UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

GREATER NEW ORLEANS FAIR HOUSING ACTION CENTER, *et al.*	)	
Plaintiffs,	)	
	)	**No. 1:08-cv-1938-HHK**
v.	)	
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *et al.*	)	
Defendants.	)	

OPPOSITION TO PLAINTIFFS' SECOND MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST THE EXECUTIVE DIRECTOR OF THE LOUISIANA RECOVERY AUTHORITY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

Other Authorities

Defendant Robin Keegan, in her capacity as Executive Director of the Louisiana Recovery Authority (hereinafter referred to as "Keegan"), submits this memorandum in opposition to Plaintiffs' second motion for a temporary restraining order and preliminary injunction under Fed. R. Civ. P. 65.

On July 26, 2010, Plaintiffs filed a notice of appeal appealing this Court's Order denying their first motion for temporary restraining order and/or preliminary injunction. Plaintiffs' second motion for temporary restraining order and/or preliminary injunction seeks identical relief on behalf of the same individuals for whom relief was sought by virtue of Plaintiffs' first motion and for whom Plaintiffs' counsel declined representing at oral argument on Plaintiffs' first motion. Keegan submits Plaintiffs' filing of a notice of appeal divests this Court of jurisdiction to entertain Plaintiffs' second motion.

In addition, Keegan submits Plaintiffs' second request for a temporary restraining order and/or preliminary injunction remains premature at this stage in the litigation since this Court has not yet decided and/or issued a ruling as to whether it has subject matter jurisdiction in this case and the proper venue for this case.[1] This Court should not address Plaintiffs' requested relief without first deciding the issue of whether it can and will exercise jurisdiction over this case.

Alternatively, Keegan maintains Plaintiffs are not entitled to a temporary restraining order and/or a preliminary injunction.[2] They cannot show a likelihood of success on the merits, irreparable injury or that the injunctive relief is in the public interest. The evidence relied upon by the Court in its Memorandum Opinion dated July 6, 2010, in suggesting the Road Home

[1] Keegan adopts and incorporates by reference all defenses raised in her motion to dismiss and reply memorandum. (Rec. Doc. 28.)

[2] Keegan adopts and incorporates by reference her opposition to Plaintiffs' first motion for temporary restraining order and preliminary injunction. (Rec. Doc. 57.)

formula may be discriminatory[3] was flawed and unreliable. In addition, it is well settled such dicta at the preliminary injunctive stage are not the law of the case. Notwithstanding, the evidence provided herein shows the Road Home formula has no discriminatory effect. Plaintiffs cannot succeed on the merits of their disparate impact claim.

In addition, it has already been established the State of Louisiana has adequately set aside and reserved sufficient funds to pay any remaining Road Home applicants who are deemed eligible. Therefore, Plaintiffs are not at risk of any irreparable injury because, even if they are successful on the merits, which is denied, the LRA has obligated sufficient funds to cover the payment of Road Home grant awards for eligible Road Home applicants who have not yet had their first closing. Injunctive relief would only harm the remaining Road Home applicants and is not in the public interest.

Plaintiffs' second request for a temporary restraining order and preliminary relief remains overly broad, unnecessary and detrimental to the public interest and the administration of the Road Home Program. Their request should be denied.

I. PROCEDURAL HISTORY

Plaintiffs filed their Complaint in this case on November 12, 2008. (Rec. Doc. 1.) Defendant filed a Motion to Dismiss Plaintiffs' lawsuit on May 5, 2009. (Rec. Doc. 28.) Although Defendant's motion to dismiss is potentially dispositive of all claims at issue in this litigation, it remains pending as of the date of this motion. On June 2, 2010, Plaintiffs filed a

---

[3] Keegan strongly disagrees with the Court's dicta concerning the discriminatory impact of the formula. The Road Home program was never about race; it was a state wide program designed to assist low to moderate income individuals whose homes were damaged or destroyed by Hurricanes Katrina and/or Rita in more than 37 Louisiana parishes. It was not designed solely for Orleans Parish. Nevertheless, there has never been a showing by any expert the Road Home formula had a discriminatory impact. The only "evidence" submitted by Plaintiffs is based on inaccurate and flawed data. Notwithstanding, once the ACG was lifted, there is no possibility there could have been a discriminatory impact, as Plaintiffs admit.

Motion for a Temporary Restraining Order and Preliminary Injunction ("First Motion"). (Rec. Doc. 50.) Oral argument on Plaintiffs' motion was heard June 25, 2010. On June 29, 2010, this Court denied Plaintiff's motion. (Rec. Doc. 59.) On July 6, 2010, the Court issued its Memorandum Opinion setting forth the reasons for the denial. (Rec. Doc. 61.) The Court's denial of Plaintiff's motion was not limited to an Eleventh Amendment analysis, but included several grounds for denial, including, Plaintiffs' failure to demonstrate a likelihood of success; the Court's lack of authority to grant the ultimate relief sought; the involvement of state versus federal funds; Plaintiffs' failure to show irreparable harm; likelihood of third party injury, and public interest weighing in favor of both parties.

Thereafter, on July 21, 2010, Plaintiffs filed a Second Motion for Temporary Restraining Order and Preliminary Injunction ("Second Motion") seeking relief identical to that sought by virtue of their first motion. (Rec. Doc. 62.) On July 22, 2010, Keegan filed a Motion for Extension of Time to Respond to Plaintiff's Second Motion. (Rec. Doc. 63.) On July 23, 2010, Plaintiffs also filed an Opposition to Keegan's motion for additional time. (Rec. Doc. 65.) On July 23, 2010, the Court denied Keegan's motion but provided an additional two days for Keegan to respond to Plaintiff's First Motion. (Rec. Doc. 66.)[4] On July 26, 2010, Plaintiffs filed a Notice of Appeal appealing the Court's order denying their First Motion for preliminary injunction. (Rec. Doc. 67.)

II. THE COURT LACKS JURISDICTION TO ENTERTAIN PLAINTIFF'S SECOND MOTION & PLAINTIFFS' MOTION IS BY COLLATERAL ESTOPPEL

Under 28 U.S.C. § 1291, "all final decisions" of the district court are appealable. This Circuit strictly construes this rule, noting "a district court's decision is ordinarily not final until it

[4] Keegan's response is timely filed in accordance with the Court's Order.

'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Banks v. Office of Senate Sergeant-At-Arms and Doorkeeper of the United States Senate*, 471 F.3d 1341, 1345 (D.C.Cir. 2006) (quoting *In re Sealed Case (Medical Records)*, 381 F.3d 1205, 1209 (D.C.Cir. 2004)). One exception to the final order rule is found in 28 U.S.C. § 1292, which grants a court of appeals jurisdiction over certain interlocutory appeals. 28 U.S.C. § 1292(a)-(b). Under § 1292(a)(1), courts of appeals have jurisdiction from orders granting or otherwise relating to injunctions. 28 U.S.C. § 1292(a)(1).[5]

It is well-settled that the filing of a notice of appeal, including an interlocutory appeal, confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal. *United States v. DeFries*, 129 F.3d 1293, 1302 (D.C.Cir. 1997) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982)("a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously"). The reasons for the transfer of jurisdiction are obvious; "divestiture of district court jurisdiction avoids the 'confusion and waste of time that might flow from putting the same issues before two courts at the same time.'" *Decatur Liquors, Inc., et al. v District of Columbia, et al*, 2005 WL 607881 *2 (D.D.C. March 16, 2005), citing, *In the Matter of Thorp*, 655 F.2d 997, 998 (9th Circ. 1981). The only exceptions to this rule are when a party frivolously appeals or takes an interlocutory appeal from a non-appealable order - neither of which is applicable in this case. *United States v. DeFries*, 129 F.3d. at 1302-03; *McKesson HBOC, Inc. v. Islamic Republic of Iran*, 315 F.Supp.2d 63, 66

[5] Additionally, under § 1292(b), a district court judge may certify that "an order 'involves a controlling question of law as to which there is substantial ground for difference of opinion' and further finds 'that an immediate appeal from the order may materially advance the ultimate termination of the litigation.' " *Banks*, 471 F.3d at 1345 (quoting 28 U.S.C. 1292(b)). If a party files an appeal upon such certification, "[t]hat application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order." 28 U.S.C. § 1292(b). No such certification has been issued in this case. Accordingly, §1292(b) is inapplicable.

(D.D.C. 2004) ("[A] notice of appeal from an unappealable order does not divest the district court of jurisdiction."). The district court does not regain jurisdiction over the issues on appeal until the court of appeals issues its mandate. *Johnson v. Bechtel Associates Professional Corp.*, 801 F.2d 412, 415 (D.C.Cir. 1986) (per curiam). [6]

Plaintiff's Second Motion claims to seek relief on behalf of Road Home applicants who have not received their initial grant rewards under the Road Home Program. (Rec. Doc. 62, p. 8.) Plaintiffs seek a temporary restraining order and preliminary injunction enjoining Keegan from using a formula that takes into account pre-storm home values to calculate and disburse any future grants. (Id.) By Plaintiffs' own admission, however, the individuals for whom Plaintiffs seek relief by virtue of their Second Motion were included in Plaintiffs' First Motion. (See Rec. Doc. 65, p. 2.) ("African American homeowners who have not yet received initial awards under the Road Home Program …have thus always been a part of this litigation and a part of the class for whom Plaintiffs sought relief in this litigation, **including in Plaintiffs' first motion for preliminary relief."**)(emphasis added.) Further, Plaintiffs admit their Second Motion "encompasses the same factual issues and largely the same legal issues" as their First Motion. (Id.) Although Plaintiffs contend their Second Motion "simply addresses a narrower subset of Plaintiffs," it is undisputed this "subset" was included in their First Motion, which this Court denied and for which Plaintiffs have filed a notice of appeal. It is further undisputed Plaintiffs counsel declined at oral argument to limit their First Motion and the requested injunctive relief to this "narrow subset" for whom they now seek relief.

[6] While a district court may retain jurisdiction to modify an injunction, Plaintiffs are not seeking a modification of their injunctive relief. Fed.R.Civ.P. 62(c). Rather, Plaintiffs are seeking the identical relief sought by way of their First Motion, which this Court denied and which Plaintiffs have now appealed.

As this Court noted in its Memorandum Opinion:

> **The Court asked plaintiffs during oral argument on this motion whether they would wish to go forward with their request for a preliminary injunction if the Court were to hold that the ultimate relief they seek is only available to those 179 individuals. Plaintiffs did not express a desire to limit their case to such a narrow group of Road Home Program beneficiaries.**
>
> *** * ***
>
> **As noted, plaintiffs' counsel have declined to indicate that the wish to represent the 179 applicants who have not yet received awards.**

(Rec. Doc. 65, pps. 14-15, fn. 12, 13.) [7]

This "narrow subset" of plaintiffs was included in Plaintiff's First Motion. It was the subject of oral argument on Plaintiffs' First Motion. It was the subject of this Court's Memorandum Opinion dated July 6, 2010, denying Plaintiff's First Motion. Plaintiffs' counsel were provided the opportunity to seek relief on behalf of this narrow subset during oral argument June 25, 2010. They declined. Their subsequent appeal of the Court's Order denying their First Motion inherently includes an appeal of all issues before the Court by way of their First Motion. *See Decatur Liquors,* supra. at *3 (where party moved to dissolve a preliminary injunction but raised no new facts or argument it was inadvisable for the court to reconsider its decision particularly where the propriety of its initial determination is under review by an appeals court.)

As this "narrow subset" was included in the First Motion, and Plaintiffs have now raised the same factual and legal arguments in their Second Motion, any issues related to the denial injunctive relief on this subset's behalf is encompassed in Plaintiffs' appeal. Accordingly, this Court is divested of jurisdiction to entertain Plaintiffs' Second Motion and their motion should be stayed pending the outcome of Plaintiffs' appeal.

[7] Keegan submits Plaintiffs' lack standing to seek injunctive relief on behalf of this subset of individuals as Plaintiffs' counsel unequivocally declined representing these individuals at oral argument.

In addition, Plaintiffs' Second Motion is barred by collateral estoppel and/or res judicata. Traditionally, issues litigated in the context of a preliminary injunction traditionally would not form a basis for collateral estoppel. *Kuznich v. County of Santa Clara,* 689 F.2d 1345, 1350-51 (9th Cir. 1983). Recent decisions have relaxed this view by applying the collateral estoppel doctrine to matters resolved by preliminary rulings." See *Barnhardt v. District of Columbia,* 2010 WL 2802646 (D.D.C. July 16, 2010) citing, *In re Nangle,* 274 F.3d 481, 484-85 (8th Cir. 2001). The doctrine may apply, where findings made in a prior proceeding are "sufficiently firm" to remove any compelling reason to permit re-litigation of the issues**.** *Barnhardt* at *9, citing, *Hawksbill Sea Turtle v. FEMA*, 126 F.3d 461, 474 n. 11 (3d Cir. 1997). For purposes of collateral estoppel, finality "may mean little more than that the litigation of a particular issue has reached such a stage that a court sees no really good reason for permitting it to be litigated again." *Id*, citing, *In re Brown*, 951 F.2d 564, 569 (3d Cir. 1991). The issue of whether Plaintiffs are entitled to any injunctive relief has already been decided by this Court. Because the subset of applicants for whom Plaintiffs now seek relief were included in their First Motion and therefore, were included in the Court's July 6, 2010, Memorandum, Plaintiffs' requested relief is barred by collateral estoppel. Moreover, Plaintiffs have appealed the denial of their First Motion. (Rec. Doc. 67; District of Columbia Court of Appeals, Civil Action No. 10-5257). Plaintiffs should be precluded from re-litigating the very issues previously decided by this Court and issues presently on appeal.

III. PLAINTIFFS LACK STANDING TO SEEK RELIEF ON BEHALF OF THE SUBSET

Article III of the Constitution limits the jurisdiction of federal courts to cases or controversies. U.S. Const. Art. III, § 2, cl. 1. "[A] showing of standing is an essential and unchanging predicate to any exercise of a court's jurisdiction." *Fla. Audubon Society v. Bentsen,*

94 F.3d 658, 663 (D.C.Cir. 1996) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). The "question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Allen v. Wright,* 468 U.S. 737, 750-51, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984). Therefore, standing must be resolved as threshold matter. *Raytheon Co. v. Ashborn Agencies, Ltd.*, 372 F.3d 451, 453 (D.C.Cir. 2004).

To demonstrate standing, a plaintiff must satisfy a three-pronged test. *Sierra Club v. Environmental Protection. Agency*, 292 F.3d 895, 898-99 (D.C.Cir. 2002) (citing *Defenders of Wildlife,* 504 U.S. at 560, 112 S.Ct. 2130). First, the plaintiff must have suffered an injury in fact which is defined as a harm that is concrete and actual and/or imminent, not one that is conjectural or hypothetical. *Byrd v. Environmental Protection Agency*, 174 F.3d 239, 243 (D.C.Cir. 1999). Second, there must be a fairly traceable connection between the alleged injury and the alleged conduct of the defendant. *Id.; Simon v. Eastern Ky. Welfare Rights Org.,* 426 U.S. 26, 41, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976). Finally, it must be likely that the requested relief will redress the alleged injury. *Id.*

It is well settled that "[m]ere allegations will not support standing at the preliminary injunction stage." *Doe v. Nat'l Bd. Med. Examiners,* 199 F.3d 146, 152 (3rd Cir. 1999); *see also Nat'l Wildlife Fed. v. Burford,* 878 F.2d 422, 423 (D.C.Cir. 1989), *rev'd on other grounds sub non Lujan,* 497 U.S. 871, 110 S.Ct. 3177 (the burden of establishing standing at preliminary injunction stage is no less than the standard for summary judgment). No standing will exist if the allegations are "purely speculative, [which is] the ultimate label for injuries too implausible to support standing." *Tozzi v. Dep't of Health & Human Servs.,* 271 F.3d 301, 307 (D.C.Cir. 2001). Further, no standing will exist if the court is required to accept "very speculative inferences and

assumptions in any endeavor to connect the alleged injury with [the challenged conduct]." *Winpisinger v. Watson*, 628 F.2d 133, 139 (D.C.Cir. 1980).

Plaintiffs cannot demonstrate an injury-in-fact for the subset of Road Home applicants for whom they seek injunctive relief. In fact, Plaintiffs' claim of injury on behalf of this purported subset is purely speculative. As more detailed below, there is only a possibility that any of the remaining "179" applicants (now numbering 141) are even eligible to receive Road Home grants due to various eligibility issues and an impending deadline. (See Section V, Exhibit B, *infra*, identifying the eligibility issues faced by the remaining 141 applicants.) In addition, because there is no injury in fact, Plaintiffs cannot establish a traceable connection between the alleged injury and the alleged conduct of Keegan. The requested relief cannot redress the subset's alleged injury as it is purely speculative as to whether an injury has been sustained.

Finally, to the extent a number of the subset claims (38) have already been processed and grants dispersed, Plaintiffs lack standing to seek redress on their behalf, as first, they can show no injury has been suffered and second, the Court is without authority to order the recalculation of these grants.

Absent this Court accepting Plaintiffs' speculative inferences and unsupported assumptions concerning the Road Home formula and the subset's alleged risk of imminent harm, Plaintiffs have failed to demonstrate standing on behalf of this subset of Road Home applicants for whom they request injunctive relief. Their request should be denied.

IV. PLAINTIFFS' SECOND REQUEST FOR INJUNCTIVE RELIEF IS PREMATURE

As of the date of this Opposition, the Court has not ruled on Keegan's Motion to Dismiss filed May 5, 2009, a motion potentially dispositive of all issues in this litigation. Accordingly,

similar to Plaintiffs' first request for injunctive relief, Keegan maintains their second request for injunctive relief is premature.

It is well settled that jurisdictional questions should be resolved before considering the merits of injunctive relief. *See Leitner v. U.S.*, 679 F.Supp.2d 37, 40 (D.D.C. 2010*); In Re Any and All Funds or Other Assets in Brown Brothers Harriman & Co.*, 601 F.Supp.2d 252, 253 (D.D.C. 2009); *Bancoult v. McNamara*, 227 F.Supp.2d 144 (D.D.C. 2002). Therefore, prior to deciding Plaintiff's second motion, this Court should decide the threshold question of whether it has jurisdiction over this litigation by ruling on the outstanding Motion to Dismiss. *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 740, 96 S.Ct. 1202, 47 L.Ed.2d 435 (1976); *Cobell v. Norton*, 240 F.3d 1081, 1094 (D.C. Cir. 2001). *See* 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2941, p. 35 (2d ed. 1995)("[Rule 65] assumes the district court has already acquired jurisdiction and that venue is proper.") Until such time as this Court rules on Keegan's motion to dismiss, Plaintiffs' repeated requests for a temporary restraining order and preliminary injunction are premature and should be denied.

V. PLAINTIFFS ARE NOT ENTITLED TO INJUNCTIVE RELIEF UNDER FED. R. CIV.P. 65

A. Standard for Injunctive Relief

Plaintiffs' Second Motion, like their First Motion, fails to satisfy the requisite showing for injunctive relief at this stage of the litigation. Injunctions are extraordinary forms of judicial relief which courts should grant sparingly. *Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S.Ct. 1865, 138 L.Ed.2d 162 (1997). It is not a form of relief granted lightly. *Ambach v. Bell*, 686 F.2d 974, 979 (D.C. Cir. 1982). Rather, only when the movant demonstrates (1) a substantial likelihood of success on the merits; (2) it would suffer irreparable injury if the injunction is not granted; (3) an injunction would not substantially injure other interested parties; and (4) the

public interest would be furthered by the injunction should such relief be granted. *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1066 (D.C. Cir. 1998)(quoting *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 746 (D.C. Cir. 1995).[8] These factors "interrelate on a sliding scale and must be balanced against each other." *Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1318 (D.C. Cir. 1998). Of significant importance in this analysis is the requirement for the movant to demonstrate a substantial likelihood of success on the merits. *Cf. Benton v. Kessler*, 505 U.S. 1084, 1085, 112 S.Ct. 2929, 120 L.Ed.2d 926 (1992)(per curiam). Absent a "substantial indication" of likely success on the merits, "there would be no justification for the court's intrusion into the ordinary processes of administration and judicial review." *Am. Bankers Ass'n v. Nat'l Credit Union Admin.*, 38 F.Supp.2d 114, 140 (D.D.C. 1999)(internal quotation omitted).[9]

B. Plaintiffs Cannot Prove A Substantial Likelihood of Success on the Merits

This Court has already found Plaintiffs cannot prove a substantial likelihood of success on the merits. To support their claim of success on the merits, Plaintiffs rely solely on the Court's dicta in its Memorandum Opinion that the Road Home formula may have a disparate

[8] Certain types of preliminary injunctions are disfavored: (1) preliminary injunctions that alter the status quo; (2) mandatory preliminary injunctions; and, (3) preliminary injunctions that give the movant all the relief it would be entitled to if it prevailed in a full trial. *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004), *affirmed*, 546 U.S. 418, 126 S.Ct. 1211, 163 L.Ed.2d 1017 (2006). In these cases, a party seeking a preliminary injunction "must meet a higher standard than in the ordinary case by showing 'clearly' that he or she is entitled to relief or that 'extreme or very serious damage' will result from the denial of the injunction." *Veitch v. Danzig*, 135 F.Supp.2d 32, 35 (D.D.C. 2001).

[9] Similar to their First Motion, Plaintiffs' Second Motion does not seek to maintain the *status quo*, rather it is tailored to have the opposite effect. The *status quo* would be to allow OCD to complete the Road Home Program to assist Louisiana homeowners by completing the processing of the Road Home grant applications and appeals remaining, awarding and disbursing compensation grants, awarding and disbursing Additional Compensation Grants (ACG) in an amount over the original $50,000 cap pursuant to Action Plan Amendment 39, and by proposing and seeking HUD approval for a construction loan program as described in Action Plan Amendment 43.

It is clear from the overly broad wording of Plaintiffs' proposed order, they are requesting a "*freeze*" all of OCD's functions at this time, thus putting an end to the flow of federal recovery money to the State of Louisiana by asking this Court to enjoin Keegan "from using the pre-storm value of a beneficiary's home as a criterion to calculate or disburse any further initial grant awards to beneficiaries of the Road Home Program, which Defendant administers." (Rec. Doc. 62-2.) Plaintiffs should be required to meet the higher standard than in the ordinary case by showing they are 'clearly' entitled to relief and/or that 'extreme or very serious damage' will result from the denial of the injunction.

impact. However, this Court has not yet ruled on Keegan's motion to dismiss or determined that the Fair Housing Act even applies to Plaintiff's claims.[10] Moreover, Plaintiffs have not proven their disparate impact claim with any competent evidence.

Disparate impact claims "involve. . . practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity." *Anderson v. Zubieta*, 180 F.3d 329 (D.C. Cir. 1999), *citing International Bhd. Of Teamsters v. United States*, 431 U.S. 324, 336 n. 15, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977). This Court has identified four factors for determining whether conduct that produces a disparate impact violates the FHA: (1) the strength of the plaintiffs' showing of discriminatory effect; (2) whether any evidence indicates discriminatory intent; (3) the defendant's interest on taking the challenged actions; and, (4) whether the plaintiffs seek to compel the defendant to affirmatively provide housing to a protected class or merely to restrain the defendant from interfering with individual property owners who wish to provide such housing. *2922 Sherman Avenue Tenants' Association v. District of Columbia*, 444 F.3d 673, 680 (D.C. Cir. 2006). Once plaintiffs demonstrate that the challenged practice has a disproportionate impact, the burden shifts to the defendant "to prove that its actions furthered, in theory and in practice, a legitimate, bona fide governmental interest and that no alternative would serve that interest with less discriminatory effect." *Id.; see also, National Fair Housing Alliance, Inc. v. Prudential Insurance Company of America*, 208 F.Supp.2d 46 (D.D.C. 2002)("Courts have applied the basic burden-shifting scheme used to review disparate impact clams brought under

[10] Keegan renews her argument the Fair Housing Act does not supply Plaintiffs with a cognizable claim since the Road Home Program at issue is a compensation grant program, rather than a housing program, and Keegan did not "make unavailable or deny . . . a dwelling to any person because of race," "discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race," participate in any "real estate-related transactions," or administer "housing-related programs" as defined in the Fair Housing Act, 42 U.S.C. §§ 3604(a)-(b) , 3605(a), 3608(d), 3608(e)(5). In addition, Plaintiffs have still not addressed their claims under the Housing and Community Development Act of 1974, 42 U.S.C. § 5304(b)(2).

Title VII, 42 U.S.C. § 1973(c), to disparate impact claims brought pursuant to FHA.") Under both the four-factor and burden-shifting approaches, this Court requires "proof of disproportionate impact." *2922 Sherman Avenue Tenants' Association*, 444 F.3d at 680. "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 Avenue Tenants' Association*, 444 F.3d at 681.

Typically, a showing of disparate impact is made through the submission of statistical evidence by an expert that compares the relevant populations and the effect of the practice at issue. *Menokan v. Blair*, 2006 WL 1102809, at *2 (D.D.C. April 26, 2006). Disparate impact discrimination is proven by showing disparities in excess of 1.96 standard deviations under a two-tailed test of statistical significance. *Anderson*, 108 F.3d 329 at 339-40. In support of their Second Motion, Plaintiffs failed to submit any real statistical evidence or the opinion of an expert economist or statistician that indicates the effect of the practice at issue (the formula used for Option 1 compensation grants) has a disparate impact on African American eligible homeowners in Orleans Parish as compared to Caucasian eligible homeowners in Orleans Parish.[11] Further, Plaintiffs have offered no admissible or reliable evidence the alleged disparities are in excess of 1.96 standard deviations. Without such reliable statistical proof, Plaintiffs are unable to show any likelihood on the success of the merits of this case.

The Court's dicta made in connection with Plaintiffs' First Motion was not based upon a complete review of the merits of Plaintiffs' disparate impact claim.[12] Rather, the Court's opinion was based upon a flawed PolicyLink report which contained incomplete and outdated data. Notwithstanding, the Court's dicta at the preliminary injunctive stage are not binding and do not

[11] Plaintiffs' First Motion was likewise devoid of this type of statistical support.

[12] Dicta is an opinion by a court on a question that is directly involved, briefed, and argued by counsel, and even passed on by the court, but that is not essential to the decision. *Black's Law Dictionary* 485 (8th ed. 2007)

form the "law of the case" as Plaintiffs suggest.[13] *Univ. of Texas v. Camenisch,* 451 U.S. 390, 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981) ("[F]indings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits."); *Nutrition Inst. v. Block,* 749 F.2d 50, 56 (D.C.Cir. 1984) ("[A] tentative assessment made to support the issuance of a preliminary injunction pending resolution of the issue ... is not even law of the case, much less res judicata in other litigation"). As of the date of Plaintiffs' Second Motion, there is no competent evidence supporting this Court's "finding" the Road Home formula may have a disparate impact. To the contrary, the evidence shows no disparate impact.

1. Plaintiffs' Evidence is Flawed

To support their First Motion, Plaintiffs relied on a 2008 report prepared by PolicyLink to prove disparate impact discrimination. In their Second Motion, Plaintiffs continue to rely on conclusions from the PolicyLink report, using the Court's dicta based on the report, to support their claim the remaining 179 Road Home applicants are of risk of being discriminated against absent injunctive relief. However, as demonstrated herein, the PolicyLink is flawed in several aspects and it does not provide any direct comparisons of the outcomes for African-Americans and Caucasians who are in the higher income group, nor anything specific to the 179 African-American homeowners who may be awarded an Option 1 grant, but who have not yet received any funds from the Road Home Program.

Primarily, the PolicyLink report is based on incomplete data. (See Exhibit A, Declaration of Janet R. Thornton, Ph.D.) The PolicyLink Report is based on data for Option 1 Road Home

[13] None of the cases cited by Plaintiffs involve a challenge to findings made during preliminary injunctive proceedings. *Kimberline v. Quinlan,* 199 F.3d 496 (D.C.Cir. 1999)(law of the case doctrine addressed during §1983 action and appeal of denial of summary judgment); *Does I through III v. District of Columbia,* 593 F.Supp.2d 115 (D.D.C. 2009)(when a case is appealed and remanded the decision of the Court of Appeals establishes the law of the case which the trial court must follow on remand).

applicants who received a monetary grant as of June 26, 2008, and whose transactions were recorded in the database upon which the authors relied. (Exhibit A, ¶ 7.) The report shows, statewide[14], the number of closed applications was 84,114 as of June 26, 2008. (Id.) As of July 15, 2010, however, there were 117,298 applicants who received Road Home Program grants under Option 1. (Id.) The PolicyLink Report failed to include approximately 30% of the Louisiana grants that have now been awarded. (Id.)

As of June 26, 2008, the number of New Orleans closed applications was 31,347. This is only 58.1% of the total number of applications citywide. (Exhibit A, ¶ 8.) The percent of New Orleans applications that closed by June 26, 2008 varied by neighborhood. (Id.) The Lower 9th Ward had the lowest percentage closed at 53.9% and Gentilly had the highest percentage closed at 66.6%. (Id.) Given that nearly 42% of the New Orleans applications are not included in the PolicyLink Report and nearly 30% of all closed applications were not included, the PolicyLink Report is not reliable to assess any validity to Plaintiffs' allegation of race discrimination in the distribution of Road Home Option 1 grants to Orleans Parish homeowners. (Id.)

In addition, the PolicyLink Report does not even focus on the group of homeowners who are the focus of Plaintiffs' claim. Rather, it is primarily based on grants awarded to homeowners in all income categories and is not restricted to those in the higher income category (i.e., above LMI). (Exhibit A, ¶ 9.) As a result, the 2008 report does not provide any information that can be used to determine whether African-American recipients in the higher income category, those persons for whom Plaintiffs now seek relief, were adversely impacted by the way in which the LRA distributed Option 1 funds. (Id.)

[14] The Road Home program was designed as a state-wide program for thirty-seven parishes. It is not designed solely for Orleans Parish.

Secondly, the PolicyLink report understates the value of the grants some homeowners actually received as of mid-2010. (Exhibit A, ¶ 10.) In 2009, the LRA amended the formula and removed the $50,000 cap on the Additional Compensation Grants (ACGs) for LMI homeowners. (Id.) Effective January 2010, applicants in this income bracket became eligible for additional grant awards up to the estimated cost of damage or up to the maximum grant of $150,000, even if the applicant did not possess flood and/or hazard insurance. (Id.) These extra funds likely eliminated any gap between the estimated cost of repairing/rebuilding and the total resources available for such purposes for those whose income was at or below 80% of the area median income. (Id.) Notably, Plaintiffs concede that LMI homeowners became entitled to grants based on the full cost of repair (up to $150,000).[15]

As of July 2010, 42% of the Option 1 closed applications were from LMI households and, across all closings, 41% were African-American. (Exhibit A, ¶ 11.) Given that in Orleans Parish there is generally a strong correlation between LMI status and being African-American, a large portion of the African-American grant recipients are likely LMI households. (Id.) For example, in 2010, among the Orleans Parish Census Tracts severely impacted by Hurricanes Katrina and Rita, approximately 82% of the families in the LMI category are African-American. (Id.) Considering this data, a large portion of the African-American recipients included in the PolicyLink Report are not likely to be part of the subset of recipients on which Plaintiffs have now focused their claim. (Id.) Further, a substantially larger percentage of African-Americans than Caucasians in the Orleans Parish neighborhoods that suffered the greatest storm damage are in the LMI category. (Id.) Therefore, the removal of the cap on ACGs likely reduced or may have eliminated any potential adverse impact on African-American recipients as a group. (Id.)

[15] See Rec. Doc. 50, p. 17, fn. 9; Rec. Doc. 58, pps. 2-3 (Plaintiffs' admit the removal of the cap on ACGs eliminated any potential adverse impact on African-Americans whose income is 80% or less of the area median income.)

Further, the PolicyLink report does not provide any information that can be used to the evaluate Plaintiffs' claim of adverse impact on the subset of individuals at issue. (Exhibit A, ¶ 12.) The PolicyLink Report includes no statistical analysis of differences between the African-American and Caucasian gaps among higher income homeowners – the category on which Plaintiffs now focus. (Id.) The PolicyLink Report shows the gap between the total resources available and the estimated cost of damage for LMI and higher income homeowners, as well as the gaps for select neighborhoods in Orleans Parish. (Id.) These June 2008 calculations reveal that, on average, the gap is larger among LMI than higher income homeowners, and is larger for homeowners in predominately African-American neighborhoods than predominately Caucasian neighborhoods. (Id.) If the PolicyLink Report included the ACGs and the additional ACGs ("AACG") that these LMI homeowners received, the gaps shown for the LMI group, African-Americans and predominately African-American low income neighborhoods, would be substantially smaller than the report suggests. (Id.)

Thirdly, even if the PolicyLink report had included complete data, the gaps between total resources to finance rebuilding and the estimated cost of repairs are likely inaccurate because the damage estimates are not based on actual repair cost. (Exhibit A, ¶ 13.) According to The Road Home's Frequent Questions for Homeowners, the estimated cost of damage is based on modest rebuilding standards. If the dwelling sustained less than 51% damage, the cost was estimated on a component-by-component basis. If the home was torn down or sustained more than 51% damage, the estimated cost of repair was calculated by multiplying $130 by the total number of square feet in the home plus other costs. Therefore, the gaps for homeowners whose actual costs of repair were higher than the modest estimates are understated. (Id.) If higher income and Caucasian homeowners were more likely to have actual repair costs in excess of their estimated

damage, then the PolicyLink comparisons of the gaps between income or racial groups exaggerate the disparity, if any existed. (Id.)

Finally, in order to determine whether African-American recipients as a group were adversely impacted by the LRA's distribution of Option 1 grants, an inferential statistical analysis must be conducted. (Exhibit A, ¶ 14.) In this case, the analysis should compare the proportion of non-LMI African-American and Caucasian recipients whose grants were based on the pre-storm value of the home. (Id.) If these proportions are statistically similar, then the data indicate that the policy is neutral with respect to the race of these homeowners. (Id.) If the proportions are not statistically similar, then the analyst can determine if the gap between African-American and Caucasian recipients is statistically significant. (Exhibit A, ¶ 15.) The calculation of the gap should account for insurance payments and FEMA grants as well as the penalty for the lack of insurance. (Id.) The results of such an analysis can be used to determine whether the high income African-Americans were adversely impacted by the formula that LRA used to distribute Option 1 grants to applicants with income above the LMI threshold. (Id.)

The PolicyLink report relied upon by Plaintiffs is unequivocally incomplete, outdated, and fails to include the additional compensation grants to low/moderate income recipients. The report is devoid of any reliable information to evaluate whether the formula utilized by the LRA has an adverse impact on the African-American Option 1 recipients or 179 potential recipients with income levels above the low/moderate income threshold. (Exhibit A, ¶ 16.) The report should be disregarded in its entirety.

2. Sovereign Immunity Concerns Exists

The Court did not deny Plaintiff's First Motion solely because of sovereign immunity concerns. Several grounds formed the basis of the denial: Plaintiffs failed to demonstrate a

likelihood of success; the Court's lacked authority to grant the ultimate relief sought by Plaintiffs; state funds, not federal funds were involved; Plaintiffs failed to show irreparable harm; there was a likelihood of third party injury, and public interest weighed in favor of both parties. (Rec. Doc. 61). Plaintiffs' Second Motion should not change this Court's analysis, as Plaintiffs continue to fail to meet the requisite showing justifying injunctive relief at this stage of the litigation.

Notably, Plaintiffs attempt to circumvent sovereign immunity concerns by citing the Court's suggestion it "would" have jurisdiction to enjoin Keegan from continuing to administer the Road Home Program in an unlawful manner. However, as demonstrated above, the Court's dicta the formula at issue may be discriminatory was based on incomplete, outdated and flawed data.

In addition, sovereign immunity concerns remain viable, even for the "179" remaining applicants for whom Plaintiffs seek relief. Of the original 179 applicants, as of July 31, 2010, an additional 38 applicants have received grants. (Exhibit B, Declaration of Lara Robertson.) Their grants have been calculated and dispersed. Accordingly, any relief ordered by this Court for those applicants would be retroactive and impermissible.

Therefore, while Keegan opposes any injunctive relief concerning the "179" applicants, as the funds involved are state, not federal funds, by no means can this Court order retroactive relief for any applicants, including, the 38 applicants identified above, whose grants have already been calculated and/or dispersed.[16]

3. There is no Risk of Irreparable Harm

"[T]he basis of injunctive relief in the federal courts has always been irreparable harm," *Sampson v. Murray*, 415 U.S. 61, 88, 94 S.Ct. 937, 39 L.Ed.2d 166 (1974). A court may deny a

[16] See Rec. Doc. 52.

motion for a preliminary injunction and not address the remaining three factors where a plaintiff fails to establish irreparable harm. *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d *738, 747 (D.C.Cir.1995).* To be irreparable, an injury must be "certain and great," "actual and not theoretical," and "of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm." *Id.* A mere showing of "possible" injury is insufficient. *Winter v. Nat. Res. Def. Council, Inc.*, --- U.S. ----, 129 S.Ct. 365, 375, 172 L.Ed.2d 249 (2008) (a plaintiff must "demonstrate that irreparable injury is likely in the absence of an injunction," and not a mere "possibility"); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C.Cir. 1985) (per curiam) (irreparable harm is shown only where a plaintiff's injury is "both certain and great" rather than "theoretical").

The purported "narrow subset" of Road Home applicants for whom Plaintiffs seek relief do not face irreparable harm as there is only a mere possibility any of these applicants will ever meet eligibility requirements and/or receive Road Home grants. Of the remaining 141 applicants, 2 applicants are no longer eligible to receive a Road Home grant because they failed to meet the program deadline of November 1, 2008. (Exhibit B, ¶5(a).) Fifty-four (54) applicants have failed to maintain communications with the program staff and it is unknown whether they have a continued interest in receiving a Road Home grant. (Exhibit B, ¶5(c).) Sixty-nine (69) applicants face eligibility issues relating to documentation evidencing their ownership of the property. (Exhibit B, ¶5(d).) Thirteen (13) applicants face eligibility issues relating to documentation evidencing their occupancy of the property. (Exhibit B, ¶5(e).) Another three (3) applicants have other eligibility issues relating to either ownership and/or occupancy issues. (Exhibit B, ¶5(b).)

The Office of Community Development has established a deadline of August 16, 2010 by which applicants must contact the program staff and provide missing documentation and schedule a closing date, which must occur prior to October 1, 2010. (Exhibit B, ¶5.) It is anticipated that a substantial portion of the remaining applicants will no longer be eligible for a Road Home grant once the August 16, 2010 deadline passes. (Id.)

In addition, it is undisputed there are sufficient funds in reserve and set-aside to pay any eligible pending grant applications. Primarily, and contrary to the position taken by the Plaintiffs in their Second Motion for Temporary Restraining Order and Preliminary Injunction, no "surplus" of monies exist from which this Court can take funds to disperse to the "subset" of applicants identified by the Plaintiffs, i.e., those individuals who comprise the approximate 141 pending Road Home applications of identified African American homeowners in Orleans Parish who opted for Option 1 and are above low-to-moderate levels of income. (Exhibit C, Declaration of Robin Keegan.)

The remaining funding of the various types of grants under the Road Home program and the expenses associated with administration and completion of the program is through an appropriation from the U.S. Congress under Public Law 110-116. (Exhibit C, ¶ 6.) Following budgeted amounts for payment of homeowner compensation grants, additional compensation grants, elevation incentive grants, "sold home" grants, payment of costs associated with rehabilitation of acquired properties, administrative expenses of the Louisiana Land Trust, among others, there remains from that appropriation approximately $150 million which is restricted by law for use in the Road Home program. (Id.) As there continue to be a number of Road Home grant recipients that, due to a variety of reasons, have unmet needs which have prevented them from completing recovery from Hurricanes Katrina and Rita, to further assist

such Road Home grant recipients the State has prepared Action Plan Amendment 43 (APA43), which was submitted to the United States Department of Housing and Urban Development on July 1, 2010. (Id.) Through APA43, the remaining funds of the appropriation under PL110-116 shall be utilized in construction lending programs. (Id.) This proposed activity would be combined with other programs that the OCD has developed to support Option 1 families to rebuild their homes. (Id.)

Notwithstanding, as this Court has already found, Plaintiffs' allegations of irreparable injury are a crisis of their own making as they waited more than 4 years to bring their motion. A party cannot claim irreparable harm if the "injury is of their own making." *See Carollo v. Herman*, 84 F.Supp.2d 374, 378-79 (E.D.N.Y. 2000); *Citibank , N.A. v. Citytrust*, 756 F.2d 273, 276 (2nd Cir. 1985); *Fiba Leasing Company, Inc. v. Airdyne Industries, Inc.*, 826 F.Supp. 38, 39 (D. Mass. 1993)("A preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted.") "It [is] elementary that a party may not claim equity in his own defaults." *Long v. Robinson*, 432 F.2d 977, 981 (4th Cir. 1970), *affirm'd*, 436 F.2d 1116 (4th Cir. 1971). Plaintiffs' lawsuit was filed on November 12, 2008. (Rec. Doc. 1.) As of November 12, 2008, there were 119,647 applications with funding disbursed and $7.3 billions dollars total funding disbursed. However, Plaintiffs waited more than 20 months to file this motion on behalf of an alleged "narrow subset" of individuals – persons they declined to represent at the hearing on their first motion. (Rec. Doc. 50.) Plaintiffs have never explained the reasons for this unreasonable delay. Such delay justifies the denial of Plaintiffs' request for preliminary injunction.[17]

[17] See *Majorica,, S.A. v. R.H. Macy & Co.*, 762 F.2d 7, 8 (2nd Cir. 1985)(lack of due diligence in pursuing injunction may, standing alone, preclude the grant of injunctive relief); *Gianni Cereda Favrics, Inc. v. Bazaar Fabrics, Inc.*, 335 F.Supp. 278, 280 (S.D.N.Y. 1971)(seven month delay reason to deny injunctive relief); *Asdourian v. Konstantin*, 50 F.Supp.2d 152 (E.D.N.Y. 1999)(four month delay between filing suit and seeking injunction

Plaintiffs' argument there is a risk of irreparable harm for the "179" Road Home beneficiaries who have not received initial grants again is based entirely on this Court's preliminary "finding" the formula may be discriminatory stemming from a flawed PolicyLink report. There is no evidence the formula has a disparate impact; as such, there is no evidence the remaining applicants face a risk of irreparable harm. Plaintiffs' request for injunctive relief should be denied.

4. Injunctive Relief Would Injure Other Interested Parties and Would Not Further the Public Interest

Keegan has provided overwhelming evidence showing no disparate impact in the use of the Road Home formula. She has provided overwhelming evidence refuting any risk of irreparable harm. Similarly, there is no justification for injunctive relief as the final two factors, harm to other interested parties and public interest, weigh against Plaintiffs. Stopping the flow of the Road Home Program in its final stages, after nearly five years of operation, during which time these Plaintiffs took no action whatsoever, would injure those remaining parties awaiting receipt of their grants. In addition, public interest in Louisiana favors completing the Road Home grant process. It does not favor a cessation of operations or a complete overhaul of the program in the final stages, particularly, when there is no evidence of disparate impact and Plaintiffs' request for relief is supported only by a PolicyLink report comprised of outdated and incomplete data.

---

undermined the plaintiffs' claim of irreparable harm); *Commer v. McEntee*, 2001 WL 274125 (S.D.N.Y. March 19, 2001)(denying plaintiff's temporary restraining order and preliminary injunction when plaintiff had been on notice of the alleged violation and failed to act for 4 months); *Allston v. Lewis*, 480 F.Supp. 328, 333 (D.S.C. 1979)(denying plaintiff's motion for preliminary injunction as plaintiff waited eleven months between the complained of harm and filing suit).

Plaintiffs' requested relief is exceedingly broad[18] and would put an abrupt stop to the disbursement of any and all funds to the eligible homeowners under the Road Home Program before there has been any judicial finding the formula at issue is discriminatory, and at a time where the final stages have commenced in an effort to complete the disbursement under the program to anyone who remains eligible. The relief Plaintiffs seek must be denied.

VI. CONCLUSION

Robin Keegan, in her capacity as Executive Director of the LRA, respectfully requests Plaintiffs' second motion for a temporary restraining order and preliminary injunction be denied for the reasons stated hereinabove.

Respectfully submitted,

/s/ A.J. Krouse
A.J. KROUSE (La. Bar #14426)
RENEE CULOTTA (La. Bar #24436)
SUZANNE M. RISEY (La. Bar #25488)
FRILOT L.L.C.
1100 Poydras Street, 37th Floor
New Orleans, LA 70163
Telephone: (504) 599-8016
Facsimile: (504) 599-8116
akrouse@frilot.com
rculotta@frilot.com
srisey@frilot.com

and

TIMOTHY E. HEFFERNAN (D.C. Bar #422923)

[18] The Proposed Order attached to Plaintiffs' motion demonstrates the overly broad nature of relief they seek. Plaintiffs are asking this Court to enjoin Keegan from using the pre-storm value of a beneficiary's home as a criterion to calculate or disburse any further initial grant awards to beneficiaries of the Road Home Program, which Defendant administers. By virtue of this language, it is clear Plaintiffs are seeking relief on behalf of all beneficiaries, not solely the "179" they now purport to represent.

WATT, TIEDER, HOFFAR &
FITZGERALD, L.L.P.
8405 Greensboro Drive, Suite 100
McLean, Virginia 22102
Telephone: (703) 749-1000
Facsimile: (703) 893-8028
theffern@WTHF.com

ATTORNEYS FOR PAUL RAINWATER, EXECUTIVE DIRECTOR OF THE LOUISIANA RECOVERY AUTHORITY

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2010, a copy of the foregoing document was filed electronically via the Court's ECF system, through which a notice of the filing will be sent to:

Joseph Marc Sellers, Esq.
Jenny R. Yang, Esq.
Cohen Milstein Sellers & Toll, PLLC
1100 New York Avenue, NW, Suite 500
Washington, DC 20005-3934
(202) 408-4600
jsellers@cmht.com
jyang@cohenmilstein.com
lgreen@cohenmilstein.com

Damon T. Hewitt, Esq.
Debo P. Adegbile, Esq.
Matthew Colangelo, Esq.
ReNika C. Moore, Esq.
NAACP Legal Defense & Educational Fund, Inc.
99 Hudson Street, 16th Floor
New York, NY 10013
(212) 965-2200
dhewitt@naacpldf.org
dadegbile@naacpldf.org
mcolangelo@naacpldf.org
rmoore@naacpldf.org

Attorneys for Plaintiff

James D. Todd, Jr., Esq.
Michael F. Hertz, Esq.
Channing D. Phillips, Esq.

Michael Sitcov, Esq.
U.S. Department of Justice
20 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 514-3378
james.todd@usdoj.gov

Attorneys for U.S. Department of
Housing and Urban Development

/s/ A. J. Krouse