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FLSD, No. 19-cv-21826-JAL, (**D.E. 403**, 12/15/20)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-21826-CIV-LENARD/O' SULLIVAN

CARLOS A. ALONSO CANO, individually and as guardian for his son, ANGIE ALONSO MOREJON, and as next of friend of his minor daughters, KATY ALONSO MOREJON and JANY LEIDY ALONSO MOREJON and FE MOREJON FERNANDEZ, individually,

Plaintiffs,

vs.

245 C & C, LLC and CFH GROUP, LLC.,

Defendants.

_____/

REPORT AND RECOMMENDATION

THIS MATTER comes before the Court on the "Urgent Motion" to (1) Stop Plaintiffs' Actual and Imminent Eviction or in the Alternative, (2) Request a Temporary Restraining Order and/or a Preliminary Injunction to Maintain the Status Quo During COVID 19 Pandemic (DE # 384, 11/20/20) filed by the plaintiffs. This case was referred to the undersigned for all pretrial matters pursuant to the

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Paperless Order Referring Case (DE # 129, 12/27/19). Having reviewed the applicable filings and the law, the undersigned respectfully RECOMMENDS that the "Urgent Motion" to (1) Stop Plaintiffs' Actual and Imminent Eviction or in the Alternative, (2) Request a Temporary Restraining Order and/or a Preliminary Injunction to Maintain the Status Quo During COVID 19 Pandemic (DE # 384, 11/20/20) be DENIED for the reasons stated herein.

BACKGROUND

On November 20, 2020, the plaintiffs filed an "Urgent Motion" to (1) Stop Plaintiffs' Actual and Imminent Eviction or in the Alternative, (2) Request a Temporary Restraining Order and/or a Preliminary Injunction to Maintain the Status Quo During COVID 19 Pandemic (DE # 384, 11/20/20) (hereinafter "Motion"). On November 30, 2020, the plaintiffs filed a supplement and the defendants filed their response. See "Suplenet [sic] Document to [ECF. No. 384], "Urgent Motion" to (1) Stop Plaintiffs' Actual and Imminent Eviction or in the Alternative, (2) Request a Temporary Restraining Order and/or a Preliminary Injunction to Maintain the Status Quo During COVID-19 Pandemic (DE# 391, 11/30/20) (hereinafter "Supplement"); Defendants' Verified Response to Plaintiffs' Motion to Stay Eviction and for Preliminary Injunction to Maintain Status Quo [384] (DE# 394, 11/30/20) (hereinafter "Response"). On December 3, 2020, the defendants filed a notice concerning the status of the case pending before the Third District

Court of Appeals. See Notice of Filing (DE # 397, 12/3/20).

This matter is ripe for adjudication

ANALYSIS

The plaintiffs seek an order staying the state court eviction proceedings or, in the alternative, an injunction prohibiting the defendants from taking any action to evict the plaintiffs while the instant action remains pending and during the COVID-19 pandemic. Motion at 1-2.

A. The Court's Prior Order (DE # 25)

The plaintiffs filed a similar motion on May 29, 2019 which the District Court denied in a detailed 20-page Order Denying Plaintiff's Motion to (1) Stay State Court Eviction Proceeding, or in the Alternative, (2) Request a Temporary Restraining Order and/or Preliminary Injunction to Maintain the Status Quo (D.E. 13) (DE # 25, 6/25/19) (hereinafter "Order").

This Court determined that it did not have the authority to grant the relief sought by the plaintiffs because:

it [was] without authority to stay or enjoin the state court action because the state court acquired in rem jurisdiction over the property first. Mercer v. Sechan Realty, Inc., 569 F. App'x 652, 656 (11th Cir.

2014). In Mercer, Sechan Realty filed an eviction action in state court against Mercer, a holdover tenant. Id. at 653. Mercer asserted counterclaims under the Florida FHA alleging that Sechan Realty was improperly attempting to evict her after she requested a reasonable accommodation for her disability. Id. at 654. The state court ultimately entered a default judgment for eviction and later dismissed Mercer's Florida FHA claims for failure to exhaust administrative remedies. Id. The day after the state court entered a default judgment for eviction, Mercer filed a complaint in federal district court alleging claims under the federal FHA. Id. She also filed an emergency motion for a TRO and/or preliminary injunction, seeking to enjoin Sechan Realty from evicting her pending the resolution of her federal FHA claims. Id. The district court granted the motion and issued a TRO. Id. Sechan Realty appealed, arguing that the Anti-Injunction Act barred the district court from granting Mercer's request for an injunction. Id. The Eleventh Circuit agreed with Sechan Realty and reversed. Id. at 656. Relevant here, the Eleventh Circuit found that the district court did not have authority to enjoin enforcement of the state court's default eviction judgment because "the state court acquired in rem jurisdiction over the property at issue first." Id. (citing In re Bayshore Ford Truck Sales, Inc., 471 F.3d at 1250-51).

> Here, too, **the state court acquired in rem jurisdiction over the property first because the eviction action was filed before the federal lawsuit**. See id.

> **Accordingly, the Anti-Injunction Act prohibits the Court from staying or enjoining the state court eviction action.** See id.; see also Gomez v. Wash. Mut. Bank, Case No.: 17-cv-60960-WPD, 2017 WL 6949244, at *1 (S.D. Fla. Apr. 13, 2017) (denying motion to enjoin state court eviction proceeding because such relief was barred by Anti-Injunction Act). Order (DE # 25 at 9-10) (emphasis added); see also id. at 12 (stating that "[i]n sum, the Court finds that the Anti-Injunction Act bars the Court from staying or enjoining the state court eviction action.").

The Court further found that the Anti-Injunction Act prohibited the Court from entering a temporary restraining order or preliminary injunction prohibiting the defendants from evicting the plaintiffs during the pendency of the federal court proceedings. Order at 12. Additionally, the Court found that "even if the Anti-Injunction Act did not prohibit the Court from granting the requested relief," the Court would not enter a temporary restraining order or preliminary injunction because the plaintiffs had not met their burden of proof. Id. at 12.

Specifically, the Court found that the plaintiffs had failed to show a substantial likelihood of success on the merits:

> To obtain a temporary restraining order, a party must establish: "(1) a substantial likelihood of success on the merits; (2) that

irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest." **Schiavo ex rel. Schindler v. Schiavo**, 403 F.3d 1223, 1225-26 (11th Cir. 2005) (citing Ingram v. Ault, 50 F.3d 898, 900 (11th Cir. 1995)). The same elements are required to grant a preliminary injunction. **See N. Am. Med. Corp. v. Axiom Worldwide, Inc.**, 522 F.3d 1211, 1217 (11th Cir. 2008) (quoting Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1246 (11th Cir. 2002)).

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The Court finds that Plaintiff has failed to establish a likelihood of success on the merits. Plaintiff filed a housing discrimination complaint with HUD who investigated the claim and determined "that no reasonable cause exists to believe that a discriminatory housing practice has occurred." (D.E. 20-2 at 10.) Plaintiff also filed a housing discrimination complaint (or complaints) with the Florida Commission on Human Relations who investigated Plaintiff's claims and issued a determination of "No Cause." (Id. at 3-8.) Given that two administrative agencies have investigated Plaintiff's housing discrimination claims and found no reasonable cause to believe a discriminatory housing practice

> occurred, the Court finds that Plaintiff has failed to establish a substantial likelihood of success on the merits. Gomez, 2017 WL 6949244, at *1 (finding that even if the Anti-Injunction Act did not bar the district court from enjoining the state court eviction proceedings, the plaintiff was not entitled to a preliminary injunction because he had not established a substantial likelihood of success on the merits).

Id. at 12-14 (footnotes omitted; emphasis added).

The Court also found that the plaintiffs had failed to show irreparable injury:

> Assuming arguendo that the eviction is actual and imminent, and not merely speculative, Plaintiff has provided no evidence that it is irreparable—e.g., that he is unable to find alternate housing and/or that his injury cannot be compensated by monetary damages. See Volis v. City of Los Angeles Hous. Auth., Case No. CV 13–01397 MMM (SPx), 2014 WL 12704885, *3-4 (C.D. Cal. Jan. 7, 2014) (finding that the plaintiff had failed to "adduce evidence" establishing that eviction from his apartment was an actual and imminent irreparable injury where, inter alia, he had "not demonstrated that he cannot find alternate housing; at most, he has argued that it will be time-consuming and difficult to do so"). In Johnson, the Eleventh Circuit held that the plaintiffs would "suffer irreparably if

> they must live in inadequate, often health endangering housing for any period of time as a consequence of a wrongful ejectment." 734 F.2d at 789. Plaintiff has not alleged, much less established, that he and his family will be required to live in inadequate housing if they are unlawfully ejected from the Villas. For these reasons, and because Plaintiff has failed to cite any case law finding the threat of eviction from a rented apartment constitutes an irreparable injury under facts analogous to those presented here, the Court finds that Plaintiff has failed to carry his burden of establishing this requirement. Canal Auth., 489 F.2d at 573 (noting that "a preliminary injunction is an extraordinary remedy, not normally available unless the plaintiff clearly carries his burden of proof as to its prerequisites").

Order (DE # 25 at 18-19) (emphasis added).

B. **The Instant Motion**

The plaintiffs argue that their "likelihood of prevail[ing] on the merits is very high." Motion at 18. The plaintiffs note that the operative complaint includes violations that occurred after the HUD investigation was completed on December 26, 2017. Id. at 17-18. Additionally, in their Supplement, the plaintiffs accuse the defendants of hiding "important evidence" from the HUD investigator "with the goal

to change the outcome of the HUD investigation and of the eviction case." Supplement at 1.

The plaintiffs also allege various perceived harms that could occur if the plaintiffs are evicted from their apartment. For instance, the plaintiffs do not believe they will be able to find an apartment with large glass doors/windows in the bedroom and living room which would allow Angie Alonso to see outside the apartment. Motion at 6-7. Mr. Alonso states that in 2013, he "went to look for another apartments [sic] in this area, and was not possible [sic] to find an apartment having the same location, with two big elevators like here, in which it is very easy to fit the wheelchair of ANGIE ALONSO, allowing to move him, in one of them when the other was broken." Id. at 7. The plaintiffs do not discuss what additional efforts they have undertaken in finding suitable housing. Moreover, 2013 was approximately seven years ago and it is likely that the inventory of available apartments is different in 2020.

The plaintiffs speculate that it "will be almost impossible" in another apartment complex to obtain "a reserved disabled parking space for ANGIE, since all the properties close to [the plaintiffs] also do not have the number of disabled parking that this property has." Motion at 8. The plaintiffs further speculate that they will not "have the benefit of school transportation," helpful and trustworthy neighbors or a large swimming pool at another apartment complex. Id. The plaintiffs do not believe the corridors would be as "wide and safe" in another

apartment complex "with concrete walls and not the metal bars, which allow[ ] [the plaintiffs] to take ANGIE ALONSO out. . . without danger or fear of falling." Id. at 9. The plaintiffs even contemplate the possibility of harm from a stray bullet, if they are forced to lease a first-floor apartment. Id. (stating that "[a]nother good reason to keep ANGIE ALONSO, in his current bedroom, is that if he is removed and can only find an apartment on the ground floor, he would be disturbed by the noise of the cars circulating near his new apartment or he or his mother taking care of him all day, could also be reached by a lost bullet, which would be almost impossible to happen in his current bedroom, by the angle of travel of that bullet.").

The plaintiffs also assert, in a conclusory manner, that they could become homeless if they are evicted. Motion at 9. However, the plaintiffs do not allege that they would have any financial hardship in obtaining a new apartment. Rather, the plaintiffs believe it "will be almost impossible that they could find an appropriate apartment for the family of five (5), as soon as they need it, and with the same conditions that ANGIE ALONSO has in his current apartment, in the area that is very suitable for him." Id.

The plaintiffs also argue that moving Angie Alonso from his current apartment, where he has been residing for approximately nine years, would threaten his emotional and physical health, including risking exposure to COVID-19. Motion at 19.

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The defendants note that "Plaintiffs do not attach any medical records to support their contentions that moving will cause ANGIE to fall into an "irreversible depression that endangers his life and it may give him a cardiac arrest or stroke from a rise in blood pressure which is happening to him now repeatedly." Response at 5 (quoting Motion at 15). The defendants further note that the plaintiffs were unable to establish that environmental changes would have a detrimental effect on Angie Alonso based on the testimony of treating physician, Dr. Annette Fornos. Id. at 5-6. Additionally, the defendants argue that the plaintiffs' expert, Nani Solares, "has no medical background, experience or expertise beyond that of a clinical psychotherapist and her impressions about ANGIE are based solely on Plaintiffs' self- serving statements." [1] Id. at 6. Lastly, the defendants argue that the "Plaintiffs have neither alleged nor established that they are unable to take appropriate precautions to transport ANGIE in their [m]inivan... to a new residence during the pandemic" and note

[1] Ms. Solares is the subject of a separate Daubert motion filed by the defendants. See Defendants' Daubert Motion Seeking to Strike the Designation of Nani Solares, M.S. as an Expert Witness and Preclude the Use and/or Presentation of Her Opinions and Expert Witness Report at Trial or for Other Purposes (DE# 393, 11/30/20). That motion has not been fully briefed.

that the plaintiffs have been transporting Angie Alonso to medical appointments during the COVID-19 pandemic. Id.

The Court should deny the instant Motion for the same reasons stated in its prior Order (DE # 25). The Anti-Injunction Act prohibits the Court from granting the requested relief because the state court proceeding was filed first. The state court acquired in rem jurisdiction over the property on February 1, 2018 when the defendants commenced an eviction action in the County Court of the Eleventh Judicial Circuit in and for Miami- Dade County Florida, Case No. 2018-000236-CC-21. The instant federal action was filed over a year later, on May 6, 2019. See Complaint (DE # 1, 5/6/19). [2] Therefore, this Court is without authority to stay or enjoin the state court action.

Even if the Anti-Injunction Act did not prohibit the Court from granting relief, the plaintiffs have failed to meet all the elements necessary for the issuance of a temporary restraining order or a preliminary injunction. At a minimum, the plaintiffs have not shown irreparable harm.

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[2] The plaintiffs filed two additional cases in federal court. Case No. 18-cv-20537-UU Alonso v. 245 C & C, LLC et al. filed on February 12, 2018 and case no. 19-cv-21045-CMA Alonso Cano v. 245 C & C, LLC et al. filed on March 19, 2019. Those cases were dismissed without prejudice and, in any event, were filed after the state court action.

"It is well-established that a preliminary injunction cannot be granted absent a showing of irreparable harm." Liberty Am. Ins. Grp., Inc. v. WestPoint Underwriters, L.L.C., 199 F. Supp. 2d 1271, 1291 (M.D. Fla. 2001); United States v. Jefferson Cty.,720 F.2d 1511, 1519 (11th Cir. 1983) (affirming denial of preliminary injunction where movant failed to show irreparable harm). Moreover, "self-serving assertions unsupported by concrete facts are insufficient to establish irreparable harm." LaTele Television, C.A. v. Telemundo Commc'ns Grp., LLC, No. 15-11792, 2016 WL 6471201, at *5 (11th Cir. May 26, 2016) (per curiam)

> This Court has stated that:
>
> [i]rreparable harm "must be neither remote nor speculative, but actual and imminent." Northeastern Florida Chapter of Ass'n of General Contractors of Am. v. City of Jacksonville, 896 F.2d 1283, 1285 (11th Cir. 1990). A preliminary injunction "will not be issued simply to prevent the possibility of some remote future injury. A presently existing actual threat must be shown." 11A Charles Alan Wright, et al., Federal Practice and Procedure § 2948.1 (3d ed.).

AvMed, Inc. v. Transaction Applications Grp., Inc., No. 20-21838-CIV, 2020 WL 2513546, at *2 (S.D. Fla. May 15, 2020). In AvMed, this Court found that the "[plaintiff's] potential loss of future business [could not] be considered irreparable because that injury [was] too remote and contingent on possible

future events." Id. Similarly here, the plaintiffs' alleged harms are too remote and speculative to establish a showing of irreparable harm.

RECOMMENDATION

Based on the foregoing, the undersigned respectfully RECOMMENDS that the "Urgent Motion" to (1) Stop Plaintiffs' Actual and Imminent Eviction or in the Alternative, (2) Request a Temporary Restraining Order and/or a Preliminary Injunction to Maintain the Status Quo During COVID 19 Pandemic (DE # 384, 11/20/20) be DENIED.

The parties will have fourteen (14) days from the date of receipt of this Report and Recommendation within which to serve and file written objections, if any, with the Honorable Joan A. Lenard, United States District Judge. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in the Report except upon grounds of plain error if necessary in the interest of justice. See 28 U.S.C. § 636(b)(1); Harrigan v. Metro Dade Police Dep't Station # 4, 977 F.3d 1185, 1191-1192 (11th Cir. 2020); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790, 794 (11th Cir. 1989); 11th Cir. R. 3-1 (2016).

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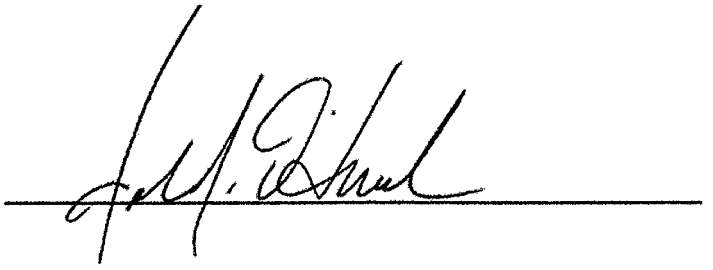
RESPECTFULLY SUBMITTED at the United States Courthouse, Miami, Florida this **15th** day of December, 2020



JOHN J. O'SULLIVAN

CHIEF UNITED STATES MAGISTRATE JUDGE

Appendix B

FLSD, No. 19-cv-21826-JAL, (**D.E. 410**, 12/30/20)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-21826-CIV-LENARD/O'SULLIVAN

CARLOS A. ALONSO CANO, individually and as guardian for his son, ANGIE ALONSO MOREJON, and as next friend of his minor daughters, KATY ALONSO MOREJON and JANY LEIDY ALONSO MOREJON, and
FE MOREJON FERNANDEZ individually,

Plaintiffs,

v.

245 C & C, LLC and CFH GROUP, LLC,

Defendants

_____/

ORDER ADOPTING REPORT AND RECOMMENDATION (D.E. 403) AND DENYING "URGENT MOTION" TO (1) STOP PLAINTIFFS' ACTUAL AND IMMINENT EVICTION OR IN THE ALTERNATIVE, (2) REQUEST A TEMPORARY RESTRAINING ORDER AND/OR A PRELIMINARY INJUNCTION TO MAINTAIN THE STATUS QUO DURING COVID-19 PANDEMIC (D.E. 384)

THIS CAUSE is before the Court on the Report and Recommendation of Magistrate Judge John J. O'Sullivan, ("Report," D.E. 403), issued

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December 15, 2020, recommending that the Court deny Plaintiffs' self-styled "Urgent Motion" to (1) Stop Plaintiffs' Actual and Imminent Eviction or in the Alternative, (2) Request a Temporary Restraining Order and/or a Preliminary Injunction to Maintain the Status Quo During COVID-19 Pandemic, ("Motion," D.E. 384). Specifically, Judge O'Sullivan recommends denying the Motion because the Court is without authority to stay or enjoin the state court action and, in any event, Plaintiffs' have not established the elements for issuance of a temporary restraining order. (Report at 8.) "At a minimum, the plaintiffs have not shown irreparable harm." (Id.) The Report provides the Parties with fourteen (14) days to file objections. As of the date of this Order, no objections have been filed. Failure to file objections shall bar parties from attacking on appeal the factual findings contained in the Report. See Resolution Trust Corp. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993). Therefore, after an independent review of the Report and record, it is hereby

ORDERED AND ADJUDGED that:

1. The Report and Recommendation of the Magistrate Judge (D.E. 403) issued on December 15, 2020, is ADOPTED; and

2. Plaintiffs' "Urgent Motion" to (1) Stop Plaintiffs' Actual and Imminent Eviction

or in the Alternative, (2) Request a Temporary Restraining Order and/or a Preliminary Injunction to Maintain the Status Quo During COVID-19 Pandemic (D.E. 384) is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida this 30th day of December, 2020.

JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

Appendix C

FLSD, No. 19-cv-21826-JAL (**D.E. 678**, 7/20/23)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-21826-CIV-LENARD/DAMIAN

CARLOS A. ALONSO CANO, individually and as guardian for his son, ANGIE ALONSO MOREJON, KATY ALONSO MOREJON, JANY LEIDY ALONSO MOREJON, and FE MOREJON FERNANDEZ individually,

Plaintiffs,

v.

245 C & C, LLC and CFH GROUP, LLC,

Defendants.

_____/

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS CAUSE came before the Court for a bench trial held from June 5 through June 27, 2023. The Court has carefully considered the credibility of the witnesses presented and the evidence admitted during the trial. Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the Court makes the following findings of fact and conclusions of law.

For context, the Court will first provide a brief background and recitation of the relevant procedural history.

Appendix C

I. BRIEF BACKGROUND

1. Plaintiff Angie Alonso Morejon ("Angie") is a permanently disabled individual who suffers from, among other things, mental retardation, severe cerebral palsy, and spasticity. (Second Am. Compl. (D.E. 92) ¶ 4.) Plaintiff Carlos A. Alonso Cano ("Carlos") is Angie's father and Plenary Guardian; Plaintiff Fe Morejon Fernandez ("Fe") is Angie's mother; and Plaintiffs Katy Alonso Morejon ("Katy") and Jany Leidy Alonso Morejon ("Jany") are Angie's sisters. (Id. ¶¶ 14-17.)

2. From October 2011 to January 2021, Plaintiffs resided in a rental apartment in the Villas of Hialeah apartment complex ("VOH") located in Hialeah, Florida.[1] (Id. ¶¶ 2, 36.) Defendant 245 C & C, LLC and/or Defendant CFH Group, LLC owns VOH, (id. 22), while Defendant CFH Group, LLC operates VOH, (id. ¶ 25).

II. BRIEF PROCEDURAL HISTORY

1. On May 6, 2019, Carlos, through counsel, initiated this federal lawsuit alleging that Defendants violated (1) various provisions of the Fair Housing Act ("FHA"), (2) the implied covenant of quiet enjoyment under Florida state law, and

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[1] On February 1, 2018, Defendants instituted eviction proceedings against Plaintiffs. The eviction case was tried in the Miami-Dade County Court on November 15, 16, and 19, 2018. The trial judge retired before issuing a ruling. A successor judge was appointed and issued a final judgment on June 20, 2019, finding in favor of Carlos and Fe. 245 C & C, LLC appealed the adverse final judgment, and on September 3, 2020, the Appellate Division of the Miami-Dade Circuit Court reversed the final judgment and remanded the case with instructions to enter judgment for 245 C & C, LLC and to calculate an award of attorney's fees for 245 C & C, LLC. It appears that Plaintiffs finally vacated the apartment on January 12, 2021. (See D.E. 427 ¶ 1.)

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(3) Section 83.67(1), Florida Statutes, by unlawfully turning off the water to Plaintiffs' home without warning. (D.E.1.) [2] On July 19, 2019, the Court entered an Order Granting in Part Defendants' Corrected Combined Motion to Dismiss Complaint and/or for More Definite Statement. (D.E. 43.) The Court found that the Complaint constituted a "shotgun pleading" that violated federal pleading

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[2] This is Plaintiffs' third attempt at suing Defendants in federal court. On February 12, 2018, Carlos, proceeding pro se, sued Defendants in this District alleging violations of his civil rights, the Americans with Disabilities Act ("ADA"), and the FHA. See Cano v. 245 C&C, LLC, et al., Case No. 18-20537-Civ-Ungaro ("Cano I"), D.E. 1. Judge Ungaro dismissed the pro se Complaint without prejudice for failure to state a claim, and provided Plaintiff leave to amend. Cano I, D.E. 6. Carlos filed an Amended Complaint, id., D.E. 9 & 10, which Judge Ungaro dismissed as "unintelligible," id., D.E. 38. Thereafter, Carlos, through newly-acquired counsel, filed a Second Amended Complaint. Id., D.E. 42. Carlos's counsel subsequently withdrew, id., D.E. 50, and Carlos moved pro se to amend his complaint a third time, id., D.E. 62. Judge Ungaro granted the motion to amend but stated that she would not grant any further opportunities to amend. Id., D.E. 67. Carlos filed a Third Amended Complaint, id., D.E. 73, which Defendants moved to dismiss, id., D.E. 81. On January 28, 2019, Judge Ungaro granted the motion to dismiss, finding that the Third Amended Complaint was a
"shotgun pleading" and, nevertheless, failed to state a claim. Id., D.E. 84. Because Carlos had been given numerous opportunities to file a complaint that stated a claim upon which relief could be granted and otherwise complied with the Federal Rules of Civil Procedure, but had failed to do so, Judge Ungaro dismissed the case without prejudice. Id. On March 19, 2019, Carlos, proceeding pro se, filed a second federal lawsuit against Defendants. See Cano v. 245 C&C, LLC, et al., 19-21045-Civ-Altonaga ("Cano II"). Judge Altonaga sua sponte dismissed the complaint without prejudice for failure to state a claim upon which relief can be granted and because it was an improper "shotgun pleading." Id., D.E. 5. Judge Altonaga denied leave to amend because: "(1) this is Plaintiff's fourth pleading directed to these two Defendants; (2) Plaintiff has already been instructed on federal pleading standards and is aware shotgun pleadings are subject to dismissal; and (3) Plaintiff was previously warned additional pleadings would not be allowed[.]" Id. at 5. Carlos moved to reopen the case and amend the complaint, Id., D.E. 11, but Judge Altonaga denied the motion, Id., D.E. 12.

standards because four of the five Counts alleged multiple claims;[3] as such, the Court required Carlos to file an Amended Complaint. (Id. at 9-12.) Although the Court provided Carlos leave to file an Amended Complaint, it warned "that it may be the final amendment the Court permits him to make[,]" (Id. (citing Brown v. Hillsborough Cnty. Sheriff's Office, 342 F. App'x 552, 554 (11th Cir. 2009))), and instructed that "Plaintiff should endeavor to remedy all deficiencies, whether discussed in this Order or not[,]" (Id. at 15).

2. On August 9, 2019, Plaintiffs filed an Amended Complaint which contained nineteen causes of action. (D.E. 52.) Defendants filed a Motion to Dismiss the Amended Complaint, (D.E. 61), which the Court granted in part, dismissing Counts Two, Six, Seven, Eight, Seventeen, Eighteen, and Nineteen with prejudice for failure to state claims upon which relief can be granted, (D.E. 90). Although the Court had previously warned Plaintiffs that it may not permit any further

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[3] The Court found that Plaintiffs' claim for breach of the implied covenant of quiet enjoyment did not constitute a "shotgun pleading" because, although it alleged various ways in which Defendants breached the implied covenant of quiet enjoyment, "it appears that under Florida law a landowner can breach the covenant of quiet enjoyment through a course of conduct." (D.E. 43 at 10-11 (citing Misha Enters. v. GAR Enters., LLC, 117 So. 3d 850, 554 (Fla. Dist. Ct. App. 2013) (finding genuine issues of material fact precluded summary judgment in favor of landowner on claim for breach of covenant of quiet enjoyment where complaint alleged, inter alia, that defendant harassed plaintiff and its customers for several months, towed vehicles belonging to plaintiff's customers, and "needlessly caus[ed] numerous agencies to inspect [plaintiff's] operation and property"); Carner v. Shapiro, 106 So. 2d 87, 89 (Fla. Dist. Ct. App. 1958) (affirming damages award for breach of covenant of quiet enjoyment where building-owner remodeled building over four-month period).)

amendments, the Court provided Plaintiffs leave to amend their complaint to add language to one paragraph. (Id. at 64.)

3. On December 2, 2019, Plaintiffs filed the operative Second Amended Complaint asserting claims under the Fair Housing Act and Florida state law. (D.E.

4. On December 17, 2019, Defendants filed a Motion to Strike Jury Trial Demand Only.[4] (D.E. 106.)

5. On March 19, 2020, Magistrate Judge John J. O'Sullivan issued an Order granting Defendants' Motion to Strike Jury Demand Only, finding that Plaintiffs had contractually waived their right to a jury trial.[5] (D.E. 180.)92.) The Second Amended Complaint contained a jury trial demand. (Id. at 1.)

6. Defendants filed a Motion for Judgment on the Pleadings as to Counts Thirteen, Fifteen, and Sixteen. (D.E. 368.) The Court entered an Order granting the Motion for Judgment on the Pleadings as to Counts Thirteen and Fifteen, and dismissing Count Sixteen with prejudice as an impermissible shotgun pleading. (D.E. 438.)

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[4] On December 27, 2019, Plaintiffs' original attorney was permitted to withdraw. (D.E. 126.) Plaintiffs then proceeded pro se until February 10, 2023, when attorney Michael D Dunlavy filed a Supplemental Notice of Permanent Appearance of Counsel on behalf of all Plaintiffs. (D.E. 581.)

[5] Plaintiffs did not object to, seek reconsideration of, otherwise challenge Judge O'Sullivan's Order for almost three years. Then, beginning on March 14, 2023, on the eve of trial, Plaintiffs filed a series of motions seeking to undo Judge O'Sullivan's Order. (See D.E. 588, 599, 601.) The Court denied each of those motions. (See D.E. 598, 603, 604.)

7. On December 16, 2019, Defendants filed an Answer and Affirmative Defenses to the remaining claims. (D.E. 101.) Relevant here, Defendants' Ninth Affirmative Defense asserts that any claim under the FHA which arose more than two years before the filing of this lawsuit is barred by the FHA's statute of limitations. (Id. ¶ 282.)

8. On November 16, 2020, Defendants filed a Motion for Summary Judgment, (D.E. 364), and a Statement of Material Undisputed Facts in support thereof, (D.E. 366). They also filed a Request for Judicial Notice. (D.E. 372.)

9. On January 11, 2021—after providing Plaintiffs two extensions of time to respond, (D.E. 390, 411)—Plaintiffs filed a Response in Opposition to Defendants' Motion for Summary Judgment, (D.E. 413), to which they attached 245 pages of exhibits, (D.E. 413-1). Plaintiffs did not file a Response to Defendants' Statement of Material Undisputed Facts, nor did it file a Response to Defendants' Request for Judicial Notice.

10. On February 5, 2021, Defendants filed a Motion to Strike Plaintiffs' Response in its Entirety and to Deem Defendants' Statement of Material Facts Admitted, or to Strike Particular Statements from the Response. (D.E. 435.)

11. On March 15, 2021—after providing Plaintiffs two extensions of time to respond to the Motion to Strike, (D.E. 437, 446)—Plaintiffs filed a document titled "Response" which did not respond to Defendants' Motion to Strike but was instead an entirely new response to Defendants' Motion for Summary Judgment. (D.E. 447.)

However, like its predecessor, it did not contain a Response to Defendants' Statement of Material Undisputed Facts. Thereafter, Defendants filed a Reply in support of their Motion to Strike. (D.E. 456.)

12. On May 18, 2021, the Court entered an Omnibus Order Granting Defendants' Motion to Strike Plaintiffs' Response in its Entirety and to Deem Defendants' Statement of Material Undisputed Facts Admitted, Granting Defendants Request for Judicial Notice, Granting Defendants' Motion for Summary Judgment, and Closing Case. ("First Order on Summary Judgment," D.E. 468.)

a) First, the Court granted the Motion to Strike by default because "Plaintiffs failed to respond to any of the arguments raised in Defendants' Motion to Strike[.]" (Id. at 9.) Alternatively, the Court granted the Motion to Strike on the merits because Plaintiffs failed to comply with Local Rule 56.1. (Id. at 10 13.)

The Court explained that because Plaintiffs failed to respond to Defendants' Statement of Material Facts, by operation of Local Rule 56.1, Defendants' facts were deemed admitted to the extent that they were supported by record evidence. (Id. at 12-13.)

b) Second, the Court granted the Request for Judicial Notice by default because Plaintiffs failed to respond to the Request.(Id. at 15.) Alternatively, the Court granted the Request for Judicial Notice on the merits, finding "that

the materials listed in Defendants' request are subject to judicial notice." (Id. at 15-16 (citations omitted).)

c) Third, the Court granted Defendants' Motion for Summary Judgment. (Id. at 17-87.) Initially, the Court found that all of the facts recited in the Omnibus Order's "Facts" section were supported by record evidence and therefore deemed admitted by operation of Rule 56.1. (Id. at 17 n.12.) The Court then found that the admitted facts and record evidence established that Defendants were entitled to summary judgment as to each remaining Count (Id. at 39-86.) The Court subsequently entered Final Judgment by separate entry and closed the case. (D.E. 469.)

13. On June 1, 2021, Plaintiffs filed a Motion to Reopen pursuant to Rule 60(b)(3) and (6). (D.E. 470.) They argued that the Court relied upon false statements by Defendants' witnesses when concluding that Defendants' were entitled to summary judgment, and that there is record evidence supporting their claims. (See id. at 2-20.) On the last page of the Motion to Reopen, under the "Legal Standard" heading, Plaintiffs appeared to argue that the Court erred by granting Defendants' Motion for Summary Judgment without first providing Plaintiffs notice of the rules and requirements governing motions for summary judgment. (Id. at 20.) Defendants filed a Response, (D.E. 474), to which Plaintiffs filed a Reply, (D.E. 477).

14. On June 25, 2021, the Court entered an Order granting the Motion to Reopen. (D.E. 483.) Briefly, the Court found that the Motion was properly construed as one under Rule 59(e), (Id. at 9), and found that the Court committed reversible error by granting Defendants' Motion for Summary Judgment without first providing notice to Plaintiffs of (1) the rules governing summary judgment, (2) their right to file affidavits or other material in opposition to the motion, and (3) the consequences of default, (Id. at 9-15 (citing Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985)). Accordingly, the Court vacated in part the Court's First Order on Summary Judgment,[6] and reinstated the Motion for Summary Judgment. (Id. at 17.) The Court further provided the Parties notice of (1) the rules governing summary judgment, (2) their right to file affidavits or other material in opposition to the motion, and (3) the consequences of default, pursuant to Rule 56(c) and (f), Griffith, Couch v. Clark, 725 F. App'x 808, 811-12 (11th Cir. 2018), "and/or otherwise." (Id. at 18-22.)

15. On August 2, 2021, Plaintiffs filed a Request for Judicial Notice. (D.E. 493.) Defendants filed a Response, (D.E. 517), to which Plaintiffs filed a Reply, (D.E. 534).

16. Also on August 2, 2021, Plaintiffs filed their Responses to the Motion for Summary Judgment (D.E. 491) and Statement of Material Facts in Dispute (D.E.

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[6] Specifically, the Court vacated the First Order on Summary Judgment to the extent that it granted Defendants' Motion for Summary Judgment, but not to the extent that it granted Defendants' Request for Judicial Notice. (D.E. 483 at 17 n.10.) The Court did not find that failure to provide notice under Griffith required the Court to vacate the part of the First Order on Summary Judgment granting Defendants' Request for Judicial Notice. (Id. at 15 n.9.)

492), which contained a section that included five "New Facts." (Id. ¶¶ 138-42). The same day, Plaintiffs filed a Notice of Conventional Filing of Plaintiffs' USB as Appendixes to Summary Judgment. ("Notice of Conventional Filing," D.E. 495.) Plaintiffs attached to the Notice of Conventional Filing "Appendix A" which contained 115 pages of documents supporting their Statement of Material Facts in Dispute. (D.E. 495-1.) However, on August 4, 2021, Plaintiffs filed a Notice of Striking the Notice of Conventional Filing. (D.E. 501.) By operation of the Notice of Striking, both the Notice of Conventional Filing (D.E. 495) and Appendix A attached thereto (D.E. 495-1) have been stricken from the record. Plaintiffs did not refile Appendix A with the Court.

17. On August 4, 2021, Plaintiffs filed a Motion (1) requesting leave to file a new USB drive with evidence that was specifically prepared to support Plaintiffs' responses to Defendants' Motion for Summary Judgment and Statement of Material Undisputed Facts, and (2) striking the USB drive Plaintiffs had previously filed in support of their opposition to Defendants' Motion for Summary Judgment and Statement of Material Undisputed Facts. (D.E. 499.) On August 9, 2021, the Court granted Plaintiffs' Motion for leave to file a new USB drive and stated that "[t]his will be the final USB the Court permits Plaintiffs to file in support of their opposition to Defendants' Motion for Summary Judgment and Statement of Material Facts." (D.E. 505.) The Court also granted the Motion to strike the

previously-filed USB drive. (Id.) The new USB did not contain "Appendix A," nor does it appear anywhere else in the record.

18. On September 3, 2021, Defendants filed their Reply in support of their Motion for Summary Judgment (D.E. 514), their Reply and Objections to Plaintiffs' Statement of New Undisputed Facts (D.E. 520), and a separate Reply "Memorandum" to Plaintiffs' Statement of New Undisputed Facts (D.E. 521).

19. Also on September 3, 2021, Defendants filed a Motion to Strike Previously Unasserted Claims and New Facts to Support these Claims in Plaintiffs' Response to Motion for Summary Judgment, its Accompanying Statement of Opposing Material Facts and Supporting Affidavits. (D.E. 516.) Plaintiffs filed a Response on September 30, 2021, (D.E. 535), to which Defendants filed a Reply on November 29, 2021, (D.E. 548).

20. Also on September 3, 2021, Defendants filed Objections to Plaintiffs' Opposing Materials and Declarations Supporting Response to Summary Judgment and Motion to Strike Declarations as Shams. (D.E. 518.) Plaintiffs filed a Response on September 30, 2021, (D.E. 536), to which Defendants filed a Reply on November 29, 2021, (D.E. 549).

21. Also on September 3, 2021, Defendants filed Objections to and Motion to Strike Plaintiffs' Disputes of Defendants' Statement of Material Undisputed Facts, (D.E. 519). Plaintiffs filed a Response on September 30, 2021, (D.E. 537), to which Defendants filed a Reply on November 29, 2021, (D.E. 550).

22. On August 17, 2022, the Court entered an Omnibus Order: (1) denying Plaintiffs' Request for Judicial Notice, (D.E. 493); (2) granting in part and denying in part Defendants' Motion to Strike Previously Unasserted Claims and New Facts to Support these Claims in Plaintiffs' Response to Motion for Summary Judgment, its Accompanying Statement of Opposing Material Facts and Supporting Affidavits, (D.E. 516); denying Defendants' Motion to Strike Plaintiffs' Declarations as Shams and deferring consideration of Defendants' Objections to Plaintiffs' Opposing Materials and Declarations Supporting Response to Summary Judgment (D.E. 518); and denying Defendants' Objections to and Motion to Strike Plaintiffs' Dispute of Defendants Statement of Material Facts, (D.E. 519). (D.E. 553.)

23. Also on August 17, 2022, the Court entered an Amended Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment. (D.E. 555.) Relevant here, the Court granted the Motion for Summary Judgment as to Counts Four, Five, Nine, Ten, Eleven, Twelve, and Fourteen, and denied the Motion as to Counts One and Three.

a) In **Count One**, Plaintiffs allege that Defendants violated the FHA by failing to provide a reasonable accommodation—specifically, an assigned handicapped parking spot with an access aisle on the driver's side reserved exclusively for Angie. (Second Am. Compl. ¶¶ 39, 128-43.) In this regard, the Second Amended Complaint alleges that "[f]rom March 2017 to June 2017, Carlos made various requests to Vilma for a

disabled parking spot reserved exclusively for Angie[,]" (id. ¶ 39), but "Vilma repeatedly refused to provide the reserved parking spot for Angie . . . ," (Id. ¶ 43).

b) In **Count Three**, Carlos, Fe, and Angie allege that Defendants violated the FHA by refusing to permit a reasonable modification to the existing premises—specifically, a modification to Angie's bathroom. (Id. ¶¶ 150-56.) The Second Amended Complaint alleges that "from March 2017 to August 2018, Carlos requested that they be allowed to modify the bathroom of Angie, but Vilma in more than one occasion refused the modification, saying they never allowed it in 'Villas.'" (Id. ¶ 59.)

24. On May 31, 2023, the Court held a Pretrial Conference during which counsel for both Parties agreed to bifurcate trial into two phases:

a) Phase 1 would be limited to whether Plaintiffs made requests for the accommodation and modification alleged in Counts One and Three, respectively, within the FHA's limitations period, and whether those requests were denied;

b) Phase 2, if necessary, would address the reasonableness and necessity of the accommodation and/or modification.

25. Between June 5 and June 27, 2023, the Court heard Phase 1 of the trial. (See D.E. 647, 668.)

26. On June 30, 2023, the Court entered a Paperless Interim Order of Completion of Trial finding, "based upon the evidence presented at trial, that: (1) a request for a modification to the bathroom did not occur until August 26, 2018, and that request was granted the next day; and (2) a request for an assigned, dedicated handicapped parking space was made only once, and that request occurred in or around October 2012." (D.E. 672.) Because no request for an accommodation or modification was made and denied within the limitations period, the Court stated that Phase 2 of trial would not be necessary and ordered the Parties to file Proposed Findings of Fact and Conclusions of Law. (Id.)

27. On July 12, 2023, Plaintiffs filed their Proposed Findings of Fact and Conclusions of Law, (D.E. 676), and Defendants filed their Proposed Findings of Fact and Conclusions of Law, (D.E. 677).

III. FINDINGS OF FACT

1. Plaintiff Angie Alonso Morejon ("Angie") suffers from severe physical and intellectual disabilities. It is undisputed that Angie is disabled for purposes of the Fair Housing Act.[7] (Pretrial Stip. (D.E. 595) at 3.)

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[7] As the Eleventh Circuit has explained:
The FHA refers to discrimination based on "handicap" rather than disability. 42 U.S.C. § 3604(f). Disability scholars, however, generally prefer the term "disability" to handicap, and the Americans with Disabilities Act, Pub. L. No. 101–336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213)
("ADA"), reflects that preference. For this reason, we treat the terms interchangeably and elect to use "disability" and the preferred possessive construction.
Bhogaita v. Altamonte Heights Condo. Ass'n, Inc., 765 F.3d 1277, 1285 n.2 (11th Cir. 2014

2. Beginning in October 2011, and throughout the period alleged in the Second Amended Complaint, Plaintiffs rented Apartment #1301 at the Villas of Hialeah ("VOH") in Hialeah, Florida.[8] (See Def. Ex. A; Trial Tr. 6/9/2023 (Lowenhaupt) at 16: 20-21.)[9]

3. Defendant CFH Group, LLC is the property management company that controls VOH. (Trial Tr. 6/9/2023 (Cabrerizo) at 5:12-24.)

4. Tom Cabrerizo is CFH Group's CEO. (Id. at 4:12.)

5. Vilma Hernandez ("Hernandez") is the Property Manager at VOH. (Trial Tr. 6/23/2023 at 88:7-14.)

6. Marleyn Garcia was CFH Group's Regional Property Manager (and Hernandez's direct supervisor) during the relevant period. (Trial Tr. 6/7/2023 (rough) at 33:2-5, 33:22 – 34:1.) Ms. Garcia now lives in Knoxville, Tennessee and no longer works for CFH Group. (Id. at 32:21-24.)

7. Paul Gallner was CFH Group's Manager of Safety and Compliance during

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[8] Although the trial record does not reflect exactly when Plaintiffs vacated Apartment #1301 following the conclusion of the state court eviction proceedings, on January 21, 2021, Plaintiffs filed an "Emergency Motion" stating that "they were evicted from their apartment by the Miami Dade Police Department" on January 12, 2021. (D.E. 427 ¶ 1.)

[9] It appears that the Parties only ordered official trial transcripts for some of the testimony. Where the official trial transcripts are divided by witness, the Court will include the witness's name in parentheses. For testimony with no official transcript, the Court will cite to a rough draft of the transcript provided by the Court Reporter.

the relevant period. (Trial Tr. 6/7/2023 (Gallner) at 3:7.) He is currently CFH Group's Director of Safety and Compliance. (Id. at 3:3.)

8. Amanda Ortiz ("Ortiz") is a social worker who has been working with Angie since 2012 as a Consultant and Waiver Support Coordinator. (Trial Tr. 6/5/2023 at 6:15-17.) As Angie's Waiver Support Coordinator, Ortiz's "main function is to coordinate all services" for Angie, which includes submitting requests to Florida's Agency for Persons with Disabilities ("APD") to secure funds for Angie's care. (Trial Tr. 6/9/2023 (Ferguson) at 14:22 – 15:5; 26:23 – 27:9; 44:12 – 50:25.)

a. Count One: Request for accommodation - assigned handicapped parking space

9. The only time Plaintiffs requested an assigned handicapped parking space was in late 2012 or early 2013. (Trial Tr. 6/23/2023 at 98:9-16; 106:8-9.)

10. Carlos testified that he orally requested an assigned handicapped parking space on seven occasions during his tenancy at VOH: first, on February 3, 2013, from Hernandez, (Trial Tr. 6/7/2023 (rough) at 130:3-14); second, in October 2015 from Hernandez, (id. at 131:10-16); third, on August 4, 2016, from CFH Group CEO Tom Cabrerizo, (id. at 133:23 - 134:21); fourth, on September 9, 2016, from Hernandez and Marleyn Garcia, (Trial Tr. 6/6/2023 (Carlos) at 7:8-11; Trial Tr. 6/20/2023 at 4:17 – 5:8; Trial Tr. 6/22/2023 at 3:12-23); fifth, in October 2016 from Hernandez, (Trial Tr. 6/7/2023 (rough) at 137:15 – 138:3); sixth, on March 29, 2017, from Hernandez, (Trial Tr. 6/6/2023 (Carlos) at 10:16-19); and seventh, on April 7,

2017, from Hernandez, (id. at 10:20-25). (See also Trial Tr. 6/6/2023 (Carlos) at 6:16-19.)

11. Only March 29, 2017, and April 7, 2017, fall within the period alleged in the Second Amended Complaint—i.e., March 2017 to June 2017. (D.E. 92 ¶ 39.)

12. The Court finds that Carlos's testimony on this issue was not credible or reliable, based on observations of him as he testified at trial, his embellishment of the underlying facts, and his inconsistent testimony.

a) Furthermore, there were no other eyewitnesses to his alleged requests on March 29 and April 7, 2017, (see Trial Tr. 6/6/2023 (Carlos) at 8:20-22; Trial Tr. 6/6/2023 (Fe) at 16:3-9), and there were no contemporaneous notes, emails, letters, or doctor's notes corroborating Carlos's testimony.

b) Additionally, his testimony conflicted with other credible witnesses, including Marleyn Garcia who had no interest in the outcome of the case. For example, Carlos testified that he also requested an assigned handicapped parking space during a meeting with Ms. Garcia and Vilma Hernandez on September 9, 2016. (Trial Tr. 6/6/2023 (Carlos) at 7:8-11; Trial Tr. 6/20/2023 at 4:17 – 5:8; Trial Tr. 6/22/2023 at 3:12-23.) Ms. Garcia testified that she never met with Carlos in September of 2016. (Trial Tr. 6/7/2023 (Garcia) at 6:3-14.)

Ms. Garcia testified that she met with Carlos and Fe in August of 2016, but neither Carlos nor Fe made a request for an assigned handicapped parking space at that meeting. (Trial Tr. 6/7/2023 (rough) at 38:2-4; 39:8-23.) Rather, they only discussed the "good conduct" addendum to their lease because neither Carlos nor Fe wanted to sign it. (Id. at 37:11 – 38:17.) Based on the consistency of Ms. Garcia's testimony with other credible and reliable evidence, the fact that she no longer works for CFH Group and therefore has no interest in the outcome of this case, and the Court's observation of the witness during her testimony at trial, the Court finds Ms. Garcia to be credible and reliable.

c) Similarly, Carlos testified that on August 4, 2016, the entire family met with CFH Group CEO Tom Cabrerizo, and during the meeting Carlos requested an assigned handicapped parking space and permission to modify Angie's bathroom. (Trial Tr. 6/20/2023 (Carlos) at 3:25 – 4:11.) Mr. Cabrerizo testified that he met with the Plaintiffs after they appeared at his office unannounced wanting to discuss the nonrenewal of their lease. (Trial Tr. 6/9/2023 (Cabrerizo) at 7:1 – 8:18.) Mr. Cabrerizo testified that he had no recollection of Carlos discussing a handicapped parking space or a bathroom modification,

Appendix C

> [a]nd . . . if he would have, at the time, it certainly would have been something that I would have discussed with my VP at the time, when I went over this meeting with her regarding the nonrenewal,

as at the time, I was on the board of the Woody Foundation, which dealt with disability, and I was on that board for four years, and I spent a lot of time on that board.

(Id. at 9:7-13.) Mr. Cabrerizo explained that the Woody Foundation "dealt with disability, primarily spinal cord injuries," and that he "was instrumental in bringing in the Woody Pack, which essentially was assistive devices to help these kids with these spinal cord injuries to be able to take care of themselves; feed themselves, you know, be able to wash, to wash their teeth, comb their hair in some cases, just all, all devices." (Id. at 10:1-6.) When asked: "[I]f [Carlos] had made a comment about needing an accommodation, would that have drawn your attention?" Mr. Cabrerizo responded: "100 percent. This is something that I would have brought up in my conversation with Gliset Perez, as this is something that was dear to me at the time -- and still is." (Id. at 10:9-11.) Based on the consistency of Mr. Cabrerizo's testimony with other credible and reliable evidence, and

the Court's observation of the witness during his testimony at trial, the Court finds Mr. Cabrerizo to be credible and reliable.

13. Vilma Hernandez testified that Carlos requested an assigned handicapped parking space only once, either in 2012 or early 2013, (Trial Tr. 6/23/2023 at 98:11, 106:8-10), "and that was the only time that he requested it[,]" (id. at 98:11-12; see also id. at 99:6-7; 106:8).

a) When asked whether Plaintiffs requested an assigned handicapped parking space between March 2017 and June 2017, as alleged in the Second Amended Complaint, Hernandez replied: "No. They did not request anything from me in that period of time." (Id. at 102:17-18.)

b) When asked whether Carlos made a request for an assigned handicapped parking space specifically on March 29, 2017, as Carlos claimed during his testimony, Hernandez replied: "No. He did not make any request that day." (Id. at 103:10.)

c) Hernandez testified that Carlos never emailed her any photographs or videos purporting to show Plaintiffs having difficulty loading Angie into their vehicle, and never emailed her regarding problems finding a parking space for Angie. (Id. at 104:11-15.)

14. The Court finds Hernandez to be credible and reliable. She testified that she remembered the 2012 or 2013 encounter with Carlos as follows:

> He came to the door. He stood at the door. He said, "Vilma, I need you to give me parking spot number 2, which is in front of Building 2500 because that one has the ramp on the side of the driver."
>
> And I answered, "Carlos, unfortunately, according to the laws in Florida, but according to statutes, parking cannot be assigned to disabled, not designated. It has to be available for all people, any person who has the disable park tag." And that was the only time he asked, and that was my answer.

(Id. at 98:24-7.) She further testified that during the March 29, 2017 encounter, Carlos only complained about receiving a parking violation warning from third-party On-Call Parking ("On-Call"):

> I remember he came into the office. He asked to speak with me. He told me, "Vilma, I got a warning." I told him, "Don Carlos, I want you to do me a favor, call On- Call because they are the company in charge of the parking administration." I continued working. It was the end of the month, and there's a lot of reports to be made. And he left.
>
> (Id. at 103:1-6.) Based on Hernandez's memory of the relevant encounters with Carlos, the consistency of her testimony with other credible and reliable evidence, and the Court's observation of the witness during her testimony at trial, the Court finds Hernandez credible and reliable

Appendix C

15. Amanda Ortiz speaks with Carlos on the phone at least twice a month and visits Angie at his home twice a year. (Trial Tr. 6/5/2023 at 6:6-9, 33:25 – 34:1.)

a) As a Consultant and Waiver Support Coordinator, Ortiz is required to keep accurate notes of all contacts she has with Angie and Carlos. (Id.at 5:21-24.)

b) Ortiz has taken contemporaneous notes of all contacts with Angie and Carlos since her initial visit with Angie on August 6, 2012. (See id. at 11:25 – 12:2.)

c) Ortiz initials all of her notes. (See id. at 11:22 – 12:2; id. at 25:19-21.)

d) If Ortiz has a health or safety concern, she is required to record it in her notes. (Id. at 10:20-25.)

e) None of Ortiz's notes from March and April 2017 reflect any discussions with Carlos regarding a handicapped parking space.

f) Ortiz's notes from March 2, 2017 state, in their entirety:
As a consultant, I contacted Angie at home and spoke to him in regards to his health and services. As a consultant, I also spoke to his father and manager and told me all services and support is all in place with the approved cost plan. As a consultant, I informed them about a pen house and Summer Camp hosted by Great Heights Academy, if they needed any more information I

will fax it over. As a consultant, I asked Angie what he likes to do for community involvement and he says he likes to watch movies, eat, and spend time with family and friends. As a consultant, I asked them to call whenever they had any questions or concerns.

(Def. Ex. 2F (emphasis added).) Ortiz's handwritten initials appear next to this note.

g) Ortiz's notes from March 20, 2017 state, in their entirety:

As a consultant I contacted Angie at his home and spoke to Angie's father in regard to Angie to see how he was doing and if there was anything that he needed. He tells me Angie is doing great and he is happy and stable. As a consultant, I asked about his health and goals. He continues to tell me how much Angie improves with his goals and will like to continue working on those same goals. As a consultant, I discussed the Support Plan and monthly budget/ statements to ensure proper management. There have been no changes in medication. Angie's father informs me about his concerns of the letter he received from APD about the EZ budget and AIM, as a consultant, I informed him that this was nothing to worry about for the moment, it was just standard procedure and that if anything changed WSC will

inform him of the changes. Angie's father tells me that Angie continues to be active by going to the beach, library, and family reunions. I will continue to monitor and review Angie's health and services for the month of April. (Id. (emphasis added).) Ortiz's handwritten initials appear next to this note.

h) Ortiz's notes from April 4, 2017 state, in their entirety: As a consultant, I contacted Angie at home and spoke to him in regards to his health and services. As a consultant, I also spoke to his father, he stated that all services and support are in place with the approved cost plan. As a consultant, I informed them about the Family Health Forum on April 22, 2017 in Miami Gardens, if they needed any more information I will fax it over. As a consultant, I asked Angie what he likes to do for community involvement and he says he likes to watch movies, eat, and spend time with family and friends. As a consultant, I asked them to call whenever they had any questions or concerns. (Id. (emphasis added).) Ortiz's handwritten initials appear next to this note.

i) Ortiz's notes from April 18, 2017 state, in their entirety: As a consultant, I contacted Angie at his home and spoke to Angie's father in regard to Angie, to see how he was doing and if

there was anything he needed. He tells me Angie is doing great and he is happy and stable. As a consultant, I asked about his health and goals. He continues to tell me how much Angie improves with his goals and will like to continue working on those same goals. As a consultant, I discussed the Support Plan and monthly budget/ statements to ensure proper management. Angie's father tells me that Angie continues to be active by going to the beach, library, and family reunions. I will continue to monitor and review Angie's health and services for the month of May.

(Id. (emphasis added).) Ortiz's handwritten initials appear next to this note.

j) At trial, Ortiz testified that her notes do not reflect any discussions with Plaintiffs about handicapped parking. (Trial Tr. 6/5/2023 at 30:14-17.)

k) The Court accords great weight to Ortiz's notes because they were made at the time of the conversations and initialed by Ortiz. The fact that the notes do not reflect any issues with parking at VOH is highly significant. It establishes that there were no issues with the disabled parking that hampered Angie's ability to participate in activities in the community and travel to

and from VOH. Thus, Ortiz's notes support an inference that Carlos did not request an assigned handicapped parking space during the relevant period, because there was no need to do so.

b. Count Three: Request for modification – Angie's bathroom

16. The first and only time Plaintiffs requested permission to modify Angie's bathroom was August 26, 2018, and that request was granted the next day.

17. In 2012, Carlos asked Amanda Ortiz whether Angie's bathroom should be remodeled due to his disabilities. (Trial Tr. 6/5/2023 at 28:8 – 29:13.) Ortiz told Carlos that APD would not approve a request for funds to remodel Angie's bathroom because Plaintiffs did not own the apartment. (Id. at 28:4– 29:13.)

18. Carlos testified that he orally requested permission to modify Angie's bathroom on six occasions during his tenancy at VOH: first, on February 3, 2013, from Hernandez, (Trial Tr. 6/7/2023 (rough) at 130:3-14); second, on August 4, 2016, from CFH Group CEO Tom Cabrerizo, (id. at 133:23 -134:21; Trial Tr. 6/20/2023 at 3:25 – 4:11); third, on September 9, 2016, from Hernandez and Marleyn Garcia, (Trial Tr. 6/20/2023 at 4:17 – 5:8; Trial Tr. 6/22/2023 at 3:12-23); fourth, in October 2016 from Hernandez, (Trial Tr. 6/20/2023 at 6:8-9); fifth, in early March 2017 from Hernandez, (Trial Tr. 6/7/2023 (rough) at 138:4-6); and sixth, on March 29, 2017, from Hernandez, (Trial Tr. 6/6/2023 (Carlos) at 10:16-19).

a) Although Carlos also testified that he told a HUD investigator that he asked for permission to modify Angie's bathroom "from August 4, 2016 up until April 7, 2017[,]" (Trial Tr. 6/22/2023 at 40:12), there is no other testimony that he requested a bathroom modification on April 7, 2017, and he appeared to testify on cross-examination that he only requested an assigned handicapped parking space on April 7, 2017.[10] (Trial Tr. 6/20/2023 at 7:24 – 8:8.)

19. Only early March 2017 and March 29, 2017 fall within the period alleged in the Second Amended Complaint—i.e., March 2017 to August 2018. (D.E. 92 ¶ 39.)

20. The Court finds that Carlos's testimony on this issue was not credible or reliable, based on observations of him as he testified at trial, his embellishment of the underlying facts, and his inconsistent testimony.

a) Furthermore, there were no other eyewitnesses to his alleged requests in March 2017, (see Trial Tr. 6/6/2023 (Carlos) at 8:20-22; Trial Tr. 6/6/2023 (Fe) at 16:3-9), and there were no contemporaneous notes, emails, letters, or doctor's notes corroborating Carlos's testimony

b) Additionally, his testimony conflicted with other credible witnesses, including Marleyn Garcia who had no interest in the outcome of the

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[10] Furthermore, in Plaintiffs' Proposed Findings of Fact and Conclusions of Law, they list April 7, 2017 as a date on which they requested an assigned handicapped parking space, but do not list it as a date on which they requested permission to modify Angie's bathroom. (D.E. 676 at 10-11.)

case. Carlos testified that he requested a bathroom modification during a meeting with Marleyn Garcia and Vilma Hernandez on September 9, 2016. (Trial Tr. 6/6/2023 (Carlos) at 7:8-11; Trial Tr. 6/20/2023 at 4:17 – 5:8; Trial Tr. 6/22/2023 at 3:12-23.) Ms. Garcia testified that she never met with Carlos in September of 2016. (Trial Tr. 6/7/2023 (Garcia) at 6:3-14.) Ms. Garcia testified that she met with Carlos and Fe in August of 2016, but neither Carlos nor Fe requested a bathroom modification at that meeting. (Trial Tr. 6/7/2023 (rough) at 38:2-4; 39:24 – 40:2.) Rather, they only discussed the "good conduct" addendum to their lease because neither Carlos nor Fe wanted to sign it. (Id. at 37:11 – 38:17.) Based on the consistency of Ms. Garcia's testimony with other credible and reliable evidence, the fact that she no longer works for CFH Group and therefore has no interest in the outcome of this case, and the Court's observation of the witness during her testimony at trial, the Court finds Ms. Garcia to be credible and reliable.

c) Similarly, Carlos testified that on August 4, 2016, the entire family met with CFH Group CEO Tom Cabrerizo, and during the meeting Carlos requested an assigned handicapped parking space and permission to modify Angie's bathroom. (Trial Tr. 6/20/2023 (Carlos) at 3:25 – 4:11.) Mr. Cabrerizo testified that he met with the Plaintiffs

after they appeared at his office unannounced wanting to discuss the nonrenewal of their lease. (Trial Tr. 6/9/2023 (Cabrerizo) at 7:1 – 8:18.) Mr. Cabrerizo testified that he had no recollection of Carlos discussing a handicapped parking space or a bathroom modification,

> [a]nd . . . if he would have, at the time, it certainly would have been something that I would have discussed with my VP at the time, when I went over this meeting with her regarding the nonrenewal, as at the time, I was on the board of the Woody Foundation, which dealt with disability, and I was on that board for four years, and I spent a lot of time on that board.

Id. at 9:7-13.) Mr. Cabrerizo explained that the Woody Foundation "dealt with disability, primarily spinal cord injuries," and that he "was instrumental in bringing in the Woody Pack, which essentially was assistive devices to help these kids with these spinal cord injuries to be able to take care of themselves; feed themselves, you know, be able to wash, to wash their teeth, comb their hair in some cases, just all, all devices." (Id. at 10:1-6.) When asked: "[I]f [Carlos] had made a comment about needing an accommodation, would that have drawn your attention?" Mr. Cabrerizo responded: "100 percent. This is something that I would have brought up in my conversation with Gliset Perez, as this is something that was dear to me at the time –

and still is." (Id. at 10:9-11.) Based on the consistency of Mr. Cabrerizo's testimony with other credible and reliable evidence, and the Court's observation of the witness during his testimony at trial, the Court finds Mr. Cabrerizo to be credible and reliable.

21. On February 27, 2017, Dr. Reynold Duarte Martinez wrote Angie a prescription for a shower chair, (Pl. Ex. 9), and on February 28, 2017, Dr. Martinez wrote a Medical Necessity Letter in support of a customized shower chair, (Pl. Ex. 10).

a) Carlos presented the documentation supporting a shower chair to his insurance carrier, but the insurance carrier did not cover the type of shower chair Angie needed. (Trial Tr. 6/7/2023 (rough) at 119:11- 17.)

b) Carlos did not request from APD funds to purchase a shower chair, but instead requested from APD funds to modify Angie's bathroom in 2018. (Id. at 119:21 – 120:2.).

22. As a Consultant and Waiver Support Coordinator, Amanda Ortiz is required to keep accurate notes of all contacts she has with Angie and Carlos. (Trial Tr. 6/5/2023 at 5:21-24.)

a) Ortiz has been keeping contemporaneous notes of all contacts she has with Angie and Carlos since her initial visit with Angie on August 6, 2012. (See id. at 11:25 – 12:2.)

b) Ortiz initials all of her notes. (See id. at 11:22 – 12:2; id. at 25:19-21.)

c) Ortiz testified that if she has a health or safety concern, she is required to record it in her notes. (Id. at 10:20-25.)

d) None of Ortiz's notes from March 2017 reflect that Carlos discussed a bathroom modification with Ortiz.

e) Ortiz's notes from March 2, 2017 state, in their entirety:

> As a consultant, I contacted Angie at home and spoke to him in regards to his health and services. As a consultant, I also spoke to his father and manager and told me all services and support is all in place with the approved cost plan. As a consultant, I informed them about a pen house and Summer Camp hosted by Great Heights Academy, if they needed any more information I will fax it over.
>
> As a consultant, I asked Angie what he likes to do for community involvement and he says he likes to watch movies, eat, and spend time with family and friends. As a consultant, I asked them to call whenever they had any questions or concerns.

(Def. Ex. 2F (emphasis added).) Ortiz's handwritten initials appear next to this note.

f) Ortiz's notes from March 20, 2017 state, in their entirety:

> As a consultant I contacted Angie at his home and spoke to Angie's father in regard to Angie to see how he was doing and if there was anything that he needed. He tells me Angie is doing great and he is happy and stable. As a consultant, I asked about his health and goals. He continues to tell me how much Angie improves with his goals and will like to continue working on those same goals. As a consultant, I discussed the Support Plan and monthly budget/ statements to ensure proper management. There have been no changes in medication. Angie's father informs me about his concerns of the letter he received from APD about the EZ budget and AIM, as a consultant, I informed him that this was nothing to worry about for the moment, it was just standard procedure and that if anything changed WSC will inform him of the changes. Angie's father tells me that Angie continues to be active by going to the beach, library, and family reunions. I will continue to monitor and review Angie's health and services for the month of April.

(Id. (emphasis added).) Ortiz's handwritten initials appear next to this note.

g) At trial, Ortiz reviewed her notes from 2016 and 2017 and testified that they contain no references to a "bathtub modification." (Trial Tr. 6/5/2023 at 24:2-8.)

h) The Court accords great weight to Ortiz's notes because they were made at the time of the conversations and initialed by Ortiz. The fact that the notes do not reflect any discussions regarding a bathroom modification in March 2017 is highly significant and supports the conclusion that Carlos did not request a bathroom modification in early March 2017 or on March 29, 2017.

23. Ortiz testified that she told Carlos in 2012 that APD would not approve a request for funds to modify Angie's bathroom because Plaintiffs did not own the apartment. (Trial Tr. 6/5/2023 at 28:8 – 29:15.) She later learned that she was incorrect. (Id. at 28:18 - 29:15.)

a) "[A]t the end" of 2017, she and Carlos began planning to request funds from APD for an environmental assessment evaluation,[11] (Trial Tr. 6/5/2023 at 58:2 – 59:14), which is the first step in receiving approval for funds to make a bathroom modification, (Trial Tr. 6/9/2023 (Ferguson) at 9:21 – 10:2).

[11] An environmental assessment involves hiring a contractor to visit the site of the proposed modification, to "draw up a plan, show pictures, and basically tell [APD] the cost of that modification." (Trial Tr. 6/9/2023 (Ferguson) at 11:9-11.)

b) On August 4, 2018, Ortiz prepared the paperwork requesting funds from APD for an environmental assessment evaluation. (Trial Tr. 6/5/2023 at 66:5; Def. Ex. 2C)

24. On August 26, 2018, Carlos submitted a written request to VOH for permission to modify Angie's bathroom. (See Trial Tr. 6/23/2023 at 73:1- 13; Pl. Ex. 117.) [12] Carlos testified that this was the only written request that he made, and that the request was approved the next day. (Id. at 62:6-8; see also id. at 72:17-19.)

a) On August 27, 2018, Defendants' corporate attorney, Kenneth J. Lowenhaupt, Esq., sent Carlos a letter approving the written request for permission to modify Angie's bathroom. (Pl. Ex. 3E; see also Trial Tr. 6/23/2023 at 62:6-8, see also id. at 72:17-19.)

b) On August 31, 2018, Vilma Hernandez emailed Carlos to confirm that his written request was granted. (Pl. Ex. 3G.)

25. Hernandez testified that the first and only time Carlos requested a bathroom modification was August 26, 2018, "and he received the authorization immediately."

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[12] The August 26, 2018, written request was admitted into evidence as Plaintiffs' Exhibit 117 on June 23, 2023. (Trial Tr. 6/23/2023 at 73:10-13.) However, on June 26, 2023, Plaintiff's counsel represented at trial that it had been introduced as Plaintiffs' Exhibit 118, (Trial Tr. 6/26/2023 at 24:7-10), and when the Parties submitted their evidence to the Court at the close of Phase 1 of the trial, the August 26, 2018 written request was marked "P-118."

(Trial Tr. at 6/23/2023 at 105:15-17; see also Trial Tr. 6/26/2023 at 12:8-11; see also id. at 17:23.)

26. The Court finds Vilma to be credible and reliable based on her memory of the relevant encounters with Carlos, the consistency of her testimony with other credible and reliable evidence, and the Court's observation of the witness during her testimony at trial.

27. On August 23, 2018, Doctor Annette Fornos wrote a letter in support of "a home bathtub that is suited for someone with [Angie's] medical condition." (Def. Ex. K.) Dr. Fornos testified that this "was the first time that anyone has asked [her] to write a letter in support of a bathroom modification[.]" (Trial Tr. 6/7/2023 (Fornos-cross) at 15:3-7.) Based on the Court's observation of the witness during her testimony at trial, the Court finds Dr. Fornos to be credible and reliable.

28. Marleyn Garcia testified that the first time Carlos requested a bathtub modification was in August 2018, and the request was granted. (Trial Tr. (rough) 6/7/2023 at 40:13-22.) As previously stated, the Court finds Ms. Garcia to be credible and reliable.

29. Paul Gallner testified that in the fall of 2018 he learned that Carlos requested permission to modify the bathroom. (Trial Tr. (Gallner) 6/7/2023 at 5:6-9.)

To his knowledge, this was Carlos's first such request. (Id. at 5:18-25.)

Gallner discussed the request with Hernandez and told her that any modification would require a licensed contractor and that the bathroom would have to be returned to its original condition when Plaintiffs moved. (Id. at 6:6-13.) Based on the consistency of Mr. Gallner's testimony with other credible and reliable evidence, and the Court's observation of the witness during his testimony at trial, the Court finds Mr. Gallner to be credible and reliable.

IV. CONCLUSIONS OF LAW

1. The Fair Housing Act makes it unlawful to "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 with such dwelling, because of a handicap of (A) that person; or (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that person." 42 U.S.C. § 3604(f)(2).

2. "Discrimination" includes both:

   a) "a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises . . . [,]" 42 U.S.C. § 3604(f)(3)(A); and

b) "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling[,]" 42 U.S.C. § 3604(f)(3)(B).

3. "A successful failure-to-accommodate claim has four elements. To prevail, one must prove that (1) he is disabled within the meaning of the FHA, (2) he requested a reasonable accommodation, (3) the requested accommodation was necessary to afford him an opportunity to use and enjoy his dwelling, and (4) the defendants refused to make the accommodation." Bhogaita v. Altamonte Heights Condo. Ass'n Inc., 765 F.3d 1277, 1285 (11th Cir. 2014) (citing Schwarz v. City of Treasure Island, 544 F.3d 1201, 1218-19 (11th Cir. 2008)).

4. "A reasonable-modification plaintiff must prove '[1] that she suffers from a disability, [2] that she requested an accommodation or modification, [3] that the defendant housing provider refused to make the accommodation or to permit the modification [the denial element], and [4] that the defendant knew or should have known of the disability at the time of the refusal.'" Johnson v. Jennings, 772 F. App'x 822, 825 (11th Cir. 2019) (quoting Hollis v. Chestnut Bend Homeowners Ass'n, 760 F.3d 531, 541 (6th Cir. 2014)). "The claim also requires proof of 'both [5] the reasonableness and [6] necessity of the requested modification.'" Id. (quoting Hollis, 760 F.3d at 541). "The failure to make a timely determination after

meaningful review amounts to constructive denial of a requested accommodation [or modification], 'as an indeterminate delay has the same effect as an outright denial.'" Bhogaita, 765 F.3d at 1286.

5. The FHA has a two-year statute of limitations. 42 U.S.C. § 3613(a)(1)(A).

Specifically, an "aggrieved person" who has been "injured by a discriminatory housing practice" is entitled to file a civil action "not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, ..." 42 U.S.C. §§ 3602(i)(1), 3613(a)(1)(A).

The FHA's "statute of limitations begins to run when 'facts supportive of the cause of action are or should be apparent to a reasonably prudent person similarly situated.'" Wood v. Briarwinds Condo. Ass'n Bd. of Dirs., 369 F. App'x 1, 4 (11th Cir. 2010) (quoting Hipp v. Liberty Nat'l Ins. Co., 252 F.3d 1208, 1222 (11th Cir. 2001)).

For example, the FHA's statute of limitations begins to run when a request for a reasonable accommodation, or for permission to make a reasonable modification, is denied. See Oliver v. Fox Wood at Trinity Cmty. Ass'n, Inc., Case No: 8:17-cv-585-T-30AAS, 2018 WL 4608325, at *7-8 & n.5 (M.D. Fla. July 30, 2018) (finding that the FHA's statute of limitations began to run when a reasonably prudent person would have become aware that a requested accommodation or

permission to modify was denied, and that an injury is not a "continuing injury" simply because a request was denied) (citing Telesca v. Vill. of Kings Creek Condo. Ass'n, Inc., 390 F. App'x 877, 882 (11th Cir. 2010)).

However, "[t]he computation of such 2-year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice." [13] 42 U.S.C. § 3613(a)(1)(B).

The FHA's statute of limitations is not tolled by a request for administrative review of a no-cause determination. See Allen v. Hous. Auth. of City of Auburn, Ala., 638 F. App'x 825, 831 (11th Cir. 2015) (observing that "nothing in the statutory scheme of the FHA expressly contemplates such review" and that "the FHA's implementing regulations do not provide for administrative review of

6. In a civil trial, the plaintiff must prove every element of his case by a preponderance of the evidence. See Johnson v. Florida, 348 F.3d 1334, 1347 (11th Cir. 2003); Allison v. McGhan Med. Corp., 184 F.3d 1300, 1320 (11th Cir. 1999). "The burden of showing something by a 'preponderance of the evidence,' . . . 'simply

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[13] On September 27, 2017, Plaintiffs' filed a Housing Discrimination Complaint with the U.S. Department of Housing and Urban Development. (See Def. Ex. 3W.) HUD conducted an investigation and issued a final decision ninety days later on December 26, 2017. (See Second Am. Compl. ¶ 94.) Although HUD's "no cause" letter was not introduced into evidence at trial, counsel for both Parties agreed that the HUD investigation lasted 90 days, and therefore that the limitations period would be statutorily tolled for 90 days. (Trial Tr. 6/22/2023 at 47:14-24.)

requires the trier of fact 'to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence.'" Concrete Pipe and Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal., 508 U.S. 602, 622 (1993) (quoting In re Winship, 397 U.S. 358, 371-72 (1970)).

7. As to Count One, the Court finds that Carlos requested an assigned handicapped parking space only once, and that request was made and denied in late 2012 or early 2013. Plaintiffs commenced this lawsuit on May 6, 2019, more than six years after Carlos's request for an assigned handicapped parking space was denied. [14] Accordingly, Defendants are entitled to judgment as to Count One because:

a) Plaintiffs failed to prove by a preponderance of the evidence that they requested an assigned handicapped parking space between March 2017 to June 2017, as alleged in the Second Amended Complaint;

b) Plaintiffs failed to prove by a preponderance of the evidence that they otherwise requested an assigned handicapped parking space within the limitations period;

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[14] The Court need not decide whether the initial Complaint filed in this action relates back to the complaints filed in Cano I or Cano II, (see supra Note 3), because even assuming arguendo that the relation back doctrine of Federal Rule of Civil Procedure 15(c) does apply, Carlos filed his complaint in Cano I approximately five years after his request for an assigned handicapped parking space was denied in 2012 or early 2013

c) Plaintiffs failed to prove by a preponderance of the evidence that Defendants denied any such request; and

d) Any claim predicated on Plaintiffs' late 2012 or early 2013 request for an assigned handicapped parking space is barred by the FHA's statute

8. As to Count Three, the Court finds that the first and only time Carlos requested permission to modify Angie's bathroom was August 26, 2018, and that request was granted the next day. Accordingly, Defendants are entitled to judgment as to Count Three because Plaintiffs failed to prove by a of limitations

8. As to Count Three, the Court finds that the first and only time Carlos requested permission to modify Angie's bathroom was August 26, 2018, and that request was granted the next day. Accordingly, Defendants are entitled to judgment as to Count Three because Plaintiffs failed to prove by a preponderance of the evidence that Defendants denied a request for permission to make a reasonable modification to the premises.

V. CONCLUSION

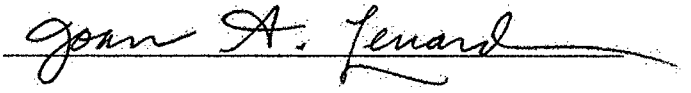
The Court has carefully considered all of the evidence, the Parties' arguments, the testimony of all of the witnesses, applicable law, and the pertinent portions of the

record. Accordingly, based on the foregoing findings of fact and conclusions of law, and consistent with the Court's prior rulings:

1. Defendants 245 C & C, LLC and CFH Group, LLC are entitled to judgment in their favor as to Counts One and Three of Plaintiffs' Second Amended Complaint; and

2. Judgment shall be set out in a separate document, pursuant to Rule 52(a)(1) and 58(a) of the Federal Rules of Civil Procedure.

DONE AND ORDERED in Chambers at Miami, Florida this 20th day of July, 2023.



JOAN A. LENARD, U.S. DISTRICT JUDGE

Appendix E

USCA11, No. 23-12413, (**Document 81**, 5/31/24)

In the
United States Court of Appeals
For the Eleventh Circuit

Nos. 23-12413, 23-13392

CARLOS A. ALONSO CANO,
as next friend of his minor daughters
Katy Alonso Morejon and Jany Leidy
Alonso Morejon,
FE MOREJON FERNANDEZ,

Plaintiffs-Appellants,

JANY L. ALONSO,

Interested Party-Appellant,

versus

245 C&C, LLC,

CFH GROUP, LLC,

Defendants-Appellees.

Appeals from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:19-cv-21826-JAL

Before NEWSOM, BRANCH, and LAGOA, Circuit Judges.

BY THE COURT:

Plaintiffs-Appellants' second motion to compel the Defendants-Appellees to produce Zoom recordings is DENIED.

Plaintiffs-Appellants' motions to file two principal briefs and to stay this appeal are DENIED.

Defendants-Appellees' motion for sanctions is GRANTED. In the order issued on April 23, 2024, this Court warned the Plaintiffs-Appellants that they could be sanctioned should they continue to file frivolous motions. Plaintiffs-Appellants have a history of filing frivolous motions in this Court, which have multiplied unnecessarily the Defendants-Appellants' work and costs in defending the district court's judgment. And this latest salvo of motions is equally frivolous. See 11th Cir. R. 27-4. Defendants-Appellees may submit time records, affidavits, and other documents that will support their request for an award of attorney's fees.

Plaintiffs-Appellants' frivolous filings have unnecessarily prolonged this consolidated appeal. The Plaintiffs-Appellants repeatedly have maligned counsel for the Defendants-Appellees and accused the court reporter of misconduct. And, most troubling, the Plaintiffs-Appellants have admitted to being dishonest with this Court. They moved in October 2023 to compel the district court to produce copies of USBs submitted with their motion for summary judgment and then they confessed in a March 2024 motion to compel the production of color copies of evidence introduced during the bench trial that they "always had a copy of the USB . . . [and] copies of the documents, affidavits, photos and videos included in that USB." The processing of such frivolous, and often voluminous, filings places an unnecessary burden on this Court's resources.

This Court "has a responsibility to prevent single litigants from unnecessarily encroaching on the judicial machinery needed by others." Procup v. Strickland, 792 F.2d 1069, 1073–74 (11th Cir. 1986). See also Theriault v. Silber, 579 F.2d 302, 303 (5th Cir. 1978) ("This court simply will not allow liberal pleading rules and pro se practice to be a vehicle for abusive documents."). Based on the motions filed recently and the Plaintiffs-Appellants' past conduct in this case, this Court sua sponte enters the following filing restriction:

Except for motions for extensions of time, this Court will not consider any further motions from Appellant until the opinion in this consolidated appeal issues. The Clerk's Office is DIRECTED to take no action on such motions, including any motion for reconsideration of this order, until the opinion issues.

Plaintiffs-Appellants shall file a single consolidated principal brief raising all issues related to Case Numbers 23-12413 and 23-13392 within 40 days of the issuance of this order.

Appendix F

USCA11, No. 23-12413, (**Document 93**, 7/23/24)

In the
United States Court of Appeals
For the Eleventh Circuit

Nos. 23-12413, 23-13392

CARLOS A. ALONSO CANO,
as next friend of his minor daughters
Katy Alonso Morejon and
Jany Leidy Alonso Morejon,
FE MOREJON FERNANDEZ,

Plaintiffs-Appellants,

JANY L. ALONSO,

Interested Party-Appellant,

versus

245 C&C, LLC,

CFH GROUP, LLC,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:19-cv-21826-JAL

Before NEWSOM, BRANCH, and LAGOA, Circuit Judges.

BY THE COURT:

We GRANT the Defendants-Appellees' motion to determine the amount of fees to be awarded as sanctions. Plaintiffs-Appellants do not dispute the lodestar amount proposed by the Defendants-Appellees. And because we find that amount to be reasonable, we award the Defendants-Appellees $21,195 in attorney's fees. The fee award is payable jointly and severally by the Plaintiffs-Appellants to the Defendants-Appellees.