

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

**THE PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General of the State
of New York,**

Plaintiff,

v.

RAPHAEL TOLEDANO, ET AL.,

Defendants.

Index No.

CONSENT ORDER AND JUDGMENT

Upon reading and filing the Complaint of Plaintiff the People of the State of New York, by its attorney LETITIA JAMES, Attorney General of the State of New York, alleging defendants Raphael Toledano, Brookhill Properties, Adele Realty LLC, and Regal Property Group LLC (together, the “Toledano Defendants”) engaged in illegal, fraudulent and deceptive conduct in violation of the New York General Business Law (“GBL”) Article 22-A (§§ 349 and 350), the New York Executive Law § 63(12) and state and local housing and tenant protection laws in connection with their practices in managing and investing in rent-regulated apartment buildings in New York City; and upon the Consent & Stipulation, dated June 19, 2019, which is incorporated by reference herein and in which the parties consent to entry of this Consent Order and Judgment (“Consent Order”);

IT NOW APPEARS that RAPHAEL TOLEDANO on behalf of the Toledano Defendants is willing to enter into this Consent Order in order to resolve the allegations contained in the Complaint and to avoid prolonged and costly litigation;

NOW, on application of LETITIA JAMES, Attorney General of the State of New York (“OAG”), attorney for Plaintiff herein (Mark Ladov and Elena González, Of Counsel), and upon consent of Defendants and their counsel, Benjamin Brafman and Jacob Kaplan of Brafman & Associates, P.C.;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows.

I. DEFINITIONS

As used throughout this Consent Order, the terms set forth below shall mean as follows:

- A. **Action** means *People of the State of New York v. Raphael Toledano et al.*, New York County Supreme Court, Index No. _____, filed on June 19, 2019.
- B. **Buyout Agreement** means an agreement entered into by a Tenant and the Toledano Defendants in which the Tenant agrees to surrender possessory rights to the subject premises in exchange for the payment of money or other consideration by the Toledano Defendants.
- C. **Communications** means any conversation, discussion, letter, email, memorandum, meeting, note or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records or reflects any of the foregoing.
- D. **Complaint** means the Complaint filed by Plaintiff to commence the Action, including any amendments, corrections or supplements thereto.
- E. **Default** means any violation of this Consent Order by the Toledano Defendants.

- F. **Defendants or Toledano Defendants** means Defendants Raphael Toledano, Brookhill Properties, Adele Realty LLC, and Regal Property Group LLC, and the special-purpose limited liability real-estate entities that own or have an interest in the Subject Properties over which Raphael Toledano exercises control, as described in the Complaint, as well as any subsequent entities created by any of the existing Defendants for the purpose of acquiring, owning, selling or managing real property.
- G. **Due Diligence Package** means the documents to be submitted by the Toledano Defendants to the Independent Monitor for the review of any proposed Real Estate Transaction, as defined below in paragraphs 21-22.
- H. **DHCR** means the New York State Division of Housing and Community Renewal.
- I. **Effective Date** means the date of entry of this Consent Order.
- J. **Essential Services** means services that a landlord must provide to a tenant by law, such as repairs, superintendents, heat, hot water, cold water, gas, electricity, and/or elevator service.
- K. **Expiration Date** means the date upon which a Court vacates the restrictions on business activities and requirements for a Monitor, PMC and Reserve Account set forth in Sections IV, V, VI, VII and IX of this Consent Order, pursuant to the procedures set forth in paragraph 64.
- L. **Government Housing Benefit** means any benefit received pursuant to any government funded housing assistance program or a landlord tax benefit that reduces the rent obligations of a Tenant of Record, including but not limited to: the Senior Citizen Rent Increase Exemption (“SCRIE”) program; the Disability Rent Increase Exemption

(“DRIE”) program; and the Section 8 Housing Choice Voucher program, administered pursuant to 42 U.S.C. § 1437 *et seq.*

- M. **Including** means including but not limited to.
- N. **Independent Monitor or Monitor** means the party engaged by the Toledano Defendants to supervise all of the Toledano Defendants’ Real Estate Transactions and Property Management pursuant to the terms of this Consent Order, and to report to the OAG on the Toledano Defendants’ compliance with this Consent Order.
- O. **Monitor Engagement Date** means the date on which an Independent Monitor begins to perform the duties described by this Consent Order pursuant to a contract with the Toledano Defendants.
- P. **OAG** means Office of the Attorney General of the State of New York.
- Q. **Parties** means the OAG and Defendants.
- R. **Plaintiff** means the People of the State of New York, by Letitia James, Attorney General of the State of New York.
- S. **Property Management** means any activities relating to the operation, control and oversight of real property, including but not limited to all activities relating to tenant leases, repairs and construction at the Subject Properties.
- T. **Property Management Company or PMC** shall mean a company not owned by the Toledano Defendants that is qualified to manage the Subject Properties.
- U. **Real Estate Transaction or Transaction** shall mean the acquisition, transfer, assignment or sale of real property or any interest in real property (including any contractual agreement to acquire, transfer, assign or sell real property at a future date), as well as the use of real property as security for any loan or transaction.

- V. **Rent-Regulated** means subject to rent control or rent stabilization laws and regulations.
- W. **Subject Properties** are the properties subject to this Consent Order and Judgment, which are residential buildings owned now or in the future by the Toledano Defendants or buildings that are the subject of any proposed or completed Real Estate Transaction now or in the future involving the Toledano Defendants. The Subject Properties include those properties which are currently owned by the Toledano Defendants or are the subject of proposed Real Estate Transactions as of June 19, 2019 as disclosed by the Toledano Defendants to the OAG.
- X. **Tenant or Rent-Regulated Tenant** means the Tenant of Record of a Rent-Regulated apartment in any of the Subject Properties.
- Y. **Tenant of Record** means any person(s) named on a lease for a unit in a Subject Property as a lessee(s) and/or any person(s) who is a party to a rental agreement and obligated to pay rent for the use or occupancy of a Rent-Regulated apartment in a Subject Property. Tenant of Record shall also include any person who remains in possession of a Rent-Regulated apartment in a Subject Property after his or her rental agreement has expired.
- Z. **Permitted Occupant** means an individual who is permitted to be in occupancy of an apartment by operation of law or by permission of the Tenant of Record.
- AA. **Tenant Relocator** includes a person who for a fee supervises, organizes, arranges, coordinates, handles, or is otherwise in charge of or responsible for the relocation (removal) of Tenants from buildings, or any other party who satisfies the definition of N.Y. Real Prop. Law § 440(4), other than an attorney duly licensed to practice law in the State of New York.

II. JURISDICTION AND VENUE

1. This Court shall retain jurisdiction to enforce any proceeding seeking to enforce the terms of this Consent Order, whether an action for specific performance, contempt, or any other relief. The Court shall also retain jurisdiction of this action for the purpose of carrying out or modifying the terms of this Consent Order or granting such further relief as the Court deems proper.
2. This Consent Order shall extend to the Toledano Defendants, their principals, directors, officers, shareholders, employees, assignees, and agents acting in concert or in participation with them.

III. COMPLIANCE WITH THE LAW

3. Defendants shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including any acts or omissions that abridge the legal rights of any Tenant of Record or Permitted Occupant. A non-exhaustive list of these laws is as follows: New York Executive Law § 63(12); New York General Business Law § 349; New York General Obligations Law § 7-101, *et seq.*; New York Real Property Law §§ 235-b, 441, 441-c; New York Rent Stabilization Code, 9 NYCRR §§ 2520.1 *et seq.*; New York Rent and Eviction Regulations, 9 NYCRR §§ 2200-2211; New York Multiple Dwelling Law; New York City Administrative Code §§ 27-2005, 27-2004(a)(48); New York City Rent Stabilization Law, § 26-501 *et seq.*; New York City Rent Control Law, § 26-401 *et seq.*; New York City Housing Maintenance Code § 27-2001 *et seq.*; New York City Construction Codes § 28-101.1 *et seq.*; New York City Building Code, § 27-101, *et seq.*; New York City Childhood Lead Poisoning Prevention Act § 27-2056.1 *et seq.* and Implementing Regulations; and New York City Human Rights Law § 8-107(5).

IV. RESTRICTIONS ON REAL ESTATE BUSINESS ACTIVITIES

4. As of June 19, 2019, the Toledano Defendants have identified all residential buildings that are owned by the Toledano Defendants or that are the subject of any proposed Real Estate Transaction involving the Toledano Defendants and have disclosed those Subject Properties to the OAG.
5. The Toledano Defendants may continue negotiations related to the Subject Properties previously disclosed to the OAG, but the Toledano Defendants shall not complete or otherwise profit from any Real Estate Transaction related to any of the Subject Properties until the Independent Monitor has concluded that each such Transaction is in compliance with this Consent Order. This includes, but is not limited to, a prohibition on the Toledano Defendants closing on a contract for purchase, selling or assigning their contract rights, or engaging in any other transaction that terminates their involvement in any pending Real Estate Transaction involving a Subject Property.
6. Except as provided in paragraphs 4 and 5 of Section IV of this Consent Order, the Toledano Defendants shall not take any further action to engage in any Real Estate Transaction or Property Management until after the engagement of an Independent Monitor to oversee such activities pursuant to the terms of this Consent Order.
7. Except as otherwise provided herein, for a period of no less than five years after the Monitor Engagement Date, and until a Court vacates these restrictions pursuant to the procedures set forth in Section XII, the Toledano Defendants shall not engage in any Real Estate Transaction or Property Management except pursuant to the terms of this Consent Order. These terms include that:

- a. The Toledano Defendants shall not sign any contract relating to any Real Estate Transaction, or cause anyone to sign such a contract on behalf of the Toledano Defendants, without submitting the Transaction to an Independent Monitor for review and approval.
- b. The Toledano Defendants shall not engage directly or indirectly in any activities relating to Property Management at any of the Subject Properties, except to the extent needed to fund or provide general instructions to an approved Property Management Company (“PMC”) that is overseen by the Monitor.
- c. The Toledano Defendants shall not have any direct Communications with Tenants, including but not limited to any conversations with Tenants about Buyout Agreements. All necessary Communications between the Toledano Defendants and Tenants (such as Communications concerning rent payment, lease renewals, required notifications, or other matters) shall be made through an approved PMC that is overseen by the Monitor.
- d. The Toledano Defendants, collectively, shall abide by the following limitations on Real Estate Transactions:
 - i. The Toledano Defendants shall not own or be in contract to own more than ten (10) residential buildings, of which no more than five (5) residential buildings (or fewer than five buildings if those buildings contain more than eighty (80) individual residential units) shall actually be owned by the Toledano Defendants, at any given time.
 - ii. The Toledano Defendants can petition the Court to lift this limit after showing compliance with this Consent Order for a minimum of eighteen

(18) months. Upon the OAG's request, the Court shall condition any increase in this limit on Defendants' contribution of additional funds to the Reserve Account described in Section IX, to ensure that this Account continues to hold sufficient funds to permit the Monitor and PMC to operate the Defendants' full portfolio for six months in the event of a Default by Defendants.

8. The Toledano Defendants shall not perform any actions requiring a professional real estate broker's license unless in compliance with all applicable laws and regulations governing such activities.
9. The Toledano Defendants shall not engage in (or cause others to engage in) any deceptive business activities, including but not limited to misrepresentations directed to tenants, property owners or potential lenders.
10. The Toledano Defendants shall not engage in (or cause others to engage in) any other fraudulent or unlawful conduct, including but not limited to all of the conduct described in the Complaint.

V. RESTRICTIONS ON TENANT BUYOUTS

11. The Toledano Defendants (or the PMC on the Toledano Defendants' behalf) shall not spend funds on tenant buyouts or other efforts to vacate tenants from any Subject Property until after they have cleared all pending "B" and "C" violations, as defined in the New York City Housing Maintenance Code, NYC Admin. Code §§ 27-2001 through 27-2152, and made all other repairs or investments necessary to provide Essential Services at the Subject Property. This provision shall not apply in the event the Toledano Defendants (or the PMC on the Toledano Defendants' behalf) are unable to remedy the

qualifying violations despite reasonable efforts (as determined by the Independent Monitor after consultation with the OAG).

12. The Toledano Defendants (or the PMC on the Toledano Defendants' behalf) shall not hire any tenant relocater (as defined in RPL Article 12-A, § 440).
13. The Toledano Defendants (through the PMC) shall not offer tenant Buyout Agreements unless they are in full compliance with all laws governing Buyout Agreements, including by ensuring that:
 - a. Any Tenant who is offered consideration in exchange for vacating a unit is provided the written disclosures required by N.Y.C. Admin. Code § 27-2004(a)(48)(f-2);
 - b. All contact and Communications regarding Buyout Agreements satisfy the requirements set forth by N.Y.C. Admin. Code § 27-2004(a)(48)(f-1 – f-3); and
 - c. The Toledano Defendants can fully fund any Buyout Agreement offered by the PMC on Defendants' behalf.

The Toledano Defendants shall ensure that any Buyout Agreement negotiated by the PMC complies with these terms before signing the Buyout Agreement.

14. The Toledano Defendants (or the PMC on the Toledano Defendants' behalf) shall not engage in or subject any Tenant to harassment as that term is defined by N.Y.C. Admin. Code § 27-2004(a)(48), and shall ensure full compliance with the Rent Stabilization Code's prohibition of harassment as defined by 9 N.Y.C.R.R. § 2525.5.

VI. ROLE OF THE INDEPENDENT MONITOR

15. Subject to approval by the OAG, the Toledano Defendants shall engage, at their sole expense, an Independent Monitor to supervise all of their Real Estate Transactions and

Property Management activities and to report to the OAG on the Toledano Defendants' compliance with this Consent Order.

16. The Toledano Defendants shall propose to the OAG a Monitor who satisfies the following criteria (which the OAG may agree to waive in part in its sole discretion):
 - a. Good standing as an attorney licensed to practice in New York State;
 - b. At least five years' experience in real estate law (including the law governing residential leases and tenants' rights);
 - c. At least five years' experience in the financing and structuring of real estate acquisitions;
 - d. Previous experience in monitoring (or administering) settlement agreements in prior State or Federal matters;
 - e. The proposed Monitor shall not have a personal, familial or business relationship with Toledano or any employee or associate of the Toledano Defendants, or have any other basis for a potential or actual conflict of interest;
 - f. The proposed Monitor shall have the capacity to serve in this position for at least five (5) years from the Monitor Engagement Date.
17. Within thirty (30) days of the Effective Date, the Toledano Defendants shall submit to the OAG the name(s) of individual(s) it proposes to be the Monitor, along with information about the proposed Monitor's qualifications; the proposed Monitor's plan for enforcing and complying with this Consent Order; and the names and qualifications of any other individuals or consultants whom the proposed Monitor intends to employ in the monitoring of this Consent Order.

18. The OAG shall approve or reject the proposed Monitor within twenty-one (21) days of receiving the proposal. In the event that the OAG rejects the proposal, then Defendants shall submit the name(s) of additional proposed individual(s) to be the Monitor within thirty (30) days of the OAG's determination. These time frames shall apply until the OAG approves a proposed Monitor.
19. The Toledano Defendants shall engage a Monitor for five (5) years from the Monitor Engagement Date.
20. Monitor's responsibilities shall include:
 - a. Reviewing all proposed Real Estate Transactions to ensure full compliance with law and the terms of this Consent Order.
 - b. Approving all proposed Real Estate Transactions, but only after determining that no fraud was used to induce the Transaction, and that the Transaction, including all debt service, is financially viable based on current rent rolls, or based on commercially reasonable and lawful plans to increase the value of the property or the income generated by the property.
 - c. Approving, hiring and/or supervising the Property Management Company ("PMC") for any Subject Property (pursuant to the terms discussed below in paragraphs 32-45).
 - d. Providing quarterly reports of the Toledano Defendants' business activities to the OAG (pursuant to the terms discussed below in paragraph 27).
 - e. Reporting any known or suspected violations of this Consent Order to the OAG.
21. The Toledano Defendants shall provide the Monitor with all information needed to allow the Monitor to perform tasks described in this Consent Order, including by preparing and

submitting to the Monitor a full Due Diligence Package to support any proposed Real Estate Transaction.

22. The Due Diligence Package shall be submitted to the Monitor on a timely basis (as defined by the Monitor) and shall include at minimum:
 - a. Rent rolls and leases relating to all properties that are the subject of the proposed Transaction.
 - b. All Communications relating to the proposed Real Estate Transaction between the Toledano Defendants and any other parties with an interest in the Transaction (including but not limited to potential sellers, buyers, lenders, investors, brokers and any other business partners).
 - c. All contracts relating to the proposed Real Estate Transaction between the Toledano Defendants and any other parties with an interest in the Transaction (including but not limited to potential sellers, buyers, lenders, investors, brokers and any other business partners).
 - d. All contracts and Communications between the Toledano Defendants and any Real Estate Broker, Real Estate Agent or any other parties hired to market the Subject Properties.
 - e. All contracts and Communications with or relating to any Tenant who resides at any Subject Property.
 - f. All reports from Landlord/Tenant counsel, or any other party, concerning the rent rolls, tenancy rights and other issues relevant to the Rent-Regulated status and legal regulated rent of any unit at the Subject Property.

- g. All business plans relating to the proposed Transaction, including enough detail so that the Monitor can review for commercial reasonableness and financial viability.
 - h. Any other materials that the Monitor requests to establish that the proposed Transaction is lawful, free of fraud and financially viable.
23. The Monitor may designate employees and/or agents of the Monitor to carry out the duties provided for herein and shall notify the OAG, within a reasonable time, of the names and duties of such designees.
24. The OAG, at its sole discretion, shall have a right at any time to request information from the Monitor, or to communicate independently with the Monitor regarding the Toledano Defendants' compliance or any other issues related to this Consent Order.
25. The OAG, at its sole discretion, shall have a right to require that Toledano replace the Monitor upon the OAG's determination that the Monitor has not effectively monitored the Toledano Defendants' compliance with the Consent Order.
26. After the OAG notifies Toledano that it has determined that the Monitor must be replaced, Toledano shall have thirty (30) days to propose the name(s) of party(ies) to replace the Monitor. The OAG shall approve or reject the proposed replacement party within twenty-one (21) days of receiving the proposal; in the event that the OAG rejects the proposal, then Toledano shall submit the name(s) of additional proposed individual(s) within thirty (30) days of the OAG's determination. The OAG, in its sole discretion, may require that the existing Monitor continue to execute his or her duties until the replacement Monitor is approved and in place. If Toledano fails to propose the name of a new Monitor within thirty (30) days of the OAG's request (or within thirty (30) days of

the OAG's rejection of a proposed replacement Monitor), Toledano shall be in Default of this Consent Order.

27. The Monitor shall prepare and provide quarterly written reports to the OAG ("Quarterly Reports") indicating whether Toledano has complied with the Consent Order during the Reporting Period. The Quarterly Reports shall include at a minimum the following:
- a. A summary of all Real Estate Transactions proposed, pending and/or completed during the Reporting Period;
 - b. A summary of any complaints (including complaints forwarded from the Property Management Company) received during the Reporting Period, the results of any investigation of the complaint, and any actions taken as a result of the investigation;
 - c. The total number of Rent-Regulated apartments that became deregulated during the Reporting Period, the reason for deregulation, documents reviewed to support the deregulation and the apartment number for each of these units; and
 - d. Any other information that the Monitor deems relevant concerning the Toledano Defendants' compliance with the Consent Order during the Reporting Period.

This list may be modified at the request of the OAG to the Monitor.

28. If the Monitor has reason to believe that Toledano or any of the Toledano Defendants has failed to comply substantially with a provision of the Consent Order, or has violated any of the laws or regulations cited in this Consent Order, the Monitor shall promptly notify the OAG of the non-compliance and shall specify the steps Defendants took to remedy the defect, and/or Defendants' stated reasons for failing to comply with the provision of the Order and/or its Policies, if such information is available.

29. The Monitor shall have access to all information within the Toledano Defendants' and/or a PMC's possession, custody or control that the Monitor finds necessary to fulfill the responsibilities set forth in this Consent Order, including all documents required to be maintained under the terms of this Consent Order or by law or that relate to obligations under this Consent Order. The Monitor may also interview Tenants, occupants, Toledano's and/or its PMC's employees and/or agents as is necessary to fulfill the responsibilities set forth in this Section.
30. The first Quarterly Report shall be submitted within sixty (60) days of the close of the first full quarter after the Monitor Engagement Date. Subsequent Quarterly Reports shall be submitted within ninety (90) days from close of each Quarter.
31. The Monitor shall have the power to communicate to the OAG confidentially, and the Toledano Defendants do not have a right to review any of the Monitor's confidential Communications with OAG. The Monitor may contact the OAG at any time regarding any concerns about the Toledano Defendants' compliance with the Consent Order.

VII. ROLE OF PROPERTY MANAGEMENT COMPANY (PMC)

32. The Monitor shall choose a PMC, subject to approval of the OAG, to manage any Subject Property that is the subject of a Real Estate Transaction involving the Toledano Defendants. The Monitor may choose, subject to approval of the OAG, to retain an existing PMC at any Subject Property, so long as the PMC agrees to abide by the obligations and restrictions set forth in this Consent Order.
33. A PMC chosen by the Monitor to manage a Subject Property shall have the requisite staff and experience, including experience managing Rent-Regulated buildings. The PMC

shall not be affiliated with the Toledano Defendants or any of their associates, relatives, business partners, or agents.

34. The Toledano Defendants shall cover all costs associated with the PMC, unless another owner of an interest in a Subject Property agrees to cover some or all of the PMC costs related to that property, subject to the approval of the Monitor.
35. The Monitor shall supervise any PMC chosen to manage a Subject Property. The PMC shall report directly to the Monitor, and shall include the Monitor on any Communications with the Toledano Defendants. The Toledano Defendants shall similarly include or copy the Monitor on any and all Communications with the PMC.
36. Upon being hired to manage any Subject Property, the PMC shall adopt and implement Policies and Procedures (“Policies”) to ensure full compliance with this Consent Order and all applicable laws and regulations. The PMC shall provide copies of all Policies to the Monitor for review, and the Monitor shall advise the PMC if any changes to its Policies are needed to ensure full compliance with this Consent Order. After approval by the Monitor, the PMC shall distribute the Policies to all employees and independent contractors whose responsibilities at the Subject Property involve any aspect of the areas referenced in the Policies. The Monitor shall report on these Policies in its regular reporting to the OAG, and the OAG shall have the right to seek changes to these Policies in its sole discretion.
37. For the duration of the Consent Order, the PMC shall prominently post a copy of the Policies in each Subject Property leasing office and in each Subject Property.
38. PMC shall not hire or work with any individual who is a current or former employee or agent of any of the Toledano Defendants, unless approved by the Monitor.

39. Immediately after a PMC is hired to manage any Subject Property pursuant to this Consent Order, the PMC shall send a letter to all Tenants, in English and Spanish (or in another language upon a Tenant's or a Tenant representative's request), advising them of the names and contact information of the applicable management company.
40. The PMC shall, subject to input from the Monitor, handle all operations of managing the Subject Properties, including, but not limited to:
 - a. Providing employee training;
 - b. Collecting rent and rent registration with DHCR;
 - c. Lease renewals and new leases;
 - d. Determining who has tenancy rights to each unit, including but not limited to rights to succeed as Tenant of Record;
 - e. Managing Tenants' surrender of tenancy;
 - f. Performing ongoing maintenance duties;
 - g. Communications with Tenants, which shall include distributing forms to Tenants on a quarterly basis soliciting complaints, feedback or repair requests;
 - h. Tenant complaints;
 - i. Managing employees, including hiring, termination and compensation determinations;
 - j. Supervising independent contractors;
 - k. Commencing litigation, and/or engaging counsel to consider potential litigation, subject to review by Monitor;

- l. Correcting or challenging violations issued by NYC Housing Preservation and Development (“HPD”) or New York City Department of Buildings (“DOB”) expeditiously and in accordance with agency procedures;
 - m. In the discretion of the PMC, hiring an engineer to inspect all Subject Properties and communicating with DOB to evaluate which conditions need to be addressed, and proposing a plan for correcting the conditions;
 - n. Ensuring compliance with the Policies adopted pursuant to paragraph 36;
 - o. Designating a tenant liaison for each of the Subject Properties that it manages. The tenant liaison, along with employees that the tenant liaison specifically designates and supervises, shall have the responsibility of reviewing and responding to Tenant inquiries and complaints originating from Tenants in the Subject Properties for which he or she is responsible, whether those inquiries or complaints are verbal, by telephone, by email, in writing, or in any other medium. The tenant liaisons can be provided by a third-party vendor hired by the PMC but shall not be previous or current employees of the Toledano Defendants; and
 - p. Any other tasks to ensure compliance with this Consent Order and federal, state and local law.
41. The PMC shall, subject to input from the Monitor, manage all aspects of implementing any construction project in the Subject Properties proposed by the Toledano Defendants, including by:
 - a. Hiring all necessary independent or general contractors;
 - b. Ensuring that all construction plans fully comply with applicable laws and regulations;

- c. Ensuring that all necessary permits are acquired before any construction activities take place;
- d. Ensuring that all construction activities are performed in a manner that fully protects the health and safety of workers and Tenants, and that fully complies with all applicable laws, regulations and tenant protection plans.

In the event that the PMC lacks the expertise or personnel to manage the proposed construction project(s), the Monitor may choose and hire (subject to the OAG's approval) an independent or general contractor to perform these responsibilities. The independent or general contractor shall be subject to all applicable obligations and restrictions that would apply to the PMC pursuant to the terms of this Consent Order. The Toledano Defendants shall cover all costs associated with any independent or general contractor hired pursuant to this paragraph, unless another owner of an interest in a Subject Property agrees to cover some or all of those costs, subject to the approval of the Monitor.

- 42. The PMC agrees to submit to the Monitor on a monthly basis the following with respect to the Subject Properties:
 - a. Repair and maintenance records for all units;
 - b. All holdover notices and petitions issued to Rent-Regulated Tenants and upon the Monitor's request, documents showing the basis for the notice and/or petition;
 - c. All rent demands and petitions issued to Rent-Regulated Tenants, and upon the Monitor's request, documents forming the basis of the demand and/or notice;
 - d. All refusals or failures to accept a rent payment from a Rent-Regulated Tenant;

- e. All correspondence and documents relating to proposed Buyout Agreements, including copies of all written notices provided to Tenants to satisfy the requirements of N.Y.C. Admin. Code § 27-2004(a)(48)(f-2).
 - f. All executed surrender agreement(s) with Rent-Regulated Tenants;
 - g. All written notices provided to Tenants regarding an interruption of an Essential Service, such as heat, hot water, gas, and/or elevator service;
 - h. All complaints from Tenants (other than complaints about routine maintenance, inspections, and repairs), government agencies, and elected officials;
 - i. All tenant protection plans filed with the DOB; and
 - j. A list of all DOB permits issued to the Toledano Defendants with the respect to the Subject Properties, and upon the Monitor's request, a copy of such permit application(s) filed with DOB.
43. If a Tenant files a complaint with the PMC, it shall conduct its own investigation and take all necessary steps to timely address the matter and shall forward the complaint, and the PMC's report of its actions to address the complaint, to the Monitor for review. A "complaint" shall not include routine requests by a Tenant for maintenance, repair, inspection or the like.
44. Nothing contained herein shall prevent the Toledano Defendants from selling any of the Subject Properties while the PMC is in place.
45. The Toledano Defendants shall ensure that the PMC has all information and documentation required to perform its duties, including all rent, security deposits and security deposit account information, tenant files, rent ledgers, rent registration information, rent lists (including monthly payment amounts and any delinquencies),

vendor agreements, municipal notices, keys, orders, unexpired and expired leases, agreements, correspondence, notices and registration statements relating to rental space or facilities in the Subject Property, and all other documents necessary for management of the Subject Properties.

46. In the event the PMC has reason to believe that a Toledano Defendant is interfering with its operations, it shall immediately notify both the Monitor and the OAG for purposes of their taking those actions that they deem appropriate.

VIII. MONETARY PROVISIONS

47. A judgment is hereby entered pursuant to New York Executive Law § 63(12) jointly and severally against the Toledano Defendants, in favor of the OAG on behalf of the People of the State of New York, in the total amount of Ten Million Dollars (\$10,000,000.00).

48. This Judgment shall be suspended so long as:

- a. The Toledano Defendants pay Three Million Dollars (\$3,000,000.00) (the “Settlement Amount”) pursuant to the following schedule (or on an accelerated schedule of their choosing):
- i. \$200,000 due on or before July 19, 2019;
 - ii. \$300,000 due on or before September 17, 2019
 - iii. \$179,000 due on or before December 17, 2019;
 - iv. \$179,000 due on or before June 18, 2020;
 - v. \$179,000 due on or before December 17, 2020;
 - vi. \$179,000 due on or before June 18, 2021;
 - vii. \$179,000 due on or before December 17, 2021;

- viii. \$179,000 due on or before June 20, 2022;
- ix. \$179,000 due on or before December 19, 2022;
- x. \$179,000 due on or before June 19, 2023;
- xi. \$179,000 due on or before December 18, 2023;
- xii. \$179,000 due on or before June 18, 2024;
- xiii. \$179,000 due on or before December 17, 2024;
- xiv. \$179,000 due on or before June 18, 2025;
- xv. \$179,000 due on or before December 17, 2025; and
- xvi. \$173,000 due on or before June 18, 2026.

b. The Toledano Defendants comply fully with the terms of this Consent Order.

49. If the Toledano Defendants fail to pay Three Million Dollars (\$3,000,000.00) pursuant to the schedule set forth in paragraph 48 or otherwise fail to comply fully with the terms of this Consent Order, upon application by the OAG, the Court shall direct that this judgment shall be reopened and suspension of the judgment lifted for the purpose of requiring payment of monetary relief totaling Ten Million Dollars (\$10,000,000.00) less any payments previously made.
50. The OAG's agreement to the entry of this Consent Order is expressly premised upon the truthfulness and accuracy of financial statements and supporting documents submitted to the OAG, which include material information upon which the OAG relied in negotiating and agreeing to the entry of this Consent Order. If the OAG finds that the Toledano Defendants have failed to disclose to the OAG any material asset or materially misstated the value of any asset in the financial statements and related documents described above, or have made any other material misstatement or omission in the financial statements and

related documents described above, then upon application by the OAG, the Court shall direct that this judgment shall be reopened and suspension of the judgment lifted for the purpose of requiring payment of monetary relief totaling Ten Million Dollars (\$10,000,000.00) less any payments previously made.

51. The OAG may apply any monetary relief obtained from the Toledano Defendants to restitution for individuals injured or harmed by Defendants' conduct as alleged in the Complaint, penalties, or the costs of this investigation as she determines in her sole discretion.
52. In any subsequent civil litigation by the OAG, including in a proceeding to enforce the OAG's rights to any payment or money judgment pursuant to this Consent Order, such as a nondischargeability complaint in any bankruptcy case, the facts alleged in the Complaint shall be taken as true, without further proof thereof. These facts are sufficient to establish all the elements necessary to sustain an action by the OAG pursuant to section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Consent Order shall have collateral estoppel effect for such purposes.
53. The Toledano Defendants expressly represent in the Consent and Stipulation that is incorporated by reference into this Consent Order that as of the signing of the Consent and Stipulation on June 19, 2019, after giving effect to the terms for payment of the Settlement Amount, Defendants: (a) will not be insolvent (either because the Defendants' financial condition is such that the sum of the Defendants' debts is greater than the fair market value of the Defendants' assets or because the fair saleable value of the Defendants' assets is less than the amount required to pay the Defendants' probable liabilities on the Defendants' existing debts as they mature); (b) do not have unreasonably

small capital with which to engage in the Defendants' business; or (c) have not incurred debts beyond the Defendants' ability to pay them as they become due.

IX. RESERVE ACCOUNT

54. In order to ensure that the Monitor and PMC are paid for their services in a timely manner, and that Tenants are not subjected to loss of utilities or other interruptions in Essential Services, the Toledano Defendants within ten (10) days of the Effective Date shall fund a Reserve Account with \$100,000, such funds being sufficient to cover six (6) months of Monitor, PMC and payments for Essential Services not otherwise covered by property income. The Toledano Defendants shall establish the Reserve Account at an FDIC-insured bank, and shall provide the Monitor and OAG with full information about the account and grant the Monitor full account access rights.
55. The Monitor may draw from the Reserve Account to pay any outstanding balance owed to the Monitor or the PMC, or to pay any other outstanding bills whose payment is required to maintain Essential Services or to protect tenants' legal rights, health or safety, if the Toledano Defendants have failed to pay that outstanding balance or bill for over fifteen (15) days.
56. The Toledano Defendants shall replenish the full Reserve Account balance within thirty (30) days of any such payment by the Monitor from the Reserve Fund.
57. The Monitor shall notify the OAG immediately of any payments made by the Monitor from the Reserve Account, and of any Default by the Toledano Defendants pursuant to these provisions.

X. ENFORCEMENT

58. Any violation of this Consent Order by the Toledano Defendants shall constitute a Default.
59. Prior to seeking judicial relief for a violation of this Consent Order, the OAG shall provide the Toledano Defendants with notice of the violation and an opportunity to cure. In the event the breach is not fully cured within 30 days, the OAG may exercise any rights reserved under this Consent Order, including lifting the suspension of any money judgment, moving to enforce the Consent Order or holding the Toledano Defendants in contempt of this Consent Order. The OAG may, in its sole discretion, seek immediate relief for a violation of this Consent Order that is non-curable, or where necessary to protect the health, safety or rights of Tenants.
60. The Court, upon an application by the OAG stating that the Toledano Defendants are in Default under this Consent Order, shall grant the relief requested by the OAG including but not limited to:
- a. Permanently banning the Toledano Defendants from engaging in Real Estate Transactions, Property Management, or any other business activity involving real property;
 - b. Appointing a Receiver to manage all of Defendants' real estate holdings, and to sell those properties if needed to protect the health, safety and rights of Tenants;
 - c. Reopening the suspended judgment for the purpose of requiring payment of monetary relief totaling Ten Million Dollars (\$10,000,000) less any payments previously made; and

- d. Granting control over the Reserve Account to the Monitor to be used for any purpose deemed necessary by the Monitor, with any remaining funds going towards payment of the suspended judgment.
61. The Toledano Defendants shall pay those costs paid by the OAG to third parties (e.g., translators, court fees, court reporters, etc.) related to any action to enforce this Consent Order.
62. The Toledano Defendants shall not engage in any activities that require the Monitor or PMC's services while in Default under the terms of this Consent Order, other than ensuring that payments are made as necessary to maintain the ordinary operations of the Subject Properties.

XI. RECORD-KEEPING AND REPORTING

63. The PMC, Monitor, and the Toledano Defendants shall maintain the following records until one year after the Expiration Date of the Consent Order, or longer if required by applicable law:
- a. All documents concerning any proposed or completed Real Estate Transaction;
 - b. All documents concerning summary eviction proceedings or any other proceeding initiated against a Tenant or occupant of the Subject Properties;
 - c. All documents concerning Tenants, including but not limited to apartment files; rent rolls; leases and renewal notices; determinations and documents supporting the tenancy rights of each Tenant, including but not limited to rights to succeed as Tenant of record; documents concerning Government Housing Benefit applications and re-certifications;
 - d. All documents concerning repairs and construction in the Subject Properties;

- e. All documents concerning violations issued by HPD or DOB, and the correction of any such violations;
- f. Annual rent registrations submitted to the DHCR;
- g. Documents concerning Tenant complaints submitted to DHCR, HPD, or any other City, state or federal agency;
- h. All logs, correspondence, and other documents required to be generated pursuant to the Policies; and
- i. All documents concerning any complaints alleging that Defendants have engaged in unlawful harassment or failed to comply with the Policies.

XII. PROCEDURES TO LIFT RESTRICTIONS IMPOSED BY CONSENT ORDER

- 64. The Toledano Defendants may ask the Court to vacate the restrictions on business activities and requirements for a Monitor, PMC and Reserve Account set forth in Sections IV, V, VI, VII and IX of this Consent Order upon a showing that the Toledano Defendants have fully complied with the terms of the Consent Order for a period of no less than five (5) years after the Monitor Engagement Date, and have fully paid the Settlement Amount of Three Million Dollars (\$3,000,000.00). The date upon which a Court vacates these restrictions shall be considered the Expiration Date.
- 65. Defendants shall continue to abide by all applicable laws and regulations in all Real Estate Transactions and Property Management activities conducted after any determination by the Court to vacate the Consent Order. Any violation of such laws and regulations shall constitute a Default of the Consent Order, and shall provide grounds for the OAG to seek relief under the Consent Order (including the payment of any remaining money owed under the suspended judgment described in Section VIII).

XIII. MISCELLANEOUS PROVISIONS

66. Nothing in this Consent Order shall be construed as relieving Defendants of their obligation to comply with all state, city and federal laws and regulation, nor shall any of the terms of this Consent Order be deemed to grant Defendants permission to engage in any acts or practices prohibited by such laws and regulations. Acceptance of this Consent Order by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and Defendants shall make no representation to the contrary.
67. Any failure of the OAG to exercise any right under any provision of this Consent Order shall not constitute a waiver of any rights of the OAG to enforce such provision prospectively.
68. Defendants shall not take any action or make any statement denying, directly or indirectly, the propriety of the Consent Order by expressing the view that the Consent Order or its substance is without factual basis. Nothing in this paragraph affects or impairs or is intended to control Defendants' (i) testimonial obligations or (ii) their respective rights to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Consent Order is not intended for use, and may not be used, by any third party in any other action or proceeding and is not intended, and should not be construed, as an admission of any liability by any Respondent.
69. Nothing contained in this Consent Order shall be construed as to deprive any individual or entity of any private right of action under the law.

70. This Consent Order (along with the Consent & Stipulation that is incorporated by reference into this Consent Order) sets forth all of the promises, covenants, agreements, conditions and understandings between the Parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied, between the Parties. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Consent Order that are not fully expressed herein.
71. Defendants expressly agree and acknowledge that in the event of a Default beyond any applicable cure period, this Consent Order shall in no way bar or otherwise preclude the OAG from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Consent Order against Defendants, or from using in any way statements, documents, or other materials produced or provided by Defendants prior to or after the date of this Consent Order.
72. Nothing in this Consent Order shall be construed as precluding the OAG from investigating or prosecuting Defendants for criminal conduct of any kind unrelated to the Action addressed by this Consent Order.
73. Nothing in this Consent Order shall be construed as precluding the OAG from investigating, taking action against, or prosecuting Defendants for any violations of civil law unrelated to the Action addressed by this Consent Order.
74. Defendants shall not state or imply or cause to be stated or implied that the OAG has approved, sanctioned, or authorized any practice, act, or conduct of Defendants.

75. Defendants waive any further notice of submission of this Consent Order to and filing thereof with this Court and agree to accept service of a conformed copy by email at jkaplan@braflaw.com and by first-class mail to Jacob Kaplan.
76. This Consent Order shall be administered, construed, and enforced according to the laws of the State of New York.
77. Any notices, statements or other written documents required by this Consent Order shall be provided by electronic mail to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the party changing such address.

For Plaintiff, the New York State Attorney General:

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For Defendants:

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ORDERED, ADJUDGED AND DECREED that the Clerk is hereby directed to enter this Consent Order and Judgment forthwith.

J.S.C.

DATE: