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

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| REGINA ALSTON, SANDRA VAUGHN-COOKE, and FAIR HOUSING JUSTICE CENTER,<br><br>Plaintiffs,<br><br>v.<br><br>STARRETT CITY, INC. and GRENADIER REALTY CORP.,<br><br>Defendants. | Index No. 452674/2015<br><br>Hon. Shlomo Hagler<br><br>Mot. Seq. No. 2 |

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE COMPLAINT AS A MATTER OF LAW PURSUANT TO CPLR § 3211(a)(7)**

**TABLE OF CONTENTS**

**Page**

PRELIMINARY STATEMENT ..... 1

STATEMENT OF FACTS ..... 4

LEGAL STANDARD ..... 7

ARGUMENT ..... 8

I. THE PLAIN MEANING OF LOCAL LAW 10 SUPPORTS PLAINTIFFS' CLAIMS FOR SOURCE OF INCOME DISCRIMINATION BASED ON DEFENDANTS' REFUSAL TO ACCEPT LINC VOUCHERS. ..... 8

a. A FAIR READING OF LOCAL LAW 10 ALLOWS FOR A BROAD INTERPRETATION OF "LAWFUL SOURCE OF INCOME" ..... 8

b. THE LEGISLATIVE HISTORY FURTHER SUPPORTS A BROAD INTERPRETATION OF "LAWFUL SOURCE OF INCOME" ..... 12

II. THE LINC PROGRAM DOES NOT OFFEND THE PURPOSE OF THE URSTADT LAW. ..... 13

CONCLUSION ..... 17

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

*Am. Surety Co. v. Marotta*,
287 U.S. 513 (1933).....11

*Art & Fashion Grp. Corp. v. Cyclops Prod., Inc.*,
120 A.D.3d 436 (1st Dep't 2014).....3

*Asmar v. 20th & Seventh Associates, LLC*,
125 A.D.3d 563 (1st Dep't. 2015).....3

*Bracker v. Cohen*,
204 A.D.2d 115 (1st Dep't 1994).....14

*Bryant Westchester Realty Corp. v. Board of Health of the City of New York*,
91 Misc.2d 56, 397 N.Y.S.2d 322 (Sup. Ct. N.Y. Co. 1977).....15

*Cales v. New Castle Hill Realty*,
No. 10 Civ. 3426 (DAB), 2011 WL 335599 (S.D.N.Y. Jan. 31, 2011).....15, 16

*City of New York v. DHCR*,
97 N.Y.2d 216 (2001).....13

*Corlear Gardens Housing Co., Inc. v. Ramos*,
126 Misc. 416 (Sup. Ct. Bronx Co. 1984).....13

*Credit Index, LLC v. RiskWise Intl. LLC*,
192 Misc.2d 755 (Sup. Ct. N.Y. Co. 2002), *aff'd*, 296 A.D.2d 318 (1st Dep't 2002).....7

*Foley v. D'Agostino*,
21 A.D.2d 60 (1st Dep't 1964).....7

*Guggenheimer v. Ginzburg*,
43 N.Y.2d 268 (1977).....8

*Helvering v. Morgan's, Inc.*,
293 U.S. 121 (1934).....11

*Leon v. Martinez*,
84 N.Y.2d 83 (1994).....7

*In re Maidman*,
2 B.R. 569 (Bankr. S.D.N.Y. 1980), *aff'd*, 668 F.2d 682 (2d Cir. 1982).....9, 11

**TABLE OF AUTHORITIES**
**(Continued)**

**Page(s)**

*New York State Club Ass'n v. City of New York*,
69 N.Y.2d 211 (1997), *aff'd*., 487 U.S. 1 (1998).....14

*Perez v. Fisher*,
No. 02 CIV. 3443 (MBM), 2006 WL 510513 (S.D.N.Y. Mar. 1, 2006).....11

*Phillip v. Univ. of Rochester*,
316 F.3d 291 (2d Cir. 2003).....12

*Priore v. New York Yankees*,
307 A.D.2d 67 (1st Dep't 2003).....13

*Puerto Rico Mar. Shipping Auth. v. I.C.C.*,
645 F.2d 1102 (D.C. Cir. 1981).....10

*Red Hook Cold Storage Co. v. Dep't of Labor*,
295 N.Y. 1 (1945).....9

*Schreiber v. St. John's Univ.*,
84 N.Y.2d 120 (1994).....17

*Short v. Manhattan Apartments Inc.*,
916 F.Supp.2d 375 (S.D.N.Y. 2012).....11, 12

*Sokoloff v. Harriman Estates Dev. Corp.*,
96 N.Y.2d 409 (2001).....7

*Tapia v. Successful Mgmt. Corp.*,
2009 WL 2163595 (N.Y. Sup. Ct. N.Y. Co. July 20, 2009), *aff'd* 79 A.D.3d
422 (1st Dep't 2010).....2, 14, 15

*Tenuto v. Lederle Labs.*,
90 N.Y.2d 606 (1997).....7

*Timkovsky v. 56 Bennett, LLC*,
23 Misc. 3d 997 (Sup. Ct. N.Y. Co. 2009).....8, 13

*Umansky v. Masterpiece Int'l. Ltd.*,
276 A.D. 692 (2d Dep't 2000).....14

*Wetzler v. Roosevelt Raceway, Inc.*,
208 A.D.2d 120 (1st Dept. 1995).....13

## TABLE OF AUTHORITIES
**(Continued)**

**Page(s)**

**Statutes**

CPLR § 3026.....7

CPLR § 3211.....1, 7, 17

Disabilities Education Act .....10

N.Y.C. Admin. Code § 8-102 ..... *passim*

N.Y.C. Admin. Code § 8-107 .....1, 9, 11

N.Y. Stat. Law § 94 .....8

N.Y. Unconsol. Laws § 8605 ("Urstadt Law").....*passim*

**Other Authorities**

34 C.F.R. § 303.18.....10

Plaintiff Regina Alston ("Ms. Alston"), Plaintiff Sandra Vaughn-Cooke ("Ms. Vaughn-Cooke"), and Plaintiff Fair Housing Justice Center ("FHJC") (hereinafter collectively referred to as "Plaintiffs"), by and through their attorneys Mayer Brown LLP, and The Legal Aid Society ("Legal Aid"), respectfully submit this memorandum of law in opposition to Defendant Starrett City, Inc.'s and Defendant Grenadier Realty Corp.'s (hereinafter collectively referred to as "Defendants") Motion to Dismiss the Complaint As A Matter of Law Pursuant to CPLR § 3211(a)(7) (the "Motion").

## PRELIMINARY STATEMENT

Plaintiffs' causes of action are straightforward: Defendants wrongly discriminated against Plaintiffs on the basis of their lawful source of income. Plaintiff Ms. Alston (a 42-year-old mother of two), Plaintiff Ms. Vaughn-Cooke (a 64-year-old single woman currently living in a New York City homeless shelter) and Plaintiff FHJC (a non-profit organization based in Manhattan dedicated to ensuring that all people have equal access to housing opportunities) each contacted Defendants to inquire about apartment availability, and were each turned away after asking whether Defendants accepted payment assistance vouchers issued by New York City's Living in Communities ("LINC") Rental Assistance Program (the "LINC Program").

Defendants' discrimination on the basis of LINC housing assistance vouchers plainly violates Section 8-107 *et seq.* of the New York City Human Rights Law Administrative Code ("NYC Human Rights Law," or "Local Law 10"). The NYC Human Rights Law is clear: landlords such as Defendants may not refuse to rent based on *any* lawful source of income, including housing assistance vouchers such as those issued in connection with the LINC Program. Accordingly, Plaintiffs asserted claims against Defendants under the NYC Human Rights Law for source of income discrimination.

Defendants have not denied that they discriminated against Plaintiffs on the basis of their source of income. Rather, Defendants seek to dismiss Plaintiffs' claims on the grounds that (1) Section 8 vouchers are the *only* form of housing assistance paid directly to the landlord that is protected from discrimination under the NYC Human Rights Law (Defs.' Mem. of Law ("Defs.' Br.") at 17), and (2) the LINC Program (a program designed to move homeless New Yorkers from shelters into stable housing) violates the Urstadt Law, N.Y. Unconsol. Laws 8605 ("Urstadt Law") because it purportedly expands the set of buildings subject to rent control or rent stabilization (Defs.' Br. at 18).

Defendants' interpretation of the plain language of the NYC Human Rights Law is strained to the point of being absurd. The NYC Human Rights Law protects against rental discrimination based on "**any** lawful source of income" derived from "**any** form of federal, state or **local** public assistance or housing assistance **including** section 8 vouchers." N.Y.C. Admin. Code at § 8-102(25) (emphasis added). Ignoring this broad formulation, Defendants would have this Court rewrite the NYC Human Rights Law to limit the definition of "housing assistance" to Section 8 vouchers, even though the statute clearly uses them as a mere *example* of such assistance. It is not surprising that Defendants fail to cite a single case supporting their "interpretation" of the statute.

Defendants' argument based on the Urstadt Law is equally meritless, in light of well-founded precedent. Indeed, in *Tapia v. Successful Mgmt. Corp.*, the court expressly held that the Urstadt Law does not prohibit local laws, such as the NYC Human Rights Law, that promote important public policies against invidious discrimination, even if such laws impose an additional burden on landlords that is incidental to the prohibition of discrimination. No.

400563/08, 2009 WL 2163595, at *5-6 (N.Y. Sup. Ct. N.Y. Co. July 20, 2009) *aff'd*, 79 A.D.3d 422 (1st Dep't 2010).

Defendants attempt to buttress these legally incorrect positions by introducing a wide range of evidence that is both irrelevant and improper for consideration on a motion to dismiss for failure to state a claim, including, (1) the alleged financial risk associated with the long term viability of the LINC Program (Defs.' Br. at 4-6), (2) a "robocall" from Mayor Bill de Blasio to unspecified New York City landlords offering LINC participation incentive payments (Defs.' Br. at 8), (3) articles published by The New York Times and BKLYNR, in 2008 and 2014 respectively, allegedly offering praise to Defendants (Defs.' Br. at 9), and (4) a publicly available report previously issued by Plaintiff FHJC examining Local Law 10 (Defs.' Br. at 3).

This extrinsic evidence and the arguments related thereto have no bearing on the question of whether Plaintiffs have adequately pleaded causes of action for source of income discrimination. Moreover, none of the evidence offered in support of these arguments disproves any of Plaintiffs' factual allegations or otherwise shows that Plaintiffs have no causes of action as a matter of law. As such, this evidence (submitted in the form of affidavits and exhibits thereto) is not valid for the purpose of determining the validity of the Complaint ("Compl."). *See Asmar v. 20th & Seventh Associates, LLC*, 125 A.D.3d 563, 564 (1st Dep't. 2015) (holding that an affidavit received on a motion to dismiss should not be considered for the purpose of determining whether there is evidentiary support for the complaint since it did nothing more than assert the inaccuracy of the allegations in the complaint and did not conclusively establish a defense to the asserted claims as a matter of law); *Art & Fashion Grp. Corp. v. Cyclops Prod., Inc.*, 120 A.D.3d 436, 438, (1st Dep't 2014) (holding that affidavits which do no more than assert

the inaccuracy of plaintiffs' allegations cannot be considered, and denying dismissal where other submissions did not conclusively establish a defense as a matter of law).

Finally, Defendants' repeated hyperbolic statements about the "frivolousness" of this action and strained policy arguments are similarly irrelevant and ineligible for consideration on a motion to dismiss. In short, Defendants argue that they should be permitted to ignore the anti-discrimination provisions of the NYC Human Rights Law because they have unilaterally decided that the City's new housing assistance vouchers do not yet have the familiarity that Section 8 vouchers do. Needless to say, landlords cannot pick and choose which anti-discrimination provisions they follow. The NYC Human Rights Law could not be more clear: Defendants are not permitted to discriminate against housing applicants on the basis of lawful income sources, including locally created programs such as LINC. Accordingly, Defendants' motion to dismiss should be denied.

## STATEMENT OF FACTS

As conceded by Defendants, the facts alleged in the Complaint must be accepted as true for purposes of this Motion. Defs.' Br. at 2.

The Commissioner of the New York City Human Resources Administration ("HRA") created the LINC Program in a joint effort with the Commissioner of the New York City Department of Homeless Services ("DHS") in order to implement Mayor Bill de Blasio's priority of moving homeless New Yorkers from shelters into stable housing. Compl. at ¶ 1. There are six versions of the LINC Program designed to meet the varied needs of families and single adults. *Id*.

The positive impact of permanent housing in the lives of these families is well-documented. *Id*. at ¶ 2. The LINC Program also serves the taxpayers of New York by moving residents of publicly-funded shelters into permanent housing, greatly reducing the government's

monthly costs. *Id.* The LINC Program gives an invaluable foothold to these New Yorkers who are attempting to move away from the shelter system and establish stable, independent lives in their own apartments. *Id*.

On or about February 1, 2015, Ms. Alston called Spring Creek Towers to inquire about a two-bedroom apartment that Ms. Alston saw advertised on Spring Creek Towers' website. *Id*. at ¶ 6. At the time, Ms. Alston and her family, including her domestic partner and two children, were homeless and residing in an emergency shelter operated by a contractor of DHS. *Id*. After mentioning that she would be relying on the LINC Program, a Spring Creek Towers representative told Ms. Alston that Spring Creek Towers does not accept LINC vouchers. *Id*.

On or about July 24, 2015, Ms. Vaughn-Cooke called Spring Creek Towers to inquire about available one-bedroom apartments. Vaughn-Cooke Aff. at ¶ 8. After asking whether Spring Creek Towers accepts LINC vouchers, a Spring Creek Towers representative told Ms. Vaughn-Cooke that Spring Creek Towers does not accept LINC vouchers. *Id*.

Upon first learning about Defendants' illicit practices, in or around March 2015, FHJC assigned "testers" to call Spring Creek Towers and inquire about the availability of rental units. Compl. at ¶ 8. A tester is an individual who works for FHJC and contacts housing providers to express interest in renting an apartment to gather information about whether discriminatory factors are relied upon by the realtor or landlord in rental decisions. Freiberg Aff. at ¶ 4. Specifically, FHJC assigned testers to contact Spring Creek Towers' representatives, determine if apartments were available, and ascertain whether such apartments could be rented using the LINC Program. *Id*. at ¶ 7.

Spring Creek Towers' agents informed FHJC testers that the pertinent apartments were indeed available, but explicitly and openly announced to the testers that Spring Creek Towers

does not accept the LINC Program. *See id*. at ¶ 8-10, 12; *cf. id*. at ¶ 13. *See also* Compl. at ¶ 49-83. The statements made by Spring Creek Towers' representatives are unambiguous. One agent of Spring Creek Towers declared, "we don't take the LINC Program" and explained that "LINC is a new program that just came out last year; we do not take that program." Compl. at ¶ 59. In response to a tester's inquiry if Spring Creek Towers accepted LINC vouchers, another agent of Spring Creek Towers plainly answered, "No, we don't." *Id*. at ¶ 71.

Each of these examples is an overt expression of discrimination on the basis of a lawful source of income—the LINC Program—of the sort that the New York City Human Rights Law expressly prohibits. Defendants' discriminatory conduct directly prevented Ms. Alston and Ms. Vaughn-Cooke from renting suitable apartments.

As a result of this discrimination, Ms. Alston was forced to remain with her family in a crowded, unsanitary shelter at government expense. *Id*. at ¶ 12. Thereafter, Ms. Alston moved her family to public housing because it allowed her family to leave the shelter as soon as possible even though Ms. Alston would have preferred to live at Spring Creek Towers. *Id*. Ms. Alston was not given a choice of public housing units, and she and her family presently reside in the one unit they were offered. *Id*.

Furthermore, as a result of Spring Creek Towers' discriminatory conduct, Ms. Vaughn-Cooke has been forced to remain in a crowded, unsanitary shelter at government expense. *Id*. at ¶ 13.

On August 26th, 2015, Plaintiffs (1) commenced this action seeking to remedy Ms. Alston's and Ms. Vaughn-Cooke's unlawful treatment and compensate them for the mental and physical suffering they have endured because of Defendants' flagrant violation of the law, and

(2) filed an application for a preliminary injunction seeking to have Plaintiff Ms. Vaughn-Cooke's housing application processed at the earliest possible time.

On September 4th, 2015, this Court entered an Order to Show Cause scheduling a hearing for September 14th for Defendants to show cause why judgment should not be made directing Defendants to process and respond to Plaintiff Ms. Vaughn-Cooke's application for an apartment notwithstanding the basis of her income, including her intention to use a New York City government housing subsidy to pay for such an apartment, and such other relief as this Court may deem proper. The hearing on that motion has since been adjourned to December 14, 2015.

On October 13th, 2015, Defendants filed the instant Motion.

## LEGAL STANDARD

On a motion to dismiss pursuant to CPLR 3211, the court must "accept as true the facts alleged in the complaint and submissions in opposition to the motion, accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory." *Sokoloff v. Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 414 (2001) (citing *Tenuto v. Lederle Labs.*, 90 N.Y.2d 606, 609-10 (1997)); *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). Defendants' Motion must be denied "if the plaintiff is entitled to recovery based upon any reasonable view of the stated facts." *Credit Index, LLC v. RiskWise Intl. LLC*, 192 Misc.2d 755, 759 (Sup. Ct. N.Y. Co. 2002), *aff'd*, 296 A.D.2d 318 (1st Dep't 2002).

When considering a motion to dismiss under CPLR 3211, the complaint must be afforded a liberal construction. *See* CPLR § 3026 (2009); *see also Foley v. D'Agostino*, 21 A.D.2d 60, 65 (1st Dep't 1964). The *sole* criterion in deciding such a motion "is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail."

*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (1977) (internal citations omitted). Since Plaintiffs have adequately pleaded valid claims for income discrimination, Defendants' Motion should be denied.

## ARGUMENT

### I. THE PLAIN MEANING OF LOCAL LAW 10 SUPPORTS PLAINTIFFS' CLAIMS FOR SOURCE OF INCOME DISCRIMINATION BASED ON DEFENDANTS' REFUSAL TO ACCEPT LINC VOUCHERS.

Defendants concede that the LINC Program, like HUD Section 8, is a form of housing assistance wherein the funds are paid directly to the landlord. Defs.' Br. at 17. Their argument for excluding LINC from the definition of "lawful source of income" boils down to the following supposed premises: (1) "income" is normally defined as "money received directly by the tenant," *id*. at 16, and (2) by mentioning only Section 8 vouchers, the legislature must have intended to restrict the definition of "housing assistance" to only one exception (*i.e.*, Section 8 vouchers) to the usual tenant-directed definition of income, *id*. at 17. But such a reading is absurd: the construction advocated by Defendants contravenes the plain meaning of the text, and Defendants do not attempt to explain what possible reason the governing body would have had to confine the definition of "housing assistance" to only one example of landlord-directed public assistance.

#### a. A FAIR READING OF LOCAL LAW 10 ALLOWS FOR A BROAD INTERPRETATION OF "LAWFUL SOURCE OF INCOME"

The plain meaning of Local Law 10 supports the notion that the LINC Program should be construed as a "lawful source of income." Legislative intent should be "ascertained from the words and language used, and the statutory language is generally construed according to its natural and most obvious sense, without resorting to an artificial or forced construction." N.Y. Stat. Law § 94 (McKinney). *Accord*. *Timkovsky v. 56 Bennett, LLC*, 23 Misc. 3d 997, 1001

(Sup. Ct. N.Y. Co. 2009) ("The text of a statute is the clearest indicator of legislative intent, and the words of a statute should be given their plain meaning.") (citation omitted).

Local Law 10, on its face, is crystal clear. The law prohibits any owner or managing agent or other person "having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation" from discriminating against anyone seeking to rent or purchase real estate, based on the individual's "lawful source of income." N.Y.C. Admin. Code § 8-107(5)(a)(1).[1] As Defendants correctly note, the term "lawful source of income" "shall include income derived from social security, or any form of federal, state or local public assistance or housing assistance **including** section 8 vouchers." N.Y.C. Admin. Code at § 8-102(25) (emphasis added).

Though Defendants dedicate nearly two and a half pages of their Motion to interpreting the phrase "source of income," conspicuously absent from their analysis is any discussion whatsoever of the term "including." In common parlance, and in statutory interpretation, the phrase "including" is used as a means to provide examples, to demonstrate an enlargement, and to signify non-exclusivity—not the opposite. *See, e.g., Red Hook Cold Storage Co. v. Dep't of Labor*, 295 N.Y. 1, 8 (1945) (Including "may be used to show the meaning of the defined word by listing some of the things meant to be referred to, but *not* by such listing excluding others of the same kind.") (emphasis added); *In re Maidman*, 2 B.R. 569, 575 (Bankr. S.D.N.Y. 1980), *aff'd*, 668 F.2d 682 (2d Cir. 1982)) ("[W]hen the verb 'include' is utilized in a definitional section, it is generally improper, as does Compass [the party who had moved to dismiss] here, to conclude that entities not specifically enumerated in the definition . . . are to be excluded.")

[1]Local Law 10 also prohibits any owner or managing agent or other person "having the right to sell rent or lease or approve the sale, rental or lease of a housing accommodation" from declaring or causing to be declared, either directly or indirectly, discriminatory statements against anyone seeking to rent or purchase real estate based on the individual's lawful source of income. N.Y.C. Admin. Code § 8-107(5)(a)(3).

(citation omitted); *Puerto Rico Mar. Shipping Auth. v. I.C.C.*, 645 F.2d 1102, 1112 n.26 (D.C. Cir. 1981) (it is "hornbook law" that the use of the word "including" indicates a list that is "illustrative, not exclusive") (citation omitted); *cf.* Disabilities Education Act, 34 C.F.R. § 303.18 (definition of "Include; including") ("Include or including means that the items named are not all of the possible items that are covered, whether like or unlike the ones named."). Given its plain meaning in the context of Local Law 10, the word "including" indicates that Section 8 vouchers are but one example of a "form of federal, state or local public assistance or housing assistance" landlords may not reject. That Section 8 vouchers are specifically mentioned in the statute serves to erase any doubt as to whether or not they qualify as such assistance. Their inclusion does not, however, exclude *all other forms of assistance* from the definition of "public assistance or housing assistance."[2]

Analyzing Local Law 10's definition section in its entirety is instructive. That section uses the phrase "include," "includes," or "including" 23 times to modify one of the terms therein. *See* N.Y.C. Admin. Code § 8-102. In the vast majority of those instances, the term is used to enlarge or to demonstrate examples.[3] In contrast, the statute uses the word "mean" or "means" no fewer than 18 times in defining certain terms. *Id*. In each of those instances, the particular term is defined with specificity and exclusivity.[4]

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[2]The statutory construction doctrine that Defendants invoke, *Expressum Facit Cessare Tacitum* ("what is expressed makes what is implied silent"), is inapplicable. That principle disfavors implying a new requirement in extant statutory language. Here, Plaintiffs are appropriately interpreting the express language of the statute. By ignoring the term "including," it is Defendants who are implying a new, imagined limitation into the statute (*i.e.*, that only discrimination against Section 8-based income is prohibited).

[3]*See*, *e.g.*, N.Y.C. Admin. Code § 8-102(2) ("The term 'employment agency' **includes** any person undertaking to procure employees or opportunities to work.") (emphasis added); *id*. at § 8-102(7) ("The term 'national origin' shall, for the purposes of this chapter, **include** 'ancestry.'") (emphasis added).

[4]*See*, *e.g.*, *id*. at § 8-102(19) ("The term 'occupation' **means** any lawful vocation, trade, profession or field of specialization.") (emphasis added); *id*. at § 8-102(20) ("The term 'sexual orientation' **means** heterosexuality, homosexuality, or bisexuality.") (emphasis added).

The difference between defining a phrase as "including" something, on one hand, and as "meaning" something, on the other hand, makes all the difference. "Generally the phrase 'shall mean' is a phrase of limitation and restriction as opposed to 'shall include,' which is a phrase of enlargement and extension." *Perez v. Fisher*, No. 02 CIV. 3443 (MBM), 2006 WL 510513, at *7 (S.D.N.Y. Mar. 1, 2006) (citing *Am. Surety Co. v. Marotta*, 287 U.S. 513, 517 (1933)); *Matter of Maidman*, 2 B.R. at 575. As the United States Supreme Court has recognized, "[t]he natural distinction would be that where 'means' is employed, the term and its definition are to be interchangeable equivalents, and that the verb 'includes' imports a general class, some of whose particular instances are those specified in the definition . . . . [T]he particular is not necessarily a substitute for the general term, excluding more general meanings included within its scope." *Helvering v. Morgan's, Inc.*, 293 U.S. 121, 126 n.1 (1934). If the New York City Council had intended to define "lawful source of income" so as to refer to Section 8 vouchers exclusively, it could have affirmatively stated that the phrase "means" Section 8 vouchers, or, at the very least, it could have used a more restrictive formulation of the term "include."[5] Pointedly, it did not do so. The conclusion to be drawn is that Section 8 vouchers are but one example—though not the only type—of a "lawful source of income" to be protected under the statute.

Indeed, other courts have found source of income discrimination claims under the Human Rights Law outside of the Section 8 context. In *Short v. Manhattan Apartments Inc.*, plaintiff Short was receiving rental housing assistance from New York City's HIV/AIDS Service Administration ("HASA"). 916 F.Supp.2d 375 (S.D.N.Y. 2012) at 381-83. The court determined that plaintiff's direct evidence of source of income discrimination was buttressed by FHJC's unequivocal audio recordings, which amounted to a "smoking gun" that defendants

[5]*See, e.g., id.* at § 8-102(4) ("The term 'unlawful discriminatory practice' ***includes only*** those practices specified in sections 8-107 and 8-107.1 of this chapter.") (emphasis added); *id.* at § 8-102(5) ("the term 'employer' ***does not include*** any employer with fewer than four persons in his or her employ") (emphasis added).

violated the New York City Human Rights Law. *Id.* at 396. Although the court dismissed plaintiff's Fair Housing Act disability discrimination claims, it used its discretion to maintain jurisdiction over the source of income discrimination claim and ruled in favor of the plaintiff. *Id.* at 396-400.

### b. THE LEGISLATIVE HISTORY FURTHER SUPPORTS A BROAD INTERPRETATION OF "LAWFUL SOURCE OF INCOME"

"If a statute is clear on its face, a court is not permitted to use other interpretative tools, including legislative history, to discern the statute's meaning." *Phillip v. Univ. of Rochester*, 316 F.3d 291, 297 (2d Cir. 2003). Nevertheless, Defendants' citation to the legislative history of Local Law 10 further supports Plaintiffs' reading of the statute. According to that history, the New York City Council was concerned about landlords who refused to offer available units because of the source of income that some tenants planned to use to pay the rent. *See* Ditlow Aff., Ex. H. "In particular," the Council noted, "studies have shown that landlords discriminate against holders of Section 8 vouchers because of prejudices they hold about voucher holders." *Id*.

The 2008 amendments to Local Law 10 were meant to address the discrimination faced by tenants from landlords who held prejudices about "voucher holders." The Council used the term "[i]n particular" to demonstrate that those with HUD Section 8 vouchers were *examples* of tenants who were being discriminated against by landlords. The same can be said now of those with other types of rent vouchers, including the LINC Program.[6]

[6]It should be noted that the LINC program had not yet been established at the time the 2008 amendments were drafted. Defendants' contention – that "[a]t no time since 2008 has Local Law 10 been amended to include any other housing assistance subsidy other than HUD Section 8," Defs.' Br. at 7 – is a red herring. After all, there was no need to enumerate other forms of subsidies within the statutory definition of housing assistance. As discussed *supra*, the legislature recognized the need for flexibility in relation to programs that might arise in the future by using the word "including" rather than "meaning."

Defendants strain to draw "logical inferences" from the legislative history, Defs.' Br. at 17, but their conclusions are anything but logical. There is simply no sensible explanation for why the Council would single out Section 8 vouchers as "the only form of housing assistance paid directly to the landlord that is protected from discrimination." *Id*. (emphasis in original). This interpretation "would be inconsistent with the purpose of Local Law 10—to prevent discrimination based on any 'lawful source of income." *Timkovsky,* 23 Misc. 3d at 1003. It would make no sense to limit the definition of "housing assistance" in an anti-discrimination law to a single housing program, while at the same time identifying three possible public sources for housing assistance income (city, state or federal). N.Y.C. Admin. Code § 8-102(25). Defendants' reading of the legislative history is patently absurd. *Cf. Timkovsky,* 23 Misc. 2d at 1001 ("Moreover, courts should not construe statutes, rules or regulations in a manner which would lead to 'absurd and unexpected consequences.'") (quoting *Wetzler v. Roosevelt Raceway, Inc.*, 208 A.D.2d 120, 129 (1st Dept. 1995)).

## II. THE LINC PROGRAM DOES NOT OFFEND THE PURPOSE OF THE URSTADT LAW.

The Urstadt Law, N.Y. Unconsol. Laws 8605, was enacted in 1971 primarily to "check City *attempts* . . . to expand the set of buildings subject to rent control or rent stabilization." *City of New York v. DHCR*, 97 N.Y.2d 216, 227 (2001) (emphasis added). It is well settled that the Urstadt Law does not prevent New York City from adopting laws that provide additional protections to tenants without restricting rents or subjecting additional units to rent regulation. *See Corlear Gardens Housing Co., Inc. v. Ramos,* 126 Misc. 416 (Sup. Ct. Bronx Co. 1984) (Urstadt does not bar City law protecting pet owners); *City of New York,* 97 N.Y.2d 216 (Urstadt does not preclude change in City tax valuation methods). In addition, New York courts have repeatedly held that the City is not precluded from enacting anti-discrimination provisions more

stringent than those found in state law. *See, e.g.*, *Priore v. New York Yankees*, 307 A.D.2d 67 (1st Dep't 2003) (State Human Rights Law has *not* preempted the field of anti-discrimination legislation vis-à-vis local governments) (emphasis added); *Umansky v. Masterpiece Int'l. Ltd.*, 276 A.D. 692 (2d Dep't 2000) (even though recovery is not available under the New York State Human Rights Laws, a city still retains the authority to give a plaintiff the ability to bring a cause of action alleging unlawful discrimination on the basis of disability); *Bracker v. Cohen*, 204 A.D.2d 115 (1st Dep't 1994) (the city had the authority to create a private right of action for unlawful sex discrimination because State Human Rights Law was not intended to preempt the field of antidiscrimination litigation); *New York State Club Ass'n v. City of New York*, 69 N.Y.2d 211 (1997) (the State has not preempted the field of antidiscrimination legislation by enacting the State Human Rights Law), *aff'd.*, 487 U.S. 1 (1998).

Nevertheless, Defendants argue, without support, that the LINC Program—a program designed to move homeless families and single adults from shelters into stable housing—is an attempt to expand the set of buildings subject to rent control or rent stabilization, and therefore, offends the objective of the Urstadt Law. Defs.' Br. at 19. This Court rejected an almost identical argument in *Tapia v. Successful Mgmt. Corp*, holding that "[t]here is no authority that [the Urstadt] law prohibits local legislation that promotes the important public policy against invidious discrimination." *Tapia v. Successful Mgmt. Corp.*, 2009 WL 2163595, at *5 (N.Y. Sup. Ct. N.Y. Co. July 20, 2009) (Friedman, J.S.C.), *aff'd* 79 A.D.3d 422 (1st Dep't 2010).

In *Tapia*, plaintiffs, who were low-income tenants, sought a judgment declaring that defendant landlords were required to accept Section 8 vouchers to supplement plaintiffs' rental payments. 2009 WL 2163595, at *1. The landlords argued that Local Law 10 was preempted by the Urstadt Law. *Id.* at *5. The court rejected this argument because the landlords' acceptance

of the tenants' Section 8 vouchers would have no impact in expanding the buildings subject to the rent stabilization law or expanding regulation under the rent laws, and thus would not offend the objective of the Urstadt Law. *Id*. Further, the court explained, although the anti-discrimination clause of Local Law 10 may impose an additional burden on landlords, the burden is incidental to the prohibition of discrimination. *Id*. at *6. The same holds true here.

Indeed, the Court in *Tapia* cited *Bryant Westchester Realty Corp. v. Board of Health of the City of New York*, 91 Misc.2d 56, 397 N.Y.S.2d 322 (Sup. Ct. N.Y. Co. 1977), which rejected a landlord's argument that a City law requiring the protection of children by the installation of window guards constituted a more "stringent" regulation in violation of the Urstadt Law. The court explained that the Urstadt law was "not intended to restrict a municipality in adopting public safety legislation or regulations for purposes other than rent regulation even though more stringent than those in effect prior to 1971, and even though they may affect rent controlled housing." *Id*., 91 Misc.2d at 59.

*Cales v. New Castle Hill Realty*, No. 10 Civ. 3426 (DAB), 2011 WL 335599, at *1 (S.D.N.Y. Jan. 31, 2011) is similarly instructive. In *Cales*, Plaintiff FHJC conducted a study of apartments advertised for rent online and found numerous advertisements posted by defendant Bayside N.Y. homes LLC ("Bayside") that indicated the apartments were not available to people using a New York City rental subsidy. *Id*. at *2. In its motion to dismiss, Bayside argued that it declined to participate in government programs for non-discriminatory reasons, such as a desire to avoid the administrative burdens imposed by those programs. *Id*. at *5. The court denied the motion to dismiss because New York courts interpreting Local Law 10 have consistently held that landlords and agents cannot avoid liability for refusing to participate in government housing programs by claiming that the terms of or burdens imposed by a voucher program are

undesirable. *Id.* The court found that defendant's assertion of non-discriminatory intent could not overcome the presumption of discrimination created by plaintiffs' prima facie showing of housing discrimination. *Id.*

Ignoring the holding in *Cales,* Defendants attempt to justify their discriminatory behavior by offering purportedly non-discriminatory reasons for refusing to accept the LINC Program. For instance, Defendants insinuate that they do not accept the LINC Program because it could be terminated in a year or in three years. Defs.' Br. at 19, 20. However, future uncertainty is not a valid justification to discriminate against Plaintiffs. After all, a tenant who does not receive LINC vouchers could lose his or her job within the same time span. Similarly, funding for the Section 8 program itself is subject to the whims of Congress. Consistent with *Cales,* Defendants' purported justifications for not accepting the LINC Program are insufficient to overcome Plaintiffs' *prima facie* showing of housing discrimination.

In addition to misconstruing the goal of the LINC Program and misapplying the Urstadt Law, Defendants argue that public policy is served by allowing them to discriminate against Plaintiffs. Defs.' Br. at 20. To the contrary, the Commissioner of the New York City HRA specifically created the LINC Program in a joint effort with the Commissioner of the New York City DHS in order to implement Mayor de Blasio's priority of moving families from shelters into stable housing. Compl. at ¶ 1. Yet Defendants maintain that public policy is served by their refusal to accept the LINC Program from applicants residing in homeless shelters so that they can avoid the alleged risks associated with the relatively new LINC Program. Defs.' Br. at 20. This argument invites a dangerous precedent whereby landlords may discriminate against tenants based on their preference of available public assistance programs. As such, accepting

Defendants' argument would directly contravene the State's "fundamental public policy against discrimination." *Schreiber v. St. John's Univ.*, 84 N.Y.2d 120, 125 (1994).

## CONCLUSION

In short, Defendants cannot avoid liability for their discrimination against Plaintiffs on the basis of Plaintiffs' proposed use of LINC vouchers as a lawful source of income. For all of the foregoing reasons, Defendants' Motion to Dismiss the Complaint as A Matter of Law Pursuant to CPLR § 3211(a)(7) should be denied in its entirety.

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