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December 4, 2020

Hon. William H. Pauley III
United States District Court, Southern District of New York
500 Pearl Street, Room 1920
New York, New York 10007

Re: *Baez, et al. v New York City Housing Authority ("NYCHA")*, No. 13-cv-8916 (WHP)

Dear Judge Pauley:

We write in response to Plaintiffs' November 27, 2020 letter seeking a pre-motion conference to discuss their proposed motion "to enforce the Revised Consent Decree." (Dkt. No. 277). This request should be denied because Plaintiffs do not seek to enforce the terms of the Revised Consent Decree, but, rather, to rewrite it to include units converted to Section 8 through the Department of Housing and Urban Development's ("HUD") Rental Assistance Demonstration ("RAD") and NYCHA's Permanent Affordability Commitment Together ("PACT") programs. In doing so, Plaintiffs ignore the plain language of the Revised Consent Decree and Standard Procedure which clearly limits their application to Section 9 public housing that is operated by NYCHA (*see* Paragraph 7(f) of Revised Consent Decree). Because Plaintiffs have not shown any basis for or legal right to the extraordinary relief requested, their request should be denied.

Background

The Housing Act of 1937 includes 2 distinct programs to assist low income families maintain housing—the Public Housing program under Section 9, and the Housing Choice Voucher program under Section 8. NYCHA's role and management scope changes depending on whether the unit is funded using the Section 8 or Section 9 program.

Under RAD, public housing authorities convert public housing developments from conventional Section 9 funding to higher funded Section 8 vouchers, which leverages the necessary capital to facilitate comprehensive repairs at the development. Through the RAD and the Section 8 programs, NYCHA remains the Section 8 administrator and manages the Section 8 subsidy while being able to partner with private property managers and developers to improve conditions at its development. As under Section 9, residential rents under Section 8 are capped at 30% of a household's gross income. Once transferred to PACT, residents are afforded all of the legal protections and enforcement tools that are available to PACT Section 8 tenants as well as the protections and oversight mechanisms contained in the transaction documents.

PACT is New York City's version of the federal RAD program in which NYCHA enters into long-term ground leases with private property managers and developers to undertake a comprehensive scope of rehabilitation to the buildings, apartments and grounds, improve property management and develop a tailored and robust scope of social services. Through PACT, NYCHA has converted almost 10,000 units to Section 8 since 2016, with over 10,000 additional units in various stages of pre-conversion. PACT is currently the only government program in place that

generates enough funding for critically needed capital repairs at NYCHA developments.

Since the Revised Consent Decree was so ordered in November 2018, NYCHA has converted 6,884 units to PACT at 38 developments. All of the residents at these developments have, or are in the process of getting, among other things, new and upgraded plumbing and heating systems, bathrooms, kitchens, roofs, facades, and other capital improvements that address the disrepairs that had previously plagued these buildings for decades.

A. The Revised Consent Decree Does Not Apply to PACT Housing.

The applicability of the Revised Consent Decree is clearly laid out in ¶7(f)—a provision ignored by Plaintiffs—which provides: "NYCHA shall fully implement the revised Standard Procedure and all other provisions of this Order across all of NYCHA's public housing developments by December 31, 2019." (emphasis added). The term "NYCHA public housing developments" is defined as, "public housing developments that receive Section 9 subsidies and are operated by NYCHA." ¶ (1)(o) (emphasis added). Plaintiffs utterly fail to address ¶7(f) of the Revised Consent Decree and instead incorrectly argue that the term "NYCHA public housing developments" only applies to roof fans (fn.2). Accordingly, this argument should be rejected by this Court without further briefing.

In addition to ignoring key provisions of the Revised Consent Decree, Plaintiffs fail to acknowledge a critical provision of the Standard Procedure (Dkt. Nos., 184 and 222), which is deemed part of the Revised Consent Decree and incorporated by reference therein (Revised Consent Decree, ¶5). The Standard Procedure specifically provides that it only applies to:

> *public housing developments that received Section 9 subsidies from the U.S. Department of Housing and Urban Development (HUD) and are operated by NYCHA. This procedure does not apply to privately managed developments including Permanent Affordability Commitment Together (PACT) developments.* (emphasis added)

The Standard Procedure, which was jointly drafted, by the parties, and reviewed, revised and filed by Plaintiffs, is a critical component of the Revised Consent Decree. It implements the Revised Consent Decree provisions, including establishing performance parameters, the data collected for the Quarterly Reports, the duties of the Independent Mold Analyst and Independent Data Analyst, the creation of the work tickets for the Ombudsperson, and the method of informing tenants about the availability of the Ombudsperson. Given Plaintiffs' hands-on involvement in the drafting the Standard Procedure, they cannot now claim that they were unaware that it would not apply to PACT housing. Certainly, Plaintiffs had ample opportunity to include language in both documents stating that the terms would continue to apply after conversion from Section 9 to Section 8 housing. No such language is included in either document.

Because, as Plaintiffs acknowledge, New York law requires that a contract be enforced as written, giving meaning to all of its terms (fn.2), Plaintiffs' request to file a motion should be summarily denied.[1]

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[1] Plaintiffs argue that limiting the application of the Revised Consent Decree to public housing developments funded under Section 9 runs counter of the "definition of the class in this case"

B. Plaintiffs Were or Should Have Been Aware of NYCHA's PACT Program

Plaintiffs' claim that they were unaware that the term "NYCHA public housing developments" excluded developments converted to Section 8 housing through PACT (fn.2) or that NYCHA concealed its PACT program defies credulity (fn. 3). Not only did Plaintiffs approve the Standard Procedure language which explicitly excludes PACT housing, but Plaintiffs knew or should have known of NYCHA's very public plan. NYCHA publicly announced PACT conversions as early as 2015, and in 2017, the City Council held two hearings on PACT.[2] In 2018, the Mayor and NYCHA announced NYCHA's plan to convert 62,000 units to PACT. In addition to the public announcements, all conversions undergo a public procurement process. In addition, throughout the conversion process, NYCHA engages in robust resident engagement with multiple resident meetings beginning more than a year before each conversion. Additionally, planned conversions are posted on NYCHA's website, and are included in NYCHA's Annual Plans submitted to HUD.

C. Plaintiffs' Are Not Entitled to the Requested Relief.

The entire premise for Plaintiffs' contemplated motion—that NYCHA is trying to circumvent its obligations under the Revised Consent Decree—is legally and factually unfounded. Extending the Revised Consent Decree to PACT housing would require an amendment to the Revised Consent Decree, an extraordinary remedy which Plaintiffs have not shown they are entitled to receive (Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 383 (1992)). A motion is not the appropriate vehicle to renegotiate the terms of this agreement. We therefore respectfully request that this Court reject Plaintiffs' attempt to circumvent the terms of the Revised Consent Decree by denying leave to file their motion.

Respectfully submitted,

/s/ Miriam Skolnik
Miriam Skolnik

(fn.2), which, they posit, includes all residents of housing owned by NYCHA, regardless of management or funding. This is wrong. The *Baez* Class is actually defined as: "Current and future residents of NYCHA who have asthma that substantially limits a major life activity and who have mold and/or excessive moisture in their NYCHA housing."

[2] See "Next Generation NYCHA", May 2015 at https://www1.nyc.gov/assets/nycha/downloads/pdf/nextgen-nycha-web.pdf; City Council testimony available at https://www1.nyc.gov/assets/nycha/downloads/pdf/2017-Executive-Budget5172017.pdf and https://www1.nyc.gov/assets/nycha/downloads/pdf/budget_testimony_20170313.pdf; last visited December 4, 2020.