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

In the Matter of the Application of NEW YORK CITY COALITION TO END LEAD POISONING, INC.; NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC.; NEW YORK STATE TENANTS & NEIGHBORS COALITION, INC.; MET COUNCIL, INC.; SINERGIA, INC.; ALIANZA DOMINICANA, INC.; CITY PROJECT, INC.; EAST NEW YORK UNITED FRONT, by its Chairperson, CHARLES BARRON; EL PUENTE OF WILLIAMSBURG, INC.; GREATER NEW YORK LABOR-RELIGION COALITION, INC.; MAKE THE ROAD BY WALKING, INC.; NEW YORK CITY ENVIRONMENTAL JUSTICE ALLIANCE, INC.; SOUTH BRONX COALITION FOR CLEAN AIR, INC.; QUEENS LEAGUE OF UNITED TENANTS, INC.; ; INOCENCIA NOLASCO, GRECIA MARIA VASQUEZ, and her minor child, KATHERINE FIGUEREO by her next friend and mother, GRECIA MARIA VASQUEZ; CATHERINE RODRIGUEZ, and her minor children, DESTINY ALONSO, BIANCA RODRIGUEZ, and JOANNE MARRERO, by their best friend and mother, CATHERINE RODRIGUEZ; ANA GOMEZ, and her minor children, CHRISTIAN GOMEZ and STEPHANIE GOMEZ, by their next friend and mother, ANA GOMEZ; MARIA CELIA NOLASCO and her minor grandchildren JUSTIN AGRAMONTE and JUAN NOLASCO, JR., by their next friend and guardian, MARIA CELIA NOLASCO; and DAVID M. MONAHAN and JULIE MONAHAN, and their minor child IRIS EVE MONAHAN, by her next friends and parents, DAVID M. MONAHAN and JULIE MONAHAN,

Petitioners-Plaintiffs

for a Judgment pursuant to Article 78 and § 3001 of the Civil Practice Law and Rules

-against-

PETER VALLONE, as Speaker of the New York City Council; THE NEW YORK CITY COUNCIL; RUDOLPH GIULIANI, as Mayor of the City of New York; and the CITY OF NEW YORK

Respondents-Defendants.

ORAL ARGUMENT REQUESTED

Index No. 120911/99

VERIFIED PETITION AND COMPLAINT

Petitioners-plaintiffs ("Petitioners"), New York City Coalition to End Lead Poisoning, Inc., New York Public Interest Research Group, Inc., New York State Tenants & Neighbors Coalition, Inc., Met Council, Inc., Sinergia, Inc., Alianza Dominicana, Inc., City Project, Inc., East New York United Front, by its Chairperson, Charles Barron, El Puente of Williamsburg, Inc., Greater New York Labor-Religion Coalition, Inc., Make the Road by Walking, Inc., New York Environmental Justice Alliance, Inc., South Bronx Coalition for Clean Air, Inc., and Queens League of United Tenants, Inc.*;* and Catherine Rodriguez and her daughters, Destiny Alonso, Bianca Rodriguez, and Joanne Marrero; Inocencia Nolasco, and Grecia Maria Vasquez and her daughter, Katherine Figuereo; Ana Gomez and her children, Christian Gomez and Stephanie Gomez; Maria Celia Nolasco and her grandsons, Justin Agramonte and Juan Nolasco, Jr.; and David M. Monahan and Julie Monahan and their daughter, Iris Eve Monahan, respectfully allege upon information and belief, unless otherwise specified, as follows:

INTRODUCTORY STATEMENT

1. The New York Court of Appeals has declared that "childhood lead paint poisoning may be the most significant environmental disease in New York City." *Juarez v. Wavecrest Mgt.*, 88 N.Y.2d 628, 641 (1996). According to the City's own data and estimates, some 30,000 children under six years old in New York City are contaminated from this environmental toxin, having blood lead levels at or above the definition of lead poisoning under the City Health Code and the federal CDC Guidelines. *See*, Ex. 77, p. 209; *see also* Ex. 113 and Ex. 64, p. 23 (estimate for fiscal year 1998).

2. Nevertheless, on June 30, 1999, the New York City Council, at the urging of Speaker Peter Vallone and Mayor Rudolph Giuliani, hurriedly passed a major lead paint bill that

severely weakens current requirements for quick and safe remediation of toxic lead paint hazards in buildings where very young children reside. Mayor Giuliani signed it into law on July 15, 1999. The bill was termed the "Landlord Protection Act" by concerned Council members who voted against it and by public health advocates.

3. If implemented on its effective date of November 12, 1999, this new local law, now designated Local Law 38 of 1999, would allow the presence of toxic lead dust and certain conditions that generate such toxic dust to remain uncorrected. It would increase the likelihood that toxic lead dust and lead paint chips will be released into residential environments by sanctioning sloppy paint removal and clean-up practices. It also would prolong the amount of time that young children are exposed to toxic lead paint hazards through extraordinarily long, unjustifiable delays in enforcement, and in some circumstances, possibly indefinitely. Also, the protection provided by the City's lead paint law against toxic lead paint hazards would no longer apply at all to six-year-old children.

4. Incredibly, the City Council and Speaker Vallone claim that Local Law 38 can have no significant adverse environmental impact whatsoever. This preposterous claim, embodied in a specious and superficial piece of paper titled a "Negative Declaration" (a declaration of "no significant adverse environmental effect"), was made to escape the requirement of preparing an environmental impact statement and considering its findings before taking action on the proposed local law.

5. While one may enjoy the cynical humor in Bismark's aphorism, "To retain respect for sausages and laws, one must not watch them in the making," New York State law declares that when local governments propose to enact a local law that may have an adverse effect on

environmental health, they cannot conduct their legislative process like sausage-making. Instead, they must "thoroughly analyze" and take a "hard look" at the potential adverse environmental effects of the proposed local law and provide a written, reasoned elaboration of their findings. If they determine that it *may* have even one significant adverse environmental effect, they *must* prepare an environmental impact statement to ensure full consideration of the proposed law's environmental effects before voting on it.

6. Every independent physician and lead poisoning expert who testified before the City Council or provided written comments on the proposed local law warned of its likely adverse environmental health effects. Yet, by adopting a Negative Declaration that did not even mention their concerns, the City Council and Speaker Vallone acted as if the public health experts had not communicated this – indeed, as if no environmental health controversy existed at all. In addition, Mayor Giuliani ignored these experts' warnings and signed the bill into law despite its invalid, inaccurate Negative Declaration.

7. By this flagrantly illegal process, respondent-defendants acted arbitrarily and capriciously, in an abuse of discretion and in violation of the mandatory requirements of the New York State Environmental Quality Review Act ("SEQRA") and the New York City Rules of Procedure for Environmental Quality Review ("CEQR"). Petitioners therefore seek to have the Court determine that the Negative Declaration and – consequently – Local Law 38 of 1999 are null and void.

NATURE OF THE PROCEEDING AND STATUTORY FRAMEWORK

8. This proceeding is brought pursuant to Article 78 and § 3001 of the New York Civil Practice Law and Rules ("CPLR") for a judgment annulling and setting aside Local Law 38

of 1999 (“Local Law 38”), which was passed on June 30, 1999, by the City Council of the City of New York (“the City Council”) as “Preconsidered Int. No. 582" and signed into law by Mayor Rudolph Giuliani of the City of New York (“the City”) on July 15, 1999, and also for a judgment annulling and setting aside the underlying Negative Declaration, *see* Ex. 1, which was adopted by the City Council through passage of “Resolution 883.” *See* Ex. 2.

9. Local Law 38 repeals a prior law concerning lead paint, Local Law 1 of 1982 (hereafter, “Local Law 1"), codified at New York City Administrative Code (“Admin. Code”) § 27-2013(h), *see* Ex. 94, substituting instead a new law, codified at N.Y.C. Admin. Code §§ 27-2056.1 et seq. It also modifies an earlier law on lead paint, Local Law 50 of 1972, codified at Admin. Code § 27-2126. *See* Ex. 96. By its terms, Local Law 38 will become effective 120 days after its signing into law, i.e., on November 12, 1999. *See* Local Law 38, § 9, Ex. 73-a.

10. Local Law 38 must be annulled because the actions taken by the respondents-defendants in relation to its enactment violated SEQRA, codified at New York Environmental Conservation Law (“ECL”) §§ 8-0101 et seq., and its implementing regulations, codified at Title 6 of the New York Code of Rules and Regulations (“N.Y.C.R.R.”) Part 617, and CEQR, codified at 43 Rules of the City of New York (“R.C.N.Y.”) §§ 6-01 *et seq* and 62 R.C.N.Y §§5-01 *et seq.* *See* Ex. 85.

11. The purpose of SEQRA is “to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time,” 6 N.Y.C.R.R. § 617.1(c), and to ensure that “the protection and enhancement of the environment, human and community resources should be given appropriate weight with social and economic considerations in determining public

policy; and that those factors be considered together in reaching decisions on proposed activities." 6 N.Y.C.R.R. § 617.1(d).

12. SEQRA requires every local government body to prepare an Environmental Impact Statement ("EIS") before enacting a local law that may have a significant effect on the environment. ECL § 8-0109; 6 N.Y.C.R.R. §§ 617.2(b)(3) and 617.3; CEQR, 24 R.C.N.Y § 6-12(a), *see* Ex. 85.

13. An EIS is *required* for a proposed "action" if the designated "lead agency" determines that the action *may* include the potential for at least one significant adverse environmental impact. ECL § 8-0109(2); 6 N.Y.C.R.R. § 617.7(a)(1). Conversely, to determine that an EIS will not be required for an action, "the lead agency must determine either that there will be no adverse environmental effect or that the identified adverse environmental effects will not be significant." 6 N.Y.C.R.R. § 617.7(a)(2). Thus, the existence of *only one* potentially significant environmental effect triggers the need for an EIS.

14. SEQRA requires that a government body must "thoroughly analyze" and take a "hard look" at the potential effects on the environment of a proposed action to determine whether or not an EIS should be prepared. *See* 6 N.Y.C.R.R. § 617.2(b); *H.O.M.E.S. v. New York State Urban Dev. Corp.*, 69 A.D.2d 222, 232 (4th Dep't, 1979). A "negative" or "positive" declaration of significance can only be issued *after* taking that "hard look" at the potential environmental effects of the action.

15. While the use of lead-based paint (hereafter, "lead paint") in residential housing was banned in New York City in 1960, 24 R.C.N.Y. § 173.13(c), this toxic substance still remains in much of the housing in the City, presenting an environmental risk that requires careful

management. According to the 1990 U.S. Census, New York City has the nation's highest percentage -- 63.5% -- of pre-1960 residential housing among large cities. "[Lead] paint continues to cover the walls of two out of three City dwellings." Juarez v. Wavecrest Mgt., 88 N.Y.2d at 641. The City estimates that some 78% of the city's 2,980,762 housing units are pre-1960, (*see* Ex. 112, p. 32), and that 2,000,000 units of housing contain lead paint (of which half are occupied by low or moderate income families). *See* Ex. 113, p. 18. Children under 6 years of age reside in an estimated 323,000 of these units. An estimated 174,000 units of these are occupied by low income families -- where deteriorated housing conditions are more prevalent. Id. at 19.

16. Toxic lead dust or paint chips from lead paint can be ingested by young children, especially toddlers with hand-to-mouth activity, causing irreversible brain damage and other physical harm. The poisoning of children by lead can be avoided by preventing their exposure to this environmental toxin. *See* Paragraphs 55-61 below.

17. As the Commissioner of the City Department of Health ("DoH") acknowledged in testimony before the Council, a child can become poisoned by lead very quickly, depending on the severity of the child's exposure to lead dust or paint chips. *See* Ex. 77, p. 139. *See also* Affidavit of Herbert Needleman, M.D.(hereafter, "Needleman Aff."), at paragraph 5; Affidavit of John Rosen, M.D. ("hereafter, Rosen Aff."), at paragraph 9.

18. If allowed to take effect, Local Law 38 would, among other adverse environmental effects:

(a) Eliminate landlords' duties to remove or permanently cover intact lead paint on friction and impact surfaces (doors and windows) and other conditions that can generate *toxic lead dust* by excluding such conditions – and lead dust itself – from the definition of "lead-based paint hazard"; this

is inconsistent with the federal definition of "lead-based paint hazard" under the Toxic Substances Control Act, § 401, 15 U.S.C. § 2681;

(b) Deprive all six-year-old children of the protection of the City's lead paint law; the existing Local Law 1, in contrast, required protection of all children through and including the age of six;

(c) Allow landlords cited by HPD for a lead paint hazard violation a 21-day period during which they can escape the duty to comply with the City Health Code's safety standards for lead paint removal; during this period, it would allow landlords to follow significantly weaker work protocols that have been criticized by leading medical and technical experts and to use untrained, uncertified workers;

(d) Allow environmentally hazardous lead paint conditions which HPD has cited as "immediately hazardous" violations in apartments housing very young and vulnerable children to remain present for unreasonably long periods;

(e) Eliminate the duty of HPD, where a landlord fails to correct a lead paint hazard in a one or two-family dwelling containing an already lead-poisoned child, to require correction of the hazard within 18 days after the matter has been referred to it by DoH. *Compare* existing Admin. Code § 2126(b) *with* Local Law 38, § 7, modifying § 27-2126(b).

19. Local Law 38 would have immediate and irreparable adverse effects because if it is allowed to take effect on November 12, 1999, landlords' duties to correct lead dust hazards not caused by peeling paint would terminate on that date. Also, landlords' duties to protect six-year-olds from lead paint hazards under Local Law 1 would end on that date. Thus, many children would be left *immediately vulnerable* to toxic lead paint hazards that inflict irreversible brain injury. Also, any lead paint abatement actually conducted by a landlord in a multiple dwelling after that date could be conducted using new, unsafe work protocols that dangerously allow lead dust and lead particles to be scattered about a child's dwelling and fail to require proper clean-up of all such dust and particles afterward. This will immediately increase the risk of more lead poisonings, which inflict irreversible brain injury. Finally, any order issued on or after that date in

a multiple dwelling would be subject to new, lax deadlines that would allow children to be exposed to toxic lead paint hazards for prolonged periods, while families in non-multiple dwellings would be denied the right to correction of lead paint hazards by any date certain at all, thus substantially increasing the risk of lead poisoning, which inflicts irreversible brain injury.

20. With this application, petitioners seek an order declaring Local Law 38 null and void. Petitioners also seek an order requiring the City Council to prepare an EIS before taking any action to re-enact the law. An EIS is required because implementation of this local law would have a significant adverse effect upon the environment for children who live in residential buildings that contain toxic lead paint hazards.

PARTIES, JURISDICTION AND VENUE

21. Petitioner-plaintiff NEW YORK CITY COALITION TO END LEAD POISONING (NYCCELP) is a membership organization founded in 1983, in response to noncompliance with New York City Admin. Code § 27-2013(h), s*ee* Ex. 94. NYCCELP's purpose is to educate and advocate for children at risk of lead poisoning and work to eliminate that risk. This includes education and advocacy regarding (a) the circumstances that trigger responsibilities to inspect for lead paint, (b) proper inspections to find all lead paint violations, and (c) lead paint abatement to cure all lead paint violations efficiently and effectively.

22. NYCCELP's members include parents who live in pre-1960 multiple dwellings or one-and-two family dwellings in New York City and who are legal guardians of children who will be at increased risk of lead poisoning as a result of implementation of Local Law 38. Indeed, the majority of NYCCELP individual members over NYCCELP's 16 years of existence have been parents of children at risk of lead poisoning. Those who are not such parents work on behalf of

such parents and their children. The most vulnerable of this parent group – those who suffer most from the environmental health impact caused by lead paint hazards – are low-income parents of children actually poisoned.

23. In 1985, such parent members initiated and have since maintained NYCCELP's class action to gain enforcement of Local Law 1, see Paragraph 68 below, and continue to work with other members of NYCCELP to push for adequate compliance with lead poisoning prevention laws.

24. NYCCELP members assist families with young children who have been exposed to lead paint, and some NYCCELP members screen children for lead poisoning. NYCCELP members educate and advocate for families to obtain proper inspections for lead paint in their apartments. NYCCELP educates and advocates for the families to obtain abatement of all lead paint as required under New York City and State laws. A representative of NYCCELP testified at the June 21, 1999, and June 24, 1999, hearings of the City Council Committee on Housing and Buildings on the proposed local law now designated Local Law 38 of 1999. NYCCELP, therefore, has a substantial interest in the subject matter and outcome of this case.

25. Petitioner-plaintiff NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC. ("NYPIRG") was formed in 1973 as a not-for-profit, non-partisan group established to effect policy reforms while training students and other New Yorkers to be advocates. NYPIRG is a statewide organization that works on issues such as environmental protection, good government, and consumer protection. Its members include parents who live in pre-1960 multiple dwellings or one-or-two family dwellings in New York City and who are legal guardians of children under age seven who will be at increased risk of lead poisoning as a result of

implementation of Local Law 38. NYPIRG has a significant history of involvement in the issue of controlling toxic lead paint hazards, beginning in 1992 when it began a Lead Poisoning Prevention Awareness Campaign. In 1993, NYPIRG produced *Get the Lead Out*, a consumer handbook on lead poisoning prevention. NYPIRG also publishes the *LEADletter*, a newsletter which reports on lead poisoning issues statewide. Representatives of NYPIRG testified at the June 21, 1999, and June 24, 1999 hearings of the City Council Committee on Housing and Buildings on the proposed local law and also repeatedly distributed written information on the proposed local law to all of the members of the City Council and to City Council staff. In addition, NYPIRG has a long history of participation in New York City Council proceedings and has a strong interest in assuring that the City Council follows proper legal procedures in conducting its legislative functions. Finally, NYPIRG has been active statewide in cases and administrative proceedings involving proper implementation of SEQRA, including participation in proceedings on regulations to implement that State law. NYPIRG, therefore, has a substantial interest in the subject matter and outcome of this case.

26. Petitioner-plaintiff NEW YORK STATE TENANTS & NEIGHBORS COALITION, INC. ("Tenants & Neighbors"), is a statewide tenants' rights lobbying and advocacy membership not-for-profit organization with approximately 16,000 individual members living in New York City and approximately 105 member organizations located in New York City. The organization lobbies the New York State Legislature, the United States Congress, and local legislative bodies throughout the state on laws affecting tenants' rights and protections, the allocation of funds for affordable housing, and the preservation of housing. The overwhelming majority of Tenants & Neighbors's members are tenants. Many of its members live in pre-1960

multiple dwellings or one-and-two family dwellings in New York City and are parents who are legal guardians of young children who will be at increased risk of lead poisoning as a result of implementation of Local Law 38. Together with Met Council, Inc., it send a written communication to all of the Council members regarding the proposed local law. A representative of Tenants & Neighbors testified at the June 24, 1999, hearing of the City Council Committee on Housing and Buildings on the proposed local law. Also, representatives of Tenants & Neighbors directly contacted many City Council members to raise their concerns about the proposed local law. Tenants & Neighbors, therefore, has a substantial interest in the subject matter and outcome of this case.

27. Petitioner-plaintiff MET COUNCIL, INC., d.b.a., METROPOLITAN COUNCIL ON HOUSING ("Met Council") is a New York City-wide tenant not-for-profit organization formed in 1959 and dedicated to decent, affordable, and integrated housing. The overwhelming majority of its members are tenants. Many of its members live in pre-1960 multiple or one-and-two family dwellings in New York City and are parents who are legal guardians of young children who will be at increased risk of lead poisoning as a result of implementation of Local Law 38. Met Council has long been concerned with the hazards of lead paint. Together with Tenants & Neighbors, it sent a written communication to all of the Council members regarding the proposed local law, and a representative of Met Council testified at the June 24, 1999, hearing of the Committee on Housing and Buildings on the proposed local law. Met Council, therefore, has a substantial interest in the subject matter and outcome of this case.

28. Petitioner-plaintiff SINERGIA, INC., is a not-for-profit organization that provides a variety of services to persons with developmental disabilities, many of whom have been

poisoned by lead paint. Sinergia's housing program manages and supervises housing for persons with developmental disabilities and provides them social services. It also assists parents in obtaining access to appropriate special education programs for their children. Sinergia is concerned with efforts to prevent children's exposure to lead because its clients — children from mostly African-American and Latino families living in the worst housing in New York City — are children with the highest percentage of developmental disabilities from lead paint exposure. Sinergia seeks to reduce this preventable environmental cause of developmental disabilities and need for special education. A representative of Sinergia testified at the June 21, 1999, and June 24, 1999, hearings of the Committee on Housing and Buildings on the proposed local law.

29. Petitioner-plaintiff ALIANZA DOMINICANA, INC., (“Alianza”) a multi-service community-based organization, provides comprehensive services to children, youth, and families in northern Manhattan. Alianza targets services to the community-at-large with a special focus on the area’s Dominican and Latino immigrant residences. Alianza has long been concerned with reducing childhood lead poisoning. It operates a program called Lead Hazard Prevention, which helps local contractors and workers perform safe lead abatement in the neighborhood and also provides prevention-oriented education to area residents about lead hazards and the importance of strict clean-up and control work methods. Many of the families and young children whom Alianza serves live in pre-1960 buildings containing serious lead paint hazards. Therefore, Alianza has a substantial interest in the subject matter and outcome of this case.

30. Petitioner-plaintiff CITY PROJECT, INC., is a member-based, nonprofit organization that promotes sound fiscal and management policies for City government to ensure efficiency, equity and quality. City Project members include tenants who live in pre-1960 multiple

or one-and-two family dwellings in New York City and are parents who are legal guardians of young children who will be at increased risk of lead poisoning as a result of implementation of Local Law 38. Through analysis, education and advocacy, City Project serves as the fiscal voice for a livable New York. City Project, through a letter from its Executive Director to Speaker Peter Vallone dated June 3, 1999, expressed concern that the City Council was moving forward quickly on a lead paint bill and urged that the Council take steps to foster adequate public participation in the process. In addition, a representative of City Project testified at the June 21, 1999 hearing of the Committee on Housing and Buildings on the proposed local law. City Project therefore has a substantial interest in the subject matter and outcome of this lawsuit.

31. Petitioner-plaintiff EAST NEW YORK UNITED FRONT ("ENYUF"), by its Chairperson, Charles Barron, is a coalition of East New York residents from block associations, tenant associations, churches and other community-based organizations. Many of the members of ENYUF and its member groups are tenants who live in pre-1960 multiple or one-and-two family dwellings in New York City and are parents who are legal guardians of young children who will be at increased risk of lead poisoning as a result of implementation of Local Law 38. One of ENYUF's most important objectives is advocacy for community environmental issues and for environmental justice for low income communities and people of color. The environmental hazards of lead paint are of great concern to ENYUF. A representative of ENYUF spoke at a press conference at City Hall, organized by environmental justice advocates to urge the City Council to reconsider and reject Local Law 38 based on its adverse environmental impact on low income communities and children of color. ENYUF therefore has a substantial interest in the outcome of this case.

32. Petitioner-plaintiff EL PUENTE OF WILLIAMSBURG, INC., is a community-based non-profit organization that provides many services to the Latino community of Williamsburg, Brooklyn, including programs in education and the environment. Many children in Williamsburg live in buildings in which lead paint presents a severe health hazard. El Puente's staff and members have been concerned for many years with childhood lead poisoning. El Puente participated in a coalition of organizations that successfully obtained a court decision requiring the City of New York to prepare an environmental impact statement on the removal of toxic lead paint from the Williamsburg Bridge. *Williamsburg Around the Bridge Block v. Giuliani*, 167 Misc.2d 980, 637 N.Y.S.2d 241 (Sup. Ct. N.Y. Co. 1995), *aff'd*, 223 A.D.2d 64 (1st Dep't, 1996). El Puente therefore has a substantial interest in the outcome of this case.

33. Petitioner-plaintiff GREATER NEW YORK LABOR-RELIGION COALITION is a network of trade union and religious leaders concerned with human rights. Lead poisoning constitutes a long-time human rights concern to this organization. Labor-Religion Coalition believes that a number of its constituents are New York City tenants who reside in pre-1960 dwellings and have children under the age of seven who are at risk from lead paint hazards and should be protected against the devastating effects of lead poisoning. Moreover, the Labor-Religion Coalition finds it tragic that the City has failed to prevent a wholly preventable environmental disease among its most vulnerable citizens and to ensure that landlords eliminate residential lead paint. This case and the new lead law it challenges bears directly on this central concern of the Labor-Religion Coalition and its members. The organization is chaired by Samuel Hirsch, a NYCCELP member since that organization's inception, and Monsignor Howard Basler, Director of Social Action for the Diocese of Brooklyn. The Labor-Religion Coalition submitted a

Memorandum of Opposition to the City Council prior to its vote on the proposed local law. This case and the recently adopted lead paint law that it challenges bear directly on a central concern of the Labor-Religion Coalition and its members. The Labor-Religion Coalition therefore has a substantial interest in the outcome of this case.

34. Petitioner-plaintiff MAKE THE ROAD BY WALKING, INC. ("MTRBW"), is a membership led, community-based, not-for-profit organization committed to promoting collective action and expanding the opportunities for self-determination among residents of Bushwick, Brooklyn, through collaborative learning, organizing and activism, and community support. MTRBW's Environmental Justice project is working to achieve real solutions to the environmental problems the plague the Bushwick community. One of the most serious of these problems is childhood lead poisoning. Bushwick had the highest rate of new lead cases of childhood lead poisoning in New York City, according to the most recent availably data from the City DoH. *See* Ex. 112, p. 44. The majority of MTRBW members and clients live in dwellings in the Bushwick community. The majority of Bushwick's housing stock was built before 1960 and has not been renovated. Many of MTRBW's members live in pre-1960 multiple dwellings or one-and-two family homes in New York City and are parents who are legal guardians of children under the age of seven who will be at increased risk of lead poisoning if Local Law 38 is implemented. Indeed, more than half of Bushwick households have children under age 18. The high rates of lead-poisoning cases in this predominately Latino community are likely to climb even higher as a result of the recent changes in New York City's law regarding lead. MTRBW, therefore, has a substantial interest in the subject matter and outcome of this case.

35. Petitioner-plaintiff NEW YORK CITY ENVIRONMENTAL JUSTICE ALLIANCE (NYCEJA) is a not-for-profit membership organization promoting a healthful environment, equal environmental protection, and open participation in developing environmental policy, especially environmental policies that have an impact on low-income and minority communities in New York City. In particular, it is concerned with proper implementation of environmental laws to protect low income people and people of color from toxic environmental hazards. NYCEJA has identified childhood lead poisoning as having a significant adverse impact on these communities. NYCEJA's Minority Worker Training Program provides training to youth recruited from neighborhoods with high rates of lead poisoning, such as Harlem, South Bronx, Williamsburg, and Central Brooklyn, in environmental work such as lead abatement. NYCEJA is greatly concerned that Local Law 38 will cause more children in low income and minority communities to be exposed to toxic lead. NYCEJA therefore has a substantial interest in the outcome of this case.

36. The SOUTH BRONX COALITION FOR CLEAN AIR, INC., is a not-for profit corporation dedicated to improving environmental quality and public health in the South Bronx of New York City. Its members include residents of the South Bronx, community groups, churches, parents associations and others concerned about environmental health in the South Bronx. Many of its individual members live in pre-1960 multiple dwelling apartments in New York City and are parents who are legal guardians of children under age seven, who are at increased risk of lead poisoning from implementation of Local Law 38. As an “environmental justice” organization, the South Bronx Coalition for Clean Air has led efforts to block sources of toxic air emissions, such as medical waste incineration, and reduce the problem of diesel emissions. It has also led efforts

to make the federal Environmental Protection Agency, State Department of Environmental Conservation and City Department of Environmental Protection more aware of the environmental problems faced by Hispanic communities and low income neighborhoods in the South Bronx. The organization has long been concerned about the presence of toxic lead in residential housing, and its harmful effects on children. It recently launched a new education and awareness program on lead poisoning, in conjunction with West Harlem Environmental Action, another not-for-profit group, to identify lead-contaminated, high-risk dwellings and give parents medical referral information on getting their children tested for lead. A representative of the South Bronx Coalition for Clean Air spoke at two news conferences at City Hall in June, urging the New York City Council to reject the proposed local law now designated Local Law 38 of 1999 because it would cause more children to be exposed to toxic lead, and because the law would have a particularly adverse impact on Latino and African American children. The organization also contacted its local City Council member, urging him to reject the proposed local law. The South Bronx Coalition for Clean Air, therefore, has a substantial interest in the subject matter and outcome of this case.

37. The QUEENS LEAGUE OF UNITED TENANTS, INC. (QLOUT), is a borough-wide coalition of tenants located in Queens County that educates tenants concerning their rights to housing that is properly maintained and provides a safe living environment, trains tenant advocates, lobbies on tenant issues and works with the City-wide Task Force on Housing Court. Many of the tenants who are members of and served by QLOUT live in pre-1960 buildings and are parents of children under seven years old who are at increased risk f lead

poisoning from implementation of Local Law 38. QLOUT therefore has a substantial interest in the outcome of this case.

38. Petitioners-plaintiffs INOCENCIA NOLASCO, and GRECIA MARIA VASQUEZ, on behalf of her daughter, petitioner-plaintiff KATHERINE FIGUEREO, reside in Apartment 1-L at 302 Grove Street, Brooklyn, New York, a multiple dwelling built before 1960. Petitioner Inocencia Nolasco is the tenant of the above-noted unit. Ms. Nolasco is the mother of Ms. Vasquez and the grandmother of Katherine a nineteen-month-old toddler born on February 2, 1998. On August 11, 1999, a certified lead paint inspector tested petitioners' apartment for lead paint with an XRF machine. Test results indicate the presence of lead paint at multiple sites in the apartment (*i.e.*, at three locations in the front bedroom (two windows and a wall) and at one location in the middle bedroom (at a door casing)). *See* Affidavit of Robert Friedl (hereafter, Friedl Aff,). Because of Katherine's extremely young age and the positive test results for the presence of lead in the apartment, Ms. Nolasco and Ms. Vasquez are anxious about Katherine's health and safety and are particularly concerned about protecting her from lead paint poisoning after November 12, 1999, when Local Law 38 would go into effect. Therefore these petitioners-plaintiffs have a substantial interest in the outcome of this case.

39. Petitioner-plaintiff CATHERINE RODRIGUEZ, on behalf of her daughters, petitioners-plaintiffs DESTINY ALONSO; BIANCA RODRIQUEZ, and JOANNE MARRERO, resides with her children in Apartment 2-L at 306 Grove Street, Brooklyn, New York, a multiple dwelling built before 1960, where she is the tenant. All three children are under the age of seven: Destiny is an eighteen-month-old toddler born on March 18, 1998; Bianca is three years old and born on September 29, 1995, and Joanne is four-and-a-half years old and born on January 22,

1994. On August 11, 1999, a certified lead paint inspector tested petitioners' apartment for lead paint with an XRF machine. Test results indicate the presence of lead paint at multiple sites in the apartment (*i.e.*, at two locations in the kitchen (at the window apron and the chair rail, which is an impact surface) and at one location in the rear bedroom (at a wall)). *See* Friedl Aff. The landlord last painted the apartment approximately two to three years ago. Ms. Rodriguez has complained to the landlord of peeling paint in the kitchen and the bedroom. Ms. Rodriguez also has two other children, ages seven and eight, one of whom had a blood lead level of 49 µg/dL. Because of her older child's lead poisoning, the extremely young ages of Destiny, Bianca, and Joanne, and the positive test results for the presence of lead in the apartment, Ms. Rodriguez is anxious about her daughters' health and safety and is particularly concerned about protecting them from lead paint poisoning after November 12, 1999, when Local Law 38 would go into effect. Therefore these petitioners-plaintiffs have a substantial interest in the outcome of this case.

40. Petitioner-plaintiff ANA GOMEZ, on behalf of her son, petitioner-plaintiff CHRISTIAN GOMEZ, and her daughter, petitioner-plaintiff STEPHANIE GOMEZ, resides with her children in Apartment 3-L at 293 Grove Street, Brooklyn, New York, a multiple dwelling built before 1960, where she is the tenant. Christian is nearly three years of age and was born on October 10, 1996 and Stephanie is a nine-month-old infant born on December 12, 1998. On August 11, 1999, a certified lead paint inspector tested petitioners' apartment for lead paint with an XRF machine. Test results indicate the presence of lead paint at multiple sites in the apartment (*i.e.*, at two locations in the middle room (at the window stool and casing) and at one location in the living room (at a wall)). *See* Friedl Aff. Ms. Gomez had informed the landlord about the presence of the lead paint. The landlord last painted the apartment one year ago. Ms. Gomez

also resides with her two other children. Because of the extremely young ages of Christian and Stephanie and the positive test results for the presence of lead in the apartment, Ms. Gomez is anxious about her children's health and safety and is particularly concerned about protecting them from lead paint poisoning after November 12, 1999, when Local Law 38 would go into effect. Therefore these petitioners-plaintiffs have a substantial interest in the outcome of this case.

41. Petitioner-plaintiff MARIA CELIA NOLASCO on behalf of her grandsons, petitioners-plaintiffs JUSTIN AGRAMONTE and JUAN NOLASCO, JR. of whom she is the legal guardian, resides with her grandchildren in Apartment 2-R at 305 Grove Street, Brooklyn, New York, a multiple dwelling built before 1960, where she is the tenant. Justin is three-and-a-half years old and was born on April 12, 1996. Juan is six-and-a-half years old and was born on March 7, 1993. The children were screened for blood lead levels and test results indicated an elevated blood lead level of 11 µg/dL for Justin and 15 µg/dL for Juan. Justin had a blood lead level of 8 µg/dL. A third grandchild, Stephanie Nolasco, an eight-year-old child born on July 23, 1991, was previously lead poisoned, with a level of 18 µg/dL. On August 11, 1999, a certified lead paint inspector tested petitioners' apartment for lead paint with an XRF machine. Test results indicate the presence of lead paint at multiple sites in the apartment (*i.e.*, at two locations in the dining room (at a cabinet shelf and wall) and at one location in the kitchen from (at a window casing)). *See* Friedl Aff. Because of Stephanie's prior lead poisoning, the young ages of Juan and Justin and their elevated blood lead levels, and the positive test results for the presence of lead in the apartment, Ms. Nolasco is anxious about her grandsons' health and safety and is particularly concerned about protecting them from lead paint poisoning after November 12, 1999, when Local

Law 38 would go into effect. Therefore these petitioners-plaintiffs have a substantial interest in the outcome of this case.

42. Petitioners-plaintiffs DAVID M. MONAHAN and JULIE MONAHAN, on behalf of their daughter, petitioner-plaintiff IRIS EVE MONAHAN, reside in the first-floor apartment of a two-family dwelling at 23-71 Crescent Avenue, Astoria, New York. Petitioners David and Julie Monahan are the tenants in the above-noted unit, which is located in a dwelling in Queens County built before 1960. Mr. and Ms. Monahan are the parents of Iris. Iris is nearly three years old and was born on October 19, 1996. Because of Iris's young age, Mr. and Ms. Monahan have expressed concerns to their landlord about the risk of lead paint in the apartment and are particularly concerned about protecting her from lead paint poisoning after November 12, 1999, when Local Law 38 would go into effect. Therefore these petitioners-plaintiffs have a substantial interest in the outcome of this case.

43. The physical health of these individual petitioners, and members of the petitioner organizations who live in pre-1960 housing, may be put at risk from environmentally hazardous lead dust and lead paint conditions that will not be corrected under Local Law 38, or as a result of the unsafe or untimely correction of such hazards under Local Law 38. This harm could occur, or begin to occur, immediately upon the effective date of Local Law 38. The failure of the respondents to conduct a proper environmental review of Local Law 38 deprives the petitioners of the statutory means of protecting themselves from environmental harm. In addition, these individual petitioners and members of the petitioner organizations are citizens and taxpayers of the City and object to the expenditure of City funds to implement Local Law 38 in violation of State and City law.

44. For the reasons presented in this Petition and Complaint, and as set forth in the accompanying expert affidavits of Philip Landrigan, M.D., Bruce Lanphear, M.D., Irving Mauss, M.D., Herbert Needleman, M.D., John Rosen, M.D., Robert Friedl, Charles Gilbert, Ph.D., Evelyn Mauss, Sc.D., David Newman, M.S., and Edward Olmsted, C.I.H., with supporting exhibits, and affidavits relating to the proceedings on Local Law 38 by Andrew Goldberg, Cathleen Breen, Suzanne Mattei, Brenda Morrow, and Matthew Chachere, with accompanying exhibits, annexed and incorporated herein, each of the petitioners will suffer substantial and irreparable injury as a result of the respondents-defendants' actions related to the enactment of Local Law 38.

45. Petitioners have no adequate remedy or relief at law or remedy other than the relief requested in this proceeding.

46. Respondent-defendant Peter Vallone, is the Speaker of the New York City Council. The Speaker has the authority to call the meetings of the Council and also has the authority to establish the agenda for each stated meeting of the Council. Rules of the Council, Ch. 1, § 1.0 and Ch. II, § 2.10. All local laws and resolutions that may be proposed to the Council for action are submitted to the Speaker. *Id*., Ch. VI, § 6.00. The Speaker is also the Majority Leader of the Council. *Id*., Ch. IV, § 4.00. *See* Ex. 90.

47. Respondent-defendant Peter Vallone is the elected official who acts as supervisor of Council staff who conducted the discussions on the draft bills and prepared the Report to the Council that was submitted as support documentation for the Negative Declaration that is the subject of this Petition and Complaint.

48. Respondent-defendant Peter Vallone approved the designation of the proposed local law and the proposed Resolution regarding the Negative Declaration as "pre-considered" for consideration by the Committee on Housing and Buildings and for consideration at the June 30, 1999, Stated City Council Meeting, as neither had been introduced at a prior Stated City Council Meeting. *See* Paragraph 91 below.

49. Respondent-defendant Peter Vallone changed the date of the full ("Stated") City Council Meeting from June 29, 1999, to June 30, 1999, and approved the addition of the proposed local law and the proposed Resolution regarding the Negative Declaration to the agenda of that Stated City Council Meeting. *See* Paragraphs 105 and 106 below.

50. Respondent-defendant, the New York City Council, is the legislative body of the City of New York created under Chapter 2 of the Charter. It is listed as the "Lead Agency" on the document entitled, "Notice of Negative Declaration" that is a subject of this Petition and Complaint. *See* Exs. 51-1 and 51-2. The City Council has the "power to adopt local laws which it deems appropriate, which are not inconsistent with the provisions of this charter or with the constitution or laws of the United States or this state, for . . . the preservation of the public health." New York City Charter, Ch. 2, § 28; *see* Ex. 89.

51. Respondent-defendant, Rudolph Giuliani, is the Mayor of the City of New York. The Mayor has the duty to act upon local laws or resolutions of the City Council, after holding a public hearing on the measure. New York Municipal Home Rule Law ("MHRL") § 20(5). This duty is non-delegable. New York City Ch., Chapter 1, § 8(f). The Mayor also "is responsible for the effectiveness and integrity of city government operations." *Id.*, § 8(a). *See* Ex. 88. The Mayor is an "involved agency" for the purpose of this SEQRA process related to enactment of

Local Law 38. *See* Paragraph 147 below. Both Resolution 883, by which the City Council adopted the Negative Declaration, and the proposed local law itself were sponsored by Council member Archie Spigner "in conjunction with the Mayor." *See* Exs. 2 and 73-a.

52. Respondent-defendant, the City of New York, is a domestic municipal corporation and political subdivision of New York State.

53. The respondents plan to use public funds to implement Local Law 38.

54. This Court has jurisdiction to review the action of the respondents-defendants pursuant to Article 78 of the CPLR and venue is proper, pursuant to CPLR § 504, because the matter that is the subject of this petition and complaint originated in New York County, the material events that are the subject of this petition and complaint occurred in New York County, and the principal offices of all of the respondents-defendants are located in New York County.

THE TOXICITY OF LEAD AND LEAD PAINT

55. Lead is a highly toxic metal which, when absorbed into the human body, produces a range of adverse health effects, particularly in children. These effects include nervous system disorders, delays in neurological and physical development, cognitive and behavioral changes, and hypertension, most of which are irreversible. The federal Centers for Disease Control and Prevention (CDC) regards lead poisoning as "the most common and societally devastating environmental disease of young children." *See* Affidavit of Evelyn Mauss, Sc.D. (hereafter, "E. Mauss Aff."), paragraph 12; Rosen Aff.; *see also* Affirmation of Dr. Philip Landrigan (hereafter, "Landrigan Aff."), paragraph 15.

56. Lead poisoning causes permanent, irreversible brain damage, interfering with a child's cognitive and intellectual abilities. *See* E. Mauss Aff., paragraphs 10-12 and Att. A; Rosen

Aff., paragraph 10. It is associated with reduced intelligence, a shortened attention span and behavioral disorders, including a propensity to violence. *See* Needleman Aff., paragraphs 8-9; Landrigan Aff., paragraph 15; and Rosen Aff. As a result, children who become lead poisoned are very likely to suffer learning disabilities and often require special education. *See* Ex. 78, p. 149.

57. Children from birth through six years old are at special risk of lead poisoning. Their normal hand-to-mouth activity – for example, after crawling, climbing, touching floors, window sills or window wells or handling toys that have been on the floor or window sill – causes frequent ingestion of toxic lead dust and lead paint chips generated by peeling lead paint or by "friction" or "impact" surfaces (such as on doors and windows) that are covered with lead paint. Tragically, children's brains and nervous systems are particularly vulnerable during these years because they are still in their early developmental stages, as connections among brain cells form and become organized. *See* E. Mauss Aff., paragraphs 7-10, and Att. A; Rosen Aff., paragraphs 5-6.

58. Adverse effects of lead poisoning have been found at increasingly lower blood levels. In 1991 the CDC lowered the federal "action level" for blood lead levels from 25 micrograms of lead per deciliter of blood ("µg/dL") to a level of 10 µg/dL. The New York City Health Code also defines lead poisoning as 10 µg/dL or higher. 24 R.C.N.Y. § 11.03. While the symptoms of lead poisoning can be subtle, often eluding diagnosis, even lead exposure well below 10 µg/dL is directly related to cognitive and neurobehavioral deficits. *See* Rosen Aff., Paragraph 8; *Williamsburg Around the Bridge Block Ass'n v. Giuliani*, 223 A.D.2d 64, 66 (1st Dep't 1996)

(blood lead levels "as low as two [µg/dL] in children under seven years old lowers IQ, stunts growth and causes behavioral problems.") These deficits are considered irreversible.

59. Indeed, Congress has found that even "at low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity and behavior problems." 42 U.S.C. § 4851(2). All the recent, rigorously performed studies converge on the strong, unequivocal conclusion: No blood lead threshold is too low to be disassociated from the adverse effects on IQ, cognitive functioning, maturational development, and academic skills necessary for success in school. *See* E. Mauss Aff., paragraph 6, and Att. A.

60. While N.Y. Public Health Law ("PHL") §§ 1370-c and 1370-d require that all children under six years of age be tested for blood lead levels, approximately 40% of such children in the City are not being tested. *See* Ex. 77, p. 135; Affidavit of Irving Mauss, M.D., paragraphs 9-10. Consequently, their only protection against lead paint hazards is the preventive measures required by the City's lead paint law, which would be substantially weaker if Local Law 38 is allowed to be implemented.

61. Low income children and children of color are at the greatest risk of exposure to toxic lead paint hazards. According to statistics from the City DoH, 90% of the children documented to have high levels of lead poisoning are Black, Latino or other children of color. *See* Ex. 27-c; Ex. 77, p. 165; Ex. 78, pp. 71-72. Consequently, childhood lead poisoning is considered to be an "environmental justice" issue.

EVENTS LEADING TO ILLEGAL ADOPTION OF LOCAL LAW: HOW RESPONDENTS-DEFENDANTS SPEAKER PETER VALLONE AND THE CITY COUNCIL IMPROPERLY RUSHED PROCEDURES IN VIOLATION OF SEQRA

Adoption of Local Law 1 and the Health Code Safety Standards for Lead Paint Removal

62. Having banned the use of lead paint in dwellings in 1960, the City amended its Health Code in 1970 to require the City DoH and HPD to order owners to remove or permanently cover lead paint in any dwelling wherein a resident has become lead poisoned. 24 R.C.N.Y. § 173.13(d)(2); *see* Ex. 92. Then in 1972, the City enacted Local Law 50, *see* Ex. 98, codified at Admin. Code § 27-2126, *see* Ex. 96, which required that if a dwelling owner fails to comply the DoH order, DoH must certify the condition to HPD for correction within 16 days of receipt of the complaint or the inspection (whichever comes first), and HPD must complete the correction within 18 days thereafter.

63. Those provisions of the Health Code and Administrative Code, unfortunately, only required action *after* a child had been poisoned. Expressing the need to eliminate lead paint hazards *before* a child is poisoned, the City Council enacted Local Law No. 1 in 1982, now codified at N.Y.C. Admin. Code § 27-2013(h). *See* Exs. 94 and 97.

64. Local Law 1 *does not* require a child's poisoning to trigger the duty to abate lead paint, and it "applies regardless of whether a City agency issues a lead paint violation." *NYCCELP v. Giuliani*, 173 Misc.2d 235, 239 (Sup. Ct. N.Y. Co. 1997), *aff'd*, 248 A.D.2d 120 (1st Dep't 1998), *leave to app. den.*, 1998 N.Y.App. Div. LEXIS 8108 (1st Dep't 1998) (NYCCELP VII)(*emphasis added*). The measure is preventive, designed to abate a major toxic hazard *before* irreversible damage to children is done.

65. Local Law 1 bans the presence of all lead-based paint — whether intact or peeling — on the interior walls, ceilings, doors, windowsills or molding in any multiple dwelling in the City where a child under the age of seven years resides. § 27-2013(h)(1); *see* Ex. 94.

NYCCELP v. Koch, N.Y.L.J. July 21, 1989, at 18, slip op. (Sup. Ct. N.Y. Co. July 6, 1989), *aff'd*, 170 A.D.2d 419 (1st Dep't 1991), *lv. to app. den.*, 1991 N.Y.App. Div. LEXIS 8028 (1st Dep't 1991)(*NYCCELP II*); *see* Ex. 101. Under Local Law 1, and Local Law 38, paint in a pre-1960 multiple dwelling apartment containing a very young child is presumed to be lead-based, but the landlord can successfully "rebut" the presumption if tests reveal that the paint is not lead-based.

66. Under Local Law 1, the presence of lead paint in such a dwelling is currently declared a Class C "immediately hazardous" violation that must be corrected within 24 hours. § 27- 2013(h)(3); *see* Ex. 94. *Juarez v. Wavecrest Management*, 88 N.Y.2d at 642. The statute requires landlords to remove or permanently cover *all* lead paint on specified interior surfaces "in a manner approved by" the City. *Id.*, 88 N.Y.2d at 647.

67. Respondent-defendant the City of New York itself is subject to this law's requirements of landlords because it owns 22,000 units of housing. *See* Ex. 77, p. 34. As of June 1999, a representative of the City Corporation Counsel's Office reports, approximately 1,400 claims were pending against the City of New York, as a landlord, regarding cases of children with elevated blood lead levels. *See* Ex. 77, p. 68.

68. In 1985, NYCCELP and other concerned organizations and individuals brought a state class action in New York County for declaratory and injunctive relief against the City and its Mayor for failure to enforce Local Law 1 properly. The action, originally entitled *NYCCELP v. Koch* (now *v. Giuliani*) (Index No. 42780/85), is still pending and has resulted in several decisions and orders requiring action by the City.

69. The court in *NYCCELP II* required the City to establish safety standards for the abatement of lead hazards. The court found "[i]mplicit" in Local Law 1 the requirement that lead paint abatement work "be undertaken with all due care for the protection of the children residing in the apartment." *Id*., slip op. at 16; *see* Ex. 101. Eventually, after being held in contempt for not complying with this order, *NYCCELP v. Koch*, N.Y.L.J., May 12, 1993, at 29, slip op. (Ex. 103) (Sup. Ct. N.Y. Co. May 4, 1993), *appeal withdrawn*, Stipulation (Feb. 24, 1995), the City eventually adopted safety standards for lead paint removal on November 16, 1993, now codified in the City Health Code at 24 R.C.N.Y. § 173.14. *See* Ex. 91.

70. The *NYCCELP II* order also required the City HPD to adopt regulations for timely inspection of lead paint violations and timely enforcement of their removal. *See* Ex. 102; *see also NYCCELP v. Giuliani*, 245 A.D.2d 49, 50 (1st Dep't, 1997)(*NYCCELP VI*). The City of New York has been held in contempt of court three times for failing to obey the orders in *NYCCELP II*. It had been paying fines since 1995 for those contempt citations, most recently at a level of $4,727.64 per month.

71. On October 9 and 15, 1998, respectively, HPD and DoH published proposed regulations, intended to comply with those court orders. *See* Exs. 99 and 100. At a hearing held by the City Council Committee on Housing and Buildings (hereafter, "the Committee"), on December 16, 1998, representatives of the City stated that the proposed regulations were intended to go into effect at the end of January, 1999, and argued that the City Council should revise Local Law 1 before then, to avoid having to fully enforce the existing law.

<u>Development of the Proposed Local Law that Is the Subject of this Petition/Complaint</u>

72. In December 1998, the plaintiffs in the *NYCCELP* lawsuit voluntarily offered to enter into an agreement to stay enforcement of all outstanding orders, suspending the contempt fines through the end of April 1999, to give the City time to revise its lead paint law to accomplish the goal of protecting children from toxic lead exposure while leaving in place intact lead paint that does not present an immediate or imminent hazard to children. By stipulation so-ordered by the court on January 29, 1999, the parties to that suit agreed to stay the orders and fines through the end of April, 1999, with the right to further extend the stay by written agreement of the parties. The stipulation plainly declared that the reason for the agreement was to avoid implementing major changes to enforcement procedures concerning residential lead paint in response to the Court's orders, only to revise them again in response to new legislation enacted largely in response to those orders, and "to assist the legislative process to proceed calmly and expeditiously." *See* Ex. 108.

73. At the time of the stay, the only existing legislative proposal to the Council on lead paint was Int. 205 (originally introduced as Int. 956 in 1997), a bill designed to modify Local Law 1 to focus on environmentally safe remediation of lead dust and other lead paint hazards coupled with strict maintenance of intact lead paint that is not removed. *See* Ex. 64 for discussion of Int. 205. Although it was introduced by the Chair of the Committee on Environmental Protection, Stanley Michels, sponsored by 36 City Council members, and determined to be cost-effective by the Independent Budget Office (*see* Ex. 63), no determination of environmental significance or hearing was ever conducted on the bill.

74. On or about April 13, Bruce Bender, Chief of Staff for respondent-defendant Speaker Peter Vallone, informed representatives of petitioner NYPIRG that the Council would

soon draft a different bill on lead poisoning. *See* Affirmation of Andrew Goldberg, NYPIRG (hereafter, "Goldberg Aff.").

75. At the end of April, 1999, as no hearings had been held on Intro 205, nor any other legislation introduced, the parties in the *NYCCELP v. Giuliani* suit agreed to a further extension of the stay of enforcement to the end of May, 1999.

76. On or about May 3, draft legislation had been developed which, according to a letter and comparison chart provided to Council members by respondent-defendant Speaker Peter Vallone and Council member Archie Spigner, required removal or covering of lead paint on friction surfaces and full dust clearance testing as currently required by the City Health Code, but it contained other provisions similar to the proposed local law that the Council ultimately adopted. *See* Ex. 75-a.

77. On or about May 19, the following City Council staff persons met with Andrew Goldberg, a representative of NYPIRG, to describe proposed legislation: Kathleen Cudahy, Director of the Human Services/Infrastructure Division of City Council staff; Ramon Martinez III, Director of the Council Services Division; Mary Mastropaolo, Assistant Counsel; Terzah Nasser, Counsel to the Committee on Housing and Buildings (hereafter, "the Committee"), and Michael Balagur, Policy Analyst. They informed Mr. Goldberg that the proposed legislation would likely allow intact lead paint to remain in place and also grant landlords a period within which they could escape compliance with the Health Code safety standards for lead paint removal. *See* Goldberg Aff.

78. On or about May 21, Ms. Cudahy informed Mr. Goldberg by telephone that the bill might be introduced on Thursday, May 27th, but that a draft of the bill was not yet ready for release. *See* Goldberg Aff.

79. On or about May 25, 1999, the following physicians and medical experts signed a letter to Speaker Peter Vallone, urging him to ensure that there would be "opportunity for thorough review of any proposed new legislation" on lead paint: I. H. Mauss, M.D. (Professor Emeritus of Clinical Pediatrics at Cornell University Medical College); Cathy Falvo, M.D. (President, Physicians for Social Responsibility); H. Jack Geiger, M.D., M.Sci. Hyg. (Professor of Community Medicine Emeritus at City University of New York Medical School); Philip Landrigan, M.D. (Director, Center for Children's Health and the Environment and Chair of Department of Community and Preventive Medicine at Mt. Sinai Medical Center); Michael McCalley, M.D. (Professor and Vice Chairman, Mt. Sinai School of Medicine Department of Community and Preventive Medicine); Herbert Needleman M.D. (Professor of Psychiatry and Pediatrics, researcher of lead poisoning impacts on I.Q. and behavior); Leon Orris, M.D. (Clinical Professor of Environmental Medicine, NYU School of Medicine); Mary Louise Patterson, M.D. (Assistant Professor of Pediatrics, Cornell University Medical College); Monroe Schneider, M.D. (Clinical Professor of Orthopedic Surgery and Rehabilitation, SUNY Health Sciences Center in Brooklyn); Victor Sidel, M.D. (Distinguished University Professor of Social Medicine, Albert Einstein College of Medicine and member of New York State Public Health Council); Irwin Solomon, M.D. (Assoc. Clinical Professor of Psychiatry, NYU School of Medicine); and Rebecca G. Solomon, M.D. (Faculty, New York Psychoanalytic Institute), to Speaker Peter Vallone, May 25, 1999. *See* Ex. 61. They received no response from Speaker Vallone. *See* I. Mauss Aff.

80. On or about May 28, 1999, respondent-defendant the City of New York asked for a further extension of the stay in the *NYCCELP v. Giuliani* lawsuit, but only through June 30. The plaintiffs in that action offered unconditionally to extend it to October 15, but the City refused that offer, insisting that the stay end on June 30.

81. By May 28, 1999, the staff of respondent-defendant the City Council had developed a draft bill that was substantially similar to the bill on which the Council ultimately voted. This draft bill eliminated the requirement to remove or permanently cover all lead paint, allowing intact paint to remain if not located on a deteriorated subsurface. It eliminated lead dust and conditions that cause lead dust from the definition of lead paint hazards, removed six-year-old children from the protection of the lead paint law, established a 21-day period during which landlords cited for lead paint violations could escape the Health Code safety standards for lead paint removal, allowed extremely long periods for lead hazard removal and enforcement, and eliminated the deadline by which HPD must take action to enforce lead paint violations in one and two-family dwellings. *See* Ex. 65.

82. On or about June 3, 1999, Lynne A. Weikart, Executive Director of the City Project, sent a letter to respondent-defendant Speaker Peter Vallone expressing the organization's concern that the Council leadership was considering a lead paint bill but that information on its provisions was not publicly available. The letter objected to the "apparent fast track status" of the proposal and urged the Council to allow time for experts to fully examine its provisions and determine its impact." *See* Ex. 20. A similar letter of concern also was sent on June 3, 1999 to Speaker Peter Vallone by Dennis Rivera, President of 1199/SEIU (Service Employees International Union) National Health and Human Service Employees. *See* Ex. 21.

83. On or about Tuesday, June 8, 1999, Suzanne Mattei, Public Policy director for the New York State Trial Lawyers Association ("NYSTLA") and members of NYSTLA met with Kathleen Cudahy, Ramon Martinez and other Council staff to discuss the May 28 draft bill. The Council staff provided them a copy of a new draft bill, printed on June 7, and Ms. Cudahy informed them that a hearing would be set for the next day, or else for Friday, June 11, or Monday, June 12. *See* Affirmation of Suzanne Mattei (hereafter, "Mattei Aff.").

84. The June 7 draft bill was similar to the May 28 bill but not quite as overwhelmingly generous to landlords. Its deadlines for HPD enforcement of lead paint violations, while still exceedingly lengthy, were not quite as extended. It provided some additional instructions for the "interim" lead paint removal protocol but still did not include many important Health Code safety standards. It added some agency reporting, inspector training and landlord/tenant education requirements. *See* Ex. 66.

85. On or about Thursday, June 10, 1999, Ms. Mattei and other representatives of NYSTLA met with Kathleen Cudahy, Ramon Martinez and other Council staff to discuss the draft legislation. At this meeting, the NYSTLA representatives were told that the bill to be considered was the May 28th draft again, not the June 7th draft. At that meeting the NYSTLA representatives were told that a hearing might be held on Thursday, June 17. *See* Mattei Aff.

86. On Wednesday, June 16, Ms. Cudahy informed Ms. Mattei that she expected the hearing to be held either on Monday, June 21 or Tuesday, June 22. *See* Mattei Aff.

87. On Thursday, June 17, some City Council staff had begun calling a few concerned organizations, notifying them that the hearing would occur on Monday rather than Tuesday, but that a draft of the bill to be considered still was not available. *See* Goldberg Aff.

88. Also on this date, an "Amended Notice" was issued to City Council members notifying them of the June 21 hearing. This notice contained no mention of a draft or proposed negative declaration, *see* Ex. 68, and no such document was produced or described at the June 21 hearing. *See* Ex. 77.

Proceedings Related to Negative Declaration and Proposed Local Law at the City Council

89. The staff of respondent-defendant the City Council did not begin releasing the bill (apparently printed at 12:06 P.M., *see* Ex. 67, p. 27) to environmental, tenant and health advocacy organizations until after noon on Friday, June 18, 1999, with some not receiving the bill until 4:00 or 5:00 on Friday or at the hearing itself, thus resulting in much less than one full business day's notice of the final contents of the bill before the hearing. *See* Ex. 77, pp. 330-31, 357-58, 423-44, 427 and 429; Ex. 30, p. 1.

90. The bill was consistent with the May 28 draft except that it allowed HPD even more time issue a violation after an inspection (from 20 to 60 days), while moving up the deadline for HPD to correct a lead paint hazard (from 120 days to 90 days). *See* Ex. 67.

91. The June 18 bill had no number; it was labeled a "preconsidered" bill and was sponsored by the Committee Chairman, Archie Spigner, in conjunction with the Mayor. It had been given the approval of respondent-defendant Speaker Peter Vallone to be referred to the Committee for consideration without having been introduced at a prior Stated City Council Meeting. *See* Exs. 67 and 68.

92. After 4:00 P.M. on Friday, June 18, representatives of NYCCELP, NYPIRG, Met Council, and other advocates met with Kathleen Cudahy and Ramon Martinez. At this

meeting, Ms. Cudahy and Mr. Martinez confirmed that the June 18 bill would be the subject of the Monday, June 21 hearing. *See* Goldberg Aff.

93. At the Monday, June 21 hearing, several experts in childhood lead poisoning and lead dust control issues testified against the proposed local law, urging that it would lead to the poisoning of more children by exposure to toxic lead dust and lead paint chips. These experts included John Rosen, M.D. (Professor of Pediatrics, Albert Einstein College of Medicine), Evelyn Mauss, Sc.D. (Physiologist and Science Consultant, Natural Resources Defense Council), Don Ryan (Executive Director, Alliance to End Childhood Lead Poisoning) and Nick Farr (Executive Director, National Center for Lead Safe Housing). *See* Ex. 77, pp. 292-96; 303-10; 212-60; Rosen Aff., paragraph 14, and Ex 25; E. Mauss Aff., paragraph 3, and Att. A. Members of the public knowledgeable about Housing Code and lead paint law enforcement also testified that the proposed local law would lead to more frequent and more prolonged exposure of children to lead paint hazards. *See* Ex. 77, pp. 356-68, 404-05, 436-40, 440-42.

94. While Philip Landrigan, M.D. (credentials described above) had grave concerns about the proposed local law, he was unable to testify on such extremely short notice. *See* Landrigan Aff., paragraphs 3-8. Dr. Evelyn Mauss noted that other medical experts also were unable to testify at the hearing because there was so little notice. *See* E. Mauss Aff., paragraph 4, and Att. A, p. 1; I. Mauss Aff., paragraph 3.

95. Witnesses at the June 21 hearing called the Committee's attention to the fact that several medical and technical experts had written to City Council Speaker Vallone or the Commissioner of Health in opposition to the proposed local law. Petitioner-plaintiff NYPIRG attached to its written testimony letters from Dr. Bailus Walker (former president, American

Public Health Association; former Health Commissioner, Massachusetts and Michigan)(Exs. 17 and 18), Dr. Lynn Goldman (former Assistant Administrator, federal Environmental Protection Agency; supervised development of national standards for lead paint hazard control in housing)(Ex. 5), Dr. Bruce Lanphear (research expert on lead dust control)(Ex. 6), the May 25, 1999 letter from physicians (described in Paragraph 79 above), Dr. Sergio Piomelli (Professor of Pediatrics, College of Physicians & Surgeons, Columbia University)(Ex. 12), Dr. Patricia Nolan (Director of Health, State of Rhode Island)(Ex. 11), Dr. Barry Levy (Tufts University School of Medicine; past president, American Public Health Association)(Ex. 8), Dr. Victor Sidel (credentials described above)(Ex. 16), and Dr. Routt Reigart (Chair, Children's Environmental Health Network; Professor of Pediatrics, Medical University of South Carolina)(Ex. 14). *See* Ex. 77, p. 413. Dr. John Rosen, in his oral testimony, notified the Committee that letters of concern had been submitted by several medical experts. *See* Ex. 77, p. 293. Also, the written testimony of Lydia Saltzman, of Parents Against Lead in Schools, noted the existence of such letters and attached the letters from Paul Mushak, M.D.(Ex. 9), Herbert Needleman, M.D. (Ex. 10), and John Rosen, M.D.(Ex. 15), to her written testimony. *See* Ex. 30.

96. Not one independent medical doctor or health expert testified in favor of the proposed local law at the June 21 hearing. Ex. 77.

97. The testimony of Matthew Chachere, Esq., on behalf of NYCCELP and the Northern Manhattan Improvement Corporation at the June 21 hearing included a statement made to the City Council in 1996 by the prior City DoH Commissioner, Margaret Hamburg, M.D., in which Dr. Hamburg had objected to a similar proposal to allow landlords an opportunity to

remove lead paint without complying with the Health Code safety standards for lead removal. *See* Exs. 26 and 26-a; and Ex. 77, p. 337.

98. The City Commissioner of Health, Neal Cohen, M.D., testified at the June 21 hearing that the number and severity of lead poisoning cases has been decreasing over the years but did not provide an analysis of the causes of that decrease. He claimed that the bill would require safe work practices but did not explain why avoiding DoH's work safety requirements would not present a hazard. He argued that the bill's mandatory time frames reduce the amount of time children are exposed to lead, but provided no data on how long children currently are exposed to lead under HPD's enforcement practices. He expressed concern that disturbance of intact paint can create new hazards but failed to discuss whether more effective enforcement could reduce or eliminate such hazards. *See* Ex. 77, pp. 115-21. The DoH Commissioner also did not provide written comments at the hearing to the City Council. *See* Ex. 77, p. 114.

99. In his testimony at the June 21 hearing, the New York City Comptroller, Alan Hevesi stated that he had not been provided a copy of the bill until Friday, June 18. He urged that the Council allow him a reasonable amount of time to prepare an economic analysis of the proposed local law, especially in light of the long-term socio-economic costs associated with care and education of lead-poisoned children. *See* Ex. 35; Ex. 77, p. 184. Comptroller Hevesi offered to provide such an analysis within just two weeks. *See* Ex. 77, pp. 208-11. As noted in Paragraph 178 below, consideration of the socio-economic effects of a proposed action is required under SEQRA.

100. The June 21 hearing concluded at approximately 7:20 P.M. *See* Ex. 77, p. 1.

101. Respondent-defendant the City Council did not take time to review and consider the extensive testimony and information presented at this eight-hour-long hearing before crafting amendments to the bill. Instead, the Council staff produced and released an amended version of the proposed local law immediately – that very same evening. The finished version, 28 pages long, was printed at 8:45 P.M. – just 85 minutes after the close of testimony. *See* Ex. 73, p. 28.

102. On that same day, June 21, the Financial Division staff of respondent-defendant the City Council, who are under respondent-defendant Speaker Vallone's supervision, released a cursory, two-page "Fiscal Impact Statement" on the proposed local law pursuant to New York City Charter Section 33, Rules of the Council, Section 6.50. This "Fiscal Impact Statement" states that it was submitted to the City Council on June 21, 1999, but it specifically refers to provisions of the June 21 *evening* version of the proposed bill – including the 120 day effective date and the limited requirement for dust sampling – not the June 18 bill. *See* Ex. 70.

103. The June 21 evening version of the proposed local law differed from the June 18 bill, with regard to changing existing law, in the following ways:

(a) It added an instruction for landlords to take one dust wipe sample after removing lead paint from doors or moldings pursuant to an HPD violation (two more for work on or near a window) – *but not for paint removal work on walls or ceilings*, no matter how large the abatement area. (As under the June 18 version, it required no dust sample for any work conducted prior to an HPD violation being cited.)

The dust sample is not a clearance test; the law does not state that the landlord must submit the result to HPD and re-clean the area if the sample fails to meet an environmental standard *before the family is allowed to reenter the area*. (While HPD subsequently proposed a regulation to require that the test meet an environmental standard before the violation is removed, even if this regulation is adopted, it still does not forbid tenant re-entry until after HPD finds that the result passes the standard.)

(b) It reinstated several of the June 7 draft's enforcement deadlines that had been temporarily withdrawn in favor of the May 28 draft's longer deadlines or otherwise lengthened for the first hearing. These included the deadline within which HPD must: (1) conduct an inspection after receiving a complaint (10 rather than 15 days in non-heating season, 15 rather than 25 days in heating season); (2) serve a notice of violation (20 rather than 60 days after inspection); (3) conduct reinspections (30 rather than 70 days after receiving landlord's certification of correction); and (4) correct a violation when the landlord fails to act (60 rather than 90 days from landlord's deadline for certifying correction).

(c) It allowed HPD to grant a landlord one extension of 45 days to correct a violation rather than an unlimited number of 30-day extensions, thus still allowing up to 66 days for action before a landlord is fined. (Local Law 1 only allows 24 hours to correct a lead-based paint hazard. § 27-2013(h)(3); *see* Ex. 94. *Juarez v. Wavecrest Management*, 88 N.Y.2d at 642.)

(d) While it increased the civil penalties for false certification from a range of $1,000-$3,000 to a range of $10,000-$25,000, HPD's actual ability to *prove* that a certification is "false" remained extremely diminished because it still contained no dust clearance test requirements to demonstrate that the area had been made environmentally unsafe.

See Ex. 73-a.

104. When questioned at the June 21 hearing on when the vote would be held (near the close of public testimony between about 6:00 P.M. and 7:20 P.M.), Chairman Spigner stated, "We intend to vote on the bill as rapidly as we can put it in the form that we think represents good public policy." *See* Ex. 77, pp. 442 and 444-45.

105. On or about June 22, 1999, respondent-defendant Speaker Peter Vallone changed the date of the full ("Stated") City Council Meeting, and the City Council staff under his supervision issued an "Amended Notice" on that date that the Meeting would be held on June 30, 1999 instead of the previously scheduled date of June 29, 1999. *See* Ex. 71.

106. Respondent-defendant Speaker Vallone placed the proposed local law and Resolution 883 on the calendar for a vote at the Stated City Council Meeting without a special

"message of necessity" from the Mayor, which would have required a two-thirds vote of the Council to obtain passage of the proposed local law. Without a "message of necessity," a bill must be introduced and in its "final form" on the desks of City Council members seven days (excluding Sundays) prior to its adoption. *See* N.Y. Municipal Home Rule Law, § 20(4); New York City Charter, Ch. 2, § 36; *see* Ex. 89.

107. The June 22 "Amended Notice" also notified Council members that the Committee would meet on Thursday, June 24, at 9:30 A.M. to consider the proposed local law. It did not state that this meeting would be a public hearing. It also did not provide notice of the existence of a Negative Declaration or that the Negative Declaration would be considered at that meeting. *See* Ex. 71.

108. Respondent-defendant the City Council did not provide this written notice to the petitioners. *See* Goldberg Aff.

109. On June 23, City Council staff members contacted a few advocacy groups to notify them that the Committee would hold a second hearing on the proposed local law, as revised, on June 24, 1999, thus effectively providing only one day's notice of the hearing. Also, the Council staff who called petitioners-plaintiffs in this action did not inform them that a Negative Declaration existed and would be on the agenda at the hearing. *See* Goldberg Aff.

110. At some time during the day of June 23, City Council staff under respondent-defendant Speaker Vallone's supervision released a second "Amended Notice" to Council members notifying them of the meeting. This notice stated that a "Preconsidered Resolution," declaring that the proposed local law would have no significant adverse impact on the environment, would be on the meeting agenda. It did not, however, state that this Resolution

would have the effect of adopting an environmental assessment statement and "Negative Declaration," nor did it refer to SEQRA or CEQR in order to notify the Council members or the public of the legal effect of the proposed Resolution (generally Council resolutions have no legal effect). Finally, it did not state that any environmental assessment statement and proposed negative declaration was available for review. *See* Ex. 72.

111. The petitioners, moreover, did not receive any written or oral notice of the Negative Declaration on June 23 or prior to the June 24 hearing. *See* Goldberg Aff.

112. Also on June 23, 1999, the parties to the *NYCCELP v. Giuliani* lawsuit met with the assigned IAS judge for a status conference. The plaintiffs in that case again offered to extend the stay of the 1993 contempt citation until October 15, 1999. Fifteen Council members and New York City Public Advocate Mark Green, a citywide elected official, had written to the Court in support of the plaintiffs' offer of an extended stay. *See* Exs. 109 and 110. The attorney for respondent-defendant the City of New York, however, did not accept this offer. The City's attorney insisted, instead, that the stay of enforcement against the City should end on June 30, 1999 rather than October 15, 1999. The only reason given for taking this position was his representation that the City Administration expected the City Council to pass a new law at its June 30 meeting. Richard Weinberg, General Counsel to respondent-defendant the City Council, speaking by the authority of respondent-defendant Speaker Vallone, confirmed that representation, stating that he also expected the City Council to pass a new law at its June 30 meeting. Nevertheless, a two-page "informational flier" sent from the Office of the Mayor to Council members entitled, "The Truth About the Council/Administration Lead Paint Bill" stated,

"Unless the Council passes this bill, a State Judge has threatened to order the City to fully enforce Local Law 1 of 1982 beginning on July 1, 1999." *See*, Ex. 83.

113. At the June 24 hearing, Chairman Spigner declared in his opening statement, "The Committee expects to vote on this amended legislation today." *See* Ex. 74, p. 4. Nevertheless, Chairman Spigner's opening statement failed to notify the Committee members or the attending public of the existence of a proposed Negative Declaration or of any plan to call for a vote on a proposed Negative Declaration at that Committee hearing. Furthermore, throughout the public testimony portion of the hearing, no Council member made any reference to the existence of a proposed Negative Declaration. *See* Ex. 78, pp. 4-9.

114. Public health, safe housing and environmental advocates testified at the June 24 hearing that the revisions to the proposed local law did not cure its fundamental defects – its failure to protect children against lead paint hazards and sloppy paint removal practices and its failure to provide timely enforcement against violations. *See* Ex. 78, pp. 85-98 and 129-67.

115. Dr. Bailus Walker (credentials described above) had sent a letter to Speaker Vallone and City Council members on June 23, 1999, urging that the revised bill's dust sample requirement was "inadequate" to protect children from toxic lead dust. *See* Ex. 19.

116. Ms. Cudahy read into the record of the June 24 hearing a letter from the City Commissioner of Health. This letter stated, in part, that the proposed local law "represents an incentive-based and workable approach to housing maintenance and reduction in lead hazards" and "contains important advances over the existing law," and that the bill "creates a prevention approach to lead hazards that will benefit New York City's children." The Commissioner stated that "[t]he dust wipe test is the single best way to insure that an area has been thoroughly cleaned

and is safe," but he incorrectly asserted that the revised bill mandated "clearance dust wipe testing" in certain instances, and he failed to give any justification for the not requiring dust clearance tests for paint removal on walls or ceilings. *See* Ex. 78, pp. 9-12; Ex. 81.

117. Neither the DoH Commissioner nor any staff member from the City DoH appeared at the June 24 hearing to explain the letter or to respond to any questions from the New York City Council. Council member Guillermo Linares stated that he had several questions that he had wanted to ask of the City DoH but was unable to do so because no representative of the Department appeared. *See* Ex. 78, pp. 53-54 and 56.

118. Again, not one independent medical doctor or health expert spoke in support of the proposed local law at the June 24 hearing. *See* Ex. 78.

119. Also at the June 24 hearing, Comptroller Alan Hevesi's First Deputy Comptroller, Steve Newman, reminded the Committee that Comptroller Hevesi had asked at the June 21 hearing for a few weeks to provide a short-term and long-term fiscal analysis of the proposed local law, and stated that the Comptroller had been under the impression that the Committee had agreed. He urged the Council, again, to take more time to review the proposed local law. *See* Ex. 78, pp. 73-74; Ex. 41, p. 1.

120. Near the close of public testimony at the June 24 Committee hearing, the City Council staff delivered a document entitled, "Notice of Negative Declaration," also including a "Notice of Lead Agency Designation" and supporting "Environmental Assessment Statement" with attachments (hereafter, these documents will be termed collectively, "proposed Negative Declaration") to the members of the Committee, along with a proposed Resolution 883 submitted

by Council Member Spigner in conjunction with Mayor Giuliani in support of the Negative Declaration. *See* Exs. 1 and 2.

121. The proposed Negative Declaration asserted that the proposed local law would have no significant effect on the environment and declared that no EIS was required. The document included an environmental assessment form (in the nature of a checklist), a "coastal consistency" checklist, and a 7-page (single-spaced) "environmental assessment" narrative for the 28-page (double-spaced) proposed local law. The proposed Negative Declaration was dated June 24, 1999 and signed by Terzah Nasser, Legislative Attorney, Counsel to the Committee. *See* Ex. 1.

122. The proposed Negative Declaration was not provided to the public prior to the hearing. Consequently, members of the public had been afforded no opportunity to prepare and provide testimony on the document.

123. Upon the close of public testimony at the June 24 hearing, Chairman Spigner asked the Committee members to vote on proposed amendments to the bill, presented by Council member Stanley Michels, who explained that his amendments were an attempt to mitigate adverse effects of the proposed local law. They did so. No mention or discussion of the proposed Negative Declaration occurred before the Council members' vote on amendments to the bill. *See* Ex. 78, pp. 210-31.

124. Chairman Spigner did not discuss the contents or reasoning of the proposed Negative Declaration or the Council's responsibilities under SEQRA and CEQR. He also failed to invite a discussion on the proposed Negative Declaration before calling for a vote upon Resolution 883. *See* Ex. 78, pp. 237-39.

125. The Committee voted to approve the proposed Negative Declaration and immediately thereafter voted on the proposed local law. Two members of the nine-member Committee, Stanley Michels and Tracy Boyland, voted against the proposed Negative Declaration and the proposed local law. *See* Ex. 78, pp. 239-40.

126. The Negative Declaration was not amended after the June 24 hearing before it was transmitted to the members of the full City Council. *See* Ex. 1.

127. The briefing report to the Council dated June 24, 1999, prepared under the supervision of Ms. Cudahy, was updated on June 25 to report the occurrence of the June 24 hearing. Both the June 21 and June 24 briefing reports included a general list of types of interests represented at the hearings, but strikingly failed to disclose that medical professionals and lead poisoning experts had testified against the bill or that Speaker Vallone or the Committee had received written comments from health professionals against the bill, and it failed to describe that testimony and comments. *See* Ex. 4, pp. 11 and 16. In fact, at least 22 medical professionals expressed written opposition to the bill to Speaker Vallone, and the hearing record itself included letters from 21 medical doctors and testimony from two medical professionals against the bill. *See* I. Mauss Aff., Attachment A; Rosen Aff., E. Mauss Aff., Attachment A; and Exs. 5,6,8-12, 14-19 and 25.

Proceedings related to Stated City Council Meeting and Vote on Proposed Local Law

128. On the morning of June 28, the following medical and technical experts on childhood lead poisoning came to New York City Hall for a press conference, at which they called upon the Council to reject the current draft bill and allow more time for public review of the effects of any new lead paint bill: John Rosen, M.D., Sergio Piomelli, M.D. (James A. Wolff

Professor of Pediatrics and Director of the Pediatric Hematology Clinic, College of Physicians & Surgeons of Columbia University), Herbert Needleman, M.D., Paul Mushak, Ph.D. (Visiting Professor of Pediatric Environmental Health, Albert Einstein College of Medicine, and director of a toxicology and health risk science firm, PB Associates), and Joan Byron (Architectural Director of the Pratt Planning & Architectural Collaborative). *See* Exs. 43 and 58-m.

129. On June 29, Speaker Peter Vallone and Chairperson Spigner sent a letter to the Council members with a comparison chart and an explanatory table claiming that the proposed local law would have only beneficial effects. *See* Ex. 75, 75-a, and 75-b.

130. On June 30, Speaker Peter Vallone and Victor Robles, Chair of the Committee on Health, had a letter delivered to Council members with a one-page "informational flier" entitled, "Early Intervention and Prevention: Council Measures to Create Lead Safe Housing" claiming the proposed local law would have beneficial effects. *See* Exs. 76 and 76-a.

131. Letters from medical and technical experts were sent to the members of the Council for the June 30 meeting, urging that the bill as revised still would not protect children from exposure to toxic lead. These experts included Philip Landrigan, M.D.; George Friedman-Jimenez, M.D., Medical Director of the Bellevue/NYU Occupational and Environmental Medicine Clinic and Stephen M. Levin, M.D., Medical Director of the Mount Sinai-Selikoff Center for Occupational and Environmental Medicine; Joel Shufro, Executive Director, New York Committee for Occupational Safety and Health and Don Ryan, Executive Director of the Alliance to End Childhood Lead Poisoning. *See* Landrigan Aff., Att. A; Exs. 7, 44 and 45.

132. Also on June 30, petitioners NYCCELP and NYPIRG offered and attempted to provide a full set of the letters from medical and technical experts, as well as testimony and

factsheets on the issue produced by environmental and public health advocates, to all of the members of the Council before the Meeting began. *See* Goldberg Aff.

133. At the June 30 Stated City Council Meeting, a discussion was held on proposed amendments to the proposed local law, and a vote was held on those amendments. No discussion was held on Resolution 883 regarding the Negative Declaration before the vote on the amendments. *See* Ex. 79, pp. 93, 98, 144-46, 154.

134. Two Council members voted in favor of the bill and the Negative Declaration before the discussion on the bill itself was held. Council member Annette Robinson, who stated that she had to leave early to attend to a family emergency, cast her vote in favor of the bill and Resolution – before any discussion was held at all, even on the proposed amendments – rather than abstaining. *See* Ex. 79, p. 56. Council member Noach Dear voted in favor of both measures after discussion of the amendments but before the debate on the proposed local law, rather than abstaining. *See* Ex. 79, p. 147.

135. Acting Public Advocate Victor Robles – a Council member sitting in place of Public Advocate Mark Green, who did not preside over this part of the meeting – did not call for a discussion of the proposed Negative Declaration before calling for a vote on the proposed local law. Each member had been allowed specifically 10 minutes to speak on the proposed local law. *See* Ex. 79, pp. 98-99. After the debate on the proposed local law itself, he called on the Council members to vote on the proposed local law and Resolution 883 simultaneously, on the same roll call. They did so, without holding a discussion on the Negative Declaration or its legal implications. *See* Ex. 79, pp. 234 and 236.

136. Fifteen Council members voted against the proposed local law, and 36 members – including Speaker Peter Vallone and Committee Chairperson Archie Spigner – voted in favor of it. *See* Ex. 79, pp. 235-74.

Proceedings Related to Mayor's Signing of Proposed Local Law

137. A notice was published in the July 9, 1999, issue of *The City Record* that the Mayor would hold a public hearing on the proposed local law on Thursday, July 15, 1999, at 2:30 P.M. *See* Ex. 84.

138. During this hearing, Dr. Philip Landrigan, Dr. John Rosen, and Dr. Evelyn Mauss urged that the proposed local law should be rejected because it would cause exposure of children to toxic lead dust and lead paint hazards. In addition, Andrew Goldberg of NYPIRG submitted a set of documents into the record that included copies of the letters from medical and technical experts described in paragraphs 79, 94, 95 and 131 above. *See* Goldberg Aff. and Ex. 46.

139. No medical doctor or researcher spoke in favor of the proposed local law. In addition, while several members of the public spoke in opposition to the proposed local law; no members of the public spoke in favor of the proposed local law.

140. Immediately after the close of the oral testimony, and without reading any of the written material submitted at the hearing, the Mayor signed the proposed measure into law.

141. Ms. Nasser provided a copy of the Resolution 883, the Negative Declaration, with its environmental assessment form and narrative, to the Mayor's Office of Environmental Coordination, but the only document submitted to that office as "supporting documentation" for the Negative Declaration and environmental assessment, as required by CEQR, 62 R.C.N.Y. § 5-

05(b)(4), *see* Ex. 85, was the June 24, 1999, Report to the Council by the Infrastructure Division, June 25, 1999 version. *See* Aff. of Brenda Morrow.

FACTS RELATED TO VIOLATION OF REQUIREMENTS UNDER SEQRA AND CEQR TO CONDUCT A PROPER REVIEW OF THE ADVERSE EFFECTS OF THE PROPOSED LOCAL LAW

Respondents-Defendants Failed to Comply with Procedural Requirements of SEQRA and CEQR in Adopting the Negative Declaration on the proposed local law

142. Respondent-defendant the City Council violated SEQRA's procedural requirement to make the determination of significance "as early as possible in the design or formulation of the action," 6 N.Y.C.R.R. § 617.6(b)(1)(I) and New York Envtl. Conserv. Law, § 8-0109(4), by failing to produce and provide the proposed Negative Declaration until after the second hearing on the proposed local law had begun, on June 24, 1999, even though the basic proposals had been conceptualized by mid-April of the same year and developed into legislative text by May 3 or May 28, if not much earlier, and issued as a "preconsidered" bill on June 18 which was made subject to its first hearing on June 21. *See* Paragraphs 74, 76, 81 and 89-92.

143. Respondent-defendant the City Council failed to carry out its procedural duty as lead agency under SEQRA to make the determination of significance itself; instead, it improperly delegated this task to Council staff, who are only empowered to "*assist* the committees of the council and Council Members in their analysis of proposed legislation and in review of the performance and management of city agencies." New York City Charter, Ch. 2, § 47 (*emphasis added*); *see* Ex. 89. Indeed, the Negative Declaration was improperly signed on June 24, 1999, by Terzah N. Nasser, Legislative Council to the Committee, rather than by a representative of the full City Council. *See* Ex. 1-a. While the signed document declares, "The City Council has

completed its review of the Environmental Assessment Statement and has determined the proposed action will have no significant adverse impact on the quality of the environment," *see* Ex. 1-a, in fact the Council had not completed a review of the Environmental Assessment Statement and had made no determination on or before June 24, 1999. The Council did not even adopt the Negative Declaration by Resolution 883 until June 30, 1999.

144. The City Council failed to carry out its procedural duty as a lead agency under SEQRA to make the determination of significance because it failed to reconsider its staff's proposed Negative Declaration in view of the written comments and oral testimony it had received. 6 N.Y.C.R.R. § 617.6(a)(1) and 617.7(a) and (b). For example, the Committee members held no discussion on the staff's proposed Negative Declaration – even though the document failed to address important facts and issues raised during both the June 21 and June 24 hearings – before voting to adopt Resolution 883. The Committee failed to do so even though its members did not receive the document for review until after the June 24 hearing had already begun. Moreover, the full City Council failed to reconsider the proposed Negative Declaration based on the information it received before, during and even *after* the June 24 hearing and issue a final determination of significance ("Negative" or "Positive") before taking any action on the proposed local law. Indeed, the full City Council failed to carry out its procedural duty to consider the proposed Negative Declaration at all, as it failed to hold any discussion on the document's findings, reasoning or legal impact before voting to adopt Resolution 883 at the June 30 meeting. *See* Paragraphs 112, 120-27, and 133-35.

145. Respondents-defendants Speaker Peter Vallone and the City Council failed to comply with the requirement to "make every reasonable effort to involve . . . the public in the

SEQR process," 6 N.Y.C.R.R. § 617.3(d), by failing to announce the existence of the proposed Negative Declaration to the public after the close of public testimony at the June 24 hearing (*see* Ex. 78, p. 237), by failing to make the document available for public review before June 24, and by providing extremely short notice even for the public hearings on the proposed local law itself as well as failing to make the bills that were the subject of the hearings publicly available in a timely fashion. *See* Paragraphs 87-123. Indeed, the extremely late notices for each of the hearings were inconsistent with the City Charter requirement that "committees shall provide reasonable advance notice of committee meetings to the public." *Id*., Ch. 2, §46. *See* Ex. 89.

146. Respondents-defendants Speaker Peter Vallone and the City Council failed to comply with the procedural requirement under CEQR, 62 R.C.N.Y. § 5-06(a), *see* Ex. 85, to "make every reasonable effort to keep involved and interested agencies informed during the environmental review process and to facilitate their participation in such process," by failing to provide the proposed Negative Declaration to the City Comptroller before the June 24 hearing and by denying the Comptroller's request for more time to provide a financial analysis of the proposed action, thus depriving the petitioners of the benefit of the Comptroller's analysis of the socio-economic impacts of the proposed action, a relevant factor for consideration under SEQRA, for their participation in the proceedings. *See* Paragraphs 99 and 119 above.

147. Respondent-defendant the Mayor failed to fulfill his responsibility as an "involved agency" to "provide the lead agency with information it may have that may assist the lead agency in making its determination of significance," 6 N.Y.C.R.R. § 617.3(e), by failing to provide to the City Council information on the environmental health effects of Local Law 38, other than conclusory statements, and by failing to instruct any representative of his Department of Health to

appear and give testimony on the proposed Negative Declaration and amended proposed local law at the June 24 hearing.

The City Council Failed to Carry out the Procedures Required under SEQRA for a Proper Environmental Review.

148. SEQRA and its implementing regulations establish a list of procedures that agencies must follow in determining whether a proposed action may have a significant effect on the environment. The City Council failed to comply with requirements under the State's regulations implementing SEQRA, as set out below.

The Negative Declaration fails to comply with SEQRA because it fails to consider the proposed action – to identify the relevant areas of environmental concern and take a "hard look" at them.

149. Respondent-defendant the City Council, in making the determination of significance, failed to consider the action and identify the relevant areas of environmental concern in the Negative Declaration, as required under SEQRA. *See* Paragraph 14 above.

150. In particular, the Negative Declaration's "environmental assessment" form and narrative failed to "contain enough information to describe the proposed action," in violation of 6 N.Y.C.R.R. § 617.2(m), by failing to disclose and describe how the proposed local law would weaken existing safeguards for children against exposure to toxic lead paint dust and other lead paint hazards. It also failed to "contain enough information to describe . . . its purpose and its potential impacts on the environment," 6 N.Y.C.R.R. § 617.2(m), by failing to thoroughly analyze and take a hard look at the areas of environmental concern.

151. The Negative Declaration is facially invalid because it failed to disclose and identify as an environmental concern that Local Law 38 weakens the existing definition of "lead-based paint hazards" by limiting its scope to paint that is peeling or on a deteriorated surface –

thus failing to include lead dust and conditions that generate lead dust. It also is inadequate because it failed to thoroughly analyze and take a hard look at the impact of this change. It failed even to disclose that this limited definition would conflict with the existing definition of lead paint hazards under the Toxic Substances Control Act, § 401, 15 U.S.C. § 2681 (also known as "Title X"), or analyze the implications of this difference in definition. Moreover, it failed to disclose and thoroughly analyze the extensive testimony from experts asserting that lead dust is a significant environmental toxin and health risk requiring preventive measures. This is a particularly serious error because that testimony was *uncontroverted* by any medical expert during the hearings on the proposed local law and echoed by the City DoH Commissioner. *See* Landrigan Aff., paragraphs 13-14 and Att. A.; Ex. 15; Ex. 77, pp. 133-40. *See also* Affidavit of Bruce Lanphear, M.D. (hereafter, "Lanphear Aff."), paragraphs 5-11; Rosen Aff., paragraphs 5-7; Affidavit of Edward Olmsted (hereafter, "Olmsted Aff."), paragraphs 2-4.

152. The Negative Declaration is facially invalid because it failed to disclose and identify as an environmental concern that Local Law 38 deprives six-year-old children of the protection of the City's lead paint law. Local Law 1, in contrast, covers all children under the age of seven. The Negative Declaration also is inadequate because it failed to thoroughly analyze and take a hard look at the impact of this change. It provides no scientific evidence or justification whatsoever for eliminating 17% of the at-risk population from the measures established by law to protect them from exposure to toxic lead paint hazards, despite information provided to the Council that six-year-old children are at special risk from lead poisoning. *See* E. Mauss Aff., paragraph 9, and Att. A.; *see also* Rosen Aff., paragraph 19; Ex. 111.

153. The Negative Declaration is facially invalid because it failed to disclose and identify as an environmental concern that Local Law 38 allows landlords to use weaker dust control work protocols and environmental clearance standards than the City Health Code safety standards required pursuant to Local Law 1 when removing lead paint under an HPD order, as described in more detail in the following paragraphs.

154. The Negative Declaration is invalid and inadequate because it failed to disclose, thoroughly analyze and take a hard look at the potential adverse effects of allowing lead paint removal work to be undertaken using weakened dust control measures. With regard to removal of toxic lead paint in multiple dwellings that do not already contain a lead poisoned child, Local Law 38:

(a) Eliminates the Health Code safety standards for abatement areas greater than six square feet which require the landlord to seal off the area and cover the entire floor and all openings with two layers of six-mil polyethylene sheeting. § 173.14(e)(2)(bb)(iv). It only requires covering of some unspecified amount of "the floor adjacent to the work area." Also, the floor can be covered with any kind of plastic, polyethylene or "equivalent sheeting" of any thickness. Even a one-mil garbage bag could be used. Plastic that is too thin can easily be torn by work shoes and equipment.

(b) Eliminates the Health Code safety standard for abatement areas smaller than six square feet which requires that two layers of six-mil polyethylene sheeting must be placed on the floor extending at least six feet outward from the work area. § 173.14(e) (2)(aa)(iii). It sets no minimum requirements for the thickness of sheeting or the size of floor area to be covered.

(c) Eliminates the Health Code safety standard that requires furniture and other objects in the work area to be covered with two layers of six-mil polyethylene sheeting, taped together and to the floor with waterproof tape, "to form a continuous barrier to the penetration of dust." § 173.14(e)(2)(aa)(ii). It only requires that these objects be covered with some kind of polyethylene or similar sheeting, eliminating the requirement of a continuous, sealed barrier against toxic lead dust.

(d) Eliminates the Health Code safety standard that requires workers to wait one hour after the paint has been removed before commencing clean-up in order to allow any temporarily airborne lead dust particles to settle on surfaces before clean-up. § 173.14(e)(4)(bb),

(e) Eliminates the Health Code safety standard that requires the polyethylene sheeting to be misted and cleaned before it is removed, to ensure that no spillage of particles occurs. § 173.14(e)(4)(bb)(I).

(f) Only requires a single step clean-up, either by washing or HEPA-vacuuming. In areas greater than two square feet, and window sills, window or door frames, the Health Code requires that clean-up include one HEPA-vacuuming, washing with a detergent, then a second HEPA-vacuuming. § 173.14 (e)(4) (bb)(ii), (iii) and (iv). The Board of Health rejected a similar weakening of its clean-up standards for areas between two and six square feet in a 1996 rule-making process. And,

(g) Omits other DoH standards for safe remediation of lead paint dust and hazards, including requirements to control ventilation, safety measures for chemical stripping of paint, record-keeping and other safety matters.

See Exs. 91 and 73-a; and Affidavit of Charles Gilbert (hereafter, "Gilbert Aff."), paragraphs 26-38; Affidavit of David Newman (hereafter, "Newman Aff."), paragraphs 8-11; Olmsted Aff., paragraphs 5-11; Ex. 77, pp. 431-32; Ex. 78, pp. 180-85.

155. The Negative Declaration also is invalid and inadequate because it failed to disclose, analyze thoroughly and take a hard look at the potential adverse effects of weakening the existing environmental clearance standards, set out in the Health Code, that landlords must follow after removing lead paint and *before* allowing the residents to reenter the work area. Such disclosure was particularly crucial because Speaker Vallone's June 29 "explanatory table" and the "informational flier" accompanying his June 30 letter to Council members, *see* Exs. 75-b and 76-a, both claimed that the bill included a "dust wipe clearance test" – which it does not.

156. Specifically, it failed to examine the adverse effects that would result when toxic lead paint removal work is subject to either no lead dust wipe test at all or to a single dust wipe

test the results of which have no impact on whether or not a child is allowed to re-enter a lead paint removal area, even though the Council received specific warnings from experts on the environmental hazards of such a change. These changes, applicable in multiple dwellings where a child has not yet been identified as lead poisoned, include the following:

(a) Local Law 38 eliminates all dust clearance test requirements, even the requirement to simply take a dust *sample*, for any lead paint removal work on walls and ceilings. In particular, it omits the Health Code safety standards requiring an independent inspector to take four dust clearance samples – from a window well, a window sill, the floor, and the floor of the adjacent area for abatement areas greater than two square feet. § 173.14(e)(4)(cc)(ii).

(b) For removal of paint on window sills, window/door frames and moldings, Local Law 38 requires only that the landlord take a *single* dust sample (two more for work at or near a window), without stating that it must pass a standard before the residents are allowed to re-enter the area. It even eliminates the requirement that the testing be conducted by an independent inspector. And, unlike under Local Law 1, this requirement applies only when a violation has been cited. The New York City Board of Health rejected a similar proposal to eliminate dust clearance testing for abatement areas between two and six square feet in a 1996 rule-making.

(c) Local Law 38 eliminates the Health Code safety standard requiring a final inspectionof the site for environmental safety – even just a final visual inspection – by an experienced contractor who is *independent* of the lead paint removal contractor. *See* § 173.14(e)(4)(cc).

(d) Local Law 38 eliminates the Health Code standard requiring that any abatement area greater than two square feet is not cleared for re-occupancy until after the dust clearance test results meet the Health Code standard. § 173.14(e)(4)(dd). It merely requires the landlord to "advise occupants not to enter the work area until the work has been completed in such work area." With no independent inspection and dust tests, a landlord will not *know* whether or not the area is environmentally safe. Indeed, under Local Law 38's lax requirements, the area very likely will *not* be safe.

See Exs. 91 and 73-a; and Landrigan Aff.; Gilbert Aff., paragraphs 39-51; Olmsted Aff., paragraphs 12-14; Newman Aff., paragraph 12; Ex. 77, pp. 431-32. Also, the Negative

Declaration provides no scientific information – in fact, no explanation whatsoever – to support the decision to require only a single dust wipe sample (which is not a clearance test) for lead paint removal on windows, doors and moldings, and *no sample at all* after lead paint removal work on walls or ceilings.

157. The Negative Declaration failed to analyze thoroughly and take a hard look at the impact of allowing landlords to avoid the above described Health Code safety standards in light of the fact that they had just been updated in 1996, through a public regulatory review proceeding initiated by the City DoH. *See* Landrigan Aff., paragraph 11 and Att. A; Gilbert Aff., paragraph 35; Ex. 77, pp. 411-12.

158. Under Local Law 38, therefore, lead dust levels of thousands of micrograms of lead per square foot could exist following lead paint removal work, with no requirement that the landlord eliminate this hazard. Lead dust is so toxic to children that the federal Department of Housing and Urban Development ("HUD") has recently lowered its safety standards from 100 to only 40 micrograms (millionth's of a gram) per square foot of floor area (μg/ft²), 64 *Fed. Reg.* 50140, 50181 (September 15, 1999), an amount that is less than half the mass of a single particle of coffee sweetener. *See*, Ex. 77, p. 218.

159. The Negative Declaration also failed to consider, analyze thoroughly and take a hard look at the fact that Local Law 38's's work standards for lead paint removal are significantly weaker than those developed by HUD (the "HUD Guidelines") with regard to work protocols and clean-up standards. See Olmsted Aff., paragraphs 13, 17 and 19. This was an important omission because the Office of the Mayor distributed to the Council members a two-page "informational flier" erroneously stating that the bill would require landlords to use work practices "approved"

by HUD, and a memorandum misleadingly stating that the proposed local law's work protocols were "based on" and "incorporate[d] many" of the work protocols required by HUD. *See* Ex. 83**;** Ex. 82, p. 3.

160. The Negative Declaration failed to analyze thoroughly and take a hard look at the question of whether Local Law 38 would allow landlords to escape the new federal requirement to use trained and certified workers to conduct paint removal under City law. Such compliance is required for all paint removal work conducted under Local Law 1 as implemented by the Health Code safety standards, § 173.14(c)(2), but this Health Code requirement would not apply to work conducted during the initial 21-day period under Local Law 38. Moreover, under Local Law 38, the rebuttable presumption that paint in pre-1960 residential units containing very young children is lead paint would apply "for the purposes of this article only," and the removal of lead paint is described as an "interim control" rather than as "abatement." Both phrases could have the effect of allowing, or be in part attempts to allow, landlords to circumvent the new federal safety rules, 40 C.F.R. §§ 745.220-745.239, 745.320-745.339, which take effect in New York State on March 1, 2000 (64 *Fed. Reg.* 42849). The Negative Declaration failed to analyze this issue even though the DoH Commissioner and other experts stated that worker training is important to ensure proper management of lead dust in order to protect both workers and children. *See* Ex. 77, pp. 130 and 176; Ex. 44; Ex. 77, pp. 401, 425 and 430; *see also,* Landrigan Aff., paragraph 13; Gilbert Aff., paragraphs 21-23; Newman Aff., paragraph 6-7; Olmsted Aff.

161. The Negative Declaration is facially invalid because it failed to disclose and identify as an environmental concern that Local Law 38 weakens the existing requirement under Local Law 1 that landlords of multiple dwellings must follow the current Health Code safety

standards when removing paint that is known or presumed to be toxic lead paint even where no violation has been cited. *NYCCELP v. Giuliani*, 173 Misc.2d 235, 239 (Sup. Ct. N.Y. Co. 1997), *aff'd*, 248 A.D.2d 120 (1st Dep't 1998), *leave to app. Den.*, 1998 N.Y.App. Div. LEXIS 8108 (1st Dep't 1998)(NYCCELP VII). Instead, it erroneously and misleadingly states that Local Law 38 "establishes a *new* prohibition on the dry scraping and dry sanding of lead-based paint." *(Emphasis added.) See* Ex. 1-d, pp. 3-4. The office of the Mayor and Speaker Vallone provided similarly misleading statements on this matter to Council members. *See* Ex. 82, p. 4; Ex. 75-b, p. 1; *see also*, Ex. 77, p. 378. In fact, the DoH had proposed stricter paint removal safety standards pursuant to Local Law 1 in October 1998, which is noted in a factsheet provided to Council members by petitioners-plaintiffs Tenants & Neighbors and the Met Council. *See* Ex. 24, p. 3, and Ex. 100.

162. The Negative Declaration is facially invalid because it failed to disclose and identify as an environmental concern that Local Law 38 could fail to ensure that the landlord obtains notice regarding whether or not a child under age six lives in an apartment. This information is critical because knowledge of the presence of such a child triggers the duty to inspect for lead paint hazards. While the local law requires the landlord to send a notice to tenants asking whether a child under age 6 resides in the apartment, it does not require the landlord to investigate to obtain an answer if the landlord receives no response. This is similar to the old notice provision in the City's window guard regulation (24 R.C.N.Y. § 131.15, passed in 1976), which gave the landlord no duty to inspect if tenants did not return questionnaires about the presence of children under age 10. Testimony explained that this approach did not protect children from falling out of windows, and the City later changed the regulation to require the

landlord to conduct a follow-up inspection. 24 R.C.N.Y. § 12-03(c). *See* Ex. 93 and Ex. 26, p. 8; Ex. 27, p. 4. An expert in landlord-tenant law explained at the June 21 hearing that a follow-up inspection is necessary because landlord notices often do not reach low-income tenants. *See* Ex. 77, pp. 405-06. Also, the Negative Declaration failed to correct misstatements about the window guard regulation made during the June 21 hearing (two witnesses for landlord interests wrongly stated that it does not require the landlord to conduct a follow-up inspection). *See* Ex. 77, pp. 386-90. HPD Commissioner Roberts failed to clarify the matter when questioned at the June 24 hearing, stating that the matter is under DoH's jurisdiction, and no representative of DoH appeared at that hearing. *See* Ex. 78, pp. 45-47.

163. The Negative Declaration is facially invalid because it failed to disclose and identify as an environmental concern how Local Law 38 weakens the existing duties of a landlord to inspect an apartment for lead paint hazards. Under Local Law 1, landlords have a continuing duty to ensure that the apartments they rent to young children are free of lead paint hazards and to make inspections *as needed* to accomplish this. *Juarez v. Wavecrest Management*, 88 N.Y.2d at 647. Local Law 38 eliminates this continuing duty, requiring the landlord to conduct a visual inspection of an apartment only for peeling paint and only once a year, regardless of the building's conditions. *See* Ex. 73-a. At other times of the year, the landlord would have no duty under Local Law 38 to inspect or remove peeling lead paint that results from a water leak, even if the landlord knew of the leak, unless the tenant notifies the landlord in writing or the landlord has "actual" notice of the peeling paint. *See* Gilbert Aff., paragraphs 16-18. Also, since Local Law 38 does not require the landlord to give a written copy of the visual inspection results to the

tenant, the tenant may not know that the landlord failed to observe (or record) a peeling paint condition.

164. The Negative Declaration also failed to analyze thoroughly and take a hard look at the impact of shifting the burden to tenants to notify landlords of peeling paint conditions despite testimony regarding the problem of language barriers and the vulnerability of tenants to the ill will of their landlords. Similarly, it failed to analyze the fact that the law provides no mechanism to educate tenants regarding this new responsibility. *See* Ex. 29, p. 5; Ex. 77, p. 425.

165. The Negative Declaration is facially invalid because it failed to disclose and identify as an environmental concern how Local Law 38 weakens existing legal requirements regarding HPD's duty to require abatement of lead paint hazard violations within a reasonable period of time. While under existing law, all immediately hazardous violations are required to be remediated by the landlord within 24 hours, § 27-2013(h)(3), *see* Ex. 94, implementation of Local Law 38 could allow a one or two year old child to be exposed to toxic lead hazards for half a year or longer if the landlord is recalcitrant. Specifically:

(a) Local Law 38 would allow the environment for a young child to continue to contain toxic lead hazards for over three months – up to 101 days – from the date of the tenant's complaint to HPD where a landlord requests an extension, as it would permit.

(b) Where a recalcitrant landlord simply fails to correct the violation, the hazardous environment may continue for 121 to 166 days (depending on whether or not the landlord obtains a 45-day extension of the deadline).

(c) Where a recalcitrant landlord falsely certifies correction of the hazard, the hazardous environment may continue for 181 to 226 days (depending on whether or not the landlord obtains a 45-day extension of the deadline).

See Ex. 73-a (new §§ 27-2056.7, 27-2115(l)(1), (2, (3), and (4))(during the non-heating season, each period would be five days less. This adverse impact also was not disclosed even though the

HPD Commissioner stated that more restrictive enforcement deadlines were placed in the proposed HPD enforcement regulations because the agency was trying to meet the requirements of the existing Local Law 1 of 1982 as interpreted by the courts. *See* Ex. 77, pp. 58-59.

166. The Negative Declaration also is inadequate because it failed to analyze thoroughly and take a hard look at the impact on a young child of allowing a hazardous environmental condition to remain in the home for an unreasonably long period. *See* Needleman Aff., paragraph 5; Rosen Aff., paragraph 9 and Ex. 15; and Exs. 24, 26, 27, and 29. Such scrutiny is particularly critical in light of repeated testimony from the HPD Commissioner that the agency could respond to complaints and take action much more quickly. The HPD Commissioner testified that HPD generally responds to all complaints regarding Class C immediately hazardous conditions within 24 to 72 hours. *See* Ex. 77, pp. 29-31, 57-63.

167. In addition, it failed to analyze thoroughly and take a hard look at whether the proposed local law's enforcement deadlines were based on health considerations or a desire to accommodate the wishes of HPD for unnecessarily lax deadlines to reduce its likelihood of being found in violation of the law in the future for failure to meet those deadlines.

168. The Negative Declaration failed to analyze thoroughly and take a hard look at the potential adverse impact of the "worst case" scenario in which HPD uses the full amount of enforcement time allotted to it under the proposed law in the case of a recalcitrant landlord who delays action and falsely certifies correction of the lead paint hazard, in violation of the City's CEQR Technical Manual. *See* Ex. 86, pp. 2-4 to 2-5. Such an analysis was particularly necessary given that at the June 24 hearing, when a witness raised the scenario of a recalcitrant landlord as a concern, Chairman Spigner misleadingly asserted that the total amount of days

before HPD would correct a violation was 60. See Ex. 78, p. 95. He then qualified that statement by asserting that the deadlines in the proposed local law were "outside numbers." *See* Ex. 78, p. 166. The Negative Declaration also failed to analyze thoroughly and take a hard look at the potential for false certification of corrections of violations, despite testimony regarding a past Comptroller report that documented that in 40 percent of the cases reviewed, self-certification was fraudulent. *See* Ex. 78, p. 7; and Exs. 60 and 61. A hard look at the potential adverse effects of this proposed local law, in particular, *requires* a "worst case" analysis because the most irresponsible landlords present the greatest risk of creating environmentally hazardous conditions that increase the exposure of children to toxic lead paint and toxic lead dust.

169. The Negative Declaration failed to analyze thoroughly and take a hard look at the question of the effectiveness of increasing the civil penalties for false certification when HPD's actual ability to prove that a certification is "false" would be severely diminished because of the lack of dust clearance test requirements to indicate that the area had been made environmentally safe. *See* Ex. 78, pp. 144-45. *See* Paragraph 156.

170. The Negative Declaration is facially invalid because it failed to disclose and identify as an environmental concern that Local Law 38, by eliminating the applicability of the Health Code safety standards under 24 R.C.N.Y. § 173.14, also eliminates the enforcement and penalties system regarding compliance with lead paint removal work and clean-up standards. Under the Health Code, DoH, HPD and the City Department of Environmental Protection have authority and responsibility to issue stop work orders and notices of violation, and to seek fines for failure to comply with the safety standards. Local Law 38 has no enforcement mechanism that can be invoked by tenants where landlords fail to comply even with the work practices allowed

during the initial 21 days after an order for peeling paint removal has been issued under Local Law 38.

171. The Negative Declaration is facially invalid because it failed to disclose and identify as an environmental concern that Local Law 38 eliminates the existing legal requirements regarding HPD's duty to place violations for lead paint in residential buildings constructed after January 1, 1960. Under existing Local Law 1, all lead paint is an immediately hazards "C" violation requiring correction, regardless of the age of the building. *See* Admin. Code § 27-1023(h)(3). *NYCCELP II* declared that the City could not rely on "the naive presumption that no lead-based paints were ever utilized in violation of law, in post-1960 buildings." *See* Ex. 101, p. 13. Indeed, in a recent case involving a lead-poisoned child living in a 1973 New York City Housing Authority building, lead paint was found in the premises and Local Law 1 was held to apply. *See* Ex. 114. Local Law 38, however, only requires HPD to inspect for lead paint in pre-60 buildings. The Negative Declaration is insufficient because it failed to analyze thoroughly and take a hard look at the impact of removing all HPD enforcement requirements for lead paint hazards in post-1960 buildings that contain lead paint, leaving young children in such dwellings exposed to toxic lead paint hazards.

172. The Negative Declaration is facially invalid because it failed to disclose and identify as an environmental concern that Local Law 38 eliminates the existing mandatory deadlines for clean-up of lead paint hazards in dwellings containing less than three apartments (which do not fall under the definition of "multiple dwellings") when they contain a child who has already been lead-poisoned. If a child is found to have a blood lead level of 20 µg/dL or higher, DoH must inspect the child's home and order removal of lead paint hazards within five days.

Health Code, § 173.13(d)(2). If the owner fails to comply, this section requires DoH to refer the matter to HPD to execute the order pursuant to DoH's authority under Admin. Code § 17-147. Prior to Local Law 38, Admin. Code § 27-2126 set the deadlines for such action: DoH must certify such a case to HPD within 16 days of receiving a complaint or conducting an inspection, and HPD must correct the violation within 18 days thereafter. *See* Exs. 96 and 98. Local Law 38, however, limits this provision to multiple dwellings, leaving already lead-poisoned children in one and two-family dwellings with no right to a remedy by a date certain. *See* Ex. 73-a. (*See* Rosen Aff., paragraph 20, which notes that approximately 35% of lead poisoned children in his clinic in the Bronx were found to come from one and two-family homes.) Such disclosure was critical because when a witness raised the matter at the June 24 hearing, a Council staff member asserted that the Health Code provided a deadline for action and the proposed local law would not change existing law on the matter. *See* Ex. 78, pp. 88-90, 115, and 118-19. The Health Code does not, however, establish the deadline for enforcement action, and this matter was not clarified in the June 25 updated briefing to the Council. *See* Ex. 54. Moreover, the Negative Declaration erroneously and misleadingly states that the proposed local law "does not attempt to circumvent or contravene any authority of the Department of Health (DoH) to act when a child is lead poisoning (sic)," *see* Ex. 1-d, p. 2, failing to disclose that it would circumvent DoH's authority to call on HPD to abate lead paint hazards in one and two-family homes by eliminating the deadline for such abatement. The Negative Declaration also failed to analyze thoroughly and take a hard look at the impact of this change.

173. The Negative Declaration is facially invalid because it failed to describe the drop in the rate and severity of childhood lead poisoning cases that has occurred since passage of Local

Law 1 of 1982 and the continued decline in such cases after adoption of the Health Code safety standards in 1993, noted in Paragraph 192, below. It also failed to identify and analyze the role of Local Law 1 and the regulations promulgated thereunder in helping to achieve that reduction, so that the program established by the proposed local law could be compared to existing conditions.

174. The Negative Declaration failed to clarify in writing, analyze thoroughly and take a hard look at specific issues which were left unresolved at the June 24 hearing because City DoH did not appear at the hearing to respond to questions from Council members regarding the impact of the proposed local law on public health, including the ineffectiveness of the notice provisions in comparison with the existing window guard law, the inadequacy of the dust sampling requirement and other matters. *See* Ex. 78, pp. 45-47, 53-54 and 56.

The Negative Declaration Reached Invalid Conclusions Regarding, or Failed to Analyze Thoroughly, Specific Areas of Environmental Concern Mandated for Consideration Under SEQRA.

175. The Negative Declaration failed to analyze thoroughly and take a hard look at the question of whether the proposed local law might cause "the creation of a hazard to human health," as required by 6 N.Y.C.R.R. § 617.7(c)(1)(vii), or to "human health or safety," as required by CEQR, 43 R.C.N.Y. § 6-06(a)(7), *see* Ex. 85. It failed to do so despite the testimony and letters provided by medical experts asserting that the proposed local law would cause such a hazard. *See* Landrigan Aff., Rosen Aff., E. Mauss Aff., Exs. 5-19.

176. The Negative Declaration's conclusion that the proposed local law would have no significant environmental effect with regard to hazardous materials (*see* Ex. 1-c, p. 14) was invalid because the Negative Declaration failed to analyze thoroughly and take a hard look at the impact of disturbance of toxic lead paint during implementation Local Law 38's so-called "interim

controls." It stated only that the "purpose" of the interim measures was to limit "the dispersal of such paint, paint chips or other work-related debris" and "to minimize the amount of work-related dust, which may contain lead, that remains in the dwelling unit after the work is completed," and that the "interim controls" were "designed to reduce the spread of hazardous or potentially hazardous materials." *See* Ex. 1-d, p. 7. It made no reference to underlying documents that would support the notion that this "purpose" actually would be achieved and failed to respond to letters and testimony from experts and advocates explaining why that purpose would not be achieved. The conclusion also is incorrect because the weakening of landlords' duties to inspect for lead paint hazards and of enforcement provisions for multiple dwellings and for one and two-family buildings will allow environmentally hazardous conditions to persist and, in many cases, even worsen. *See* Paragraphs 163, 165-172 above.

177. The Negative Declaration also failed to follow the guidelines for making a determination of significance with regard to hazardous materials, as established in the City of New York's CEQR Technical Manual, by analyzing the potential for increased human exposure to toxic contaminants as a result of the proposed action and the potential for the action to increase pathways to exposure to toxic contaminants, particularly in light of Local Law 38's weakened standards for work site safety and elimination of dust clearance test requirements. *See* Ex. 86, pp. 2-1, 3J-2, 3J-9 and 3J-10.

178. The Negative Declaration's conclusion that the proposed local law would have no significant adverse effect with regard to socio-economic impacts was invalid because it failed to consider, thoroughly analyze and take a hard look at the adverse effect of Local Law 38 on

existing community or neighborhood character, as required by 6 N.Y.C.R.R. § 617.7(c)(1)(v), despite the fact that:

(a) The City Comptroller requested a delay so that he could provide an analysis of the socio-economic costs of the proposed local law and offered to provide that analysis in just two weeks. *See* Ex. 77, pp. 208-211.

(b) The DoH Commissioner could not provide expected costs of administering the program when questioned at the June 21 hearing and did not appear and answer such questions at the June 24 hearing. *See* Ex. 77, p. 123.

(c) Medical experts raised concerns regarding the socio-economic impacts of failing to reduce childhood lead poisoning, including increased healthcare and education costs, the stress on families caring for poisoned children, and the potential increase in delinquent or criminal behavior by lead-poisoned children. *See* Exs. 63 and 67; *See also* Ex. 77, p. 433.

(d) Testimony and comments described how low-income and minority neighborhoods in the City as well as certain socio-economic groups of children within the City suffer from a significantly higher rate of childhood lead poisoning. *See* Ex. 29, pp. 5-6**;** Ex. 78, p. 133.

179. The Negative Declaration failed to evaluate the significance of the proposed local law's potential adverse environmental effects in connection with their "irreversibility," as required by SEQRA, 6 N.Y.C.R.R. § 617.7(c)(3)(iv), and CEQR, 43 R.C.N.Y. **§** 6-06(b), *see* Ex. 85, making only the perfunctory statement that very young children "are more likely [than older individuals] to suffer permanent damage to their physical and mental health as lead impedes their neurological development." *See* Ex. 1-d, p. 1.

180. The Negative Declaration failed to evaluate the significance of the proposed local law's adverse environmental effects in connection with their "probability of occurrence," as required by SEQRA, 6 N.Y.C.R.R. § 617.7(c)(3)(ii), and CEQR, 43 R.C.N.Y. § 6-06(b), *see* Ex. 85. For example, it failed to analyze existing data on landlord compliance with the Housing Code, including the issue of false certification regarding correction of violations. *See* Paragraphs 156

and 167 above. Failure to provide this information made the Negative Declaration inadequate because Local Law 38 allows landlords to remove toxic lead paint using weak dust control and clean-up practices with no meaningful test of the effectiveness of those weakened standards to eliminate the environmental hazards.

181. With regard to the "probability of occurrence," the Negative Declaration also failed to evaluate the impact of allowing, or at least attempting to allow, lead paint removal to be conducted without the use of workers trained and certified under a program approved by the federal Environmental Protection Agency who would follow certain lead dust control safety procedures set by that agency. *See* Paragraph 160, above.

182. The Negative Declaration failed to evaluate the significance of the proposed local law's adverse environmental effects in connection with their "duration," as required by SEQRA, 6 N.Y.C.R.R. § 617.7(c)(3)(iii) and CEQR, 43 R.C.N.Y. § 6-06(b), *see* Ex. 85, particularly in light of the potential for prolonged exposure of young children to toxic environmental hazards during the unnecessarily extensive compliance and enforcement periods for multiple dwellings and the lack of enforcement deadlines in one and two-family homes. See Paragraphs 163, 165-72 above.

183. The Negative Declaration failed to evaluate the significance of the proposed local law's adverse environmental effects in connection with "the number of people affected," as required by 6 N.Y.C.R.R. § 617.7(e)(3) (vii), even though Local Law 38 – for no stated scientific reason – eliminates six-year-old children from the protection of the City's lead paint law. See Paragraph 152 above.

184. The Negative Declaration also failed to analyze the potential adverse effects of the proposed local law in connection with the "number of people affected" in light of the fact that the victims of lead poisoning are mostly very young, poor children of color, and environmental justice considerations must be considered under SEQRA. *See* Ex. 87 and Paragraph 61 above.

185. The Negative Declaration failed to evaluate the significance of the proposed local law's adverse environmental effects in connection with setting, geographic scope, and magnitude as required by SEQRA, 6 N.Y.C.R.R. §§ 617.7(c)(3)(I), (v), and (vi), and CEQR, 43 R.C.N.Y. § 6-06(b), *see* Ex. 85.

186. The Negative Declaration failed to "consider reasonably related long-term, short-term, direct, indirect and cumulative impacts" in making its determination of non-significance, as required by 6 N.Y.C.R.R. § 617.7(c)(2). For example, The Negative Declaration failed to discuss the fact that because Local Law 1, as interpreted by the courts, requires permanent removal of all lead paint, its enforcement in each case removes the apartment forever as a source of children's exposure to toxic lead paint. The Negative Declaration did not even document how many apartments in the City had been fully abated – or substantially abated – pursuant to Local Law 1, and thus made wholly or substantially lead-free.

187. The Negative Declaration failed to consider the fact that there was significant "public controversy related to potential adverse impacts" from the proposed local law. The State Department of Environmental Conservation specifically identifies public controversy as a factor for consideration by the lead agency in making a determination of significance. *See*, Full EAF form and Short EAF Form provided in 6 N.Y.C.R.R. § 617. The proposed local law was the subject of substantial controversy, as evidenced by the above-described testimony at the hearings,

correspondence and written information provided to the Speaker and Council members , and newspaper coverage. *See* Ex. 58.

The City Council Failed to Provide a Reasoned Elaboration and Reference to Supporting Documentation in its Written Determination.

188. Under SEQRA and CEQR's implementing regulations, the lead agency must set forth the reasons supporting its determination of nonsignificance in written form, "containing a reasoned elaboration and providing reference to any supporting documentation." SEQRA, 6 N.Y.C.R.R. § 617(g)(2)(iv); CEQR, 43 R.C.N.Y. § 6-07(b)(v), *see* Ex. 85.

189. For the reasons set forth in Paragraphs 151-187 above, the City Council failed to set forth in writing a reasoned elaboration for the determination of no significant effect for this action. Further reasons are set forth in the paragraphs below.

190. The Negative Declaration failed to provide a reasoned elaboration of its conclusory statement, *see* Ex. 1-d, p. 1, that "children under the age of six" are more likely to suffer permanent brain damage from lead than are children under the age of *seven*, which is the standard set in Local Law 1. *See* Paragraph 152 above. Indeed, it failed to provide any reason at all for this change.

191. The Negative Declaration failed to provide a reasoned elaboration for its statement that "the existence of lead-based paint constitutes an immediately hazardous condition [only] when it is peeling or located on a deteriorated subsurface," and for the decision to limit the definition of "lead-based paint hazard" to such conditions, *see* Ex. 1-d, p. 1, given the extensive testimony and correspondence provided to the Council on the known hazards of toxic lead dust and the potential for such dust to be released from intact lead paint on friction or impact surfaces. *See* Landrigan Aff., Lanphear Aff., Rosen Aff., Gilbert Aff., Newman Aff., Olmsted Aff., and

Paragraph 151 above. The Negative Declaration failed to provide such elaboration even though DoH Commissioner Cohen testified that lead dust should be included in the definition of "lead-based paint hazard" in the bill. *See* Ex. 77, p. 173.

192. The Negative Declaration failed to provide a reasoned elaboration of its conclusory statement that the "City Council and the Mayor concur that the goal of Local Law 1 for the year 1982, which was to eliminate hazardous housing conditions before a child becomes lead poisoned, is not best served by the removal of intact paint containing lead," *see* Ex. 1-d, p. 1, especially given that:

(a) The Council received testimony and letters regarding the need to remove intact lead paint from friction and impact surfaces; and

(b) Documented incidents of lead poisoning in the City have been decreasing, not increasing, in frequency and severity. The DoH Commissioner testified that the number of new cases of childhood lead poisoning at levels of 20 µg/dL or higher has declined since 1994 by almost 50%. *See* Ex. 77, p. 115. The Negative Declaration did not refer to any analysis of the role of Local Law 1 and the Health Code safety standards (first adopted in late 1993) in helping to bring about this change.

193. The Negative Declaration failed to provide a reasoned elaboration of its conclusory statement that "the best way to prevent poisoning from paint containing lead is to ensure that such paint is kept in good repair or, if it is peeling or located on a deteriorated subsurface, that it is repaired using safe work practices," *see* Ex. 1-d, p. 1, especially in light of testimony at the June 21 and June 24 hearings and written submissions to the City Council that harmful toxic lead dust can be generated from lead paint that is intact but located on friction or impact surfaces.

194. The Negative Declaration failed to provide a reasoned elaboration of its assertion that the proposed local law would meet the goal of requiring that lead paint be "repaired using

safe work practices," *see* Ex. 1-d, p. 1, given that numerous nationally-recognized medical and technical experts stated that the proposed local law's work practices were not safe and given that Local Law 38 eliminates the applicability of Health Code safety standards which were updated in 1996. *See* Paragraphs 153-60 above.

195. The Negative Declaration failed to provide a reasoned elaboration of its conclusory statement that the proposed local law "imposes strict time frames" for a landlord to correct a lead paint hazard after a violation has been issued, *see* Ex. 1-d, p. 3, by responding to the concerns about enforcement deadlines raised by medical experts and by public health and tenant advocates. *See* Landrigan Aff., Rosen Aff., Gilbert Aff., Olmsted Aff., and Exs. 24, 26, 27, and 29.

196. The Negative Declaration also failed to elaborate this statement given that the time frames for enforcement are not more strict than under Local Law 1 and the proposed HPD Local Law 1 regulations. For example, the 10-day deadline for conducting an inspection in response to a complaint and the 20-day deadline for HPD to serve a notice of violation after an inspection had already been set forth by HPD in its proposed regulations to implement Local Law 1, *see* Ex. 99, and under Local Law 1, a lead paint hazard must be corrected within 24 hours, not 21 days as allowed under Local Law 38. The Negative Declaration also failed to elaborate this statement given that the proposed local law would leave already lead-poisoned children in one and two-family dwellings with no right to correction of a lead paint hazard by a date certain. *See* Paragraph 172 above.

197. The Negative Declaration failed to provide a reasoned elaboration of its conclusory statement that the HPD's action to correct a violation after an owner fails to correct

the hazard "is expected to reduce the potential number of days in which a child may be exposed to lead-based paint hazard (sic)," *see* Ex. 1-d, p. 3, in light of existing law mandating correction of the hazard within 24 hours and the duty of HPD to enforce that law, and the information described in Paragraphs 165 and 172 above regarding how long a child could be exposed to lead paint before remediation occurs if Local Law 38 takes effect.

198. The Negative Declaration failed to provide reference to supporting documents for its findings which the public (or Council members) could review, as required by SEQRA, 6 N.Y.C.R.R. § 617(g)(2)(iv), and CEQR, 43 R.C.N.Y. § 6-07(b)(v), *see* Ex. 85.

Because Implementation of Local Law 38 Would Have Adverse Environmental Effects, Its Enactment Is Invalid Without Preparation of an Environmental Impact Statement.

199. The respondent-defendant City Councils' decision that the proposed local law would have no adverse environmental effect was arbitrary, capricious, an abuse of discretion and in violation of law because it: (1) was based upon incorrect statements and assumptions and inadequate information, (2) is unsupported by testimony and written submissions regarding the proposed local law, (3) conflicts with past and recent testimony by the City DoH, (4) conflicts with substantial, uncontroverted testimony and comments by experts in pediatrics, environmental medicine and childhood lead poisoning, and (5) conflicts with other City documents and federal documents that indicate that implementation of Local Law 38 will have significant adverse environmental effects. These adverse environmental effects include the release of environmentally toxic lead dust and chips from poorly controlled or uncontrolled lead paint removal work and the prolonged exposure of young children to uncorrected environmental hazards as a result of lax enforcement deadlines or the elimination of enforcement deadlines for correction of lead paint hazards as well as the removal of protection for six-year-old children against lead paint hazards.

Because Local Law 38 may have one or more significant adverse environmental effects but was not subjected to an EIS, its enactment is invalid, and the City Council cannot undertake to enact it in compliance with SEQRA and CEQR without preparation of an EIS.

AS AND FOR A CLAIM FOR RELIEF:
VIOLATION OF SEQRA AND CEQR

200. Petitioners repeat and reallege the allegations contained in Paragraphs 1 through 192 as if fully set forth herein.

201. Respondents-defendants' aggressive pursuit of enactment of this local law, coupled with the City's lack of compliance with the existing law, establish a record of behavior that indicates a lack of objectivity on this proceeding that justifies close scrutiny of the decision to avoid preparing an EIS before acting on the proposed local law.

202. The City's unique position as a landlord that must regulate itself also justifies close scrutiny of the decision to avoid preparing an EIS before acting on the proposed local law.

203. Because respondent-defendant the City Council failed to comply with the procedural and substantive requirements of environmental review under SEQRA – including the failure to make the determination of significance as early as possible in the formulation of the action, make every effort to involve the public and interested agencies, consider the action and make the determination itself, identify the areas of environmental concern, compare the action with existing conditions, analyze thoroughly the areas of environmental concern, and provide a reasoned elaboration of its determination of environmental impact with reference to supporting documentation – the Negative Declaration is invalid.

204. Respondent-defendant the City Council's adoption of the determination that the proposed local law would not have a significant effect on the environment is based on incorrect

statements and assumptions and inadequate information, is unsupported by testimony and written submissions regarding the proposed local law, conflicts with past and recent testimony by the City DoH, and conflicts with other City documents and federal documents that indicate that the local law will have significant adverse environmental effects, triggering the requirement to prepare an EIS. Accordingly, Resolution 883 is conclusory and not based on a "hard look" at the matter as required under SEQRA, and the actions of respondents-defendants City Council Speaker Peter Vallone and the City Council in adopting Resolution 883 in support of the proposed Negative Declaration were arbitrary, capricious, an abuse of discretion, made in violation of lawful procedure, and affected by an error of law.

205. Implementation of Local Law 38 will have adverse environmental effects sufficient to require the preparation of an EIS. Accordingly, the actions described in this Petition and Complaint resulting in enactment of the local law without conducting an EIS on the local law were arbitrary and capricious, an abuse of discretion, made in violation of lawful procedure, and affected by an error of law.

206. The record of the proceedings related to enactment of the local law is facially and substantively insufficient to support the decision to adopt the Negative Declaration and the decision to enact the local law.

207. As a result of the respondents-defendants' actions, petitioners will be irreparably harmed by the implementation of the local law and the resultant contamination or continued contamination of homes of young children by toxic lead paint dust and other lead paint hazards.

208. 6 N.Y.C.R.R. § 617.3(a) provides that: "No agency involved in an action shall carry out, fund or approve the action until it has complied with the provisions of SEQRA."

209. Respondents-defendants' failure to fully comply with the procedural and substantive mandates of SEQRA requires the nullification of Local Law 38 and the enjoining of the implementation of Local Law 38.

210. No prior application for the relief herein requested has been made.

WHEREFORE, Petitioners respectfully request this Court to grant judgment:

(a) declaring the Negative Declaration for the proposed local law now known as Local Law 38 null and void;

(b) declaring Local Law 38 of 1999 null and void;

(c) directing the respondents-defendants to prepare an EIS prior to undertaking action to enact the proposed local law now known as Local Law 38;

(d) enjoining the respondents-defendants from taking action, including disbursing or expending City funds, to implement Local Law 38 until the requirements of SEQRA and CEQR are met; and

(e) directing the respondents-defendants that an EIS for the proposed action must, at a minimum, consider the issues raised in this Verified Petition; and,

(f) providing such other and further relief as the Court may deem just and proper.

Dated: New York, New York
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KENNETH ROSENFELD, Esq.
NORTHERN MANHATTAN IMPROVEMENT
CORP. LEGAL SERVICES
By: Matthew J. Chachère
Theodora Galacatos
James M. Baker
Attorneys for Petitioners-Plaintiffs
76 Wadsworth Avenue
New York, NY 10033
212-822-8300

ANDREW GOLDBERG, Esq.
Attorney for Petitioner-Plaintiff NEW YORK
PUBLIC INTEREST RESEARCH GROUP,
INC.
9 Murray Street
New York, NY 10007-2272
212-349-6460