

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

MARIBEL BAEZ, *et al.*,

Plaintiffs,

- against -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

Case No. 13 Civ. 8916 (WHP)

**DECLARATION OF GREGORY RUSS**

1. My name is Gregory Russ, and I am the Chair and Chief Executive Officer of the New York City Housing Authority (“NYCHA”). I have served as Chair and Chief Executive Officer of NYCHA since August 2019. I respectfully submit this declaration in support of NYCHA’s opposition to plaintiffs’ motion to enforce the revised consent decree.

2. I have personal knowledge of the facts set out in this declaration based on my work at NYCHA, review of historical documents, and the information shared with me by other former and current NYCHA employees.

**I. NYCHA’s Reliance on Section 8 and 9 Funding to Maintain Its Aging Housing Stock.**

3. Founded in 1934 in response to the housing crisis during the Great Depression, NYCHA was the first agency in the United States to provide publicly funded housing. Since then, NYCHA has become the largest public housing authority (“PHA”) in the country, and if NYCHA were a city, it would rank 33rd in population size in the United

States—larger than Sacramento, Atlanta, and Miami. As of today, NYCHA provides affordable housing to 555,498 low-income New Yorkers and is the largest landlord in New York City.

4. NYCHA is a victim of its age, and of chronic underfunding over the years, particularly in the area of capital investment to renovate its facilities. Some 175 of NYCHA’s 302 developments are 50 or more years old, and 93 are at least 60 years old and have not been adequately maintained through the years. As a result, windows, roofs, facades, pipes, and ventilation systems—all of the parts of the buildings that are necessary to keep the buildings water tight and combat excessive moisture—continue to deteriorate.

5. The Department of Housing and Urban Development (“HUD”) administers two major low-income housing programs that provide funding to NYCHA, commonly referred to as Section 8 and Section 9.

6. Section 9, part of the Housing Act of 1937, provides federal funding for publicly owned, managed, and operated housing developments—the type of housing commonly referred to as “public housing.” Federal money for Section 9 public housing developments is allocated to PHAs to help fund the developments the PHAs own and operate. Two primary types of funds are provided by HUD; operating subsidies for day-to-day maintenance and management of the buildings, and capital funds for large-scale capital projects, such as boiler replacements. Because Section 9 housing is publicly owned and operated, private investment capital is not available to help fund and pay for capital improvements to these developments.

7. Section 8, created by the Housing and Community Development Act of 1974, provides a different funding model. Section 8 provides federal funding for two

primary programs: the Housing Choice Voucher program and the Project-Based Voucher program. Under the Housing Choice Voucher program, HUD disburses federal funds to PHAs, and PHAs can issue vouchers to eligible low-income applicants who then apply that voucher to partially subsidize their rent in privately owned and operated homes that meet the requirements of the Section 8 program. Tenants thus use the voucher, and the PHA pays the difference between their monthly rent payments to the private landlord (capped at 30% of the tenant's monthly income) and the market-based rent charged for the unit.

8. Under the Project-Based Voucher program, tenants still pay no more than 30% of their monthly income towards rent, however, the voucher subsidies are tied to designated housing units at specific properties.

9. Today, one in fifteen New Yorkers lives in NYCHA-operated Section 9 public housing developments or in privately owned and operated housing funded through Section 8 voucher programs.

## **II. Substantial Disinvestment in Funding for Section 9 Public Housing.**

10. Despite the large number of residents that live in traditional Section 9 public housing, which, in New York City, is over 400,000 people, PHAs have been facing a federal funding crisis for many decades. Since the 1980s, Congress has steadily cut federal funding for Section 9 public housing developments. Congress continues to underfund the Public Housing Capital Fund and the Public Housing Operating Fund, both of which fall under Section 9, thereby hampering the ability of PHAs, like NYCHA, to make all necessary capital improvements to Section 9 public housing developments. This means that hundreds of thousands of people are living in buildings that have not been properly invested in for decades.

11. Section 8 funding, by contrast, has remained stable over the same time period. In fact, since 2017, Congress has increased Section 8 funding.

12. Because NYCHA relies so heavily upon Section 9 funding, the decline of the Capital Fund and Operating Fund has, over time, inflicted massive damage to NYCHA's budget. In 2020, NYCHA's operating budget contained nearly \$2.2 billion of federal funding, comprising 57% of NYCHA's total revenue. Almost half of those federal dollars flowed from the declining Capital Fund and Operating Fund in Section 9. Indeed, NYCHA received \$420 million in federal capital funding in 2001, but by 2017, that annual amount had fallen to a non-inflation-adjusted \$346 million.

13. The costs of maintaining and repairing public housing developments continue to increase at an alarming rate. Every five to six years, NYCHA conducts a Physical Needs Assessment ("PNA") to identify the capital expenditures needed to bring NYCHA public housing developments to a state of good repair. A PNA that took place in 2006 identified a five-year capital need of \$7.5 billion. The 2011 PNA identified a five-year capital need of \$16.5 billion. The most recent PNA, in 2017, found a five-year capital need of \$31.8 billion. And because NYCHA is forced to defer maintenance and repair work due to a lack of necessary funds, NYCHA's funding needs continue to escalate each year. Moreover, the needs identified by the PNA—which are substantial as is—do not even include all of NYCHA's capital needs across its full housing portfolio, such as capital needs for lead abatement.

14. Due in large part to the decrease in Section 9 federal funding of NYCHA, current capital funding stands at only \$7.8 billion over five years. And because of the age of the majority of NYCHA housing developments, as discussed above, many of those developments will continue to deteriorate unless the budgetary shortfall is addressed. As of

now, NYCHA's current capital shortfall is estimated at \$40 billion, and is growing by an estimated \$1 billion annually.

15. Moreover, NYCHA's capital shortfall for just its mold and moisture remediation (including piping, ventilation, new kitchens and bathrooms, and other improvements) exceeds \$9.5 billion—more than three times the total of HUD's capital appropriation for the *entire nation's* Section 9 housing stock.

16. As a result of this enormous budgetary shortfall, NYCHA is unable to make necessary capital improvements to fix the root causes of mold and excessive moisture in its deteriorating housing stock, such as leaking roofs, broken piping systems, and inadequate ventilation. These problems simply cannot be addressed without a massive infusion of capital funds, which are not available through Congressional appropriations to Section 9 public housing developments.

17. Ultimately, NYCHA desperately needs an alternative funding source to save its infrastructure and fulfill its critical mission of providing quality, affordable housing to low-income New Yorkers.

### **III. RAD Addresses NYCHA's Budget Shortfall Through Public-Private Partnerships.**

18. In 2012, the Obama administration launched the Rental Assistance Demonstration ("RAD") program, which converts Section 9 public housing to long-term Section 8 project-based housing in order to leverage private investment. Broadly speaking, RAD enables PHAs to lease developments to private developers under long-term lease agreements. Tenants' rent payments remain subsidized and capped at no more than 30% of their adjusted gross household income, and are paid to the developers. The developers, in turn, invest millions of

dollars to renovate the properties, and retain private property management companies to manage and operate the developments.

19. The Section 9 public housing developments are thereby converted to Section 8 funded developments operated by private developers—rather than by the PHA itself—and benefit from associated capital improvements and enhanced, ongoing private property management.

20. Stable funding from the federal government is not the only reason Section 8 provides better opportunities for capital investment. As previously described, while some Section 8 funds are “tenant-based”—in which the assisted housing unit is selected by the tenant—other Section 8 funds are “project-based,” whereby rental assistance is tied to the unit and paid to the owners of such units for income-eligible residents who live in them. Because Section 8 provides “project-based” federal funds, under RAD, private developers are able to use the housing developments as collateral to raise debt and equity for renovations and new construction, a process that is not permitted in the Section 9 public housing program. This unlocks access to private and public debt and equity markets, and the RAD program then requires that private developers commit capital towards improving and managing affordable housing units.

#### **IV. Efforts to Address Mold and Excessive Moisture in NYCHA-Operated Section 9 Public Housing Developments.**

21. NYCHA’s aging Section 9 public housing stock has been plagued by moisture and mold problems—among other issues—stemming from deteriorating piping, windows, roofing, facades, and ventilation systems.

22. This litigation is an outgrowth of those problems, and ultimately resulted in the Revised Consent Decree (“RCD”). The RCD references and incorporates by reference the

revised Standard Procedure, which establishes responsive measures to remediate mold and creates protocols to protect the residents and staff when remediating such mold.

23. Even with the new remediation plans, however, the root causes of mold and excessive moisture may persist. This is because mold can stem from minor issues, such as increased humidity or poor ventilation, but may also occur on a systemic level from deteriorating roofs and plumbing systems. These systemic mold issues require massive capital investments in remodeling or reconstruction to be resolved. In addition, because of the age and fragility of the underlying infrastructure, repairs to NYCHA's old pipe systems often result in failures down the line, resulting in adjacent leaks or other failures. This very problem is the reason a capital-based solution—and not only improved remediation procedures—is necessary to solve the problems of underlying moisture and mold in NYCHA's Section 9 portfolio.

24. Insufficient federal funding makes it impossible for NYCHA to fund the necessary capital improvements to all of its developments. Thus, despite NYCHA's best efforts to remediate mold and excessive moisture, systemic issues will persist unless NYCHA can obtain other funding sources to address the root causes in its aging housing stock.

25. The only currently available solution that NYCHA has found for thousands of its housing units is to convert NYCHA-operated Section 9 public housing developments to Section 8 developments under the RAD program, which NYCHA has implemented under the name Permanent Affordability Commitment Together ("PACT"). In light of the years of federal neglect of Section 9 public housing, PACT presents an essential and immediate opportunity to improve the quality of life for hundreds of thousands of low-income New Yorkers by using the RAD program to convert NYCHA-operated Section 9 public housing developments to PACT Section 8 developments.

**V. NYCHA Has Been Publicizing Its Conversion of Section 9 Public Housing Developments to PACT Section 8 Developments For At Least Six Years.**

26. For years, NYCHA has widely publicized its efforts to use RAD/PACT to achieve much needed capital improvements to Section 9 public housing developments.

27. NYCHA began considering the RAD/PACT program shortly after it was launched. In the years leading up to the parties' agreement to the RCD, NYCHA issued at least a dozen press releases about the program and held dozens of public meetings with NYCHA residents about it.

28. NYCHA announced its first RAD project in May 2015, which involved conversion of the Ocean Bay Apartments in Far Rockaway, Queens—a 24-building complex with 1,395 apartments housing nearly 4,000 residents—from a NYCHA-operated Section 9 development to a PACT Section 8 development. A true and correct copy of a May 19, 2015 news release issued by Mayor Bill de Blasio and NYCHA that announced the plan to convert the Ocean Bay Apartments under RAD is attached hereto as **Exhibit A**.

29. Starting in the spring of 2015, NYCHA held more than a dozen meetings with tenants about the program, including town hall-style meetings in each of the five boroughs. A true and correct copy of a NYCHA Fact Sheet about RAD is attached hereto as **Exhibit B**. A true and correct copy of an Executive Summary of NYCHA's Amendment to the Annual PHA Plan for FY 2015 and the Five Year Annual PHA Plan for FY 2015-2019, discussing these meetings, is attached hereto as **Exhibit C**.

30. In February 2016, NYCHA issued a press release stating that RAD was part of "NYCHA's 10 year strategic plan to preserve public housing and become a more effective and efficient landlord." A true and correct copy of the February 19, 2016 press release is attached hereto as **Exhibit D**.



31. In December 2016, NYCHA announced that it had closed an agreement with HUD for the Ocean Bay conversion under PACT, which would provide \$325 million in funding to make needed repairs at that development. A true and correct copy of the December 30, 2016 press release announcing that agreement is attached hereto as **Exhibit E**.

32. In January 2017, NYCHA announced that it had received approval to bring an additional 1,700 apartments in the Bronx and Brooklyn into the PACT program, which would raise an additional \$300 million for capital and other improvements, including roof replacements. A true and correct copy of the January 18, 2017 press release containing that announcement is attached hereto as **Exhibit F**.

33. In June 2017, NYCHA announced that it had secured \$560 million in federal, state, city, and private investment to fund much needed capital improvements at Ocean Bay, including roof repairs and new boilers, under PACT. A true and correct copy of the June 19, 2017 press release concerning that announcement is attached hereto as **Exhibit G**.

34. In January 2018, NYCHA announced that three developers had been selected for the PACT conversions in Brooklyn and the Bronx that would provide over \$300 million in capital needs. A true and correct copy of the January 18, 2018 press release concerning that announcement is attached hereto as **Exhibit H**. The release also noted that NYCHA's Community Development team had held two dozen resident engagement meetings to discuss how RAD would improve residents' lives, and stated that NYCHA would continue to hold resident meetings throughout the conversion process.

35. In June 2018, Mayor de Blasio announced an agreement to convert an additional 2,400 units in 21 NYCHA-operated public housing developments in Brooklyn and Manhattan to PACT Section 8 developments, which would enable \$400 million in upgrades to

the buildings, including the replacement of windows, boilers, and roofs. A true and correct copy of the June 25, 2018 press release that the Mayor's office issued concerning that announcement is attached hereto as **Exhibit I**.

36. All in all, PACT has brought \$1.76 billion in much needed capital repairs to developments that have been converted under the program, including investments in roof replacement, new plumbing, facade work, and interior renovations. A true and correct copy of a NYCHA presentation summarizing these investments is attached hereto as **Exhibit J**.

#### **VI. Moisture and Mold Issues Are Addressed in PACT Developments.**

37. Although the RCD does not apply to PACT Section 8 developments, that does not mean that moisture and mold problems in those developments are not addressed. To the contrary, and as discussed above, the PACT program provides hundreds of millions of dollars of investments in capital improvements, at a time when virtually no money is available for capital investments in traditional NYCHA-operated Section 9 public housing developments. As a result, the deteriorating roofs, facades, windows, and pipes that are the root causes of the moisture and mold conditions in these PACT Section 8 developments are finally being replaced.

38. In addition, in December 2019, NYCHA issued the "Mold and Moisture Control Procedures for NYCHA's PACT Projects Memorandum"—commonly called the "Mold Memo"—which sets forth guidelines for mold remediation in PACT Section 8 developments. A true and correct copy of the Mold Memo is attached hereto as **Exhibit K**.

39. Among other things, the Mold Memo will require that PACT developers adopt Operation and Management Plans ("O&M Plans") drafted by third-party environmental consulting firms that outline "the essential tasks that will be routinely executed to eliminate sources of moisture," and provides a "suggested guideline" to be "consistent with the . . . Baez

Consent Decree.” Mold Memo at 5. The Mold Memo also explains that NYCHA will transfer responsibility for work orders to PACT developers through an orderly process that ensures the transfer of the information regarding work orders in NYCHA’s system. It also sets forth expectations for developers to provide reports to NYCHA on “capital repairs, remediation work completed in Apartments and resident communication and responses to complaints and mold issues.” Mold Memo at 3.

40. Following issuance of the Mold Memo, NYCHA has ensured that PACT developers follow its guidelines, even going so far as to include the document in the Control Agreement with its most recent PACT developer, and including in developers’ leases a requirement that their O&M Plans be “consistent with *Baez v. NYCHA*, No. 13 Civ. 8916, as same may be amended.” True and correct copies of the Control Agreement and Lease Agreement from the most recent PACT closing, referred to as the “Manhattan Bundle,” are attached hereto as **Exhibits L** and **M**, respectively (the “Control Agreement” and the “Lease Agreement,” respectively). The Manhattan Bundle consists of 1,718 units throughout 16 NYCHA developments in Manhattan, and converted to PACT on November 30, 2020.

41. The Control Agreement requires that the developer provide an annual report detailing communications between the developer and the residents in regard to complaints and mold issues. *See* Control Agreement § 6.5. In addition, a failure to comply with O&M Plans, including provisions addressing excessive moisture and mold complaints, may trigger a default under the Lease Agreement. *See* Lease Agreement § 15(a)(xvii).

42. PACT developers also have obligations with respect to mold under the terms of their loan documents with their lenders. For example, for the most recent PACT conversion (the Manhattan Bundle), the developer executed a Compliance Agreement for Mold

Operations and Maintenance Plan, which specifically requires the developer to “develop, implement and carry out an operations and maintenance plan for the prevention, minimization and containment or removal of mold.”

43. The Housing Assistance Payment Contract (the “HAP Contract”) between NYCHA, as the Section 8 administrator, and the PACT developer, governs the administration of the Section 8 subsidy. Pursuant to the HAP Contract, NYCHA will withhold Section 8 subsidy payments from the developer for violations of Housing Quality Standards (“HQS”), which are established by HUD. Private managers of Section 8 properties are required to maintain the units and buildings in accordance with HQS, the standards established by HUD that apply to the Section 8 program, which provide criteria for the health and safety of residents. In addition, residents of PACT Section 8 developments who report mold issues to the NYCHA Customer Contact Center receive an inspection of their home by NYCHA’s Leased Housing Department. Inspections are performed pursuant to HQS and any violation of HQS must be cured and confirmed with either the tenant’s signature or photos.

44. Of note, Plaintiffs in this litigation have asserted that NYCHA is laying the groundwork to further limit the application of the RCD as part of the proposed “Blueprint for Change” program, which will also use Section 8 funding. However, that program has not yet been authorized and, in any event, NYCHA expects that the RCD would apply to developments that are part of that program because, as the program is currently contemplated, NYCHA itself would operate and manage those developments. A true and correct copy of FAQs on NYCHA’s Blueprint for Change program is attached hereto as **Exhibit N**.

**VII. As Part of the Conversion Process, NYCHA Works With PACT Developers to Ensure that Mold Remediation Processes Are Followed.**

45. NYCHA continues to manage Section 9 developments that are scheduled for conversion to PACT Section 8 developments until the date of closing with the PACT developer and management companies. Six months prior to closing, NYCHA will begin a work order transition plan to ensure that work orders and open issues are properly transferred to the new PACT property managers.

46. The Mold Memo details the process of identifying areas that require capital improvements to combat mold and excessive moisture and the transition of open work orders to the private developers.

47. The process is as follows:

- (a) Step 1 requires NYCHA to provide PACT Project Teams with all resident complaint data that requires responses to mold and leak complaints. This data, from the six months prior to closing, includes open work orders, data on cancelled or closed work orders because no mold or leaks were found, data on roof fan and ventilation work, complaint data from the Ombudsperson Call Center (“OCC”) and HUD complaint line, and data from inspections where mold or leak conditions may have been observed.
- (b) Step 2 requires the PACT Project Teams, as part of their pre-development inspection, to identify mold, leaks, and excessive moisture. The PACT Project Teams will notify NYCHA of any short-term remediation required and remediation that requires more significant capital improvements.
- (c) Step 3 requires the PACT Project Team to submit Capital, O&M, and Remediation Plans to NYCHA for review.
- (d) Step 4 enables NYCHA to review the plans, provide comments, and then finalize plans that will be described in, and create binding obligations under, the Lease Agreement.
- (e) Step 5 requires NYCHA to provide a final report of completed work orders so the PACT Project Team is aware of which work orders have been completed ten days prior to transition.

**VIII. PACT Tenants Retain Numerous Rights With Respect to Mold and Moisture Remediation.**

48. After a PACT conversion, residents can contact their PACT property managers with respect to requests for repairs and work orders, both generally and related specifically to mold and moisture issues. If residents' requests are not adequately addressed by PACT property managers, there is oversight over the PACT property managers as follows. First, PACT apartments receive biennial inspections, including visual inspections for mold, conducted by NYCHA's Leased Housing Department to ensure that units continue to meet HUD's HQS. Second, PACT Section 8 development residents can also call NYCHA's Customer Contact Center at any time and request an inspection (outside of the regular biennial inspections) by NYCHA's Leased Housing Department. NYCHA's Leased Housing Department provides information to residents of PACT Section 8 developments concerning these rights, such as by circulating brochures prominently featuring numbers to call for repairs. Third, PACT Section 8 development residents have access to the Department of Health and Mental Hygiene and the properties are subject to enforcement under Local Law 55.

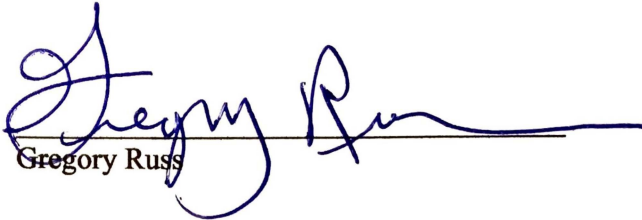
49. In addition, PACT Section 8 development residents can call 311 to file a mold complaint, which routes them to the Department of Housing Preservation and Development ("HPD") where they can request an HPD inspection. This remedy is not available to residents of NYCHA-operated Section 9 public housing developments.

50. Most significantly, the residents of PACT Section 8 developments benefit from much needed capital repairs and improvements. Under PACT, major renovations occur in the first two to three years of the development conversion, which are meant to satisfy major capital improvements needed for the next 20 years. Thus, the developers upgrade plumbing and

heating systems, bathrooms, kitchens, roofs, facades, and perform other capital improvements that address the root causes and disrepair that had previously plagued these buildings for decades.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 11, 2021  
Minneapolis, Minnesota

  
Gregory Russ