

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SCHERÉ BARCLAY, CORISHA BROWN, MOLLA
BROWN, FLORINE BUMPARS, TAMERA
CUNNINGHAM, TERRANCE DEBRECOURT,
DAWN HOLMES, JANET LOPEZ-GRULLON,
ELYSE NEMEROWSKY, KAREN RIVERA, LISA
AND ANGEL RIVERA, JEANNETTE RODRIGUEZ,
EMELISA RUIZ, MYRNA SANTIAGO,
CONSTANCE SPEARMAN, CASEY TOWNES,
JUSTINA ZENO, BIENVENIDA BENCOSME,
CHRISTIAN FALOYE, WILMA HOLLISTER,

Plaintiffs,

-against-

JOHN B. RHEA, as Chairman of the New York City
Housing Authority, and the NEW YORK CITY
HOUSING AUTHORITY,

Defendants.
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11 CIV 6740

COMPLAINT

2011 Civ. ()

JUDGE GRIESA



PRELIMINARY STATEMENT

1. Plaintiffs challenge the New York City Housing Authority's violation of federal law and agency-wide failure to reduce their Section 8 family rent share following a reduction in household income, in a timely, accurate, and lawful manner. Due to NYCHA's unlawful policies and practices, plaintiffs and numerous other low-income families throughout New York City are required to pay unaffordable and illegal rents each month. Plaintiffs, unable to maintain these monthly payments, have endured unnecessary Housing Court proceedings and have lived under the ongoing threat of eviction while waiting – in some cases for more than one year – for NYCHA to properly calculate their family share.

2. Families holding a Section 8 housing voucher must pay a family share for rent and utilities that is no larger than 30% of the family's adjusted monthly income, pursuant to the Brooke

Amendment to the United States Housing Act of 1937. The family share, set annually, is based upon an examination of household composition, income, and deductions. At any time, however, a participant may request an interim examination of family income and a corresponding change in the family share. Such a determination must be completed in a reasonable time after the request.

3. The New York City Housing Authority (“NYCHA”) administers a Section 8 program for existing housing in New York City and is charged with performing interim examinations. NYCHA’s own written policies, in the form of its Administrative Plan and Leased Housing Directives, in many cases preclude a rent adjustment until the family share has reached 40% of income – a facial violation of the Brooke Amendment – and require that some families wait twenty six (26) weeks at a minimum. The written policies set unreasonable time frames, lack proper notice requirements, and improperly treat families differently depending on the method NYCHA uses to calculate their annual income, all in violation of federal law.

4. NYCHA also violates federal law in its processing of interim recertifications by its pattern and practice of unreasonable and egregious delay, inaccurate calculations, improper determination of effective dates, lack of notice regarding the share change and calculation methods, and failure to advise participants of their right to a hearing. NYCHA often unlawfully applies the family share change prospectively, instead of retroactive to the effective date of the income reduction, leaving the family permanently liable for the unaffordable share which accrued during the recalculation period.

5. NYCHA, by its policies and practices, has failed to: (1) accurately adjust participants’ family shares to an amount no higher than 30% of the family’s monthly adjusted income; (2) perform interim family share adjustment determinations in a reasonable time period; (3) notify participants of

interim share adjustments and their right to a hearing to contest the determination; (4) notify participants of the basis for the share adjustment calculations; and (5) properly set the effective date and adjust subsidy payments to the landlord after an interim family share adjustment determination.

6. NYCHA's policies and practices violate the Brooke Amendment and its implementing regulations, the Supremacy and Due Process clauses of the U.S. Constitution, and NYCHA's own written policies.

7. As a result, plaintiffs herein, and Section 8 tenants citywide, remain liable for an unaffordable family share that they are unable to pay on a monthly basis. Due to NYCHA's inactions, failures, and illegal policies, these indigent families have endured substantial damages and have faced unnecessary Housing Court proceedings, unsatisfied monetary judgments, and the ongoing threat of eviction from their homes.

JURISDICTION AND VENUE

8. This court has subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1337. A cause of action for the federal claims is created by 42 U.S.C. § 1983.

9. This court has supplemental jurisdiction over state claims pursuant to 28 U.S.C. §1367.

10. Declaratory and injunctive relief are authorized by 28 U.S.C. § 2201(a) and Rules 57 and 65 of the Federal Rules of Civil Procedure.

11. Venue is proper in the Southern District of New York, pursuant to 28 U.S.C. §1391(b).

PARTIES

Plaintiffs

12. Plaintiff Schéré Barclay resides at 2130 East Tremont Avenue, Apartment 5A, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

13. Plaintiff Corisha Brown resides at 236 East Gunhill Road, Apartment 1A, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

14. Plaintiff Molla Brown resides at 666 E. 141st Street, Apartment 6B, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

15. Plaintiff Florine Bumpars resides at 2615 Jerome Avenue, Apartment 52, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

16. Plaintiff Tamera Cunningham resides at 2511 Cruger Avenue, Apartment 22N, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

17. Plaintiff Terrance DeBrecourt resides at 352 East 141st Street, Apartment 3B, in the Bronx. He is a participant in the Section 8 Leased Housing program. His Section 8 family share has been improperly set at an amount which is above 30% of his adjusted income.

18. Plaintiff Dawn Holmes resides at 3325 Neptune Avenue, Apartment 904, in Brooklyn. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share

has been improperly set at an amount which is above 30% of her adjusted income.

19. Plaintiff Janet Lopez-Grullon resides at 1749 Grand Concourse, Apartment 1F, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

20. Plaintiff Elyse Nemerowsky resides at 2920 West 21st Street, Apartment 8K, in Brooklyn. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

21. Plaintiff Karen Rivera resides at 694 East 141st Street, Apartment 4B, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

22. Plaintiffs Lisa and Angel Rivera reside at 2039 Cruger Avenue, Apartment 4D, in the Bronx. They are participants in the Section 8 Leased Housing program. Their Section 8 family share has been improperly set at an amount which is above 30% of their adjusted income.

23. Plaintiff Jeannette Rodriguez resides at 1771 Seward Avenue, Apartment 2, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

24. Plaintiff Emelisa Ruiz resides at 18 Minerva Place, Apartment 1D, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

25. Plaintiff Myrna Santiago resides at 3171 Rochambeau Avenue, Apartment LB, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

26. Plaintiff Constance Spearman resides at 2303 Haviland Avenue, Apartment 2S, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

27. Plaintiff Casey Townes resides at 340 East 184th Street, Apartment 3D, in the Bronx. He is a participant in the Section 8 Leased Housing program. His Section 8 family share has been improperly set at an amount which is above 30% of his adjusted income.

28. Plaintiff Justina Zeno resides at 593 141st Street, Apartment 2, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

29. Plaintiff Bienvenida Bencosme resides at 3450 Gates Place, Apartment 2A, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

30. Plaintiff Christian Faloye resides at 455 Jackson Avenue, Apartment 3A, in the Bronx. He is a participant in the Section 8 Leased Housing program. His Section 8 family share has been improperly set at an amount which is above 30% of his adjusted income.

31. Plaintiff Wilma Hollister resides at 2767 Morris Ave., Apartment 1-B, in the Bronx. She is a participant in the Section 8 Leased Housing program. Her Section 8 family share has been improperly set at an amount which is above 30% of her adjusted income.

Defendants

32. Defendant New York City Housing Authority ("NYCHA") is a body corporate and politic established by the New York State Legislature, as set forth in § 401 of the N.Y. Public

Housing Law. NYCHA has entered into an Annual Contributions Contract with the Secretary of Housing and Urban Development to administer a Section 8 program for existing housing in New York City. NYCHA maintains its principal place of business at 250 Broadway in New York County.

33. Defendant John B. Rhea is the chairperson of the New York City Housing Authority and is responsible for the operation of New York City Housing Authority. He is sued in his official capacity. Defendants John B. Rhea and New York City Housing Authority are collectively referred to as “NYCHA” herein.

STATUTORY AND REGULATORY SCHEME

34. The Fourteenth Amendment to the United States Constitution guarantees that all persons shall be provided due process of law under the laws of the states.¹

Section 8 of the U.S. Housing Act

35. Congress enacted the United States Housing Act of 1937 “to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income.”² Section 8 of the Act provides:

For the purpose of aiding lower-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing, newly constructed and substantially rehabilitated housing in accordance with the provisions of this Section.³

36. Section 8 authorizes the Secretary of Housing and Urban Development (“HUD”) “to enter into annual contributions contracts with public housing agencies pursuant to which such

¹ U.S. Constitution, Amendment XIV, Section 1.

² 42 U.S.C. § 1437.

agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this Section.”⁴

37. Pursuant to this authority, the Secretary of HUD has entered into an Annual Contributions Contract with NYCHA to administer a Section 8 program for existing housing in New York City.⁵

38. In carrying out the Section 8 program, NYCHA is bound to comply with HUD regulations governing Section 8 programs for “Existing Housing.”⁶ When a Public Housing Agency (“PHA”) such as NYCHA finds a family eligible for Section 8 assistance and funds are available, the PHA issues the family a housing voucher.⁷

39. Families are eligible for Section 8 assistance only if they are indigent. All assisted families must be either “lower-income families” or “very low-income families.”⁸ A “lower-income” family has income at or below 80 percent of the median income for the area as determined by HUD.⁹

40. Once a Section 8 voucher holder has found a suitable apartment, NYCHA signs a Housing Assistance Payments (“HAP”) contract with the landlord, and the landlord signs a lease with the tenant.¹⁰ The HAP contract obligates NYCHA to pay a portion of the rent directly to the landlord. NYCHA's share is the difference between 30 percent of the tenant's income and the rent or the “payment standard” established by the Housing Authority, which in New York City is 110 percent of the Fair Market Rent set by HUD.¹¹ NYCHA also pays a utility allowance.

³ 42 U.S.C. § 1437f(a).

⁴ 42 U.S.C. § 1437f(b)(1).

⁵ See 24 C.F.R. § 982.151.

⁶ See 24 C.F.R. § 982.

⁷ 24 C.F.R. § 982.302.

⁸ 42 U.S.C. § 1437n.

⁹ 42 U.S.C. § 1437a(b)(2).

¹⁰ 24 C.F.R. § 982.305.

¹¹ 24 C.F.R. § 982.505. The NYCHA payment standard is available at <<http://www.nyc.gov/html/nycha/html/section8>

41. The Brooke Amendment to the United States Housing Act imposes a ceiling for rents charged to families participating in the Section 8 program. The Brooke Amendment in its present form states, in part:

A family shall pay as rent...the highest of the following amounts, rounded to the nearest dollar:

- (1) 30 per centum of the family's monthly adjusted income;
- (2) 10 per centum of the family's monthly income; or
- (3) if the family is receiving payments for welfare assistance from a public agency and a part of such payments...is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.¹²

42. The family remains responsible for the "family share" of the rent, which is defined as the portion of rent and utilities paid by the family¹³ and constitutes the difference between the amount of the housing assistance payment (subsidy) and the gross rent¹⁴ (sum of rent to owner plus utility allowance¹⁵). Where the housing assistance payment exceeds the base rent, the PHA may pay the balance, the utility reimbursement,¹⁶ to the family to pay utilities.¹⁷

Income Examinations and Determinations

43. HUD regulations require that NYCHA reexamine and re-certify the eligibility of Section 8 participants at least annually, and on an interim basis as necessary. Accordingly, families must supply information relating to the family's income, income deductions, assets, and household

[/voucher_payment.shtml>](#).

¹² 42 U.S.C. 1437a(a). Where the rent to owner exceeds the NYCHA payment standard for a given family size, the family share can exceed 30% of the family's income. 24 C.F.R. 982.505(b); *see* 24 C.F.R. § 982.4(b). This factual situation is not present in the instant case.

¹³ 24 C.F.R. § 982.4(b).

¹⁴ 24 C.F.R. § 982.515(a).

¹⁵ 24 C.F.R. § 982.4(b).

¹⁶ *See* 24 C.F.R. § 982.4(b).

¹⁷ *See* 24 C.F.R. § 982.514(b).

composition.¹⁸

44. To set the family share, NYCHA must first calculate the household annual income.¹⁹

The regulations limit the income sources that NYCHA may consider.²⁰ Where income is not fixed, NYCHA may annualize income in anticipation of a later change or reduction in income:

If it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.²¹

After calculating annual income, to reach the annual adjusted income, NYCHA must subtract allowable deductions, including those for dependent children, elderly and disabled family members, medical expenses, and reasonable education-related childcare expenses.²²

45. NYCHA must then apply the 30% Brooke Amendment threshold²³ and divide by twelve (12) to reach the monthly family share. After crediting the utility allowance,²⁴ NYCHA arrives at the family portion of the rent.

HUD Interim Recertification Requirements

46. In addition to recalculations for annual reexaminations, NYCHA must perform these calculations for interim reexaminations as well. At any time a participant may request an interim examination and NYCHA must make a determination within a "reasonable time."²⁵

¹⁸ See 24 C.F.R. §§ 982.516, 982.551(b)(2).

¹⁹ 24 C.F.R. § 5.611.

²⁰ See 24 C.F.R. §§ 5.609(a)(1), 5.609(c).

²¹ 24 C.F.R. § 5.609(d).

²² 24 C.F.R. § 5.609(d).

²³ 42 U.S.C. 1437a(a).

²⁴ The NYCHA Section 8 utility allowance for corresponding family sizes can be found at <http://www.nyc.gov/html/nycha/html/section8/voucher_payment.shtml>.

²⁵ 24 C.F.R. § 982.516(b)(2).

47. HUD has published the HUD Housing Choice Voucher Program Guidebook (“HUD Guidebook”)²⁶ to “advise public housing agencies...regarding the administration of the tenant-based subsidy programs.”²⁷ The HUD Guidebook distinguishes between income increases and decreases. For income decreases, HUD takes a mandatory approach and “[r]equire[s] PHAs to process interim reexaminations when a family reports a reduction in income[.]”²⁸ HUD has a more permissive approach for income increases, and a PHA “may require a family to report some, all, or none of the changes in income or expenses that would result in a rent increase.”²⁹

48. To simplify the verification process for interim recertifications, the HUD Guidebook specifies that “only those [income] factors that changed will need to be verified at an interim reexamination.”³⁰

49. After a determination is complete, HUD requires that NYCHA notify the family of the updated share and of the family’s right to request an informal hearing if they disagree with the determination.³¹

50. The notice must also indicate the effective date of the family share change and NYCHA must adopt policies setting forth its methods for determining the effective date of an interim redetermination.³² The HUD Guidebook counsels:

Generally: Decreases in the family share of the rent are effective on the first day of the month following the date of the reported change. At the PHA’s policy discretion, if the family failed to report the change as required, the notice may or may not be effective

²⁶ The Department of Housing and Urban Development Housing Choice Voucher Program Guidebook (hereinafter “HUD Guidebook”), can be found at <http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook>.

²⁷ *Id.* at Ch. 1.1, p. 1-1.

²⁸ *Id.* at Ch. 12.6, p. 12-9.

²⁹ *Id.*

³⁰ *Id.* at Ch. 12.6, p. 12-10.

³¹ 24 C.F.R. §§ 982.555(a)(1)(i)-(ii), (c)(1); HUD Guidebook, Ch. 12.6, p. 12-10.

³² 24 C.F.R. § 982.516(d)(1).

retroactively.³³

Based on the effective date, NYCHA must make appropriate adjustments in payments to the landlord.³⁴

NYCHA Interim Recertification Written Policies

51. NYCHA must perform interim examinations “in accordance with the policies in the PHA administrative plan”³⁵ and “must apply interim reporting rules uniformly to all families.”³⁶ Accordingly, HUD mandates that PHAs “[d]evelop a policy that can be easily explained and understood by participants as well as staff who must enforce it.”³⁷

52. NYCHA has promulgated a Housing Choice Voucher Program Administrative Plan (hereinafter “Administrative Plan”), most recently updated in 2010, and three Leased Housing Directives (“LHD”) which address interim recertifications.

53. NYCHA issued LHD 99-11, “Change in Policy on Interim Re-examinations”, on April 7, 1999. LHD 99-11 establishes that a family may request an interim determination at any time and that NYCHA must make an interim determination within a reasonable time.

54. LHD 99-11 also establishes that the family share change is effective the month after the tenant has submitted proof of the income change.³⁸ LHD 99-11 is the only NYCHA document which addresses the effective date for income and family share decreases.

55. Recognizing that “some families may have experienced rent hardships due to the fact

³³ HUD Guidebook, Ch. 12.6, p. 12-10; *see* 24 C.F.R. § 982.516(d).

³⁴ 24 C.F.R. § 982.516(d)(2); HUD Guidebook, Ch. 12.6, p. 12-10.

³⁵ 24 C.F.R. § 982.516(b)(3).

³⁶ HUD Guidebook, Ch. 12.6, pp. 12-10.

³⁷ *Id.* at Ch. 12.6, pp. 12-9-10.

³⁸ Leased Housing Directive (hereinafter “LHD”) 99-11, Change in Policy on Interim Re-Examinations, April 7, 1999.

that the new lower income was not used until the next regularly scheduled annual review”,³⁹ on October 16, 2006, NYCHA issued LHD 06-26, “Revised Policy for Section 8 Interim Re-examinations”. LHD 06-26 re-affirms the requirement that NYCHA perform an interim determination within a “reasonable time.”⁴⁰

56. LHD 06-26 also creates a distinction between participants who receive “fixed” income and “non-fixed” income.⁴¹ According to LHD 06-26, “fixed” income is employment income “projected on the basis of the current rate of pay.”⁴² When a fixed income family requests an interim change, in most cases it must endure a 13-week waiting period before any rent share adjustments are made.⁴³

57. “Non-fixed” income is “projected on the basis of the average rate of pay (or actual earnings) during a prior 12 month period”⁴⁴ and may include “seasonal employment, piece workers, commission based pay, sporadic income, etc.”⁴⁵ For families receiving non-fixed income, LHD 06-26 establishes that NYCHA is only to perform interim family share determinations where: (1) a member of the household loses employment and as a result the family share exceeds 40% of the tenant’s adjusted income; and (2) the tenant submits third party verification confirming the receipt of unemployment for 26 consecutive weeks.⁴⁶

58. The 2010 Administrative Plan repeats the redetermination requirements of LHD 06-

³⁹ LHD 06-26, Revised Policy for Section 8 Interim Re-examinations, October 16, 2006, p. 1.

⁴⁰ *Id.* at p. 1.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at p. 2. This waiting period can only be waived (1) where an employed family member dies or permanently moves out; (2) a household member receiving Social Security, SSI, or a pension dies or permanently moves out; (3) an employed household member retires or permanently leaves the job market; or (4) a household member begins receiving public assistance as a result of a loss of employment.

⁴⁴ *Id.* at p. 1 (emphasis in original).

⁴⁵ *Id.*

⁴⁶ *Id.* at pp. 1-2.

26 and includes the different requirements for fixed and non-fixed income tenants.⁴⁷ The Administrative Plan also states that the family may request a hearing to challenge the determination.⁴⁸ The Administrative Plan does not address notice requirements or the effective date for income and family share reductions.

59. The third NYCHA interim recertification directive, LHD 10-04, only addresses instances in which tenants must report increases in income.

STATEMENT OF FACTS

60. Plaintiffs currently pay or remain liable for an amount higher than 30% of the family's monthly adjusted income due to NYCHA's unlawful failure to timely reduce plaintiffs' rent share to reflect a loss of income.

61. NYCHA's written policies regarding interim rent adjustments are facially in conflict with federal law, *inter alia*, because they impose unlawful waiting periods, and preclude rent adjustments for "fixed income" tenants who cannot prove receipt of unemployment benefits, and even then, not unless the tenant portion reaches 40% of the family income.

62. In addition, NYCHA as a matter of pattern and practice egregiously violates the federal mandate that interim rent adjustments be processed within a reasonable time and thus compels plaintiffs to pay rent in excess of federal limitations. Plaintiffs have waited many months, in some cases for over a year, to have their family shares reduced to an affordable amount as required by federal law. In other cases, after submission of documentation and a request for an interim examination, NYCHA has taken no action whatsoever.

⁴⁷ NYCHA Section 8 Housing Choice Voucher Program Administrative Plan (hereinafter "NYCHA Administrative Plan"), Item 19, pp. 13-14.

63. Moreover, even when NYCHA has completed interim recertifications, tenant shares have been improperly set without regard to the family income.

64. NYCHA has not given plaintiffs proper notice of the determinations, including the basis underlying the share adjustment calculations, or of the family's right to a hearing to contest the determination.

65. Finally, NYCHA has failed to properly set the effective date and adjust subsidy payments to the landlord after an interim family share adjustment determination. Thus, NYCHA often unlawfully applies the family share change prospectively, instead of retroactive to the effective date of the income reduction, leaving the family permanently liable for the unaffordable share which accrued during the recalculation period.

66. Upon information and belief, NYCHA's systemic failure to comply with federal recertification requirements has arisen in the context of recent changes in NYCHA's procedures, including the adoption of a new computer-based system that has caused widespread loss of documents and information and has created a substantial backlog of tenant household and income information.

67. Upon information and belief, NYCHA compounded the problem by shifting its participant interface structure from a worker-based system, in which each participant was paired continuously with a NYCHA employee in the participant's borough, to a task-oriented system, in which NYCHA employees address various piecemeal tasks for different tenants. Upon information and belief, NYCHA now refuses to meet with tenants who enter the Customer Contact Centers without an appointment; tenants must now request an appointment and wait for a NYCHA representative to contact the family by phone or mail. NYCHA currently employs only three

⁴⁸ *Id.* at p. 14.

citywide Customer Contact Centers, none of which are located in Manhattan or Staten Island.

68. Furthermore, upon information and belief, NYCHA has failed to institute and promulgate effective procedures or train and supervise its staff, and has not instituted an adequate system for tracking the submission of documents and correspondence.

69. NYCHA's policies and practices violate the Brooke Amendment and its implementing regulations, the Supremacy and Due Process clauses of the U.S. Constitution, and NYCHA's own written policies.

Individual Plaintiffs

70. Due to the pervasiveness and widespread effects of NYCHA's illegal policies and practices, plaintiffs reside throughout New York City. Accordingly, plaintiffs herein are represented herein by various agencies throughout the boroughs, as set forth *infra*.

Plaintiffs Represented by Legal Services NYC

Scheré Barclay

71. Scheré Barclay is the tenant at 2130 East Tremont Avenue, Apartment 5A, in the Bronx. She receives a Section 8 tenant-based rent subsidy administered by the New York City Housing Authority, which pays a portion of her rent.

72. Ms. Barclay has lived in this apartment for three years. She currently lives alone, and her sole income is employment wages of approximately \$1,580 per month.

73. In February 2011, Ms. Barclay's family share of the rent was set at \$671 per month. But based on her income, her share should only be approximately \$403 per month.

74. Ms. Barclay reported the discrepancy to NYCHA and requested a recalculation of her share in February 2011, and was told that she needed a rent share adjustment. Since that time, Ms. Barclay has repeatedly attempted to follow-up with NYCHA, in person and by telephone, about her rent adjustment request. In July 2011, NYCHA did send Ms. Barclay a new share letter, but only reduced her share to \$638 per month. She again followed-up with NYCHA in person, by telephone and in writing to contest this amount. However, as of this date, NYCHA still has not corrected Ms. Barclay's share, which remains at 40% of her adjusted income.

75. As Ms. Barclay has been unable to fully pay her family share of the rent, her landlord has commenced a non-payment proceeding against her in Bronx Housing Court, under Index Number L&T 38843/2011. There is a final judgment and warrant of eviction against Ms. Barclay in that case. Her payment deadline was September 23, 2011. But she is unable to pay the outstanding arrears, and is now in danger of eviction.

76. As a result of NYCHA's conduct, Ms. Barclay has been liable for a rent in excess of the amount allowed under federal law for a period of seven (7) months.

Corisha Brown

77. Corisha Brown is the rent-stabilized tenant at 236 East Gunhill Road, Apartment 1A, in the Bronx. She receives a Section 8 tenant-based rent subsidy administered by the New York City Housing Authority, which pays a portion of her rent.

78. Ms. Brown and her son, age eighteen (18), have lived in the apartment since 1998.

79. Her family share has been set at \$406 per month effective April 1, 2010.

80. At the time her family share was set, she Ms. Brown was employed at AIG earning

\$10 per hour working about 37 hours per week. This employment ended in November 2010. Ms. Brown immediately applied for and began receiving public assistance in December 2010.

81. In or about December 2010, Ms. Brown reported that she was no longer working and requested that her family share be reduced accordingly. She provided income information to NYCHA on January 4, April 14, June 15, and June 29, 2011. The NYCHA Customer Contact Center receipt dated April 14, 2011 states that Ms. Brown was “checking status of rent change.” The receipt dated June 29, 2011 states that she was there to “Check Tenant Rent Status.”

82. However, NYCHA has yet to change Ms. Brown’s Section 8 family share.

83. Since Ms. Brown cannot afford to pay her family share of the rent, her landlord has commenced a non-payment proceeding against her in Bronx Housing Court, *Montehill LLC v. Corisha Brown*, under Index Number L&T 24969/2011.

84. Meanwhile, because Ms. Brown’s family share is unaffordable and she is unable to pay ongoing rent, public assistance denied her emergency rent arrears grant application. A fair hearing decision affirms the denial, due to the unaffordability of the monthly family share, despite a discussion of Ms. Brown’s attempts to have her Section 8 family share adjusted in an interim recertification.

85. As a result of NYCHA’s conduct, Ms. Brown and her family have been liable for a rent in excess of the amount allowed under federal law for a period of ten (10) months, and remain in danger of eviction.

Molla Brown

86. Molla Brown is the rent-stabilized tenant at 666 E. 141st Street, Apartment 6B, in the

Bronx. She receives a Section 8 tenant-based rent subsidy administered by the New York City Housing Authority, which pays a portion of her rent.

87. Ms. Brown has lived in this apartment for three years. She resides with her four-year-old twin daughters. Ms. Brown is employed, and earns approximately \$1,300 per month. In order to maintain her employment, she has \$60 per month in unreimbursed childcare expenses.

88. Ms. Brown's sister, Ronell Brown, and Ronell's two children, used to reside in the premises as well. Ronell received unemployment benefits which, together with Ms. Brown's income, resulted in a tenant rent share of \$655 per month.

89. Prior to September 2010, Ms. Brown's apartment was directly subsidized through the Department of Housing and Urban Development (HUD). But in September 2010, Ms. Brown transitioned from the direct subsidy to NYCHA's enhanced voucher program.

90. Initially, the family share was calculated at \$600 per month. Ms. Brown has since been told by NYCHA that her share actually increased to \$655 per month effective October 1, 2010. However, Ms. Brown never received any notice of this increase.

91. In February 2011, Ronell and her children permanently vacated the apartment, taking her unemployment benefits with them. Ms. Brown reported and provided proof of this household and income reduction to NYCHA, and requested an interim recertification of her rent share.

92. Since that time, Ms. Brown has repeatedly contacted NYCHA – in person, in writing, and by telephone – to follow-up about her interim recertification request. However, as of this date, NYCHA still has not adjusted Ms. Brown's share, which remains at 56% of her adjusted income.

93. As Ms. Brown has been unable to fully pay her family share of the rent, her landlord has commenced a nonpayment proceeding against her in Bronx Housing Court, *Diego Beekman*

M.H.A. HDFC v. Molla Brown, under Index Number L&T 23042/2010. That case is calendared for trial on October 13, 2011.

94. As a result of NYCHA's conduct, Ms. Brown and her family have been liable for a rent in excess of the amount allowed under federal law for a period of seven (7) months and remain in danger of eviction.

Florine Bumpars

95. Florine Bumpars is the rent-stabilized tenant at 2615 Jerome Avenue, Apartment 52, in the Bronx. Ms. Bumpars receives a Section 8 tenant-based subsidy administered by NYCHA which pays for a portion of her rent.

96. Ms. Bumpars, age 42, has lived in her apartment nearly nine years with her child, age twenty (20).

97. Ms. Bumpars's family share was previously set at \$785 per month, effective August 1, 2010. This share was based on employment with FJC Securities where she was paid \$15.85 per hour for about 45 hours per week.

98. However, in March 2011, she began working under a new contract which paid \$9.00 per hour for 32 hours of work per week. Her income accordingly fell to approximately \$1,248 per month, and her family share should have been set at \$374 per month.

99. Ms. Bumpars provided proof of her income reduction on March 9, 2011 and April 12, 2011.

100. Ms. Bumpars's employment ended June 2011 and she began receiving unemployment benefits. She reported her unemployment income to NYCHA on or around July 14, 2011. She is

currently receiving \$302 per week. Thus, her Section 8 portion should be \$393 per month, effective June 2011.

101. However, NYCHA recently set Ms. Bumpars's family portion at \$413.06 effective September 1, 2011, without reducing her share retroactive to the date she notified NYCHA of her loss of income.

102. Since Ms. Bumpars cannot afford to pay her family share of the rent, her landlord has commenced a non-payment proceeding against her in Bronx Housing Court, *Stanaj Realty LLC v. Florine Bumpars*, under Index Number L&T 26006/2011.

103. As a result of NYCHA's conduct, Ms. Bumpars and her family have been liable for a rent in excess of the amount allowed under federal law for a period of seven (7) months and remain in danger of eviction.

Tamera Cunningham

104. Tamera Cunningham is a 32 year old rent-stabilized tenant who resides at 2511 Cruger Avenue, Apartment 22N, in the Bronx. Ms. Cunningham is a recipient of a NYCHA Section 8 housing subsidy which pays a portion of her family's rent.

105. Ms. Cunningham has lived in the apartment for ten years with her minor son, presently age fourteen (14).

106. Through December 2010, Ms. Cunningham worked as home health aide. Initially, she earned \$7.50 per hour and worked at times as much as eighty four (84) hours per week. Effective October 1, 2009, her family share was set at \$780 per month.

107. However, her employment soon fell to about sixty (60) hours per week and she

requested a conference regarding her family share. She reported the income change to NYCHA in person with a letter and a copy of her most recent paystubs which is stamped as received by NYCHA on October 30, 2009.

108. In April 2010, her employment was further reduced to about forty eight (48) hours week, so she was only receiving gross income of about \$1,690 per month. At this point, her family share should have been reduced to \$495 per month. Ms. Cunningham again reported that her income had been reduced.

109. On April 28, 2010, Ms. Cunningham received a receipt from NYCHA which states "Tenant is requesting a rent adjustment." A receipt dated May 14, 2010 states "tenant here to inquire about status of interim change." Ten days later, on May 24, 2010, Ms. Cunningham again returned income documentation and a Verification of Employment form which shows the income reduction from 2009 to 2010.

110. A NYCHA Customer Contact Center receipt dated June 11, 2010 states that she was "checking new tenant share of rent." A subsequent receipt on June 29, 2010 states "Submitted document showing income has decreased on several occasions." NYCHA then acknowledged receiving copies of Ms. Cunningham's pay stubs on July 12, 2010.

111. A NYCHA Customer Contact Center receipt dated August 3, 2010 states "Tenant inquiring about her rent change."

112. Effective October 1, 2010, Ms. Cunningham's family share was finally set at \$667 per month. The following month, effective November 1, 2010, Ms. Cunningham's family share was set at \$609 per month and has the words "interim change" written at the top.

113. Meanwhile, on October 8, 2010, Ms. Cunningham submitted a Verification of

Employment form to NYCHA which shows the income reduction from 2009 to 2010.

114. During fall 2010, her employment dropped to about thirty six (36) hours per week, with income totaling approximately \$1,170 per month. NYCHA should have reduced her share to \$339 per month.

115. A NYCHA Customer Contact Center receipt dated November 5, 2010 states that Ms. Cunningham was “requesting informal conference regarding her portion of rent.”

116. As of January 2011, Ms. Cunningham is no longer employed. Her family’s sole source of income is public assistance benefits.

117. NYCHA Customer Contact Center receipts dated March 14, 2011 and May 20, 2011 show that Ms. Cunningham has submitted her PA Budget Letter.

118. Meanwhile, since Ms. Cunningham cannot afford to pay her family share of the rent, her landlord commenced a non-payment proceeding in Bronx Housing Court on or about October 14, 2010, *Tri Cruger Realty LLC v. Tamera Cunningham*, under Index Number L&T 59030/10.

119. Appearing *pro se*, Ms. Cunningham agreed to a final judgment of possession in the landlord’s favor. Ms. Cunningham’s most recent application for a public assistance rent arrears grant was denied because her family share was unaffordable.

120. Ms. Cunningham has since retained counsel to assist her with his case but still remains in danger of eviction.

121. As a result of NYCHA’s conduct, Ms. Cunningham and her family have been liable for a rent in excess of the amount allowed under federal law for a period of twenty four (24) months and remain in danger of imminent eviction.

Terrance DeBrecourt

122. Terrance DeBrecourt is a 46 year old rent-stabilized tenant who resides at 352 East 141st Street, Apartment 3B, in the Bronx. Mr. DeBrecourt is a recipient of a NYCHA Section 8 housing subsidy which pays a portion of his rent.

123. Mr. DeBrecourt lives in the apartment with his three (3) minor children, ages ten (10), thirteen (13), and fourteen (14). Mr. DeBrecourt has lived in his apartment for about ten (10) years.

124. Based on Mr. DeBrecourt's unemployment benefits and his child's SSI income of \$627 per month, NYCHA set the family share at \$485 per month effective September 1, 2010.

125. The family began receiving public assistance in December 2010 and Mr. DeBrecourt lost his unemployment benefits in February 2011. He immediately requested an interim change in his share of the rent from NYCHA. NYCHA, however, has failed to adjust the family share which remains at \$485 per month.

126. Since Mr. DeBrecourt cannot afford to pay his family share of the rent, his landlord commenced a non-payment proceeding in Bronx Housing Court on or about January 20, 2011, *D.L. Gold Inc. v. Terrance DeBrecourt*, under Index Number L&T 5929/2011.

127. Appearing *pro se*, Mr. DeBrecourt agreed to a final judgment of possession in the landlord's favor. Mr. DeBrecourt has since received numerous notices of eviction and has petitioned the Housing Court judge for assistance. Mr. DeBrecourt has since retained counsel to assist him with his case.

128. As a result of NYCHA's conduct, Mr. DeBrecourt and his family have been liable for a rent in excess of the amount allowed under federal law for a period of eight (8) months and remain in danger of imminent eviction.

Dawn Holmes

129. Dawn Holmes resides at 3325 Neptune Avenue, Apartment 904, in Brooklyn. Ms. Holmes receives Section 8 assistance which helps pay a portion of her rent.

130. She has lived at this address over twenty nine (29) years.

131. Ms. Holmes's family share was previously set at the affordable amount of \$630 per month based on income of approximately \$1,576 per month derived from unemployment benefits she was receiving.

132. However, Ms. Holmes' unemployment benefits ended in February 2011. Ms. Holmes reported this loss of income to NYCHA but she was told that she had to receive public assistance benefits before her share could be adjusted.

133. Ms. Holmes applied for public assistance and a case was opened on her behalf in April 2011. Her income from Public Assistance was \$342.90 per month.

134. On April 11, 2011, Ms. Holmes reported to NYCHA a second time, and she was allowed to apply for an adjustment of her share.

135. In June 2011, she received her annual recertification packet asking for information that she had sent in April. On July 11, 2011 she brought in the annual recertification packet and asked about her request for an interim certification. She was told that her case was under review.

136. Meanwhile, because of her unaffordable family share, on or about December 6, 2010, her landlord commenced a non-payment proceeding in Brooklyn Housing Court, *Bay Park One Company v. Dawn Holmes*, under Index Number L&T 104794/2010. Ms. Holmes received an emergency rent arrears grant to pay arrears through April 2011. However, by the time she received

the rent arrears grant, she owed additional rent, based upon the illegal family portion of \$630 per month, for May and June rent.

137. As part of the ongoing court case, Ms. Holmes subpoenaed Section 8. On July 28, she was told that her application was still missing paperwork. She received no formal notice of this.

138. Ms. Holmes, appearing *pro se*, consented to a final judgment of possession in the landlord's favor. On September 16, 2011, her order to show cause was denied. Execution of the warrant of eviction is stayed through September 30 for payment of rent. Since Ms. Holmes has no ability to pay, she could be evicted at that time.

139. As a result of NYCHA's conduct, Ms. Holmes has been liable for a rent in excess of the amount allowed under federal law for a period of eight (8) months and remains in danger of imminent eviction.

Janet Lopez-Grullon

140. Janet Lopez is a rent-stabilized tenant who resides at 1749 Grand Concourse, Apartment 1F, in the Bronx. Ms. Lopez receives Section 8 assistance which helps pay a portion of her rent.

141. Ms. Lopez has lived in the apartment over eight (8) years. She currently resides with her three children, ages ten (10), six (6) and five (5).

142. In April 2009, Ms. Lopez stopped working due to an accident at work. Ms. Lopez's family share of \$749, based on her employment income, became unaffordable.

143. In July 2009, she reported to NYCHA that she had stopped working and provided a document from her doctor showing that she was too injured to work. NYCHA was already aware of

her child support income of \$400 per month. Ms. Lopez submitted documentation to the NYCHA Customer Contact Center on various occasions, including April 1, 2010. NYCHA did not reduce Ms. Lopez's unaffordable family share.

144. Since Ms. Lopez could not afford to pay her family share of the rent, on or about April 21, 2010, Ms. Lopez's landlord commenced a non-payment proceeding in Bronx Housing Court, *1749 Grand Concourse Owner LLC v. Janet Lopez*, under Index Number L&T 23140/2009.

145. Legal Services NYC-Bronx has advocated since June 2010 to have her share adjusted. The case has been adjourned on numerous occasions to allow NYCHA to complete the interim family share adjustment. On June 29, 2010, the Section 8 representative under subpoena stated that she would provide a list of documents necessary for Ms. Lopez's interim recalculation. Thereafter, Ms. Lopez and counsel submitted a letter with documentation to NYCHA by mail on July 13, 2010; by personal delivery to the NYCHA Customer Contact Center on July 19, 2010; by personal delivery in court; and again by email after the September 29, 2010 court date.

146. Effective October 1, 2010, Ms. Lopez's family share was adjusted to \$350 per month which remained unaffordable. However, she was not provided notice of this change, the right to request a hearing, or the calculations underlying this change. Counsel was later notified of this change by a Section 8 worker in Housing Court.

147. Counsel for Ms. Lopez continued to advocate and sent to a NYCHA caseworker an email request that her family share be set at \$94 per month based on her receipt of child support income. Ms. Lopez then submitted a notarized affidavit dated April 4, 2011 requesting that her share be set at \$94 per month, which stated that her only income was child support payments of \$100 per week.

148. A NYCHA Section 8 “Service Requests” sheet provided in court in June 2011, shows “Open” pending Interim Recertification requests dated April 8, 2011 and June 13, 2011 and a “Closed” request dated July 1, 2011.

149. NYCHA then set Ms. Lopez’s family share at \$347 effective April 1, 2011. Again, Ms. Lopez was not provided notice of this change, the right to request a hearing, or the calculations underlying this change. Counsel was again notified of this change by a Section 8 worker in Housing Court.

150. Ms. Lopez then began receiving workers compensation income. Accordingly, by letter dated July 14, 2011, sent to NYCHA by regular and certified mail, counsel for Ms. Lopez requested that her family share be set at \$269 per month.

151. NYCHA has still refused to set Ms. Lopez’s family share at an affordable amount. Meanwhile, Ms. Lopez’s Housing Court case has continued for seventeen (17) months, since April 2011.

152. As a result of NYCHA’s conduct, Ms. Lopez and her family have been liable for a rent in excess of the amount allowed under federal law for a period of twenty seven (27) months, over two years and remain in danger of eviction.

Elyse Nemerowsky

153. Elyse Nemerowsky is the tenant who lives at 2920 West 21st Street, Apartment 8K, in Brooklyn. Ms. Nemerowsky receives Section 8 assistance which helps pay a portion of her rent.

154. She has lived at this address over seventeen (17) years and currently resides with her minor son, age fifteen (15).

155. Ms. Nemerowsky's family share was previously set at the legal and affordable amount of \$384 per month based on income of approximately \$1,399 per month derived from her employment as a school bus matron.

156. However, effective February 1, 2011, Ms. Nemerowsky's family share portion was set at \$955 per month, an unaffordable amount that was seemingly based on her adult son's income.

157. In December 2010, Ms. Nemerowsky reported to NYCHA that she was the only person residing in the household because her adult son Joseph had moved out of the apartment to live with his girlfriend while he awaited United States Marine Corps active duty commencing May 2011.

158. On January 19, 2011, in response to a request for additional information, Ms. Nemerowsky provided NYCHA evidence in the form of a letter from the Marine Corps to Joseph's new address, 563 Van Siclen Avenue, in Brooklyn, stating that Joseph no longer lived in the household and that his relocation to South Carolina would begin on May 31, 2011.

159. In early February 2011, Ms. Nemerowsky again submitted additional documentation, including evidence of Joseph's bank account at his new address.

160. On June 28, 2011, Ms. Nemerowsky again went to the NYCHA Customer Contact Center to submit additional proof, including notarized statements from herself and her son Joseph regarding his new address. This submission was noted on a form checklist by a NYCHA Section 8 worker as "Request an Interim Change". She was told that it would take three months for the change to be made.

161. Meanwhile, however, since Ms. Nemerowsky cannot afford to pay her family share of the rent, on or about July 13, 2011, her landlord commenced a non-payment proceeding in Brooklyn

Housing Court under Index Number L&T 30635/2011. This proceeding is based upon the illegal family portion of \$955 per month.

162. Ms. Nemerowsky, appearing *pro se*, consented to a final judgment of possession in the landlord's favor. She has since received a notice of eviction, but filed an order to show cause and is currently in court on this matter. Her order to show cause, scheduled to be heard on September 28, 2011, could be denied.

163. As a result of NYCHA's conduct, Ms. Nemerowsky and her family have been liable for a rent in excess of the amount allowed under federal law for a period of nine (9) months and remain in danger of imminent eviction.

Karen Rivera

164. Karen Rivera resides at 694 East 141st Street, Apartment 4B, in the Bronx. She is a participant in the Section 8 Leased Housing program which pays a portion of her monthly rent.

165. Ms. Rivera has lived in her apartment six (6) years with her son, age six (6), who is autistic and receives Supplemental Security Income ("SSI").

166. Ms. Rivera works at Target. Until May 2010, she was a manager, earning \$13.65 per hour, working 40 hours per week. When combined with her son's SSI of \$627, she had an effective income of \$2,953 per month. Based upon this income, her family share was set at \$866 per month.

167. Ms. Rivera then took a leave of absence under the Family Medical Leave Act from May 2010 until January 2011. She reported this to NYCHA. During this time, since her only income was her son's SSI, her family share should have been set at \$176 per month.

168. Upon returning in January 2011, she was no longer a manager and in the subsequent

eight months she has earned \$11.66 per hour, working 20 hours per week. When combined with her son's SSI of \$697 per month, her effective monthly income is \$1,668.

169. Accordingly, her family share should be set at \$500 per month.

170. She immediately reported this change to NYCHA. On January 5, 2011, Ms. Rivera submitted an affidavit of income and requested a change in income at the Bronx Customer Contact Center.

171. On April 14, 2011, Ms. Rivera sent by overnight mail a copy of her income information to the NYCHA office located at PO Box 19196 in Long Island City, Queens.

172. NYCHA sent a letter dated April 22, 2011 stating that it would perform an income review process and notify Ms. Rivera of the updated family share.

173. On June 15, 2011, Ms. Rivera requested a hearing regarding the certification request.

174. To date, Ms. Rivera's family share remains set at 52% of her income.

175. As a result of NYCHA's conduct, Ms. Rivera and her autistic son have been liable for a rent in excess of the amount allowed under federal law for a period of seventeen (17) months and remain in danger of eviction.

Lisa and Angel Rivera

176. Lisa and Angel Rivera are rent-stabilized tenants who live at 2039 Cruger Avenue, Apartment 4D, in the Bronx. Lisa and Angel Rivera are co-tenants of the apartment and are listed as co-recipients of the Section 8 housing subsidy, which they have received since 1990, and which pays a portion of their rent each month.

177. They have lived in the apartment with their adult son, George, for fourteen (14) years.

178. Mr. and Mrs. Rivera submitted an annual recertification packet to NYCHA on or about March 19, 2010 showing that both Angel and George Rivera were employed. However, George stopped working in May 2010 to return to school and received unemployment from June to August 2010. Angel Rivera lost his job on July 31, 2010 and was told that he was ineligible for unemployment.

179. In July 2010, NYCHA set the family share at \$1,149.41 per month effective August 1, 2010. Ms. Rivera requested a hearing which NYCHA has yet to schedule.

180. Mr. and Mrs. Rivera began receiving public assistance in late October 2010.

181. By the end of November 2010, Mr. Rivera found new employment earning \$11.23 per hour working approximately 35 hours a week. Meanwhile, George participated in a work study program as a fulltime student and NYCHA could not consider any income above \$40 per month. Thus, the full countable monthly income was about \$1,742, and the family share should have been no more than \$523 per month.

182. Mrs. Rivera repeatedly visited the NYCHA Leased Housing Bronx Borough office, including on December 27, 2010 and January 25, 2011, to submit proof of her family's income. Ms. Rivera was told repeatedly by NYCHA employees that they were behind in processing paperwork for Section 8 tenants and that she would receive a hearing or an adjustment to her family's share of the rent eventually.

183. A NYCHA worker told her that they should pay the full rent and they would be credited by NYCHA in the future.

184. Ms. Rivera eventually called 311 to lodge a complaint. Thereafter, on or around

January 3, 2011, NYCHA sent her a letter stating that a standard interim change waiting period is thirteen (13) weeks.

185. The Riveras also submitted an annual recertification packet in early July 2011.

186. Since the Riveras could not afford to pay her family share of the rent, set well above the household income, their landlord commenced a non-payment proceeding in Bronx Housing Court, known as *2039 Realty LLC v. Lisa Rivera, Angel Rivera*, under Index Number L&T 3487/2011.

187. On or about February 25, 2011, a NYCHA representative under subpoena stated that it would take an additional thirteen (13) weeks to reduce Mr. and Mrs. Rivera's family share.

188. Accordingly, Housing Court Judge Villella temporarily calculated the Riveras' family share at \$590 per month and ordered that this amount be paid prospectively by the tenth of each month.

189. As a result of NYCHA's conduct, Mr. and Mrs. Rivera and their family have been liable for a rent in excess of the amount allowed under federal law for a period of fourteen (14) months and remain in danger of eviction.

Jeannette Rodriguez

190. Jeannette Rodriguez is a 43 year old rent-stabilized tenant who resides at 1771 Seward Avenue, Apartment 2, in the Bronx. Ms. Rodriguez is a recipient of a NYCHA Section 8 housing subsidy which pays a portion of her family's rent.

191. Ms. Rodriguez lives with her son, disabled adult daughter, and minor daughter, age seventeen (17).

192. Ms. Rodriguez is employed and earns \$8.65 per hour, working about 30 hours per week. Her daughter also receives supplemental security income (“SSI”) of \$697 per month. Thus, her annualized monthly adjusted income is about \$1,741 and her family share should be \$522 per month.

193. Although there was no increase in income, Ms. Rodriguez’s share was increased to \$646 per month effective May 1, 2010. Ms. Rodriguez immediately began advocating with NYCHA to have her share set at an affordable level. She went to the NYCHA Customer Contact Center on various occasions, including on August 24 and November 19, 2010, and January 19, February 24, and June 13, 2011.

194. Meanwhile, since Ms. Rodriguez could not afford to pay her family share of the rent, her landlord commenced a non-payment proceeding in Bronx Housing Court, *Dorothy Morris v. Jeanette Rodriguez*, under Index Number L&T 62194/2010.

195. Appearing *pro se*, Ms. Rodriguez agreed to a final judgment of possession in the landlord’s favor. Thereafter, she received notices of eviction and returned to court on various occasions. Ms. Rodriguez has since retained counsel to assist her with his case but still remains in danger of eviction.

196. With the assistance of counsel, Ms. Rodriguez’s family share has since been reduced to \$453 per month effective September 1, 2011. To date, however, no amounts have been paid retroactive to when she requested the interim recertification.

197. As a result of NYCHA’s conduct, Ms. Rodriguez and her family have been liable for a rent in excess of the amount allowed under federal law for a period of seventeen (17) months and remain in danger of imminent eviction.

Emelisa Ruiz

198. Emelisa Ruiz is a 29 year old rent-stabilized tenant who resides at 18 Minerva Place, Apartment 1D, in the Bronx. Ms. Ruiz is a recipient of a NYCHA Section 8 housing subsidy which pays a portion of her family's rent.

199. Ms. Ruiz has lived in her apartment for three years with her minor children, ages seven (7) and one (1).

200. Ms. Ruiz's prior family share was \$580. This amount was unaffordable given her income, and has since been reduced to \$113 per month effective September 1, 2011. To date, however, no amounts have been paid retroactive to when she requested the interim recertification.

201. Ms. Ruiz previously worked for Off Track Betting where she earned \$21 per hour working 20 hours per week, for an effective income of \$1,820 per month. Based upon this income, her portion should have been set at \$534 per month.

202. When she became pregnant with her second child, she took maternity leave and stopped receiving income. She later had to have an emergency Caesarian section in or around March 2010 and remained bedridden thereafter. During this time, she did not have any income.

203. She applied for unemployment and disability benefits but was found ineligible. She then began babysitting her nephew for \$75 each week.

204. Throughout these changes in household income, she reported the changes to NYCHA, including as early as April 2010.

205. A NYCHA Customer Contact Center receipt dated September 17, 2010 states that she had reported a "letter of termination and new income." A receipt dated September 20, 2010, states

“interim change (notarized letter from child’s father).”

206. She also turned in her re-certification package with the updated income on three separate occasions, including on March 17, 2011. She indicated in the “Verification of Employment” document that she could not provide the document because the employer no longer existed. Off Track Betting had since been dissolved due to a lack of funding by the New York State legislature.

207. Meanwhile, since Ms. Ruiz could not afford to pay her family share of the rent of \$580, her landlord commenced a non-payment proceeding in Bronx Housing Court on or about December 7, 2010, *Gega Realty Corp. v. Emelisa Ruiz*, under Index Number L&T 69150/2010.

208. Appearing *pro se*, Ms. Ruiz agreed to a final judgment of possession in the landlord’s favor. Thereafter, she received notices of eviction and returned to court to request additional time to satisfy the judgment on various occasions. Ms. Ruiz has since retained counsel to assist her with his case but still remains in danger of eviction.

209. With the assistance of counsel, Ms. Ruiz’s family share has since been reduced to \$113 per month effective September 1, 2011. To date, however, no amounts have been paid retroactive to when she requested the interim recertification.

210. As a result of NYCHA’s conduct, Ms. Ruiz and her family have been liable for a rent in excess of the amount allowed under federal law for a period of seven (7) months and remains in danger of imminent eviction.

Myrna Santiago

211. Myrna Santiago lives at 3171 Rochambeau Avenue, Apartment LB, in the Bronx.

Ms. Santiago has been received Section 8 assistance for over 16 years which helps pay a portion of her rent.

212. Ms. Santiago has lived in her apartment over twelve (12) years. She currently resides with her three children, two of whom are minors.

213. Ms. Santiago is disabled and receives supplemental security income ("SSI"). Currently, her monthly household income consists of her supplemental security income ("SSI") benefits of \$697, and her adult daughter's unemployment benefits of approximately \$737, for a total of \$1,434 per month.

214. Ms. Santiago's family share was set at \$994.00 per month as of February 1, 2011. Prior to that date, it was set at \$499.00 per month.

215. In December 2010, one of Ms. Santiago's daughters and her son, both of whom were working, moved out of the apartment.

216. On January 25, 2011, Ms. Santiago provided NYCHA documentation showing that her children had left the apartment. She also provided documentation showing NYCHA that her other daughter, who remained in the home, had been terminated from her job December 2010 and had begun receiving unemployment income in January 2011. NYCHA stamped a form which showed that she had provided documentation.

217. Despite having provided these documents, NYCHA set her family share at \$994.00 effective February 1, 2011.

218. Since Ms. Santiago cannot afford to pay her family share of the rent, her landlord has commenced a non-payment proceeding, based upon the illegal family portion of \$994 per month, in Bronx Housing Court, *3171 Rochambeau Ave. LLC v. Myrna Santiago*, under Index Number L&T

30635/2011.

219. Ms. Santiago, without representation, consented to a final judgment of possession in the landlord's favor. Her emergency rent arrears grant was denied because she cannot prove that she will pay future rent.

220. Since the commencement of the Housing Court case in June 2011, Ms. Santiago has visited the NYCHA Customer Service Center on at least eight (8) occasions to request that NYCHA process her interim recertification.

221. She has also requested an informal hearing to contest the illegal family share.

222. As of this date, NYCHA still has not adjusted Ms. Brown's share, which remains at 73% of her adjusted income.

223. As a result of NYCHA's conduct, Ms. Santiago and her family have been liable for a rent in excess of the amount allowed under federal law for a period of eight (8) months and she remains in danger of imminent eviction.

Constance Spearman

224. Constance Spearman is the rent-stabilized tenant at 2303 Haviland Avenue, Apartment 2S, in the Bronx. She receives a Section 8 tenant-based rent subsidy administered by the New York City Housing Authority, which pays a portion of her rent.

225. Ms. Spearman has lived in her apartment for four years.

226. Ms. Spearman's family share of the rent was \$386 per month effective September 1, 2009. At the time she was working thirty six (36) hours per week, earning \$7.50 per hour, for an effective monthly income of \$1,170 per month. Her family share should have been \$351 per month

at that time.

227. Her income did not change, yet Ms. Spearman's family share of the rent was raised to \$464 per month effective September 1, 2010.

228. Meanwhile, in November 2010, Ms. Spearman's work hours were reduced to twenty (20) per week, for an effective monthly income of \$650 per month. At that point her family share should have been set at \$195 per month.

229. Ms. Spearman immediately reported this income change to NYCHA in November 2010. On December 16, 2010, she handed in an employment letter. The receipt she received at the Customer Contact Center has the notation: "states earns less income, requesting income/rent adjustment."

230. Ms. Spearman went to the NYCHA Customer Contact Center in January and February 2011 and on additional dates. On March 15, 2011, her NYCHA receipt states "Requesting Interim Change." The receipt dated April 26, 2011 states "Needs to have her rent lower."

231. On May 13, 2011, she was given an informal conference on May 27 at 8:30 AM. At the informal conference, Ms. Spearman was told to bring proof of all of her paystubs since November 2011. That same day, Ms. Spearman returned and submitted the paystubs. The worker told Ms. Spearman that NYCHA would send a letter in the mail setting her new tenant portion.

232. Ms. Spearman returned on June 7, July 7, and July 13, 2011 requesting status updates. Each time she was told that NYCHA was working on it.

233. Meanwhile, NYCHA set Ms. Spearman's family share at \$386 per month effective September 1, 2011. Her income has remained the same and her family share should be \$195 per month. Accordingly, Ms. Spearman has requested a hearing to contest the family share calculation.

234. Since Ms. Spearman cannot afford to pay her family share of the rent, her landlord has commenced a non-payment proceeding against her in Bronx Housing Court, *Mahendra Lauchman v. Constance Spearman*, under Index Number L&T 19973/2011.

235. When she appeared *pro se* she consented to a possessory judgment in the landlord's favor and later received an eviction notice. She later retained an attorney to assist her with her Housing Court case. Ms. Spearman has now been fighting the eviction proceeding since March 2011.

236. As a result of NYCHA's conduct, Ms. Spearman has been liable for a rent in excess of the amount allowed under federal law for a period of eleven (11) months and remains in danger of eviction.

Casey Townes

237. Casey Townes is the rent-stabilized tenant at 340 East 184th Street, Apartment 3D, in the Bronx. He receives a Section 8 tenant-based rent subsidy administered by the New York City Housing Authority, which pays a portion of his rent.

238. Mr. Townes has lived in his apartment for seven years. He lives alone, and his sole income is employment wages of approximately \$471 per month.

239. In February 2011, Mr. Townes's family share of the rent was set at \$258 per month. But based on his income, his share should only be approximately \$141 per month.

240. Mr. Townes reported the income discrepancy to NYCHA on February 28, 2011, and was told that he needed an interim rent share adjustment. Since that time, Mr. Townes has repeatedly attempted to follow-up with NYCHA, in person and by telephone, about his

recertification request. However, as of this date, NYCHA still has not adjusted Mr. Townes's share, which remains at 55% of his adjusted income.

241. As Mr. Townes has been unable to fully pay his family share of the rent, his landlord has commenced a non-payment proceeding against her in Bronx Housing Court, *Cavan Properties Inc. v. Casey Townes*, under Index Number L&T 38652/2011.

242. As a result of NYCHA's conduct, Mr. Townes has been liable for a rent in excess of the amount allowed under federal law for a period of seven (7) months and remains in danger of eviction.

Justina Zeno

243. Justina Zeno is the rent-stabilized tenant at 593 141st Street, Apartment 2A, in the Bronx. She receives a Section 8 tenant-based rent subsidy administered by the New York City Housing Authority, which pays a portion of her rent.

244. She lives with her son, age twenty (20), niece, age seventeen (17), and grandson, age twelve (12). She has lived in her current apartment four (4) years.

245. Effective June 2010, Ms. Zeno's family share was set at \$787.

246. Ms. Zeno's granddaughter, Dorka Morales, previously lived in the apartment and received Social Security income, but moved out in November 2010.

247. After her granddaughter moved out of the apartment, Ms. Zeno notified NYCHA at the Customer Contact Center. She later returned and provided her granddaughter's new address in Connecticut as well as a utility bill.

248. She has since returned on numerous occasions to attempt to have NYCHA process an

interim recertification.

249. Ms. Zeno receives supplemental security income (“SSI”) of \$697 per month. The three younger children receive public assistance.

250. On June 30, 2011, NYCHA recertified Ms. Zeno at the monthly family share portion of \$534.32, effective August 1, 2011.

251. Meanwhile, due to the unaffordability of Ms. Zeno’s family share, her landlord has commenced a proceeding against her in Bronx Housing Court, *Diego Beekman M.H.A. HDFC v. Justina Zeno*, under Index Number L&T 58190/2010.

252. As a result of NYCHA’s conduct, Ms. Zeno and her family have been liable for a rent in excess of the amount allowed under federal law for a period of nine (9) months and remain in danger of eviction.

Plaintiffs Represented by The Legal Aid Society

Bienvenida Bencosme

253. Bienvenida Bencosme is the rent-stabilized tenant at 3450 Gates Place, Apartment 2A, in the Bronx. She receives a Section 8 tenant-based subsidy administered by NYCHA which pays for a portion of her rent.

254. Ms. Bencosme has lived in her apartment for approximately seven years with her two children, ages fourteen (14) and twelve (12).

255. Ms. Bencosme and her family have received public assistance benefits since in or about December 2010. Ms. Bencosme became unemployed on or about August 2010 when she suffered an injury which left her disabled and unable to work.

256. Thereafter, on or about September 23, 2010, Ms. Bencosme went to the Bronx Leased Housing Borough Office and requested an interim certification and adjustment in her family share due to the loss of income. At that time, Ms. Bencosme supplied NYCHA with proof of her loss of income.

257. On or about February 15, 2011, Ms. Bencosme followed up with the Leased Housing office, but NYCHA had not taken any action on the interim recalculation. At this point, she requested an informal conference. She also received a receipt from NYCHA indicating that NYCHA did not have the means to complete the interim recertification at that time:

“Tenant came in to follow up on income adjustment requested in September 2010. Currently our database is under construction, tenant will receive notice by mail, once the adjustment to her income and rent portion has been completed. Tenant also requested an informal conference to discuss this matter.”

258. On or about July 12, 2011, Ms. Bencosme had an informal conference regarding the adjustment of her family share. The NYCHA housing agent requested that she submit additional information even though Ms. Bencosme had provided documentation that her sole income was public assistance.

259. NYCHA additionally stated that she would need to provide a letter from her former employer with her last work date and apply for unemployment, despite the fact that she had already been rejected for unemployment. Unable to do so, she provided her final paycheck and a signed affidavit stating her last date of employment.

260. Although Ms. Bencosme currently receives a shelter allowance from public assistance of just \$400 per month, the maximum shelter allowance for a family of three, NYCHA has refused to adjust her family share.

261. Ms. Bencosme's family share remains improperly set at \$763.00 per month.

262. Since Ms. Bencosme cannot afford to pay her family share of the rent, her landlord has commenced a non-payment proceeding against her in Bronx Housing Court, *3450 Gates Place Association v. Bienvenida Bencosme*, under Index Number L&T 66613/2010.

263. The landlord currently has a judgment of possession.

264. As a result of NYCHA's conduct, Ms. Bencosme and her family have been liable for a rent in excess of the amount allowed under federal law for a period of thirteen (13) months and remain in danger of imminent eviction.

Christian Faloye

265. Christian Faloye is the rent-stabilized tenant at 455 Jackson Avenue, Apartment 3A, in the Bronx. He receives a Section 8 tenant-based rent subsidy administered by the New York City Housing Authority, which pays a portion of his rent.

266. Mr. Faloye has lived in his apartment nearly ten years and lives with his four children, ages two (2), fourteen (14), seventeen (17) and nineteen (19).

267. Mr. Faloye's income is comprised of disability benefits

268. Mr. Faloye completed an annual recertification in or around March 2009 when his now ex-wife still lived in the household and the family's monthly income was \$3,107.92.

269. On or about January 26, 2010, Mr. Faloye received a voucher change notification letter stating that his family share of the rent would be \$969.00 per month.

270. After a decrease in income, however, Mr. Faloye reported the new household income on or around September 2010. However, NYCHA never adjusted his share of the rent and Mr.

Faloye's share of the rent remained at 55% of his income.

271. Accordingly, Mr. Faloye requested an interim recertification and an informal conference to contest his family share.

272. On or about March 31, 2011, Ms. Faloye's ex-wife permanently vacated the apartment, thereby lowering the household income to \$837.00 per month.

273. Mr. Faloye again promptly reported the change in household composition and income and provided proof of these changes. Mr. Faloye requested a second interim recalculation of the share or, in the alternative, an informal conference regarding the adjustment of the tenant share.

274. On or about April 27, 2011, Mr. Faloye participated in an informal conference regarding the adjustment of his share. The housing assistant handling Mr. Faloye's informal conference acknowledged that Mr. Faloye's share had been set incorrectly. However, as of this date, NYCHA still has not adjusted Mr. Faloye's share.

275. Mr. Faloye's family share is currently \$969.00 per month, which is significantly more than his monthly income

276. Since Mr. Faloye cannot afford to pay his family share of the rent his landlord has commenced a non-payment proceeding against him in Bronx Housing Court, under Index Number L&T 64404/2010.

277. Accordingly, the landlord currently has a judgment of possession and Mr. Faloye has been fighting to prevent his family's eviction since November 2010.

278. As a result of NYCHA's conduct, Mr. Faloye and his family have been liable for a rent in excess of the amount allowed under federal law for a period of twelve (12) months.

Wilma Hollister

279. Wilma Hollister is the rent stabilized tenant at 2767 Morris Ave., Apartment 1-B, in the Bronx. She receives a Section 8 tenant-based rent subsidy administered by NYCHA, which pays a portion of her rent.

280. Ms. Hollister has lived in her apartment for approximately thirteen years, and lives with her adult son who is a full time student.

281. Ms. Hollister is currently unemployed.

282. On or around February 2010, Ms. Hollister completed an annual recertification when her three adult children and her granddaughter were still in the household. For the 2010 annual recertification, Ms. Hollister reported her unemployment benefits, employment wages for Ms. Hollister and her two full-time student sons, and Social Security Disability income for her adult daughter.

283. Ms. Hollister never received a voucher change notification letter stating her new share of the rent. Nevertheless, NYCHA adjusted her share to \$1,098.00, effective July 1, 2010.

284. Ms. Hollister went to NYCHA twice beginning in September 2010 to report and document the change in income and household composition that occurred when Ms. Hollister's daughter and granddaughter left the household.

285. After Ms. Hollister lost her unemployment benefits, she again returned to NYCHA on November 9, 2010 to document this loss of income.

286. When NYCHA refused to adjust the family share, Ms. Hollister requested an informal conference and then a formal conference. However, NYCHA refused to provide her with an opportunity to challenge the rent setting.

287. In or around February 2011, Ms. Hollister completed the 2011 annual recertification package.

288. Again, Ms. Hollister never received a voucher change notification letter. Nevertheless, NYCHA adjusted her share to \$870.41, effective July 1, 2011.

289. Upon realizing that her share was still too high, on or about August 18, 2011, Ms. Hollister requested an informal conference to challenge the calculation of her share. She was informed that NYCHA currently states that her annual income is \$34,436.00, which is \$11,591.00 more than the amount reported on the 2011 annual income certification affidavit.

290. On or about August 24, 2011, Ms. Hollister submitted documentation that she is currently unemployed and is applying for public assistance benefits. During 2011, Ms. Hollister has also reported that her son no longer lives in the apartment.

291. Meanwhile, the family share is significantly larger than the household's total monthly income.

292. Since Ms. Hollister cannot afford to pay her family share of the rent, her landlord has commenced a non-payment proceeding against her in Bronx Housing Court, known as *J.M.V. Realty Corp. v. Wilma Hollister*, under Index Number L&T 13017/2011. She currently has a judgment of possession which resulted in her receipt of a notice of eviction.

293. As a result of NYCHA's conduct, Ms. Hollister and her family have been liable for a rent in excess of the amount allowed under federal law for a period of thirteen (13) months and remain in danger of eviction.

CLAIMS FOR RELIEF

I. VIOLATION OF THE BROOKE AMENDMENT TO THE U.S. HOUSING ACT

294. Plaintiffs incorporate the above paragraphs as if fully set forth herein.

295. NYCHA, by virtue of its written policies and its actual practices and procedures, compels plaintiffs to pay more than 30% of their income as rent for prolonged periods of time.

296. NYCHA's policies and practices violate the Brooke Amendment to the U.S. Housing Act, 42 U.S.C. § 1437a(a), and its implementing regulations.

297. As a result of NYCHA's policies and practice, plaintiffs have suffered and continue to suffer damages, including the threat of eviction from their homes.

298. A cause of action is created by 42 U.S.C. § 1983.

II. VIOLATION OF THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION

299. Plaintiffs incorporate the above paragraphs as if fully set forth herein.

300. NYCHA, by virtue of its policies and practices, has deprived plaintiffs of due process of law by compelling them to pay rent in excess of federal limits without adequate notice or a timely opportunity to be heard.

301. As a result of NYCHA's policies and practice, plaintiffs have suffered and continue to suffer damages, including the threat of eviction from their homes.

302. A cause of action is created by 42 U.S.C. § 1983.

III. VIOLATION OF THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION

303. Plaintiffs incorporate the above paragraphs as if fully set forth herein.

304. NYCHA's policies regarding interim recertification of income are in conflict with the Brooke Amendment and its implementing regulations, and stand as an obstacle to the accomplishment and execution of the full purposes and objectives of the statute, thus violating the Supremacy Clause of the U.S. Constitution.

305. As a result of NYCHA's policies and practice, plaintiffs have suffered and continue to suffer damages, including the threat of eviction from their homes.

IV. VIOLATION OF STATE LAW BASED ON NYCHA'S FAILURE TO FOLLOW ITS OWN WRITTEN POLICIES

306. Plaintiffs incorporate the above paragraphs as if fully set forth herein.

307. Plaintiffs seek a declaration pursuant to Article 30 of the New York Civil Practice Law and Rules that NYCHA has violated its own written policies and procedures by failing properly to adjust plaintiffs' rent shares in a timely manner or to set appropriate effective dates for the adjustments.

308. As a result of NYCHA's actions, plaintiffs have suffered and continue to suffer damages, including the threat of eviction from their homes.

REQUEST FOR RELIEF

WHEREFORE, the plaintiffs respectfully request that this Court:

1. Enter a final judgment pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1337 of the Federal Rules of Civil Procedure declaring that:

a. NYCHA's failure to timely and accurately adjust plaintiffs' family rent shares to an amount no higher than 30% of the family's monthly adjusted income violates the

Brooke Amendment to the United States Housing Act, 42 U.S.C. 1437a(a) and its implementing regulations;

b. NYCHA's policy and practice of compelling plaintiffs to pay more than 30% of the family's monthly adjusted income without adequate notice or a timely opportunity to be heard, violates the Due Process Clause of United States Constitution;

c. NYCHA's policies regarding interim income recertification conflict with federal law in violation of the Supremacy Clause of United States Constitution;

d. NYCHA's failure to timely and properly adjust plaintiffs' rent shares and set appropriate effective dates for the adjustments violates NYCHA's own written policies, in violation of State law;

2. Preliminarily and permanently enjoin NYCHA from enforcing and continuing the policies challenged in this action;

3. Issue a preliminary injunction requiring defendant NYCHA to complete interim recertification determinations properly setting family shares, set the effective date of the subsidy change, retroactively adjust subsidy payments, and properly provide notice with share calculations to plaintiffs currently involved in eviction proceedings;

4. Issue a permanent injunction requiring defendant NYCHA to develop a plan and promulgate comprehensive procedures, satisfactory to this Court, to ensure that the defendant complies with federal law and implementing regulations, and due process of law, with respect to interim adjustments to participants' family shares;

5. Issue a permanent injunction directing defendant NYCHA to adjust plaintiffs' family shares retroactive to reporting dates in compliance with federal law and implementing regulations;

6. Issue a permanent injunction directing defendant NYCHA to adjust and make subsidy payments to plaintiffs' landlords in accordance with the retroactive calculation of plaintiffs' family shares;
7. Award the plaintiffs damages in an amount to be determined at trial;
8. Award the plaintiffs costs and attorneys fees incurred in the pursuit of this action; and
9. Grant such other and further relief as this Court may deem just and proper.

Dated: September 23, 2011
Bronx, New York

Respectfully,

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