

Appendix to plaintiffs' objections and responses to defendant's FRCP 56.1 statement

Preliminary note: as referenced in plaintiffs' objections to defendant's Statements 235-42, the Statements are improper. Indeed, they constitute an unsanctioned discovery device rather than a statement of material fact as to which there is no dispute. Because of that impropriety, and because a comprehensive rebuttal with all available evidence would be far too burdensome for both plaintiffs and for the Court, plaintiffs are here providing a sample of the available intent evidence, including but not limited to the following: evidence of the existence of the desire to maintain the segregated status quo; evidence of defendant's knowledge of that desire; evidence of deliberate indifference to defendant's obligations relating to fair housing; evidence of other policies where defendant perpetuates segregation or is responsive to concerns about the racial "other"; evidence of defendant's sensitivity to deal with issues of race and racial segregation; and evidence of pretext and consciousness of guilt. **The sampling of evidence set forth below does not in general include the evidence set out in Point VI of plaintiffs' memorandum of law in reply to opposition to motion and in opposition to defendant's cross-motion ("PRO Brief"); please refer to that point as well.**

Sampling of deposition-based evidence

1. **Margaret Brown** has been an Assistant Commissioner and is now an Associate Commissioner at HPD. She admitted that she is aware of residents, elected officials, and an advocacy group expressing the view that community preference was needed to maintain a neighborhood's culture or "ethnic character," or racial identity. At various meetings, she has heard residents "feel strongly about the ethnic identity of the neighborhood." Ms. Brown recalled this in connection with certain neighborhoods of Brooklyn, as well as East Harlem (from Latinos)

and West Harlem (from African Americans). *See* excerpt of transcript of Jan. 18, 2018 deposition of Margaret Brown, annexed as Ex 55 to Nov. 5, 2020 reply and opposition declaration of Roger Maldonado (“MD”), at 133:23-138:17.

2. **Joseph Salvo** is the director of the population division in defendant’s Department of City Planning. His testimony revealed both defendant’s awareness of concerns regarding neighborhood racial and ethnic change and the intensity of those concerns. *See* excerpts of Nov. 27, 2018 deposition testimony of Joseph Salvo, MD Ex 59, at 50:10-51:15 and 55:13-56:25 (explaining that he observed concerns about racial or ethnic change in a neighborhood coming up in the context of presentations to community leaders and groups, and that he is careful “not to take sides, frankly” because “I feel that perceptions are powerful” and “I don’t want to somehow nullify the importance of those perceptions”).

3. **Rafael Cestero** was a Deputy Commissioner at HPD from 2004 to 2007, when Shaun Donovan was HPD Commissioner. He was later HPD Commissioner from March 2009 until April 2011. He acknowledged that during his time as commissioner HPD “didn’t have a specific policy that said we should be . . . expanding the racial diversity of neighborhoods.” Asked whether there was a policy of *any sort* to “reduce racial segregation in neighborhoods,” he responded, “You know, I – not a – not a policy that I as commissioner was, you know, actively involved with.” The former commissioner also acknowledged that, to his knowledge, “reducing residential segregation was not identified as a goal of the city.” *See* excerpts of Nov. 14, 2017 deposition of Rafael Cestero, MD Ex 60, at 33:9-18, 35:4:11, and 61:23-62:4.

4. **Alicia Glen** was Deputy Mayor for Housing and Economic Development in the de Blasio administration from early 2014 through early 2019. When she became deputy mayor, “racial patterns was not – or race discrimination issues were not front and center at all with what

we were deeming to be the challenges facing the housing market.” She was asked about the Mandatory Inclusionary Housing (“MIH”) policy, with the examiner noting explicitly that “I’m trying to find out all of the different intents of the policy, whether official or unofficial.” Asked “[i]s one of those intents to have neighborhoods accept more racial and ethnic diversity,” Ms. Glen said no, adding “[t]hat’s not the intent of this policy.” She also admitted that defendant did not have a plan for ending residential racial segregation, and that she never recalled having a conversation with the Mayor about housing patterns in New York City. “That is not something we’ve talked about.” *See* excerpts of Nov. 3, 2017 deposition of Alicia Glen, MD Ex 13, at 110:13-20, 259:24-260:9, 262:4-24, 264:4-265-9.

5. **James Patchett** was chief of staff to Deputy Mayor Glen from early 2014 to early 2017. Thereafter, he has been president of the New York City Economic Development Corporation (“EDC”). It is clear from other parts of the record that subsidized housing has been concentrated in African American and Latino areas. *See, e.g.*, the maps found at BROD Exs. 33-39. Mr. Patchett was asked whether he had had conversations within city government – specifically within the Mayor’s office or with HPD – regarding “concerns about concentrating affordable housing . . . in minority neighborhoods.” He responded, “I don’t think there was a concern that putting affordable housing in a minority neighborhood would be a problematic thing.” *See* excerpt of Jan. 16, 2019 deposition of James Patchett, MD Ex 61, at 216:17-217:4. *Cf.* “Affirmatively Furthering Fair Housing: A Preliminary Guide to NYC’s Submission,” Sept. 2016, (“Sept. 2016 AFFH Preliminary Guide”), MD Ex 30, at 21079 (under the heading of the high difficulty of dealing with the history of segregation of New York City, the Guide identifies as an issue, “Justifying past and present creation of affordable housing in minority neighborhoods (i.e. the Bronx) which may perpetuate segregation”).

6. **Leila Bozorg** had been the chief of staff at HPD from late 2015 through mid 2017 (having begun as chief of staff to HPD’s office of development the prior year) and, at the time of her deposition, was Deputy Commissioner for Neighborhood Strategies. She was shown an email she had written to an HPD colleague about “how our teams *should or should not speak* to statements like the following during community meetings.” Bozorg Mar. 2017 email, MD Ex 62, at 181535 (emphasis added). The issues were described as such “landmines to traverse!” *See id.* One of the type of statements referenced were statements at community meetings about “preservation of the ‘culture and community’ of longtime residents.” *See id.* Very clearly, these are the kinds of (not-very-coded) statements that *MHANY* speaks to, statements that defendant was clearly aware of. *See MHANY Mgmt. v. County of Nassau*, 819 F.3d 581, 608-10 (2d Cir. 2016) (discussing “code words for racial animus”); *see also* PRO Brief, at 76-77 (same). Despite the email and her office’s frequent engagement with the public,¹ Ms. Bozorg testified that she had “not heard race-based fears through my experience.” Bozorg Depo, at 112:6-8. She claimed not to be able to recall what her concerns were when she wrote that the issue of whether or not to speak to preservation of the culture and community of long-time residents represented a landmine to traverse, beyond “facilitating difficult conversations and being sensitive to the issues we are hearing . . . while also allowing the conversations to be facilitated productively.” *Id.* at 248:9-250:8.

7. A jury could certainly take Ms. Bozorg’s email as confirmatory of defendant’s knowledge of race-based concerns in the community, and could find her testimony to be evasive, reflective of consciousness of guilt, and false insofar as she claimed to have not heard race-based

¹ Ms. Bozorg acknowledged that her “teams are responsible for taking many of our affordable housing projects through the uniform land use review process. So we’re out in communities very frequently.” *See* excerpts of Jan.10, 2019 deposition of Leila Bozorg (“Bozorg Depo”), MD Ex 63, at 111:8-25.

fears. Those permissible conclusions would be bolstered by her answers to other questions at her deposition. For example, she was presented with a document prepared under her auspices about the education component of defendant's *assessment of fair housing* ("Where We Live") process. *See* MD Ex 35. The document stated the following at the heading "Community opposition" (in a section enumerating "the top five contributing factors to disparities in access to quality education"): "Zoning of schools and school integration are often controlled by wealthy parents, often excluding low-income children in low performing schools and reinforcing divide. Many parents support the status quo and NIMBYism does not allow for *the integration of schools and neighborhoods.*" *Id.* at 1 (emphasis added).² Ms. Bozorg insisted that she did not "read this specifically as race-based opposition"; and, when she was pressed on this point ("[Y]ou think the comment is talking about nimbyism . . . that doesn't allow for the integration of schools but the nimbyism is not being asserted [by those giving feedback] to have anything to do with race?"), she insisted again, "I read it to not necessarily be about race." *Id.* at 97:7-100:21.

8. There was a City Limits panel discussion in which Ms. Bozorg participated. HPD prepared talking points in advance. *See* excerpts of City Limits talking points, MD Ex 64. The talking points posed the question, "Is the end goal integration?", but HPD recommended weaving around the question without providing "yes" for an answer. *See id.* at 166783. Ms. Bozorg was asked at her deposition why not, and she spent a good period of time dancing around the question, beginning with the statement, "I think part of the complexity is understanding what meaningful integration truly means and that really does mean different things to different audiences." *See* Bozorg Depo, at 285:17-24. According to Ms. Bozorg, integration "is a goal," but a goal defendant

² Note that the document is not reflecting a conclusion that defendant reached but rather "feedback" from "stakeholders."

seeks to “balance.” *Id.* at 285:25-286:6; for more, *see also* 285:5-288:13. A jury could conclude both that defendant finds it too politically sensitive to state directly and publicly that a residentially racially integrated city is a goal, and/or that it *was not* a goal (as others have testified)³ and Ms. Bozorg’s rationalization reflects consciousness of guilt.

9. A jury would also have to consider Ms. Bozorg’s credibility (and consciousness of guilt) when she, like former HPD Commissioner Torres-Springer,⁴ for example, tried mightily to avoid acknowledging the deep residential segregation that exists in New York.

Q. Ms. Bozorg, I understand that there are lots of ethnic groups, but let's see if we could talk about a piece of the picture. So I'm acknowledging to you right now explicitly on the record that this is not the whole thing. But I just want to talk a little bit about the difference between black and white. And however you slice it, lived experience, data, there's still in New York City a lot of separation between black and white or African American or in the census term non-Latino blacks on the one hand and non-Latino whites on the other hand; that's true, isn't it?

MS. POLIFIONE: Objection.

A. Again, I'm not a demographer or a data expert on this. And I've seen some of the preliminary data, especially the data provided by the HUD tool, but I don't know how that translates specifically into white-black segregation.

Q. Forget about being – forget about being a data expert. It's very just disturbing that -- I mean, you're a pretty high-ranking official at HPD. And I know your Where We Live work is ongoing but in January 2019 you're not able to tell me that whatever nuance there may be, there's an awful lot of separation or segregation in the residential context between non-Hispanic whites and non-Hispanic blacks?

MS. POLIFIONE: Objection.

A. I'm acknowledging that by some measures of the issue there is segregation. All I'm saying is those are some measures of the issue and, you know, part of what I hear on the ground and what I see is that there are more diverse neighborhoods than the data often suggests. That's all I'm saying.

³ *See, e.g.*, ¶ 4, *supra*.

⁴ *See* PRO Brief, at 86-87 and 87 n.291 (citing evidence of Ms. Torres-Springer’s consciousness of guilt).

Q. By what measures -- by what measures, data measures or other measures, is there not a lot of separation between non-Hispanic blacks and non-Hispanic whites in the residential context?

MS. POLIFIONE: Objection.

Q. In New York City?

MS. POLIFIONE: Objection.

A. I don't know.

See Bozorg Depo at 288:14-290:20. *Cf.* This can reasonably be interpreted as the evidence of an evasive, not-credible witness, deeply conscious of guilt.

10. **David Quart** was an HPD Deputy Commissioner from 2014 until the end of 2017 (he also served as chief of staff for HPD from 2014 through late 2015). He acknowledged that sometimes the people who are the loudest are the ones who have the most influence on the City Council and that, in his experience, it was “accurate to say” that some of those loudest people are also the ones who want to maintain the cultural identity or ethnic identity of a neighborhood. *See* excerpts of June 14, 2018 deposition of David Quart, MD Ex 15, at 126:2-14.

11. Mr. Quart also acknowledged that racial and ethnic opposition to affordable housing projects can and has been effected through the use of the Councilmanic “veto.” *See id.* at 120:8-21.

12. **Vicki Been** is defendant’s current Deputy Mayor for Housing and Economic Development, and was the Commissioner of HPD from the beginning of the de Blasio Administration until early 2017. She acknowledged awareness of resistance to racial integration in certain neighborhoods at her second deposition. *See* excerpts of Apr. 10, 2018 deposition testimony of Vicki Been (“Been II”), MD Ex 29, at 22:15-25 (“I think that opposition to racial,

ethnic, religious integration in some parts of Brooklyn that are heavily occupied by the Jewish community is sometimes difficult.”).

13. **Purnima Kapur** is the former executive director of City Planning in the de Blasio Administration until mid-2018, having previously served as the director of the Bronx and then Brooklyn offices in defendant’s Department of City Planning. She acknowledged having heard race-based opposition to rezonings, such as the claim that the East Harlem rezoning was “a plan for ethnic cleaning” or an equivalent concept, or the charge that defendant was targeting “communities of color” for rezoning and (per the organizations) displacement – which she confirmed was an allegation that reflected, in part, a “concern that majority non-white communities were going to become less so.” *See* excerpts of Apr. 19, 2018 deposition of former Purnima Kapur (“Kapur Depo”), MD Ex 8, at 168:12-24 and 182:4-186:15.

14. **Steven Banks** is the Commissioner of defendant’s Human Resources Administration and Department of Social Services. He acknowledged that he has seen opposition to the placement of homeless persons in neighborhoods manifested as “demonizing” those New Yorkers, and that part of this demonization was driven by the homeless New Yorkers being of different races from the opponents. *See* excerpts of Nov. 29, 2017 deposition testimony of Steven Banks, (“Banks Depo”), MD Ex 65, at 166:2-5 and 170:11-172:2. He also agreed that anti-homeless protests that he has heard like “Go back to East New York,” which were directed at a proposed homeless shelter in Maspeth, were race-linked or race-coded. *See id.* at 174:7-10 and 175:13-176:4.

15. **Professor Edward Goetz** is one of defendant’s experts. He agreed that he would not expect New York City to be an outlier from a dynamic related to resistance to new housing development that was described in an article he cited to as follows: “Throughout this process *race*

plays a central role as new development is seen as white and for white people who either live in nearby but segregated suburbs or for potential new residents.” *See* excerpts of transcript of Apr. 5, 2019 deposition of Professor Edward Goetz (“Goetz I”), MD Ex 12, at 139:23-141:23. He similarly testified, “There’s no reason to suspect otherwise” when he was asked if the following phenomenon occurs in New York City: “When residents describe their fears of gentrification[,] they do not describe them only in terms of displacement through housing. They also point to the possibility that new development becomes what Anderson describes as ‘white space.’” *See id.* at 142:2-16. He acknowledged that even though particular white arrivals to a community may not in fact indicate impending displacement, their race is used as a proxy, stating that new arrivals’ race “is seen as evidence of the kinds of changes in a neighborhood that enhance displacement possibilities.” *See id.* at 142:17-144:13.

Sampling of document-based evidence

16. The Mayor knows that it is the non-preference part of the lottery that has integrative effect. *See* excerpt of transcript of Mayor de Blasio Jan. 2018 “Inside City Hall” appearance, MD Ex 50, at 3 (emphases added) (The Mayor refers to the lottery as a “50-50 split” with the preference half addressing the interests of insiders, and then explaining the benefit of the non-preference half as the “50 percent [that] go to anyone and everyone in the whole city,” a distribution “*reflecting the total diversity of the city*”; adding “that certainly has integrative impact”).⁵

17. Nevertheless, the Mayor wanted the 50 percent preference *expanded still further*. *See* Been, Glen and Patchett Jun. 2014 emails re community preference, MD Ex 66 and MD Ex 67, at 130327 and 124985, respectively (revealing that the Mayor was “extremely worked up”

⁵ Lest there were any doubt about his meaning, he said that the housing lottery system “speaks to *both parts* of the reality.” *Id.* (emphasis added). One part is concerns about insiders; the other part is the integrative part.

that “we can’t do more community preference, much less that we might have to do less” and “really focused on having at least what we have, and if possible, even more, in a lot of our deals”).

18. Defendant justifies the policies on a racial basis. *See* excerpt of defendant’s 2012 Affirmatively Furthering Fair Housing (“AFFH”) statement, MD Ex 43, at 14509 (defending the policy by emphasizing its benefits to minorities, stating that community districts (“CDs”) with “large black and Hispanic populations want this community district preference so as to ensure that their black and Hispanic residents are not shut out” by outsider applicants; that lotteries are “often in neighborhoods with high numbers” of “minority groups”; and that Bedford-Stuyvesant residents (implying largely Black applicants) and “Hispanic residents of Williamsburg” have been given “advantage” via the policy in lotteries in those areas “over residents of other areas of the City”).

19. Defendant cannot deny knowledge of use of the policy to maintain the residential racial status quo. A telling example: the informational flyer for a lottery for housing in East Harlem that said that the purpose of the policy was to “help the area retain its traditional Latino identity,” *see* MD Ex 33, at 69798, was *approved by defendant*. *See* Mar. 2017 email, MD Ex 68, at 180748-49 (stating that flyer (attached to email) had been “approved by all agencies and filed with HPD”).

20. HPD itself linked the policy to the maintenance of the racial status quo. *See* HPD press secretary Jan. 2010 email, MD Ex 69, at Bated 97994 (downplaying “mass exodus” in Harlem in response to inquiry about “racial breakdown” and rate of homeownership, and “stress[ing] our community preference when leasing up or selling affordable[]units so that we keep the identity of the neighborhood intact”).

21. Members of defendant’s legislative arm are also concerned about threats to the segregated residential status quo.⁶ *See, e.g.,* New York Post Mar. 2015 article,” MD Ex 70, at 1-

⁶ Information on this is limited because plaintiffs were not permitted to get discovery of Council Members (“CMs”). *See MHANY*, 819 F.3d at 609 (citations omitted) (“Anti-discrimination laws and lawsuits have “educated” would-be

2 (quoting CM Laurie Cumbo as suggesting that “[t]here could be some benefit to housing people by culture” and that this issue “needs to be discussed”).

22. *See also* HPD Sept. 2016 talking points regarding Sunnyside mandatory inclusionary zoning project, MD Ex 36, at 28774-75, and 28777 (warning that “acquiescing to NIMBYism” and “voting down” this project “will set a dangerous precedent for all affordable housing” where “any “NIMBY CM can kill any project,” and characterizing the objections being raised as “typical of arguments made against affordable housing in exclusionary suburbs” that amount to opposition with “no rationale – or vague rationales” that are meant to “maintain privilege and economic and racial segregation”).

23. *See also* a City Hall Dec. 2016 email forwarded to deputy Mayor Alicia Glen and her chief-of-staff James Patchett regarding a meeting with CM Andy King, MD Ex 71, at 125126 (stating CM opposed proposal in part because “he thought the development was geared to people outside of his community,” taking particular exception with “the people in the rendering” – *i.e.*, the way they *looked* – for not being “representative of people from the Bronx”).

24. Defendant was and is aware of role of race and attempts to maintain the residential racial status quo in connection with housing policy. Sometimes it recognizes those attempts; sometimes it finds those attempts understandable; sometimes it panders to those attempts. *See, e.g.*, excerpts of Carl Weisbrod Jul. 27, 2017 deposition transcript, MD Ex 24, at 99:22-101:20 (stating that “[o]ver 50 years of working in New York City,” including during his tenure in the de Blasio Administration, “racial politics are always in the ether,” and agreeing this is true of housing policy advocacy specifically).

violators such that extreme manifestations of discrimination are thankfully rare.... Regrettably, however, this in no way suggests that discrimination based upon an individual's race, gender, or age is near an end. Discrimination continues to pollute the social and economic mainstream of American life, and is often simply masked in more subtle forms.”).

25. See NY Post Jul. 2018 article, “Inwood residents say rezoning plan is an ‘ethnic cleansing,’” MD Ex 72, at 2 (quoting Patchett as responding to Inwood advocate who dubbed rezoning “an ethnic cleansing” as stating it was not, but that “I totally understand the concerns”).

26. See Queens Community Board 6 Fiscal Year 2012 statement of needs, MD Ex 73, at 146918 (showing community board of plurality-White CD with small Black population⁷ engaged in racial stereotyping by describing “the influx of new immigrants (many from totalitarian countries),” as well as “a substantial increase in ethnic/racial diversity,” as a “public safety” concern that “made policing in CB 6 more complex and time-consuming”).

27. See excerpt of Real Affordability for All (advocates) Sept. 2015 policy paper on mandatory inclusionary housing (“MIH”), MD Ex 74, at 5 (stressing “Race is an undeniable factor here and needs to be acknowledged” because MIH “will lead to the whitening of neighborhoods” since “current residents in low-income communities of color will not be the beneficiaries of new housing” and instead the “so-called affordable housing will overwhelmingly go to wealthier, whiter outsiders – people who come from other neighborhoods”).

28. See Apr. 2018 talking points for HPD Commissioner Torres-Springer interviews and fair housing forum, MD Ex 45, at 167385 (showing defendant’s awareness of racially-charged motivations for “enormous community opposition to affordable housing projects across the board,” since opposition is “often couched as concerns about parking, infrastructure, density, public safety, but many of these are just code words for ‘I don’t want people in my neighborhood’”).

⁷ Queens CD 6 was not the location of any of the projects involved in the parties’ analyses of lottery data, but DCP’s “Community District Profile” for Queens CD 6 shows that it is 47.7% White and 29.7% Asian, while being just 15.5% Hispanic and 3.1% Black. See DCP CD 6 profile, available at <https://communityprofiles.planning.nyc.gov/queens/6>.

29. The recognition of the use of pretextual reasons to cover up a concern about residential racial change was not a one-time occurrence for defendant's HPD. Almost identical language was used in another document. *See* Apr. 2018 Politico New York article, MD Ex 75, at PDF page 7 (quoting HPD deputy commissioner Molly Park as recognizing that, although opposition to affordable housing is often "couched in a lot of things" – like "people's concern about parking, people's concern about density and light and open space" – these are "really . . . code words for 'I don't want other people in my neighborhood'").

30. Sometimes the suggestion to maintain an area's "cultural identity" was made explicitly and directly to defendant, including to Mayor de Blasio. *See, e.g.*, Feb. 2015 memo to the Mayor from Ron Shiffman of Pratt Institute (with HPD comments inserted), MD Ex 76, at 54727-28 (framing housing concerns as including "real and perceived" fears of "loss of community identity," and lauding community-based planning for accomplishing the "reinforcement of the area's cultural identity").

31. Defendant's Department of City Planning has heard calls for protecting areas' racial identity as part of opposition to rezonings. *See* Met Council on Housing and anti-MIH coalition Mar. 2016 rally flyer emailed to Weisbrod and Kapur, MD Ex 77, at 80889 and 80892 (referring to East New York and the South Bronx as "our bastions" for "working class and communities of color," and opposing MIH since that the "fate" of such communities of color "hangs in the balance").

32. *See also* Nov. 2015 El Diario article on East Harlem translated for Kapur, MD Ex 78, at 118198-99 (defendant aware of housing opposition explicitly motivated by opposition to racial change, such as the following: "We want El Barrio [to] remain[] as it is, with [its] Puerto Rican community and Mexicans and Dominicans").

33. HPD has heard similar neighborhood “identity” concerns raised. *See* Oct. 2016 talking points for then-Commissioner Been in preparation for a conference, MD Ex 79, at 14122-23 (showing then-Commissioner Been received questions that were going to be asked in panel moderated by the NYU Furman Center that highlighted “threats to ethnic identity of neighborhoods” as “one of the key issues that comes up in debates around gentrification”).

34. These kinds of concerns influence where defendant builds and does not build. *See, e.g.*, Feb. 2015 email chain including Weisbrod and Kapur regarding Williamsburg, MD Ex 80, at 152151-52 (with Ms. Kapur dismissing “housing prospects” in the area due in part to “the battles between the various ethnic groups here (Latino, Hasidic, in particular”).

35. *See also* Nov. 2015 Kapur email, MD Ex 81, at 97373 (deriding analytical framework for discussing neighborhoods for rezoning received from HPD official as “almost impossible for [City Planning] to do for a number of reasons not the least of which is politics”).

36. *See* HPD Sept. 2016 emails regarding withdrawal of Queens affordable housing proposal, MD Ex 82, at 99855 (demonstrating defendant’s cognizance of heightened opposition in White areas, an HPD staffer worried that “whole saga” culminating in rejection of proposal was likely to recur “especially for Queens and Staten Island,” in part due to “demographics”).

37. *See* New York Communities for Change (advocacy group) “Whitening of Crown Heights” policy paper, MD Ex 83, at 1, 3 (opposing affordable housing due to prospect of racial change, claiming project “will accelerate the whitening of Crown Heights” since demographic data reveal “it is more likely that white households will win any lottery for affordable units” and concluding “the project is not for African-American and Latino residents of the area” but rather “for white newcomers”).

38. See a classic illustration of sensitivity to race-based association of affordable housing with race in Nov. 2016 email to then-Commissioner Been regarding Staten Island project, MD Ex 84, at 28668 (relaying EDC request to remove logos for HPD and the Mayor's affordable housing plan (Housing New York) from front page of Staten Island project description and to not "message this as an affordable housing project" due to "political sensitivities," including "Staten Island BP's [borough president] perception of affordable housing").

39. Defendant knows that terms that on the surface seems to be about affordability are regularly about race. See, e.g., excerpt of Mar. 2014 Housing Development Corporation ("HDC")⁸ presentation on gentrification, MD Ex 85, at 68044 (defining gentrification as a "catchword for neighborhood change" with the "Implied change" including "racial" change, and acknowledging "Fear of the Other" and specific complaint about "the influx of white families into Fort Greene").

40. "Self-segregation" (or the supposedly voluntary concentration of one group within a particular area's housing supply) is by definition exclusionary in a city where there is intense competition for affordable housing everywhere. See Goetz I, at 156:2-10 (acknowledging that in New York City there is much more demand for than supply of affordable housing and that there is intense competition over that limited resource). Nevertheless, the City has tried to defend segregation as self-segregation. See, e.g., Nov. 2014 letter from then-Commissioner Been and then-Director of City Planning Weisbrod regarding HUD's proposed AFFH tool, arguing *inter alia*, that it did not allow sufficient leeway to excuse racial concentration or ethnic enclaves, MD Ex 37, at 2 (complaining the tool does not allow cities "with many neighborhoods with different ethnic and religious concentrations to adequately describe the circumstances," such as when "religious, immigrant or ethnic enclaves" arise due to "residents' preferences, not segregation").

⁸ HDC administers lotteries along with HPD.

41. *See also* Deputy Mayor Been’s comment to the New York Times in July 2019, conveyed in article entitled, “What the City Didn’t Want the Public to Know: Its Policy Deepens Segregation,” MD Ex 86, at 2 (quoting Deputy Mayor Been as defending the policy as giving neighborhood incumbents “choice” and highlighting the claim that the “beneficiaries” are “largely black and Hispanic” (while ignoring the disparate impacts the policy causes to, and restrictions on choice that the policy imposes on, African Americans and Latinos who choose to compete for housing in a CD with a different racially dominant group), all under the banner that “[s]egregation is a question of choice”).

42. Defendant repeatedly demonstrates that it is concerned about the political implications of concerns about residential racial change, sometimes taking steps to undercut the charge that racial change is occurring (instead of insisting that people of all races are entitled to affordable housing anywhere in the city). *See, e.g.*, Sept. 2015 email from key Mayoral aide Emma Wolfe to James Patchett and others, MD Ex 87, at 128960-61 (Wolfe worried “we’re a little boxed in here if we don’t play this right” regarding report that attacked MIH plan by saying the affordable housing it generates “will overwhelmingly go to wealthier, whiter outsiders – people who come from other neighborhoods,” with Wolfe underscoring “the ‘whitening’ allegations” for response and calling for “undermin[ing] the key findings”).

43. *See also* March 2017 emails between and among HPD, EDC, and City Hall on “Whitening of Crown Heights” report, MD Ex 88, at 164366-67 (defendant concerned with “bombs” presented by advocate’s report arguing that “white families are more likely to fill the apartments” in Crown Heights lottery, with EDC seeking “numbers on demographics that disagree” and City Hall asking HPD to “pick apart their analysis” contained in the report).

44. Defendant has been so sensitive to the raising of the issue of residential segregation that it had, early on in the de Blasio administration, not even wanted the term “segregation” used. *See, e.g.*, Nov. 2014 Been and Weisbrod letter to HUD, MD Ex 37, at 7 (recommending that HUD AFFH tool refer to “concentration” and not “segregation” since there are “non-invidious reasons for a particular ethnic group to be concentrated in a particular area”).

45. There is ample evidence of defendant’s deliberate indifference to dealing with AFFH (barriers to fair housing choice), including indifference to exploring implications of the community preference policy. *See, e.g.*, Anti-Discrimination Center’s (ADC’s) Jun. 2005 letter to HPD deputy commissioner Kimberly Hardy, MD Ex 89, at 1 (alerting HPD to the fact that community preference “illegally perpetuates segregation”); ADC’s Jan. 2006 letter to then-Commissioner of HPD Shaun Donovan, MD Ex 90, at 1 (raising to the then-HPD Commissioner the problem that given “how strongly segregated almost every single community district” is, “preference cannot help but result” in more segregation than would otherwise be the case, and highlighting that a citywide (*i.e.*, equal access) lottery would instead be “segregation reducing, not perpetuating”); ADC’s Mar. 2008 letter to City Planning regarding draft AFFH, MD EX 91, at 2-3 (advising defendant of the “segregation-perpetuating impact” of the community preference); and Fair Housing Justice Center’s Nov. 2012 “Barriers to Housing Choice” report submitted to City Planning, MD Ex 92, at 14341 (underscoring that the preference “perpetuates residential segregation because the preference is based on Community District boundaries drawn by the City” and such boundaries “often reflect the high levels of racial segregation throughout New York City”); and *compare* defendant’s amended responses to plaintiffs’ requests to admit (“Def. Amended RTA responses”) MD Ex 16, at 23-24, Nos. 37-38 (defendant admitting in connection with the analyses of impediments to fair housing choice it conducted for its 2002, 2007, and 2012

5-year AFFH Statements, that it did not analyze citywide the extent to which the community preference policy may cause a disparate impact on the basis of race in affordable housing lotteries or may perpetuate segregation on the basis of race, and did not prior to 2013 otherwise analyze citywide the extent to which the community preference policy may cause a disparate impact on the basis of race in affordable housing lotteries or may perpetuate segregation on the basis of race).⁹

46. *Compare also* PRO Brief, at 83 n.273 and accompanying text, and 83 n.272 (citing admissions that from 2004 to 2009, when the HPD Commissioner was Shaun Donovan, neither HPD, City Planning, nor the Office of the Mayor had a policy specifically and explicitly targeted at reducing residential racial segregation; “[t]hroughout the de Blasio administration, which took office on January 1, 2014, HPD has not maintained a formal written policy or procedure regarding compliance with the Fair housing Act’s affirmatively furthering fair housing requirements, nor is it required to do so”).

47. Defendant continued to be informed of the fair housing infirmities of the community preference policy. *See, e.g.*, July 2013 HDC email to HPD re: “Disparate Impact,” MD Ex 93, at 98599 (relating to HPD that “industry experts in attendance from around the country” at housing conference “all expressed concerns” about HUD AFFH rule’s “impact” on residency preferences “i.e., community board preferences for NYC” because “[i]nherently, such preferences favor the demographics (i.e. racial, religious, or any other protected class) of the community/locality in question; arguably to the impediment of making the housing equally accessible to other demographics”).

⁹ Defendant refused to admit or deny whether it performed such analyses in 2014, 2015, 2016, 2017, or 2018, on the basis of privilege. *See* Def. Amended RTA responses, at 24-28, Nos. 39-44.

48. Yet despite awareness of potential risk and availability of data, defendant continued failed to investigate potential fair housing concerns regarding the policy in a manner reflective of deliberate disregard or indifference. *See* Feb. 2013 email from HPD’s Matthew Murphy regarding Housing Connect, MD Ex 94, at 34045-46 (recognizing availability of data in Housing Connect “opens the door for fair housing litigation against our community board preferences” and so City may need “as much data as possible for each applicant”), but *compare* Jun. 2015 HPD letter to ADC re Freedom of Information Law request, MD Ex 95, at PLTF_0256 (stating that HPD does not track application outcomes by community district and “ethnic identification”).¹⁰

49. *See also* HPD May 2016 analyses of Housing Connect data, MD Ex 23 and MD Ex 96. Even though HPD explains that the study examines several dimensions of housing lottery data (indeed, the study does look at numerous data points, including rent burden, and length of residence), and that analysis “will in turn benefit HPD’s knowledge base *as well as inform future policy*,” *see* MD Ex 23, at 166445 (emphasis added), HPD failed to analyze the race of applicants at the level of CD or CD typology. *This is also another example of where the defendant’s practice in relation to the preference differs procedurally and substantively from defendant’s norm*¹¹ (*i.e.*, normally looking to inform most of housing lottery policy with analysis, but not doing so in respect to the impact of the preference policy specifically).

50. Defendant was aware that New York State had concerns about the fair housing implications of using community preference. Indeed, the 2015 Fair Housing and Tenant Selection Guidelines of the New York State Housing Finance Agency provides that “Use of a residency preference may not have the purpose *or effect* of delaying or otherwise denying admission *to a*

¹⁰ Either the statement was true, reflecting deliberate indifference, or it was false, reflecting consciousness of guilt.

¹¹ *See Winfield v. City of New York*, 2016 WL 6208564, at *7 (S.D.N.Y. Oct. 24, 2016).

project or unit based on the [protected class status, including race] of any member of an applicant family.” *See* MD Ex 97, at 10, Section 4.1.4.1.4 (emphases added). Nevertheless, defendant continued using the preference. *Cf.* PRO Brief, Points II and III.

51. Evidence of defendant’s lack of prioritization of addressing issues that implicated fair housing can be seen in other areas of policy, as well. *See also* Banks Depo, at 179:20-180:25 (stating that there was only one occasion that he could recall where he discussed with the Mayor the role of race plays in the difficulty of siting homeless New Yorkers).

52. *See also* Feb. 2016 deputy HPD commissioner Eva Trimble email to Been, MD Ex 98, at 18176 (nearly 30 years after the preference policy had been initiated, and more than 13 years after it had been expanded, evincing HPD was just then “proceeding” with “figuring out how to weave mobility into our general program operations”).

53. Defendant’s intent is also seen in its maintenance of other past and current practices that concentrate subsidized housing and related services to areas with certain demographic characteristics while avoiding others. For example, defendant has acknowledged that public housing is located in “disproportionately low-income neighborhoods,” and notes that it needs to justify “past and present creation of affordable housing in minority neighborhoods (i.e. the Bronx) which may perpetuate segregation.” *See* Sept. 2016 Preliminary AFFH Guide, at 21079.

54. *See also* May 24, 2016 “Housing Connect Analysis,” MD Ex 96, at 166299 (containing map of new affordable housing developments (represented by blue circles) showing disproportionately little building in the Upper West Side and Upper East Side of Manhattan, Southern Brooklyn, Northwest Queens, and Staten Island).

55. *See also* May 20, 2016 “Affordable Housing Study,” MD Ex 23, at 166485 (only approximately 5 percent of projects built in what defendant describes on the poverty axis as high

opportunity neighborhoods); and at 166492.002 (only 15 percent of projects built in high opportunity, here as defined by low crime, neighborhoods).

56. *See also* “Affirmatively Furthering Fair Housing: A Guide to NYC’s Submission and Potential Issues,” Aug. 2016, MD Ex 31, at 105041 (reciting as a high difficulty contributing factor to segregation defendant’s MIH policy “targeting low-income neighborhoods”).

57. *See also* Apr. 2017 Politico New York article, MD Ex 99, at 3 (quoting CM Antonio Reynoso as observing that the City is being “very aggressive” in building “the maximum affordable housing” in “poor” areas, while “they do the bare minimum” in affluent areas).

58. *See also* excerpt of Feb. 2017 City Council Feb. 2017 report on “fair share” homeless shelter siting reform, MD Ex 100, at 12 (highlighting that “residential beds” – meaning placements for individuals in correctional facilities, homeless shelters, transitional housing, etc. – are “highly concentrated in communities of color,” with the five CDs with highest recent increases in beds-to-population ratios *all* located in communities of color – accounting for a third of the City’s total beds – while the 3 CDs with the greatest decrease in the ratio “were all majority or near majority white”).

59. *See* Apr. 2018 Politico New York article, MD Ex 75, at 7 (reporting that a City staff member described the Mayor as singularly focused on housing production via rezonings, with integration not factoring into his strategy).¹²

60. Plaintiffs referenced in the PRO Brief the fact that the *ad hoc*, unresearched way that the preference percentage was raised by defendant in 2002 was at variance with what a host of former HPD Commissioners described in an op-ed as the normal process of developing policy at HPD. *See* PRO Brief, at 80-81 (citations omitted) (emphases added) (contrasting how various

¹² For the purposes of discovery (not bearing on trial evidence), plaintiffs were precluded from deposing the Mayor and getting this information directly.

former HPD Commissioners, including Jerilyn Perine, stated that “[b]efore making a decision,” they “collected the facts and weighed [their] options” with how Ms. Perine gave no thought to whether raising the preference could implicate segregation concerns – “it never dawned on me”).

61. Another illustration of how the preference policy represents a procedural and substantive departure from defendant’s normal approach to other issues¹³ relates to where defendant is going to use anti-displacement tools. Talking points prepared for then-Commissioner Been in April 2015 said that defendant “want[s] to be cautious” in choosing where to deploy anti-displacement tools, because “it is not clear that in every neighborhood displacement is inevitable” due to concentrations of NYCHA or rent-regulated units in some areas. *See* excerpt Apr. 2015 talking points for NYU forum, MD Ex 101, at 64004. In contrast to that targeted approach, the preference is applied citywide, without regard to local conditions.

62. Defendant’s pandering to the desire to maintain the neighborhood racial status quo extends to its homeless policy. In early 2017, the Mayor critiqued previous efforts to fight homelessness, stating that he “understand[s] why” communities have opposed homeless shelters when “they don’t feel connection” to the homeless being served; he further stated that government has made it harder because “we’ve sent people all over and there’s not a sense of the people who are being served are from my very own community – they are just like me – and that’s something we need to change.” *See* excerpts of transcript of Mayor’s speech on the City’s Homelessness Plan, Feb. 28, 2017 (“Homeless Policy Speech”), MD Ex 102, at 7. Steven Banks, who helped the Mayor prepare for the speech, *see* Banks Depo, at 164:9-18, explained that there are a variety of dimensions on which homeless New Yorkers are demonized as being not like “you and me”; for example, “my neighborhood / not my neighborhood.” *See id.* at 170:11-171:3. Asked whether the

¹³ *See Winfield*, 2016 WL 6208564, at *7.

demonization also comes from seeing people as “[m]y race/not my race,” Mr. Banks agreed that “the demonization may be based on that too in terms of my experience, yes.” *See id.* at 171:4-8.

63. The Mayor’s plan was to continue to have disproportionately high concentrations of homeless New Yorkers in some CDs, and disproportionately low concentrations of homeless New Yorkers in other CDs. *See Homeless Policy Speech*, at 13 (emphases added) (proposing each CD must have “capacity for the people from their neighborhood,” even though some CDs have a “very small number” of homeless individuals and others a “very large number,” and even if it means some CDs have capacity for “50 people in [the] shelter system” and others “for thousands”). *See* paragraph 59, *supra* (residential beds highly concentrated in communities of color).

64. Concerns about race are present in the education context, too. *See* Gothamist Jan. 2016 article on school rezoning in Brooklyn, MD Ex 103, at 2 (revealing racially-inflected opposition to school rezoning intended to integrate school by quoting PTA head as stating, “All that we will get is another PS 8 – a school that all of the black and brown folks built, only to lose all of the stake and ownership”).

65. *See also* Apr. 2018 New York Daily News article, MD Ex 104, at 1 (Department of Education Chancellor Richard Carranza shared a recap of a school meeting where white parents spoke out against middle school integration plans entitled “WATCH: Wealthy white Manhattan parents angrily rant against plan to bring more black kids to their schools”).

66. Defendant’s attempt to defend the policy’s disparate impact on a citywide, separate-but-equal basis is not credible and is contrary to its previously expressed understanding. For example, then-Commissioner Been wrote to the Mayor about a specific project, independent of whether impact would be “offset” elsewhere. *See* Aug. 2014 Vicki Been email to Mayor de Blasio

regarding Culver El project, MD Ex 38, at 53604-05 (informing Mayor project is on hold because it is in “one of the least racially diverse” CDs and thus HPD has “to share the community board preference with adjacent boards under the agreement we are negotiating with HUD to end their fair housing investigation,” and relating that while local CM is “very unhappy about having to share the preference,” proceeding with standard preference would “result in an immediate new lawsuit (which we would likely lose)”).

67. As discussed in paragraphs 7-9, *supra* using salient examples from Ms. Bozorg’s testimony, plaintiffs have uncovered ample consciousness-of-guilt evidence among defendant’s high-ranking officials (and again, all of this is beyond what was adverted to in the PRO Brief). *See, e.g.*, May 2016 Carl Weisbrod email, MD Ex 105, at 80803 (revealing City attempt to downplay segregation so as to cast preference in a more favorable light when then-Director Weisbrod highlights data that “show a city that is more integrated than common wisdom suggests” as potentially “helpful in terms of the attack on our community preference system”). *Compare* the reality identified by the Sept. 2016 AFFH Preliminary Guide, at 21059 (discussing dissimilarity indices for four racial/ethnic groups as compared with Whites (Black, Hispanic, Asian or Pacific Islander, and all non-White groups combined) from 1990, 2000, and 2010 and concluding “NYC scores in the ‘high segregation’ category for all ethnicities, at all time periods with the exception of Asian or Pacific Islander/White” and further that the city’s “levels of segregation have remained mostly constant over the last 20 years, with the exception of Asian or Pacific Islander/White, which has become more segregated”).

68. In May 2016, in preparation for a WNYC interview with Vicki Been, talking points were prepared to give a reason for why Section 8 housing voucher recipients were concentrated in areas of poverty. The talking points did not reference any governmental role in this concentration

but said: “Most participants choose to stay in their neighborhoods where they have social connections and support networks.” *See* excerpt of WNYC talking points, MD Ex 106, at 76532.

69. While defendant is downplaying the significance of rent burden (now that it has been shown that outsiders are as rent-burdened as insiders and, in raw numbers, the rent-burdened outsiders vastly outweigh the rent-burdened insiders¹⁴), this downplaying is a function of consciousness-of-guilt. Defendant used to recognize an important role for rent-burden when thinking about displacement and gentrification. *See* Feb. 2015 emails between then-Commissioner Been and Elyzabeth Gaumer, MD Ex 107, at 15197 (demonstrating defendant’s awareness, prior to the filing of this action, that rent burden of lottery applicants is a useful proxy for displacement and specifically relevant to “get ready for the community board preference fight,” and that defendant has long had the data since it “already ha[d] done a lot of work” regarding applicant rent burden).

70. Defendant’s concerns about the feasibility of the alternative of combining CDs to create a less-discriminatory CD-preference-area is pretextual. *See* Aug. 2014 email to then-Commissioner Been, MD Ex 108, at 80100 (revealing that then-Commissioner Been had the “instinct” that combining adjacent CDs in a subset of cases would create a CD-preference area with a racial diversity index higher than what the index would be for an individual CD, and that in almost all of the subset of cases, it was “a workable solution”).

71. Consciousness of guilt is also revealed by an evasive answer that HPD suggested to a developer being asked by State HCR the question of “How do you plan to periodically evaluate your community preference to ensure that it does not perpetuate a discriminatory impact for protected classes?” *See* MD Ex 109, at 29459. HPD’s standard response was a non-response:

¹⁴ *See* March 4, 2020 declaration of Professor Andrew Beveridge (“BD”), at 54-58, ¶¶ 189-199 and Table 14.

“Community preference is implemented only during initial rent up of the project. Re-rentals of units are not subject to any residency preference. Therefore, it is not necessary to re-evaluate the preference over time.” *Id.* Obviously, the recommended phrasing was avoiding the thrust of the question: how do you *over time* (periodically) evaluate the impact of *implementing* your policy? Deputy Mayor Been, at her second deposition, agreed that the answer was not responsive to the question and that she recognized that State HCR was asking, “have you evaluate[d] and will you continue to evaluate whether the Community Preference [policy] does not perpetuate a discriminatory impact.” *See* Been II, at 230:7-232:2.

72. Former HPD Commissioner (and former HUD Secretary) Shaun Donovan’s testimony during a half-day deposition was marked by continuous evasion and gamesmanship. A jury would reasonably conclude that former Secretary Donovan was consistently not being truthful in his testimony, that his testimony specific to whether defendant was engaging in work to reduce segregation should be treated as false, and that his insistence on claiming to having worked to promote residential integration while HPD Commissioner in the face of evidence that he had not done so reflects consciousness of guilt. The entire transcript of his June 1, 2018 deposition is already part of the record (ECF 592-2); here we call the Court’s attention only to selected excerpts:

- a. *See, e.g.*, MD Ex 53, at at 47:4-10 (claiming that he believed that defendant had turned with all the purpose at its command to trying to reduce and ultimately eliminate racial segregation in housing);
- b. *See also id.* at 51:13-57:7 (unwilling or unable to say that he knew when he was HPD Commissioner [as distinct from his later work at HUD] that there even *was* an AFFH obligation with which defendant had to comply);

- c. *See also id.* at 63:3-15 (asserting that it was his goal, and, he believed, the goal of then-Mayor Bloomberg, specifically to reduce residential segregation);
- d. *See also id.* at 64:6-65:3 (evading the question of whether Mayor Bloomberg charged him specifically with trying to reduce residential segregation to the maximum extent possible by saying his “recollections of these are more general than being able to recall specific words or specific conversations”; note: he was not asked what words were used in a conversation, but rather whether an assignment with a specific purpose was given);
- e. *See also id.* 65:25-67:20 (admitting to be unable to remember whether there were any documents at all where the *concept* of reducing residential segregation was mentioned);
- f. *See also id.* at 70:23- 72:8 (debating what it means to have a “focus” on a goal, but ultimately claiming that he focused on his goal of reducing residential racial segregation a “significant amount”);
- g. *See also id.* at 72:9-74:18 (admitting not being able to remember who on his staff he spoke to about this goal on which he claimed to have had a significant amount of focus);
- h. *See also id.* at 77:23-86:2 (responding to the question of whether it would have been wrongful for HPD *not* to have had reducing residential segregation as a goal, by debating the questions being asked; saying that it depends on what the word “wrongful” means and professing that he did not understand what it meant in the context of the question; and ultimately not be willing to say more about whether there was anything *independently* negative about residential racial segregation as

opposed to residential economic segregation by saying that the question was “complex,” and ultimately “I think my answer would be yes but disentangling those two is quite complex”);

- i. *See also id.* at 87:8-92:24 (refusing to answer the question, or claiming not to be aware – as someone who grew up in New York City on the Upper West Side and Upper East Side of Manhattan and in Boerum Hill in Brooklyn – that there were some neighborhoods in New York City that had very similar economic profiles of their residents, but very different racial profiles of those residents);
- j. *See also id.* at 96:4-97:11 (evading an answer to the question put: “[D]o you recall that this desire or goal or program to enhance the access of minority group families to neighborhoods of opportunity, of higher opportunity, was written down anywhere?”);
- k. *See also id.* at 100:20-102:16 (refusing to acknowledge that there *were* proposals for mandatory inclusionary zoning that the Bloomberg administration opposed, even when it was made clear that the question was not asking him to get into the specifics of any proposals);
- l. *See also id.* at 111:6-117:6 (dodging basic questions – not involving any specifics at all – as to his awareness of the fact that there were contemporaneous criticisms of the Bloomberg administration’s anti-displacement efforts; instead only noting that government is always criticized and stating he would expect such criticisms were made or that it would not surprise him);
- m. *See also id.* at 118:20-121:7 (refusing to answer directly whether the Bloomberg administration worked to strengthen State laws on rent regulation or, for example,

opposed efforts to limit or eliminate “vacancy decontrol” of rent-regulated apartments);

- n. *See also id.* at 137:9-141:20 (describing letter to then-Commissioner Donovan from ADC critiquing preference policy as segregation-perpetuating, MD Ex 90, as raising an “issue,” and, ultimately, an issue that was not “trivial,” and that, in general, it is important to find out whether criticism is well-founded or not);
- o. *See also* MD Ex 53, at 142:22-144:9 (asked whether it had occurred to him that, given the segregated housing patterns of New York City, it was likely that the pool of insider lottery applicants would be more racially and ethnically homogenous than the pool of outsider applicants, the former Secretary first replied, “I don’t recall a specific time where I had that concern”; and then asserted that he did not have a specific recollection of what occurred to him at the time);
- p. *See also id.* at 155:3-156:21 (claiming not to recall whether “preserving neighborhood character” was a slogan or catchphrase used by the Bloomberg administration in connection with some of its rezonings);
- q. *See also id.* at 22:22-26:21 (professing difficulty in understanding the nomenclature “insiders” and “outsiders” to characterize those who lived in the CD and were eligible for preference and those who did not live in the CD and were not eligible for preference); and
- r. *See also id.* at 16:5-17:21 (even dodging the question of whether he was *considering* running for Mayor);

73. *Compare, e.g.,* PRO Brief, at 83 n.272 and accompanying text (from 2004 to 2009, when the HPD Commissioner was Shaun Donovan, neither HPD, City Planning, nor the Office of

the Mayor had a policy specifically and explicitly targeted at reducing residential racial segregation). As noted above, a jury can reasonably conclude that former Secretary Donovan was consistently untruthful in his testimony, including testimony concerning residential segregation and defendant's efforts or lack of efforts in relation thereto, and that his testimony is evidence of his consciousness of guilt about what defendant did and did not do under his leadership of HPD.¹⁵

74. Plaintiffs have explained in PRO Brief, Point IV(B) why it is not a legally sufficient justification that the policy supposedly yields CM support, including the fact that the question is a forward-looking one: what would CMs do in the absence of the policy? But, in addition to those questions, it turns out that defendant has engaged in choreography between its executive and legislative branches. *See, e.g.*, Aug. 2015 City Hall and City Planning emails, MD Ex 110, at 128878 (showing Mayor's communications director suggesting it would be "great to have [CM] "Espinal in particular defend" the policy "as protection against gentrification").

75. As has already been shown (such as in the discussion regarding former Commissioner Donovan), there is an enormous amount of pretext and credibility evidence in the record. The following provides only a small further sample.

76. Former HPD Commissioner Maria Torres-Springer was still peddling broad claims about the policy's supposed relationship to addressing displacement writ large that defendant has belatedly abandoned. *See* excerpts of May 10, 2018 deposition of then-HPD Commissioner Maria Torres-Springer ("T-S Depo"), MD Ex 14, at 265:19-266:24 (confirming her view that preference addresses concerns about being displaced imminently). *Compare* defendant's objections and responses to plaintiffs' FRCP 56.1 statement, ¶ 123 (agreeing that "the policy is not designed to

¹⁵ If necessary at trial, plaintiffs will proffer evidence of the incredible nature of Secretary Donovan's statements (including those related to his purported lack of knowledge of the Bloomberg administration's opposition to mandatory inclusionary zoning, its resistance to repealing vacancy decontrol, etc.).

deal with imminent displacement” and that “community preference policy is not designed to reduce fear of imminent displacement from one’s apartment”).

77. Ms. Torres-Springer’s was markedly evasive at her deposition on matters relating to residential segregation and other housing patterns. *See* T-S Depo, at 60:6-67:11 (refusing to acknowledge that her reference to a “legacy of discrimination and segregation” in an op-ed on fair housing that was published in her name (*see* MD Ex 52) was principally referring to racial segregation; and refusing to confirm that the sentence was referring to a legacy of housing discrimination and segregation, and could only reasonably be understood that way); T-S Depo, at 96:7-97:5 (claiming not to be able to answer the question as to whether buildings in need of rehabilitation are “randomly situated throughout the city or perhaps [are] more concentrated in some neighborhoods than in others”).

78. Deputy Mayor Been told this Court in her 2015 declaration in support of defendant’s motion to dismiss that a justification for the policy was helping those who had persevered through long years of unfavorable conditions. *See* excerpt of Oct. 2, 2015 declaration of Vicki Been (“Been 2015 Dec”), ECF 18, MD Ex 19, at 3-4, ¶ 8. But that justification had longed ceased to bear any resemblance to the reality of the policy. *See, e.g.*, excerpts of Oct. 26, 2017 deposition of former HPD Jerilyn Perine, MD Ex 40, at 211:4-24 (confirming that during her 2000-2004 commissionership – when long-term resident displacement was still being proffered as a justification for the policy – the policy was not reserved for those who had persevered through long years of unfavorable conditions).

79. In her Aug. 2020 declaration, Deputy Mayor Been tries to make the case for the Councilmanic veto system. *See* Aug. 14, 2020 declaration of Vicki Been, ECF 899 (“Been Aug. 2020 Dec”), at 46 n.75 (asserting that each CM may vote on what they think is the best interest of

their constituents and other CMs “legitimately may be swayed” by the CM in whose district the project is located). Privately, however, the Deputy Mayor has told a different story. *See* Sept. 2016 email chain, MD Ex 111, whole document but particularly at 130031 (revealing that the then-Commissioner had encouraged academic colleagues to write and place an op-ed opposing the CM veto because of “two ridiculous rejections or threatened rejections of private rezoning applications” in parts of the city that “desperately need both market rate and affordable housing”; acknowledging that she had a “vested interest,” and writing that it “would be great to keep the debate going”). A factfinder could view the Deputy Mayor as having tailored her declaration to fit the needs of the moment as opposed to presenting her true views, reject her as a credible witness, and conclude that defendant’s dismissal of the alternative of moving away from the CM-veto system is a pretext designed to make the policy appear necessary when it is not.

80. In her Aug. 2020 declaration, Deputy Mayor Been tries to emphasize that concerns about non-imminent displacement from neighborhood are “rational.” *See* Been Aug. 2020 Dec, at 33-34, ¶ 69. *But compare* the Sept. 2014 email from the Brooklyn Borough Director of the Community Affairs Unit of the Office of the Mayor, ECF 903-9, at 124661 (noting that “[t]hrough misinformation and playing on people’s fears,” an advocate “now has an entire movement behind her” and that she had a roomful of 400 people booing the mention of affordable housing because “she has convinced them that affordable housing means housing that is not affordable to the people that currently live there and will end up displacing everyone who lives in the neighborhood”). A jury could reasonably conclude that the Deputy Mayor was not being forthright about the rationality of fears and assess her credibility on other matters accordingly.

81. Much evidence undercuts any of defendant’s claims about really knowing anything about the characteristics of displacement, let alone non-imminent displacement from

neighborhoods. *See, e.g.*, Oct. 2017 email chain between HPD and City Planning, MD Ex 112, at 167221 (noting “there isn’t any sound analysis about displacement, its magnitude or causes in different neighborhoods”).

82. *See also* Dec. 2016 HPD talking points for New York Housing Conference panel, MD Ex 113, at 32312-13 (denying HPD housing causes displacement since there is “absolutely no direct displacement” and defendant has other protections in place like rent stabilization and tenant protection laws).

83. *See also* excerpt of City Planning emails regarding defendant’s lack of information about displacement, MD Ex 114, at 119581 (Joseph Salvo , the director of City Planning’s population division, admits “we really have no data on this question” of “why people come and go” or as to “causality (again, since there are no data)”).

84. Deputy Mayor Been repeatedly cites to the views of “advocates” to support the points she makes in her declaration, but views of advocates inside City Hall are very different from the public posture. *See, e.g.*, excerpt of May 2018 (then) Deputy Mayor Phillip Thompson email, MD Ex 115, at 168211 (dismissing “NYC housing advocates” for “lack of serious analysis” or “real ideas” on displacement and for instead “do[ing] what’s comfortable for them (beat up on City Hall),” which “undermines their credibility”; he concluded that “I obviously can’t be this frank” publicly). In addition to a jury being able to take into account the mismatch between the Been proffering of how defendant views advocates view and Deputy Mayor Thompson’s frankness regarding defendant’s view of them, a jury could also reasonably conclude that it needs to be skeptical more generally of statements from defendant that are prepared for public (or Court) consumption.