IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ESVIN CALDERON, ET AL.,

Plaintiffs,

v.

GRAZIA BARBARINO, ET AL.,

Defendants.
/

No. C 12-05819 JSW

ORDER DENYING MOTION TO DISMISS AND DENYING MOTION TO STRIKE

Now before the Court is the motion to dismiss filed by Defendant City of Saint Helena ("City") and the motion to strike the oversize brief filed by Plaintiff in opposition. Having considered the parties' arguments, relevant legal authority, the Court hereby DENIES the City's motion to dismiss, with leave to amend and DENIES the motion to strike.[1]

BACKGROUND

This is a housing action brought against the City of Saint Helena and the owners and managers of sub-standard rental units in the City. Plaintiff individuals are Latino residents of the City who have tried to rent affordable low-income units after having been vacated from their sub-standard homes. The institutional plaintiffs are agencies and organizations whose mission is to provide education, counseling, and enforcement around issues related to housing discrimination in the Napa Valley.

[1] Although Plaintiffs' opposition brief does exceed the Court's page limits set in its Standing Order, because the Court would have granted a request for extension, it will allow the over-sized brief. In the future, the parties are admonished to follow all rules of this Court or face appropriate sanctions.

The individual plaintiffs allege that they formerly resided in sub-standard housing units at 1105 Pope Street ("Pope Street Property") and were ordered to move out of the apartments when the City "red-tagged" the units instead of citing the owners of the apartments for code violations and taking steps to ensure appropriate repairs were made. (First Amended Complaint ("FAC") at ¶ 61-145.) Plaintiffs also allege that they have suffered injury as a result of the City's conduct in obstructing and rejecting the development of housing affordable to lower income households on feasible and non-discriminatory terms. The amended complaint alleges that the City has rejected all proposals for a parcel on Adams Street which included proposals to build affordable housing units, despite staff recommendations to consider the proposals. (*Id.* at ¶¶ 41-42.) Plaintiffs further allege that the City has stymied all efforts to develop affordable housing at the Romero Street property. (*Id.* at ¶ 28, 47-49.) Plaintiffs also allege that although the City has passed a resolution to form a Housing Committee to make recommendations regarding planning for affordable housing, the City abruptly disbanded the Committee when it submitted a report recommending the development of affordable housing. (*Id.* at ¶¶ 52, 54-59.)

The City submits a request for judicial notice, requesting that the Court take notice of four official documents regarding the City's planning and housing decisions. The first two exhibits are not relevant to the claims alleged by Plaintiffs. The second two exhibits contain material relating to the officially-stated reasons behind a number of the City's planning decisions. Because the subject matter of the Plaintiffs' allegations concerns the veracity of the City's stated reasons for its housing decisions and conduct over time, the Court may not notice the documents for the truth of what is asserted. Accordingly, although the Court has reviewed the content of the documents, the request for judicial notice is denied.

ANALYSIS

A. Applicable Legal Standard on Motion to Dismiss.

A motion to dismiss is proper under Rule 12(b)(6) where the pleadings fail to state a claim upon which relief can be granted. The complaint is construed in the light most favorable to the non-moving party and all material allegations in the complaint are taken to be true. *Sanders v. Kennedy,* 794 F.2d 478, 481 (9th Cir. 1986). However, even under the liberal

pleading standard of Federal Rule of Civil Procedure 8(a)(2), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

Pursuant to *Twombly*, a plaintiff must not merely allege conduct that is conceivable but must instead allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. ... When a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (quoting *Twombly*, 550 U.S. at 556-57) (internal quotation marks omitted). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 544. If the allegations are insufficient to state a claim, a court should grant leave to amend, unless amendment would be futile. *See, e.g., Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

B. Standing.

The City seeks dismissal of Plaintiffs' complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of standing. In order to satisfy the Constitution's standing requirements, plaintiff must show: (1) an "injury-in-fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury must be fairly traceable to the challenged action to the defendant; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). As an aspect of justiciability, "the standing

question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (citing *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

For purposes of ruling on a motion to dismiss for lack of standing, the Court must accept as true all material allegations of the complaint and must construe the complaint in favor of the complaining party. *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011) ("At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim.")

1. Injury in fact.

The City contends that Plaintiffs have failed to allege an injury in fact which is concrete and particularized and not conjectural or hypothetical. *See Lujan*, 504 U.S. at 560. A particularized injury must be more than a "generalized grievance shared in substantially equal measure by ... a large class of citizens." *Keith v. Volpe*, 858 F.2d 467, 478 (9th Cir. 1988).

Plaintiffs have alleged specific facts regarding the City's actions which have allegedly impeded the development of affordable housing in St. Helena, both by rejecting the Adams Street proposals and rejecting the Mercy Housing proposals for Romero Street. (*See* FAC at ¶¶ 28, 37-51.) Plaintiffs allege that the City's disbanding of a housing committee which had proposed affordable housing projects also led to the lack of available affordable housing. (*See id.* at ¶¶ 52-60.) Finally, Plaintiffs also allege that, after a history of complaints about the sub-standard living conditions at the Pope Street residence, the City refused to take action to remedy the conditions and instead "red-tagged" the building and evicted its tenants. (*See id.* at ¶¶ 61-145.)

The City's argument that Plaintiffs' allegations of injury are insufficient is two-fold. First, the City contends that there is no specific injury to Plaintiffs because lack of opportunity for affordable housing does not constitute a cognizable injury. Although there is no statutory or constitutional right for individual citizens to have housing that meets a particular standard, or a

duty on the part of political entities to provide housing, the City may not "act in a manner which frustrates the Fair Housing Act's clear congressional mandate that it 'is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.'" *Smith v. Town of Clarkton, North Carolina*, 682 F.2d 1055, 1068 (4th Cir. 1982) (citing 42 U.S.C. § 3601). "Governmental bodies are bound to uphold and obey the provisions of the Fair Housing Act, ... and cannot seek refuge in broad generalizations regarding the absence of a constitutional guarantee of adequate housing." *Id.* (internal citations omitted). The facts as alleged in the amended complaint concern the City's conduct in blocking and frustrating attempts to create affordable housing. The Court must take these allegations as true; the City's factual dispute regarding whether it did or did not actually frustrate the mandate to provide fair housing is a matter to be developed by a full record.

Second, the City argues that Plaintiffs suffered no particularized exclusion which would constitute injury sufficient to allege standing. The City contends that Plaintiffs were not excluded from any specific housing development or neighborhood, and therefore suffered no cognizable injury. However, in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, the Supreme Court found that someone who worked in the area had standing to challenge the City's allegedly discriminatory refusal to rezone land to make way for an affordable housing development. 429 U.S. 252, 264-65 (1977). The Court recognized the individual resident's injury as the denial of a housing opportunity in the area. Similarly, here, Plaintiffs allege that the City's conduct has resulted in the same injury of providing no affordable housing opportunities in the area where Plaintiffs work. The allegations of Plaintiffs' injury are specific enough to allege standing.

2. Injury is fairly traceable to conduct by City.

The City argues that Plaintiffs have failed to establish a causal connection between any conduct it undertook and the alleged lack of affordable housing. In this regard, the City contends that the specific facts regarding its decisions to reject the proposals at the Adams Street property and the Mercy Housing decision to cancel its proposal are not fairly traceable to conduct by the City. The City argues it had no obligation to require that the proposals include

affordable units and no obligation to accept the proposals offered. The City also contends that the unilateral decision by Mercy Housing on the Romero Street property cannot be traced to the City's conduct. However, these contentions rest on disputed facts and allegations. Plaintiffs allege that the developers' decision to withdraw was "because of several years of active opposition from the City Council." (FAC at ¶ 48.) Plaintiffs repeatedly assert that the City's historic pattern of rejecting proposals and its obstructionist conduct are causally linked to Plaintiffs' alleged injuries. (*See* FAC at ¶¶ 36, 41-44, 51, 56, 58.) At this procedural stage, that is sufficient.

3. Injuries alleged can be redressed.

In addition to compensatory, punitive and statutory damages, Plaintiffs seek an order "[e]njoin[ing] all unlawful practices complained about herein and impos[ing] injunctive relief requiring defendants ... to take affirmative action to provide equal housing opportunities to all regardless of national origin, race, and color." (FAC at Prayer for Relief at ¶¶ 1, 2, 5.) The City contends that the law does not require it affirmatively to provide housing and there is no specific project at stake. Accordingly, the City argues that Plaintiffs' alleged injuries may not be redressed. However, the Court finds that Plaintiffs have alleged sufficient injury and causation to allege standing at this procedural juncture, and their claims for relief would address those specific injuries. While there is no guarantee that any particular developer will go forward with any particular affordable housing project should the Court finally order injunctive relief, there is at least a substantial probability that prohibiting the alleged obstructionist conduct would result in some affordable housing. *See Arlington Heights*, 429 U.S. at 264.

C. Policy Allegations Under Section 1983 Claim.

Next, the City argues that the Section 1983 claims may not proceed because Plaintiffs fail sufficiently to allege an official policy or decision officially adopted and promulgated by the City and its officers. *See Monell v. Dep't of Social Services*, 436 U.S. 658, 690 (1978) (holding that governmental entity can only be sued under Section 1983 where an "action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted by that body's officers.").

However, Plaintiffs do allege that decisions by the City Council implemented an official policy to obstruct the development of affordable housing. (*See* FAC at ¶¶ 42-43, 47-48, 59.) These allegations regarding votes and decisions by the City Council, at this procedural posture and viewed in the light most favorable to Plaintiffs, are sufficient to state constitutional claims under municipal liability. *See, e.g., Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986) ("whether or not that [legislative] body had taken similar action in the past or intended to do so in the future – because even a single decision by such a body unquestionably constitutes an act of official government policy.").

D. Equal Protection Claim.

The Equal Protection Clause commands that the government shall not deny any person the equal protection of the laws, "which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). To state such a claim, a plaintiff must show that defendants acted with an intent or purpose of discriminating against the plaintiff based upon membership in a protected class. *Barren v. Harrington,* 152 F.3d 1193, 1194 (9th Cir. 1998). Where a challenged governmental policy is "facially neutral," a plaintiff must establish that it has a disproportionate impact on an identifiable group by demonstrating that some invidious or discriminatory purpose underlies the policy. *See Arlington Heights*, 429 U.S. at 264-66. Plaintiffs must "plead and prove that the defendant acted with discriminatory purpose." *Ashcroft*, 556 U.S. at 676; *see also Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001) (holding that the plaintiff must allege that the state actor acted with an intent or purpose to discriminate against him based upon his membership in a protected class). To show such discriminatory purpose, Plaintiffs must do more than show Defendant's "awareness of the consequences." *Ashcroft*, 556 U.S. at 676. Rather, Plaintiffs must show Defendant's "undertaking a course of action ''because of,' not merely 'in spite of,' [the action's] adverse effects upon an identifiable group.'" *Id.* (internal citation omitted).

Here, Plaintiffs claim that the City's policy of obstructing affordable housing, while facially neutral in that it effects all low-income residents equally, had the effect of

discriminating on the basis of national origin because the predominant proportion of the low-income population in St. Helena is Latino. That is clearly insufficient. However, Plaintiffs also allege that the City acted with discriminatory intent. (*See, e.g.,* FAC at ¶¶ 28, 37, 51.) Determining whether discrimination is a motivating factor "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429 U.S. at 266. The "impact of the official action whether it 'bears more heavily on one race than another,' ... may provide an important starting point." *Id.* (citations omitted). "Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face." *Id.* However, where such patterns are not determinative, the court may consider the effect on protected groups, historical background, the specific sequence of events leading up to the challenged decision, substantive departures from normal procedures, and any relevant legislative or administrative history, including contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports. *See id.* at 267-68. These multiple factors require a fact-intensive inquiry which may give rise to an inference of unlawful discriminatory intent.

In this matter, Plaintiffs have alleged discriminatory impact as a starting point, as well as departures from the usual protocol in the disbanding of the Housing Committee, as well as the City's alleged pattern of decisions adversely affecting Latinos in code enforcement, eviction, and obstruction. The sensitive and fact-intensive inquiry needed to determine whether the City acted with discriminatory intent cannot be made solely on the pleadings. Again, at this procedural posture and viewed in the light most favorable to Plaintiffs, Plaintiffs have stated a claim for violation of their equal protection rights.

E. Due Process Claims.

The City argues that Plaintiffs' due process claims fail as a matter of law because they have failed to plead facts sufficient to state a claim for either procedural or substantive due process violations.

Procedural due process provides "a guarantee of fair procedure in connection with any deprivation of life, liberty, or property" by the government. *Collins v. City of Harker Heights*,

503 U.S. 115, 125 (1992). To state a substantive due process claim, the plaintiff must establish that government conduct constituted an abuse of power is so arbitrary and egregious as to shock the conscience or interfere with "rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987); *see also Porter v. Osborn*, 546 F.3d 1131, 1137 (9th Cir. 2008).

With regard to the procedural due process violation, Plaintiffs have sufficiently asserted that they had a protected property interest in residing at their homes and that instead of conducting proper inspections and requiring remediation of residential conditions, the City evicted all Plaintiffs from the Pope Street dwellings without proper notice. (*See* FAC at ¶¶ 63-75, 90-92, 96, 109, 121, 138.)

With regard to the substantive due process claims, Plaintiffs have alleged that the policy and practice of the City's decisions has been to deprive Latinos of fair housing based on their national origin. Premised upon the same allegations of statutory violations, the Court finds the City's motion to dismiss premature. The claims for violation of due process rests upon the substantive claims of statutory discrimination based on national origin.

F. Government Code Section 65008 Claim.

Government Code § 65008 prohibits discrimination against residential development on the basis of the race or low-income level of the intended tenants. The section provides that:

> Any action pursuant to this title by any city ... or other local governmental agency in this state is null and void if it denies to any individual or group the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons: ... the lawful occupation, age, or any characteristic of the individual, or ... the intended occupancy of any residential development by persons or families of very low, low, moderate, or middle income.

Cal. Gov't Code § 65008(a)(1)(A) and (3).

The City argues that the phrase any "action" requires that the allegation be affirmative conduct such as enactment of an ordinance or denial of a permit. Plaintiffs here allege that the City summarily rejected housing proposals from private developers. (*See* FAC at ¶ 40-45.) Without authority to the contrary, the Court finds that an affirmative decision to reject a proposal *because* it affords Latinos or very low income families the enjoyment of residence

would constitute an "action" within the meaning of the code. The government code reflects "an important state policy to promote the construction of low income housing and to remove impediments to the same." *Building Industry Ass'n of San Diego v. City of Oceanside*, 27 Cal. App. 4th 744, 770 (1994). An affirmative decision to create an impediment to housing may constitute an action under the statute, just as an affirmative decision to pass an ordinance or deny a permit may so constitute.

G. Health & Safety Code Sections 17980 *et seq.*

The City argues that Plaintiffs' claim for violation of California Health & Safety Code §§ 17980(c)(1) and (2) is barred as a matter of law due to Plaintiffs' alleged failure to comply with California Government Claims Act, requiring that a prior written claim be timely presented to the City and rejected in whole or in part. *See* Cal. Gov't Code § 905, 905.2, 945.2. However, the requirement to file a claim does not apply to an action brought primarily for declaratory or injunctive relief, even though incidental money damages may be sought. *Independent Housing Services of San Francisco v. Fillmore Center Ass'n*, 840 F. Supp. 1328, 1357-58 (N.D. Cal. 1993). According to the allegations in the complaint, Plaintiffs seek both compensatory, punitive, and statutory damages as well as a declaration that the City violated the code and an injunction of further unlawful practices. (*See* FAC Prayer for Relief at ¶¶ 1, 2, 4, 5.) While Plaintiffs do seek damages, their request for a declaration of past violation and an injunction of future conduct is "of great weight and not just ancillary to the request for damages." *Independent Housing Services*, 840 F. Supp. at 1358. Accordingly, the Court finds written notice of the claim was not required under the California Government Claims Act.

Next, the City argues that it cannot be liable under California Health & Safety Code §§ 17980(c)(1) and (2) because public entities may only be liable under for failing to discharge a mandatory duty. *See* Cal. Gov't Code § 815.6. The question whether a statute or ordinance is intended to create a mandatory duty is a question of law. *Fox v. County of Fresno*, 170 Cal. App. 3d 1238, 1242 (1985). California Health & Safety Code § 17980(c)(1) provides that whenever the code enforcement agency inspects a building and determines it to be substandard, the enforcement agency shall commence abatement proceedings to abate the substandard

conditions by repair, rehabilitation, vacation, or demolition. California Health & Safety Code § 17980(c)(2) provides:

> In deciding whether to require vacation of the building or to repair as necessary, the enforcement agency shall give preference to the repair of the building whenever it is economically feasible to do so without having to repair more than 75% of the dwelling, as determined by the enforcement agency, and shall give fill consideration to the needs for housing as express in the local jurisdiction's Housing Element.

Plaintiffs allege that the City failed to give the mandatory preference to repairs and consideration of the need for housing in the jurisdiction's Housing Element. As Plaintiffs have alleged that the City has breached a mandatory duty, the Court finds the claim sufficient at this procedural stage. *See City of Santa Monica v. Gonzalez*, 43 Cal. 4th 905, 932 (2008) (construing similar language under California Health & Safety Code § 17980.6 to impose a mandatory duty to provide specific notice).

Lastly, the City contends that Plaintiffs fail to state a cause of action for violation of Health & Safety Code § 17980.6 because the injury Plaintiffs allege to have suffered does not arise from the type of injury the statute was aimed to prevent. California Health & Safety Code § 17980.6 provides that any order or notice "shall be provided either by posting a copy of the order or notice in a conspicuous place on the property ... and shall include" certain key pieces of information. Plaintiffs contend that the City failed to give proper notice to the occupants of the Pope Street Property of rights that they may have in abatement proceedings, including their right to contest the abatement, the right to relocation benefits from the property owner, the right to request a hardship deferral, and the right to seek judicial relief prior to displacement. Plaintiffs indeed allege that they suffered from an inability to find replacement housing, one of the specific injuries the statute was designed to prevent. (*See* FAC at ¶¶ 97-98, 101, 110, 113-14, 125-26, 137.) The complaint alleges that the City failed to ensure that the tenants received information to protect them from illegal attempts to retaliate against them and to afford them access to administrative review process in order to advocate to preserve their tenancy and remediate their housing conditions. Accordingly, the allegations of Plaintiffs' injuries fall within the statutory protections of the California Health & Safety Code provisions.

CONCLUSION

For the foregoing reasons, the City's motion to dismiss the First Amended Complaint and motion to strike the oversize opposition brief are DENIED.

IT IS SO ORDERED.

Dated: May 2, 2013

JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE