

Fair Housing Legal Update
2013 Civil Rights Conference
Lincoln, Nebraska
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I. Recent Developments

- A. Disparate impact regulation issued
- B. Petition for certiorari filed in *Mount Holly Citizens in Action v. Township of Mount Holly*, 658 F.3d 375 (3d Cir. 2011) on the issue of disparate impact. Justices asked for view of the United States
- C. Draft Affirmatively Furthering Fair Housing Regulation not issued yet
- D. Settlement of major discriminatory lending cases
- E. HUD issues guidance on immigration and fair housing and discrimination based on sexual orientation and gender identity

II. Jurisdictional Issues

A. Standing

Velzen v. Grand Valley State Univ., 2012 WL 4809930 (W.D. Mich. Oct. 10, 2012) (holding that fair housing organization had standing under the FHA at the motion to dismiss stage where it alleged that it conducted research, investigated defendant's policies and consulted with counsel. The Court rejected defendant's argument that the activities that the organization engaged in were consistent with its mission and stated that no case law states that an organization's activities must be outside its mission to constitute an injury in fact. The Court explained that "[i]f plaintiffs are successful in this case, then the FHCWM's limited resources and time will no longer be so disproportionately constrained to a single housing issue, allowing it to better carry out its mission and serve more people." The Court, however, held that the organization did not have standing under Section 504 because the organization was not discriminated against or denied a benefit based on disability)*

Housing Opportunities Project for Excellence, Inc. v. Wedgewood, 2012 WL 4193969 (S.D. Fla. Sept. 19, 2012) (denying motion to dismiss in case challenging restrictive covenant that limited residents to people over the age of 16 and holding that current residents of condominium complex had standing to challenge alleged discriminatory

practices that excluded families with children because they were denied the benefits of socialization with families with children)*

Williams v. Rhea, 2012 WL 2921211 (E.D.N.Y. July 17, 2012) (denying defendant's motion to dismiss in case in which a blind Section 8 tenant sought to receive notices and forms in an accessible format and holding that the plaintiff established standing because he continued to receive notices in a non-accessible format and therefore continued to be injured by a discriminatory practice)

B. Definition of a Dwelling

Boykin v. Gray, 2012 WL 4713012 (D.D.C. Oct. 4, 2012) (denying motion to dismiss brought by former residents challenging closure of homeless shelter and holding that this particular shelter fell within the definition of "dwelling" under the FHA because, among other things, there was no time length limiting the amount of time a resident could stay in the shelter)*

Kaeo-Tomaselli v. Butts, 2013 WL 399184, (D. Haw. Jan. 31, 2013) (denying plaintiff's motion for summary judgment in case alleging that plaintiff was denied housing in a group home because she was undergoing a sex change operation and holding that the home may not be a "dwelling" under the FHA because it was "shared living" and shared living facilities are not dwellings under the FHA according to the Ninth Circuit)*

C. Proper Parties

Comeux v. Trahan, 2012 WL 5400044 (W.D. La. Nov. 5, 2012) (denying motion to dismiss in case alleging that franchisor of Coldwell Banker refused to sell a home to plaintiff based on his race . Court held that plaintiff alleged sufficient facts to show apparent agency and held the franchisor liable where plaintiff alleged Coldwell Banker allowed Pelican Realty to use logo, color scheme and advertising trademarks, provided training to Pelican Realty, monitored Pelican Realty, prescribe business hours and provided policy manual to Pelican Realty)*

Fielder v. Sterling Park Homeowners Assoc., 2012 WL 6114839 (W.D. Wash. Dec. 10, 2012) (denying motion to dismiss in case in which an African-American homeowner brought a civil rights action against her homeowners' association and individual board members after the board ordered her to close the daycare she operated out of her home and holding that the individual board members were proper defendants because they sent the letter to the homeowner demanding closure of her daycare and harassed the daycare's clients)

United States v. Hylton, 2012 WL 2327750 (D. Conn. June 19, 2012) (denying motion to dismiss in case alleging that landlord refused to approve of sublease based on the race of sub-lessees and holding that both the tenants and sub-lessees were “aggrieved persons” as defined under the FHA)

D. Statute of limitations

National Fair Housing Alliance v. HHHunt, -- F.Supp.2d --, 2013 WL 335877 (W.D. Va. Jan. 29, 2013) (denying defendant architect’s motion for summary judgment on statute of limitations grounds. The court held that architect could be liable under the continuing violations theory because plaintiffs timely brought claims against the architect based on his design of one of the apartment complexes and plaintiffs had produced sufficient evidence—including demonstrating similar violations and proximity in time of the architect’s involvement — to raise a question of fact about whether the architect’s design of a second complex was related to his design of the first apartment complex and therefore part of a continuing violation)*

Clement v. United Homes, 2012 WL 6720701 (E.D.N.Y. Dec. 27, 2012) (dismissing homeowners’ claim against real estate appraiser for overstating value of home on statute of limitations grounds. Statute of limitations accrued when plaintiff moved into her home and learned of many warranty issues with her home)

E. Post-Acquisition Conduct

Davis v. City of New York, 2012 WL 4761494 (S.D.N.Y. Oct. 4, 2012) (denying motion for summary judgment in case in which public housing residents and guests filed a class action challenging the New York Police Department’s stop and frisk practices applied to public housing residents. The court held that the FHA covers post-acquisition conduct because the FHA should be given broad and liberal construction and the court’s interpretation was consistent with the interpretations of the Department of Housing and Urban Development and the Department of Justice)*

F. Mootness

Housing Opportunities Project for Excellence, Inc. v. Wedgewood, No. 12-60172, 2012 WL 4193969 (S.D. Fla. Sept. 19, 2012) (holding that removal of a discriminatory covenant excluding families with children from living in condominium complex did not make the action moot where board of directors of homeowners association did not remove the discriminatory provision from the Declaration of Condominium but only promised not to enforce covenant until it became legal to do so)

G. Abstention

Sagar v. Housing Comm'n of Anne Arundel County, 855 F. Supp. 2d 524 (D. Md. 2012) (holding that (1) Younger abstention was not appropriate where state law eviction case was no longer pending and there was no state law interest in eviction from federal public housing and (2) it was inappropriate to dismiss case based on state law eviction judgment because it was unclear whether issue of reasonable accommodation was necessarily decided by the state court)

Allen v. McKenna Prop. Mgmt., 2012 WL 3648852 (D. Nev. Aug. 22, 2012) (denying motion to dismiss federal court action under the FHA based on Rooker-Feldman doctrine because plaintiffs did not claim to be injured by state court judgment but by discrimination).

H. Res Judicata

Reed v. Friedman Mgt. Corp., 2012 WL 1267972 (S.D.N.Y. Apr. 12, 2012) (tenants' affirmative FHA lawsuit against an apartment owner alleging that they were evicted on the basis of their race barred by *res judicata* because the issues already had been addressed in a state court action in which the tenants were evicted).

Get Back Up, Inc... v. City of Detroit, 878 F. Supp. 2d 794 (E.D. Mich. 2012) (holding that plaintiffs' lawsuit alleging that denial of conditional use permit to operate a residential substance abuse program in Detroit violated the FHA was not barred by *res judicata* because a prior administrative appeal does not preclude a subsequent civil action under Michigan law)

III. Transactions Covered

A. Affirmatively Further Fair Housing

United States v. Westchester County, 2013 WL 1352537, -- F.3d -- (2d Cir. Apr. 5, 2013) (affirming district court decision that Westchester County's executive breached a settlement with the United States when he vetoed legislation that would have prohibited housing discrimination based on source of income)*

United States ex rel. Lockey v. City of Dallas, 2013 WL 268371 (N.D. Tex. Jan. 23, 2013) (granting summary judgment to defendant in False Claims Act case alleging that city falsely certified that it would affirmatively further fair housing. The court held that there was a public disclosure of the allegations or transactions because a news article stated that the author was trying to determine if the city scammed HUD by submitting

false claims and relators were not original sources of the information because they learned of the information in the article from other public documents)*

United States ex rel. Washington, III v. City of New Orleans, 2012 WL 956497 (Mar. 19, 2012). (granting summary judgment to City in False Claims Act case alleging that New Orleans submitted false statements to HUD by stating that it would affirmatively further fair housing. The court found that the city submitted evidence of several actions designed to overcome impediments to housing choice including providing educational opportunities regarding the need for fair housing, initiated lawsuits to enforce fair housing laws, monitored execution of fair housing laws, investigated fair housing complaints and produced an AI in 2010)*

B. Discriminatory statements

Fair Hous. Resource Ctr., Inc., v. DJM's 4 Reasons LTD., 2012 WL 3871871 (6th Cir. Sept. 6, 2012) (affirming district court granting of judgment as a matter of law in case alleging that housing provider made various statements to testers such as “it’s a pet and I’m not going to allow it” in response to the testers’ inquiries about assistance animals. The court found that the district court correctly found that the landlord’s statements were not facially discriminatory and that the jury could properly consider context under the ordinary listener test)*

C. Harassment

Cooper v. Western & Southern Financial Group, Inc., 847 F. Supp. 2d 1031 (S.D. Ohio 2012) (holding that residents of an affordable residence for women stated a claim for violation of § 3617 against neighboring property owner that wanted to redevelop their home for commercial purposes where plaintiffs alleged that defendants photographed them, falsely accused them of criminal behavior, encouraged community organizations to oppose the financing of the housing and threatened to block the funding of organization that operated the housing)

Luis v. Smith Partners & Assoc., 2012 WL 5077726 (N.D. Ill. Oct. 18, 2012) (holding that two Hispanic tenants who alleged that agent of management company harassed them in an effort to force them to move stated a claim under the FHA)

D. Hate Crimes

Wells v. Rhodes, 2013 WL 556166 (S.D. Ohio Feb. 12, 2013) (summary judgment granted to African-American family who were the victims of a cross-burning with words “KKK will make you pay” and n-word written on cross and holding that lack of specific

intent was not a defense and that defendants intended to affect Plaintiffs' ability to use and enjoy their property)*

E. Lending

United States v. Wells Fargo Bank, No. 12cv1150 (D.D.C. July 7, 2012) (consent decree in case alleging that Wells Fargo engaged in a pattern or practice of discrimination against qualified African-American and Hispanic borrowers in its mortgage lending from 2004 through 2009. The settlement provides \$125 million in compensation for borrowers who were steered into subprime mortgages or who paid higher fees and rates than white borrowers because of their race or national origin)*

F. Loan Servicing

Adler v. American Home Mortgage Servicing, Inc., 2012 WL 2524232 (D. Col. Sept. 5, 2012) (holding that plaintiff, a blind man who requested that the loan servicers for his mortgage provide him with notices in 24 point font and whose home was later foreclosed upon because he did not understand his rights and duties, failed to state a claim for violations of the discriminatory terms, conditions and services section of the FHA because loan servicing does not fall within the definition of "services" under § 3604(f)(2))*

G. Redevelopment

City of Fort Lauderdale v. Scott, 888 F. Supp. 2d 1279 (S.D. Fla. 2012) (court granted summary judgment to defendant on plaintiffs' claims that the city's use of code enforcement inspections to acquire properties for redevelopment had a disparate impact upon African-Americans where city acquired only three properties through foreclosure and none belonged to plaintiffs)

H. Reverse Redlining

Steed v. Everhome Mortgage Co., 2012 WL 2849482 (11th Cir. July 11, 2012) (holding that the district court correctly dismissed reverse redlining claims because plaintiff failed to present evidence of the proportion of homes serviced by defendant that belong to African Americans or evidence that the predatory practices were applied more often to African-Americans as compared to other races)*

I. Voice Identification

Walker v. McCoy, 2012 WL 1191470 (W.D. Wisc. Apr. 10, 2012) (denying motion for summary judgment to plaintiffs in a refusal to rent case because although court was bound to accept as a fact that voice was racially identifiable as a result of the default, issues of fact existed about whether plaintiffs were refused a rental because of race)*

IV. Protected Classes

A. National Origin

HUD, Immigration Status and Housing Discrimination Frequently Asked Questions (FAQ) (July 13, 2012). (The guidance provides several examples of immigration-related practices that may violate the FHA based on national origin including: (1)if a landlord asks for additional identification documents because of a person's national origin; (2) refusing to rent to applicants whose primary language is not English and (3) procedures to screen potential and existing tenants for citizenship and immigration status. The guidance states that the FHA prohibits owners from threatening to report tenants to immigration authorities if tenants file a discrimination complaint with HUD. HUD notes that it does not ask about immigration status when investigating housing discrimination claims. HUD will investigate complaints alleging that a landlord asked about a person's immigration status to determine whether national origin discrimination occurred.)

Conciliation Agreement Between HUD and Huntsville Utilities, HUD Case No. 12-0006-8 (July 6, 2012). (conciliation agreement case in which HUD alleged utility required Hispanic applicants to apply for utility service in person and required Social Security numbers while offering non-Hispanic applicants the option of applying online. Under the settlement, the utility company must screen all applicants in the same manner regardless of national origin, must adopt a limited English proficiency plan and develop a list of alternative identification documents that may be submitted by applicants)

HUD v. Virginia Realty Company of Tidewater, Inc., et al. FHEO Case Nos.: 03-11-0424 (Title VIII) (Conciliation Agreement Dec. 28, 2012) (conciliation agreement reached in case in which complainant alleged that she was denied the opportunity to submit an application because she had limited English proficiency and real estate company would not allow her to use a friend to interpret. During its investigation, HUD found that Virginia Realty maintained a written policy requiring all applicants to have the ability to communicate in English without assistance. The agreement requires Virginia Realty to pay the individual complainant \$7,500 and requires the company to adopt and implement a non-discrimination policy (in both Spanish and English) within 30 days; develop a limited English proficiency plan within 90 days; provide education and training

regarding the company's non-discrimination policy and donate a total of \$75,000 to Virginia organizations that support Hispanic, fair housing, and bilingual outreach causes)

Cabrera v. Alvarez, 2013 WL 1283445 (N.D. Cal. Mar. 27, 2013) (court grants in part and denies in part defendants' motion to dismiss. Plaintiff's suit claimed that public housing development discriminated by refusing to provide translation services, and therefore plaintiff was unable to convey habitability problems in rental unit to housing authority. The Court dismissed disability-based claims—because there were no allegations that housing authority failed to provide services because of, rather than in spite of, disability. However, it held that plaintiff stated a claim based on national-origin discrimination, because she alleged that defendant's employees stated she should "learn English" and accused her of being an "undocumented immigrant.")

B. Familial Status

Davila v. RTI Props., Inc., 2012 WL 5388468 (C.D. Cal. Nov. 2, 2012) (granting temporary restraining order in case in which two tenants alleged that the owner of their unit served them with an eviction notice based on their noncompliance with rules restricting children from playing in common areas without supervision. The court found that the tenants showed a likelihood of success on the merits by providing evidence that the policy was facially discriminatory against families with children and by presenting testimony that the policy contributed to the owner's decision to issue the eviction notice. The court also noted the substantial hardship the tenants would face based on their 15-year occupancy, the lack of available comparable housing, and the proximity of the housing to the tenants' employment and their son's school)*

Iniestra v. Cliff Warren Investments, Inc., -- F. Supp. 2d --, 2012 WL 3580533 (C.D. Cal. 2012) (granting partial summary judgment to plaintiffs in case in which apartment complex rules stated that children were not allowed in the pool area unless accompanied by parents or guardian, children must be supervised at all times by responsible adult and children under age 10 must be supervised at all times)

Tyrrell v. Manly, 2012 WL 3765188 (N.D. Ill. Aug. 29, 2012) (granting landlord's motion for summary judgment in case in which two tenants filed a FHA action against their former landlord alleging that the landlord sent them letters stating that their children should not use the complex's front yard as a play area and declined to renew their leases because of their children. The court noted that the landlord offered as evidence letters from other tenants complaining about the children and showed that the children had damaged the landscaping)

Balvage v. Ryderwood Improvement and Service Ass'n, Inc., No. C09-5409BHS, 2012 WL 2977981 (W.D. Wash. July 20, 2012) (holding on remand from the Ninth Circuit that fact issues precluded summary judgment for either plaintiff or defendant regarding whether a community qualified as Housing for Older Persons. The court explained that a 2007 survey was not dispositive because it was unclear whether the survey surveyed owners or residents and whether other previously held information was incorporated into the survey)

C. Sex

Miles v. Gilray, 2012 WL 2572769 (W.D.N.Y. June 29, 2012) (granting temporary restraining order enjoining the owner from commencing eviction proceedings against female tenants who alleged sexual harassment against a mobilehome park owner. The owner allegedly sent a termination notice to one tenant and advised other tenants that he wanted to fill the mobilehome park with single mothers. The district court held that the tenants demonstrated that they would suffer imminent irreparable harm in the form of eviction if the injunction did not issue and that the tenants showed a likelihood of success on the merits)*

D. Source of Income

Comm'n on Human Rights & Opportunities v. Burkamp, 2012 WL 6742361 (Conn. Super Ct. Dec. 20, 2012) (entering judgment against an owner that refused to accept a potential tenant's state-issued Security Deposit Guarantee, in violation of a Connecticut law prohibiting housing discrimination on the basis of source of income and awarding tenant \$10,000 in compensatory damages for emotional distress, \$89,788 in attorney's fees and \$10,000 in civil penalties)*

Short v. Manhattan Apartments, -- F. Supp. 2d --, 2012 WL 6827386, (S.D.N.Y. Dec. 3, 2012) (finding after a trial that defendants violated NY state Human Rights Law by telling testers that certain units were off-limits for "programs" and treating persons who received a certain type of government benefits differently by requiring them to fill out an application in person, complete an application and pass a credit check before viewing apartment and awarding \$20,000 in damages against two defendants to bona fide plaintiff and \$5,000 to fair housing organization)*

E. Disability

1. Reasonable Accommodation

Cinnamon Hills Youth Crisis Center, Inc. v. St. George City, 685 F.3d 917 (10th Cir. 2012) (holding that district court properly granted summary judgment to city in case in which a residential treatment facility wanted to operate a program for young people with emotional or mental disorders at a motel. The city denied the facility's requested variance from a code that limited motel stays to 29 days and prohibited persons from living in a commercial district. The Tenth Circuit held that the district court correctly concluded that the plaintiff failed under the reasonable accommodation theory because it failed to present any proof that any person would be entitled to reside longer than 29 days in a motel in a commercial district. The court rejected plaintiff's argument that a reasonable accommodation should be granted any time it results in an amelioration of the effects of a disability and held that it is not just amelioration of *any* effect of the disability that demands accommodation, but only amelioration of those effects which preclude the disabled individual from availing himself of an otherwise available housing opportunity.)

Roman v. Jefferson at Hollywood LP, 2012 WL 5351249 (9th Cir. Oct. 30, 2012) (affirming district court's order dismissing reasonable accommodation case in which tenant requested waiver of a storage fee and asked to be moved to the top floor. The Ninth Circuit held that the district court correctly dismissed the case because there was no evidence tying the waiver of the storage fee to the tenant's mental disability and that there was no evidence that it was possible to move the tenant to the top floor. Furthermore, the court noted that the housing provider acted reasonably by placing the tenant on a waiting list for a top floor apartment)

A.B. v. Hous. Auth. of S. Bend, 2012 WL 6621450 (7th Cir. Dec. 20, 2012). (affirming district court's dismissal in case in which public housing tenant alleged that housing authority failed to make reasonable accommodations to its one strike policy for drug use and holding that tenant was not disabled under the FHA because she was a current user of drugs at the time of the eviction)

Velzen v. Grand Valley State Univ., -- F. Supp. 2d --, 2012 WL 4809930 (W.D. Mich. Oct. 10, 2012) (denying motion to dismiss in case alleging that a university failed to make reasonable accommodation by allowing a guinea pig as an emotional support animal and holding that the regulations applying to the ADA requiring that service animals be trained and excluding emotional support animals from the definition of service animal do not apply under the Rehabilitation Act)*

Nikolich v. Vill. of Arlington Heights, -- F. Supp. 2d --, 2012 WL 2359313 (N.D. Ill. 2012) (granting summary judgment to defendant municipality in case alleging that the municipality denied an application for a supportive housing development that would have housed people with disabilities and holding that the accommodation sought would not ameliorate the prospective tenants' mental disabilities but rather would make it more financially feasible for the developers to build the housing)*

Sinisgallo v. Town of Islip Hous. Auth., ___F. Supp. 2d___, 2012 WL 1888140 (E.D.N.Y. May 23, 2012) (granting motion for temporary restraining order to enjoin pending eviction in case where a public housing authority sought to evict a tenant after he struck a neighbor during a dispute. The tenant requested a probationary period after medication for his bipolar disorder had been adjusted as a reasonable accommodation. As a preliminary matter, the court found that it was not barred from granting injunctive relief because the tenants showed that they could not assert their federal disability rights claims in the pending eviction proceeding. The court rejected the PHA's argument that the tenant had not shown that he was disabled and found that the tenant received SSI and a non-medical service agency properly verified the tenant's disability. The court noted that from the date the tenant's medication was adjusted until the present, no further incidents had occurred, even though the neighbor continued to provoke him. The court also noted that the tenants' requested accommodation—a probationary period—had been adopted as a reasonable accommodation by a number of courts)*

Ajit Bhogaita v. Altamonte Heights Condominium Ass'n, 2012 WL 6562766 (M.D. Fl. Dec. 17, 2012) (granting plaintiff's motion for summary judgment on claim that condominium association failed to provide reasonable accommodation by not waiving a rule limiting pets to twenty-five pounds to allow service animal. Court held that defendant constructively refused by make requested accommodation by repeatedly insisting on more information from plaintiff about his disability)

Book v. Hunter, 2013 WL 1193865 (D. Ore. Mar. 21, 2013) (following bench trial, court ruled that defendant refused to grant reasonable accommodation by denying rental application on the basis of plaintiff's need for a service animal. Court holds that FHA required defendants to engage in an interactive process if they believed that plaintiff was not truly disabled or that her request for an accommodation was unreasonable)

Bd. of Directors of Cameron Grove Condo., II v. State of Com'n on Human Relations, -- A.3d---, 2013 WL 1276023 (Md. Ct. App. 2013) (the court affirms decision of the state Commission on Human Relations that board discriminated against unit owners by refusing to grant reasonable accommodation. Notably, the court reviews a circuit split in

federal court regarding which party has the obligation to provide that the requested accommodation is reasonable, and holds that the burden should be on the defendant to prove that it is unreasonable)

Churney v. Chicago Hous. Auth., 2013 WL 589599 (N.D. Ill. Feb. 14, 2013) (dismissing complaint with leave to amend in case alleging that termination of Section 8 voucher of woman with a mental disability who was convicted of sex offense violated the FHA because the Housing Authority failed to make a reasonable accommodation. Court held that plaintiff failed to show that requested accommodation of granting an exception to the rule disqualifying sex offenders so long as she agreed to ongoing treatment for mental health issues – was reasonable because Plaintiff had not alleged that the accommodation would ameliorate the legitimate safety concerns underlying the Housing Authority's termination. Plaintiff was already undergoing treatment for mental disability at time she committed sex offense.)

Costello v. Malcolm, 2012 WL 2527019 (W.D. Va. June 29, 2012) (granting motion to dismiss without leave to amend in case alleging that landlord failed to make a reasonable accommodation by failing to remediate mold in an apartment and holding that plaintiff failed to plead a reasonable accommodation claim because the plaintiff pled no facts showing that she had a disability)

McKay v. S. Seas E. Condo. Apartments, 2012 WL 2872856 (M.D. Fla. July 12, 2012) (denying motion to dismiss in case alleging that condominium association denied an owner's request to keep a service dog and holding that plaintiff alleged sufficient facts to support a reasonable accommodation claim by alleging that plaintiff's physical impairments limited his ability to walk and keep his balance and that dog would assist him in walking)

Robbins v. Conn. Inst. for the Blind, 2012 WL 3940133 (D. Conn. Sept. 10, 2012) (denying defendants' motion to dismiss in case alleging that the owner refused to grant a blind public housing tenant's reasonable accommodation request for an extension of time to complete his annual income recertification. The tenant requested verbal notification of the recertification process, but the owner sent only written information regarding the tenant's upcoming recertification. The court held that the tenant showed that an extension of time was necessary because the owner failed to send the recertification notices in an accessible format and the tenant presented evidence that the owner had given another blind tenant extra time to recertify)*

V. Methods of Proof

A. Disparate Impact

Inclusive Communities Project v. Texas Dep't of Hous. & Community Affairs., 860 F. Supp.2d 312 (N.D. Tex. 2012) (finding that Texas' allocation of low income tax credits violated the FHA under the disparate impact method of proof because Texas failed to prove that there were no less discriminatory alternatives to its allocation of low income tax credits given that Texas had some discretion in awarding tax credits and was not completely bound by federal law)*

Boykin v. Gray, -- F. Supp. 2d --, 2012 WL 4713012 (D.D.C. Oct. 4, 2012) (denying motion to dismiss disparate impact claims of former residents challenging closure of an emergency shelter for homeless individuals and holding that plaintiffs may establish a disparate impact claim by alleging that the population in need of homeless shelters is disproportionately composed of racial minorities and by alleging that the effect of the closure of homeless shelters was to segregate minorities in primarily minority areas of the city)*

City of Joliet v. Mid-City Nat'l Bank of Chicago, 2012 WL 2514936 (N.D. Ill. June 28, 2012) (denying City's motion for judgment on the pleadings on owner's and tenant's fair housing affirmative defenses in condemnation action. The court rejected the city's argument that the disparate impact theory should not apply to eminent domain actions. The court held that the fact that disparate impact analysis would demand a more detailed review of the record was not a basis upon which to dismiss a claim under the disparate impact theory and noted that eminent domain actions may have the effect of making housing unavailable to minorities)*

Nikolich v. Vill. of Arlington Heights, -- F. Supp. 2d --, 2012 WL 2359313 (N.D. Ill. 2012) (granting summary judgment to defendant municipality in case alleging that the municipality denied an application for a supportive housing development that would have housed people with disabilities and holding that the disparate impact theory cannot be used to challenge a single zoning decision but rather can only be used to challenge a policy or practice)*

B. Disparate Treatment

Cinnamon Hills Youth Crisis Center, Inc. v. St. George City, 685 F.3d 917 (10th Cir. 2012) (holding that district court properly granted summary judgment to city in case in which a residential treatment facility wanted to operate a program for young people with

disabilities at a motel. The city denied the facility's requested variance from a code that limited motel stays to 29 days. The Tenth Circuit held that the district court correctly concluded that the plaintiff failed under the disparate treatment method of proof because it failed to show similarly situated people without disabilities were or would be granted a variance)

HDC, LLC v. City of Ann Arbor, 675 F.3d 608 (6th Cir. 2012) (affirming district court's motion to dismiss in case alleging that the city intentionally imposed the condition that the developers obtain a demolition permit because of the disabilities of the proposed residents. The Sixth Circuit held that it was implausible that the City would have accepted the developer's proposal to build affordable housing on city land for people with disabilities and then impose an impossible condition to block the development)*

Choices in the Community v. Michael J. Petlus, Jr., -- Fed. App'x. -- , 2013 WL 1149712 (6th Cir. 2013) (affirming district court grant of summary judgment against plaintiffs in disparate treatment case alleging that realty company refused to show home to non-profit organization who assisted people with development disabilities. The Sixth Circuit found that the defendant's concerns about zoning were a legitimate, non-discriminatory reason for refusing to show the home and that plaintiff failed to show that the reason was a pretext for discrimination)*

Nikolich v. Vill. of Arlington Heights, -- F. Supp. 2d --, 2012 WL 2359313 (N.D. Ill. 2012) (granting summary judgment to defendant municipality in case alleging that the municipality denied an application for a supportive housing development that would have housed people with disabilities and holding that the plaintiffs' claim under the disparate treatment theory failed because the municipality would have made the same decision and denied the multiple variances requested even if the prospective residents did not have mental disabilities)

Maciel v. Thomas J. Hastings Properties, Inc., No. 10-12167-JCB, 2012 WL 3560815 (D. Mass. Aug. 16, 2012) (holding that genuine issues of material fact existed precluding entry of summary judgment where plaintiff sought to purchase an affordable housing unit in a condominium complex and presented evidence that the complex attempted to steer her away, questioned whether she would be comfortable in the complex, attempted to prevent her from signing the sale agreement, provided incomplete information on a questionnaire required by a lender and refused to let her extend the time for closing by one day)

United States v. City of New Orleans, 2012 WL 6085081 (E.D. La. Dec. 6, 2012) (denying motion to dismiss in case in which a nonprofit developer planned to convert a

former nursing home into a 40-unit affordable housing development for people with disabilities but the New Orleans zoning board repeatedly denied the developer's applications for variances. The court found that DOJ sufficiently pled that the city intended to discriminate or was improperly motivated in making discriminatory decisions by alleging that the city denied variances to the developers on three occasions largely because of community opposition, the board provided no explanation for the denials and that board members made statements demonstrating that they were aware of the community opposition)

C. Exploitation Theory

Rivera v. Village of Farmingdale, -- F. Supp. 2d --, 2013 WL 599928 (E.D.N.Y. Feb. 19, 2013) (holding that group of Hispanic residents did not state a claim under the exploitation theory against village or owner for implementing a discriminatory redevelopment plan because plaintiffs failed to show that exploitation theory applies to FHA claims and failed to show an economically credible explanation of how the alleged exploiter could stay in business charging above-market rents)*

VI. Procedural Issues

A. Attorneys' fees

1. Plaintiff

Inclusive Communities Project v. Texas Dep't of Hous. & Community Affairs, 2013 WL 598390 (N.D. Tex. Feb. 15, 2013) (awarding \$1.8 million in attorneys' fees to plaintiffs based on excellent results achieved by obtaining extensive injunctive relief that addressed every issue raised in complaint. The court held that the failure to prevail on intentional discrimination claim did not require reduction in fees)*

2. Defendant

United States v. Hurt, -- F.3d --, 2012 WL 1207267 (8th Cir. Apr. 12, 2012) (reversing award of attorneys' fees against plaintiff United States under the Equal Access to Justice Act because the government's position in sexual harassment case was substantially justified)

Anderson Group v. City of Saratoga Springs, 2013 WL 160267 (N.D.N.Y. 2013) (denying defendant's motion for attorneys' fees based on plaintiffs' failure to prevail on disparate treatment claim because defendant did not show that claim was frivolous and

could not show that it incurred fees based solely on allegedly frivolous disparate treatment claim)

B. Discovery Sanctions

Short v. Manhattan Apartments, Inc., -- F. Supp. 2d --, 2012 WL 4829615 (S.D.N.Y. Oct. 11, 2012) (granting motion for discovery sanctions for repeated failures to comply with court order to produce documents related to a database maintained that contained landlord preferences. The Court ordered that it be established for purposes of trial that the rental listing database contained landlord preferences against renting to persons with governmental rental assistance and ordered the payment of \$23,000 as a discovery sanction)*

C. Class Certification

In Re Countrywide Financial Corp. Mortgage Lending Practices Litigation, 2013 WL 149853 (6th Cir. Dec. 5, 2012) (affirming district court's failure to certify class in case alleging that African-American and Latino borrowers paid higher interest rates because of subjective pricing policies. The Sixth Circuit held that plaintiffs failed to show either a uniform policy or practice or a common mode among the acts of discretion that caused the disparate impact)*

Barrett v. Option One Mortgage Corp., 2012 WL 4076465 (D. Mass. Sept. 18, 2012) (decertifying class in mortgage discrimination case where plaintiffs alleged that brokers had the discretion to charge higher interest rates and additional fees and brokers exercised discretion to charge higher rates to African Americans because under *Wal-Mart* the exercise of discretion is not sufficient to establish commonality unless the brokers exercised discretion by considering specific attributes)*

Kolio v. State of Hawaii, No. 11-266-LEK, 2012 WL 4472255 (D. Haw. Aug. 28, 2012) (holding that plaintiffs in fair housing class action alleging that public housing project was physically inaccessible failed to establish numerosity by relying on statistical estimates of the number of class members)

D. Pattern or Practice

United States v. Bahir, -- F. Supp. 2d --, 2012 WL 1365976 (W.D. Ala. Apr. 19, 2012) (holding that the United States established a pattern or practice in sexual harassment case based on allegations that owner employed manager to manage two properties and that manager engaged in the sexual harassment of multiple female tenants)

E. Settlement and Waiver

Fair Hous. Council of Cent. California v. Tyler Property, 2012 WL 5866619 (E.D. Cal. Nov. 19, 2012) (denying motion to enforce settlement where defendants approached represented plaintiffs and separately negotiated settlements outside the presence of plaintiffs' counsel on the grounds that the settlements were not knowing waivers of claims)

F. Injunctive Relief

Inclusive Communities Project v. Texas Dep't of Housing and Community Affairs, No. 08-cv-546, 2012 WL 3201401 (N.D. Tex. Aug. 7, 2012, amended Nov. 8, 2012). (awarding injunctive relief in case in which the Inclusive Communities Project (ICP) sued the Texas Department of Housing and Community Affairs (TDHCA) claiming that TDHCA's actions violated the FHA by allocating low-income housing tax credits (LIHTC) disproportionately to developments to be located in low-income, minority communities and denying tax credits to developments proposed for predominantly white, higher-income areas. The court ordered that the TDHCA adopt a remedial plan for the Dallas metropolitan area. The approved plan includes measures such as altering the QAP criteria to encourage more development in high-opportunity areas and conducting an annual disparate impact analysis. The remedy also included adjustments to the definition of a high-opportunity area by creating a graduated Opportunity Index, which gives varying weights to specific criteria (such as quality of schools or median income) in places where the poverty rate falls below fifteen percent.)

VII. Judgments

United States v. Bahir, -- F. Supp. 2d --, 2012 WL 1365976 (W.D. Ala. Apr. 19, 2012)(awarding default judgment in sexual harassment case of \$17,000 to four tenants and a civil penalty of \$10,000)

HUD v. Riverbay Corp., No. 11-F-052-FH-18 (HUD ALJ May 7, 2012) (awarding complainant \$38,930.78 in actual damages for medical cost of angioplasty and emotional distress and civil penalty of \$16,000 for refusing to engage in the interactive process and therefore failing to allow a person with depressive disorder an emotional support dog as a reasonable accommodation)

VIII. Settlements

United States v. Sussex Cnty., No. 12cv1591 (D. Del. Consent Decree filed Nov. 28, 2012) (consent decree in case alleging that the county's planning and zoning

commission denied land use approval for an affordable housing subdivision proposed by developer Diamond State Community Land Trust which had a disparate impact on African Americans and Latinos. The consent decree requires the county to pay \$750,000 to the developer, reconsider the proposal using nondiscriminatory criteria, enjoins the county from obstructing or delaying any affordable housing that is proposed by the developer without a substantial justification that is neutral on its face and consistent with applicable zoning laws and requires the county to take affirmative steps to provide for future affordable housing, including formulating a fair housing marketing plan and appointing a fair housing compliance officer)*

United States v. JPI Construction, No. 09cv412 (N.D. Tex. consent order June 25, 2012) (consent decree in design and construction case requiring JPI to pay \$10,250,000 into an accessibility fund to provide retrofits at properties built by JPI and to increase the stock of accessible housing in the communities where these properties are located and a \$250,000 civil penalty)*

United States v. GFI Mortgage Bankers, Inc., No. 12 Civ. 02502, Fair Housing – Fair Lending ¶ 9.9 - Sept. 2012 (S.D.N.Y. Aug 27, 2012) (consent decree in discriminatory lending case requiring defendant to pay \$3.5 million and a \$50,000 civil penalty for charging higher interest rates to African-American and Hispanic borrowers. Defendant also agreed to adopt a fair lending program and agreed not to compensate employees based on the terms and conditions of a loan)

Fair Housing Justice Ctr. v. Revlyn Apartments., No. 12-CV-1336 (BMC), Fair Housing – Fair Lending ¶ 11.10 (E.D.N.Y. Oct. 10, 2012) (settlement requiring apartment complex to pay \$225,000 for damages and attorneys' fees in case alleging that defendant refused to rent based on race)

United States v. Burgundy Gardens LLC, Fair Housing – Fair Lending ¶ 5.10, No. 10 Civ. 9099 (S.D.N.Y. Apr. 16, 2012) (\$175,000 settlement of race discrimination case against apartment complex for providing incorrect or incomplete information about availability to African-American prospective tenants, failing to provide application for an African-American prospective tenant, and failing to show available apartments to African-American prospective tenants)

Fair Hous. Justice Ctr. v. Town of Yorktown, Fair Housing – Fair Lending ¶ 4.9, No. 10-CIV-9337 (S.D.N.Y. Feb. 27, 2010) (\$165,000 settlement and injunctive relief (including the elimination of local residency preference for Section 8 program, fair housing training, written non-discrimination policy and affirmative marketing) in case challenging local residency preference on the grounds that program discriminated based on race and national origin and that town failed to affirmatively further fair housing)*

United States v. Community State Bank, Fair Housing – Fair Lending ¶ 1.8 (Jan. 2013) (consent decree requiring bank to invest \$165,000 in predominately African-American neighborhoods around Saginaw, Michigan in case alleging that bank failed to serve the credit needs of residents in African-American neighborhoods while addressing the credit needs of similarly situated residents in white neighborhoods)

Guerra v. Madera Mgt. Co., No. 1:11-cv-1488-LJO, 2012 WL 4091994 (E.D. Cal. Sept. 17, 2012) (settlement requiring defendant to pay \$140,000 in damages and attorneys' fees to plaintiff for sexual harassment and enforcing discriminatory rules)

Long Island Housing Serv. v. Main St, Fair Housing – Fair Lending ¶ 1.8 (Jan. 2013) (settlement agreement requiring payment of \$136,000 in damages and attorney fees for steering people with disabilities away from apartments, providing false information to applicants with disabilities and quoting higher rents to people with disabilities)

Juncker v. Relica, Fair Housing – Fair Lending ¶ 4.9 (April 2012) No. 5:11-00886-HRL (N.D. Cal. Feb. 24, 2012) (\$122,500 settlement for three families with children who were subject to discriminatory rules)