

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of the Application of:

PARTNERSHIP FOR THE PUBLIC GOOD, INC.,
HOUSING OPPORTUNITIES MADE EQUAL, INC.,
PEOPLE UNITED FOR SUSTAINABLE HOUSING,
INC.,
CENTER FOR ELDER LAW & JUSTICE, INC.,

DOROTHY OATMEYER, KRYSTAL CRUZ,
DENITA ADAMS, and VICTORIA RING, on behalf
of themselves and of all others similarly situated,

**VERIFIED PETITION AND
CLASS ACTION
COMPLAINT**

Index No.:

**ORAL ARGUMENT
REQUESTED**

Petitioners-Plaintiffs,

v.

CITY OF BUFFALO,

BYRON BROWN, MAYOR OF THE CITY OF
BUFFALO, in his Official Capacity, and

CATHERINE AMDUR, COMMISSIONER OF
PERMIT AND INSPECTION SERVICES FOR THE
CITY OF BUFFALO, in her Official Capacity,

Respondents-Defendants,

For a Judgment Pursuant to § 3001 and Articles 9 and
78 of the Civil Practice Law and Rules

INTRODUCTION

1. In 2017, a report commissioned by the City of Buffalo found that Buffalo suffers from some of the highest rates of lead poisoning in the nation.¹ Children in Buffalo tested between 2006 and 2014 showed lead levels up to eight times higher than those found in children in Flint, Michigan, making Buffalo one of the most dangerous regions for young children nationwide.²

2. Though shocking, the 2017 report was not news. The prevalence of wide-spread lead poisoning, especially of children, in Buffalo has been well-known for more than thirty years.³ For example, in 1990, the Environmental Defense Fund released a report stating that Erie County had the sixth highest rate of lead poisoning in the nation, and the Buffalo News reported that levels were even higher within the City of Buffalo.⁴ Similar research reports and media investigations have been published on a regular basis since that time.

3. In Buffalo, the main source of lead exposure is nearly always paint—most often from dust and chips from windows, doors, siding, and porches.⁵ Cases rise in the summer when windows get opened and closed, lead dust blows in from exteriors through windows, children play on porches and in yards, and lead dust from porches and soil is tracked into houses.⁶

¹ See Affirmation of Melinda Cameron (“Cameron Aff.”), Exhibit (“Ex.”) 2.

² *Id.*; also, M.B. Pell, *Lead’s Hidden Toll*, Reuters (Apr. 21, 2017), <https://www.reuters.com/investigates/special-report/usa-lead-states/>.

³ See Affirmation of Eugene M. Fahey at ¶¶ 2, 6-11.

⁴ Cameron Aff., Ex. 4.

⁵ Cameron Aff., Ex. 2.

⁶ *Id.*

4. Lead poses severe risks to almost every system in the body and is especially damaging to the development of children under the age of six.⁷ Lead poisoning negatively affects a child's brain development.⁸

5. Lead-poisoned children suffer neurological damage, learning disabilities, attention disorders, hearing and speech problems, decreased IQ, decreased ability to pay attention throughout their lives, and decreased lifespan.⁹

6. Approximately 21,200 children under the age of six reside in the City of Buffalo.¹⁰ Every one of them is susceptible to the ingestion of lead from flaking and peeling of paint and its harmful consequences. And every year, approximately four hundred and fifty children under the age of six are diagnosed with elevated blood lead level ("EBLL").¹¹

7. There is no safe level of lead exposure, and damage from lead poisoning is irreversible.¹²

8. Data further indicates that children living in Black neighborhoods are twelve times as likely to be poisoned by lead than children living in white neighborhoods.¹³

9. Compounding this travesty is Buffalo's "two-tiered" healthcare system disproportionately affecting children in poverty, primarily Black and Latinx children. Nearly 54% of Buffalo's children face poverty-related challenges, impacting access to healthcare.¹⁴

⁷ Cameron Aff. ¶ 5.

⁸ Cameron Aff. at ¶¶ 6-7; Affirmation of Myron L. Glick ("Glick Aff.") at ¶ 8.

⁹ Cameron Aff., Ex. 2.

¹⁰ Affirmation of John O'Brien ("O'Brien Aff.") at ¶ 12.

¹¹ Cameron Aff., Ex. 2.

¹² Cameron Aff., Ex. 2; Glick Aff. at ¶ 7.

¹³ Cameron Aff., Ex. 2.

¹⁴ Cameron Aff., Ex. 2.

10. Remediation of lead-based paint hazards is the only measure available to ensure a significant reduction in or the complete elimination of new cases of childhood lead poisoning. And mandatory rental inspections have proven to be a critical feature to successful remediation programs. For example, in 2005, Rochester, N.Y., adopted an ordinance that mandates inspections of rental properties for the presence of lead paint. Its enforcement resulted in more than an eighty percent drop in the number of children with lead poisoning.¹⁵

11. With these remedies in mind, in 2020, the Buffalo Common Council enacted the Proactive Rental Inspection (“PRI”) Law.

12. The stated purpose of the Law is to achieve the complete remediation of lead-based paint hazards, the correction and prevention of unsafe and unhealthy housing conditions, and the restriction and revocation of rental privileges to property owners who fail to maintain safe and healthy housing.

13. Indeed, in December 2020, Mayor Byron Brown wrote an article for the National League of Cities celebrating PRI as a critical law to reduce lead poisoning and improve unsafe housing conditions. He wrote, “Renters will no longer have to deal with potential lead contamination after moving in when they are more vulnerable to landlord inflexibility. With this legislation, landlords are forced to deal with this issue before they’re able to legally rent a unit.”¹⁶

14. Pursuant to the PRI Law, all rental dwelling units subject to its provisions must be inspected for lead paint hazards and other health and safety violations before an application to

¹⁵ *Id.*

¹⁶ Mayor Byron W. Brown, Why Buffalo Pushed Safe and Affordable Housing in the Middle of a Pandemic, National League of Cities (Dec. 4, 2020), <https://www.nlc.org/article/2020/12/04/why-buffalo-pushed-safe-and-affordable-housing-in-the-middle-of-a-pandemic/>.

be certified in the rental registry may be approved. Rental of a unit not included in the registry is unlawful, and units found to have active lead-paint hazards must undergo remediation before they may be certified.

15. The PRI Law also requires the City's Commissioner of Permit and Inspection Services ("Commissioner") to promulgate an application form for these certificates of rental compliance.

16. The PRI Law imposes nondiscretionary duties on the City of Buffalo and the Commissioner. However, almost four years after the PRI Law's effective date, very few of the 36,000 covered properties have been inspected. To date, only 4,827 covered residential rental units have been inspected and only 458 certificates of rental compliance have been issued.

17. Moreover, no form to apply for certificates of rental compliance has even been promulgated, thwarting the intent and purpose of the PRI Law.

18. Until an application is promulgated and inspections are conducted as required by the PRI Law, children living in Buffalo will continue to experience unconscionable levels of lead-poisoning.

19. Petitioners therefore bring this Article 78 plenary action to compel the City to perform the acts required by the PRI Law, namely, to conduct inspections of properties in the rental registry and to implement the surrounding application and issuance process for certificates of rental compliance.

20. Petitioners also seek a declaratory judgment that Respondents' failure to enforce the PRI Law violates the rights of the most vulnerable residents of the City of Buffalo to a safe and healthful environment as guaranteed by the New York State Constitution Article I, Section 19, which provides that "each person shall have a right to clean air and water, and a healthful environment."

JURISDICTION

21. This Court has jurisdiction over the causes of action brought herein under New York State Constitution Article I, Section 19 and under CPLR 301 and 7801.

22. Venue is proper pursuant to CPLR 506(n) and CPLR 7804(b).

PARTIES

Petitioners

23. Petitioner Partnership for the Public Good (“PPG”) is a not-for-profit organization organized under New York law. PPG is based in Buffalo, New York.

24. Petitioner Center for Elder Law and Justice (“CELJ”) is a not-for-profit organization organized under New York law. CELJ serves the Western New York area and is headquartered in Buffalo, New York.

25. Petitioner Housing Opportunities Made Equal (“HOME”) is a not-for-profit organization organized under New York law. HOME serves the Western New York area and is headquartered in Buffalo, New York.

26. Petitioner People United for Sustainable Housing Buffalo (PUSH) is a not-for-profit organization organized under New York law. PUSH is based in Buffalo, New York.

27. Petitioner Victoria Ring is a resident of Buffalo, New York.

28. Petitioner Dorothy Oatmeyer is a resident of Buffalo, New York.

29. Petitioner Denita Adams is a resident of Buffalo, New York.

30. Petitioner Krystal Cruz is a resident of Buffalo, New York.

Respondents

31. Respondent City of Buffalo (“Buffalo” or “City”) is a political subdivision of the State of New York that can sue and be sued in its own name. Respondent City is responsible for

the policies, practices, and conduct of the Department of Permit and Inspection Services as well the policies, practices, and conduct of the Mayor of the City of Buffalo.

32. Respondent Byron Brown is the Mayor of the City of Buffalo and has served in that capacity since January of 2006.

33. Pursuant to the Buffalo City Charter, as Mayor of the City of Buffalo, Mr. Brown acts as the City's Chief Executive Officer and has the responsibility to enforce the laws of Buffalo, to supervise and direct all department heads, and to ensure that the duties of all City officers, departments, boards, commissions, and other City agencies are faithfully performed.

34. Respondent Catherine Amdur is the Commissioner of Permit and Inspection Services of the City of Buffalo and has served in that capacity since March 2, 2022.

35. Pursuant to the Buffalo City Charter, as Commissioner, Ms. Amdur serves as the head of the Department of Permit and Inspection Services, and her responsibilities include: (a) to supervise, manage, and conduct the affairs of that Department, including all matters related to permits and inspections and housing; (b) to supervise all inspections required by the City Code and all housing code enforcement programs; (c) to supervise the issuing, transferring, renewing, revoking, suspending, and cancelling of all licenses and collecting fees and coordinating inspections in connection with such licenses; and (d) to carry out all duties conferred or imposed upon the Commissioner of Permit and Inspection Services by the City Code.

STATEMENT OF FACTS

Respondents' Duty to Inspect

36. After decades of advocacy and outcry on the public health crisis of lead-paint poisoning in Buffalo's young children, the Buffalo Common Council passed the PRI Law on November 24, 2020.

37. The PRI Law amends Buffalo's existing Rental Registry law, Chapter 264 of the City's Code, which has been in effect since 2006.

38. The Rental Registry Law, requires non-owner-occupied rental properties containing two or fewer units to apply for inclusion within the City's rental dwelling unit registry. Buffalo Code §§ 264-3(B), 264-4(A) (2019).

39. Pursuant to the Rental Registry Law, it is unlawful to rent a covered dwelling unit without applying for, and receiving, a certificate evidencing registration. *Id.* § 264-3(A) (2019).

40. Registration lasts one year and any unit's inclusion within the Registry expires after one year and must be the subject of a new application if it is to continue to be rented to tenants. *Id.* § 264-8(B) (2019).

41. The PRI Law maintains the Buffalo Rental Registry and the requirement to annually apply for and receive inclusion therein. *Id.* §§ 264-16, 264-17, 264-18.

42. Before passage of the PRI Law, Buffalo's Rental Registry law authorized, but did not require, Respondent Commissioner to inspect rental dwelling units, upon their registration. In relevant part, the Buffalo Code provided that: "Upon the rental dwelling unit being registered, . . . the Commissioner . . . may make an inspection of the rental dwelling unit to determine whether or not such rental dwelling unit is in substantial compliance with this chapter and the New York State Uniform Fire Prevention and Building Code." *Id.* § 264-14(A) (2019).

43. The PRI Law amends this specific provision concerning inspections of properties in the Rental Registry in three ways: (1) it makes inspections by the Commissioner mandatory and not permissive; (2) it requires inspections to be made before the Commissioner approves an application to include a property in the rental registry, so that a unit must pass an inspection before it may be lawfully rented at all; and (3) it requires inspections for compliance with a broader array of housing and building codes. *Id.* §§ 264-1, 264-2, 264-8.

44. “The Commissioner *shall* make an inspection of the rental dwelling unit that is the subject of an application for a license issued pursuant to this chapter to determine whether or not such rental dwelling unit is in substantial compliance with this chapter and all other applicable housing and building codes.” *Id.* § 264-8(A) (emphasis added).¹⁷

45. “Application” is defined by the PRI Law as “[t]he filing, review, and completion of pre-requisite conditions conducted in furtherance of obtaining the rental unit registration or certificate of rental compliance.” *Id.* § 264-2.

46. The Law thus creates a proactive inspections program for single and double-unit rentals that requires Respondents to inspect rental units for health and safety violations including lead paint hazards before they can be included in the Registry and therefore before they can be lawfully rented to tenants.

47. The Law imposes on Respondents the duty to inspect all such units to ensure the absence of deteriorated paint as well as other building code violations that threaten the occupants’ health and safety. *Id.* §§ 264-1, 264-2, 264-8.

48. 36,000 rental units in 1-family and 2-family dwellings are required to have interior and exterior inspections every three years.¹⁸

49. A checklist published by Respondents contains approximately 75 different interior and exterior conditions subject to inspection pursuant to the PRI Law.¹⁹

¹⁷ Chapter 264 of the City Code was renumbered at the time the PRI Law was enacted because, in addition to amending the Rental Registry law to include the PRI Law provisions, separate provisions relating to a Short-Term Rental Registry were separated and moved into a different Chapter of the City Code. As a result, Section 264-14, concerning the Commissioner’s authority to inspect, became Section 264-8.

¹⁸ See Affirmation of John Lipsitz (“Lipsitz Aff.”), Ex. 2.

¹⁹ See Lipsitz Aff., Ex. 3.

50. Respondents' PRI inspections checklist includes various items aimed at discovering water damage, persistent dampness, inadequate heating, pest infestation, trip hazards, inoperable or deteriorating windows and doors, inadequate lighting, and inadequate or inoperable smoke and carbon monoxide detectors.²⁰

51. The checklist also includes exterior and interior inspections for peeling paint, the primary source of lead-paint poisoning, in various parts of the dwelling, including exterior siding/trim, the interior and exterior of doors and windows, porches, stairs, walls, and ceilings.²¹

52. Until January 1, 2027, a lead dust wipe test must be included in the mandatory inspections any time there is reason to believe that a lead hazard may be present either due to specific factors such as renovations listed in the Law, or in the discretion of the Commissioner. *Id.* § 264-7(C)-(D).²²

Respondents' Duty to Create a Process to Obtain a Certificate of Rental Compliance

53. In addition to the existing rental registry, the PRI Law mandates Respondent Commissioner to create an entirely new process wherein covered units may not be rented without applying for and receiving a certificate of rental compliance ("CRC") that expires, and must be renewed, every three years. *Id.* §§ 264-20, 264-21(A).

54. The PRI Law requires the Commissioner to promulgate a form to be used to apply for certificates of rental compliance and to process such applications within one year. *Id.* §§ 264-24(A), 264-2 (definition of "Application" states that "[a]n application will be considered

²⁰ *Id.*

²¹ *Id.*

²² The PRI Law also phases in universal lead inspections over a period of six years, requiring all inspections conducted under the Law to include a lead-based paint dust wipe test beginning on January 1, 2027. Buffalo Code § 264-7(A).

current for one year following the date of filing or until the license sought is granted or denied, whichever occurs first.”).

55. Each application must include, among other items, the name, principal residence address, principal business address, and telephone number for each owner or general partner; whether the owner is an association or limited liability partnership; the name, address, and telephone of any designated agent or managing company; and a certification that the owner is aware of the possibility of lead in the property, the federal disclosure requirements concerning properties that may contain lead, and the safe work practices that must be utilized during painting, renovating, or repairing the property. *Id.* §§ 264-24(A), 264-18(B).

56. To obtain a certificate of rental compliance, an owner must also pass a visual inspection for housing code violations. *Id.* §§ 264-22(A)(4), 264-26(A).

57. The owner must also submit an affidavit of compliance disclosing information such as the existence of lead-related or other health citations from the Erie County Health Department. *Id.* §§ 264-24(A), 264-25.

58. The PRI Law provides that absent a certificate of rental compliance it is unlawful to rent covered units in the City of Buffalo. *Id.* § 264-24(A).

59. Respondents’ Proactive Rental Inspection Brochure, available on Respondents’ Proactive Rental Inspections website, further clarifies that “[r]ecent amendments to the city charter require all rental properties to maintain and display a CRC on the premise to legally operate.”²³

²³ See Lipsitz Aff., Ex. 4.

Respondents' Fail to Fulfill Their Duties

60. Annually, Respondent Commissioner is required to report to the Common Council information related to activities conducted pursuant to the PRI Law, including the number of residential rental dwelling units inspected and the number of certificates of rental compliance issued by the Department. *Id.* § 264-13(B).

61. In the most recent report dated March 14, 2024, Respondent Commissioner admits that the PRI Law requires that 36,000 rental units in 1-family and 2-family dwellings have interior and exterior inspections every 3 years.²⁴

62. The PRI Law requires that all rental dwelling units that are the subject of either an application for rental registration or a certificate of rental compliance be inspected. *Id.* §§ 264-2, 264-8(A).

63. As of June 21, 2024, approximately 36,000 rental units covered by the PRI Law are active on the rental registry.²⁵

64. Prior to being added to the registry, each unit underwent an application process and, pursuant to the PRI Law, should have been subjected to a mandatory inspection.

65. Nevertheless, in the four years that the PRI Law has been in effect, a total of only 4,827 units have been inspected: in all of 2023, only 293 residential rental units had been inspected; in the first quarter of 2024, Respondent Commissioner had completed only 200 residential unit inspections.²⁶

²⁴ See Lipsitz Aff., Ex. 2.

²⁵ See O'Brien Aff. at ¶ 5.

²⁶ See Lipsitz Aff., Ex. 2.

66. Respondents have also failed to promulgate an application for a certificate of rental compliance as required by the PRI Law.

67. Pursuant to the PRI Law, a certificate of rental compliance may only be issued after an exterior and interior inspection has been conducted to ensure that the unit has no active housing code violations that threaten the life, health, or safety of any occupants. Buffalo Code § 264-22(A)(4).

68. Thus, an application initiates the process whereby an inspection is conducted and a unit becomes lawful to rent.

69. Instead of creating an application as required by the PRI Law, Respondents only direct landlords interested in obtaining a CRC to call 311.²⁷

70. As a result of Respondents' failure to fulfill their nondiscretionary duty to promulgate an application as mandated by law, as of March 14, 2024, only 458 certificates of rental compliance have been issued by Respondents.²⁸

71. Of the 36,000 properties being rented to tenants that were required to be apply and be inspected and to receive certificates before they could be lawfully rented to tenants, more than 35,500 of them have not gone through that process because of Respondents' failure to promulgate an application and implement a process.

72. Respondents' failure to create an application has allowed Respondents to thwart the proactive rental inspections program and its intended purpose to discover and remediate health and safety hazards.

²⁷ See Lipsitz Aff. at ¶¶ 4-5.

²⁸ See Lipsitz Aff., Ex. 2.

73. On February 13, 2024, Petitioners were among thirty-nine signatories to a letter sent to and received by Respondents demanding that Respondents comply with the PRI Law and specifically the duty to conduct inspections of properties seeking inclusion in the rental registry.²⁹

74. Respondent Amdur responded in a letter dated March 11, 2024, but the letter did not address Petitioners' demand.³⁰

Failure to Enforce the PRI Law Violates the Individual Petitioners' Green Amendment Rights

75. Respondents' failure to enforce the PRI Law violates Petitioners' and other Buffalo residents' rights to clean air and a healthful environment.

76. Section 19 of Article I of the New York Constitution (the "Green Amendment") guarantees that "[e]ach person shall have a right to clean air and water, and a healthful environment."

77. As a result of Respondents' failure to enforce the PRI Law, Petitioners' and other Buffalo residents' homes are permeated with flaking and peeling lead paint that poisons the interior environments of their homes and causes irreversible health consequences.

78. Deteriorated paint from the exterior of homes is also the most common source of lead contamination in residential soil.³¹ Lead in soil can poison children through direct contact.³²

²⁹ See Lipsitz Aff., Ex. 5.

³⁰ See Lipsitz Aff., Ex. 6.

³¹ Cameron Aff. Ex. 2.

³² *Id.*

79. Respondents' failure to enforce the PRI Law therefore creates a toxic exterior environment for Petitioners and other Buffalo residents by allowing soil to become permeated with poisonous lead dust.

80. The interior inspections required by the PRI Law would also ensure that covered properties have, at a minimum, adequate heat, hot water, and smoke and carbon monoxide detectors and would be free of rodents, structural defects, leaks, and other hazards that are harmful to physical, mental and social well-being.³³

81. Infestations of pests have long been known to be associated with the transmission of disease in humans; structural defects in the property can allow pests to enter and water leaks provide pests with a source of water.³⁴ Infectious diseases also spread when clean water for drinking or hot water for washing are absent.³⁵

82. Lack of adequate heat increases the risk of cardiovascular disease, and damp, cold, and moldy housing conditions are associated with asthma and other chronic respiratory diseases.³⁶ Other conditions, such as inadequately lit hallways and trip hazards, present risk of injury and generally introduce stressors that contribute to mental illness.³⁷

83. Respondents' failure to enforce the PRI Law also allows these other unhealthy housing conditions, unrelated to lead paint, to proliferate.

³³ See Lipsitz Aff, Ex. 3.

³⁴ Glick Aff. at ¶ 12.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

84. Petitioner Victoria Ring is a Buffalo resident who currently rents an apartment in a non-owner occupied two-unit residential property in the City of Buffalo that is subject to the PRI Law.

85. Ms. Ring's home is not fit for habitation. It contains multiple housing violations that would have been discovered, and presumably corrected, if her home had been inspected as required by the PRI Law: the foundation of Ms. Ring's home is sinking; the kitchen ceiling is collapsing; water leaks from the roof into the back portion of Ms. Ring's unit and kitchen; the front porch of Ms. Ring's home has areas of rotted wood that would collapse if walked on; carbon monoxide leaks up into the home's bedrooms through floors in the floor; glass from windows are broken and missing; mice, roaches, and bedbugs are persistent problems; and the interior and exterior surfaces of Ms. Ring's home – window frames, baseboards, walls, floors, exteriors, front porch – are all lead hazards.³⁸

86. These extremely poor conditions have severely harmed the physical and mental health of Ms. Ring and her family: Ms. Ring has suffered from carbon monoxide poisoning, her four-year old son has been found to have elevated blood lead levels, and she and her family are covered in bites from pests.³⁹

87. However, Ms. Ring has been unable to move into better housing because all of the other rental units that are affordable to her also contain similar health hazards, including chipped and peeling lead paint, that have not been corrected due to Respondents' failure to enforce the PRI Law.⁴⁰

³⁸ Affirmation of Victora Ring at ¶¶ 3-6, 9, 13-15.

³⁹ *Id.* at ¶¶ 6-7, 14

⁴⁰ *Id.* at ¶¶ 20-22.

88. Petitioner Dorothy Oatmeyer is a resident of the City of Buffalo and lives in a non-owner-occupied rental unit that is subject to the PRI Law.

89. Similar to Ms. Ring, Ms. Oatmeyer's home is also not fit for habitation. It contains multiple housing violations that would have been discovered, and presumably corrected, if her home had been inspected as required by the PRI Law: there are multiple holes in the roof; the basement periodically floods with sewage; black mold is growing in the kitchen and bathrooms; there are holes between the bricks of the home and gaps in the corners of windowsills allowing cold air and water to penetrate; the kitchen floor is missing large areas; the electrical wiring is faulty; and there is chipped and peeling paint throughout, including on the wooden front porch.⁴¹

90. These extremely poor housing conditions have led to many serious health consequences for Ms. Oatmeyer and her family: in 2020, Ms. Oatmeyer's two-year old granddaughter was tested with an extremely elevated lead blood level that the Erie County Health Department attributed to her playing on the deteriorated front porch; one of Ms. Oatmeyer's daughters has developed asthma; Ms. Oatmeyer, her husband, and two of her sons suffer from constant headaches that they believe are connected to the home's extremely dangerous conditions; Ms. Oatmeyer's 22-year old son suffers from severe, heavy nosebleeds on many days; and the constant stress Ms. Oatmeyer experiences has exacerbated her high blood pressure condition.

⁴¹ Affirmation of Dorothy Oatmeyer at ¶¶ 3-10.

91. Ms. Oatmeyer has called the City of Buffalo housing inspector's office many times, resulting in her landlord being cited with over 17 violations in 2022 and 25 identified violations in 2023.⁴² Nevertheless, Ms. Oatmeyer's unit remains active on the rental registry.

92. Ms. Oatmeyer's landlord has done nothing to address the hazardous conditions in the unit and has suffered no consequence for failing to comply with building codes. Instead, Ms. Oatmeyer's landlord has initiated a retaliatory eviction proceeding against her.⁴³

93. Ms. Oatmeyer would like to move to a safe home that would allow her to live with dignity. However, Respondents' failure to enforce the PRI Law has made it so that she is unable to find a safe apartment that she and her family can afford.⁴⁴

94. Petitioner Denita Adams lives in a non-owner-occupied rental unit that is subject to the PRI Law.

95. Ms. Adams' home contains multiple housing violations that would have been discovered, and presumably corrected, if her home had been inspected as required by the PRI Law: the walls and ceilings of her home are infested with rodents; the foundation of the property's basement is crumbled, causing water, sewage, and vermin to enter the premises; the basement entranceway flooring is broken; the electrical sockets are not safely connected to the wall; and areas of the ceiling and plaster are falling apart.⁴⁵

⁴² *Id.* at ¶ 16.

⁴³ *Id.* at ¶¶ 15, 21.

⁴⁴ *Id.* at ¶ 22.

⁴⁵ Affirmation of Denita Adams at ¶¶ 3,6-12.

96. The health hazards in Ms. Adams' home are directly related to Respondents' failure to perform its mandatory duties under the PRI law and have caused tremendous mental distress to Ms. Adams and her family members.⁴⁶

97. Ms. Adams has begun searching for a new home but has so far been unsuccessful. Ms. Adams' inability to find another rental unit that is safe is the result of Respondents' failure to comply with the PRI Law to ensure that all rental units on the market meet a basic standard of habitability and health.

98. Petitioner Krystal Cruz is a resident of the City of Buffalo and lived with her children in a single unit home in the City of Buffalo that was subject to the requirements of the PRI Law.

99. At the time of her occupancy, a social services agency visited the unit, became concerned about the conditions in the apartment, and called a City of Buffalo inspector to inspect for health hazards.⁴⁷ The inspector identified multiple code violations including lead paint hazards resulting from chipping and peeling paint, windows that did not lock or work, insufficient smoke alarms, and a damaged foundation wall.⁴⁸

100. Ms. Cruz's family also began suffering respiratory problems they believed were attributable to mold growing in the basement.

101. After complaining about conditions in her home, Ms. Cruz's landlord initiated eviction proceedings against her.⁴⁹

⁴⁶ *Id.* at ¶ 4-5, 13.

⁴⁷ Affirmation of Krystal Cruz at ¶ 4.

⁴⁸ *Id.* at ¶ 5.

⁴⁹ *Id.* at ¶ 6.

102. The multiple health hazards present in Ms. Cruz's unit were directly related to Respondents' failure to perform its mandatory, non-discretionary duties under the PRI Law.

103. The fact that Ms. Cruz's apartment remained lawful to rent, despite multiple and persistent code violations, is a result of Respondents' failure to perform its duties to pro-actively inspect units for health hazards, enforce building codes and carry out the responsibilities outlined in the PRI law.

104. The fact that Ms. Cruz suffered a retaliatory eviction proceeding after complaining about the conditions is another consequence of Respondents' failure to perform mandatory, non-discretionary duties under the PRI Law, which was designed in part to protect tenants from having to complain about poor housing conditions and potentially face retaliation for their complaints.

105. Moreover, the PRI Law explicitly prohibits retaliation against tenants who take steps to obtain necessary repairs, particularly by landlords who have not obtained certificates of rental compliance. Buffalo Code §§ 264-5, 264-28(E)

106. Enforcement of the PRI Law would ensure that Ms. Cruz and the putative class of individuals living in rental units subject to the PRI Law would be automatically inspected by Respondents, protecting residents from retaliatory evictions or other adverse consequence from complaining about conditions.

107. Enforcement of the PRI Law would also protect Ms. Ring, Ms. Oatmeyer, Ms. Adams, Ms. Cruz, as well as the thousands of other renters in covered units in the City of Buffalo, from suffering violations of their right to a safe and healthful environment under New York State Constitution Article I, Section 19.

Respondents' Failures Also Cause Harm to the Organizational Petitioners

108. Petitioner PPG is a member-based organization consisting of 340 partner groups. Among PPG's member groups are organizations that assist tenants with housing problems. Many of PPG's member groups have been negatively impacted by poor housing conditions in Buffalo.

109. Improved housing quality serves PPG's mission of building a more just, sustainable, and culturally-vibrant community.

110. Respondents' failure to carry out the duties imposed on it by the PRI Law causes PPG to spend time and resources on advocacy, media work, events, and additional communications aimed at getting Respondents to implement the law as required.

111. If Respondents were fulfilling their mandatory duties, this time and resources could be focused on other areas of city, county, and state policy change.

112. PPG has also taken on advocacy on behalf of individuals with housing issues, an activity that falls outside of PPG's normal work on behalf of its member groups, that would otherwise be resolved by the proactive rental inspections required by the PRI Law.

113. Petitioner CELJ is a not-for-profit organization whose mission is to improve the quality of life for older disabled and low-income adults through the provision of free legal services, primarily in Western New York. As part of its work, CELJ represents tenants in eviction proceedings in the City of Buffalo.⁵⁰

114. Many of CELJ's clients live in single and double investor-owned rental properties that are in disrepair and have conditions that are unsafe.⁵¹

⁵⁰ Affirmation of Kevin Quinn at ¶¶ 5-6.

⁵¹ *Id.* at ¶ 7.

115. Because of Respondent's failure to conduct proactive rental inspections as required by the PRI Law, CELJ has been forced to divert considerable time and effort assisting clients with housing violations that would have been repaired or corrected if the units had been inspected.⁵²

116. Because of Respondents' failure to implement the PRI Law, CELJ is forced to turn away clients who are facing housing discrimination or landlord misconduct because so many of its resources are spent representing tenants in retaliatory eviction proceedings.⁵³

117. Petitioner HOME is a not-for-profit organization headquartered in Buffalo, New York whose mission is to promote the value of diversity and ensure that all people have an equal opportunity to live in the housing and communities of their choice.⁵⁴ HOME achieves its mission through education, advocacy, the enforcement of fair housing laws, and the creation of housing opportunities.⁵⁵

118. HOME offers comprehensive support to victims of housing discrimination; records and investigates housing discrimination complaints; educates landlords on their rights and responsibilities; and counsels individuals on their housing rights and options under federal, state, and local laws.⁵⁶

119. HOME frequently receives calls from tenants in the City of Buffalo who are experiencing poor housing conditions, which can lead to significant health and safety risks,

⁵² *Id.* at ¶¶ 10-12.

⁵³ *Id.* at ¶ 12.

⁵⁴ Affirmation of DeAnna Eason at ¶ 2.

⁵⁵ *Id.*

⁵⁶ *Id.*

although dealing with poor housing conditions is not a part of HOME's stated mission.⁵⁷

However, because these issues are very persistent, staff do not turn clients away if they need help in this area.⁵⁸

120. HOME is forced to expend resources that it would otherwise avoid due to Respondents' failure to enforce and implement the PRI Law: staff members must spend significant time helping tenants search for safe, healthy housing because so much of Buffalo's rental housing stock is in poor, unsafe condition; much time is spent discussing tenants' options, calling 311, calling the health department, and calling housing inspectors; and staff are diverted from mission-drive work to negotiate with landlords to make repairs.⁵⁹

121. Petitioner PUSH is a not-for-profit organization based in Buffalo, New York whose mission is to mobilize residents to create strong neighborhoods with quality, affordable housing; to expand local hiring opportunities; and to advance racial, economic, and environmental justice in Buffalo.⁶⁰

122. Among PUSH's members are tenants who reside in single and double-unit rentals in the City of Buffalo.⁶¹

123. Many of PUSH's Buffalo members live in rental properties that have unsafe housing conditions. As a result of Respondents' failure to carry out the duties imposed on it by

⁵⁷ *Id.* at ¶¶ 3, 7.

⁵⁸ *Id.* at ¶ 7.

⁵⁹ *Id.* at ¶¶ 8-10, 12.

⁶⁰ Affirmation of Dawn Wells-Clyburn at ¶ 5.

⁶¹ *Id.* at ¶ 6.

the PRI Law, much of PUSH's resources are diverted to assist tenants with housing issues that would otherwise be resolved by the proactive rental inspections required by the law.⁶²

124. Respondents' failure to implement the PRI Law also frustrates PUSH's mission by preventing the creation of strong neighborhoods with quality, affordable housing and advancing racial, economic, and environmental justice in Buffalo.⁶³

CLASS ACTION ALLEGATIONS

125. The Individual Petitioners bring this Verified Petition and Complaint as a class action pursuant to Article 9 of the CPLR.

126. The Individual Petitioners seek to represent themselves and a putative class of similarly situated individuals consisting of: all individuals who reside or seek to reside in one- or two-family non-owner-occupied rental housing in the City of Buffalo.

127. The class is so numerous that joinder of all members is impracticable since the PRI law applies to more than 36,000 rental units, each of which may house one or more individuals. Moreover, approximately 21,200 children under the age of six reside in the City of Buffalo, most of whom live in rental housing. Every one of them is susceptible to the consequences of an unhealthy living environment and is vulnerable to the harms related to poisoning by lead from flaking and peeling paint.

128. There are questions of law and fact that are common to the class and that predominate over any questions affecting only individual class members, namely whether Respondents' failure to fulfill their mandatory, nondiscretionary duties to inspect and

⁶² *Id.* at ¶¶ 9-12.

⁶³ *Id.* at ¶ 13.

promulgate an application for a certificate of rental compliance as required by the PRI Law violates the putative class members' rights under the Green Amendment.

129. The claims of the Individual Petitioners are typical of the claims of the putative class. The Individual Petitioners' claims are the same as the claims of the putative class members because they arise from Respondents' same failure to fulfill their mandatory, nondiscretionary duties to inspect and promulgate.

130. The Individual Petitioners will fairly and adequately protect the interests of the class. Putative class counsel has had decades of combined experience in complex civil litigation, lead-paint and catastrophic personal injury claims, and class action litigation.

131. A class action is superior to other available means for the fair and efficient adjudication of this controversy and will prevent the imposition of undue financial, administrative, and procedural burdens on the parties and the Court.

132. Due to the complexity of the issues raised by this class action and the scarcity of legal services attorneys available to represent low-income plaintiffs, it is unlikely that a substantial number of individual proceedings would be brought by the members of the proposed class.

133. Class certification will allow review of actions by Respondents affecting the putative class members who would otherwise not be able to seek relief within the statute of limitations period provided by Article 78 of the CPLR.

**CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION**

**Article 78: Mandamus to Compel Pursuant to CPLR 7803(1) for Failure to Comply with
the PRI Law**

134. The Petitioners incorporate by reference the allegations contained in the preceding paragraphs as if set forth fully herein.

135. The PRI Law mandates that Respondent Commissioner shall make an inspection of each rental dwelling unit that is the subject of an application for a license issued pursuant to Chapter 264 of the Buffalo Code to determine whether or not such rental dwelling unit is in substantial compliance with the chapter and all other applicable housing and building codes. Buffalo Code § 264-8(A).

136. Approximately 36,000 rental dwelling units are active on Buffalo’s rental registry.

137. Although these 36,000 rental dwelling units were required to be inspected at least once every three years, since the PRI went into effect in November 2020, only 4,827 units covered by the Law have been inspected.

138. The PRI Law also requires Respondent Commissioner to promulgate a form for an application for a certificate of rental compliance and to process such applications. Buffalo Code § 264-24(A).

139. Respondents have failed to promulgate an application for a certificate of rental compliance as required by the PRI Law.

140. As a result of Respondents’ failure to promulgate an application as mandated by law, as of March 14, 2024, only 458 certificates of rental compliance have been issued.

141. The obligation to conduct rental unit inspections as required by the PRI Law is a nondiscretionary duty.

142. The PRI Law also imposes on Respondents the obligation to promulgate an application for a certificate of rental compliance.

143. By failing to conduct more than 4,827 rental unit inspections and by failing to promulgate an application for a certificate of rental compliance, Respondents have failed to perform ministerial, nondiscretionary duties enjoined upon them by the PRI.

144. Petitioners have been, and continue to be, aggrieved by Respondents' failure to discharge these ministerial duties, and have suffered, and continue to suffer, resultant harm.

SECOND CAUSE OF ACTION

New York State Constitution Article I, Section 19 (the Green Amendment)

145. The Petitioners incorporate by reference the allegations contained in the preceding paragraphs as if set forth fully herein.

146. Section 19 of Article I of the New York Constitution (the "Green Amendment") provides for "environmental rights," and guarantees that "[e]ach person shall have a right to clean air and water, and a healthful environment."

147. The Green Amendment was overwhelmingly passed by a ballot measure in 2021.

148. The Green Amendment recognizes and functions to preserve New Yorkers' constitutional right to clean air, clean water, and a healthful environment. These inherent and inalienable rights reflect the basic societal contract between citizens and the government of New York.

149. The Common Council also had the purpose of protecting tenants from hazardous conditions, including lead exposure, in the interior environment of rental dwellings.

150. Respondents' continuing omission to fulfill the requirements of the PRI Law has created and continues to create toxic interior environments for Petitioners and the putative class

members. Respondents' failure to enforce the PRI Law also allows lead to be released into the soil and air around and within lead-contaminated rental properties, creating a toxic exterior environment.

151. Respondents' failure to perform the non-discretionary duties they assumed by virtue of the enactment of the PRI Law violates the constitutionally protected, affirmative rights of Petitioners and their members to a healthful environment pursuant to the Green Amendment.

152. Through their continuing failure to implement and enforce the PRI Law, Respondents are violating the constitutional rights of the most vulnerable residents of the City.

PRAYER FOR RELIEF

WHEREFORE, Petitioners request this Court enter an order:

- (a) Declaring that Respondents have violated the PRI Law by:
 - a. Failing to inspect all properties covered by the PRI Law;
 - b. Failing to create an application and process for owners of properties subject to the PRI law to apply for and receive a certificate of rental compliance;
 - c. Failing to require owners of properties subject to the PRI law to correct and abate lead-based paint hazards and other housing code violations prior to issuance of a rental registration license and/or certificate of rental compliance;
 - d. Issuing rental registration licenses and/or certificates of compliance to and permitting rental of properties that contain lead-based paint hazards and other housing code violations.

- (b) Declaring that Respondents' failure to implement and to enforce the PRI Law violates the constitutional rights of Petitioners and putative class members to "clean air and water, and a healthful environment" as guaranteed by the New York State Constitution Article I, Section 19;
- (c) Declaring that, subject to Buffalo Code § 264-28(E), no owner who fails to obtain a certificate of compliance may maintain an eviction action for nonpayment of rent in the Housing Part of the Buffalo City Court;
- (d) Ordering Respondents to promulgate an application for a certificate of compliance and an affidavit of compliance within 90 days;
- (e) Ordering Respondents to inspect all properties currently overdue for inspection under the PRI Law within one year and to issue, deny and/or revoke rental registration licenses and/or certificates of compliance within 60 days of inspection;
- (f) Permanently enjoining Respondents to perform all the mandatory, non-discretionary duties outlined in Chapter 264 to accomplish the Law's purpose of ensuring the safety and habitability of all covered rental units, including:
 - a. requiring all non-owner-occupied units to obtain a rental registration license and certificate of rental registration within legally-mandated time frames;
 - b. performing a triannual inspection of each covered unit, including obtaining warrants for entry if necessary to perform the inspection;

- c. issuing or denying rental registration licenses and/or certificates of rental compliance for all covered units within 60 days of inspection;
 - d. where rental registration licenses and/or certificates of rental compliance are denied or revoked, engaging in code enforcement activities to obtain code compliance in a timely manner; and,
 - e. promulgating all necessary documents and processes to achieve legally required outcomes and facilitating enforcement of the Law by coordinating and communicating with Housing Court to prohibit evictions in units that have been denied certificates of rental compliance.
- (g) Permanently enjoining Respondents from issuing rental registration licenses and/or certificates of rental compliance to any unit that fails to meet basic health and habitability standards as required by law;
- (h) Requiring oversight of the requested Relief including mandating regular reporting, establishing timelines and benchmarks, and instituting other processes necessary to ensure accountability;
- (i) Certifying this action and proceeding, pursuant to CPLR Article 9, as a class action, consisting of all individuals who reside or seek to reside in one- or two-family non-owner-occupied rental housing in the City of Buffalo;
- (j) Appointing Petitioners' counsel as counsel for the class;
- (k) Converting, if necessary, the Article 78 proceeding to an action;

- (l) Awarding attorneys' fees, costs, and disbursements in an amount to be determined; and
- (m) Granting such other and further relief as the Court may deem just and proper.

Dated: July 10, 2024

s/John Ned Lipsitz
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VERIFICATION

State of New York)

County of Erie)

Andrea Ó Súilleabháin, as Executive Director of and on behalf of Partnership for the Public Good (PPG), a 501(c)(3) non-profit organization, being duly sworn, deposes and states that PPG is one of the Petitioners in the within proceeding; that she has read the foregoing petition and knows the contents thereof; that the same is true to her own knowledge, except as to matters stated to be alleged on information and belief, and as to those matters, she believes them to be true.

Andrea Ó Súilleabháin

STATE OF NEW YORK)

COUNTY OF ERIE) ss:

On the 10th day of July, 2024, before me personally appeared Andrea Ó Súilleabháin, known to me to be the individual described above, and who has executed the foregoing and duly acknowledged to me that she executed the same.

Amanda S. Jarosz
Notary Public

AMANDA S. JAROSZ
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01JA6370193
Qualified in Erie County
Commission Expires January 29, 2026

VERIFICATION

State of New York)

County of Erie)

Dorothy Oatmeyer, being duly sworn, deposes and states that she is one of the Petitioners in the within proceeding; that she has read the foregoing petition and knows the contents thereof; that the same is true to her own knowledge, except as to matters stated to be alleged on information and belief, and as to those matters, she believes them to be true.



STATE OF NEW YORK)

COUNTY OF ERIE) ss:

On the 10th day of July, 2024, before me personally appeared Dorothy Oatmeyer, known to me to be the individual described above, and who has executed the foregoing and duly acknowledged to me that she executed the same.



Notary Public

**Nathan Feist
Notary Public, State of New York
Reg. No. 01FE0013498
Qualified in Erie County
Commission Expires 09/13/2027**