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February 16, 2017

VIA IZIS

Chairman Anthony Hood
District of Columbia Zoning Commission
441 4th Street NW, Suite 200
Washington, DC 20001

Re: ZC Case No. 14-18A – Mid-City Financial Corporation, Brentwood Associates Limited Partnership, and MCF Brentwood SC, LLC (collectively, the "Applicant") – Response to Request for Party Status of The Brookland Manor/Brentwood Village Residents Association

Dear Chairman Hood and Members of the Commission:

On February 9, 2017, The Brookland Manor/Brentwood Village Residents Association (the "Association") filed a request for party status in opposition to ZC Application No. 14-18A. The Applicant does not object to the Association being granted party status in this case. However, the Applicant does object to the proposed testimony of three of the Association's witnesses, as that proposed testimony is clearly outside of the scope of the Zoning Commission's review of a modification of a First Stage PUD and Second Stage PUD application.

As noted in Subtitle X, § 302.2, the Zoning Commission's review of this Second-Stage PUD application is focused on a detailed site plan review of the project to determine its transportation management and mitigation requirements, final building and landscape design and materials, and compliance with the intent and purpose of the First-Stage Order (ZC Order No. 14-18). The First-Stage Order established the overall development envelope, mixture of uses and unit sizes, the affordable housing requirements, and compatibility with adopted public policies of the District (including the Comprehensive Plan)[1].

[1] The proposed modifications to the First-Stage PUD approval for Block 7 include a reduction in building height, the replacement of the two-over-two units with a multi-family building, and the swapping of the location of the seniors' building and the multi-family building. The proposed modifications are entirely consistent with the overall massing, development envelope, policy objectives, character and appropriateness of the First-Stage Order. The Zoning Commission made extensive findings regarding the First-Stage PUD's consistency with the Comprehensive Plan. See Zoning Commission Order No. 14-18 Findings of Fact ¶¶ 53-62. None of the modifications to the First-Stage PUD proposed as part of this application disturb the Zoning Commission's earlier findings.

The Association's request for Party Status noted that it expects to have 8-10 witnesses testify on their behalf. The Association noted that it expects to present testimony from three attorneys. The names of those attorneys and their proposed testimony is as follows:

- Nooree Lee: Attorney with Covington & Burling LLP. Mr. Lee's testimony will focus on the discriminatory impact caused by the current redevelopment plan which will affect a protected class (families) by effectively eliminating much of the family sized housing. This claim is the basis of a lawsuit filed jointly by the Washington Lawyer's Committee and Covington & Burling LLP.

- Shaina Lamchick Hagen: Attorney with Neighborhood Legal Services. Ms. Hagen's testimony will focus on legal issues associated with current and former Brookland Manor residents as it relates to the overall redevelopment process.

- Catherine Cone: Fair Housing Staff Attorney of the Washington Lawyers' Committee for Civil Rights and Urban Affairs. Ms. Cone will offer testimony regarding the reasons why the District of Columbia's certifications that it is in compliance with the Fair Housing Act and will affirmatively further fair housing made in conjunction with the District's submission of its Consolidated Plan to the United States Department of Housing and Urban Development fall short of the District's obligations. Through the lens of the Brookland Manor redevelopment, Ms. Cone will testify that the Zoning Commission's approval of the currently proposed second-stage Planned Unit Development is an example of an action through which the District is failing to fully address impediments previously identified by the District in its prior Analyses of Impediments (AIs) to Fair Housing Choice. In this case, the District is failing to take actions identified in its AIs by permitting: (1) a drastic reduction or elimination of three-, four-, and five-bedroom units, (2) a loss of affordable housing, and (3) the likely end result that families who are left without housing through the redevelopment will move to racially concentrated neighborhoods, thus perpetuating racial segregation. (See Exhibit 30, p. 4-5).

The proposed testimony of these three lawyers is clearly outside the scope of the Zoning Commission's review of this application pursuant Subtitle X, § 302.2. The proposed testimony of these witnesses is not related to transportation management and mitigation or the final building and landscape materials that are proposed in this application. In regard to the compliance with the intent and purposes of the First-Stage Order, this proposed testimony appears to be an attempt to re-argue the issue of the possible inclusion of four and five bedroom units in the approved First-Stage PUD. Zoning Commission Order No. 14-18 clearly addressed this issue in Findings of Fact Nos. 99-102 and in Conclusion of Law No. 9. Therefore, it is not appropriate for these issues to be re-argued in this application.

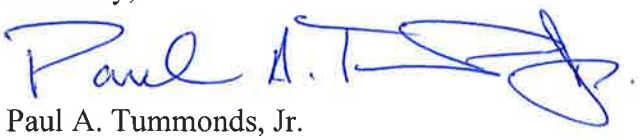
To bolster its request for party status, the Association attached the complaint from the U.S. District Court regarding an alleged Fair Housing Act violation. It offers one of the attorneys in that case, Mr. Lee, as a witness to present testimony in this case. However in the civil case before the U.S. District Court, the plaintiffs stated:

> [t]he Zoning Commission is not a competent body to decide discrimination claims. Indeed the Zoning Commission's governing statute grants it authority only over issues related to city zoning, such as regulation of "the location, height, bulk, number of stories and size of buildings and other structures." (See p. 19 of the Plaintiffs' Reply Memorandum in Support of Their Motion for a Preliminary Injunction, filed in Case No. 16-cv-01723-RC of the United States District Court for the District of Columbia, attached here as Exhibit A.)

Mr. Lee, therefore, has argued in Court that the Zoning Commission is not the appropriate forum for these issues. Furthermore, the U.S. District Court in a memorandum opinion filed on November 21, 2016 (copy attached as Exhibit B), agreed with the plaintiffs' arguments described above and concluded that "[t]here is no indication that the District of Columbia Zoning Commission could be considered a 'competent' court for purposes of reviewing FHA [Fair Housing Act] claims". (see p. 20 of Exhibit B). Therefore, the Applicant and the Association agree that any testimony presented now by the Association that is related to the alleged discrimination claims is clearly outside the scope of the Zoning Commission's review of this application.

The Applicant believes that keeping the scope of the public hearing on February 23, 2017 limited to the issues that are relevant to the Zoning Commission's review of this application will allow for a more efficient and effective public hearing. The Applicant is prepared to address this issue more fully, if needed, as a preliminary matter at the public hearing.

Sincerely,



Paul A. Tummonds, Jr.

David A. Lewis

Enclosures

Certificate of Service

The undersigned hereby certifies that copies of the foregoing document will be delivered by first-class mail or e-mail to the following addresses on February 16, 2017.

Jennifer Steingasser (*via e-mail*)
Office of Planning
1100 4th Street, SW, Suite 650E
Washington, DC 20024

Ryan Westrom (*via e-mail*)
District Department of Transportation
55 M Street, SE, Fourth Floor
Washington, DC 20003

Regina James, ANC 5C05 (*via first-class mail*)
1363 Adams Street, NE
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2413 14th Street NE
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ANC 5C (*via first-class mail*)
PO Box 91902
Washington, DC 20090

ANC 5B (*via first-class mail*)
1920 Irving Street, NE
Washington, DC 20018

Brookland Manor Residents Association (*via e-mail*)
c/o William R. Merrifield, Jr.
Washington Legal Clinic for the Homeless
1200 U Street, NW, Third Floor
Washington, DC 20009

David A. Lewis

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADRIANN BORUM, *et al.*,

*Plaintiff*s,

v.

BRENTWOOD VILLAGE, LLC, *et al.*,

Defendants.

Case No. 1:16-cv-01723-RC

PLAINTIFFS' BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS

September 29, 2016

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INTRODUCTION

Plaintiffs Adriann Borum and Lorretta Holloman, on their own behalf and on behalf of more than one hundred similarly situated families, and organizational plaintiff Organizing Neighborhood Equity in Shaw and the District of Columbia ("ONE DC") hereby oppose Defendants' Motion to Dismiss the Class Action Complaint filed by Brentwood Associates Limited Partnership, Mid-City Financial Corporation ("Mid-City"), and Edgewood Management Corporation.

Plaintiffs bring this lawsuit to seek relief from Defendants' displacement of residents from the Brookland Manor apartment complex as part of their discriminatory redevelopment plan. As detailed in the Complaint, Defendants have embarked upon a plan to tear down the homes of long-standing Brookland Manor residents and replace those homes with a new complex that excludes family-sized apartments. Defendants have already begun relocating families as part of its redevelopment plan, even without the all necessary approvals from the District of Columbia Zoning Commission (the "Zoning Commission"). Families have already been harmed and will continue to be harmed by Defendants' actions.

Defendants seek to dismiss the Complaint on two broad grounds. First, Defendants argue that the Complaint is based on the discriminatory disparate impact on "large families," and that "large families" are not a protected class under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* ("FHA") and the District of Columbia Human Rights Act, D.C. Code § 2-1401 *et seq.* ("DCHRA"). Second, Defendants toss forward a litany of procedural arguments challenging this Court's exercise of jurisdiction over Plaintiffs' claims. Both of these grounds are without merit.

First, Plaintiffs do not, as Defendants wrongly contend, allege a disparate impact on merely "large families," but instead allege that the proposed redevelopment plan has a disparate impact on families as a whole. Defendants' argument that the Complaint is based on alleged

harm only to large families is contradicted by multiple portions of the Complaint. As alleged in the Complaint, Defendants' redevelopment plan calls for the elimination and/or reduction of larger apartments at Brookland Manor. The Complaint alleges detailed facts demonstrating that families as a whole (not just large families) are more than four times as likely to be impacted by the proposed redevelopment as non-families. Compl. ¶¶ 69-79. While it may be true that large families are the ones most negatively impacted, the redevelopment plan's disparate impact on families as a whole vis-à-vis non-families is the basis for the Complaint's disparate impact counts (Counts I and II). Defendants do not and cannot challenge that "families"—as defined in the Complaint—are a protected class under the FHA and DCHRA because these families clearly fall within the FHA's and DCHRA's definition of "familial status," and the Complaint alleges that families are disparately impacted by Defendant's redevelopment plan.

Second, the Complaint is properly before this Court, and the Court's authority and jurisdiction over these claims are beyond doubt. Defendants conjure every conceivable procedural argument, including collateral estoppel, administrative exhaustion, the *Rooker-Feldman* doctrine, the *Younger* abstention doctrine, and organizational standing. The fatal flaws in each of these procedural arguments are detailed in turn below. At a macro-level, Defendants' procedural arguments betray a fundamental misunderstanding of the nature of Plaintiffs' claims under the FHA and DCHRA. Plaintiffs are not bringing a challenge to the order from the Zoning Commission. Instead, Plaintiffs are challenging the actions of Defendants to perpetuate a redevelopment plan that violates the FHA and the DCHRA. The perpetuation of this discriminatory redevelopment plan includes prior and future relocation of Brookland Manor residents.

The Zoning Commission is ***not*** a competent body to adjudicate Plaintiffs' FHA claims, particularly as it has no authority to provide any relief to Plaintiffs for actions taken by Defendants to perpetuate their redevelopment plan. Any appeal of an order by the Zoning Commission to a D.C. state court would have necessarily been limited to review of that order and could not have adjudicated Plaintiffs' FHA claims or have provided appropriate remedies. The FHA provides a federal right of action for Plaintiffs, and this Court is the appropriate forum for resolution of these claims.

For the reasons outlined above and detailed below, Defendants' Motion to Dismiss should be denied in its entirety.[1]

STANDARD OF REVIEW

When reviewing a motion to dismiss under Fed. R. Civ. P. 12(b)(6),[2] the court accepts the facts stated in the complaint to be true. *Badwal v. Bd. of Trustees of Univ. of D.C.*, 139 F. Supp. 3d 295, 307 (D.D.C. 2015) (citing *Macharia v. U.S.*, 334 F.3d 61, 65 (D.C. Cir. 2003)). A court accepts the veracity of well-pleaded factual allegations. *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009)). Allegations are plausible when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Boykin v. Gray*, 895 F. Supp. 2d 199, 208 (D.D.C. 2012); *Badwal*, 139 F. Supp. 3d at

[1] Defendants' Motion to Dismiss never addresses Counts III and IV of Plaintiffs' Complaint, which bring claims for discriminatory statements under the FHA, 42 U.S.C. § 3604(c), and DCHRA, D.C. Code § 2-1402.21(a)(5). Plaintiffs assert that Defendants' failure to raise any argument as to Counts III and IV means that these counts are not properly before the Court on this Motion to Dismiss.

[2] The standard of review is not impacted by Defendants' filing of an Answer. Even if the Court were to treat Defendants' motion under Rule 12(c), the standard is the same. *See Comcast Cable Commc'ns, LLC v. Hourani*, No. 15-CV-1724 (RMC), 2016 WL 2992053, at *3 (D.D.C. May 23, 2016) ("The standard of review on a motion for judgment on the pleadings is virtually identical to the standard for a motion under Rule 12(b)(6)"); *Covad Commc'ns Co. v. Revonet, Inc.*, 250 F.R.D. 14, 18 (D.D.C. 2008) (same).

307. Factual allegations outside of a Complaint, such as in a defendant's answer or a motion for preliminary injunction, are not incorporated at the motion to dismiss stage. *See United States v. Philip Morris Inc*., 116 F. Supp. 2d 131, 135 (D.D.C. 2000) ("At the motion to dismiss stage, the only relevant factual allegations are the plaintiffs', and they must be presumed to be true." (internal quotation marks and citation omitted)).

ARGUMENT

I. Plaintiffs' Disparate Impact Claim is Based on Impact on All Families

Defendants' Motion to Dismiss misinterprets the nature of the disparate impact claim at hand by arguing that the Complaint relies upon disparate impact on a subclass of "large families." To the contrary, the Complaint details factual allegations that the disparate impact is on all families who reside at Brookland Manor.

As detailed in the Complaint, in June 2015, which was the last time that Defendants reported Brookland Manor's demographics, 116 households resided in four- and five-bedroom apartments at Brookland Manor, and an additional 67 households resided in three-bedroom units. Compl. ¶¶ 35, 37. Of the 183 households in units with three- or more bedrooms, 149 households include minor children and qualify as "families" under the FHA and the DCHRA. Compl. ¶¶ 37, 144, 156. According to Defendants' First-Stage PUD application, the redeveloped property would have zero four- or five-bedroom apartment units and only 64 three-bedroom apartment units. Compl. ¶¶ 46-47, 56. Currently, 58.89% (149 of 253) of families live in units with three or more bedrooms while only 14.59% (34 of 233) live in such units. Compl. ¶ 78. As a result, families at Brookland Manor as a whole (and not just large families) are more than four times as likely as non-families to be adversely affected by the proposed redevelopment. Compl. ¶¶ 69-79.

Defendants claim that the redevelopment plan greatly increases the number of housing opportunities overall (1646 new apartments as compared to 535 existing apartments), but

acknowledge that this increase exclusively involves one- and two-bedroom units. Despite the more-than-threefold increase in the overall number of apartments, fewer three bedroom apartments will be available at the redeveloped property, and no four- or five-bedroom apartments will be built. Compl. ¶¶ 46-47, 56. Defendants nonetheless argue that the increased overall density required a finding that no discriminatory impact exists. At its core, Defendants' argument appears to boil down to the assertion that they should be immunized from FHA liability, as a matter of law, because their redevelopment plan only intended to displace certain size families, notwithstanding the fact that its adverse effect is alleged to be class wide. This argument would lead to absurd results, effectively undermining the remedial purpose of the Fair Housing Act. As alleged in the Complaint, even the largest units at the redeveloped property are insufficient for the families that currently reside in three-, four- and five-bedroom units at Brookland Manor, and would be insufficient for a disproportionate number of other families as well. Compl. ¶¶ 50-51. Accordingly, there is at the very least an issue of fact requiring discovery to determine the disparate impact on families versus non-families.

To support their argument that the Complaint improperly focuses on an unprotected subclass, Defendants cite to *Boykin v. Gray*, 986 F. Supp. 2d 14 (D.D.C. 2013). In *Boykin*, a group of homeless men claimed that the District of Columbia's closure of a homeless shelter, as part of a program to transition to permanent supportive housing and away from emergency shelters, created a disparate impact on African Americans and Hispanics in violation of the FHA because 87.2% of men in shelters in the District were African American or Hispanic. *Id.* at 19. The court ruled in favor of the defendant's motion for summary judgment because the plaintiffs failed to proffer any evidence that countered the District's assertion that its program yielded a net increase in the availability of housing for the homeless population. *See id.* at 21. Contrary to the

facts of *Boykin*, the loss of Brookland Manor's three-, four- and five-bedroom units is not a part of a program intended to yield a net increase in the availability of affordable housing for families. The Complaint alleges that affected families at Brookland Manor will not be able to find appropriate housing elsewhere in the community. *See* Compl. ¶¶ 6, 90, 105.

Moreover, *Boykin* is inapplicable to this case because it involved a motion for summary judgment calling for the plaintiffs to provide competent evidence that the defendant's program would not yield a net increase in the availability of housing. *Id.* In contrast, the instant case involves a motion to dismiss, which only requires that the Complaint allege facts that, when accepted as true, state a claim that is plausible on its face. Indeed, the court in *Boykin* specifically ***denied*** a motion to dismiss because the plaintiffs had presented a *prima facie* case of disparate impact, precisely as Plaintiffs have presented here. *See Boykin v. Gray*, 895 F. Supp. 2d 199, 208, 215 (D.D.C. 2012). Defendants' argument is purely a factual dispute inappropriate on a motion to dismiss.

Next, Defendants cite to *Greater New Orleans Fair Housing Action Center v. U.S. Dept. of HUD*, 639 F.3d 1078 (D.C. Cir. 2011) ("*GNOFHAC*") to prop up their argument that the Complaint focuses on a subclass of "large families." In *GNOFHAC*, a group of African American men requested preliminary injunctive relief against the U.S. Department of Housing and Urban Development and the executive director of the Office of Community Development for using a formula that used pre-Katrina house values as a grant ceiling for homeowners affected by hurricanes Katrina and Rita. *Id.* at 1081. Plaintiffs claimed disparate impact on African American homeowners who tended to live in areas with lower property values. *Id.* The court denied preliminary injunctive relief because factual evidence submitted by defendants showed that African American grant recipients on average received larger total awards than white grant

recipients when considering the effects of the formula on Louisiana as a whole rather than on a particular parish. *See id.* at 1086-88. Just as with *Boykin*, Defendants' reliance on *GNOFHAC* is misplaced because the procedural posture was not on a motion to dismiss and instead involved a preliminary injunction, which required the plaintiffs to show a substantial likelihood of success on the merits.[3] *Id.* at 1083.

Moreover, *GNOFHAC* describes in detail what the correct inquiry is for purposes of showing adverse impact on a protected group when presenting a disparate impact claim: "[W]hether the policy in question had a disproportionate impact on the minorities in the total group to which the policy was applied." *Id.* at 1086 (citing *Betsey v. Turtle Creek Assocs.*, 736 F.2d 983, 987 (4th Cir. 1984)). Here, Plaintiffs have properly relied on proportional statistics by demonstrating how Defendants' policy of eliminating and reducing 3, 4, and 5 BR units will adversely affect a larger portion of all families at Brookland Manor as compared to non-families at the same property. In *Betsey*, the court specifically concluded that Plaintiffs' evidence of disparate impact on the minorities residing in "Building Three," to which the "all-adult conversion policy" would have applied, was sufficient, and noted that the effect of the policy on the "rest of the 'local community,' the rest of The Point [the building in which Plaintiffs resided], or even prospective applicants for space in Building Three [was] irrelevant." 736 F.2d at 987. Similarly, here, Plaintiff's disparate impact analysis focuses on the impact Defendants' policy of

[3] In addition, the facts of *GNOFHAC* are substantially different from the case at hand. Overall, the protected class in *GNOFHAC* benefitted from the formula used to determine grant amount. Here, families will not benefit from the further loss or denial of three-, four- and five-bedroom affordable housing in the District of Columbia. As further briefed in their Reply Memorandum in Support of Their Motion for a Preliminary Injunction (filed contemporaneously with this brief), Plaintiffs here readily meet the more stringent "substantial likelihood" test as well.

eliminating four- and five-bedroom units and reducing three-bedroom units has on families currently residing in such units at the property, to whom Defendants' policy applies.

Accordingly, neither *Boykin* nor *GNOFHAC* are applicable, and Plaintiffs have pleaded sufficient facts to claim disparate impact on all families, not just "large families."[4]

II. Plaintiffs Are Entitled to Bring their Federal Right of Action Before this Court

Defendants have conjured up a number of procedural defenses that characterize Plaintiffs' Complaint as an improper collateral attack on the Zoning Commission Order or argue that this Court lacks subject matter jurisdiction. Each of these arguments is fatally flawed and reveals a fundamental misunderstanding of the nature of Plaintiffs' claims and the posture of the case. Plaintiffs have rightfully brought their federal and pendent state civil rights claims before this Court. These claims are brought against a commercial developer and its affiliates, who together are taking and planning to take actions to infringe upon Plaintiffs' fair housing rights. Plaintiffs' civil rights claims are not being addressed in any other proceeding, and contrary to Defendants' arguments, the Zoning Commission has neither the judicial competence nor the authority to rule upon and provide remedies for these claims.

A. Plaintiffs' Failure to Object and/or Appeal the Zoning Commission Order Does Not Bar an FHA Claim Before this Court

Defendants assert that (1) Plaintiffs' failure to object or appeal the Zoning Commission Order precludes Plaintiffs from challenging the redevelopment plan for failure to exhaust administrative remedies and (2) *res judicata* bars Plaintiffs from bringing their discriminatory

[4] Defendants cite to *Fair Housing Advocates Ass'n, Inc. v. City of Richmond Heights, Ohio,* 209 F.3d 626 (6th Cir. 2000) in an attempt to argue that Plaintiffs are not entitled to FHA protection. *Fair Housing Advocates*, however, is inapposite because the plaintiffs in that case expressly claimed that only families of four, as opposed to other families, suffered discriminatory impact. Plaintiffs' have pleaded that Defendants' redevelopment plan has a discriminatory impact on all families. Compl. ¶¶ 69-79.

impact claims due to the Zoning Commission's order. These arguments are flawed because an FHA claim was never before the Zoning Commission, and the Zoning Commission is not competent to adjudicate Plaintiffs' civil rights claims.

Plaintiffs are not challenging the Zoning Commission's approval of Mid-City's stage-one PUD application. Rather, Plaintiffs are challenging the redevelopment plan created, championed, and already being implemented by Defendants. This is not a collateral attack of any kind.[5] It is a direct challenge to Defendants' own actions, which have already resulted and will continue to result in direct harm to families residing at Brookland Manor. The statutorily created remedial scheme to appeal the Zoning Commission Order is simply inapposite to this claim.

1. Plaintiffs' FHA Claim Does Not Require Administrative Exhaustion

The Supreme Court has unequivocally held that a plaintiff may proceed on an FHA claim "directly into federal court, deferring neither to the Secretary of Housing and Urban Development nor to state administrative and judicial processes." *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 125 (1979) (interpreting the right of action found in § 3612, since amended and codified at § 3613); *see also McNeese v. Bd. of Educ. for Cmty. Sch. Dist. 187*, 373 U.S. 668, 672 (1963) (holding that it would defeat the purpose of federal remedial statutes if the "assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court").

[5] Defendants have created from whole cloth their argument that Plaintiffs seek to have the Court "amend that part of the Zoning Order which approves the elimination of four- and five-bedroom apartments." *See* Defs' Mot. to Dismiss at 18. Plaintiffs have never made such a request, and Plaintiffs do not do so here.

Subsequent amendments to the FHA's language reaffirm rather than negate *Gladstone*'s holding. As amended, the FHA provides that an aggrieved party may "commence a civil action in an appropriate United States district court or State court . . . whether or not [an administrative] complaint has been filed under section 3610(a)" of the FHA. 42 U.S.C. § 3613(a)(1)-(2). And courts interpreting this language have recognized that "the purpose of allowing immediate judicial review . . . would be seriously undercut if [federal judicial] actions were conditioned upon prior exhaustion of state administrative remedies." *Huntington Branch, N.A.A.C.P. v. Town of Huntington, N.Y.*, 689 F.2d 391, 393 n.3 (2d Cir. 1982). In short, the D.C. cases cited by Defendants are irrelevant. Federal law provides that Plaintiffs may bring an FHA claim in federal court without first exhausting any available state judicial or administrative remedies. *See Gladstone*, 441 U.S. at 125.[6]

Similarly, as to Plaintiffs' DCHRA claim, the statute disclaims any administrative exhaustion requirement. *See* D.C. Code § 2-1403.16 ("Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of competent jurisdiction . . . unless such a person has [already] filed an administrative complaint"); *Williams v. District of Columbia*, 467 A.2d 140, 142 (D.C. 1983) (holding that the DCHRA does not

[6] *See also Bryant Woods Inn, Inc. v. Howard Cnty., Md.*, 124 F.3d 597, 601 (4th Cir. 1997) ("[Defendant] contends that . . . [plaintiff]'s failure to pursue its statutorily-created right of appeal to the Howard County Board of Appeals . . . makes this claim premature. But the Fair Housing Act provides otherwise. It permits private enforcement of the Fair Housing Act whether or not an administrative complaint has been filed." (alterations and citation omitted)); *Huntington Branch, N.A.A.C.P.*, 689 F.2d at 393 n.3 (holding that state-level administrative remedies need not be exhausted); *Rhodes v. Advanced Property Mgmt., Inc.*, No. 10-cv-826 (JCH), 2011 WL 2076497, at *5 n.5 (D. Conn. May 26, 2011) ("[T]here is no exhaustion requirement for an FHA suit"); *Phoomahal v. Ridgehaven Village*, No. CV 04-2083(SDF)(ARL), 2007 WL 2292741, at *3 n.2 (E.D.N.Y. Aug. 9, 2007) (same); *Oliver v. Foster*, 524 F. Supp. 927, 929-30 (S.D. Tex. 1981) ("Neither the statute itself nor the applicable case law suggest that administrative remedies provided for by the FHA under section 3610 *or by state law* must be exhausted before complainants can seek relief in federal court." (emphasis added)).

impose administrative exhaustion requirements on claims brought by non-government employees). Thus, Plaintiffs have the right to challenge Defendants' discriminatory actions through a judicial proceeding, and this Court is undoubtedly a court of "competent jurisdiction" given this claim's pendent nature. *See* 28 U.S.C. § 1367(a).[7]

The case that Defendants primarily rely upon to argue that exhaustion is required, *Auger v. D.C. Bd. of Appeals & Review*, 477 A.2d 196 (D.C. 1984), is inapposite. *Auger* did not relate to claims brought under the DCHRA, and *Auger*'s extremely limited holding was that the plaintiff had to pursue an administrative appeals process related to the issuance of a permit before bringing a declaratory judgment action because the initial permit revocation procedure did not trigger the "contested case" jurisdiction of D.C. courts. *Id.* at 203, 205-06. Here, Defendants affirmatively state that the Zoning Commission's PUD proceeding is a "contested case," Defs.' Mot. to Dismiss at 20, making judicial review available without administrative exhaustion even if Plaintiffs' claims were construed as an appeal from the Zoning Commission's order, which they are not.

2. The Zoning Commission Has No Competency to Rule on Plaintiffs' Claims

Even if some other administrative proceedings could theoretically be given preclusive effect to later FHA claims, the Zoning Commission's decision should not be given such effect here because the Zoning Commission is not a competent body to decide discrimination claims. Indeed, review of the Zoning Commission's governing statute states that it is granted authority only "to regulate the location, height, bulk, number of stories and size of buildings and other

[7] Insofar as Defendants are attempting to argue that Plaintiffs' action is untimely, this argument fails. Plaintiffs do not appeal from the Zoning Commission's order. Therefore, the thirty-day appeal deadline for the D.C. Court of Appeals, *see* D.C. App. R. 15(a)(2), has no application to this case.

structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density of population, and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, or other purposes." D.C. Code. § 6-641.01; *see also Watergate E. Comm. Against Hotel Conversion to Co-op Apartments v. D.C. Zoning Comm'n*, 953 A.2d 1036, 1043 n.6 (D.C. 2008) (finding that the Zoning Commission's authority is circumscribed to the powers listed in § 6-641.01). Unsurprisingly, the Zoning Commission has no mandate to resolve claims of unlawful discrimination arising under either the FHA or the DCHRA. *See, e.g., Nat'l Fair Hous. Alliance, Inc. v. Prudential Ins. Co. of Am.*, 208 F. Supp. 2d 46, 61 (D.D.C. 2002) (finding that D.C. agencies that regulate the insurance industry lacked competency to adequately address FHA claims about discriminatory lending practices); *Barnes Found. v. Twp. of Lower Merion*, 927 F. Supp. 874, 879 (E.D. Pa. 1996) ("A local zoning proceeding is an insufficient forum to raise federal civil rights claims . . . ."). And, even if the Zoning Commission were to consider the claim, its governing statute does not imbue it with the authority to provide injunctive relief or damages to redress Plaintiffs' harm. *See Randolph-Sheppard Vendors of Am. v. Weinberger*, 795 F.2d 90, 107 (D.C. Cir. 1986) (finding that administrative exhaustion does not apply where the agency could not grant full relief).

3. Issue and Claim Preclusion Do Not Apply

Defendants argue that *res judicata* bars Plaintiffs from bringing their discriminatory impact claims due to the Zoning Commission's order. Again, this argument misconceives the nature of Plaintiffs' claim. Plaintiffs are suing to protect their federally protected right to fair housing opportunities from harm caused directly by Defendants' redevelopment. They are not asserting any claim that was, or could have been, considered by the Zoning Commission in its stage-one PUD proceeding.

Because Defendants never clarify whether they intend to assert an argument under claim or issue preclusion, Plaintiffs address both. First, claim preclusion prohibits a party from bringing a claim that was brought, or could have been brought, in a prior suit that has reached a final judgment and was adjudicated on the merits. *See Capitol Hill Grp. v. Pillsbury, Winthrop, Shaw, Pittman, LLC*, 569 F.3d 485, 490 (D.C. Cir. 2009). Claim preclusion is assessed under a four-factor test, which requires that "there has been prior litigation (1) involving the same claims or cause of action, (2) between the same parties or their privies, and (3) there has been a final, valid judgment on the merits, (4) by a court of competent jurisdiction." *Smalls v. United States*, 471 F.3d 186, 192 (D.C. Cir. 2006).

Issue preclusion is a related, but narrower, doctrine that prohibits "successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment." *See United Student Aid Funds, Inc. v. King*, No. 15-cv-01137 (APM), 2016 WL 4179849, at *7 (D.D.C. Aug. 5, 2016) (quoting *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008)). For issue preclusion to apply, three factors must be met: (1) "the same issue now being raised must have been contested by the parties and submitted for judicial determination in the prior case"; (2) "the issue must have been actually and necessarily determined by a court of competent jurisdiction"; and (3) "preclusion . . . must not work a basic unfairness." *Yamaha Corp. of Am. v. United States*, 961 F.2d 245, 254 (D.C. Cir. 1992). Unlike claim preclusion, issue preclusion does not extend to issues that *could* have been raised. Rather, "the previously resolved issue must be identical to the one presented in the current litigation; similarity between the issues is insufficient." *Jahr v. District of Columbia*, 968 F. Supp. 2d 186, 191 (D.D.C. 2013) (quoting *District of Columbia v. Gould*, 852 A.2d 50, 56 (D.C. 2004)).

Defendants' argument in favor of claim and issue preclusion fails for a number of reasons. As an initial matter, Defendants' reliance on *University of Tenn. v. Elliott*, 478 U.S. 788 (1986), ignores the actual holding of that case, which reasoned that state administrative agency decisions could be given preclusive effect in the absence of an expression of congressional intent to the opposite. *Id.* at 797. Thus, *Elliott* requires consideration of Congress' intent when passing the FHA, and Defendants fail to cite to any case law applying the *Elliott* principle to FHA cases.

The statutory language of the FHA demonstrates that Congress did not intend for administrative agency decisions to be given preclusive effect in the context of FHA cases. The FHA expressly provides a right of action for "[a]n aggrieved person [to] commence a civil action . . . whether or not [an administrative] complaint has been filed . . . *and without regard to the status of any such complaint.*" 42 U.S.C. § 3613(a)(2) (emphasis added). Courts have analyzed this statutory language and held that it "demonstrates that Congress did not intend for administrative determinations . . . whether issued by HUD or certified state agencies, to preclude aggrieved parties from seeking vindication of their rights through civil actions." *United States v. E. River Hous. Corp.*, 90 F. Supp. 3d 118, 146 (S.D.N.Y. 2015); *see also Miller v. Poretsky*, 409 F. Supp. 837, 838-39 (D.D.C. 1976) (reviewing the statutory structure of the FHA and concluding that "it would make little sense to give res judicata effect to [an administrative] proceeding").[8]

As to issue preclusion, even if the Zoning Commission *could* have heard Plaintiffs' discriminatory disparate impact claim, there can also be no doubt that this claim was not actually

[8] Moreover, even if *some* administrative proceedings could be given preclusive effect in later FHA claims, the Zoning Commission's decision should not be given such effect here. As noted above, the Zoning Commission is not a competent body to decide discrimination claims. *See, e.g., Randolph-Sheppard Vendors of Am.*, 795 F.2d at 107.

litigated by the Zoning Commission. The closest Defendants get to any such argument is to assert that the Zoning Commission heard testimony that the redevelopment "was not 'family friendly.'" *See* Defs.' Motion to Dismiss at 21. Of course, a generalized complaint that the redevelopment is not "family friendly" in no way serves to "actually litigate[]" Plaintiffs' discriminatory impact claim. This alone suffices to show that issue preclusion does not apply. *See, e.g.*, *Barnes Found.*, 927 F. Supp. at 880 ("The mere mention of discrimination . . . does not mean that the issue of discrimination was properly brought before the Zoning Hearing Board or that the Board [could] address it").[9]

B. The *Rooker-Feldman* Doctrine Does Not Apply and this Court has Jurisdiction over Plaintiffs' Claims.

Defendants' second procedural argument asserts that the Court lacks subject matter jurisdiction over Plaintiffs' claim under the *Rooker-Feldman* doctrine. This doctrine involves a three factor test: (1) "[t]he party against whom the doctrine is invoked must have actually been a party to the prior state-court judgment"; (2) "the claim raised in the federal suit must have been actually raised or inextricably intertwined with the state-court judgment"; and (3) "the federal claim must not be parallel to the state-court claim." *Bradley v. DeWine*, 55 F. Supp. 3d 31, 41-42 (D.D.C. 2014) (quoting *Lance v. Dennis*, 546 U.S. 459, 462 (2006)).

[9] Although Defendants' argument fails for all the reasons above, it is also worth noting that Plaintiffs are not privies with the Brookland Manor/Brentwood Village Residents Association, which participated before the Zoning Commission. Privity requires that a party be "so identified in interest with a party to former litigation that he represents *precisely* the same legal right in respect to the subject matter involved." *Jefferson Sch. of Social Sci. v. Subversive Activities Control Bd.*, 331 F.2d 76, 83 (D.C. Cir. 1963) (emphasis added). The Residents Association's goal before the Zoning Commission was to represent the sometimes varying interests of all of its members. The Resident Association did not represent a class of families specifically seeking to assert their legal rights to access housing on an equal basis with non-families. Their legal interests are not identical. Defendants' citation to a single case that applies New York law on the issue of privity does not show otherwise.

Even without addressing the three factor test, Defendants' argument is flawed because the *Rooker-Feldman* doctrine is confined to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Hunter v. U.S. Bank Nat. Ass'n*, 698 F. Supp. 2d 94, 99 (D.D.C. 2010), *aff'd*, 407 F. App'x 489 (D.C. Cir. 2011) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283 (2005)). Here, there is no state court involved, and Plaintiffs are challenging an application before the Zoning Commission, a state administrative agency.

Defendants' own Motion to Dismiss brief acknowledges that the "the doctrine has no application to judicial review of executive action, including determinations made by a state administrative agency." *Verizon Md., Inc. v. Public Service Comm'n of Md.*, 535 U.S. 635 (2002); *see also Exxon Mobil Corp.*, 544 U.S. at 284 (holding that the *Rooker-Feldman* doctrine applies only to "state-court losers" challenging "state-court judgments"). Indeed, Defendants have failed to cite to D.C. Circuit case law applying *Rooker-Feldman* to even a remotely similar situation to the case at hand. Moreover, their reliance on *Reiner v. Cal. Dep't of Indus. Relations*, No. CV 12-08649 JST (RZ), 2012 WL 7145706 (C.D. Cal. Dec. 18, 2012), is misplaced. The *Reiner* Court held that *Rooker-Feldman* applied because the claim brought in federal court was "not strictly a challenge to the [agency] rules per se but rather a challenge to subsequent *state court* denials of writs of review." *Id.* at *3 (emphasis added). Similarly, the Ninth Circuit affirmed on the ground that *Rooker-Feldman* applied "[t]o the extent [that] Reiner's claims depended on finding the California Supreme Court's order . . . was invalid." *Reiner v. California*, 612 F. App'x 473, 474 (9th Cir. 2015).

Defendants' *Rooker-Feldman* argument would also fail under the three-factor test articulated by the D.C. Circuit, *see Bradley v. DeWine*, 55 F. Supp. 3d at 41-42, as Plaintiffs were not party to any prior proceeding and there is no parallel state court proceeding.[10]

C. *Younger* Abstention Does Not Apply to a FHA Claim Brought After a Zoning Board Proceeding.

Next in the cavalcade of baseless procedural arguments, Defendants contend that the *Younger* abstention doctrine precludes this Court's review of Plaintiffs' claims. Defendants' *Younger* argument appears vaguely based upon application of the traditional three-prong test for application of *Younger* abstention. *See Ford v. Tait*, 163 F. Supp. 2d 57, 62 (D.D.C. 2001); *see also Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982). Traditionally, each of three factors had to be satisfied in order for this Court to dismiss a case based on *Younger*: "first, a federal court may dismiss a federal claim only when there are ongoing state proceedings that are judicial in nature; second, the state proceedings must implicate important state interests; third, the proceedings must afford adequate opportunity in which to raise the federal claims." *Ford*, 153 F. Supp. 2d at 62 (quoting *Hoai v. Sun Ref. & Mtkg. Co.*, 866 F.2d 1515, 1517 (D.C. Cir. 1989)). Not only are none of these factors met here, but Defendants also completely fail to address the Supreme Court's more recent decision in *Sprint Commcn's, Inc. v. Jacobs*, 134 S. Ct. 584 (2013), which further narrowed the application of *Younger* and the breadth of the three factor test.

Defendants' argument fails under the first factor because there is no ongoing state proceeding that is judicial in nature. Defendants' first-stage PUD proceeding ended prior to commencement of this case. After this case was instituted, Defendants submitted a second-stage

[10] *See supra* note 9, explaining the absence of privity.

application before the Zoning Commission, but that application is not be judicial in nature for purposes of *Younger* abstention because the Supreme Court has held that *Younger* is limited to "exceptional" circumstances. 134 S. Ct. at 588, 591-92, 594.[11] Defendants cite only D.C. state court rulings to support the judicial nature of Zoning Commission proceedings, and naturally state courts rulings necessarily cannot pertain to the standard for federal abstention. The only case in Defendants' brief applying *Younger* to zoning issues, *JMM Corp. v. D.C.*, 378 F.3d 1117 (D.C. Cir. 2004), is a pre-*Sprint* decision, and even before *Sprint* was decided, *JMM Corp.* was inapposite because it related to an on-going state court proceeding directly addressing the issues in the federal suit, as opposed to a state administrative proceeding that cannot address the same claims raised in the federal case. *Id.* at 1126

Under the second factor, Defendants argue that zoning questions are an important state interest that should be protected under *Younger*, and Defendants cite two pre-*Sprint* cases in support of its position. *Sprint* stated unequivocally, however, that *Younger* abstention may apply to "particular state civil proceedings that are akin to criminal prosecutions . . . or that implicate a State's interest in enforcing the orders and judgments of its court." 134 S. Ct. at 586. The Supreme Court rejected attempts to extend the recognizable state interests beyond the criminal and quasi-criminal context. *Id.* ("Divorced from their quasi-criminal context, the three

[11] *See Sprint Commc'ns, Inc.*, 134 S. Ct. at 588 (circumscribing "exceptional" circumstances to three categories: (1) "state criminal prosecutions," (2) "civil enforcement proceedings," and (3) "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial function" (citing *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 367-68 (1989) ("*NOPSI*")). In line with *Sprint*, neither the first nor third exception would apply here given that the instant cases does not involve a state criminal prosecution or touch on a state court's ability to perform its judicial function. *See, e.g.*, *Id.* at 582 (citing cases that involved a civil contempt order or requirement for posting bond (citations omitted)). Moreover, there is no enforcement proceeding at issue of the kind to which *Younger* has been extended—those "akin to a criminal prosecution" in "important respects." *Id.* at 592 (citations and internal quotation marks omitted).

Middlesex conditions would extend *Younger* to virtually all parallel state and federal proceedings, at least where a party could identify a plausibly important state interest."). The state zoning interests here are not recognized under the *Younger* doctrine.

Finally, Defendants entirely fail to address the third *Middlesex* factor, likely because Defendants realize that a Zoning Commission proceeding could never provide the relief requested by Plaintiffs. *See Ford*, 163 F. Supp. 2d at 65 ("The D.C. Circuit applies the *Younger* equitable-restraint doctrine to section 1983 claims only if the state proceeding can provide the full relief prayed for in the federal claims"). The Zoning Commission is not a competent body to adjudicate Plaintiffs civil rights claims. *See supra* at 10-11. Indeed, the Zoning Commission members are not judges or even all lawyers. In addition, the Zoning Commission lacks the power to enjoin Defendants from their ongoing efforts to displace current tenants as well as the authority to award monetary damages sought under the Complaint. *Randolph-Sheppard Vendors of Am.*, 795 F.2d at 107.

Sprint re-affirmed the Supreme Court's earlier holding that "[o]nly exceptional circumstances . . . justify a federal court's refusal to decide a case in deference to the State." 134 S. Ct. at 591 (quoting *NOPSI*, 491 U.S., at 368). None of the exceptional circumstances set out in *Sprint* are present here.

III. This Action Does Not Infringe Upon Mid-City's Right of Access to Administrative Agencies and Courts and There is No Prior Restraint on Speech.

Defendants' Motion to Dismiss improperly characterizes Plaintiffs' request for injunctive relief as a violation of Mid-City's constitutional right of access to administrative agencies and as a prior restraint on speech. In making this argument, Defendants fail to distinguish between preliminary injunctive relief, which is the subject of Plaintiffs' separate motion, and permanent injunctive relief, which would issue only after full adjudication on the merits of a claim. *See*

Compl. at 35 (seeking "any and all injunctive relief that the Court may deem appropriate, including entering a preliminary and permanent injunction").

As to preliminary injunctive relief, Defendants' argument conflates Plaintiffs' Complaint with Plaintiffs' separate Motion for a Preliminary Injunction. As pleaded, Plaintiffs' prayer for relief asks the court to "enjoin[] Defendants' implementation of the currently proposed redevelopment." Compl. at 35. As is to be expected in a pleading, the prayer for relief does ***not*** propose any specific formulation of what the Court's Order granting a preliminary injunction, if found warranted, would look like. It appears that Defendants are actually attempting to dispute the specific form of injunctive relief suggested by Plaintiffs in the Proposed Order appended to their Motion for a Preliminary Injunction, but this is not an issue properly raised in a motion to dismiss. Even if the court were to deny preliminary injunctive relief, that denial has no effect on Plaintiffs' pleadings.[12]

As to permanent injunctive relief, Defendants argument is equally flawed. Permanent injunctive relief would only issue after full adjudication of Plaintiffs' claims on the merits, at which time the Court would formulate an appropriate order to address the violation of law for which Defendants had been found liable. Any argument regarding the potential constitutional implications arising from such a future injunction is premature and provides no basis to strike Plaintiffs' request for injunctive relief from their prayer for relief. Moreover, there is no reason to think that a Court order issued at after a finding of liability would need to enjoin Defendants

[12] In addition, on September 22, 2016, Defendants' filed their second-stage PUD application with the Zoning Commission. As Plaintiffs' make clear in their Reply Memorandum filed in support of their Motion for a Preliminary Injunction, by filing this application Defendants knowingly foreclosed the possibility that an Order could issue enjoining Defendants from filing with the Zoning Commission. Of course, the act of filing with the Zoning Commission was at the heart of Defendants' prior restraint argument. Based on Defendants' application, even if their constitutional argument had been properly raised in this motion, it is now moot.

specifically from making an application to a court or administrative agency. To the contrary, at this stage of the litigation, the Court could simply enjoin Defendants' from further illegal acts. As a matter of law, such an injunction would not constitute a prior restraint on speech. In *Alexander v. United States*, 509 U.S. 544, 551 (1993), the Supreme Court considered a First Amendment challenge to a forfeiture order in a RICO case. The Supreme Court reasoned that seizure of RICO assets was not a prior restraint because

> The constitutional infirmity in nearly all of our prior restraint cases . . . was that the Government had seized or otherwise restrained materials . . . ***without a prior judicial determination that they were in fact [illegal]***. . . . In this case, however, the assets in question were ordered forfeited not because they were believed to be [illegally obtained], but because they were directly related to petitioner's past racketeering violations. . . . The [RICO] statute is oblivious to the expressive or nonexpressive nature of the assets forfeited; books, sports cars, narcotics, and cash are all forfeitable alike under RICO.

Alexander, 509 U.S. at 551; *see also Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 705-06 (1986). After a finding of liability, Defendants could not mask their discriminatory redevelopment plan by calling it "free speech."

Defendants' argument fails for the independent reason that their request to strike Plaintiffs' request for injunctive relief is procedurally improper. Rule 12(b)(6) is a vehicle to challenge the viability of Plaintiffs' claims, not to challenge the propriety of injunctive relief. Specifically, the Complaint includes two claims of discriminatory impact (Counts 1 and 2) and two claims of discriminatory statements (Counts 3 and 4) under federal and parallel state law. There is no count for injunctive relief in the complaint, because an injunction is a remedy, not a cause of action. *Guttenberg v. Emery*, 41 F. Supp. 3d 61, 70 (D.D.C. 2014) ("[A] request that the Court grant a particular form of relief (an injunction) to redress the other claims plaintiffs assert" is not the same as "a separate cause of action or claim"); *see also Johnson v. District of*

Columbia, 49 F. Supp. 3d 115, 117 n.1 (D.D.C. 2014) (same). Defendants have brought a Rule 12(b)(6) motion seeking dismissal for failure to state a claim, and they cannot use that motion to try and strike Plaintiffs' prayer for relief.

IV. ONE DC Has Adequately Alleged Standing to Assert Claims for Itself and on Behalf of Its Members.

Courts have recognized that organizational plaintiffs may demonstrate standing in two ways: standing to assert claims for the organization's own harms (organizational standing) and standing to assert claims on behalf of the organization's members (associational standing). *See Abigail Alliance for Better Access to Developmental Drugs v. Eschenbach*, 469 F.3d 129, 132 (D.C. Cir. 2006). ONE DC has adequately pleaded that it has both organizational and associational standing to assert FHA and DCHRA claims.

With respect to ONE DC's organizational standing, the D.C. Circuit has held that "[a]n organization may assert an injury in fact that arises from a drain on the organization/s resources caused by the defendants' conduct (and the ensuing litigation), if the conduct results in an impairment of the organization's work and constitutes 'far more than simply a setback to the organization's abstract social interests.'" *Nat'l Fair Hous. All., Inc. v. Prudential Ins. Co. of Am.*, 208 F. Supp. 2d 46, 52 (D.D.C. 2002) (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982)) (internal quotations omitted); *see also Spann v. Colonial Village, Inc.*, 899 F.2d 24, 27 (D.C. Cir. 1990). In *Nat'l Fair Housing*, the court held that the Fair Housing Group had sufficiently alleged an injury in fact caused by the defendants' conduct. The plaintiffs had alleged in detail that the organization's counseling and referral services, as well as educational programs, were burdened and harmed by the defendants' discriminatory policies and practices that caused plaintiffs to divert scarce resources away from these activities. 208 F. Supp. 2d at 53.

Defendants assert that Plaintiff ONE DC lacks standing to assert an FHA claim on its own behalf based on misplaced reliance on references to "self-inflicted" injuries by the organization described in *Equal Rights Center v. Post Properties, Inc.*, 633 F.3d 1136 (D.C. Cir. 2011). However, *Post Properties* made clear that the "the district court ***erroneously*** concluded that [Equal Rights Center ("ERC")] could not establish standing because it '*chose* to redirect its resources to investigate Post's allegedly discriminatory practices.'" *Id.* at 1140 (quoting *Equal Rights Ctr. v. Post Properties, Inc.*, 657 F. Supp. 2d 197, 201 (D.D.C. 2009)) (first emphasis added). Contrary to Defendant's argument, the D.C. Circuit was clear that organizational standing does not "depend on the voluntariness or involuntariness of [a plaintiff organization's] expenditures." *Id.*[13] Instead, *Post Properties* ruled that the plaintiff organization lacked standing because the only "actual or imminent" expenses that the organization suffered in relation to the filing of the complaint were investigation and litigation expenses. *Id.* at 1142.

Unlike the plaintiff organization in *Post Properties*, and consistent with the requirements for standing under *Nat'l Fair Housing*, ONE DC has alleged a concrete injury that is actual and imminent outside of any investigation and litigation expenses it has incurred. For example, in response to Defendants' discriminatory conduct perpetrated through and in furtherance of Defendants' redevelopment plan, ONE DC undertook outreach to the Brookland Manor resident community in the form of phone calls, door knocking, canvassing efforts and a series of tenant association and related-tenant focused meetings and gatherings. Compl. ¶ 117. Because of the

[13] *See also Equal Rights Ctr. v. Properties Int'l*, 110 A.3d 599, 605 (D.C. App. Ct. 2015) (citing *Post Properties* for the proposition that the trial court should have inquired into whether the Defendant's discriminatory conduct injured the ERC's interest in promoting fair housing and whether the ERC used its resources to counteract that harm); *id.* (noting additionally that at the pleading stage, the trial court was "obliged to accept the [ERC's] allegations [that it had 'committed scarce resources to counteract [appellees'] discriminatory conduct' as true").

impact of the redevelopment, ONE DC redirected and continues to redirect significant resources to crisis organizing and tenant counseling and development-resistance training efforts. Compl. ¶ 118. ONE DC further allocated resources to meet with other organizations regarding Brookland Manor and participated in various government-related meetings and hearings to raise awareness about the proposed redevelopment. Compl. ¶¶ 119-20. ONE DC's injuries do ***not*** involve investigation and litigation expenses, *see, e.g.*, Compl. ¶¶ 113-19, and the voluntary nature of ONE DC's efforts does not affect its right to sue on behalf of its members, *Post Properties*, 633 F.3d at 1140 (making clear that the choice to divert resources does not defeat standing).

In addition to alleging its own harms, ONE DC has standing to bring housing claims on behalf of its members. To establish standing to bring claims for its members, ONE DC must show that: (1) its members would otherwise have standing to assert their own claims, (2) the interests asserted are related to ONE DC's purpose, and (3) "neither the claim asserted nor the relief requested requires participation of individual members in the law suit." *United Food & Comm. Worker Union Local 751 v. Brown Grp.*, 517 U.S. 544, 553 (1996).

ONE DC has sufficiently pleaded standing because the Complaint alleges each element of this three-part test. First, the Complaint alleges that ONE DC's members "are residents of Brookland Manor," "have minor children," and are suffering a violation of their fair housing rights due to Defendants' redevelopment. *See, e.g.*, Compl. ¶ 109. Second, the Complaint alleges that the protection of Plaintiffs' fair housing rights is germane to ONE DC's mission to "preserve affordable housing, ensure fair housing, and further equitable development in D.C." *See, e.g.*, Compl. ¶ 108. Third, neither the alleged injury or the claimed relief requires individual participation of ONE DC's members.

As to this third element, Defendants attack ONE DC's associational standing by citing to a non-binding, out-of-circuit decision from the District of Minnesota, *Community Stabilization Project v. Cuomo*, 199 F.R.D. 327 (D. Minn. 2001). *Cuomo* held that the plaintiff organization did not have standing because the existence and extent of claimed injury required individualized proof on issues specific to each resident, such as the resident's income, rent charged, and utility rates at the residence. *Id.* at 333. In contrast, a determination of familial status discrimination based on Defendants' redevelopment plan does not depend upon factors specific to each resident. Rather, the claim here can be established through common proof, including statistical analysis of the redevelopment plan's effect on all families at Brookland Manor. *See* Compl. ¶¶ 69-79. The requested relief, similarly, is common to the class, including all class members that are ONE DC members.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant's Motion to Dismiss.

Respectfully submitted,

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Counsel for Plaintiffs Adriann Borum, Lorretta Holloman, ONE DC, and all those similarly situated.

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADRIANN BORUM, *et al.*,	:	
	:	
Plaintiffs,	:	Civil Action No.: 16-1723 (RC)
	:	
v.	:	Re Document Nos.: 3, 16
	:	
BRENTWOOD VILLAGE, LLC, *et al.*,	:	
	:	
Defendants.	:	

MEMORANDUM OPINION

DENYING DEFENDANTS' MOTION TO DISMISS; DENYING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I. INTRODUCTION

At first glance, this case places the Court in the unenviable position of either standing in the way of residential redevelopment or jeopardizing the homes of families who depend on the status quo. Defendants are several companies planning to redevelop their existing apartment complex into a more modern development with many more one- and two-bedroom units. Plaintiffs are a nonprofit organization and two tenants, purporting to represent a class, who contend that Defendants' elimination of many three-, four-, and five-bedroom apartments in the process will disproportionately impact families in violation of the Federal Fair Housing Act and a comparable District of Columbia statute. Plaintiffs seek preliminary injunctive relief on the grounds that they face imminent irreparable harm if Defendants proceed with their redevelopment plan. Defendants counter that any of the alleged injuries would not occur until years down the road. They also move to dismiss on several procedural grounds, and because Plaintiffs "cherry-pick" a narrow demographic—"large families"—from the entirety of the class protected under the FHA—families—and focus only on the destruction of certain apartments and

not the construction of many more. Because Defendants' procedural arguments are flawed and Plaintiffs do not cherry-pick data, the Court will deny the Motion to Dismiss. Because Plaintiffs do not adequately show that the threatened injuries are imminent, the Court will deny the Motion for a Preliminary Injunction.

II. FACTUAL BACKGROUND

A. Complaint[1]

Defendants Brentwood Associates, L.P.,[2] Mid-City Financial Corporation, and Edgewood Management Corporation are owners of an affordable housing development located in Northeast D.C. *See* Compl. ¶ 3, ECF No. 2. They are in the process of redeveloping their deteriorating 75-year-old buildings, in part by increasing the total number of units but decreasing the number of larger-sized apartments. *See* District of Columbia Zoning Commission, Order No. 14-18, Case No. 14-18 at 33 (Mid-City Fin. Corp.) (Sept. 10, 2015), *available at* ECF No. 4-18 [hereinafter *Mid-City Fin. Corp.*, Z.C. Case 14-18];[3] Compl. ¶¶ 4–5. Their redevelopment plan

[1] Because the Court considers different information when analyzing a motion to dismiss than it does with a motion for a preliminary injunction, the relevant facts are divided into two sections.

[2] Per stipulation, Plaintiffs have voluntarily dismissed the case against Defendant Brentwood Village, LLC, because Brentwood Village does not have an ownership interest in the property subject to the suit. *See* Notice of Voluntary Dismissal, ECF No. 12.

[3] With respect to Defendants' Motion to Dismiss, the Court takes judicial notice of the facts in the District of Columbia Zoning Commission proceeding involving Defendants and their proposed redevelopment only to "avoid unnecessary proceedings when an undisputed fact on the public record makes it clear that the plaintiff does not state a claim upon which relief could be granted." *Covad Commc'ns Co. v. Bell Atl. Corp.*, 407 F.3d 1220, 1222 (D.C. Cir. 2005) (internal citation and quotations omitted). The Court takes into account only uncontested facts, and does not "review[] the entire record," which would require conversion of the Motion to Dismiss into a motion for summary judgment. *See Marshall Cty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1228 (D.C. Cir. 1993) (Mikva, C.J., dissenting). Plaintiffs never dispute Defendants' invocation of the Zoning Commission's order as a basis for its factual claims. *See generally* Pls.' Br. in Opp'n to Defs.' Mot. to Dismiss, ECF No. 21 (Plaintiffs even specifically

calls for the elimination of 113 four-bedroom and 21 five-bedroom apartment units. *See* Compl. ¶¶ 32, 46. In light of social, economic, and practical considerations, the D.C. Zoning Commission agreed with Defendants that, like in other developments nationwide, it would not be economical to build four- and five-bedroom units. *See Mid-City Fin. Corp.*, Z.C. Case 14-18, at 52, 56. The plan also calls for the decrease of three-bedroom apartments from 75 to 64 units. Compl. ¶ 47. In all, the redevelopment would decrease the number of three-, four-, and five-bedroom apartments from 209 to 64. *Id.* ¶ 5. It would also displace at least 119 households—the majority of which are families—currently residing at Brookland Manor. *Id.* ¶¶ 50–53, 75. Even the remaining three-bedroom apartments might not be affordable, "further reducing the available housing for larger families." *Id.* ¶ 52. Defendant Mid-City's Vice President Michael Meers testified before the D.C. Zoning Commission that "all residents in good standing shall have the opportunity to return to the redeveloped property . . . [a]nd when relocations do occur[,] ownership will pay for all packing and moving expenses." *Id.* ¶ 54.

Plaintiffs allege that the redevelopment plan would have a disparate impact on families. *See id.* ¶¶ 69–79. Among the 486 occupied units at Brookland Manor, 253 (52%) are occupied by "families" that Plaintiffs claim are within the relevant statutory definitions, which the Complaint defines as "those who have one or more minor children living in the household." *See id.* ¶ 72. Of the 303 one- and two- bedroom apartments, only 104 (34%) are occupied by families, as defined by Plaintiffs. *Id.* ¶ 74. Of the 183 three-, four-, and five-bedroom units, 149 (81%) are occupied by families. *Id.* Taken together, 149 families—comprising 59% of families overall—are at risk of displacement because of the development, compared to only 34 non-

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state that they "are not challenging the Zoning Comission's approval of Mid-City's stage-one PUD application").

families—15% overall. *Id.* ¶ 77. The new development would contain about 1,760 units, including 1,646 apartments. *Id.* ¶¶ 48. There are currently around 535 apartment units at Brookland. *See Mid-City Fin. Corp.*, Z.C. Case 14-18, at 7.

Individual Plaintiffs—Ms. Adriann Borum and Ms. Loretta Holloman—allege that redevelopment would force them out of their homes and subject them to multiple forms of injury. *See* Compl. ¶¶ 80–107. Ms. Borum lives in a four-bedroom apartment unit with her five children, who range in age from 7 to 21. *Id.* ¶¶ 94–95. She and her children depend on the local community for academic, religious, and recreational support. *Id.* ¶¶ 97–101. If the family is involuntarily displaced, "Ms. Borum will have an extremely difficult time finding an adequately[-]sized apartment in D.C. for her family because of the scarcity of affordable housing of her unit type." *Id.* ¶ 105. Ms. Holloman lives with her mother, brother, and three school-aged children in a four-bedroom Brookland Manor apartment. *Id.* ¶¶ 80–81. Her brother and one of her children are both autistic and attend a special-needs programs—one for children and one for adults—in the community. *Id.* ¶ 82–83. She too will have a difficult time finding a replacement apartment for her family, may have to move outside of D.C., and will lose the irreplaceable community on which she and her family depend. *See id.* ¶¶ 82–91.

Individual Plaintiffs bring this case on behalf of themselves and "all others similarly situated" including "[a]ll households who reside or have resided at Brookland Manor in a three-, four-, or five-bedroom unit with one or more minor child," and who have either been displaced or are at risk of being displaced by Defendants' proposed redevelopment project. *See id.* ¶ 122. Plaintiffs allege that at least 149 families are in the Proposed Class, and that the redevelopment will have "the same impact on all class members." *Id.* ¶¶ 125–27. According to Plaintiffs, all members of the Proposed Class are interested in the case because the redevelopment project

significantly decreases the amount of available housing suitable for families, would have a disparate impact on families, and may have been motivated by a discriminatory purpose. *See id.* ¶ 127. Moreover, Plaintiffs argue, a single injunction would afford the primary relief that members of the Proposed Class seek. *Id.* ¶ 137.

The final Plaintiff, community organization ONE DC, is "comprised of members who include tenants of affordable housing properties that are seeking to avoid displacement, preserve affordable housing, ensure fair housing, and further equitable development in D.C." *Id.* ¶ 108. ONE DC seeks this injunction "on its own behalf and as a representatives of its members, including members who are residents of Brookland Manor and have minor children." *Id.* ¶ 109. It further asserts that Defendants' conduct has directly "damaged ONE DC by frustrating its mission of creating and preserving racial and economic equity in D.C. for all and by causing ONE DC to divert scarce organizational resources," particularly given that the organization has only two fulltime staff members. *See id.* ¶¶ 111–12. As a result of Defendants' actions, ONE DC diverted its resources from its mission to "crisis organizing" through "identifying, investigating, and combating Defendants' discriminatory policies and practices, and to counseling, organizing, and reassuring tenants who have been forcibly moved or have feared imminent displacement under Defendants' proposed redevelopment plan." *Id.* ¶ 113, 118. For example, after hearing about the proposed redevelopment, ONE DC organized a series of "Outreach Days." *Id.* ¶¶ 114–16. In all, ONE DC alleges that, as of July 28, 2016, it had spent 640 staff-hours on "combat[ing] Defendants' discriminatory conduct." *Id.* ¶ 121.

To implement their redevelopment, Defendants have petitioned the D.C. Zoning Commission through the "planned unit development (PUD) process." *See id.* ¶ 43; D.C. Mun. Regs. tit. 11-X, § 300. In October, 2014, Defendants submitted an application for a First-Stage

PUD and Related Zoning Map Amendment ("First-Stage PUD") with the D.C. Zoning Commission. Compl. ¶ 44; *see generally* D.C. Mun. Regs. tit. 11-X, § 302. The Zoning Commission approved the First-Stage PUD application in June, 2015, and its order became final on November 6, 2015. Compl. ¶ 56. Now, Defendants have filed a Second-Stage PUD application, the approval of which would allow Defendants to begin redevelopment and destruction of Plaintiffs' apartments. *See* Pl. Reply Mem. in Supp. of Mot. for Prelim. Inj., at 17–18, ECF No. 20; Compl. ¶ 57.

During the course of the redevelopment process, Defendants made comments that Plaintiffs allege are discriminatory. *See* Compl. ¶ 59. In a December 2014 letter to the Brookland Manor Residents Association, Defendant Mid-City stated that four- and five-bedroom apartments are "not an ideal housing type for larger families and there are adverse impacts on the remainder of the community." *Id.* ¶ 61. The following month, Mid-City said that there would not be four- or five-bedroom units because they are "not consistent with the creation of a vibrant new community." *Id.* ¶ 62. Then, in an April 2015 hearing in front of the Zoning Commission, Defendant Mid-City, representing Brentwood Village, said that "[c]ommunities and organizations throughout the country are in agreement that housing very large families in apartment complexes is significantly impactful upon the quality of life of households as well as their surrounding neighbors. Therefore, [Defendants do] not propose to construct four or five bedroom units in the project." *Id.* ¶ 60.

Plaintiffs now allege that Defendants violated the Federal Fair Housing Act ("FHA") by undertaking the redevelopment project that will disproportionately reduce the amount of apartments available for families, which they allege constitutes discrimination on the basis of familial status. *See id.* ¶¶ 140–50. Plaintiffs further allege that Defendants violated the District

of Columbia Human Rights Act ("DCHRA") on similar grounds. *See id.* ¶¶ 151–62. Plaintiffs make separate claims under both statutes alleging discriminatory statements, because of Defendants' statements suggesting that housing for large families is incompatible with the community they seek to create. *See id.* ¶¶ 163–78. Defendants do not aim the Motion to Dismiss at Plaintiffs' claims about these alleged statements.

Plaintiffs' Complaint seeks certification of a class, a judgment declaring that the proposed plan's decrease of the number of units available for certain families violates the FHA and DCHRA, "any and all injunctive relief that the Court may deem appropriate," compensatory and punitive damages, and attorneys' fees. *See* Prayer for Relief, Compl. at 35–36.

B. Motion for a Preliminary Injunction

In addition to the above allegations, Plaintiffs and Defendants each put forward evidence for consideration of Plaintiffs' Motion for a Preliminary Injunction.

1. Plaintiffs' Evidence

Plaintiffs put forth evidence that they argue shows that Plaintiffs face threats of injury if the redevelopment project proceeds. They submit a statement from Defendants to the Zoning Commission confirming the numerical allegations in the Complaint. *See* Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 12, ECF No. 4-13. To digest the redevelopment plan in numerical terms, they also submit the declaration of a social-statistician, Dr. Andrew Beveridge. *See* Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 1 ("Beveridge Decl."), ¶ 9, ECF No. 4-2. Based on his analysis of the redevelopment plans, he states that "families would be more than four times as likely as non-families to be adversely affected by the planned redevelopment because 58.9[%] of the families at Brookland Manor live in three-, four-, or five-bedroom units . . . [and] [i]n contrast, only 14.6[%] of non-families live in such . . . units." *See id.* ¶ 9. Dr. Beveridge further

asserts that families will face difficulty finding new housing, or, for the few families that might be able to remain at Brookland, overcrowding. *See id.* ¶¶ 10–11.

Individual Plaintiffs assert specific injuries that they will suffer if Defendants carry out the redevelopment. Ms. Holloman claims in a declaration that she and her family will "suffer displacement," and leave her along with her "aging mother, brother with special needs, and three minor children with nowhere to go." *See* Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 5 ("Holloman Decl."), ¶ 9(a), ECF No. 4-6. She predicates this assertion on her "strong[] belie[f] that [she] will be unable to find housing that will accommodate [her] family's size and special needs" within the community and at an affordable price. *See id.* ¶ 9(a)(i). She specifically worries that her mother will be unable to continue her "essential" career training classes, her brother will lose his "essential" special-needs program, her autistic son will lose his "crucial" special needs classes, her other children will lose their local schooling, and the whole family will lose its community connections. *See id.* ¶¶ 9(a)(i)–(vi). Ultimately, she is "concerned that [her] family could be forcibly broken up," leaving her separated from her children. *See id.* ¶ 9(b). In addition to the toll moving would take on her family, she claims she will suffer her own emotional distress. *See id.* ¶ 9(e). Ms. Borum similarly asserts that without a four-bedroom unit she and her family cannot reside at Brookland, putting her family at risk of displacement or fragmentation. *See* Pl.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 4, ¶ 9(a), ECF No. 4-5. She claims that she personally is "aware of" other families who have "been asked to leave the property" or been "broken up." *See id.* ¶ 8. Like Ms. Holloman, Ms. Borum believes the redevelopment would make it impossible for her and her family to remain in the community. *See id.* ¶ 9(a).

To bolster their claims that Defendants' redevelopment will displace or break apart families, Plaintiffs submit second-hand declarations of people who claim they know of other families who have been forced to relocate. *See id.* ¶ 8; Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 9 ("McFadden Decl."), ¶ 6, ECF No. 4-10 (declaration of tenant Reginald McFadden, wherein he asserts that he is "aware of other families who have already had to transfer to another unit . . . , had their families broken up into smaller units, or been asked to leave"); Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 10 ("Scott Decl."), ¶ 6, ECF No. 4-11 (declaration of tenant Valarie Scott asserting the same); Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 8 ("Jenkins Decl."), ¶ 6, ECF No. 4-9 (declaration of tenant Javon Jenkins asserting the same). Although Plaintiffs acknowledge that Defendants will allow families the right to return to Brookland, *see* Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 15, at 3, ECF No. 4-16, they argue that families cannot do so without larger apartments, which are scarce in the District of Columbia, *see* Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 2 ("Merrifield Decl."), ¶ 27, ECF No. 4-3. Plaintiffs assert that families who rely on Section 8 vouchers to subsidize their rent payments will be particularly affected by redevelopment, because units available to lower-earning households are even scarcer than they are for the general population. *See* Merrifield Decl., ¶¶ 18, 32–34.

Plaintiffs also produce evidence that they argue shows that the threatened injuries against Plaintiffs are imminent, if not occurring already. *See* Pls.' Mem. in Supp. of Mot. for Prelim. Inj., at 26, ECF No. 4. As noted above, several tenants argue that they know of families who have been forcibly moved or separated by Defendants. More broadly, Plaintiffs argue that "Defendants will soon receive final approval of their proposed redevelopment." *See id.* at 13. The D.C. Zoning Commission gave first-stage PUD approval to Defendants' redevelopment plan, and Defendants submitted an application for second-stage PUD approval weeks before it

was due. *See* Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 17, ECF No. 4-18 (D.C. Zoning Commission approval); Pls.' Reply Mem. in Supp. of Mot. for Prelim. Inj. Ex. 2, ECF No. 20-2 (Defendants' stage-two application, dated September 20, 2016); Defs.' Mem. in Supp. of Mot. to Dismiss, at 9, ECF No. 16-1 (noting that Defendants were required to submit a stage-two application by November 6, 2016). Plaintiffs argue that Defendants' early submission of the stage-two application shows just how quickly they intend to implement the redevelopment. *See* Pls.' Reply Mem. in Supp. of Mot. for Prelim. Inj., at 12. With Defendants' submission of another application for stage-two approval, the Zoning Commission can immediately consider the proposal, and if the Commission gives approval, Defendants may begin redeveloping immediately thereafter. *See* D.C. Mun. Regs. tit. 11-Z, § 702. At that point, Plaintiffs argue, there will be no way to stop Defendants from inflicting irreparable injuries upon Plaintiffs. *See* Pls.' Mem. in Supp. of Mot. for Prelim. Inj., at 14. Plaintiffs further argue that a recent filing with the Zoning Commission shows that the first phase of redevelopment will affect a building that is made up almost entirely of three- and four-bedroom units. *See* Pls.' Reply Mem. in Supp. of Mot. for Prelim. Inj. Ex. 3, at 1, ECF No. 20-3.

To show that Defendants do not want "large families to reside on their property," *see* Pls.' Mem. in Supp. of Mot. for Prelim. Inj., at 15, Plaintiffs put forth statements made by Defendants in connection with the redevelopment project. *See* Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 12, at 6; Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 18, at 8, ECF No. 4-19. In a submission to the Zoning Commission, Defendants stated that "housing very large families in apartment communities is significantly impactful upon the quality of life of households as well as their surrounding neighbors." *See* Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 12, at 6. Then, in response to a question from tenants, Defendants stated that they would "not build any

new [four-bedroom] or [five-bedroom] apartment flats as our practical experience has demonstrated that it is not an ideal housing type for larger families and there are adverse impacts on the remainder of the community." *See* Pls.' Mem. in Supp. of Mot. for Prelim. Inj. Ex. 18, at 8.

2. Defendants' Evidence

Defendants produce evidence telling a different story. According to Michael S. Meers, Executive Vice President of Defendant Mid-City Financial Corporation, the redevelopment is an innocuous response to two principal concerns. *See* Defs.' Opp'n to Pls.' Mot. for Prelim. Inj. Ex. 1 ("Meers Aff."), ¶ 1, ECF No. 18-1. First, "[t]he existing buildings are now 75 years old and are functionally obsolete with all of the major systems requiring replacement," with the property last having been renovated over 40 years ago. *Id.* ¶ 6. The District of Columbia Office of Planning concurred with Defendants that "the buildings and the infrastructure [of Brookland] are not optimally functional." *See Mid-City Fin. Corp.*, Z.C. Case 14-18, at 64. Second, "the urban design of the original community and buildings . . . has resulted in the property not being as safe" as it could be because of crime. Meers Aff. ¶ 7. Mr. Meers attributes the "ongoing crime problems" to the street configuration's lack of conduciveness to "efficient pedestrian and vehicular access through the subject property," resulting in a kind of isolation from the surrounding community. *See id.* In addition, Defendants plan to provide many more homes for all—regardless of familial status—by expanding the existing 535 apartment units to 1,760 total units, including 1,646 apartments. *See id.* ¶ 8, 10. The Zoning Commission agreed with Defendants that including larger units would be impractical. *See Mid-City Fin. Corp.*, Z.C. Case 14-18, at 52, 56. As for the families who claim to require larger units, Defendants indirectly invoke a study purportedly showing that several Brookland tenants currently reside in apartments

that are too big for their respective occupants, based on "the HUD guidelines of two persons per bedroom," so that only "13 exiting households would require four bedrooms and no household would require five bedrooms." *See Mid-City Fin. Corp.*, Z.C. Case 14-18, at 38. The Zoning Commission favorably cited the D.C. Office of Planning as having considered this information prior to stage-one PUD approval, *see id.* at 35–38, but neither the HUD guidelines nor the study are themselves in the record. The Office of Planning also found that Defendant planned to maintain "[t]he building with the larger units . . . until the later phases at which time they can be 'right sized' to accommodate larger families." *See id.* at 38.

Defendants emphasize that any displacement of tenants would not occur until years down the road, during later phases of the redevelopment project. *See* Defs.' Opp'n to Pls.' Mot. for Prelim. Inj., at 6, ECF No. 18. Defendants plan to implement the redevelopment project in three phases. *See id*. During "Phase One" in late 2017, three of the current 19 buildings that constitute Brookland Manor will be replaced by 28 for-sale units and 200 senior-citizen units. *See* Meers Aff. ¶ 17. These buildings are called "Block 7." *See Mid-City Fin. Corp.*, Z.C. Case 14-18, at 50. All residents in those three buildings will be "relocated at ownership expense to an appropriate apartment home on the property." *Id.* Some tenants have been moved, but "[n]o tenant in [the three affected buildings] has been forced to move outside the development as a result of any failure to accommodate that tenant elsewhere in the development." *See* Meers Aff. ¶ 17. Because Defendants would need the units created by Phase One to relocate tenants, Phase Two and Phase Three will not begin until 2019. *See Mid-City Fin. Corp.*, Z.C. Case 14-18, at 50. Individual Plaintiffs would not need to vacate during Phase One. Defendants do not anticipate forcing Ms. Borum to relocate until "at least 2020" or forcing Ms. Holloman to relocate "until 2023." Meers Aff. ¶¶ 18–19 (also declaring that any communication concerning

relocation "will not happen until the year 2020 at the earliest for Plaintiff Borum, and the year 2023 at the earliest for Plaintiff Holloman"). The record does not show that any of the affiants that Plaintiffs cite in their motion, *see* Pls.' Mem. in Supp. of Mot. for Prelim. Inj., at 10, will be required to move away from Brookland as a result of the redevelopment until after Phase One. *See generally* Meers Aff.; Defs.' Opp'n to Pls.' Mot. for Prelim. Inj. Ex. 2 ("Sanquist Aff."), ¶ 6, ECF No. 18-2.

If a preliminary injunction were to be granted, Defendants argue, they would be severely harmed. "Based on the Zoning Commission's approval, Mid-City has subsequently expended significant capital on architecture, landscaping, engineering, legal services[,] and financing opportunities in anticipation of . . . construction phasing outlined in the approved PUD." Meers Aff. ¶ 23. Not only will this mean that Defendants "would suffer enormous financial harm," but it might mean that they would be unable to build the additional units and "be forced to re-evaluate the commitment to voluntarily retain the Section 8 contract that assists 373 very-low income families in the District of Columbia." *Id.* ¶ 24. In fact, "[i]n the case of delay, Mid-City could be forced to leave the aging property 'as is' and convert the existing units to true unrestricted market rate units." *Id.*

III. ANALYSIS

Plaintiffs move for a preliminary injunction. In the Motion for a Preliminary Injunction, Plaintiffs move for the Court to enjoin Defendants from submitting a second-stage PUD application. *See* Pls.' Mot. for Prelim. Inj., ECF No. 3. In the Complaint, Plaintiffs request "any and all injunctive relief that the Court may deem appropriate, including entering a preliminary . . . injunction ordering Defendants to . . . cease violating" Plaintiffs' rights under the Federal Fair Housing Act and District of Columbia Human Rights Act. *See* Prayer for Relief, Compl. at 35–

36. After Plaintiffs filed their Complaint and Motion for a Preliminary Injunction, Defendants submitted a second-stage PUD application, *see* Pls.' Reply Mem. in Supp. of Mot. for Prelim. Inj. Ex. 2, making the specific request in Plaintiffs' Motion for a Preliminary Injunction moot. Nonetheless, the Court considers Plaintiffs' request for an appropriate preliminary injunction to remedy their injuries.[4]

Using a theory of disparate impact, Plaintiffs argue that the redevelopment plan "will effectively eliminate housing for the majority of large families at the Brookland Manor property," and that without a preliminary injunction, "it is almost certain that the nearly 150 families now resident at Brookland Manor will lose their housing during the pendency of this litigation." *See* Pls.' Mot. for Prelim. Inj., at 1. Defendants oppose a preliminary injunction, arguing that the alleged injuries are not imminent, Plaintiffs are unlikely to be successful on the merits, and that preliminarily enjoining the redevelopment would significantly harm Defendants and the public.[5] *See generally* Defs.' Opp'n to Pls.' Mot. for Prelim. Inj.

Defendants move to dismiss on a number of grounds. They advance four procedural arguments: first, that Plaintiffs did not exhaust their administrative remedies through the zoning

[4] In their Reply Memorandum, Plaintiffs assert that they "now modify the requested form of relief and seek to enjoin Defendants from taking any action towards residents meant to effectuate their challenged redevelopment plan, including relocating tenants on or off the property, evicting, moving, or otherwise bringing about the cessation of tenancy in preparation for . . . redevelopment." Pls.' Reply Mem. in Supp. of Mot. for Prelim. Inj., at 18, ECF No. 20. Plaintiffs did not move to amend their request for a preliminary injunction. However, because these are possible "appropriate" forms of a preliminary injunction meant to preserve Plaintiffs' rights, the Court will consider them with respect to any preliminary injunction it might issue.

[5] Defendants previously argued that Plaintiffs' proposed injunction preventing the filing of a second-stage PUD application would have violated the United States Constitution because it would block access to the Zoning Commission and constitute a prior restraint. *See* Defs.' Opp'n to Pls.' Mot. for Prelim. Inj., at 11–13. As Plaintiffs acknowledge, because Defendants already submitted their application, the Court is unable to impose such an injunction, making the argument moot. *See* Pls.' Reply Mem. in Supp. of Mot. for Prelim. Inj., at 17–18.

process, so principles of "'*res judicata*' and/or collateral estoppel" preclude relief; second, that the Court does not have jurisdiction under the *Rooker–Feldman* doctrine, because review would constitute an appeal of a state-administrative proceeding; third, that the Court should dismiss on *Younger* abstention grounds, because the case involves important D.C. matters; and fourth, that ONE DC lacks standing. *See* Defs.' Mem. in Supp. of Mot. to Dismiss, at 9–10. In the substantive realm, Defendants move to dismiss on the grounds that Plaintiffs impermissibly cherry-pick the scope of both the protected class and alleged discriminatory action.

The Court will first address Defendants' Motion to Dismiss, then move to Plaintiffs' Motion for a Preliminary Injunction.

A. Defendant's Motion to Dismiss

Defendants' arguments concerning exhaustion, *Younger* abstention, and Plaintiffs' data interpretation are non-jurisdictional in nature and ask the Court to determine whether Plaintiffs' complaint states a cognizable claim. *See William Penn Apartments v. D.C. Court of Appeals*, 39 F. Supp. 3d 11, 19 (D.D.C. 2014) (analyzing *Younger* abstention in the context of a 12(b)(6) motion instead of a 12(b)(1) motion); *Johnson v. District of Columbia*, 368 F. Supp. 2d 30, 36 (D.D.C. 2005), *aff'd*, 552 F.3d 806 (D.C. Cir. 2008) (noting that "in cases where state courts properly treat a state administrative exhaustion requirement as a matter of subject matter jurisdiction . . . similar jurisdictional status for that state-law exhaustion requirement in federal courts will not be theoretically justified"). To survive such a motion a complaint must contain sufficient factual allegations that, if accepted as true, would state a plausible claim to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* Instead, plaintiffs must "nudge[] their claims across the line from conceivable to plausible." *See Bell Atl. Corp. v.*

Twombly, 550 U.S. 544, 570 (2007). "In evaluating a Rule 12(b)(6) motion to dismiss, a court may consider the facts alleged in the complaint, documents attached as exhibits or incorporated by reference in the complaint, or documents upon which the plaintiff's complaint necessarily relies even if the document is produced not by the parties." *Busby v. Capital One, N.A.*, 932 F. Supp. 2d 114, 133–34 (D.D.C. 2013) (internal citations and quotations omitted).

In contrast, Defendants' *Rooker–Feldman* and standing arguments concern whether the Court has subject-matter jurisdiction over the case at all. *See Bradley v. DeWine*, 55 F. Supp. 3d 31, 41 (D.D.C. 2014) (Rooker–Feldman doctrine); *Cheeks v. Fort Myer Const. Co.*, 722 F. Supp. 2d 93, 108 (D.D.C. 2010) (standing). Federal courts are courts of limited jurisdiction, and the law presumes that "a cause lies outside this limited jurisdiction." *Rasul v. Bush*, 542 U.S. 466, 489 (2004) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)); *see also Gen. Motors Corp. v. EPA*, 363 F.3d 442, 448 (D.C. Cir. 2004) ("As a court of limited jurisdiction, we begin, and end, with an examination of our jurisdiction."). Thus, it is the plaintiff's burden to establish that the Court has subject-matter jurisdiction. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). When considering whether it has jurisdiction, a court must accept "the allegations of the complaint as true." *Banneker Ventures, LLC v. Graham*, 798 F.3d 1119, 1129 (D.C. Cir. 2015) (citing *Herbert v. Nat'l Acad. of Scis.*, 974 F.2d 192, 197 (D.C. Cir. 1992)).

The Court will analyze Defendants' Motion to Dismiss using these standards, beginning first with Defendants' procedural arguments before moving to their argument that Plaintiffs do not state a cognizable claim.

1. Exhaustion

Defendants argue that because Plaintiffs knew about the Zoning Commission proceedings but did not choose to challenge the proposed redevelopment, both their FHA and DCHRA claims are barred by the doctrines of exhaustion and preclusion. *See* Defs.' Mem. in Supp. of Mot. to Dismiss, at 18–19. The Court will address Defendants' argument starting with an analysis of the FHA before moving to the DCHRA.

a. Fair Housing Act

Although Defendants do not bifurcate their analysis of exhaustion, the Court will begin with federal law. In support of their exhaustion argument, Defendants invoke *Auger v. D.C. Board of Appeals & Review*, a District of Columbia Court of Appeals case, where the plaintiff sought review "of his administrative appeal from the District of Columbia's imminent enforcement of an order revoking his permit for a neon sign atop his hotel" and a preliminary injunction prohibiting authorities from removing the sign. *See* 477 A.2d 196, 199 (D.C. 1984). In *Auger*, the plaintiff did not administratively appeal his case, despite notice and an opportunity to do so. *See id.* at 206. As a result of the plaintiff's failure to exhaust, the District of Columbia courts did not have jurisdiction over the action. *See id.* at 207. Defendants further note that parties alleging injury from a Zoning Commission order can appeal their case to the D.C. Court of Appeals. *See D.C. Library Renaissance Project/W. End Library Advisory Grp. v. D.C. Zoning Comm'n*, 73 A.3d 107, 119 (D.C. 2013); *see also York Apartments Tenants Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1079, 1081 (D.C. 2004).

Under 42 U.S.C. § 3613(a)(1)(A), "[a]n aggrieved person may commence a civil action in a[] . . . court . . . to obtain appropriate relief with respect to . . . [a] discriminatory housing practice or breach." Thus, a plaintiff filing under § 3613 "may proceed directly into federal

court, deferring neither to the Secretary of Housing and Urban Development nor to state administrative and judicial processes." *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 125 (1979). Congress "carefully chose[] language" allowing immediate judicial recourse to individuals "directly victimized by a discriminatory housing practice." *Id.* at 125–26. The fact that Plaintiffs had District of Columbia administrative remedies available is irrelevant. As Plaintiffs argue, to require individuals seeking relief from an imminent violation of their federal rights to proceed through state-level administrative or judicial avenues would defeat the purpose—as evinced from the "carefully chosen language" of the statute—of the remedy that Congress provided. *See id.* at 125. The FHA "would be seriously undercut if Section 812 actions were conditioned upon prior exhaustion of state administrative remedies." *Huntington Branch, N.A.A.C.P. v. Town of Huntington, N.Y.*, 689 F.2d 391, 393 n.3 (2d Cir. 1982) (analyzing state-level administrative zoning remedies). Defendants cite cases analyzing the processes governing appeals of unfavorable District of Columbia zoning restrictions generally—but not in the context of the violation of federal rights. *See Auger*, 477 A.2d at 200 (appeal of the denial of a permit to place a neon sign atop the plaintiff's hotel); *Capitol Hill Restoration Soc. v. Zoning Comm'n*, 287 A.2d 101, 102 (D.C. 1972) (appeal of a zoning application to build an office building); *C. Library Renaissance Project/W. End Library Advisory Grp.*, 73 A.3d at 111 (appealing "certain zoning requirements"); *York Apartments Tenants Ass'n*, 856 A.2d at 1081 (appealing an application to modify a PUD on procedural grounds). Because Plaintiffs seek relief from alleged discrimination, Defendants' cases are inapposite and Plaintiffs' FHA claims are not barred for failure to exhaust.

Throughout their argument on exhaustion, Defendants invoke concepts of claim preclusion and issue preclusion, so the Court will address them separately. Defendants argue

that "Plaintiffs' [indirect] challenge . . . to the Zoning Order is barred by jurisprudence on the preclusive effect of state administrative agency orders on later-filed [f]ederal claims involving matters decided in agency adjudicative proceedings." *See* Defs.' Mem. in Supp. of Mot. to Dismiss, at 24. Defendants cite to *Univ. of Tennessee v. Elliott*, a case in which the Supreme Court reasoned that it saw "no reason to suppose that Congress, in enacting the Reconstruction civil rights statutes, wished to foreclose the adaptation of traditional principles of preclusion to such subsequent developments as the burgeoning use of administrative adjudication in the 20th century." *See* 478 U.S. 788, 797 (1986). Even putting aside the technical requirements of claim and issue preclusion, *Elliott* is not controlling here. Unlike in that case, where there was "no reason to suppose that Congress" intended to foreclose preclusion, as noted above, Congress "carefully chose[]" to allow plaintiffs to "proceed directly into federal court" to vindicate their federal rights. *Gladstone Realtors*, 441 U.S. at 125–26. This shows that "Congress did not intend for administrative determinations . . . whether issued by [federal] or certified state agencies, to preclude aggrieved parties from seeking vindication of their rights through civil actions." *United States v. E. River Hous. Corp.*, 90 F. Supp. 3d 118, 146 (S.D.N.Y. 2015). Thus, "it would make little sense to give res judicata effect to a proceeding," *Miller v. Poretsky*, 409 F. Supp. 837, 838 (D.D.C. 1976), whether federal or state, under the FHA. *See id.*; *E. River Hous. Corp.*, 90 F. Supp. 3d at 146. Accordingly, the Zoning Commission's findings do not have preclusive effect over Plaintiffs' FHA claims.

But even if Congress did intend for state-level administrative proceedings to have preclusive effect, the Court could not give such an effect here. Both claim and issue preclusion require a ruling by "a court of competent jurisdiction." *See Smalls v. United States*, 471 F.3d 186, 192 (D.C. Cir. 2006) (claim preclusion); *Yamaha Corp. of Am. v. United States*, 961 F.2d

245, 254 (D.C. Cir. 1992) (issue preclusion). The D.C. Zoning Commission has power to "regulate the location, height, bulk, number of stories and size of buildings . . ., the percentage of lot which may be occupied, the sizes of yards . . . and other open spaces, the density of population, and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, or other purposes."[6] D.C. Code § 6-641.01. Although the Commission does have the power to ensure that zoning regulations are consistent with the District of Columbia's "comprehensive plan," *see Tenley & Cleveland Park Emergency Comm. v. D.C. Bd. of Zoning Adjustment*, 550 A.2d 331, 332 (D.C. 1988), which, according to Defendants, is "a broad framework intended to guide the future land use planning decisions for the District of Columbia," *see* Defs.' Reply to Pls.' Opp'n to Mot. to Dismiss, at 15, ECF No. 24, the Zoning Commission has no power to implement the plan. *Tenley & Cleveland Park Emergency Comm.*, 550 A.2d at 341 n.22. Because DC's "broad framework" is not comparable to the Federal FHA and Defendants do not identify any power to independently review private FHA violations,[7] there is no indication that the District of Columbia Zoning Commission could be considered a "competent" "court" for purposes of reviewing FHA claims.

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[6] Defendants contend that this is not the proper provision providing the Zoning Commission with its powers. *See* Defs.' Reply to Pls.' Opp'n to Mot. to Dismiss, at 15, ECF No. 24. They cite part (a) of D.C. Code § 6-621.01 for the proposition that the Zoning Commission has general power "[t]o protect the public health, secure the public safety, and to protect property." *See id.* However, after this clause follows: "there is created a Zoning Commission." *See* D.C. Code § 6-621.01(a). Then, part (e), which grants the Commission its power, provides that "[t]he Zoning Commission shall exercise all the powers . . . with respect to zoning . . . *as provided by law*." *See* D.C. Code § 6-621.01(e) (emphasis added). So, although part (a) outlines broad *purposes* for creating a Zoning Commission, it does not by itself grant power.

[7] In their reply memorandum, Defendants assert that a footnote of a D.C. District Court "not[ed] that the Zoning Commission may find that regulations governing community-based residential facilities are violative of the FHA." *See* Defs.' Reply to Pls.' Opp'n to Mot. to Dismiss, at 15. In fact, this is not the case, at least using any meaningful definition of the word "find." That footnote quoted the Zoning Commission as simply stating that a regulation "could

b. D.C. Human Rights Act

Defendants also seek dismissal of the DCHRA count on exhaustion grounds. Similar to the FHA, the DCHRA provides that "[a]ny person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate, unless such person has filed a[n administrative] complaint." D.C. Code § 2-1403.16(a); *see also Williams v. District of Columbia*, 467 A.2d 140, 141 (D.C. 1983) (noting that the DCHRA provides "direct resort to the courts," but holding that government employees must exhaust administrative remedies in some cases). The plain language of the DCHRA commands the same finding as the language of the FHA. Because the Court is one of "competent jurisdiction" and Plaintiffs claim to be "aggrieved by an unlawful discriminatory practice" under the DCHRA, Plaintiffs did not need to exhaust any District of Columbia administrative remedies. Given the arguably stronger language in the D.C. statute ("[a]ny person . . . shall have a cause of action"), this reasoning applies equally to issues of preclusion here. Moreover, there is no indication that the District of Columbia Zoning Commission is a competent "court" to review such a claim. The Court will not give preclusive effects to any findings by the Zoning Commission.

2. The *Rooker–Feldman* Doctrine

The Court next considers Defendants' argument that the Court lacks subject-matter jurisdiction to consider this matter under the *Rooker–Feldman* doctrine. Defendants argue that review of this case would functionally constitute an appeal of a state-level judgment. "The *Rooker–Feldman* doctrine . . . is confined to . . . cases brought by state-court losers complaining

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be subject to challenge under the provisions of the Fair Housing Amendments Act," not ruling on it substantively. *See Cmty. Hous. Tr. v. Dep't of Consumer & Regulatory Affairs*, 257 F. Supp. 2d 208, 223 n.18 (D.D.C. 2003).

of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The doctrine is rooted in the Supreme Court's appellate jurisdiction over state-court judgments granted by Congress. *See* 28 U.S.C. § 1257. In *D.C. Court of Appeals v. Feldman*, the Supreme Court "held that this grant of jurisdiction is exclusive." *Lance v. Dennis*, 546 U.S. 459, 463 (2006); *see also D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). The doctrine is named after *Feldman* and the only other case where the Supreme Court has "applied this rule to find that a Federal District Court lacked jurisdiction," *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). *See Lance*, 546 U.S. at 463. In *Rooker*, the plaintiff sought Supreme Court review of an Indiana Supreme Court decision. *Id.* When the Supreme Court declined review, the plaintiff filed an action in a federal district court. *Id.* The Supreme Court "viewed the action as tantamount to an appeal of the Indiana Supreme Court decision, over which only [the Supreme] Court had jurisdiction, and said that the 'aggrieved litigant cannot be permitted to do indirectly what he no longer can do directly.'" *Id.* (quoting *Rooker*, 263 U.S. at 416). Sixty years later in *Feldman*, the Court applied the same reasoning to a District of Columbia Court of Appeals decision refusing admission to a bar applicant. *Id.* The Supreme Court emphasized the difference between a judicial decision and an administrative one, holding that "to the extent plaintiffs challenged the Court of Appeals decisions themselves—as opposed to the bar admission rules promulgated nonjudicially by the Court of Appeals—their sole avenue of review was with this Court." *Id.* "Neither *Rooker* nor *Feldman* elaborated a rationale for a wide-reaching bar on the jurisdiction

of lower federal courts, and [Supreme Court] cases since *Feldman* have tended to emphasize the narrowness of the *Rooker–Feldman* rule."[8] *Id.* at 464.

As Defendants candidly point out, *see* Defs.' Mem. in Supp. of Mot. to Dismiss, at 25, the Supreme Court has held that "[t]he doctrine has no application to judicial review of executive action, including determinations made by a state administrative agency." *Verizon Maryland, Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 644 n.3 (2002). Defendants attempt to distinguish *Verizon Maryland* by arguing that "not all federal courts have confined the scope of that remark to the specific factual scenario addressed in that decision," citing an unpublished Central District of California case, *Reiner v. California Dep't of Indus. Relations*. *See* Defs.' Mem. in Supp. of Mot. to Dismiss, at 25. (citing No. 12-8649, 2012 WL 7145706, (C.D. Cal. Dec. 18, 2012), *report and recommendation adopted*, 2013 WL 571797 (C.D. Cal. Feb. 10, 2013), *aff'd sub nom. Reiner v. California*, 612 F. App'x 473 (9th Cir. 2015)). In *Reiner*, the plaintiff sought review of determinations made in a state-level workers' compensation appeal board and "state tribunals." *See* 2012 WL 7145706, at *2. In finding that the *Rooker–Feldman* doctrine applied, the Magistrate Judge emphasized that the case was based primarily on state law, not federal law as in *Verizon Maryland*, and that the party in *Reiner* had actually filed a state-level claim previously, unlike in *Verizon Maryland*. *See id.* at *3.

Given that the *Rooker–Feldman* doctrine is "narrow and focused," *Thana v. Board of License Comm'rs*, 827 F.3d 314, 319 (4th Cir. 2016), the Court is not inclined to go against the black-letter of *Verizon Maryland* that "[t]he doctrine has no application to judicial review of

[8] Courts and scholars alike emphasize that the Supreme Court has trended toward narrowing the doctrine since *Feldman*, particularly in *Lance*. *See, e.g.*, *Thana v. Board of License Comm'rs*, 827 F.3d 314, 319–20 (4th Cir. 2016) (calling the doctrine "narrow and focused"); Samuel Bray, *Rooker Feldman (1923–2006)*, 9 Green Bag 2d 317 (2006) (mock obituary of the doctrine).

executive action, including determinations made by a state administrative agency." 535 U.S. at 644 n.3. But even if it were, this is not a case of "primarily . . . state law," *Reiner*, 2012 WL 7145706, at *3, and, as noted above, the Zoning Commission could not have substantively heard these types of discrimination claims. This is a case of primarily federal law with the actions of a state administrative agency looming in the background; in no way is the current action an appeal of the Zoning Commission's order. Accordingly, *Rooker–Feldman* is inapplicable.

3. *Younger* Abstention

Defendants invoke the related doctrine of *Younger* abstention in support of their Motion to Dismiss. "In *Younger v. Harris* and its progeny, the Supreme Court held that, except in extraordinary circumstances, a federal court should not enjoin a pending state proceeding (including an administrative proceeding) that is judicial in nature and involves important state interests." *JMM Corp. v. District of Columbia*, 378 F.3d 1117, 1120 (D.C. Cir. 2004). The doctrine stems from the equitable principle that "courts . . . should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." *Younger v. Harris*, 401 U.S. 37, 43–44 (1971). At its core, *Younger* abstention stems from concerns of comity and federalism and prevents federal courts from enjoining ongoing criminal prosecutions. *See id.*; *see also Samuels v. Mackell*, 401 U.S. 66, 73 (1971). Moving beyond the core of the doctrine, federal courts also abstain in quasi-criminal contexts. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975) (abstaining in a civil context because "the proceeding is both in aid of and closely related to criminal statutes which prohibit the dissemination of obscene materials"). The periphery of the doctrine may encompass proceedings not in courts, but that are judicial in nature and concern important state interests. *See New Orleans Pub. Serv., Inc. v. Council of City of*

New Orleans, 491 U.S. 350, 364–73 (1989). The doctrine has even been applied to suits between two non-state parties where the underlying dispute concerned important state interests. *See, e.g.*, *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 17 (1987). In a case between private parties, federal courts must abstain when (1) the relief sought would enjoin an ongoing state proceeding, (2) the state proceeding is judicial in nature, (3) "the state proceedings implicate important state interests," and (4) "the proceedings afford an adequate opportunity to raise the federal claims." *See William Penn Apartments*, 39 F. Supp. at 19 (internal citations and quotations omitted).

The Court need not address all four requirements, because Defendants' argument fails to establish that the Zoning Commission proceedings "afford an adequate opportunity to raise the federal claims." Defendants argue that a D.C. Federal District Court has said that "[t]he Board of Zoning Adjustment ha[s] authority to consider reasonable accommodation request[s]," implying that the board could consider such requests under the FHA. *See* Defs.' Mem. in Supp. of Mot. to Dismiss, at 29. In fact, that court suggested the opposite—although acknowledging that the Board of Zoning Adjustment has the power to make a reasonable accommodation *sua sponte* under the "functional equivalent" of the FHA under D.C. regulations, the court explicitly stated that "the [DC Department of Consumer and Regulatory Affairs] is the body to whom a request for reasonable accommodation is properly lodged in the first instance." *See United States v. District of Columbia*, 538 F. Supp. 2d 211, 218 (D.D.C. 2008). The court cited 14 D.C.M.R. § 111, which is entitled "Procedures Regarding Requests for Reasonable Accommodation Under the Fair Housing Act." That regulation provides that "[a]ll requests for reasonable accommodation under the Fair Housing Act shall be submitted to the Director, Department of Consumer and Regulatory Affairs . . . or such office as the District may assign or delegate." 14 D.C.M.R. § 111.3. Similarly, here, as noted above in the Court's discussion of

issue and claim preclusion, the Zoning Commission is not a body empowered to hear FHA claims. Thus, the Court will not abstain from addressing the merits of Plaintiffs' federal claims.

4. ONE DC Standing

The Court next addresses Defendants' argument that ONE DC—the community organization with some members who are residents of Brookland Manor with minor children, *see* Compl. ¶¶ 108–09—lacks standing to bring this matter. Defendants specifically argue that ONE DC lacks a sufficiently concrete injury-in-fact. *See* Defs.' Mem. in Supp. of Mot. to Dismiss, at 31–35. "The Supreme Court has held that standing to bring an FHA claim is coextensive with constitutional standing." *Nat'l Fair Hous. All., Inc. v. Prudential Ins. Co. of Am.*, 208 F. Supp. 2d 46, 52 (D.D.C. 2002); *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982). ONE DC "bears the burden of establishing" its standing. *See Lujan*, 504 U.S. at 561. "An organization can have standing on its own behalf . . . or on behalf of its members." *Abigail All. for Better Access to Developmental Drugs v. Eschenbach*, 469 F.3d 129, 132 (D.C. Cir. 2006) (internal citations omitted). Standing based on an organization's own injury—"organizational standing"—requires an organization, "like an individual plaintiff, to show actual or threatened injury in fact that is fairly traceable to the alleged illegal action and likely to be redressed by a favorable court decision." *Equal Rights Ctr. v. Post Properties, Inc.*, 633 F.3d 1136, 1138 (D.C. Cir. 2011) (internal quotations omitted). For an organization to sue on behalf of its members through "associational standing," it must show that (1) "its members would otherwise have standing to sue in their own right," (2) "the interests it seeks to protect are germane to the organization's purpose," and (3) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *United Food & Commercial Workers Union*

Local 751 v. Brown Grp., Inc., 517 U.S. 544, 553 (1996) (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

Plaintiffs assert that ONE DC has both organizational and associational standing. Because the Court finds that ONE DC has organizational standing, it need not address the associational standing issue. As noted above, organizational standing requires a concrete injury, not "a mere setback to [the organization's] abstract social interests." *See Equal Rights Ctr.*, 633 F.3d at 1138 (internal citations and quotations omitted). "An organization's expenditure of resources on a lawsuit does not constitute an injury in fact sufficient to establish standing." *Id.* However, it is "clear . . . that if the defendant's allegedly wrongful action prompts an organization to 'increase[] the resources [it] must devote to programs independent of its suit' . . . , the organization has shown an injury in fact." *Id.* (alterations in original) (quoting *Spann v. Colonial Vill., Inc.*, 899 F.2d 24, 27 (D.C. Cir. 1990)). There is "an important limitation" on this principle: if an injury is "self-inflicted as a result of the organization's own budgetary choices," the party cannot claim an injury-in-fact as a result of the defendant's behavior. *Id.* at 1139 (internal quotations omitted). This "does not automatically mean that [a party diverting resources] cannot suffer an injury sufficient to confer standing." *Id.* at 1140. The crucial test for determining whether an injury is self-inflicted is whether the party "undertook the expenditures in response to, and to counteract, the effects of the defendants' alleged discrimination rather than in anticipation of litigation." *Id.* In the housing context, using resources for a program to counteract a defendant's discriminatory advertisement constitutes an adequate injury-in-fact, because it is used for the practical purpose of responding to allegedly illegal activity, not to prepare for litigation. *See id.* (citing *Spann*, 899 F.2d at 27–29). In *Spann v. Colonial Village, Inc.*, the plaintiff-organizations established standing when they alleged that the defendants'

"preferential advertising tended to steer black home buyers and renters away from the advertised complexes," requiring the plaintiffs to "devote more time, effort, and money to endeavors designed to educate not only home buyers and renters, but the DC area real estate industry." 899 F.2d at 27. So, if Defendants' alleged actions frustrated ONE DC's mission and ONE DC used resources to counteract that harm, it has standing to maintain the action. *See Equal Rights Ctr.*, 633 F.3d at 1140.

Based on the facts alleged in the Complaint, ONE DC has standing to maintain this action. ONE DC is "comprised of members who include tenants of affordable housing properties that are seeking to avoid displacement, preserve affordable housing, ensure fair housing, and further equitable development in D.C." Compl. ¶ 108. The alleged discrimination plainly frustrates ONE DC's mission. Plaintiffs allege that ONE DC has had to divert its scarce resources away from its central mission to "crisis organizing" in the form of investigation, counseling, organizing, canvassing, and other Brookland-specific programming. *See id.* ¶¶ 113–121. In all, Plaintiffs allege that, as of July 28, 2016, ONE DC has "diverted approximately 640 hours of its staff members' time to identify and combat Defendants' discriminatory conduct through outreach, organizing, advocacy, and tenant counseling efforts." *Id.* ¶ 121. This places ONE DC's case squarely within the holdings in *Equal Rights Center* and *Spann*. ONE DC did not spend 640 hours concocting an injury in anticipation of litigation, but instead did so for the practical purpose of combating alleged discrimination in the community. Defendants' alleged discrimination forced ONE DC to address an exigency in the community at the expense of its broader social goals. Accordingly, ONE DC has sufficiently alleged organizational standing to withstand Defendants' Motion to Dismiss.

5. Failure to State Disparate Impact Claims

Defendants move to dismiss for failure to state a claim with respect to Plaintiffs' disparate impact claims under the FHA and DCHRA. Defendants argue that Plaintiff erroneously assumes that "large families" are a protected group under the FHA, instead of the broader protected class of "families." Defendants further argue that without an FHA claim, Plaintiff cannot invoke supplemental jurisdiction to maintain its DCHRA claim. The Court will address these arguments in turn.

a. Fair Housing Act

Defendants move to dismiss Plaintiffs' FHA disparate impact claim for failure to state a claim on the basis that Plaintiffs' statistical analysis cherry-picks "large families" from the broader "familial status," and in so doing fails to analyze the effect that the *entire* redevelopment plan would have on *all* families that reside or will reside in the new community. *See* Defs.' Mem. in Supp. of Mot. to Dismiss, at 11–12.

The Federal FHA prohibits "mak[ing] unavailable . . . a dwelling to any person because of . . . familial status." *See* 42 U.S.C. 3604(a). "'Familial status' means one or more individuals (who have not attained the age of 18 years) being domiciled with . . . a parent or another person having legal custody of such . . . individuals," or the parent's designee. 42 U.S.C. 3602(k). It is important to note that the FHA is generally a repository of negative rights—it does not affirmatively provide special privileges to parents living with minor children, but rather protects them from discriminatory acts. *See Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2522 (2015) ("The FHA is not an instrument to force housing authorities to reorder their priorities. Rather, the FHA aims to ensure that those priorities can be achieved without arbitrarily creating discriminatory effects or perpetuating segregation.").

For example, the FHA does not entitle families to occupy units in excess of nondiscriminatory, reasonable occupancy requirements that apply to the population in general. *Fair Hous. Advocates Ass'n, Inc. v. City of Richmond Heights, Ohio*, 209 F.3d 626, 636 (6th Cir. 2000); *see also City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 733 (1995) (contrasting impermissible policies that target families with permissible policies that "apply uniformly to *all* residents of *all* dwelling units"). It is also important to emphasize that the FHA only protects minor children domiciled with parents (or other such persons in a guardian role, as provided by the statute). As Plaintiffs concede, *see* Pls.' Br. in Opp'n to Defs.' Mot. to Dismiss, at 8 n.4, ECF No. 21, the sub-class of "large families" is not a protected class under the FHA. *Debolt v. Espy*, 832 F. Supp. 209, 215 (S.D. Ohio 1993), *aff'd*, 47 F.3d 777 (6th Cir. 1995) ("The Court notes that as opposed to families in general, 'large families' are not a specifically protected class under Title VIII."); *see also Fair Hous. Advocates Ass'n, Inc.*, 209 F.3d at 638 (concluding that "families of four, as opposed to families of three, are not protected classes").

"[D]isparate-impact claims are cognizable under the Fair Housing Act . . . ." *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2518, 2525 (2015). "To prevail on a disparate impact claim, a plaintiff must offer sufficient evidence to support a finding that the challenged policy *actually* disproportionately affected a protected class." *2922 Sherman Ave. Tenants' Ass'n v. District of Columbia*, 444 F.3d 673, 681 (D.C. Cir. 2006). The Secretary of Housing and Urban Development has "[t]he authority and responsibility for administering" the FHA. 42 U.S.C. § 3608(a); *see also Mhany Mgmt., Inc. v. County of Nassau*, 819 F.3d 581, 618 (2d Cir. 2016). Part of that authority is the power to promulgate rules "to carry out" the FHA. *See* 42 U.S.C. § 3614a; *see also Mhany Mgmt., Inc.*, 819 F.3d at 618. Accordingly, in line with the Second Circuit in *Mhany Management*, the Court "must defer to

[HUD]'s reasonable interpretation" of the FHA with respect to its rules on disparate impact. *See* 819 F.3d at 618 (citing *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)); *accord Boykin v. Fenty*, 650 F. App'x 42, 44 (D.C. Cir. 2016). HUD has adopted a burden-shifting framework for evaluating disparate impact claims. *See* 24 C.F.R. § 100.500(c). First, the plaintiff has "the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect." 24 C.F.R. § 100.500(c)(1). Once the plaintiff makes such a showing, the "defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant." 24 C.F.R. § 100.500(c)(2). If the defendant is able to do so, the "plaintiff may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect." 24 C.F.R. § 100.500(c)(3).

To make an initial showing of disparate impact at "step one," courts often rely on statistical analyses. *See, e.g.*, *R.I. Comm'n for Human Rights v. Graul*, 120 F. Supp. 3d 110, 124–25 (D.R.I. 2015); *Gashi v. Grubb & Ellis Prop. Mgmt. Servs., Inc.*, 801 F. Supp. 2d 12, 16–17 (D. Conn. 2011). Such an analysis requires a plaintiff to "compar[e] those affected by the policy with those unaffected by the policy." *See Gashi*, 801 F. Supp. 2d at 16 (citing Tsombanidis *v. West Haven Fire Dep't*, 352 F.3d 565, 575–76 (2d Cir.2003)); *accord Graul*, 120 F. Supp. 3d at 124 (internal citation and quotations omitted). In the "context . . . [of] housing discrimination, a wide enough contrast between the way a policy burdens members of a protected group as opposed to non-members is cognizable as a disparate impact." *Graul*, 120 F. Supp. 3d at 125. In *Gashi*, the court found a 30.76% effect on households with children and a 9.88% effect on households without children sufficient to constitute a disparate impact. *See* 801

F. Supp. 2d at 16–17. In *Graul*, the court found a threefold difference sufficient. *See* 120 F. Supp. 3d at 126.

Defendants move to dismiss on the grounds that Plaintiffs have not made a showing at step one of HUD's framework, because, according to Defendants, Plaintiffs' statistical analysis inappropriately focuses on a particular subset of the protected class—large families—and a particular aspect of the redevelopment—the elimination of larger-occupancy apartments. *See* Defs.' Mem. in Supp. of Mot. to Dismiss, at 11–18. The Court will address these two contentions in turn.

i. "Familial Status" vs. "Large Families"

Defendants' first qualm with Plaintiffs' reasoning is that it relies on discrimination against large families rather than families as a protected group. *See* Defs.' Mem. in Supp. of Mot. to Dismiss, at 9. As noted above, the FHA protects all families, as defined by statute, regardless of size. Courts have consistently assumed that "'[f]amilial status' refers to the presence of minor children in the household." *See Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 247 (9th Cir. 1997); *see also Graul*, 120 F. Supp. 3d at 125–26 (favorably citing methodology comparing "households with children" and "households with no children"); *United States v. Branella*, 972 F. Supp. 294, 298 (D.N.J. 1997) ("Specifically, the FHAA provides that it is unlawful to make a dwelling unavailable to any prospective buyer or renter because of the presence of minor children in the prospective household."). So, although there is no special treatment for "large families" under the FHA, they are still protected under the umbrella of "families" if minors are in the household.

Although Plaintiffs do repeatedly refer to "large families" in their Complaint, their statistical analysis specifically concerns "those who have one or more minor children living in the household." *See* Compl. ¶¶ 72, 37. Similarly, Plaintiffs define their proposed class as "[a]ll households who reside or have resided at Brookland Manor in a three-, four- or five[-]bedroom unit with one or more minor child." *See id.* ¶ 122. Plaintiffs' statistical analysis includes apartments of all sizes, comparing those with minor children to those without them. *See id.* ¶ 75. Using that metric, Plaintiffs arrive at the conclusion that the proposed redevelopment would adversely affect 59% of families overall, compared to 15% of nonfamilies. *See id.* ¶ 77. It does not matter that many of the protected individuals are part of "large families" for the purpose of the Complaint, so long as the unprotected group and protected group are correctly defined. Because the Complaint shows that Plaintiffs do correctly define these groups, Plaintiffs did not "cherry-pick" protected families from the larger protected class.

ii. The Elimination of Large Apartments vs. the Project as a Whole

Defendants also argue that Plaintiffs fail to take into account "*all* families that reside *or will reside* in the revitalized community," citing *Boykin v. Gray*. *See* Defs.' Mem. in Supp. of Mot. to Dismiss, at 11 (second emphasis added). In *Boykin*, a group of homeless men claimed that the District of Columbia's closure of a particular homeless shelter violated the FHA, because a disproportionate amount of the D.C. homeless population is black and Hispanic. *See* 986 F. Supp. 2d 14, 16 (D.D.C. 2013). The closure of the homeless shelter was part of a "broader shift in the District's policy toward its homeless citizens" that had a net-positive impact on the minority population in the District. *Id.* at 21. Applying a disparate-impact standard, that court found that "[t]he fundamental defect in the plaintiffs' argument is that the adverse impact of which they complain was suffered not by the entire homeless population in the District of

Columbia, nor even by a significant portion of its more than 6,000 members." *See id.* at 20. Closing the specific shelter affected 90 people, but the overall number of beds available to homeless persons rose as a result of the District's program. *See id.* at 20–21. By referring to "*its* homeless citizens," "the entire homeless population in the District of Columbia," and "*its* 6,000 members," the above excerpts show that the court was interested in the District of Columbia's overall universe of homeless persons.

In the context of a private landlord, courts are similarly concerned with the private party's universe of tenants. In *Betsey v. Turtle Creek Associates*, the tenants of a particular building contended that a policy would have a disparate racial impact on them as individuals. 736 F.2d 983, 985–87 (4th Cir. 1984). Because the plaintiffs did not show a "continuing disproportionate impact," a sufficient racial impact of the entire complex, or any impact on the local community, the district court dismissed the claim. *See id.* at 986–87. Reversing, the Fourth Circuit held that "members of a discrete minority[] are required to prove only that a given policy had a discriminatory impact on them as *individuals*." *Id.* at 987. That court found "consideration of the rest of the local community, the rest of [the residential community], or even prospective applicants for space in [the building] irrelevant." *See id.* (internal quotations omitted). "The correct inquiry is whether the policy in question had a disproportionate impact on the minorities in the total group to which the policy was applied." *Id.*

Here, it does not matter that the redevelopment might open up space for families in the local community to occupy smaller apartments at the redeveloped project. Defendants' universe of persons are the existing tenants at Brookland Manor. If the current families of Brookland Manor are disparately impacted by the redevelopment, it is irrelevant that some protected persons in the local community might end up filling their shoes in units that could not support

them. Plaintiffs do analyze the effect that the entire project will have on all existing tenants of Brookland Manor. *See* Compl. ¶¶ 75–79. Given that Plaintiffs adequately allege that the proposed redevelopment project will affect Brookland Manor families over three times as much as it will nonfamilies, they state a claim.

b. D.C. Human Rights Act

Defendants' only contention specific to the DCHRA is that "elimination of [Plaintiffs'] federal claims would dictate dismissal of the rest of their claims as failing the test for supplemental jurisdiction." *See* Defs.' Mem. in Supp. of Mot. to Dismiss, at 18 n.7. Even if true, the Court simply notes that, as set forth above, it is not dismissing the federal-question claims under the federal FHA, so supplemental jurisdiction remains.

B. Plaintiffs' Motion for a Preliminary Injunction

Plaintiffs move for a preliminary injunction to prevent Defendants from proceeding with their redevelopment plan.[9] "To warrant preliminary injunctive relief, the moving party must show (1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the injunction were not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). There must be a showing of likely irreparable harm for a preliminary injunction to issue. *Id.*; *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) ("Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction."). The D.C. Circuit "has set a high standard for irreparable injury,"

[9] *See supra* note 4 and accompanying text.

requiring that the injury "be both certain and great," and "actual and not theoretical." *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297 (internal citations and quotations omitted). "The moving party must show '[t]he injury complained of is of such *imminence* that there is a "clear and present" need for equitable relief to prevent irreparable harm.'" *Id.* (alteration in original) (quoting *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam)). To meet the standard, "the harm must be so imminent as to be irreparable if a court waits until the end of trial to resolve the harm." *Rodriguez ex rel. Rodriguez v. DeBuono*, 175 F.3d 227, 235 (2d Cir. 1999). The moving party must also show that the threatened injury is "beyond remediation" with other forms of relief. *See Chaplaincy of Full Gospel Churches*, 454 F.3d at 297.

Plaintiffs argue that the threatened injuries are imminent, because when Defendants receive Stage Two approval, they will be free to commence destruction of Plaintiffs' homes. *See* Pls.' Mem. in Supp. of Mot. for Prelim. Inj., at 26. Specifically, they argue that "D.C. Municipal Regulations make clear that second-stage approval is the final step before a redeveloper may commence demolition." *See id.* They further argue that Defendants have already required families who reside in large units to "relocate, break up, and downsize." *See id.* In support of their assertion, Plaintiffs cite to several declarations of tenants who claim to know others at Brookland Manor who have been forced to move. *See id.* at 27; McFadden Decl. ¶ 6; Jenkins Decl. ¶ 6; Scott Decl. ¶ 6. However, they do not cite to any first-hand account of a family who has been forced to relocate off the property, nor any family who has been told they will need to relocate but will be unable to do so on the property.[10]

[10] Plaintiffs' argument that a recent submission to the Zoning Commission shows that the first block to be demolished contains almost all three- and four-bedroom apartments is unavailing. *See* Pls.' Reply Mem. in Supp. of Mot. for a Prelim. Inj., at 13, ECF No. 20. If, as

Defendants argue that any displacement would not occur until years in the future. *See* Defs.' Opp'n to Pls.' Mot. for Prelim. Inj., at 6. Michael Meers, Vice President of Defendant Mid-City Financial Corporation, has stated that demolition will not commence until late 2017, at the earliest, because of the length of time it takes to receive Stage Two approval and then obtain the requisite permits to begin the project. *See* Meers Aff. ¶ 17. Moreover, because the existing buildings are collateral on a HUD loan until August 1, 2017, it is "highly unlikely" that Defendants could begin demolition any earlier.[11] *See id.* ¶ 21. Even then, the project will be limited to "Phase One," meaning that only three of the 19 buildings will be demolished. *See id.* ¶ 17. Later phases will not begin until 2019, and neither individual Plaintiff will need to vacate until 2020, at the earliest. *See id.* ¶¶ 17–19. When the buildings are demolished during Phase One, Michael Meers asserts that all residents in those buildings will be "relocated at owner expense to an appropriate apartment home *on the property*." *See id.* ¶ 17 (emphasis added). Mr. Meers further declares that, although some tenants have been moved, none have been unable to relocate at Brookland Manor. *See id.* Citing to HUD guidelines and the D.C. Office of Planning's finding that the D.C. Zoning Commission cited favorably, Defendants' own numbers

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they argue, Defendants have already relocated "the overwhelming majority of [that block's] residents," *id.* at 12 they should be even more capable of providing the Court with something in the record to show that a family has been relocated and unable to move into another apartment on the property. If anything, this supports Defendants' argument that all families who will be relocated from Block 7 will be able to relocate on the property. But even more to the point, the submission that Plaintiffs reference refers specifically to Block 7. *See* Pls.' Reply Mem. in Supp. of Mot. for Prelim. Inj. Ex. 3, at 1, ECF No. 20-3. The D.C. Zoning Commission knew that Block 7 was going to be demolished during Phase One, yet still credited a report that the larger units would not be phased out until the later stages of redevelopment. *See Mid-City Fin. Corp.*, Z.C. Case 14-18, at 38, 50.

[11] For the same reasons noted in note 10, Plaintiffs' arguments about relocation occurring well in advance of demolition are unavailing. *See* Pls.' Reply Mem. in Supp. of Mot. for a Prelim. Inj., at 13. Although it is obviously true that relocation must occur before demolition, this fact, if anything, shows that Defendants are capable of relocating tenants to other locations on the property.

show that only 13 Brookland Manor households would currently require a four-bedroom apartment, and none would require a five-bedroom apartment.[12] *See Mid-City Fin. Corp.*, Z.C. Case 14-18, at 38. The same finding from the D.C. Office of Planning noted that "[t]he building with the larger units would remain on the site until the later phases at which time they can be 'right sized' to accommodate the larger families." *Id.*

Plaintiffs have failed to demonstrate that any families—let alone a disproportionate number of them—are facing the imminent threat of being forced to relocate until well after the case can be fully adjudicated. Plaintiffs do not, for example, point to a particular family that lives in the block of houses scheduled to be demolished during Phase One that would be unable to move into an apartment elsewhere at Brookland Manor. Although Plaintiffs cite to certain second-hand sources alluding to the idea of relocation, *see, e.g.*, Jenkins Decl., Defendants cite to specific attributes of the redevelopment project showing otherwise. The Vice President of Mid-City has stated that it is "highly unlikely" that Phase One could begin until August, 2017, and that it would be much more likely to begin later in 2017. And, assuring the Court that the harm is not imminent even further into the future, he states that no resident will be forced to move away from Brookland Manor during Stage One, leaving the Plaintiffs with no ground to stand on until Stage Two, which is at least three years away. This makes sense in the context of Defendants' contention that many families are in apartments that are too large, that the building with larger units will remain until later phases of redevelopment, and that vacancies currently exist that can be used to house displaced households from Block 7.[13] The situations of individual

[12] Plaintiffs are correct that D.C. occupancy law may make this number higher in certain cases. However, they do not tell the Court how frequently this is the case, or otherwise carry their burden of showing the extent of the issues in light of Defendants' evidence.

[13] It is worth noting that although Plaintiffs' methodology is plausible for HUD's "step one" showing of disparate impact at the motion-to-dismiss stage, it comes up short in showing

Plaintiffs give the Court further assurance: there are no plans that would require Ms. Borum to relocate until 2020 at the earliest or Ms. Holloman until 2023. Even if the proposed class were certified here, vague stories and misgivings from tenants are insufficient for Plaintiffs to shoulder their burden of showing that an irreparable injury will likely occur if the Court waits to adjudicate the dispute on the merits. Although it is certainly *possible* that Defendants' plans could change by moving the process up considerably, Plaintiffs have not met the "high standard" of showing that they imminently face their alleged injuries. The chance that the timeline moves up, disparate impact will occur at Phase One, or Plaintiffs will otherwise suffer injury does not rise to the level of a "clear and present threat" necessary for a showing of irreparable injury. Because some showing of imminent irreparable injury is required for the issuance of a preliminary injunction, the Court must deny Plaintiffs' motion.

If Plaintiffs do obtain evidence showing that imminent injury is likely to occur, the Motion can be renewed and will be reconsidered in light of such new evidence. And, because Defendants applied for Stage Two PUD approval ahead of schedule and stop short of guaranteeing that they will follow the timeline set forth in their declarations, the Court will impose on Defendants a requirement to report to the Court and Plaintiffs any changes in schedule

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that "families"—as defined by the FHA—will necessarily be forced to relocate away from the property at a disproportionate rate during the later stages of redevelopment. As noted above and shown by a plain reading of the statutory text, the FHA protects *only* minor children living with parents (or similar guardians). *See* 42 U.S.C. § 3602(k). The definition of "family" does not, for example, "encompass groups of more than one family." *Doe v. City of Butler*, 892 F.2d 315, 326 (3d Cir. 1989) (Roth, J., dissenting). Thus, a group of people cannot talismanically receive protection under the FHA just because one of them happens to be a parent domiciled with a minor child. Although the Court need not reach the issue given the lack of imminent irreparable injury, in light of the fact that all tenants will eventually have to relocate to different units on the property, *see Mid-City Fin. Corp.*, Z.C. Case 14-18, at 2 (noting that all the existing buildings will be replaced), the Court queries whether breaking up groups of people—including extended families—into separate apartments will necessarily disparately impact "families."

that might make displacement of tenants at Brookland Manor more imminent than it was when they made their declarations in opposition to Plaintiffs' Motion for a Preliminary Injunction.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is **DENIED** and Plaintiffs' Motion for a Preliminary Injunction is **DENIED**. An order consistent with this Memorandum Opinion is separately and contemporaneously issued.

Dated: November 21, 2016

RUDOLPH CONTRERAS
United States District Judge