To be argued
By: FREDERICK A. BRODIE
10 minutes requested

Supreme Court of the State of New York
Appellate Division – Third Department

In the Matter of the Application of

GUI ZHU CHEN, YA YUN LI, MARIA RODRIGUEZ, GUI HUA SONG, and CHUN FENG ZHUANG,

On behalf of themselves and all others similarly situated,

No. CV-24-2037
No. CV-25-0784

Petitioners-Respondents,

v.

ROBERTA REARDON, as Commissioner of the New York State Department of Labor,

Respondent-Appellant.

APPELLANT'S REPLY BRIEF

LETITIA JAMES
Attorney General
State of New York
Attorney for Appellant
The Capitol
Albany, New York 12224
(518) 776-2317
Frederick.Brodie@ag.ny.gov

ANDREA OSER
Deputy Solicitor General
FREDERICK A. BRODIE
Assistant Solicitor General
of Counsel

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PRELIMINARY STATEMENT

Under Labor Law § 196(2), the Department of Labor (DOL) is "vested with discretion" to conduct investigations. As the opening brief in this appeal demonstrates, Supreme Court overstepped its bounds by ordering DOL to reopen investigations that, in a reasonable exercise of prosecutorial discretion, the agency had decided to close.

In response, petitioners cite no other case in which a court overrode an agency's discretionary decision not to investigate an alleged regulatory violation. We have found no such case, either. Members of the public—including petitioners—cannot hijack DOL's enforcement discretion to advance their own interests. SAPA does not provide a vehicle for doing so because an agency's discretionary decision not to continue an investigation, even in a class of cases, does not constitute a rule for purposes of SAPA: it is not legally enforceable and confers no rights, but rather could be altered tomorrow.

Petitioners' contrary position would risk regulatory paralysis. As DOL's opening brief explained, freezing agencies' enforcement priorities in promulgated rules—as Supreme Court required here—would alert potential violators about situations in which enforcement would be

unlikely and thereby provide further incentive to take illegal action. Conversely, agencies would be unable to adjust their enforcement priorities without first promulgating a regulatory amendment using SAPA's lengthy notice and comment process.

This Court should consequently reverse Supreme Court's SAPA ruling (the Merits Order) and vacate its order regarding class certification (the Class Certification Order).

ARGUMENT

POINT I

DOL'S CLOSURE OF INVESTIGATIONS WAS NOT A RULE REQUIRING COMPLIANCE WITH SAPA

A. In Closing Its Investigations of Petitioners' Claims, DOL Exercised the Enforcement Discretion Conferred on It by Statute.

Petitioners concede that, under Labor Law § 196(2), DOL has discretion to decide which cases to investigate. (*See* Pet. Br. at 2.) Petitioners nonetheless assert that SAPA contains no exception for exercises of enforcement discretion. (*See* Pet. Br. at 24.) But exercises of enforcement discretion are not "fixed, general principle[s] to be applied by an administrative agency without regard to other facts and circumstances"—the

criterion that the Court of Appeals uses to differentiate rules from other actions. *Matter of Schwartfigure v. Hartnett,* 83 N.Y.2d 296, 301 (1994) (internal quotation marks and citation omitted) (employing criterion); *see also Matter of Pallette Stone Corp. v. State of New York Office of General Services*, 245 A.D.2d 756, 758 (3d Dep't 1997) (where applicable standards allowed for discretion in granting post-bid price reductions for multiple-award contracts, agency's exercise of that discretion did not require promulgation of rule).

Indeed, the Court of Appeals expressly distinguished rulemaking from exercises of discretion in *Matter of Alca Indus., Inc. v. Delaney*, 92 N.Y.2d 775 (1999), a case on which petitioners rely (*see* Pet. Br. at 2, 20-21). The Court held there that the withdrawal criteria in a bid advertisement did not constitute a rule under SAPA, explaining that the agency "was not acting in its quasi-legislative rule-making capacity when it decided to include the withdrawal criteria in its bid advertisement for this project, but rather in its discretionary capacity." *Id.* at 779.

DOL similarly acted in its discretionary capacity here. "[A]n agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise." *Fresh Air for the*

Eastside, Inc. v. State, 229 A.D.3d 1217, 1219 (4th Dep't 2024) (internal quotation marks and citation omitted), *app. dismissed*, 42 N.Y.3d 1084 (2025), *lv. denied,* 44 N.Y.3d 907 (2025). Such a decision thus necessarily involves an exercise of discretion.

And here, Supreme Court improperly interfered with DOL's exercise of that discretion. Supreme Court may not "usurp the administrative function by directing the agency to proceed in a specific manner, which is within the jurisdiction and discretion of the administrative body in the first instance." *See Matter of Steen v. Governor's Office of Empl. Relations,* 1 A.D.3d 644, 645 (3d Dep't 2003) (internal quotation marks and citation omitted).[1] As the Court of Appeals explained in *Gaynor v. Rockefeller*: "It is the settled policy of the courts not to review the exercise of discretion by public officials in the enforcement of State statutes, in the absence of a clear violation of some constitutional mandate." 15 N.Y.2d 120, 131 (1965). And no such violation is alleged here.

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[1] *Accord Matter of Capece v. Schultz,* 117 A.D.3d 1045, 1047 (2d Dep't 2014); *Burke's Auto Body v. Ameruso,* 113 A.D.2d 198, 200-01 (1st Dep't 1985).

Thus, private parties, however sincerely motivated, may not interpose themselves and the courts into "questions of judgment, discretion, allocation of resources and priorities," which are lodged in administrative agencies. *Jones v. Beame,* 45 N.Y.2d 402, 407 (1978) (internal quotation marks and citation omitted). Yet that is precisely what petitioners seek to do here.

B. DOL Did Not Create an Unpromulgated Rule by Closing a Category of Investigations.

Petitioners argue that DOL was required to follow SAPA's rulemaking requirements because its exercises of discretion established a "pattern or course of conduct for the future." (Pet. Br. at 2, 21.) But those exercises of discretion did not bind DOL in future cases. As DOL's opening brief explained (at 29, 32), DOL remains free to change course and redouble its enforcement efforts if it finds that circumstances justify such action. DOL's decision on how to allocate enforcement resources thus neither created nor extinguished rights in petitioners, their employers, or the general public.

To the extent that DOL's decision charted a course for the future, DOL still was not required to promulgate its decision as a rule. Recent

law from the New York Court of Appeals confirms the point. *Matter of LL 410 E. 78th St. LLC v. Div. of Housing & Community Renewal,* 44 N.Y.3d 232 (2025), involved 9 N.Y.C.R.R. § 2528.3(c), a regulation of the Division of Housing and Community Renewal (DHCR) authorizing an owner to amend a prior registration statement for rent-stabilized housing if the owner establishes "the propriety of such amendment." The regulation did not specify when an amendment would be proper, but DHCR determined to accept only amendments that made "ministerial" changes. *Matter of LL 410,* 44 N.Y.3d at 239-40. Even though that determination affected all owners seeking in the future to amend a prior registration statement, the Court of Appeals sustained the determination as a rational exercise of discretion. *Id.* at 234-35, 242. And it did so notwithstanding the argument of two dissenting judges that DHCR's determination should have been promulgated as a rule. *See id.* at 256 (Wilson, C.J. and Halligan, J., dissenting).

Petitioners also fail to respond to the argument in DOL's opening brief (at 33-36) that its process of deciding whether a complaint fell into the group of investigations to be closed in fact involved an individualized inquiry. Before closing an investigation of a home care aide's complaint,

DOL necessarily determined—on an individual basis—whether the home care aide belonged to a union; whether the union brought a grievance that covered the home care aide's claim; whether the claim involved retaliation; and when the claim arose.

Petitioners nevertheless attempt to distinguish between discretionary decisions affecting an individual case (which they acknowledge are not rules) and discretionary decisions affecting classes of cases (which they claim require a promulgated rule). (*See* Pet. Br. at 19-21, 27.) Supreme Court made the same distinction. (R16.) But it cannot be the law that any discretionary enforcement decision made by an agency that governs more than one specific case would violate SAPA and be subject to nullification under article 78.

The distinction between discretion exercised in one case and discretion exercised in multiple cases collapses under scrutiny. Under petitioners'—and Supreme Court's—approach, DOL could simply redo the same analysis multiple times, once for each complaining home care aide, and thereby not violate SAPA. The statute does not require DOL to undertake such a time-consuming and pointless exercise. If an agency can exercise its discretion to discontinue the investigation of one claim,

it surely can do so for two similar claims at the same time. And if an agency can exercise its discretion as to two similar claims at once, it should also be able to act in a discretionary manner as to a larger group of similar claims.

Here, petitioners do not deny that their claims are the same in material respects. In fact, in support of class certification, petitioners assert that their claims and those of the putative class are "identical" (Sup. Ct. NYSCEF #66 at 4), and Supreme Court so found (R33). DOL should therefore be able to exercise its discretion on those claims as a group.

Case law does not support petitioner's proposed distinction between individual exercises of discretion and exercises of discretion affecting a group of claims, either. Petitioners' attempt to distinguish two cases discussed in DOL's opening brief (*see* DOL Br. at 28; Pet. Br. at 25-27) fails to overcome the fact that, in both of the cases in question, the court rejected the SAPA challenge to the agency's discretionary determination, notwithstanding that the determination affected multiple persons or entities.

Specifically, in *Matter of Vladyka v. DiNapoli,* this Court sustained the Comptroller's discretionary determination that *all* applicants for service retirement benefits, without exception, must prove that they actually retired. 238 A.D.3d 1362, 1365-66 (3d Dep't 2025). Although petitioners observe that *Vladyka* was commenced by a single retiree (*see* Pet. Br. at 25-26), that fact did not alter the wide effect of the Comptroller's underlying decision regarding the evidence required to support a service retirement application. Similarly, in *Matter of Personal-Touch Home Care v. City of New York,* the First Department upheld the Department of Health's decision to deny offset requests from *all* home-care agencies that had participated in the distressed self-insurance trust at issue. 201 A.D.3d 532, 533-34 (1st Dep't 2022).[2]

The cases cited here and in DOL's opening brief control here, whereas the two unreviewed lower-court opinions upon which petitioners rely (*see* Pet. Br. at 24-25) do not. Neither of those lower-court opinions involved a situation like the one presented here, where enforcement

[2] Due to a typographical error, the opening brief contained an inaccurate citation for *Matter of Personal-Touch.* The citation preceding this footnote is the correct one.

decisions were entrusted by statute to an agency's prosecutorial discretion.[3]

C. DOL's Decision to Close Investigations Lacked Legally Binding Effect.

DOL's opening brief (at 31-32) also demonstrated that DOL's decision to discontinue investigations of petitioners' claims was not a "rule" under SAPA because it had no legally binding effect. Petitioners respond that DOL's decision was legally binding because it left them without an avenue for recovering lost wages, given that they had opted out of obtaining a share of the 1199SEIU arbitral award and the statute of limitations may otherwise have run. (*See* Pet. Br. at 28-30, 35.)

Petitioners' argument is irrelevant to petitioner Zhuang, who was not a member of 1199SEIU and whose union's grievance against her

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[3] *See Matter of Consumer Directed Personal Assistance Ass'n v. Zucker,* 65 Misc. 3d 1005, 1010 (Sup. Ct. Albany County 2019) (requiring that policy for Medicaid rate-setting in managed care context be adopted through promulgated rule); *Matter of Household & Commercial Prods. Ass'n v. New York State Dep't of Envtl. Conserv.*, 65 Misc. 3d 832, 841-42 (Sup. Ct. Albany County 2019) (requiring that cleaning product ingredient disclosure program be adopted through promulgated rule).

employer remained pending when DOL closed its investigation. (*See* R1100.)

As to the remaining petitioners, all of whom belonged to 1199SEIU, petitioners' argument misapprehends the meaning of "legal effect" under SAPA. Actions fall within SAPA's exclusion if they have no legal effect "in themselves." SAPA § 102(2)(b)(iv). DOL's determination to close its investigations of claims by home care aides whose unions were pursuing relief on their behalf lacked such legal effect. DOL's determination did not confer rights on anyone to enforce it. Nor did that determination address the validity of petitioners' underlying wage complaints, let alone in itself preclude further litigation by petitioners or their unions. If petitioners are barred by a statute of limitations from pursuing such litigation, that is not a legal effect of DOL's determination in itself, but rather a consequence of petitioners' strategic choices.

D. Petitioner's Allegations of Misconduct by DOL Should Be Rejected.

The Court should not be distracted by petitioners' accusations of misconduct on the part of DOL and its counsel. The three accusations that petitioners make are mistaken and do not in any event provide a basis for affirmance here.

First, petitioners assert that DOL improperly withheld documents. (*See* Pet. Br. at 14-15 & n.1, 32). But DOL was under no obligation to provide documents, at least not beyond those submitted with its answer. Jeanette Lazelle, DOL's Deputy Commissioner for Worker Protection, stated that the answer annexed the documents on which she relied in rendering the determination at issue, except for one memorandum that was subject to the attorney-client privilege. (*See* S. Ct. NYSCEF #146 at 2; R1667.) Indeed, Supreme Court reasonably denied petitioners' motion for discovery on finding that the discovery petitioners sought was not relevant to their claims in this litigation (R1663-1667), and petitioners did not challenge that ruling on appeal.

Second, petitioners mistakenly accuse DOL of misrepresenting the date on which it acquired knowledge of 1199SEIU's class-action grievance. (Pet. Br. at 13, 35.) Even if DOL erred in representing the date on

which it acquired that knowledge—and it did not—petitioners fail to explain how any such mistake would transform an otherwise rational determination into an irrational one.

In fact, DOL made no such mistake. As Division of Labor Standards Director Maura McCann explained, while petitioners Chen and Song disclosed on their complaint forms that they belonged to 1199SEIU, each of them affirmatively represented that when they asked 1199SEIU for assistance, "none" was provided. (R1339, 1341; *see* R1349 [Chen], 1360 [Song].) It is true that these complaint forms also referenced "force[d] mandatory arbitration." (R1349 [Chen], 1360 [Song].) Director McCann explained, however, that when she read that vague phrase, she "presumed this meant that the arbitration was forced under an employment contract or some other mechanism"; she did not understand the arbitration to be part of a collective bargaining agreement. (R1339.) And in otherwise detailed cover letters to DOL, petitioners' counsel did not mention 1199SEIU's grievance or the arbitration. (*See* R274-276 [Chen], 261-262 [Song].) Consequently, Director McCann did not believe that DOL was aware until "[i]n or around" March 2019 that 1199SEIU had filed a

grievance against Chen's and Song's employer over violations of the 13-Hour Rule.[4] (R1341.)

It is also true that one former DOL employee appears to have learned of 1199SEIU's grievance before January 30, 2019. (*See* R268.) But the record does not contain any evidence suggesting that this person shared that information with the actual decisionmakers, namely Deputy Commissioner Lazelle (*see* Sup. Ct. NYSCEF #146 at 2) and Director McCann (*see* R1343). At most, then, it would have been more accurate for Director McCann to say that she *personally* became aware of 1199SEIU's grievance in or around March 2019.

Regardless, the difference between January 30, 2019, and "in or around March 2019" is immaterial. DOL continued to deliberate internally over whether to close the investigations long after the award was rendered. DOL ultimately closed its investigations of 1199SEIU members' claims around 10 months after learning that a federal court had confirmed the award. (*See* R1342-1343.)

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[4] Director McCann also stated that the Division of Labor Standards was aware of the class-action nature of the grievance "[b]y September 2019." (R1341.) She did not state when the Division first learned that the grievance was a class action.

And third, DOL did not imply or suggest to Supreme Court that it had engaged in "no investigation," as petitioners assert here. (*See* Pet. Br. at 13-14, 32.) DOL's memorandum in Supreme Court stated that DOL had opened investigations into petitioners' complaints. (R1424; *see also* R1339 [McCann affirmation; similar].) And Supreme Court was not misled: the Merits Order stated that DOL had "accepted Petitioners' complaints and began investigating them." (R8.) More importantly, regardless of whether DOL had begun work on its investigations, it rationally determined to close those investigations, as demonstrated in the opening brief (at 13-18). The Court should reject petitioners' attempts to discredit DOL's legal arguments with accusations of purported misconduct that are irrelevant to the merits of this appeal.

POINT II

THE COURT SHOULD NOT AFFIRM ON THE ALTERNATE GROUNDS THAT PETITIONERS ADVANCE

Petitioners advance two alternative grounds for affirmance, both of which were raised below but not addressed by Supreme Court. Neither has merit.

A. DOL Rationally Determined Not to Continue Investigating Petitioners' Claims.

Contrary to petitioners' argument (Pet. Br. at 4, 30-36), DOL's determination was not arbitrary and capricious, but rather was rationally based on the information before it.

Under the arbitrary and capricious standard, "[r]ationality is what is reviewed." *Pell v. Bd. of Educ. of Union Free School Dist. No. 1*, 34 N.Y.2d 222, 231 (1974). The rational basis standard is "extremely deferential" to agency decision making. *Matter of Mantilla v. New York City Dep't of Housing Preservation & Dev.*, __ N.Y.3d __, 2025 N.Y. Slip Op. 07079, 2025 WL 3670604, *2 (Ct. App. Dec. 18, 2025) (internal quotation marks and citation omitted). "If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency." *Id.* (internal quotation marks and citation omitted).

As DOL's opening brief explained (at 13-18), DOL rationally decided not to continue investigating petitioners' and the putative class members' wage complaints based on multiple considerations. Those considerations included the actions of petitioners' unions to advance their claims in

another forum; DOL's longstanding policy of promoting collective-bargaining agreements and private arbitration; the potential strain on DOL's resources from litigating numerous complex and time-consuming claims made under the 13-Hour Rule; the limitations of DOL's investigative and enforcement resources and the competing demands upon them; and the litigation risk of facing suit by petitioners' employers. Any one of those considerations would have justified DOL's determination, and in combination they amply satisfy the rational basis test.

Moreover, the cited considerations were not "post hoc justifications" as petitioners contend. (Pet. Br. at 12, 16, 22.) As DOL's opening brief explained (at 13), DOL went through an extensive decision-making process that involved monitoring the arbitration and related litigation for two years, meeting with organizations that represent home care aides, considering arguments made by petitioners' counsel, and deliberating internally.

More particularly, Deputy Commissioner Lazelle had personal knowledge of the decision-making process. (R1240-1241.) She testified that the considerations identified above were all considered "[i]n reaching this decision" to close the investigations. (R1244.) Director McCann

instructed DOL staff to close the investigations. (R1343.) She cited various considerations that were taken into account, including the 1199SEIU class-action grievance that encompassed petitioners' claims (R1342-1343); the DOL resources that the investigations would demand (R1342); and the complexity of the required investigations (R1343).

The record thus shows that DOL's concerns were not invented after the fact but rather constituted the grounds on which DOL relied in making its determination in the first place. And in this litigation—where petitioners challenged the investigations' closure under article 78 as arbitrary and capricious—DOL properly placed before the court evidence of those considerations from individuals with personal knowledge of the decision-making process. *See Matter of Hammonds v. New York State Educ. Dep't,* 206 A.D.3d 1334, 1334-35 (3d Dep't 2022).

Petitioners nonetheless argue (Pet. Br. at 31) that DOL altered course without explanation, in violation of *Matter of Charles A. Field Delivery Serv.*, 66 N.Y.2d 516, 520 (1985). That is simply incorrect. As Deputy Commissioner Lazelle explained, DOL has "a long-standing labor policy of promoting labor stabilization through collective bargaining agreements and a clear preference for private arbitration grievances."

(R1244-1245.) Director McCann likewise confirmed that DOL "generally declines to investigate wage claims when employees assert their rights in other venues." (R1343.) Consistent with its practice, DOL put the complaints from 1199SEIU members on hold while it studied the arbitral decision's effect. (R62-63, 558.) And DOL continued to investigate the claims of non-1199SEIU home care workers until it learned that those workers' unions were bringing similar grievances. (*See, e.g.,* R1343-1344.)

In effect, petitioners seek to have this Court reweigh DOL's considerations. (*See* Pet. Br. at 16-18, 32-35.) Any such reweighing would be improper. So long as DOL's determination was rational—and it was—its decision must be sustained, even if a court might have reached a different result. *See Matter of Mantilla*, 2025 WL 3670604 at *2; *Matter of Wooley v. New York State Dep't of Correctional Servs.,* 15 N.Y.3d 275, 280 (2010); *Matter of Decime v. Annucci,* 231 A.D.3d 1229, 1230 (3d Dep't 2024).[5]

[5] Neither of the cases cited by petitioners on this point involved an exercise of enforcement discretion. *See Matter of Era Steel Constr. Corp. v. Egan,* 145 A.D.2d 795, 795 (3d Dep't 1988) (challenge to denial of certification as women-owned business); *Matter of Collins v. Governor's Office of Empl. Relations*, 211 A.D.2d 1001, 1001-02 (3d Dep't 1995) (challenge to respondent's denial of out-of-title work grievance).

Petitioners' arguments for reweighing are flawed in any event. For example, DOL stated in Supreme Court that it "began investigating a representative sample of claims filed by certain home health aides." (R1060 [Answer]; *see also* R1052 [similar].) DOL did *not* say, as petitioners now assert (Pet. Br. at 16), that it "developed a class model to efficiently resolve Petitioners' and the class members' claims." Any suggestion that DOL could easily have resolved all the claims by using a "class model" is inaccurate.

There also is no substance to petitioners' argument (Pet. Br. at 17) that DOL's intervention was necessary because unidentified home care aides had filed charges with the National Labor Relations Board (NLRB) against 1199SEIU for purportedly violating its duty of fair representation. The NLRB dismissed those charges on finding no evidence of collusion between the employer and 1199SEIU. (R1530.) And petitioners provide no evidence of collusion here. Instead, they cite an email from their own counsel, who asserted vaguely that unidentified union members "have not had positive experiences" with 1199SEIU or were once pressured to drop a lawsuit sometime before 2015, when the mandatory

arbitration clause was added to 1199SEIU's collective bargaining agreement. (*See* Pet. Br. at 17; R267.)

B. DOL's Decision Was Not Affected by an Error of Law.

Petitioners additionally argue that DOL's decision to close the investigations at issue was affected by error of law because DOL concluded that their collective bargaining agreements superseded DOL's statutory authority to enforce the Labor Law. (*See* Pet. Br. at 4, 36-38.) DOL reached no such conclusion. In fact, the DOL officials involved in rendering the determination at issue concluded that DOL *retained* authority to investigate the 1199SEIU members' complaints, notwithstanding the arbitration. (R1244; *see also* R9-10; Br. at 12.) Those officials simply recognized a risk of litigation over the issue. (R1245.)

In seeking to dispute DOL's representations on this issue, petitioners place undue weight on an email from a supervising investigator. There, the investigator correctly stated that 1199SEIU's collective bargaining agreement contained a mandatory arbitration clause and that the union had filed a grievance. (R101.) While the investigator—a nonlawyer—also went on to say he was following the advice of counsel in closing the investigations, he did not state that counsel had opined on the

question whether the collective bargaining agreements superseded DOL's authority. (*See* R101.) Accordingly, he was offering no more than his own legal opinion on the effect of petitioner's collective bargaining agreements.

The legal opinion of a lay investigator has no weight. *See People v. Richardson,* 193 A.D.3d 430, 431 (1st Dep't) (police officer's lay opinion on a matter of law was irrelevant), *lv. denied,* 37 N.Y.3d 967 (2021). And the investigator was not the decisionmaker here. As shown above, the decisionmakers concluded otherwise. Accordingly, the subject email is insufficient to support petitioners' claim that DOL's decision to close its investigations turned on any erroneous legal conclusion.

POINT III

THE CLASS CERTIFICATION ORDER SHOULD BE VACATED

Petitioners do not contest DOL's argument that, if this Court reverses Supreme Court's SAPA ruling, it should vacate the court's subsequent Class Certification Order. (*See* Pet. Br. at 38.) As DOL's opening brief explained (at 35), without a basis to annul the DOL determination at issue here, there is no basis to certify a class.

CONCLUSION

The Decision and Order of Supreme Court entered October 9, 2024, should be reversed; the Decision and Order of Supreme Court entered April 8, 2024, should be vacated as moot; and the petition should be dismissed.

Dated: Albany, New York
January 22, 2026

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York
Attorney for Appellant

By: /s/ *Frederick A. Brodie*
FREDERICK A. BRODIE
Assistant Solicitor General

The Capitol
Albany, New York 12224
(518) 776-2317
Frederick.Brodie@ag.ny.gov

ANDREA OSER
Deputy Solicitor General
FREDERICK A. BRODIE
Assistant Solicitor General
of Counsel

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