekman to issue corrected leases to Petitioners and all Subclass members and to remove unlawful charges from the accounts of Petitioners and other Subclass members.

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New York, NY

Respectfully submitted,

Edward Josephson

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