APPENDIX

APPENDIX A

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 14-14544
Non-Argument Calendar

D.C. Docket No. 1:13-cv-24508-WPD

CITY OF MIAMI,
a Florida municipal corporation,

Plaintiff - Appellant,

versus

WELLS FARGO & CO.,
WELLS FARGO BANK, N.A.,

Defendants - Appellees.

No. 14-14543
Non-Argument Calendar

D.C. Docket No. 1:13-cv-24506-WPD

CITY OF MIAMI,
a Florida Municipal Corporation,

Plaintiff - Appellant,

versus

BANK OF AMERICA CORPORATION,
BANK OF AMERICA, N.A.,
COUNTRYWIDE FINANCIAL CORPORATION,
COUNTRYWIDE HOME LOANS,
COUNTRYWIDE BANK, FSB,

Defendants - Appellees.

Appeals from the United States District Court
for the Southern District of Florida

(May 3, 2019)

Before MARCUS and WILSON, Circuit Judges, and SCHLESINGER,[1] District Judge.

MARCUS, Circuit Judge:

This pair of ambitious fair housing lawsuits brought by the City of Miami against major financial institutions returns to our Court after having been appealed to the Supreme Court and resolved there in Bank of American [sic] Corp. v. City of Miami, 137 S. Ct. 1296 (2017). Miami alleges that, for years, the defendant institutions, major nationwide banks, carried on discriminatory lending practices that intentionally targeted black and Latino Miami residents for predatory loans. The City says this resulted in disproportionate foreclosures on homeowners of those races, diminished property values in predominantly minority neighborhoods, substantially reduced tax revenue for the City, and increased expenditures by the City for municipal

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[1] Honorable Harvey E. Schlesinger, United States District Judge for the Middle District of Florida, sitting by designation.

services. When we first heard these cases, we determined that Miami had standing under the Fair Housing Act, and that it had adequately pled proximate cause. See City of Miami v. Bank of Am. Corp., 800 F.3d 1262 (11th Cir. 2015); City of Miami v. Wells Fargo & Co., 801 F.3d 1258 (11th Cir. 2015). The Supreme Court agreed in part. It resolved the hotly contested standing issue in the City's favor, but vacated and remanded with regard to proximate cause. See Bank of Am., 137 S. Ct. at 1305-06.

The Court held that the standard that this panel had applied—foreseeability—was not enough on its own to demonstrate proximate cause. Id. at 1306. Instead, the Court said that proximate cause under the FHA also required "some direct relation between the injury asserted and the injurious conduct alleged." Id. at 1306 (quotations omitted). But the Court declined to "draw the precise boundaries of proximate cause under the FHA and to determine on which side of the line the City's financial injuries fall." Id. It remanded the case, preferring to leave this issue open for percolation in the lower courts. See id. Today, we take up the question of how the principles of proximate cause identified by the Court's opinion function when applied to the FHA and to the facts as alleged in the City's complaints.

At this preliminary stage in the lawsuit, we conclude that the City has adequately pled proximate cause in relation to some of its economic injuries when the pleadings are measured against the standard required by the Fair Housing Act. Proximate cause asks whether there is a direct, logical, and identifiable connection between the injury sustained and its alleged cause. If there is no discontinuity to call into question whether the alleged misconduct led to the injury, proximate cause will have been adequately pled. The question for now is whether, accepting the allegations as true, as we must, the City has said enough to make out a plausible case—not whether it will probably prevail. Considering the broad and ambitious scope of the FHA, the statute's expansive text, the exceedingly detailed allegation found in the complaints, and the application of the administrative feasibility factors laid out by the Supreme Court in Holmes v. Securities Investor Protection Corp., 503 U.S. 258 (1992), we are satisfied that the pleadings set out a plausible claim.

The City's pleadings meet this standard because Miami has alleged a substantial injury to its tax base that is not just reasonably foreseeable, but also is necessarily and directly connected to the Banks' conduct in redlining and reverse-redlining throughout much of the City. This injury plausibly bears "some direct relation" to the claimed misconduct. Bank of Am., 137 S. Ct. at 1306. The injury to the City's tax base is uniquely felt in the City treasury, and there is no risk that duplicative injuries could be pled by another plaintiff or that the apportionment of damages amongst different groups of plaintiffs would be a problem. As we see it, the City is in the best position. Indeed only the City can allege and litigate this peculiar kind of aggregative injury to its tax base. Simply put, a lawsuit commenced by an individual homeowner cannot challenge the Banks' policies on the same citywide scale that the alleged misconduct took place on.

However, the City's pleadings fall short of sufficiently alleging "some direct relation" between the Banks' conduct and a claimed increase in expenditures on municipal services. The complaints fail to explain how these kinds of injuries—increases in police, fire, sanitation, and similar municipal expenses—are anything more than merely foreseeable consequences of redlining and reverse-redlining. The Court has told us that foreseeability alone is not enough.

We do not mean to suggest that the City's claims are destined to succeed. Many questions, and many difficult questions, remain and will have to be worked out in the district court. At the motion to dismiss stage, though, we are not asking whether the complaints meet any probability requirement, only whether they plausibly allege violations of the FHA. Since we have found that they do, we allow this discrete portion of the City's claims to proceed for now. The plaintiff has said enough to get into the courthouse and be heard. We decide nothing more today.

I. Background

A. The City's Claims

On December 13, 2013, the City of Miami brought three complex civil rights actions in the Southern District of Florida against several different financial institutions. One suit was filed against Bank of America Corporation, Bank of America N.A., Countrywide Financial Corporation, Countrywide Home Loans, and Countrywide Bank, FSB (collectively "Bank of America"), and another against Wells Fargo & Co. and Wells Fargo Bank, N.A. (collectively "Wells Fargo"). For simplicity, we refer to all these defendants jointly as "the Banks." These were accompanied by another similar case against

Citigroup, Inc. and related institutions. See City of Miami v. Citigroup, Inc., 801 F.3d 1268 (11th Cir. 2015). The first time this panel considered this set of cases, we heard the Citigroup case as well, but that case was not appealed to the Supreme Court. It has returned to the district court, where it has been stayed pending resolution of the other two. See Order Staying Case Pending the Supreme Court's Disposition of Matters Now Before the Court, City of Miami v. Citigroup Inc., No. 13-cv-24510 (S.D. Fla. July 13, 2016). As a result, our opinion today concerns only Bank of America and Wells Fargo.

The City alleged in considerable detail that the Banks had violated § 3604(b) and § 3605(a) of the Fair Housing Act. The first of these provisions makes it unlawful "[t]o 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, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(b). The second states that "[i]t shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin." Id. § 3605(a). The City alleged that the Banks had violated these provisions by intentionally engaging in discriminatory mortgage lending practices that resulted in a disproportionate and excessive number of defaults by black and Latino homebuyers and caused substantial financial harm to the City.[2]

The City said the Banks made a practice of systematically and intentionally refusing to extend credit to minority borrowers on the same terms as they would extend credit to non-minority borrowers and, when they did extend credit to comparably situated minority borrowers, doing so only on predatory terms, worse than the terms non-minorities received. First Amended Complaint for Violations of the Federal Fair Housing Act at 2-5, City of Miami v. Bank of Am., No. 13-cv- 24506 (S.D. Fla. Sept. 9, 2014) ("BoA FAC"); First Amended Complaint for Violations of the Federal Fair Housing Act at 2-5, City of Miami v. Wells Fargo & Co., No. 13-cv-24508 (S.D. Fla. Sept. 9, 2014) ("WF FAC").[3] This amounted to both

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[2] The City also alleged that the Banks unjustly enriched themselves by taking advantage of "benefits conferred by the City" at the same time that they engaged in unlawful lending practices which "denied the City revenues it had properly expected through property and other tax payments and . . . cost[] the City additional monies for services it would not have had to provide . . . absent [the Bank's] unlawful activities." Wells Fargo, 801 F.3d at 1261 (quoting Complaint for Violations of the Federal Fair Housing Act at 61, City of Miami v. Wells Fargo & Co., No. 13-24508-CIV (S.D. Fla. July 9, 2014), 2013 WL 6903725); Bank of Am., 800 F. 3d at 1267; see also Complaint for Violations of the Federal Fair Housing Act at 52-55, City of Miami v. Bank of Am. Corp., No. 13-24506-CIV (S.D. Fla. July. 9, 2014), 2013 WL 6903721 (raising the same claims and allegations). The district court held that these claims failed. City of Miami v. Bank of Am., No. 13-24506-CIV, 2014 WL 3362348 at *6-7 (S.D. Fla. July 9, 2014). We affirmed, Bank of Am., 800 F.3d at 1287; Wells Fargo, 801 F.3d at 1267, and the City did not appeal these claims to the Supreme Court. Accordingly, they are no longer in this case.

[3] The operative complaints for our purposes are the First Amended Complaints in both cases. As we explain, *infra*, the City

"redlining" (refusing to extend credit) and "reverse redlining" (extending credit on worse terms). Black and Latino borrowers were thus unable to refinance their loans effectively. BoA FAC at 4; WF FAC at 4; see also Wells Fargo, 801 F.3d at 1261; Bank of Am., 800 F. 3d at 1267. The City's complaints detailed at

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appealed the denial of motions in both cases asking the district court to reconsider the dismissal of its initial Complaints and to grant leave to file the First Amended Complaints. After this panel reversed the decisions in September 2015, litigation proceeded in the district court for some months before the Supreme Court granted the Banks' petitions for certiorari in June 2016. On remand from this Court, the City filed what it styled "Second Amended Complaints," (even though the First Amended Complaints had not technically been filed), and both of these were dismissed on multiple grounds, but with leave to amend. Order Granting Motion to Dismiss Second Amended Complaint, Bank of Am., No. 13-cv-24506 (Mar. 17, 2016) (No. 98); Order Granting Motion to Dismiss Second Amended Complaint, Wells Fargo, No. 13-cv-24508 (Mar. 17, 2016) (No. 77). By the time the Supreme Court granted the petition for certiorari, the City had filed Third Amended Complaints, and both Banks had moved to dismiss these as well. See Defendants' Motion to Dismiss Third Amended Complaint with Prejudice and Request for Hearing, Bank of Am., No. 13-cv-24506 (May 16, 2016) (No. 103); Wells Fargo's Motion to Dismiss with Prejudice the City's Third Amended Complaint and Request for Hearing, Wells Fargo, No. 13-cv-24508 (May 24, 2016) (No 83). Both cases were then stayed pending resolution in the Supreme Court. Order Staying Case Pending the Supreme Court's Disposition of Matters Now Before the Court, Bank of Am., No. 13-cv-24506 (July 13, 2016) (No. 128); Order Granting Unopposed Motion to Stay Further Proceedings Pending the Supreme Court's Disposition of Matters Now Before the Court, Wells Fargo, No. 13-cv-24508 (July 13, 2016) (No. 102). Since nothing had been appealed since the Second and Third Amended Complaints were filed, the Supreme Court was explicit that it was looking to the First Amended Complaints, see Bank of Am., 137 S. Ct. at 1301, and we do the same on remand.

considerable length the nature of these practices and characterized them as "abusive" because they resulted in loans with "unfair terms that [borrowers] could not afford." BoA FAC at 13; WF FAC at 11; see, e.g., BoA FAC at 22 (explaining what kinds of loans the City would categorize as "predatory"); WF FAC at 34 (same).

The City claims that these policies were entirely deliberate on the part of the Banks. The Amended Complaints explain that confidential witnesses—former employees at both Bank of America and Wells Fargo—will testify to how minorities and residents of minority neighborhoods were targeted for predatory loan terms. E.g., BoA FAC at 19; WF FAC at 29. Moreover, witnesses allegedly will testify that Wells Fargo specifically targeted Latino and African American community groups and churches (but never white churches) and that employees were assigned based on their race to make presentations to these groups. WF FAC at 30. Witnesses from Bank of America likewise will testify that they were encouraged to steer less financially savvy borrowers, often racial minorities, toward loan products that were decidedly unfavorable to the customer and different from loan products offered to white applicants, but highly favorable to the bank. BoA FAC at 19-20.

According to the City, all of this violated the FHA in two stages. To start, the Banks intentionally discriminated against minority borrowers by targeting them for burdensome loans. This had a disparate impact on minority borrowers, leading, down the line, to a disproportionate number of exploitative loans in minority neighborhoods and, eventually, to a disproportionate number of foreclosures on minority-owned properties. BoA FAC at 15-19; WF FAC at 21-29.

The City employed detailed regression analyses of the Banks' self-reported data to show that a Bank of America loan in a predominantly African-American or Latino Miami neighborhood was 5.857 times more likely to result in foreclosure than a Bank of America loan in a non-minority Miami neighborhood. BoA FAC at 26. For a minority-neighborhood loan from Wells Fargo, foreclosure was 6.975 times more likely. WF FAC at 39. Further calculations indicated that, controlling for credit history and other factors, a black Miami borrower was 1.581 times more likely than a white borrower to receive a predatory loan from Bank of America and 4.321 times more likely to receive one from Wells Fargo. BoA FAC at 22; WF FAC at 34. A Latino borrower was 2.087 times more likely to receive such a loan from Bank of America and 1.576 times more likely to receive one from Wells Fargo. BoA FAC at 22; WF FAC at 34. Notably, even among borrowers with good credit (FICO scores over 660), black borrowers were 1.533 and 2.572 times more likely to receive a predatory loan from Bank of America and Wells Fargo, respectively. BoA FAC at 22; WF FAC at 34. For Latino borrowers with good credit, the figures were 2.137 and 1.875 times more likely. BoA FAC at 22; WF FAC at 34. The City identified similar disproportionalities on a larger scale by comparing predominantly white neighborhoods with predominantly minority ones. <u>See</u> BoA FAC at 23-25; WF FAC at 35-37.

The complaints further alleged that the Banks' lending practices resulted in minority borrowers suffering especially fast and frequent foreclosures, an important indicator of predatory lending practices. See BoA FAC at 29-30; WF FAC at 41. White borrowers' average time from origination to foreclosure was 3.448 years for a Bank of America loan or 3.266 years for a Wells Fargo loan; for black and Latino borrowers the averages were 3.144 (black) and 3.090 (Latino) years from Bank of America and 2.996 (both black and Latino) from Wells Fargo. BoA FAC at 28; WF FAC at 41. Confidential witnesses from both Banks will allegedly support the claims that each had deliberately targeted black and Latino borrowers for predatory loans. E.g., BoA FAC at 19-21; WF FAC at 30-31.

What's more, according to the complaints, the Banks' misconduct was not limited to loan origination but instead continued almost to the point of foreclosure. As the Supreme Court noted, Bank of Am., 137 S. Ct. at 1301, the predatory practices alleged by the City included denying black and Latino customers opportunities to refinance or make loan modifications on fair terms. E.g. BoA FAC at 21; WF FAC at 32. According to the complaints, both Banks would cause foreclosures when "a minority borrower who previously received a predatory loan sought to refinance the loan, only to discover that [the bank] refused to extend credit at all," or refused to do so on the same terms they extended when "refinancing similar loans issued to white borrowers." BoA FAC at 4; WF FAC at 4. We note that such refinancing and loan modification decisions can occur before or after a property enters default.

The City alleged that it suffered both economic and noneconomic injuries. BoA FAC at 31-35; WF FAC at

44-48. In both complaints the alleged noneconomic injury was that the Banks' conduct "adversely impacted the racial composition of the City and impaired the City's goals to assure racial integration and desegregation and the social and professional benefits of living in an integrated society."[4] BoA FAC at 31; WF FAC at 44. The City identified two forms of economic injuries. It claimed damages from each bank based on reduced property tax revenues, arguing that the Banks' lending policies caused minority-owned properties to fall into unnecessary or premature foreclosure, causing them to lose substantial value and, in turn, decreasing the values of surrounding properties. BoA FAC at 32-34; WF FAC at 45-47. This reduced the City's tax base and the tax revenue it took in. According to the City, "Hedonic regression" techniques could be used to quantify with considerable particularity what portion of its losses was attributable to the Banks' conduct. BoA FAC at 32-34; WF FAC at 45-47. Additionally, the City claimed damages based on the cost of the increased municipal services it provided to deal with problems attributable to the foreclosed and often vacant properties—including police, firefighters, building inspectors, debris collectors, and others. These increased services too, the City claimed, would not have been necessary if the properties had not been foreclosed upon as a result of the Banks'

[4] Because we find that the City adequately pled proximate cause for one of its economic injuries, we need not evaluate whether it also did so for its noneconomic injuries. The parties in their briefing have not squarely addressed these injuries, and the Supreme Court had little to say about them. We leave this matter to the district court to address in the first instance.

discriminatory lending practices. BoA FAC at 34-35; WF FAC at 47-48.

The City also asked for a declaratory judgment stating that the Banks' conduct violated the FHA, an injunction barring the Banks from engaging in similar predatory conduct, compensatory and punitive damages, and attorneys' fees. BoA FAC at 40-41; WF FAC at 53-54.

B. District Court and 11th Circuit Decisions

On July 9, 2014, the district court granted motions to dismiss by both banks.[5] City of Miami v. Bank of Am., No. 13-24506-CIV, 2014 WL 3362348 (S.D. Fla. July 9, 2014). The court determined first that the City lacked standing because, according to this Court's opinion in Nasser v. City of Homewood, 671 F.2d 432 (11th Cir. 1982), its claims fell outside the "zone of interests" protected by the FHA. Bank of Am., 2014 WL 3362348 at *3-4. Miami had alleged "merely economic injuries" that were not "affected by a racial interest." Id. at *4. The trial court also determined that the FHA contained a proximate cause requirement, and that this requirement had not been met because the City failed to "demonstrate that the [Banks'] alleged redlining and reverse redlining caused the foreclosures to occur." Id. at *5. According to the district court, the City should have "allege[d] facts that isolate [the Banks'] practices as the cause of any alleged lending disparity." Id. Additionally, the

[5] The court issued a detailed opinion in the Bank of America case. It then adopted and incorporated that opinion in the Wells Fargo case. City of Miami v. Wells Fargo & Co., No. 13-24508-CIV (S.D. Fla. July 9, 2014).

district court said that the FHA claims fell outside the statute of limitations. Id. at *6-7.

The City moved for reconsideration and for leave to file amended complaints in both cases, arguing that it had standing and that it could remedy the statute of limitations issue by amending the complaint. See Bank of Am., 800 F.3d at 1271; Wells Fargo, 801 F.3d at 1264. The amended complaints added further details concerning noneconomic injuries suffered by the City as a result of the Banks' discriminatory lending practices. See BoA FAC at 31; WF FAC at 44. The City also argued in its amended complaints that predatory lending had "adversely impacted the racial composition of the City," "impaired the City's goals to assure racial integration and desegregation," and "frustrate[d] the City's longstanding and active interest in securing the benefits of an integrated community." BoA FAC at 31; WF FAC at 44. The district court denied the motion, and the City appealed to this Court. Bank of Am., 800 F.3d at 1271; Wells Fargo, 801 F.3d at 1265.

We reversed and remanded in a series of opinions, the most detailed of which we issued in City of Miami v. Bank of America Corp., 800 F.3d 1262 (11th Cir. 2015). We began by addressing standing and held that the City had alleged an injury in fact sufficiently concrete and immediate to confer Article III standing. Id. at 1272. Next we addressed "statutory standing" —a misnomer, since it really concerns "whether the plaintiff has a cause of action under the statute." Id. at 1273 (quotation omitted). We determined that this plaintiff did because the key statutory language "swe[pt] as broadly as allowed under Article III" and placed the City within the statute's zone of interests.

Id. at 1278; see also Trafficante v. Metro Life Ins. Co., 409 U.S. 205, 209 (1972) (identifying "a congressional intention to define [FHA] standing as broadly as is permitted by Article III").

We next held that the FHA did require proximate cause, but that the City's pleadings were adequate. Bank of Am., 800 F.3d at 1279-80, 1283. We rejected the idea that the City needed to "allege that the [Banks'] actions directly harmed the City." Id. As we saw it, the "strict directness requirement" suggested by the Banks could not be the proper standard for the FHA because it "would run afoul of Supreme Court and Eleventh Circuit caselaw allowing entities who have suffered indirect injuries . . . to bring a claim under the FHA." Bank of Am., 800 F.3d at 1281 (citing Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 109-11 (1979) (allowing a village to sue a firm for discriminatory practices that caused segregation); Havens Realty Corp. v. Coleman, 455 U.S. 363, 378-79 (1982) (allowing suit by a non-profit for "impairment of its organizational mission" and "drain on its resources"); Baytree of Inverrary Realty Partners v. City of Lauderhill, 873 F.2d 1407, 1408-09 (11th Cir. 1989) (allowing a non-minority developer to challenge a zoning decision as discriminatory)). Proximate cause, we said, was "not a one-size fits-all analysis." Id. Rather, it "can differ statute by statute." Id.

Instead, noting the Supreme Court's "broad and inclusive" readings of the FHA, e.g., Trafficante, 409 U.S. at 209, we agreed with the City that the proper standard for proximate cause was "foreseeability." Id. at 1281-82. Damages claims under the FHA were analogous to tort claims, we reasoned, and tort law had traditionally relied on foreseeability as the standard by which to evaluate causal relationships and to limit the expansion of liability. See id. at 1282. The City had met this standard; "it claim[ed] that the [Banks'] discriminatory lending caused property owned by minorities to enter premature foreclosure, costing the City tax revenue and municipal expenditures." Id. at 1282. We said that "[a]lthough there are several links in that causal chain, none are unforeseeable," and also noted that the regression analyses in the complaints made the pleadings more than just speculative. Id. We made no comment, though, on "whether the City will be able to actually prove its causal claims." Id. at 1283 (emphasis added). That would be worked out in the district court on a factual basis far beyond the four corners of the complaint. Accordingly, we remanded the case. Id. at 1289.

Bank of America and Wells Fargo each filed petitions for certiorari, which the Supreme Court granted. It consolidated the two cases.

C. Supreme Court Decision

The Supreme Court began by resolving the "statutory standing" question of whether the City had a cause of action under the FHA. Bank of Am., 137 S. Ct. at 1302-05. The Court agreed that its previous cases had interpreted the statute broadly for standing purposes. See id. Congress had even amended the statute after these decisions, without making any change to the relevant language, indicating its assent to the Court's expansive reading of the original text. Id. at 1303-04.

On proximate cause, though, the Supreme Court disagreed with this panel but reached no firm conclusions. It determined that foreseeability, standing alone, was not a sufficiently rigorous standard. See id. at 1306 ("[T]he Eleventh Circuit erred in holding that foreseeability is sufficient to establish proximate cause under the FHA."). The Court explained that "foreseeability alone does not ensure the close connection that proximate cause requires." Id. Since lending and housing policies are deeply interconnected with "economic and social life," the Court said that "[a] violation of the FHA may . . . 'be expected to cause ripples of harm to flow' far beyond the defendant's misconduct." Id. (quoting Assoc. Gen. Contractors of Cal., Inc. v. Carpenters, 459 U.S. 519, 534 (1983)). Since "[n]othing in the statute suggests that Congress intended to provide a remedy wherever those ripples travel," foreseeability alone could not be enough. Id.

While the Court was clear that foreseeability was not enough, it was less definitive when it came to laying out what more FHA proximate cause required. Its key instructions were these:

> Rather [than foreseeability], proximate cause under the FHA requires "some direct relation between the injury asserted and the injurious conduct alleged." Holmes v. Sec. Investor Protect. Corp., 503 U.S. 258, 268 (1992). A damages claim under the statute "is analogous to a number of tort actions recognized at common law," Curtis v. Loether, 415 U.S. 189, 195 (1974), and we have repeatedly applied directness principles to statutes with "common-law foundations," Anza v. Ideal Steel Supply Corp., 547 U.S. 451, 457 (2007). "The general tendency" in these cases is, "in regard to damages at least, is not to go beyond the

> first step." Hemi Grp., LLC v. City of New York, 559 U.S. 1, 10 (2010). What falls within that "first step" depends in part on the "nature of the statutory cause of action," Lexmark Int'l, Inc. v. Static Control Components, Inc., 134 S. Ct. 1377, 1390 (2014), and an assessment "of what is administratively possible and convenient," Holmes, 503 U.S. at 268.

Bank of Am., 137 S. Ct. at 1306 (citation formats altered).

The Court remanded for further proceedings, stating that "[t]he lower courts should define, in the first instance, the contours of proximate cause under the FHA and decide how that standard applies to the City's claims for lost property-tax revenue and increased municipal expenses." Id. Lacking "the benefit of [the Eleventh Circuit's] judgment" on how to apply the principles it had laid out, and with no other circuits having weighed in yet, the Court "decline[d]" to speak first. Id.

In this opinion, we endeavor carefully to apply the Court's mandate to these complaints, to determine if they plausibly state a claim under the Fair Housing Act.

II. Standard of Review

We review a district court's decision to dismiss a complaint de novo "accepting the factual allegations in the complaint as true and construing them in the light most favorable to the plaintiff." Boyd v. Warden, Holman Corr. Facility, 856 F.3d 853, 863-64 (11th Cir. 2017); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Here, the district court also denied leave to amend, which we generally review for abuse of discretion; however, when, as here, leave to amend was denied "on the grounds of futility," we review the denial de novo "because it is a conclusion of law that an amended complaint would necessarily fail." Id. ("An amendment is considered futile when the claim, as amended, would still be subject to dismissal."). Essentially, then, we must consider de novo whether the City's amended complaints, which the district court declined to entertain, have stated a claim. This is in line with the review conducted by the Supreme Court, Bank of Am., 137 S. Ct. at 1302, and with our review when we first heard these cases, Bank of Am., 800 F.3d at 1271.

For this case to proceed past a motion to dismiss, we need not find that the Banks' actions in fact proximately caused the plaintiff's injuries; we must find that the City plausibly alleged that they did so. We evaluate whether each complaint "contain[s] sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). The standard is "plausibility"; it is decidedly not a "probability requirement." Id. Still, plausibility requires that allegations push past the line of showing "a sheer possibility" and "[w]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" Id. (quoting Twombly, 550 U.S. at 557). Facts are taken as true so long as they are not a "formulaic recitation of the elements" or "conclusory." Id. at 681 (quoting Twombly, 550 U.S. at 555).

III. Analysis

Prosser and Keeton observed, of proximate cause, that "[t]here is perhaps nothing in the entire field of law which has called forth more disagreement, or upon which the opinions are in such a welter of confusion." W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 41, at 263 (5th ed. 1984). The Supreme Court has not directed the lower courts to propose a sweeping standard for proximate cause that would apply across all cases or to define the word "direct" for all time. Indeed, we are not looking for (and could not find) "a black-letter rule that will dictate the result in every case." Holmes, 503 U.S. at 272 n.20. Rather, we must evaluate where, as a matter of judicial economy and policy, we ought to draw the line for this particular cause of action and these particular claims. As the Court has said, proximate cause "label[s] generically the judicial tools used to limit a person's responsibility for the consequences of that person's own acts. . . . [P]roximate cause reflects ideas of what justice demands, or of what is administratively possible and convenient." Id. at 268 (quotation omitted).

We begin our analysis, then, with the Supreme Court's instructions. Proximate cause under the FHA certainly requires foreseeability, which is present here but is not enough. See Bank of Am. 137 S. Ct. at 1305-06. Proximate cause also requires "some direct relation between the injury asserted and the injurious conduct alleged." Id. at 1306 (quoting Holmes, 503 U.S. at 268). Our task today is to determine what plaintiffs must do in order to plausibly allege "some direct relation" and to evaluate whether the City's complaints have met that standard.

At the outset, we consider the central phrase "some direct relation." There is give in the joints between "some direct relation" and "some direct causation." These are not identical concepts, and so when, for example, Bank of America suggests that Miami's injuries "were not caused 'directly' by a loan," it may not be presenting the question in a way that precisely and accurately reflects the Court's instruction. We might agree that the injuries were not "caused directly by a loan" and yet still find "some direct relation" between the injury and the statutory violations. Causation is "the act or process of causing," and to "cause" something is "to serve as cause or occasion of" or "to bring [it] into existence." Webster's Third New International Dictionary 356 (2002). Relation, on the other hand is "the mode in which one thing or entity stands to another, itself, or others," or "a logical bond." Id. at 1916. We are considering "direct relation," as a critical aspect of "proximate cause," so some palpable causation is required. We ought not forget, though, that foreseeability, while insufficient on its own, remains a requirement and ensures some causal connection. "Some direct relation," then, works to guarantee that there is a "logical bond" between violation and injury. Put another way, while foreseeability ensures "cause," "some direct relation" ensures that the cause is sufficiently "proximate."

Further, the law requires "some direct relation" not any quantifiable amount of it. The standard is softened by the modifier "some," meaning, "of an unspecified but appreciable or not inconsiderable quantity, amount, extent or degree." Id. at 2171. The requirement is therefore somewhat easier to meet than if the Court had said we needed to find "a direct relation."

We are also aware that our analysis must be tied to the Fair Housing Act in a specific way. The Supreme Court twice emphasized that the policy judgments that shape our proximate cause analysis will necessarily depend on the FHA. For starters, "what falls within [the] 'first step,'" to which proximate cause is "general[ly]" constrained, will "depend[] in part on the 'nature of the statutory cause of action.'" Bank of Am., 137 S. Ct. at 1306. Second, our task is to "define, in the first instance, the contours of proximate cause under the FHA and" to apply that standard to the City's claims. Id. (emphasis added).

After thoroughly reviewing the City's complaints, we are satisfied that we can find "some direct relation," a meaningful and logical continuity, between the City's tax revenue injury and the Banks' conduct by following the four guiding principles the Court outlined in Bank of America. We begin by considering (a) "what falls within [the] 'first step'" of the causal chain, as we are aware of "'[t]he general tendency' in these cases . . . 'not to go beyond [that] first step.'" Id. (quoting Hemi Grp., 559 U.S. at 10). What falls within the first step will, we're told, depend on (b) "the nature of the statutory cause of action," and (c) "an assessment of what is administratively possible and convenient." Id. Finally, since the common law is the basis for the direct relation requirement, we also look to (d) the FHA's common-law antecedents to the extent that we can. Id. We consider each of these principles in turn.

A. An intervening step does not vitiate proximate cause

The Court has also told us that "[t]he general tendency in these cases, in regard to damages at least, is not to go beyond the first step." Bank of Am., 137 S. Ct. at 1306 (quotations omitted). Both Banks, in their briefing on remand, make much of this "first step" analysis. It is clear, though, that proximate cause does not always cut off at the first step after a violative act. A general tendency is not the same as a hard and fast rule that dictates the outcome in every case, and Supreme Court precedent shows that an intervening step will not vitiate proximate cause in all instances. What is more important, precedent reveals, is the certainty with which we can say the injury is fairly attributable to the statutory violation. An extended causal chain often makes attribution more difficult, but may not be the final word.

1.

Supreme Court precedent makes crystal clear that an intervening step does not necessarily mean proximate cause has not been plausibly alleged. Lexmark International, Inc. v. Static Control Components, Inc., 134 S. Ct. 1377 (2014), is a good starting point precisely because the chain of causation there was complex and involved more than one simple step. The basic facts were these: Lexmark manufactured and sold both laser printers and toner cartridges for those printers. Lexmark, 134 S. Ct. at 1383. Other companies would buy used cartridges, then refurbish and resell them. Id. The plaintiff company, Static Control, made and sold the components that the refurbishers needed to operate. Id. at 1384. Lexmark would have preferred that its customers return used cartridges directly to Lexmark, so that it could refurbish and resell them itself. See id. at 1383. Static Control sued under the Lanham Act, alleging that Lexmark falsely and misleadingly led Lexmark's customers to believe that they were legally obligated to return spent cartridges to Lexmark and also led the refurbishers to believe that their businesses were illegal. Id. at 1384. This, said Static Control, violated the Lanham Act's prohibition on "false or misleading representation of fact . . . in commercial advertising or promotion [that] misrepresents the nature, characteristics, [or] qualities . . . [of] another person's goods, services, or commercial activities." Id. (quoting 15 U.S.C. § 1125(a)). The Supreme Court granted certiorari in Lexmark to resolve issues of "statutory standing" under the Lanham Act, including proximate cause. See id. at 1385, 1390. The central question was "whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits." Id.

An "intervening step of consumer deception" between Lexmark's alleged conduct and the harm sustained by Static Control was not fatal to the claim. Id. at 1391. The Court said that a Lanham Act plaintiff could demonstrate proximate cause by "show[ing] . . . injury flowing directly from the deception wrought by the defendant's advertising," including, critically, "deception of consumers caus[ing] them to withhold trade from the plaintiff." Id. (emphasis added). Common-law principles supported the idea that "a plaintiff [could] be directly injured" even when a misrepresentation was made to a third party. Id. Liability was not without limits, though. A company injured only by a third party's "inability to meet [its] financial obligations" could not sue. Id. at 1392 (quotation omitted).

The Court acknowledged, as it would again in Bank of America, the "general tendency" not to go "beyond the first step." Id. at 1394; see Bank of Am., 137 S. Ct. at 1306. In the circumstances presented by Lexmark, though, the nature of the conduct and the harm sustained persuaded the Court against following this general tendency. See Lexmark, 134 S. Ct. at 1394. The Court explained its reluctance to invariably limit liability to the first step this way:

> [T]he reason for that general tendency is that there ordinarily is a "discontinuity" between the injury to the direct victim and the injury to the indirect victim, so that the latter is not surely attributable to the former (and thus also to the defendant's conduct), but might instead have resulted from "any number of other reasons."

Id. (quoting Anza, 547 U.S. at 458-59). This "discontinuity" is evaluated in terms of logical relations and policy judgments. See Anza, 547 U.S. at 459-60. In Lexmark, if the refurbishers sold fewer cartridges, "it would follow more or less automatically" that Static Control suffered a proportional injury, "without the need for any 'speculative . . . proceedings' or 'intricate, uncertain inquiries.'" Lexmark, 134 S. Ct. at 1394 (quoting Anza, 547 U.S. at 459-60).

There was no "discontinuity" problem in Lexmark because of the close connection between Static Control and the remanufacturers it supplied. "Any false advertising that reduced the remanufacturers' business necessarily injured Static Control as well."

Id. There was "something very close to a 1:1 relationship" between harm to remanufacturers and harm to Static Control because the false advertising hurt Static Control in direct proportion to how much it hurt the remanufacturers. Id. In other words, harm to Static Control was "so integral an aspect of the [violation] alleged" that the Court went beyond the first step in the causal chain. Id.

Still, Lexmark cabined liability by requiring "economic or reputational injury flowing directly from the [defendant's] deception." Id. at 1391. This requirement would not be met "when the deception produces injuries to a fellow commercial actor that in turn affect the plaintiff." Id. By way of example, the Court suggested that a competitor whose business failed because of false advertising could sue the false advertiser, but that competitor's landlord could not sue the false advertiser for the value of rent payments he could no longer collect. See id. The landlord's injury suffered from a "discontinuity" that Static Control's injury did not. See id. at 1394.

All of this goes to show that intervening steps in a causal chain cannot automatically and invariably end the analysis. If they could, there would be no meaningful way to distinguish Static Control from the hypothetical landlord. Each is only injured if the defendant's direct competitor (the refurbishers on the actual facts of the case) is injured first. The chain of causation is an important part of the analysis, but the real deciding factor, at least for this Lanham Act case, was whether there was a discontinuity between violation and injury, or, put another way, whether the injurious conduct "necessarily injured [the plaintiff] as well" as the first-step victim, in such a way that the first-step victim was "not [a] more immediate victim[]" than the plaintiff. Id. Thus we may look to whether the injury is "surely attributable" to the statutory violation; we do not simply count the steps in the causal chain. Id.

Bridge v. Phoenix Bond & Indemnity Co., 553 U.S. 639 (2008), a RICO mail fraud case, makes the same point. In a suit between bidders at County-operated tax lien auctions, the defendants were accused of filing fraudulent documents in order to increase their success at the auctions at the expense of the plaintiffs. See Bridge, 553 U.S. at 642-44. To the extent that a chain of causation was discussed at all, it was explained in terms of reliance. See id. at 657-58. The defendants argued that the County, not the plaintiffs, had relied on their misrepresentations. Id. at 648. The Court held that the plaintiffs' injuries were proximately caused by the defendants' misrepresentations even though the plaintiffs had not themselves relied on the fraudulent filings—"first-party reliance" was not "necessary to ensure that there was a sufficiently direct relationship between the defendant's wrongful conduct and the plaintiff's injury" to satisfy proximate cause. Id. at 657-58 (emphasis added).

The "direct relationship" in Bridge turned on a connection between harm and injury that was non-formalistic and disconnected from step-counting. The decision instead rested on policy considerations, see id. at 654-55, and on common-law principles, see id. at 656-57. The Court never mentioned a "first step" default rule, but it's clear that the plaintiffs' harm would not have fallen in the first step, since the County had to rely on the defendants' misrepresentations and then had to conduct auctions on these fraudulent terms before the plaintiffs could be injured. Instead, Bridge observed that the Second Restatement of Torts "does not say that only those who rely on the misrepresentation"—that is, those at the front of the chain of causation—"can suffer a legally cognizable injury." Bridge, 553 U.S. at 656 (citing 3 Restatement (Second) of Torts §548A (1976)).

While neither Lexmark nor Bridge arose under the FHA, their approach to the first-step rule is instructive. Both decisions acknowledge that "under common-law principles, a plaintiff can be directly injured by a misrepresentation even where" someone else relied on it. Lexmark, 134 S. Ct. at 1391 (citing Bridge, 553 U.S. at 639). This is a foundational principle of proximate cause; it is not an idiosyncratic wrinkle associated with a particular statute or type of claim. E.g., Blue Shield of Virginia v. McCready, 457 U.S. 465, 482-84 (1982) (discussing "*antitrust* injury" as a requirement of proximate cause under certain statutes).

2.

Turning to our case, the Banks argue that the City fails to allege proximate cause simply because its injuries fall outside of the "first step." So wooden a rule would be inconsistent with precedent as well as with the oft-noted statement that, when it comes to proximate cause, it is "virtually impossible to announce a blackletter rule that will dictate the result in every case." Assoc. Gen., 549 U.S. at 536 (citing Blue Shield, 457 U.S. at 477 n.13; Palsgraf v. Long Island R. Co., 162 N.E. 99, 103 (N.Y. 1928) ("[W]hat is a proximate cause, depend[s] in each case upon many considerations . . . .") (Andrews, J., dissenting)); see also Lexmark, 134 S. Ct. at 1390 ("The proximate-cause inquiry is not easy to define . . ."); Bridge, 553 U.S. at 659 ("[P]roximate cause is generally not amenable to bright-line rules."); Holmes, 503 U.S. at 272 n.20. Proceeding beyond a first step here is consistent with the instruction that we stop at the first step only as a "general tendency," and that we also consider the nature of the cause of action, principles of continuity, and administrative feasibility. Bank of Am., 137 S. Ct. at 1306.

Wells Fargo nevertheless argues that the City's claims cannot survive proximate cause analysis because they are wholly "contingent," and points to Holmes v. Securities Investor Protection Corp., 503 U.S. 258 (1992), as an example of a case where proximate cause failed "because the [plaintiffs'] injuries were 'purely contingent on the harm suffered by [third parties].' [Holmes, 503 U.S.] at 271." But Holmes established no such rule. Rather, it explicitly identified three distinct considerations by which proximate cause should be evaluated. Holmes, 503 U.S. at 269. We discuss these in considerable detail, infra, but for now it is enough to observe that contingency on third parties is not among them. The Court would have had no recourse to policy considerations if it could have disposed of Holmes merely based on the involvement of a third party.[6]

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[6] We also reject the application of Anza v. Ideal Steel Supply Corp, 547 U.S. 451, 457 (2006), that Wells Fargo has offered in its briefing on remand. It cites Anza for its proposed rule that proximate cause cannot exist where the causes of a plaintiff's injury are distinct from the violative conduct. But this amounts to simply assuming the answer to our question. Whether the causes of the City's injury are too distinct and too remote from the violative conduct is at the heart of the proximate cause

Indeed, if Wells Fargo were right about the application of the first-step rule here, this case would be over at the pleading stage simply because the chain of causation involves more than a single step. And there would have been no reason for the Supreme Court to remand this case back to our Court for further proximate cause analysis. The Supreme Court, too, was obviously aware that individual homeowners were involved in this case. Again, if that alone were enough to bar proximate cause, the Court would hardly have sought the input of the lower federal courts. The essential point for us then is that the "general tendency" to stop at the first step is just that, a general tendency, not an inexorable rule.

If, in fact, there were a hard and fast "only the first step" rule limiting liability, a plaintiff homeowner who was forced into foreclosure on account of a predatory bank loan that violated the Fair Housing Act would never be able to plausibly allege that the foreclosure was proximately caused by the bank's predation. By the Banks' lights, there are two critical steps in the chain of causation between the act of redlining and foreclosure: the middle and distinct step being a homeowner's default. So inexorable a rule would even bar the homeowner from seeking redress for the foreclosure under the FHA, since the foreclosure only occurs after the homeowner takes the independent step of failing to make payments on the predatory loan.

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inquiry. Furthermore, the Bank's suggested rule overlooks that Anza applied the factors drawn from Holmes. Anza, 547 U.S. at 459-60.

If, arguendo, we were to count steps, the Banks' arguments would still be unconvincing. For starters, the Banks overstate the length of the causal chain by reading the complaints unfavorably to the City, ignoring, among other things, allegations that Bank of America "fail[ed] to offer refinancing or loan modifications to minority customers on fair terms" and that Wells Fargo "limit[ed] the ability of minority borrowers to refinance out of the same predatory loans that they previously received from the Bank." BoA FAC at 21; WF FAC at 32. These alleged torts and acts of redlining occurred after—perhaps long after—the bad loans were originated, and may have occurred far down the causal chain, shortly before foreclosure. To take one example of their step-counting, Wells Fargo says that injury to the City from lost property-tax revenue falls six links down the causal chain and depends on the actions of five independent parties. This count ignores the complaints' allegations that distinct FHA violations occurred when homeowners already having financial difficulties were attempting to refinance or otherwise modify their loans, and instead counts only from the point of loan origination. Because loan modification and refinancing can occur after a borrower defaults, FHA violations of this type could be far more closely connected to the City's lost revenue. At the very least there might only be one step between the denial of refinancing and a bank's foreclosing on a property already in default.

Additionally, the Bank counts a reduction in a home's market value and a concomitant tax assessment of that property as comprising two distinct steps in the causal chain and speculates that foreclosures are not carried out by the Banks themselves but by "a fourth party (presumably the mortgage servicers).” The complaints make no mention of an independent mortgage servicer, and in fact suggest that the Banks were involved in refinancing and loan modifications, presumably serving themselves as the loans’ mortgage servicers. By ignoring these unfavorable facts in the pleadings, and by generally refusing to draw inferences in the City’s favor, this accounting fails to read the complaints in the light most favorable to the City, as we must at the motion to dismiss stage.

Additionally, Wells Fargo’s count is undermined by the very principles animating the general tendency in tort to stop at the first step. We generally stop there because, as the time frame is extended and the chain of causation becomes more attenuated, additional variables (maybe even causes) may intervene, making it more difficult to fairly attribute fault to the tortfeasor. As the Supreme Court put it in this case, “the housing market is interconnected with economic and social life,” and “[a] violation of the FHA may . . . be expected to cause ripples of harm to flow far beyond the defendant’s misconduct.” Bank of Am., 137 S. Ct. at 1306 (quotations omitted).

Thus, a further problem with the Banks’ count is that the variety of factors that we worry might independently explain a homeowner’s foreclosure (like the loss of a job or spiking health care costs) all occur at the front end of the step-counting, between the act or acts of redlining and the foreclosure, not later. Once we have reached increased foreclosures on a neighborhood or citywide basis, it seems to us that the path to the City’s substantially decreased tax base is clear, direct and immediate; we can discern no obvious intervening roadblocks. Virtually all the independent variables posited by the Banks occur before foreclosure. We can identify the same kind of continuity here as in Lexmark: if the Banks' predatory lending practices injured homeowners and led to foreclosures on a massive scale, these injuries inflicted on multiple homeowners in the same city must almost surely have injured the City as well. There is no discontinuity in this portion of the causal chain. Thus, since the risks of multiple independent variables after foreclosure are not likely, and are not many, even if we were to count steps in the way the Banks have suggested, the principles animating the general first-step rule do not support the Banks' calculation of the post-foreclosure causal chain.

The Banks' step-counting is self-evidently conducted so as to identify as many steps as possible. We might just as easily place the same injury at the second or third step: First, a bank extends predatory loans in violation of the FHA. Second, homeowners default. Third, the bank forecloses and the property values plummet, necessarily reducing the City's tax base and injuring its fisc. The chain will be shorter still if struggling homeowners sought to refinance and then faced swift foreclosures when fair terms were not extended. This count, which draws inferences in favor of the City, is decidedly more appropriate for the motion to dismiss stage. At the very least, the ease with which we can count far fewer steps reinforces our view that step-counting is of limited value and cannot alone settle the challenging questions of proximate cause here.

B. The text and history of the FHA suggest a far-reaching statute

The Supreme Court also instructs us to consider "the nature of the statutory cause of action." Id. As we see it, the FHA has a broad remedial purpose, is written in decidedly far-reaching terms, and is perfectly capable of accommodating the type of aggregative causal connection that the City has identified between the Banks' alleged misconduct and financial harm to Miami. Proximate cause is only one means by which Congress sets the scope of liability. Thus, for example "Congress might express limits by defining the parties who may sue, by using affirmative defenses, by providing limited remedies, by narrowly proscribing prohibited conduct, or by defining statutory terms." Sandra F. Sperino, Statutory Proximate Cause, 88 Notre Dame L. Rev. 1199, 1236 (2013). The result, especially for complex and repeatedly amended statutes like the FHA, is an "interconnected web of congressional judgments about how and when liability should be limited." Id. To develop a proximate cause standard without taking the full statutory scheme into account would be "to intrude upon" this web and to ignore the will of Congress. See id.

Most obviously, the "[t]he language of the [FHA] is broad and inclusive." Trafficante v. Metro. Life Ins. Co., 409 U.S. 205, 209 (1972). It provides for suit by "an aggrieved person," 42 U.S.C. § 3613(a)(1)(A), (c)(1), expansively defined as "any person who claims to have been injured by a discriminatory housing practice," § 3602(i) (emphasis added). As we've said before, "'any' means all." Jones v. Waffle House, Inc., 866 F.3d 1257, 1267 (11th Cir. 2017) (emphases added). This language facilitates suits by a broad range of potential plaintiffs, and the Court has told us that it evinces not merely "a congressional intent to confer standing broadly," Bank of Am., 137 S. Ct. at 1303, but "a congressional intention to define standing as broadly as it is permitted by Article III," Trafficante, 409 U.S. at 209. The Court has also noted that later Congresses amended the FHA with full knowledge of the Court's broad readings and without changing the language the Court had construed so broadly. Bank of Am., 137 S. Ct. at 1303.

The Fair Housing Act also prohibits a wide range of conduct. Thus, it is a violation "to refuse to sell or rent . . . or to refuse to negotiate . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin" as well as "[t]o 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" for any of the same reasons. 42 U.S.C. § 3604(a)-(b). It also expressly forbids racial preferences in housing notices and advertisements, misrepresentation of housing availability based on race, and "representations regarding the entry or prospective entry into the neighborhood" of members of protected classes. Id. § 3604(c)-(e). Most relevant for the City's claims, it is also "unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction," including in loans "for purchasing, constructing, improving, repairing, or maintaining a dwelling." Id. § 3605(a). Again, this is far-reaching, and takes aim at discrimination that might be found throughout the real estate market and throughout the process of buying, maintaining, or selling a home.

The injury to the City is as valid and as cognizable under the FHA as the injury to the homeowners. See Bank of Am., 137 S. Ct. at 1303 (finding the City has standing). And cities have been allowed to sue for similar injuries in the past, as in Gladstone Realtors v. Village of Bellwood, 441 U.S. 91 (1979), where a city alleged it was injured when segregative racial steering practices by two real estate firms redounded to "the economic and social detriment of the citizens of [the] village." Id. at 95. The village said "racial steering effectively manipulate[d] the housing market" because marketing homes in certain areas only to buyers of certain races served to dramatically reduce the number of potential buyers. Id. at 109-10. The Court identified "profound" consequences in neighborhoods impacted by this practice, including financial consequences. Id.; see id. at 111 & n.24. Not only did the village have standing to challenge racial steering, but the Court even said that "[a] significant reduction in property values directly injures a municipality by diminishing its tax base." Id. at 110-11 (emphasis added). The phrase "directly injures" was not used in a causal sense, but nonetheless suggests that the Court has not traditionally considered this type of injury to be overly attenuated or nebulous.

Moving beyond the text, in evaluating proximate cause for a statutory cause of action, the Court has repeatedly directed us to consider a statute's remedial aims—Congress's priorities in passing it. See, e.g., Blue Shield, 457 U.S. at 478 (considering "the relationship of the injury alleged with those forms of injury about which Congress was likely to have been concerned"); see also Lexmark, 134 S. Ct. at 1393 (identifying "diversion of sales to a direct competitor" as possibly "the paradigmatic direct injury from false advertising"); Assoc. Gen. Contractors of Cal., Inc. v. California State Council of Carpenters, 459 U.S. 519, 538 (1983) (following Blue Shield in evaluating whether an injury fell "squarely within the area of congressional concern," (quoting Blue Shield, 457 U.S. at 484)); cf. Holmes, 503 U.S. at 274 ("[W]e fear that RICO's remedial purposes would more probably be hobbled than helped . . . ." if the plaintiff's proximate cause standard were adopted).

The legislative history of the FHA is less detailed than most. Congress passed it through "a truncated legislative process in which no committee reports were issued." Rodney A. Smolla, Federal Civil Rights Acts § 3:10, at 546-47 (3d ed. 2017). A legislative assistant who worked on the legislation recalled after the Act's passage that this was "a time when riots threatened to close down every major city in the country," and that the Act was presented as a response; it was hoped that "the law as a teacher might overcome the ignorance and fear of whites which previously had blocked attempts to lower a black-white barrier." Jean Eberhart Dubofsky, Fair Housing: A Legislative History and a Perspective, 8 Washburn L. J. 149, 154 (1969). The legislative history that we do have and the context in which the FHA arose both comport with a proximate cause standard that can accommodate claims like the City's. Thus, for example, the Supreme Court has recently recounted how, in response to the turmoil of the mid-60s, President Johnson convened the National Advisory Commission on Civil Disorders (the "Kerner

Commission"), which "identified residential segregation and unequal housing and economic conditions in the inner cities as significant, underlying causes of the social unrest." Tex. Dept. of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507, 2516 (2015). "The Commission concluded that '[o]ur Nation is moving toward two societies, one black, one white—separate and unequal.'" Id. (quoting Report of the National Advisory Commission on Civil Disorders 1 (1968)).

In passing the Fair Housing Act, Congress explicitly took aim at these broad social ills—maladies that were being felt on a citywide scale. Congress did not just target individual discriminatory landlords, but sought to reshape in meaningful ways the landscape of American cities. Senator Walter Mondale, the chief sponsor of the bill that would become the FHA, explained that the Act was intended to end housing segregation as a means of bringing about racial equality more broadly. The legislation's goals were directed at the neighborhood level and indeed were aimed beyond the housing market:

> [O]vert racial discrimination remains in one major sector of American life—that of housing. . . [F]air housing is one more step toward achieving equality in opportunity and education . . . . The soundest, long-range way to attack segregated schools is to attack the segregated neighborhood.

114 Cong. Rec. 3421 (Feb. 20, 1968); see also id. at 3422 ("[I]n truly integrated neighborhoods people have been able to live in peace and harmony—and both Negroes and whites are the richer for the experience."). A co-sponsor asked, "As segregation continues to grow . . . will not the cities which house

the majority of the nation's industrial and commercial life find themselves less and less able to cope with their problems, financially and in every other way?" Id. at 2988 (Feb. 14, 1968) (statement of Sen. Brooke). The legislation, as its sponsors saw it, was designed to extend through chains of causation. Among other things, its sponsors quite specifically referenced harm to a city's tax base, arising out of discrimination in the housing market. Senator Mondale put it this way:

> Declining tax base, poor sanitation, loss of jobs, inadequate educational opportunity, and urban squalor will persist as long as discrimination forces millions to live in the rotting cores of central cities.

Id. at 2274 (Feb. 6, 1968) (emphasis added).

It does not go too far to suggest, at least at a high order of abstraction, that in setting a standard for proximate cause the FHA looks far beyond the single most immediate consequence of a violation. Limiting the proximate cause calculus in that way would not be consonant with the powerful remedial purposes animating the bill. The Act took aim at "the segregated neighborhood" in general, not just at the prejudiced building owner.

This is all to say that, notwithstanding issues of proof that might arise later in litigation, the FHA was written in broad terms and was aimed at broad problems. We can discern no reason to think as a general matter that the City's claims are out of step with the "nature of the statutory cause of action" and the remedial scheme that Congress created.

C. Tracing causation here is not administratively infeasible

Perhaps the most important step in the proximate cause analysis in this case is consideration of "what is administratively possible and convenient." Bank of Am., 137 S. Ct. at 1306 (quoting Holmes, 503 U.S. at 268). This is because administrative feasibility is most closely connected to the policy judgments upon which proximate cause standards necessarily depend. See Holmes, 503 U.S. at 268 ("[P]roximate cause reflects ideas of what justice demands, or of what is administratively possible and convenient." (internal quotations omitted)). In no small part, we conclude that the City has adequately—that is to say, plausibly—pled proximate cause because we find it entirely practicable and not unduly inconvenient for the courts to handle damages like the City's tax revenue injury. Cases like this will never be among the simplest that our courts see, but the federal courts regularly handle complex and high-stakes cases, so complexity alone is no reason to dismiss a case on the pleadings. As pled, the City's injury is ascertainable with a sufficient degree of precision for some of its economic injuries, specifically the harm to its tax base. Since the City's injuries are unique to its treasury, no other plaintiff will plead the same injuries, or attempt to recover the same funds. The City is in the best position to allege and litigate this peculiar kind of injury, to deter future violations and, theoretically, to actually remedy its distinctive injury.

In Holmes v. Securities Investor Protection Corp., 503 U.S. 258 (1992), the Court conducted a proximate cause analysis focused on administrative feasibility. Holmes involved the Securities Investor Protection Corporation (SIPC), a federally created non-profit corporation empowered to sue broker-dealers who "ha[ve] failed or [are] in danger of failing to meet [their] obligations to [their] customers." Id. at 261 (quoting 15 U.S.C. § 78eee(a)(3)). In Holmes, SIPC alleged that broker-dealers manipulated securities in "a 'pattern of racketeering activity'" that violated RICO, 18 U.S.C. §§ 1962, 1961(1), (5). Holmes, 503 U.S. at 263. The case asked whether SIPC, "neither a purchaser nor a seller of securities" could sue under RICO even though its claims were, in essence, the same claims that could have been brought by investors under Rule 10b-5, under which SIPC lacked standing. Id. at 265 n.7.

RICO allows for a civil action by "[a]ny person injured in his business or property by reason of a violation of section 1962." Id. at 265 (quoting 18 U.S.C. § 1964(c)). SIPC claimed that it should be allowed to sue under this provision "because it [was] subrogated to the rights of those customers of the broker-dealers who did not purchase manipulated securities." Id. at 270. The chain of causation was thus the following: The defendants manipulated securities and broker-dealers bought manipulated securities. The broker-dealers sold some of their customers these manipulated securities, and their value plummeted when the fraud was exposed. As a result, the broker-dealers could not meet their obligations to their customers, including to some who had not even bought manipulated securities. It was these nonpurchasing customers' rights that SIPC argued it was subrogated to. See id. at 270-71. Granting, ""*arguendo*"" that SIPC was subrogated as it claimed, Holmes, 503 U.S. at 271, the Court found that "the conspirators' conduct did not proximately cause the nonpurchasing customers' injury," id. at 270.

The Court pointed to three distinct reasons why "directness of relationship" was "one of [the] central elements" of "Clayton Act causation." Holmes, 503 U.S. at 269. First, less direct injuries are harder to attribute to a violation. Id. Second, claims at different levels of remove complicated the apportionment of harm among plaintiffs at different levels. Id. Third, directly injured plaintiffs usually can be counted on to sue and deter wrongdoing. Id. at 269-70. All three reasons for directness were said to apply "with equal force" to antitrust and RICO suits. Id. at 270. The Court then considered the reasons again in the context of the particular claims and found that each indicated that SIPC's claims fell outside the proper limits of proximate causation. Id. at 272-74. It would appear, from the Court's analysis, that these are not only reasons why "directness of relationship" is required, but are also important factors against which to measure the directness of the relationship.

When applied to the City's claims against the Banks, these factors strongly suggest that the City has plausibly alleged "some direct relation" between the Banks' alleged conduct and the injury to the City's tax revenue. We cannot say the same for the increased-expenditures injury, though. Here, we review how each of the Holmes factors applies to the City's economic injuries, distinguishing, when relevant, between the tax-revenue injury and the increased-expenditures injury. Finally, we explain how the Holmes factors provide a clear means by which to cabin liability and prevent suits by more remotely injured parties.

1.

Holmes's first factor says that directness is required because "the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors." Holmes, 503 U.S. at 269. In Holmes, this factor decidedly cut against finding a sufficiently direct relationship because it would have required the district court "to determine the extent to which [the nonpurchasing customers'] inability to collect from the broker-dealers was the result of the alleged conspiracy to manipulate, as opposed to" any other reasons why the broker-dealers might not have money on hand (such as "poor business practices," and the "failure to anticipate developments in the financial markets"). Id. at 273. On this first factor, the City's tax-revenue injury fares well, and its municipal-expenditures injury fares poorly. The City has plausibly alleged that it can present an analysis of reduced tax revenue that is precise enough to avoid difficulties with isolating the role of the Banks' alleged violations. It has not done so for its municipal expenditures.

In its complaints, the City of Miami's tax-revenue injury seeks damages "based upon reduced property tax revenues resulting from (a) the decreased value of the vacant properties themselves, and (b) the decreased value of properties surrounding the vacant properties." BoA FAC at 31; WF FAC at 44. According to the City, "[r]outinely maintained property tax and other data allow for the precise calculation of the property tax revenues lost by the City as a direct result of particular [bank] foreclosures." BoA FAC at 32; WF FAC at 45. This "Hedonic regression methodology," the City asserts, "can be used to quantify precisely the property tax injury to the City caused by [the Banks'] discriminatory lending practices and resulting foreclosures in minority neighborhoods." BoA FAC at 34; WF FAC at 47.

The City does not go so far as to conduct this analysis and attach the results to its pleadings, but its First Amended Complaints nonetheless suffice to describe the analysis in far more than speculative or conclusory fashion. The City has explained in some detail how this analysis works:

> Homes in foreclosure tend to experience a substantial decline in value . . . [F]oreclosure properties and the problems associated with them likewise cause especially significant declines in surrounding property values because the neighborhoods become less desirable. . . .
>
> Routinely maintained property tax and other data allow for the precise calculation of the property tax revenues lost by the City as a direct result of particular [bank] foreclosures. Using a well-established statistical regression technique that focuses on effects on neighboring properties, the City can isolate the lost property value attributable to [the Banks'] foreclosures and vacancies from losses attributable to other causes, such as neighborhood conditions. This technique, known as Hedonic regression, when applied to housing markets, isolates the factors that contribute to the value of a property by studying thousands of housing transactions. Those factors include the size of a home, the number of bedrooms and bathrooms, whether the neighborhood is safe, whether neighboring

> properties are well-maintained, and more. Hedonic analysis determines the contribution of each of these house and neighborhood characteristics to the value of a home.

BoA FAC at 32-33; WF FAC at 45-46.[7] This gives us a clear idea of the final analysis—based on empirical data drawn from thousands of housing transactions, the City will calculate the impact of the Banks' foreclosures on property values in redlined (and reverse-redlined) areas of Miami, controlling for other variables and isolating the impact of the redlining. The City points to studies in which this methodology has produced the kind of results the City will need to present. BoA FAC at 33-34; WF FAC 46-47. The complaints conclude, then, that "[a]pplication of such Hedonic regression methodology . . . can be used to quantify precisely the property tax injury to the City caused by [the Banks'] discriminatory lending practices and resulting foreclosures." BoA FAC at 34; WF FAC at 47.

The pleadings strongly suggest, then, that the tax-revenue injury to the City attributable to the Banks' alleged discriminatory practices is readily calculable. Under Twombly and Iqbal a mere statement that "[the Banks] caused the loss of property tax revenue" would be wholly conclusory and would be disregarded. But by indicating and explaining at considerable

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[7] Wells Fargo says that the City pleads "that it could conduct a study that might be able to show that foreclosures affect property values." (emphases in original). The City's pleading does not hedge its allegations in this way, and discounting the feasibility of its analysis on the front end is inconsistent with our obligation to draw all reasonable inferences in the City's favor at this preliminary stage.

length the kind of analysis that would be conducted to quantify the loss of revenue attributable to discriminatory lending, the City has plausibly alleged a calculable harm and has made more than a formulaic recitation of how the causation requirement will be met. There could be a battle of experts down the line over whether the regression analysis really shows what the City says it does, but, as we see it, that would be for a later stage of the litigation. The complaints' allegation that regression analysis can pinpoint causation is sufficient at this stage and helps account for the concerns raised by this first factor.

The plausibility of hedonic regression analysis has a direct bearing on how "difficult it [is] to ascertain the amount of [the City's] damage attributable to the violation, as distinct from other, independent, factors," Holmes, 503 U.S. at 269, and thus helps determine "what is administratively possible and convenient," in terms of damages calculation, Bank of Am., 137 S. Ct. at 1306. Here, the City has plausibly pled that it is practicable and convenient to quantify the property tax injury's causal connection to the Banks' policies. In addition to the studies identified by the City, we note in passing there has been a substantial amount of writing (including legal literature) that has discussed or employed hedonic regression analysis as a practicable and effective way of calculating impacts on real estate values.[8] One

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[8] See, e.g., Yun-Chien Chang, *Economic Value or Fair Market Value: What Form of Takings Compensation is Efficient?,* 20 SUP. CT. ECON. REV. 35, 52-54 (2012); Yun-Chien Chang & Lee Anne Fennell, *Partition and Revelation*, 81 U. CHI. L. REV. 27, 35 n.35 (2014); Randall Akee, *Checkerboards and Coase: The Effect of Property Institutions on Efficiency in Housing Markets*, 52 J.L. & ECON. 395, 402-03 (2009).

author at the University of Wisconsin School of Business has written that "[o]ver the past three decades, hedonic estimation has clearly matured from a new technology to become the standard way economists deal with housing heterogeneity."[9] Likewise, the Organisation for Economic Co-operation and Development's (OECD) Handbook on Residential Property Prices Indices (RPPI) calls hedonic regression "probably the best method that could be used in order to construct quality RPPIs for various types of property."[10] While we may not engage in a Daubert analysis at this early stage, that hedonic regression analysis has been favorably referenced and employed elsewhere and over several decades cuts against the suggestion at the motion to dismiss stage that it is a wholly implausible invention of the City's or that apportioning blame through its application would be so challenging that the complaints cannot state a claim.

At a more basic level, the aggregative nature of the City's claims also helps eliminate any discontinuity between the statutory violation and the injury. See Lexmark, 134 S. Ct. at 1394. Here, the claimed violation is a "pattern or practice of reverse redlining" leading to a "disproportionately high rate of foreclosure." BoA FAC at 30; WF FAC at 43. Even if each individual act of redlining does not bear a one-to-one proportional relationship to Miami's loss of tax revenue, see Lexmark, 134 S. Ct. at 1394, since

[9] Stephen Malpezzi, *Hedonic Pricing Models: A Selective and Applied Review*, *in* HOUSING ECONOMICS AND PUBLIC POLICY 67, 87 (Tony O'Sullivan & Kenneth Gibb eds., 2003).

[10] OECD, *Hedonic Regression Methods*, *in* HANDBOOK ON RESIDENTIAL PROPERTY PRICE INDICES 50, 57 (2003).

intervening circumstances affect which individual properties go into foreclosure, in the aggregate it has been plausibly alleged that the impact of redlining and reverse-redlining can be identified with precision and deterred. Similarly, in Blue Shield, the Court identified "the physical and economic nexus between the alleged violation and the harm to the plaintiff" as a factor to consider when applying proximate cause to the Clayton Act. Blue Shield, 457 U.S. at 478. The scale of the misconduct matches the scale of the injury.

Since the Supreme Court spoke to this issue in Bank of America, two district courts analyzing similar FHA claims by municipalities against lending institutions have relied on the availability of regression analysis in finding that proximate cause had been plausibly alleged. Most similarly and most recently, a district court in the Northern District of California entertained a similar case brought by the City of Oakland against Wells Fargo for predatory lending practices. City of Oakland v. Wells Fargo Bank, N.A., No. 15-cv-04321, 2018 WL 3008538 (N.D. Cal. June 15, 2018).[11] In denying a motion to dismiss that court

[11] After this decision, the district court in the Oakland case certified two questions for interlocutory appeal to the Ninth Circuit: "(1) Do Oakland's claims for damages based on the injuries asserted in the [First Amended Complaint] satisfy on a motion to dismiss proximate cause required by the FHA?" and "(2) Is the proximate-cause requirement articulated in City of Miami limited to claims for damages under the FHA and not to claims for injunctive or declaratory relief?" Order Granting Defendant's Motion to Amend Order to Include Certification for Interlocutory Appeal, City of Oakland, No. 15-cv-04321, 2018 WL 7575537 at *2. The parties' briefs before the Ninth Circuit are due in June and July of 2019. City of Oakland v. Wells Fargo & Co., No. 19-15169 (9th Cir. Mar. 26, 2019), ECF No. 10.

recognized, as we have, that "[w]hile the fact of aggregative injury itself does not obviate proximate cause analysis," the proffer of "a specific statistical analysis in regard to [the City's] property tax injury" adequately supports the idea that there was "an alleged provable and quantifiable causal link between the defendant's conduct and plaintiff's injury" notwithstanding the suggested length of the causal chain. Id. at *8. But when it came to a municipal-expenditures injury —similar to Miami's—the district court ruled that since "Oakland ha[d] not proffered any statistical analyses comparable to those in the property-tax analysis," the first Holmes factor counted against them and problems of multiple causation abounded. Id. at *10. Those claims were dismissed without prejudice. Id. A district court in Philadelphia found that city had "adequately [pled] proximate cause for . . . noneconomic injuries" stemming from FHA violations in part by relying on "a regression analysis of [bank] loan data" that had demonstrated Latino and African-American borrowers were 2.641 and 4.147 times more likely to go into foreclosure than similarly situated white borrowers. City of Philadelphia v. Wells Fargo & Co., No. 17-2203, 2018 WL 424451 (E.D. Pa. Jan. 16, 2018).

In describing its second claimed economic injury—increased municipal expenditures for police, fire, sanitation, and the like resulting from widespread foreclosures—the City does not do as well when measured against the first Holmes factor. When it comes to this injury, the City's complaints fail to explain how we can ascertain with any level of detail or precision which expenditures will be attributable to the Banks. It is self-evident that this must be accomplished somehow because the entire increase in municipal expenditures over any time period cannot possibly be fairly attributed to the Banks' conduct. Intervening causes and independent variables will inevitably run up this measure of damages because the City's expenditures occur at some obvious level of remove from the foreclosures that it says cause them. They are further down the chain, to put it in step-counting terms. There is nothing in the pleadings that suggests the plaintiff will be able to sort out the extent to which these damages are attributable to the Banks' misconduct.

The City's pleadings on increased expenditures are in stark contrast to their pleadings about tax revenue. The increased expenditures pleadings state, in almost conclusory fashion, that "the City is required to provide increased municipal services" at foreclosed properties and that "these services would not have been necessary if the properties had not been foreclosed upon." BoA FAC at 34; WF FAC at 47. The complaints then proceed to list types of expenditures: police, fire, building code enforcement, and the like. If any direct connections exist between the foreclosure and any of these expenditures, the City has not explained them, and they are not so obvious as to be self-evident. We also see no explanation of how the City will identify the amount of increase attributable to the foreclosures or to the Banks' conduct. In pleading the tax-revenue injury, however, the City explains in considerable detail how hedonic regression analysis will help pinpoint the attributable loss. This is not to say that hedonic regression analysis, specifically, should have been referenced again in relation to the expenditure injury in order to satisfy the first Holmes factor. Rather we suggest only that a pleading in a case like this must make clear how a plaintiff will demonstrate that an injury is attributable to a defendant. Hedonic regression serves this role with regard to the tax-revenue injury, but may not be the only way this could ever be accomplished.[12]

The first Holmes factor, addressing the attributability of the injury to the defendant's conduct, is where the two economic injuries alleged by the City are most different in terms of finding a "direct relation." The tax-revenue injury has been pled with detailed explanations of statistical proof, which serve to plausibly allege that the courts will be able to work

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[12] A few other district courts have illustrated the point. In three lawsuits against banks alleging the same kinds of practices that Miami has alleged, Cook County, Illinois claimed damages based on "out-of-pocket costs it . . . incurred in processing the discriminatory foreclosures, such as additional funding for the Cook County Sheriff to serve foreclosure notices and for the Circuit Court of Cook County to process the deluge of foreclosures." County of Cook v. Bank of Am. Corp., No. 14 C 2280, 2018 WL 1561725 at *7 (N.D. Ill. Mar. 30, 2018); see also County of Cook, Ill. v. HSBC N. Am. Holdings, 314 F. Supp. 3d 950, 956 (N.D. Ill. 2018); County of Cook, Ill. v. Wells Fargo & Co., 314 F. Supp. 3d 975, 982 (N.D. Ill. 2018). Those out-of-pocket costs were found to have plausibly been proximately caused by the banks because these expenditures are automatic results of foreclosures. See HSBC, 314 F. Supp. 3d at 962; Wells Fargo, 314 F. Supp. 3d at 984; Bank of Am., 2018 WL 1561725 at *7. These were the only claimed damages that survived a motion dismiss in the Northern District of Illinois, as all three courts there found that Cook County had failed to adequately plead proximate cause for the kinds of tax-revenue and municipal-expenditure injuries that Miami pleads here. See HSBC, 913 F. Supp. 3d at 962-64; Wells Fargo, 314 F. Supp. 3d at 988; Bank of Am., 2018 WL 1561725 at *5. Miami pled no out-of-pocket costs closely tied to foreclosures along these lines.

out just what the Banks can be fairly held accountable for. The municipal-expenditure injury fails to do this. Statistical proofs are not the only method of proof, but, when we readily discern a discontinuity between misconduct and injury, for the plaintiff to plausibly plead proximate cause, it must allege something more with which to bridge the gap and demonstrate that the defendant's liability will bear "some direct relation" to its actions. On the increased-expenditure injury, the City has not plausibly pled its case.

2.

Holmes's second factor posits that "recognizing claims of the indirectly injured would force courts to adopt complicated rules apportioning damages among plaintiffs removed at different levels of injury from the violative acts, to obviate the risk of multiple recoveries." Holmes, 503 U.S. at 269. In Holmes, this was a problem because a trial court would "have to find some way to apportion the possible respective recoveries by the broker-dealers and the customers, who would otherwise each be entitled to recover the full treble damages." Id. at 273. Antitrust cases also emphasize "the risk of duplicative recovery engendered by allowing every person along a chain of distribution to claim damages" from a single violation, and have identified this as a powerful reason to allow suit only by more directly injured parties. Blue Shield, 457 U.S. at 474-75 (citing Ill. Brick Co. v. Illinois, 431 U.S. 720, 745 (1977); Hawaii v. Standard Oil Co. of Cal., 405 U.S. 251 (1972)).

Again, no such problem is presented in this case: plainly, the injuries to the City's treasury are not shared by any other possible plaintiff. These economic injuries, whether or not they can ultimately be recovered for, could only be alleged by the City. The City's theory, therefore, presents no concern about double recovery or "piggy-backing," precisely because its injuries are unique. Substantially decreased tax revenue and increased municipal costs are injuries that affect the interests of the City alone, so there could not plausibly be any difficulty in apportioning them between multiple plaintiffs. The harm and damages pled by individual homeowners suing under the FHA would be entirely different. These plaintiffs could sue for actual and punitive damages, injunctive and equitable relief, or attorney's fees. See 42 U.S.C. § 3613(c). In this Circuit they could also seek damages based on "anger, embarrassment, and emotional distress." Banai v. Sec'y, U.S. Dep't of Hous. & Urban Dev. ex rel. Times, 102 F.3d 1203, 1207 (11th Cir. 1997). Many courts have permitted FHA plaintiffs to recover pecuniary damages, including moving costs and forfeited security deposits. E.g., Belcher v. Grand Reserve MGM, LLC, 269 F. Supp. 3d 1219, 1239 (M.D. Ala. 2017). But no court could allow a homeowner to recover for harm to a city's treasury.

The City, on the other hand, has claimed it was financially harmed in two ways—injury to its tax base and tax revenue because of reduced property value, and increased expenditures on City services in certain neighborhoods. The damages that these harms could support do not overlap in any way with or duplicate the damages that individual homeowners may have sustained, because the harms are entirely separate. The City's injuries would be "passed on" forms of the homeowners' injuries if, for example, it were claiming it lost tax revenue because homeowners who were overpaying on their mortgages were subsequently unable to pay their taxes. But this is not the case.

The City alleges instead that the Banks' misconduct had a direct, necessary, and immediate impact on its fiscal health at the neighborhood and citywide level. The homeowners' losses are obviously related to the losses that Miami allegedly incurred, but they are independent. Injury to the City's treasury is a distinct injury, it is not purely derivative of misfortunes visited on homeowners. Even if we were to assume that each victim of discrimination were to successfully bring an individual claim—a wholly implausible hypothesis—the City would still have an independent set of claims based on the independent harm that it suffered. The claims would be linked only by shared facts surrounding the violation.

3.

Holmes's final factor builds on the first two: "[T]he need to grapple with these problems," the Court said, referring to the first two factors, "is simply unjustified by the general interest in deterring injurious conduct, since directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." Id. at 269-70. Thus, in Holmes, the directly injured broker-dealers "could be counted on to bring suit for the law's vindication," and so it was less necessary for SIPC to sue on behalf of the broker-dealers' customers. Id. at 273. In Bridge, the same factor cut in the other direction; the plaintiffs were injured because they had less success at county-run auctions when the defendants cheated, and their harm was "the direct result of [defendant's] fraud" in part because, even though the plaintiffs didn't themselves rely on any fraudulent assertions, "no more immediate victim is better situated to sue." Bridge, 553 U.S. at 658.

The third Holmes factor has been applied to antitrust statutes as well. The availability of more directly injured plaintiffs influenced the Court's determination that "directness" between the plaintiff's injury and the defendant's action was lacking in Associated General Contractors of California, Inc. v. Carpenters, 459 U.S. 519, 540-41 (1983). There, a union alleged that the defendant employer association had "coerced certain third parties . . . to enter into business relationships with nonunion firms" in a way that violated the Clayton Act. Id. at 520-21. This hurt unionized firms and, thus, hurt the plaintiff union. Id. The Court found that the union had not alleged a sufficiently direct injury, noting that:

> The existence of an identifiable class of persons whose self-interest would normally motivate them to vindicate the public interest in antitrust enforcement diminishes the justification for allowing a more remote party such as the Union to perform the office of a private attorney general. Denying the Union a remedy on the basis of its allegations in this case is not likely to leave a significant antitrust violation undetected or unremedied.

Id. at 542.

In these kinds of cases it is preferable for more directly injured plaintiffs to take the lead in acting as private attorneys general because those plaintiffs will be able to deter future violations more effectively and efficiently. When more directly injured parties can sue for the full swath of harm caused by statutory violations, the threat of suit by these parties has the maximum possible deterrent effect on potential violators, and it's simply not worthwhile to also allow minimally deterring suits by plaintiffs farther down the causal chain. Cf. Southern Pac. Co. v. Darnell-Taenzer Lumber Co., 245 U.S. 531, 534 (1918) ("The [defendant] ought not to be allowed to retain his illegal profit, and the only one who can take it from him is the one that alone was in relation with him, and from whom the [defendant] took the sum.") (Holmes, J.).

Thus, in antitrust cases the courts have long expressed a "concern for the reduction in the effectiveness of those suits if brought by indirect purchasers with a smaller stake in the outcome than that of direct purchasers suing for the full amount of the overcharge." Ill. Brick Co., 431 U.S. at 745; see also Lexmark, 134 S. Ct. at 1391 (establishing, for the Lanham Act, a rule barring suit by "commercial parties who suffer merely as a result of [a direct] competitor's 'inability to meet [its] financial obligations'" (quoting Anza, 547 U.S. at 458)). For this reason, the federal courts have rejected the monopolist's "passing on" defense—the argument that mid-stream purchasers charged monopoly prices are not harmed because they can "pass on" any overcharges to consumers. See Richard A. Posner, *Economic Analysis of Law* 395-96 (9th ed. 2014). Consumers cannot sue over monopoly pricing, but this does not mean there is a meaningful reduction in enforcement. See id. at 396 ("[Consumers'] right [to sue] is less valuable because, being at once more remote . . . and more numerous, consumers are less efficient antitrust enforcers.").

The same logic surrounding deterrence does not apply here. While the City may be a step further down the chain of causation, the homeowners are much more numerous and less well suited to prosecute a global claim. The City's suit could achieve better deterrence because it aims to recover for a larger injury sustained on a citywide basis and to remedy a different, broader violation than a homeowner's suit would. The City alleges widespread redlining and reverse-redlining policies conducted by the Banks. The City's suit challenges the entire policies. A discrimination claim by an individual homeowner would challenge only a bank's discriminatory action against <u>that homeowner</u>. Conceivably the banks could face suits by many homeowners who were discriminated against, or who lost property value because their neighbors' houses were foreclosed on, but these suits wouldn't serve to condemn the pattern or policy. Individual homeowners would also face most of the same causation problems—presumably a variety of factors contributed to any individual foreclosure—but the regression analysis that can isolate the impact of redlining on the neighborhood scale could not solve this problem on the individual level because of the diversity of individual circumstances.

Moreover, even if homeowners were better-situated to vindicate the same wrongdoing—and that is plainly not the case here—the additional assumption that others will pursue the lawsuits and achieve deterrence is nowhere near as likely true under the FHA as under the other statutes. Antitrust and, to a lesser extent, civil RICO suits are typically brought by sophisticated business entities, often with deep pockets, and those plaintiffs also have the added incentive of realizing treble damages. In Holmes and Associated General Contractors, the Court left the job of deterring statutory violations to broker-dealers and businesses using union labor. These parties were subject to complex regulatory environments and undoubtedly had counsel in place prepared to sue to vindicate their rights. Here, instead, the alternative plaintiffs are homeowners whose homes were foreclosed upon. Compared with the sophisticated parties involved in the RICO and antitrust cases, it seems far less likely that these injured parties could be counted on to file suit. While it's possible that some might, it seems exceedingly unlikely that more than a handful at most would do so, and we have seen precious little reason to believe that many have. The vast majority of individual cases of discriminatory lending cases are left unpursued and unaddressed. In Associated General, the Court observed that "[d]enying the [plaintiff] a remedy on the basis of its allegations in this case [was] not likely to leave a significant [statutory] violation undetected or unremedied." 459 U.S. at 542. That's less plausible here.

As a result, the peculiarities surrounding the claims raised in this case make it distinct from an antitrust case where a mid-stream purchaser can bring essentially the same action against a monopolist as the ultimate consumer would. The question of efficacy is harder to resolve here because, although the homeowners are arguably closer in the chain, they are too numerous and diffuse to be counted on for deterrence. They are better situated only in a narrow, literal sense. The City, on the other hand, has plausibly alleged an injury, calculable in the aggregate, that bears a direct relation to the Banks' policies, applied in the aggregate, which allegedly violated the statute.

4.

The Holmes factors also help cabin proximate cause against other less- directly injured plaintiffs. Writing separately in Bank of America, Justice Thomas suggested that Miami's theory of causation would require that neighboring homeowners who were not foreclosed on but whose property values fell could also sue the banks. 137 S. Ct. at 1312 (Thomas, J., concurring in part and dissenting in part). Still other concerns have been raised about the corner grocer who may have lost business on account of foreclosures, the utility company, or maybe even real estate brokers working on commission to resell properties in the area. The Court's own guidance from Holmes, attuned as it is to the administrative practicalities, can go a long way toward allaying these concerns. Application of the Holmes factors reasonably establishes that the City's injury is logically bound up with the Banks' alleged conduct in meaningful ways missing from injuries to these other putative claimants.

To begin with the first factor, corner grocers or neighboring property owners, unlike the City, would have substantially more difficulty plausibly alleging that they could calculate damages attributable to the Banks' actions with a reasonable degree of certainty. By contrast, hedonic regression techniques are most effective when applied on a neighborhood or citywide level, precisely because individual variations among homeowners average out when foreclosures are considered in the aggregate. Indeed the amended complaints specifically cite to a study showing that each foreclosure in Chicago was "responsible for an average decline of approximately 1.1% in the value of each single-family home within an eighth of a mile." BoA FAC at 33; WF FAC at 46. The average decline can be used to calculate the impact of foreclosures on property value across a neighborhood on account of the large sample size. A neighboring homeowner, on the other hand, would be affected only by homes closest to his own, and these might not accurately reflect the citywide average, in terms of causation or value. And a corner grocer might be affected by the surrounding few blocks of homes, but this may be wholly unrepresentative of citywide trends, making causal attribution to redlining all the more difficult.

Put another way, in step-counting terms, the grocer or the utility company is demonstrably further down the causal chain because many independent variables can enter the equation after foreclosure occurs. The City will necessarily be harmed as soon as the foreclosures occur. For the grocer, though, a nearby home's foreclosure does not necessarily mean anything. The causal chain for the grocer is longer, more attenuated, and more of a problem for proximate cause analysis because there is a powerful discontinuity between the foreclosures and the grocer's loss of profits. It would therefore be exceedingly difficult to trace causation from the Banks' predatory practices through the foreclosures to the grocers' diminished profits. The corner grocer, or the utility company, is not affected when a home is foreclosed or when property values go down. These parties are not hurt until individual homeowners decide to spend less money at that grocer, decide not to pay the electric bill, or move away. Thus, there are many more third parties, and many more intervening steps when it comes to the corner grocer or the utility company. When a homeowner is given a bad, discriminatory loan, the injury to one of these more distant plaintiffs is in no sense "automatic[]," Lexmark, 134 S. Ct. at 1394; it therefore becomes harder to attribute back to the Banks.

The application of the second Holmes factor also strongly suggests why any injury sustained by the corner grocer or by the utility company would not be proximately caused by the Banks' conduct. These are classic "passed on" injuries. The Court has consistently said that "where the alleged violations [are] linked to the asserted harms only through the [directly injured parties'] inability to meet their financial obligations" proximate cause will not be found. Anza, 547 U.S. at 458; see also Lexmark, 1391 S. Ct. at 1391 (referencing "the electric company," specifically, as an entity in this sort of position); Holmes, 503 U.S. at 271. Individual homeowners have financial obligations to the City in the form of property taxes, but the City's claim is not that it is harmed because property taxes went unpaid. Rather, the City says that property values decreased and that therefore it was not entitled to as much property-tax revenue. The City's loss is not due to anyone lacking "the wherewithal to pay," Holmes, 503 U.S. at 271, but to the fact that redlining means the City is not able to collect nearly as much as it would have, had the alleged FHA violations not occurred in the first place.

The third Holmes factor—the reliability with which a plaintiff could remedy harm or achieve deterrence—also strongly suggests that we need not fear a deluge of suits by grocers, neighbors, or power companies. These potential plaintiffs, even if injured, would be in a far weaker position and far less likely than the City to achieve deterrence or to remedy the entirety of the harm caused by the Banks' alleged violations. Their claims would be disjointed, aimed at remedying FHA violations only on particular blocks, in contrast to the City's unique ability to attack the Banks' whole pattern or practice on a municipal level. Any claims by the corner grocer or the neighboring homeowner would be further out in the chain of causation than the City is, and these claims would lack the broad scope that allows the City to achieve maximal deterrence. Quite simply, they would face far tougher versions of all the challenges the City faces, but with none of the offsetting advantages.

As we see it, the factors articulated by the Supreme Court in Holmes cabin this decision and keep the floodgates closed. But these factors are not the only reason our ruling does not extend liability beyond what is reasonable. Foreseeability remains a real part of the proximate cause calculation and also will function to cut off liability in many instances. Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 199, at 686 (2d ed. 2011) ("The defendant must have been reasonably able to foresee the kind of harm that was actually suffered by the plaintiff . . . ."). We are exceedingly dubious that courts would expect lenders to reasonably foresee unending ripples of harm that overwhelm the judicial branch.

D. Common-law antecedents require direct relation

The Court has also told us that the FHA's common-law antecedents are a primary reason why "proximate cause under the FHA requires 'some direct relation between the injury asserted and the injurious conduct alleged.'" Bank of Am., 137 S. Ct. at 1306. As a result, we know that "[a] damages claim under the [FHA] 'is analogous to a number of tort actions recognized at common law,'" and that "directness principles" thus apply. Id. We also observed, in our previous opinions, that FHA damages claims "have long been analogized to tort claims." See Bank of Am., 800 F.3d at 1282. These analogues, however, only take us so far. They do not help flesh out the meaning of "direct relation," even though they are the basis for imposing the requirement.

The Court identified some common-law claims that are analogues for FHA claims in Curtis v. Loether, 415 U.S. 189 (1973). See Bank of Am., 137 S. Ct. at 1306 (citing Curtis for the proposition that an FHA damages claim is analogous to certain common-law torts). There, the Court was evaluating whether the Seventh Amendment, which guarantees jury trials for "suits at common law," guaranteed a jury in an FHA suit. U.S. CONST. amend VII; see Curtis, 415 U.S. at 190. The Court said it did, because FHA claims for housing discrimination were comparable to "the common-law duty of innkeepers not to refuse temporary lodging to a traveler without justification," "an action for defamation or intentional infliction of mental distress," or "law[s] of insult and indignity." Id. at 195 n. 10.

The identification of these common-law antecedents does not get us too far. We lack any clear indication that Congress had these common-law claims in mind when drafting the FHA, and so we are reluctant draw too much from them beyond the "some direct relation" requirement. For one thing, we would not know which common-law claim to begin with, since we do not see the obvious correspondence to the common law the

Court has identified elsewhere. Thus, for example, this case is not like Bridge where common-law mail fraud was an obvious precursor to RICO mail fraud. See Bridge, 553 U.S. at 652.

Other statutory causes of action have more tangible foundations in particular common-law claims. The Court does not define what exactly counts as "common-law foundations" but RICO and the antitrust statutes are the paradigmatic examples. See, e.g., Bridge, 533 U.S. at 651 ("[W]hen Congress established in RICO a civil cause of action for a person 'injured . . . by reason of' a 'conspir[acy],' it meant to adopt . . . well-established common-law civil conspiracy principles" (quoting Beck v. Prupis, 529 U.S. 494, 504 (2000))); Holmes, 503 U.S. at 267 ("[C]ourts had read § 7 [of the Sherman Act] to incorporate common-law principles of proximate causation."). In Anza v. Ideal Steel Supply Corp., 547 U.S. 451, 457 (2006), a RICO case, the Court also said that "directness principles" apply to statutes with "common-law foundations." Bank of Am., 137 S. Ct. at 1306 (quoting Anza, 547 U.S. at 457). Anza repeated reasoning from Holmes comparing RICO's civil suit provision to the Clayton Act's. Anza, 547 U.S. at 457 (citing Holmes, 503 U.S. at 267-68).

The connection between the Clayton Act and RICO, laid out in Holmes, was foundational for proximate cause analysis under RICO. See, e.g., Hemi Group, 559 U.S. at 8-10 (citing Holmes, 503 U.S. 258); Bridge, 553 U.S. at 653-55 (citing Holmes, 503 U.S. 258); Anza 547 U.S. at 457 (citing Holmes, 503 U.S. at 267-68). In fact, RICO's civil suit provision was modeled on the antitrust statutes of the early 20th century, so standards of proximate cause that applied to early

Clayton and Sherman Act cases can be readily applied to RICO as well. See Holmes, 503 U.S. at 268; see also Assoc. Gen. Contractors, 459 U.S. at 531-35. Even without a deep dive into legislative history, the connection between the statutes is obvious because their civil suit provisions are almost identical. The Clayton Act reads:

> [A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . . and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

15 U.S.C. § 15. Likewise, RICO reads:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee . . . .

18 U.S.C. § 1964(c). Both statutes thus say that "any person" "injured in his business or property" by a violation of the statute has a cause of action and can recover treble damages plus attorney's fees.

The common-law foundations of the Fair Housing Act are less obvious insofar as they relate to proximate cause. For starters, the FHA does not employ the language that the Clayton Act shares with RICO. It authorizes suit by an "aggrieved person," 42 U.S.C. § 3613(a)(1)(A), expansively defined as "any person who (1) claims to have been injured by a discriminatory housing practice; or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur." Id. § 3602(i). Indeed, under the language employed by Congress in the FHA, the aggrieved person need not be injured specifically "in his business or property." Moreover, the remedies are distinct from the relief available for a violation of the Clayton Act or RICO—treble damages are not available, and the court "may allow" attorney's fees, but under the FHA it is not required to, as it would be under RICO or the Clayton Act. See 42 U.S.C. § 3613(c).

These textual differences make it harder to assume that the legislators drafting the FHA were drawing on the same version of proximate cause that was used in these earlier statutes. We are still able to borrow notions about proximate cause from the common law for the FHA, but it strikes us as inappropriate simply to assume that the FHA necessarily incorporated the nature and form of proximate cause as it was employed in these other statutes for which we can trace a much more direct provenance. And, since understandings of proximate cause at common law evolved over time, we would need to know which version of common-law proximate cause a statute adopted. See Sperino, *supra,* at 1225 ("The one thing that is certain about proximate cause is that its underlying goals are contested and evolving."). Different statutes may not have incorporated the same common-law standard; the Palsgraf case and the *First Restatement of Torts* both postdated passage of the Sherman Act but had become highly foundational texts for understanding proximate cause by the time RICO was drafted. Id. The evolving shape of proximate cause at common law further complicates any analysis that would depend entirely upon incorporating a common-law standard from a statute that predated the FHA.

Congress might have brought common-law standards to bear on the new problems it addressed in the 1960s, but the fact that we may identify some common-law analogue does not necessarily mean that this was the case. The Fair Housing Act does not employ language drawn from the older federal statutes with connections to the common law, and, as best as we can tell, this cause of action does not have an unmistakable common-law antecedent. As a result, while considering the common law may be valuable and informative, and while the statute's common-law antecedents do require a plaintiff plausibly to allege "some direct relation," we are unable to discern any further lessons from the common law that bear on our analysis.

IV. Conclusion

In sum, we hold that there is "some direct relation" between the City's tax-revenue injuries and the Bank's alleged violations of the FHA. The Supreme Court has never held that the presence of an intervening causal step or the involvement of a third party necessarily bars a finding of proximate cause as a matter of law, and we decline to establish so hard and fast a rule today.

The City's detailed allegations on its tax-revenue injury are sufficient for a variety of reasons: the FHA is a broad and ambitious statute which employs a standard of proximate cause that facilitates its operation; Congress meant for the FHA to be a big solution to a big problem—housing segregation generated by intentional racial discrimination; for half a century courts have read the FHA broadly and

Congress has repeatedly assented to these readings; the impact of the Banks' redlining can readily be identified at a citywide or neighborhood level, so even if there were not "something very close to a 1:1 relationship," Lexmark, 134 S. Ct. at 1394, the City has plausibly explained how it will calculate damages in a reasonably precise way; the injury is profoundly different from any injuries suffered by a homeowner; and there's no reason to think that homeowners would make for more efficient plaintiffs. In the absence of any palpable concerns about unadministrable litigation, we ought not to unduly constrain the remedial effect of the FHA.

Put differently, the City has adequately pled proximate cause when it comes to its tax-base injury because the Banks' redlining and reverse-redlining practices bear some direct relation to the City's fiscal injuries. There is a logical and direct bond between discriminatory lending as a pattern and practice applied to neighborhoods throughout the City and the reduction in property values. Third parties are involved, but the harm to the City is not contingent on their actions when considered in the aggregate. There is no discontinuity between the violation and the harm. Bad loans in the aggregate will mean foreclosures in the aggregate, which will mean loss of property value and a reduction in the tax base. An individual home might go under for a variety of causes, but when discriminatory lending practices pervade a neighborhood or a city, the city's fisc will necessarily be affected because we know some number of homes will go under, and some number of properties will lose value. When we consider the claimed violations and the injuries sustained in the aggregate —that is, at the scale that the complaints present them—it becomes clearer that injuries to the city's treasury are necessary, direct, and immediate results of these kinds of FHA violations.

By many of these same measures, however, the City's increased municipal expenditures injury fails, and so the district court was correct to find that proximate cause for this injury had not been adequately pled in the complaints it was reviewing. The City's increased expenditures have not been plausibly presented as directly and automatically resulting from the Banks' alleged conduct. Even though we think foreclosures follow directly from the Banks' conduct, there is too much opportunity in the causal chain between foreclosure and increased expenditures for intervening actors and causes to play a role, and there has been no explanation by the City of how we might conceivably isolate the injury attributable to the Banks. Thus we have identified this alleged injury as being too remote to satisfy proximate cause.

We repeat that we have not answered every outstanding question in this case. Much remains to be determined as the litigation proceeds, but this case is before this Court only on a motion to dismiss. It is not our role at this stage to decide whether hedonic regression analysis can actually identify injuries attributable to violations with sufficient accuracy, or indeed whether the banks actually made decisions based on race as opposed to socioeconomic factors that may correlate with race or with other considerations. Today we have done only two things. Broadly, we have worked out in some detail what proximate cause requires in an FHA suit. More specifically, we have evaluated whether these complaints against these

Banks plausibly allege that Miami's injuries to its tax base were directly related to the violations they describe. We simply find that the operative complaints explain in a plausible fashion how the claimed tax-revenue injuries bear "some direct relation" to the misconduct that the City is challenging. This harm to Miami, as pled, is not just foreseeable but, when measured in the aggregate, is directly related to the pattern of unlawful behavior the City has alleged.

The City has plausibly alleged a violation of the FHA and has stated a claim in its First Amended Complaints. Accordingly we conclude that the district court improvidently dismissed the FHA claims in their entirety and ought to have granted the City leave to amend its complaints, since amendation would not have been futile.[13] The cases are remanded to the district court for further proceedings consistent with this opinion.

REVERSED and REMANDED

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[13] We leave it to the district court to determine which complaints should be operative for its purposes, or whether to grant the City leave to file new ones. See supra n.2.

APPENDIX B

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-14543

D.C. Docket No. 1:13-cv-24506-WPD

CITY OF MIAMI,
a Florida Municipal Corporation,

Plaintiff - Appellant,

versus

BANK OF AMERICA CORPORATION,
BANK OF AMERICA, N.A., et al.,

Defendants - Appellees.

Appeals from the United States District Court
for the Southern District of Florida

(September 1, 2015)

Before MARCUS and WILSON, Circuit Judges, and SCHLESINGER,[*] District Judge.

MARCUS, Circuit Judge:

The City of Miami has brought an ambitious fair housing lawsuit against Bank of America,[1] alleging

[*] Honorable Harvey E. Schlesinger, United States District Judge for the Middle District of Florida, sitting by designation.

[1] The City also filed substantially similar complaints against Citigroup and Wells Fargo for the same behavior. The three cases

that it engaged in a decade-long pattern of discriminatory lending in the residential housing market that caused the City economic harm. The City claims that the bank targeted black and Latino customers in Miami for predatory loans that carried more risk, steeper fees, and higher costs than those offered to identically situated white customers, and created internal incentive structures that encouraged employees to provide these types of loans. The predatory loans, as identified by the City, include: high-cost loans (i.e., those with an interest rate at least three percentage points above a federally established benchmark), subprime loans, interest-only loans, balloon payment loans, loans with prepayment penalties, negative amortization loans, no documentation loans, and adjustable rate mortgages with teaser rates (i.e., a lifetime maximum rate greater than the initial rate plus 6%). Complaint for Violations of the Federal Fair Housing Act at 34, City of Miami v. Bank of America Corp., No. 13-24506-CIV (S.D. Fla. July 9, 2014) ("Complaint"). The City alleged that by steering minorities toward these predatory loans, Bank of America caused minority-owned properties throughout Miami to fall into unnecessary or premature foreclosure, depriving the City of tax revenue and forcing it to spend more on municipal services (such as police, firefighters, trash

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were heard by the same judge in the Southern District of Florida, and resolved in the same way: the reasoning laid out in the district court's order in this case was adopted and incorporated in the orders dismissing the other two cases. They were each appealed separately. We have resolved the companion cases in separate opinions. See City of Miami v. Citigroup Inc., No. 14-14706; City of Miami v. Wells Fargo & Co., No. 14-14544. This opinion contains the most detailed account of our reasoning.

and debris removal, etc.) to combat the resulting blight. The City asserts one claim arising under the Fair Housing Act (FHA), 42 U.S.C. § 3601 et seq., as well as an attendant unjust enrichment claim under Florida law.

The district court dismissed the City's FHA claim with prejudice on three grounds: the City lacked statutory standing under the FHA because it fell outside the statute's "zone of interests"; the City had not adequately pled that Bank of America's conduct proximately caused the harm sustained by the City; and, finally, the City had run afoul of the statute of limitations and could not employ the continuing violation doctrine. We disagree with each of these conclusions.

As a preliminary matter, we find that the City has constitutional standing to pursue its FHA claims. We also conclude that under controlling Supreme Court precedent, the "zone of interests" for the Fair Housing Act extends as broadly as permitted under Article III of the Constitution, and therefore encompasses the City's claim. While we agree with the district court that the FHA contains a proximate cause requirement, we find that this analysis is based on principles drawn from the law of tort, and that the City has adequately alleged proximate cause. Finally, we conclude that the "continuing violation doctrine" can apply to the City's claims, if they are adequately pled.

Because the district court imposed too stringent a zone of interests test and wrongly applied the proximate cause analysis, we conclude that it erred in dismissing the City's federal claims with prejudice and in denying the City's motion for leave to amend on the grounds of futility. As for the state law claim, we affirm the dismissal because the benefits the City allegedly conferred on the defendants were not sufficiently direct to plead an unjust enrichment claim under Florida law.

I.

On December 13, 2013, the City of Miami brought this complex civil rights action in the United States District Court for the Southern District of Florida against Bank of America Corporation, Bank of America N.A., Countrywide Financial Corporation, Countrywide Home Loans, and Countrywide Bank, FSB (collectively "Bank of America" or "the Bank") containing two claims. First, it alleged that the defendants violated sections 3604(b)[2] and 3605(a)[3] of the Fair Housing Act, Complaint at 53, by engaging in discriminatory mortgage lending practices that resulted in a disproportionate and excessive number of defaults by minority homebuyers and caused financial harm to the City. It also alleged that the

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[2] 42 U.S.C. § 3604(b) makes it unlawful "[t]o 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, color, religion, sex, familial status, or national origin."

[3] "It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin." 42 U.S.C. § 3605(a). A "residential real estate-related transaction" includes "the making or purchasing of loans . . . for improving, constructing, repairing, or maintaining a dwelling; or secured by residential real estate." Id. § 3605(b)(1).

Bank unjustly enriched itself by taking advantage of "benefits conferred by the City" while, at the same time, engaging in unlawful lending practices, which "denied the City revenues it had properly expected through property and other tax payments and . . . cost[] the City additional monies for services it would not have had to provide . . . absent [the Bank's] unlawful activities."

The complaint accused Bank of America of engaging in both "redlining" and "reverse redlining." Redlining is the practice of refusing to extend mortgage credit to minority borrowers on equal terms as to non-minority borrowers. Reverse redlining is the practice of extending mortgage credit on exploitative terms to minority borrowers. Complaint at 3. The City alleged that the Bank engaged in a vicious cycle: first it "refused to extend credit to minority borrowers when compared to white borrowers," then "when the bank did extend credit, it did so on predatory terms." Id. at 4. When minority borrowers then attempted to refinance their predatory loans, they "discover[ed] that [the Bank] refused to extend credit at all, or on terms equal to those offered . . . to white borrowers." Id. at 5.

The City claimed that this pattern of providing more onerous loans—i.e., those containing more risk, carrying steeper fees, and having higher costs—to black and Latino borrowers (as compared to white borrowers of identical creditworthiness) manifested itself in the Bank's retail lending pricing, its wholesale lending broker fees, and its wholesale lending product placement. Id. at 18-25. It also averred that the Bank's internal loan officer compensation system encouraged its employees to give out these types of loans even when they were not justified by the borrower's creditworthiness. See id. at 20, 24. The City claimed that Bank of America's practice of redlining and reverse redlining constituted a "continuing and unbroken pattern" that persists to this day. Id. at 4.

The City said that the Bank's conduct violated the Fair Housing Act in two ways. First, the City alleged that the Bank intentionally discriminated against minority borrowers by targeting them for loans with burdensome terms. Id. at 30-33. Second, the City claimed that the Bank's conduct had a disparate impact on minority borrowers, resulting in a disproportionate number of foreclosures on minority-owned properties, and a disproportionate number of exploitative loans in minority neighborhoods. Id. at 26-30.

Among other things, the City employed statistical analyses to draw the alleged link between the race of the borrowers, the terms of the loans, and the subsequent foreclosure rate of the underlying properties. Drawing on data reported by the Bank about loans originating in Miami from 2004-2012, the City claimed that a Bank of America loan in a predominantly (greater than 90%) minority neighborhood of Miami was 5.857 times more likely to result in foreclosure than such a loan in a majority-white neighborhood. Id. at 43. According to the City's regression analysis (which purported to control for objective risk characteristics such as credit history, loan-to-value ratio, and loan-to-income ratio), id. at 37, a black Bank of America borrower in Miami was 1.581 times more likely to receive a loan with "predatory" features[4] than a white borrower, and a Latino borrower was 2.087 times more likely to receive such a loan. Moreover, black Bank of America borrowers with FICO scores over 660 (indicating good credit) in Miami were 1.533 times more likely to receive a predatory loan than white borrowers, while a Latino borrower was 2.137 times more likely to receive such a loan. Id. at 6.

The City's data also suggested that from 2004-2012, 21.9% of loans made by Bank of America to black and Latino customers in Miami were high-cost, compared to just 8.9% of loans made to white customers. Id. at 34. Data cited in the complaint showed significantly elevated rates of foreclosure for loans in minority neighborhoods. While 53.3% of Bank of America's Miami loan originations were in "census tracts" that are at least 75% black or Latino, 95.7% of loan originations that had entered foreclosure by June 2013 were from such census tracks. Id. at 39. And 32.8% of Bank of America's loans in predominantly black or Latino neighborhoods resulted in foreclosure, compared to only 7.7% of its loans in non-minority (at least 50% white) neighborhoods. Id. at 40. Likewise, a Bank of America borrower in a predominantly black or Latino census tract was 1.585 times more likely to receive a predatory loan as a borrower with similar

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[4] As we've noted, the City identified as "predatory" those containing features such as high-cost loans (i.e., those with an interest rate that was at least three percentage points above a federally established benchmark), subprime loans, interest-only loans, balloon loan payments, loans with prepayment penalties, negative amortization loans, no documentation loans, and adjustable rate mortgages with teaser rates (i.e., a lifetime maximum rate greater than the initial rate plus 6%). Complaint at 34.

characteristics in a non-minority neighborhood. Id. at 38.

The complaint also alleged that the bank's loans to minorities resulted in especially quick foreclosures.[5] The average time to foreclosure for Bank of America's black and Latino borrowers was 3.144 years and 3.090 years, respectively, while for white borrowers it was 3.448 years. Id. at 42. The allegations also gathered data from various non-Miami-based studies (some nationwide, some based on case studies in other cities) to demonstrate the elevated prevalence of foreclosure, predatory loan practices, and higher interest rates among black and Latino borrowers, and the foreseeability of foreclosures arising from predatory lending practices and their attendant harm. See id. at 26-30.

The City's charges were further amplified by the statements of several confidential witnesses who claimed that the Bank deliberately targeted black and Latino borrowers for predatory loans. Thus, for example, one mortgage loan officer with Bank of America who worked on loans in the Miami area claimed that the bank targeted less savvy minorities

[5] The complaint quoted a joint report from the Department of Housing and Urban Development and the Department of the Treasury noting that time to foreclosure is an important indicator of predatory practices: "[t]he speed with which the subprime loans in these communities have gone to foreclosure suggests that some lenders may be making mortgage loans to borrowers who did not have the ability to repay those loans at the time of origination." U.S. Dep't of Hous. & Urban Dev. & U.S. Dep't of Treasury, Curbing Predatory Home Mortgage Lending 25 (2000), available at http://www.huduser.org/Publications/pdf/treasrpt.pdf. Complaint at 43.

for negative amortization loans. Id. at 31. Another noted that Bank of America paid higher commissions to loan officers for Fair Housing Act loans as opposed to the allegedly more advantageous Community Reinvestment Act (CRA) loans, incentivizing officers to steer borrowers away from the CRA loans. Id. at 32. Still another noted that back-end premiums (a premium earned by the loan officer equal to the difference between the borrower's loan rate and the rate the bank pays for it) on loans were not disclosed and "often eluded less educated, minority borrowers." Id. One of the witnesses explained that from 2011-2013, Bank of America did not offer regular refinancing to persons with mortgages at over 80% of the value of the house (including many negative amortization loans), which disproportionately affected minorities in danger of losing their homes. Id. at 33.

Notably, the City sought damages based on reduced property tax revenues. Id. at 45. It claimed that the Bank's lending policies caused minority-owned property to fall into unnecessary or premature foreclosure. Id. The foreclosed-upon properties lost substantial value and, in turn, decreased the value of the surrounding properties, thereby depriving the City of property tax revenue. The City alleged that "Hedonic regression" techniques could be used to quantify the losses the City suffered that were attributable to the Bank's conduct. Id. at 46-47. The City also sought damages based on the cost of the increased municipal services it provided to deal with the problems attending the foreclosed and often vacant properties—including police, firefighters, building inspectors, debris collectors, and others. These increased services, the City claimed, would not have been necessary if the properties had not been foreclosed upon due to the Bank's discriminatory lending practices. Id. at 49-50. The City also sought a declaratory judgment that the Bank's conduct violated the FHA, an injunction barring the Bank from engaging in similar conduct, and punitive damages, as well as attorneys' fees. Id. at 55-56.

On July 9, 2014, the district court granted defendants' motion to dismiss.[6] First, the court found that the City of Miami lacked statutory standing to sue under the FHA. The court determined that, based on this Court's earlier opinion in Nasser v. City of Homewood, 671 F.2d 432 (11th Cir. 1982), the City's claim fell outside the FHA's "zone of interests," and therefore the City lacked standing to sue under this statute. In particular, the trial court determined that the City had alleged "merely economic injuries" that were not "affected by a racial interest." Like the plaintiffs in Nasser, the court suggested, the City was seeking redress under the FHA for "an economic loss from a decrease in property values," and as with the plaintiffs in Nasser, this was insufficient. The City's goal went far beyond the purpose of the FHA, which is to "provide, within constitutional limitations, for fair housing throughout the United States." City of Miami v. Bank of America Corp., 2014 WL 3362348, at *4 (quoting 42 U.S.C. § 3601).

The court also concluded that the FHA contains a proximate cause requirement, but that the City had not adequately pled proximate cause. The City had not sufficiently traced any foreclosures to the

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[6] This order was adopted and incorporated in the two companion cases involving Citigroup and Wells Fargo.

defendants' conduct, as opposed to confounding background variables such as "a historic drop in home prices and a global recession," and "the decisions and actions of third parties, such as loan services, government entities, competing sellers, and uninterested buyers." Id. at *5. The court also determined that the City had not shown that the Bank's mortgage practices caused the City any harm. It was unimpressed with the "statistics and studies" the City cited, noting that some were not based on data from Miami, some were not limited to the defendants' practices, and others "d[id] not control for relevant credit factors that undoubtedly affect lending practices." Id. Moreover, some of the harm to the City stemmed directly from "the actions of intervening actors such as squatters, vandals or criminals that damaged foreclosed properties." Id.

The district court also concluded that the City's federal claim ran afoul of the statute of limitations. It noted that for the FHA, a plaintiff must bring his claim "not later than 2 years after the occurrence" of the discriminatory housing practice, and that for discriminatory loans the statute of limitations begins to run from the date of the loan closing. But the City had not alleged that any loans were made later than 2008, a full five years before its complaint was filed. The court was not persuaded by the City's invocation of the continuing violation doctrine—which can allow plaintiffs, under some circumstances, to sue on an otherwise time-barred claim—since the City had not alleged sufficient facts to support its allegation that the specific practices continued into the statutory period. The district court dismissed the City's FHA claim with prejudice, reasoning that even if the statute of limitations deficiencies could be cured by an amended pleading, the City's lack of statutory standing could not be.

Finally, the district court rejected the City's unjust enrichment claim on several grounds. As a preliminary matter, the City had failed to draw the necessary causal connection between the Bank's alleged discriminatory practices and its receipt of undeserved municipal services. Moreover, the court found that the City had failed to allege basic elements of an unjust enrichment claim under Florida law. It determined that any benefit the Bank received from municipal services was not direct but "derivative" and, therefore, insufficient to support an unjust enrichment claim. It also found that the City had failed to allege that the Bank was not otherwise entitled to those services as a Miami property owner. Finally, it rejected the City's argument that Miami was forced to pay for the Bank's externalities (the costs of the harm caused by its mortgage lending), holding that paying for externalities cannot sustain an unjust enrichment claim. The district court dismissed the unjust enrichment claim without prejudice, leaving the City free to amend its complaint.

The City chose not to proceed on its unjust enrichment claim alone "because the two claims are so intimately entwined and based on largely the same underlying misconduct." Instead, it moved in the district court for reconsideration and for leave to file an amended complaint, arguing that it had standing under the FHA and that the amended complaint would cure any statute of limitations deficiency. The proposed amended complaint alleged that the Bank's discriminatory lending practices "frustrate[] the

City's longstanding and active interest in promoting fair housing and securing the benefits of an integrated community," thereby "directly interfering]" with one of the City's missions. First Amended Complaint for Violations of the Federal Fair Housing Act at 31, City of Miami v. Bank of America Corp., No. 13-24506-CIV (S.D. Fla. Sept. 9, 2014) ("Amended Complaint"). It also made more detailed allegations about properties that had been foreclosed upon after being subject to discriminatory loans. Specifically, the proposed amended complaint identified five foreclosed properties that corresponded to predatory loans that originated between 2008 and 2012, and three that originated between 2004 and 2008. It also identified seven properties that corresponded to predatory loans that the Bank had issued after December 13, 2011 (within two years of filing suit) that had not yet been foreclosed upon but were likely to "eventually enter the foreclosure process," based on expert analysis. Id. at 36-37. The complaint continued to invoke the continuing violation doctrine and claimed that the statute of limitations had not run.

The district court denied the City's motion for reconsideration and for leave to amend. As for statutory standing, the court explained that "[a]rguing that this Court's reasoning was flawed is not enough for a motion for reconsideration." City of Miami v. Bank of America Corp., 2014 WL 4441368, at *2. And the court was unimpressed by the City's new argument that it "has a generalized non-economic interest . . . in racial diversity," ruling that these were "claims [the City] never made and amendments it did not previously raise or offer despite ample opportunity," and were therefore "improperly raised as grounds for reconsideration." Id. Finally, the court noted that these "generalized allegations [do not] appear to be connected in any meaningful way to the purported loss of tax revenue and increase in municipal expenses allegedly caused by Defendants' lending practices." Id. at *2 n.1.

The City timely appealed the court's final order of dismissal.

II.

A. Standard of Review

We review the district court's grant of a motion to dismiss with prejudice de novo, "accepting the [factual] allegations in the complaint as true and construing them in the light most favorable to the plaintiff." Mills v. Foremost Ins. Co., 511 F.3d 1300, 1303 (11th Cir. 2008) (quotation omitted). We generally review the district court's decision to deny leave to amend for an abuse of discretion, but we will review de novo an order denying leave to amend on the grounds of futility, because it is a conclusion of law that an amended complaint would necessarily fail. Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla., 641 F.3d 1259, 1264 (11th Cir. 2011). Finally, we review de novo whether plaintiffs have Article III standing. Ga. Latino Alliance for Human Rights v. Governor of Ga., 691 F.3d 1250, 1257 (11th Cir. 2012).

B. Fair Housing Act Claim

1. Article III Standing

We come then to the first essential question in the case: whether the City of Miami has constitutional standing to bring its Fair Housing Act claim. See Bochese v. Town of Ponce Inlet, 405 F.3d 964, 974 (11th Cir. 2005) ("[Article III] [s]tanding is a threshold jurisdictional question which must be addressed prior to . . . the merits of a party's claims." (quoting Dillard v. Baldwin Cnty. Comm'rs, 225 F.3d 1271, 1275 (11th Cir. 2000)). Although the district court addressed only the issue of so-called "statutory standing," the Bank contests both Article III standing and statutory standing, and we address each in turn.

"[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). It is by now axiomatic that to establish constitutional standing at the pleading stage, the plaintiff must plausibly allege: (1) an injury in fact that is concrete, particularized, and actual or imminent; (2) "a causal connection between the injury and the conduct complained of," such that the injury is "fairly traceable to the challenged action of the defendant"; and (3) that a favorable judicial decision will "likely" redress the injury. See Bochese, 405 F.3d at 980 (quotation omitted). The "line of causation" between the alleged conduct and the injury must not be "too attenuated." Allen v. Wright, 468 U.S. 737, 752 (1984). The party invoking federal jurisdiction bears the burden of establishing these elements. See FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990). At the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice" to demonstrate standing. Defs. of Wildlife, 504 U.S. at 561.

The district court did not address whether the City had Article III standing because it granted the Bank's motion to dismiss on other grounds. On appeal, the Bank argues that the City lacked Article III standing because it had not adequately alleged the causal connection—that is, the "traceability"—between its injury and the Bank's conduct. We are unpersuaded.

To recap, the City claims that the Bank's discriminatory lending practices caused minority-owned properties to fall into foreclosure when they otherwise would not have, or earlier than they otherwise would have. This, in turn, decreased the value of the foreclosed properties themselves and the neighboring properties, thereby depriving the City of property tax revenue, and created blight, thereby forcing the City to spend additional money on municipal services. Complaint at 45-50. We have little difficulty in finding, based on controlling Supreme Court caselaw, that the City has said enough to allege an injury in fact for constitutional standing purposes. Our analysis is guided by Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979). In that case, the Village of Bellwood sued a real estate firm under the FHA for discriminatory renting practices that caused racial segregation. Id. at 94-95. The Supreme Court held that the village had Article III standing to bring its claim partly on the basis of "[a] significant reduction in property values," because such a reduction "directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services." Id. at 110-11. Like the Village of Bellwood, the City of Miami claims that an allegedly discriminatory policy has reduced local property values and diminished its tax base. Thus, like the Village of Bellwood, the City of Miami has adequately alleged an injury in fact.

As for Article III causation, the Bank claims that the City's harm is not fairly traceable to the Bank's conduct. Specifically, it suggests that a myriad of other factors cause foreclosure and blight—including the state of the housing market and the actions of third parties like other property owners, competing sellers, vandals, etc.—thereby breaking the causal chain. While we acknowledge the real possibility of confounding variables, at this stage in the proceeding the City's alleged chain of causation is perfectly plausible: taking the City's allegations as true, the Bank's extensive pattern of discriminatory lending led to substantially more defaults on its predatory loans, leading to a higher rate of foreclosure on minority-owned property and thereby reducing the City's tax base. See Cnty. of Cook v. Wells Fargo & Co., No. 14 C 9548, 2015 WL 4397842, at *3-4 (N.D. Ill. July 17, 2015) (finding the same causal allegation sufficient for Article III traceability in a materially identical FHA case and citing eight other district court cases finding the same). Moreover, the complaint supports its allegations with regression analyses that link the Bank's treatment of minority borrowers to predatory loans, predatory loans to foreclosure, and foreclosure to reduced tax revenue. Complaint at 6, 37-38, 44, 46. All told, the City has "allege[d] . . . facts essential to show jurisdiction." FW/PBS, 493 U.S. at 231 (quoting McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936)).

Of course, the City has limited its claim only to those damages arising from foreclosures caused by the Bank's lending practices. At a subsequent stage in the litigation it may well be difficult to prove which foreclosures resulted from discriminatory lending, how much tax revenue was actually lost as a result of the Bank's behavior, etc. But at this early stage, the claim is plausible and sufficient. The City has said enough to establish Article III standing.[7]

2. "Statutory Standing"

The district court dismissed the City's claim, however, not on the basis of Article III standing, but because it lacked what the court characterized as "statutory standing." It found that the City fell outside the FHA's "zone of interests," and that its harm was not proximately caused by the Bank's actions. Ultimately, we disagree with the district court's legal conclusions. As for the zone of interests, we conclude that we are bound by Supreme Court precedent stating that so-called statutory standing under the FHA extends as broadly as Article III will permit, and find that this includes the City. As for proximate cause, we agree that it must be pled for a damages claim under the FHA, but find that the City has adequately done so here.

Notably, the Supreme Court recently clarified in Lexmark International, Inc. v. Static Control Components, Inc., 134 S. Ct. 1377 (2014), that the longstanding doctrinal label of "statutory standing" (sometimes also called "prudential standing") is misleading. The proper inquiry is whether the plaintiff "has a cause of action under the statute." Id. at 1387. But that inquiry isn't a matter of standing, because "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction, i.e., the court's statutory or constitutional power to adjudicate

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[7] The third Lujan factor, redressability, is not at issue in this appeal. The City has "allege[d] a monetary injury and an award of compensatory damages would redress that injury." Resnick v. AvMed, Inc., 693 F.3d 1317, 1324 (11th Cir. 2012).

the case." Id. at 1387 n.4 (quoting Verizon Md. Inc. v. Public Serv. Comm'n of Md., 535 U.S. 635, 642-643 (2002)). Instead, it is "a straightforward question of statutory interpretation." Id. at 1388.

This issue comes before the Court on a motion to dismiss for failure to state a claim, and the City's pleadings are evaluated for plausibility using the standard set forth in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009). "The complaint must contain enough facts to make a claim for relief plausible on its face; a party must plead 'factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" Resnick v. AvMed, Inc., 693 F.3d 1317, 1324-25 (11th Cir. 2012) (quoting Iqbal, 556 U.S. at 678). Of course, in evaluating the plausibility of the claim we must take all of the plaintiff's factual allegations as true. See Iqbal, 556 U.S. at 678.

a. Zone of Interests

In general, a statutory cause of action "extends only to those plaintiffs whose interests 'fall within the zone of interests protected by the law invoked.'" Lexmark, 134 S. Ct. at 1388 (quoting Allen v. Wright, 468 U.S. 737, 751 (1984)). The Supreme Court has instructed us that this test "applies to all statutorily created causes of action," but its application is not uniform: "certain statutes . . . protect a more-than-usually 'expansive' range of interests." Id. (quoting Bennett v. Spear, 520 U.S. 154, 164 (1997)) (alteration adopted).

The FHA provides that

> [a]n aggrieved person may commence a civil action in an appropriate United States district

> court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice . . . to obtain appropriate relief with respect to such discriminatory housing practice or breach.

42 U.S.C. § 3613(a)(1)(A). It defines an "aggrieved person" as anyone who "claims to have been injured by a discriminatory housing practice," or "believes that such person will be injured by a discriminatory housing practice that is about to occur." Id. at § 3602(i).

The Bank claims that the City is not an "aggrieved person," and, therefore, falls outside the statute's zone of interests and cannot state a cause of action under the FHA. The City argues, however, that "FHA statutory standing is as broad as the Constitution permits under Article III," and therefore it is within the statute's zone of interests. Older Supreme Court cases appear to support the City's view, while certain more recent cases—as well as an older decision of this Court—have cast some doubt on the viability of those holdings. The answer requires carefully parsing both Supreme Court and Eleventh Circuit precedent, and a review of the relevant cases is instructive.

i. Early Supreme Court cases

The first major FHA case explicated by the Supreme Court is Trafficante v. Metropolitan Life Insurance, 409 U.S. 205 (1972). Two tenants of an apartment complex—one black, one white—alleged that the landlord discriminated against minorities on the basis of race when renting units, in violation of the FHA. Id. at 206-07. The Court held that standing under the Act was defined "as broadly as is permitted by Article III of the Constitution . . . insofar as tenants of the same housing unit that is charged with discrimination are concerned." Id. at 209 (quotation omitted). "The language of the Act is broad and inclusive," the Court wrote, and "the alleged injury to existing tenants by exclusion of minority persons from the apartment complex is the loss of important benefits from interracial associations." Id. at 209-10.

Seven years later, in Gladstone, the Village of Bellwood brought suit under the FHA against two real estate firms for "steering" black and white homeowners into targeted, race-specific neighborhoods, thereby "manipulat[ing] the housing market," "affecting the village's racial composition," and causing "[a] significant reduction in property values." 441 U.S. at 109-10. The Court concluded that the village had stated a cause of action under the FHA and reaffirmed, based on the legislative history and purpose of the statute, that statutory standing under the FHA "is as broad as is permitted by Article III of the Constitution." Id. at 109 (quotation omitted and alteration adopted).

Next came Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982), in which—along with other plaintiffs—a nonprofit corporation whose purpose was "to make equal opportunity in housing a reality in the Richmond Metropolitan Area" brought an FHA claim against a realty firm for racial steering (i.e., fostering racial segregation by guiding prospective buyers towards or away from certain apartments based on the buyer's race). In the clearest and most unambiguous terms, the Supreme Court reiterated the holding of Gladstone: "Congress intended standing under [the FHA] to extend to the full limits of Art. III and . . . the courts accordingly lack the authority to create prudential barriers to standing in suits brought under [the FHA]." Id. at 372 (quotation omitted). As the Court explained, "the sole requirement for standing to sue under [the FHA] is the Art. III minima of injury in fact: that the plaintiff allege that as a result of the defendant's actions he has suffered 'a distinct and palpable injury.'" Id. (quoting Warth v. Seldin, 422 U.S. 490, 501 (1975)). The organization's allegation that the racial steering "perceptibly impaired [its] ability to provide counseling and referral services for low- and moderate-income homeseekers" was sufficient to constitute injury in fact for purposes of Article III (and statutory) standing. Id. at 379.

ii. Nasser

Less than a month after Havens, the Eleventh Circuit issued an opinion in Nasser, 671 F.2d 432, on which the district court and the Bank principally rely. In Nasser, property owners challenged a zoning ordinance that rezoned their property from multi-family residential to single-family residential, alleging, inter alia, that the ordinance violated the FHA. Id. at 434. In 1976, the plaintiffs entered into an agreement with a developer for the construction of a multi-family housing complex on their property. The developer had looked into the possibility of making some units of this complex available for low- and moderate-income families via rent subsidies, and had inquired with the Department of Housing and Urban Development. But the development never materialized. A detailed affidavit from a member of the county planning commission stated that the plaintiffs had never suggested that their purpose "was to build a multi-family project for the use and benefit of low income or minority groups." Id. at 435. Instead, the affidavit claimed that the plaintiffs had represented their project as "an exclusive-high rent apartment complex." Id. The Court found that there was no "evidence that the 1976 project was in any way affected by or related to racial or other minority interests." Id.

Three years later, the land was re-zoned. Id. at 434. The plaintiffs claimed that the re-zoning had reduced the value of their property by more than 50% (from $285,000 to $135,000). See id. at 435. A panel of this Court concluded that the plaintiffs lacked statutory standing under the FHA despite this purported economic injury. In making this determination, the Court considered Trafficante and Gladstone, and concluded: "There is no indication that the [Supreme] Court intended to extend standing, beyond the facts before it, to plaintiffs who show no more than an economic interest which is not somehow affected by a racial interest." Id. at 437. The Nasser Court found that the property owners lacked an economic interest affected by a racial interest, and therefore lacked standing to sue under the FHA. Id. at 438.

iii. Newer Supreme Court cases on statutory standing

Two recent Supreme Court cases have cast some doubt on the broad interpretation of FHA statutory standing in Trafficante, Gladstone, and Havens. In Thompson v. North American Stainless, LP., 562 U.S. 170 (2011), the Court considered whether an employee had a cause of action under Title VII, which uses nearly identical statutory language to the FHA. See 42 U.S.C. § 2000e-5(f)(1) ("[A] civil action may be brought . . . by the person claiming to be aggrieved."). The Court rejected the argument that this language expanded statutory standing to the limits of Article III. Id. at 177. Instead, it drew an analogy to the Administrative Procedure Act (which contains similar language) and held that plaintiffs must "fall[] within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." Id. at 177-78 (quoting Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 883 (1990)).

The Court acknowledged that this analysis was in some tension with Trafficante and Gladstone. But in glossing Trafficante, the Thompson Court focused on language in the opinion that arguably limited the holding to its facts: the Trafficante Court stated that standing under the FHA was coextensive with Article III only "insofar as tenants of the same housing unit that is charged with discrimination are concerned." Id. at 176 (quoting Trafficante, 409 U.S. at 209). The Thompson Court acknowledged that later cases (such as Gladstone) reiterated that standing under the FHA "reaches as far as Article III permits" without any limiting language, but it stated that "the holdings of those cases are compatible with the 'zone of interests' limitation" that the Court went on to read into Title VII. Id. at 177.

Finally, the Supreme Court's recent opinion in Lexmark (interpreting the Lanham Act) discarded the labels "prudential standing" and "statutory standing," and clarified that the inquiry was really a question of statutory interpretation, and not standing at all. 134 S. Ct. at 1386-87 & n.4. One aspect of this interpretation, the Court explained, was a zone of interests analysis, which "requires [the court] to determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiffs claim." Id. at 1387. The Court went on to say that this zone of interests test "applies to all statutorily created causes of action." Id. at 1388. Lexmark did not mention the FHA or any of the Court's FHA cases.

iv. Analysis

The scope and role of the zone of interests analysis in the FHA context is a difficult issue, and one that has sharply divided the courts that have considered it. Compare, e.g., Cnty. of Cook, 2015 WL 4397842, at *5-6 (holding that Thompson and Lexmark effectively overruled the Supreme Court's interpretation of FHA statutory standing as being coextensive with Article III standing), with, e.g., City of Los Angeles v. JPMorgan Chase & Co., No. 2:14-CV-04168-ODW, 2014 WL 6453808, at *6 (C.D. Cal. Nov. 14, 2014) (finding that the Supreme Court's original interpretation of FHA statutory standing remained good law after Thompson and Lexmark). Ultimately, we disagree with the district court, and hold that the phrase "aggrieved person" in the FHA extends as broadly as is constitutionally permissible under Article III.

Simply put, Trafficante, Gladstone, and Havens have never been overruled, and the law of those cases is clear as a bell: "[statutory] standing under [the FHA] extends 'as broadly as is permitted by Article III of the Constitution.'" Gladstone, 441 U.S. at 98 (quoting Trafficante, 409 U.S. at 209); accord Havens, 455 U.S. at 372. While Thompson has gestured in the direction of rejecting that interpretation, a gesture is not enough. The rule governing these situations is clear: "if a precedent of the Supreme Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to the Supreme Court[] the prerogative of overruling its own decisions." Evans v. Sec'y, Fla. Dep't of Corr., 699 F.3d 1249, 1263 (11th Cir. 2012) (quotation omitted and alterations adopted); accord Tenet v. Doe, 544 U.S. 1, 10-11 (2005). In other words, "the Supreme Court has insisted on reserving to itself the task of burying its own decisions." Evans, 699 F.3d at 1263 (quotation omitted).

Notably, Thompson itself was a Title VII case, not a Fair Housing Act case. Thompson surveyed Trafficante and Gladstone, but did not explicitly overrule them—nor could it, given the different statutory context in which it arose. Instead, the Court held that any suggestion drawn from the FHA cases that Title VII's cause of action is similarly broad was "ill-considered" dictum. Thompson, 562 U.S. at 176. It's true that Title VII contains nearly identical statutory language to the FHA, and therefore the Thompson Court's interpretation of Title VII may signal that the Supreme Court is prepared to narrow its interpretation of the FHA in the future. (The dicta in Thompson indicating that its Title VII interpretation is "compatible" with the Court's previous FHA holdings suggests as much. See 562 U.S. at 176-77.) But that day has not yet arrived, and until it does, our role as an inferior court is to apply the law as it stands, not to read tea leaves. The still-undisturbed holding of the Supreme Court's FHA cases is that the definition of an "aggrieved person" under the FHA extends as broadly as permitted under Article III.

This Court's binding precedent in Nasser is not to the contrary. Nasser stands for the unremarkable proposition that a plaintiff has no cause of action under the FHA if he makes no allegation of discrimination (or disparate impact) on the basis of race (or one of the FHA's other protected characteristics: color, religion, sex, handicap, familial status, and national origin). The allegation of discrimination provides the "racial interest" Nasser requires to bring an economic injury within the scope of the statute. 671 F.2d at 437. The Nasser plaintiffs' claim was unrelated to race (or any protected FHA characteristic) altogether; they simply objected to the rezoning of their property because it cost them money. As the Nasser Court put it, the plaintiffs' "interest in [the] value of the property in no way implicate[d] [the] values protected by the Act." Id.

Indeed, this is exactly how subsequent Eleventh Circuit caselaw has treated Nasser. In Baytree of Inverrary Realty Partners v. City of Lauderhill, 873 F.2d 1407 (11th Cir. 1989)—the only case of this Court to revisit or reference Nasser's treatment of the FHA—we held that a non-minority real estate developer, Baytree, stated a claim under the FHA when it challenged the city's decision to rezone its property, alleging that the decision was racially motivated and rendered the property worthless. Id. at 1408. We distinguished Nasser as a case "in which plaintiffs alleged only an economic injury unaffected by any racial interest," and found it inapposite because Baytree had properly alleged that its injury "result[ed] from racial animus." Id. at 1409. The same is true of the City of Miami's claim. Like Baytree, the City claims to have suffered an economic injury resulting from a racially discriminatory housing policy; in neither case does Nasser prevent the plaintiff from stating a claim under the FHA.

In sum, we agree with the City that the term "aggrieved person" in the FHA sweeps as broadly as allowed under Article III; thus, to the extent a zone of interests analysis applies to the FHA, it encompasses the City's allegations in this case. The City's claim does not suffer from the same flaw as the Nasser plaintiffs', because the City has specifically alleged that its injury is the result of a Bank policy either expressly motivated by racial discrimination or resulting in a disparate impact on minorities.

b. Proximate Cause

The district court also concluded that the City's pleadings did not sufficiently allege that the Bank's lending practices were a proximate cause of the City's injury. It determined that the City had not "allege[d] facts that isolate Defendants' practices as the cause of any alleged lending disparity" compared to the background factors of a cratering economy and the actions of independent actors such as "loan services, government entities, competing sellers, and uninterested buyers." City of Miami v. Bank of America Corp., 2014 WL 3362348, at *5. It also found that the City's statistical analyses indicating that foreclosures caused economic harm were "insufficient to support a causation claim," because some of the studies were not limited to Miami, some were not limited to the defendants' practices, and some did not control for relevant credit factors. Id. The plaintiffs disagree, arguing that they need not plead proximate causation at all, only the lesser "traceability" required by Article III. In the alternative, they say that their pleadings were sufficient under either standard.

Although we agree with the Bank and the district court that proximate cause is a required element of a damages claim under the FHA, we find that the City has pled it adequately.

In Lexmark, the Supreme Court illuminated the doctrine of proximate cause as it relates to statutory causes of action. "[W]e generally presume that a statutory cause of action is limited to plaintiffs whose injuries are proximately caused by violations of the statute." 134 S. Ct. at 1390. This principle reflects "the reality that the judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing," as well as the Court's assumption that Congress is familiar with the traditional common-law rule and "does not mean to displace it sub silentio." Id. (quotation omitted). The Court made clear that proximate causation is not a requirement of Article III, but rather an element of the cause of action under a statute, and it "must be adequately alleged at the pleading stage in order for the case to proceed." Id. at 1391 n.6. The Supreme Court has read a variety of federal statutory causes of action to contain a proximate cause requirement. See, e.g., Lexmark, 134 S. Ct. at 1390-93 (Lanham Act); Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336, 346 (2005) (securities fraud); Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258, 265-68 (1992) (RICO); Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 529-35 (1983) (Clayton Act).

Although proximate cause "is not easy to define," the basic inquiry is "whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits." Lexmark, 134 S. Ct. at 1390. The requirement is "more restrictive than a requirement of factual cause alone," Paroline v. United States, 134 S. Ct. 1710, 1720 (2014), and we have said that it demands "something [more]" than Article III traceability, Focus on the Family v. Pinellas Suncoast Transit Auth., 344 F.3d 1263, 1273 (11th Cir. 2003); see also Lexmark, 134 S. Ct. at 1391 n.6. But the nature of the proximate cause requirement differs statute by statute: it is "controlled by the nature of the statutory cause of action," so the scope of liability depends on the statutory context. Lexmark, 134 S. Ct. at 1390.

No case of the Supreme Court or this Court has ever dealt directly with the existence or application of a proximate cause requirement in the FHA context. But certain statements by the Supreme Court suggest that proximate cause must exist for a damages action brought under the FHA. First, the Lexmark Court characterized proximate cause as a "general[] presum[ption]" in statutory interpretation. Id. at 1390. Moreover, the Supreme Court has observed that an FHA damages claim is "in effect, a tort action," governed by general tort rules, Meyer v. Holley, 537 U.S. 280, 285 (2003); Curtis v. Loether, 415 U.S. 189, 195 (1974) ("A damages action under the [FHA] sounds basically in tort—the statute merely defines a new legal duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach."), and proximate cause is a classic element of a tort claim, see Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, The Law of Torts § 198 (2d ed. 2011). If the City's claim is functionally a tort action, then presumably the City must adequately plead proximate cause, just like any other plaintiff raising any tort claim. At least two of our sister circuits appear to have reached the same conclusion. See Pac. Shores Props., LLC v. City of Newport Beach, 730 F.3d 1142, 1167-68 & n.32 (9th Cir. 2013) (noting that a damages action under the FHA "sounds basically in tort" and applying a proximate cause requirement), cert. denied sub nom. City of Newport Beach v. Pac. Shores Props., LLC, 135 S. Ct. 436 (2014); Samaritan Inns, Inc. v. Dist. of Columbia, 114 F.3d 1227, 1234-35 (D.C. Cir. 1997) (same); see also Miami Valley Fair Hous. Ctr., Inc. v. Connor Grp., No. 3:10-CV-83, 2015 WL 853193, at *4-5 (S.D. Ohio Feb. 26, 2015) (holding that a fair housing organization must establish proximate cause because it is "one step removed from the discrimination," so its claimed damages must be "t[ied] . . . to the defendant's alleged wrongdoing").[8]

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[8] We recognize that our conclusion that a private cause of action under the FHA contains a proximate cause requirement may be in some tension with the Supreme Court's general holding that statutory standing under the FHA extends as broadly as permitted under Article III. As we've explained, Article III's only causation requirement is that the plaintiffs injury be "fairly traceable" to the defendant's unlawful conduct. Defs. of Wildlife, 504 U.S. at 590 (quoting Allen, 468 U.S. at 751). Plainly, proximate cause is not an element of constitutional standing. See Lexmark, 134 S. Ct. at 1391 n.6. Nonetheless, we do not interpret Trafficante, Gladstone, or Havens to have read a proximate cause requirement out of the statute. Nothing in those cases decided, or even asked, whether some kind of proximate cause requirement is an element of an FHA claim.

To the extent those cases addressed Article III standing, they were concerned with what we call today the first Lujan factor: injury in fact—an injury that is "concrete and particularized," and "actual or imminent." Defs. of Wildlife, 504 U.S. at 560. In Trafficante, the plaintiffs were two tenants, one black, one white, who had lost the benefit of interracial associations; causation was not discussed. 409 U.S. at 206; see Gladstone, 441 U.S. at 112-13 (characterizing Trafficante's holding as turning on Article

The Bank argues that proximate cause creates a "directness requirement" within the FHA, and that the City's pleadings, therefore, fail because they do not allege that the Bank's actions directly harmed the City. The City does not accuse the Bank of discriminating against the City itself in its lending practices; instead, it claims that the Bank's discriminatory practices led the City to lose tax revenue and spend money combating the resulting blight. This harm, the Bank claims, is too indirect to have been proximately caused by the Bank's conduct.

III's injury-in-fact requirement). In Gladstone, causation was again not considered, except for a suggestion in dicta that evidence of the defendant's business practices might "be relevant to the establishment of the necessary causal connection between the alleged conduct and the asserted injury" in later stages of litigation. Id. at 114 n.29. Finally, in Havens, the Court did not discuss causation; "the question before [the Court] . . . [was] whether injury in fact ha[d] been sufficiently alleged." 455 U.S. at 376 (emphasis added). Nothing in the holdings of these cases speaks to the existence of a proximate cause requirement, let alone bars us from interpreting the FHA to require a showing of proximate cause for damages actions.

Moreover, it seems inconceivable that the FHA would not contain a proximate cause requirement of some sort, because the alternative would produce seemingly absurd results. Requiring nothing but Article III traceability for FHA damages actions would create an open-ended fount of liability, particularly for plaintiffs (like the City of Miami) who are at least one step removed from the defendant's discriminatory conduct. This, of course, is why proximate cause is a classic element of a tort action—and, as we have said, the Supreme Court has observed that damages claims under the FHA are essentially tort actions. Indeed, this statutory interpretation, rooted in the nature of the cause of action, has now been embraced by all three circuit courts of appeals to have addressed the issue.

We disagree. The Bank proposes to draw its proximate cause test from other statutory contexts, primarily from the Supreme Court's interpretation of the Racketeer Influenced and Corrupt Organizations Act (RICO) in Holmes, 503 U.S. 258. In that case, the Court read a proximate cause requirement into RICO, reasoning that its statutory language (granting a cause of action to anyone injured "by reason of" a violation of 18 U.S.C. § 1692, see 18 U.S.C. § 1964(c)) mirrored language used in the antitrust statutes, which had long been interpreted to contain such a requirement. See Holmes, 503 U.S. at 267-68. One of the "central elements" of proximate cause in the RICO and antitrust context, the Court explained, is "a demand for some direct relation between the injury asserted and the injurious conduct alleged." Id. at 268-69; see, e.g., Simpson v. Sanderson Farms, Inc., 744 F.3d 702, 712 (11th Cir. 2014) (applying the Holmes directness requirement in a civil RICO case); cf Lexmark, 134 S. Ct. at 1390 (appearing to endorse a directness requirement by noting that a claim "ordinarily" fails to allege proximate cause when "the harm [to the plaintiff] is purely derivative of 'misfortunes visited upon a third person by the defendant's acts'" (quoting Holmes, 503 U.S. at 268)). The Bank argues that proximate cause in the FHA context must be the same.

But the Supreme Court in Lexmark made clear that proximate cause is not a one-size-fits-all analysis: it can differ statute by statute. Thus, for example, Lexmark involved an allegation of false advertising under the Lanham Act brought by one company against a rival. As the Court noted, all such injuries "are derivative of those suffered by consumers who are deceived by the advertising." 134 S. Ct. at 1391. A claim based on such a derivative injury might not satisfy proximate cause under a statute that strictly requires a direct connection between the plaintiff's harm and the defendant's conduct. Nevertheless, the Court found that the claim satisfied proximate causation under the Lanham Act: because the statute authorized suit "only for commercial injuries," the derivative nature of the plaintiff's claim could not be "fatal" to the plaintiffs cause of action. Id. In other words, the statutory context shaped the proximate cause analysis. So, too, in this case.

The FHA's proximate cause requirement cannot take the shape of the strict directness requirement that the Bank now urges on us: indeed, such a restriction would run afoul of Supreme Court and Eleventh Circuit caselaw allowing entities who have suffered indirect injuries—that is, parties who have not themselves been directly discriminated against—to bring a claim under the FHA. Notably, the Village of Bellwood in Gladstone was permitted to bring an FHA claim even though it was not directly discriminated against. 441 U.S. at 109-11. So, too, was the non-profit corporation in Havens, which alleged impairment of its organizational mission and a drain on its resources, not direct discrimination. 455 U.S. at 378-79. And in our own Circuit, the same is true of the plaintiff in Baytree, a non-minority developer who challenged a city's zoning decision as racially discriminatory. 873 F.2d at 1408-09. Indeed, the Supreme Court in Havens instructed that the distinction between direct and indirect harms—or, as the Havens Court characterized it, the difference "between 'third-party' and 'first-party' standing"—was "of little significance in deciding" whether a plaintiff had a cause of action under the FHA. 455

U.S. at 375; see Pac. Shores Props., 730 F.3d at 1168 n.32 ("The fact that FHA plaintiffs' injuries must be proximately caused by the defendants' discriminatory acts does not, of course, mean that defendants are not liable for foreseeable, but indirect, effects of discrimination.").

In examining RICO and the antitrust statutes, the Supreme Court has looked to the statutory text and legislative history to determine the scope and meaning of the proximate cause requirement. See Holmes, 503 U.S. at 265-68. Neither party has presented any argument based on these considerations. However, the Supreme Court has observed that the language of the FHA is "broad and inclusive," Trafficante, 409 U.S. at 209, and must be given "a generous construction," id. at 212. What's more, while the Supreme Court has cautioned that "[t]he legislative history of the [the FHA] is not too helpful" in determining the scope of its cause of action, it observed that the FHA's proponents "emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered." Id. at 210. In short, nothing in the text or legislative history of the FHA supports the Bank's cramped interpretation.

As we've noted, damages claims arising under the FHA have long been analogized to tort claims. Thus, we look to the law of torts to guide our proximate cause analysis in this context. We agree with the City that the proper standard, drawing on the law of tort, is based on foreseeability.[9] See Dobbs, Hayden &

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[9] We acknowledge that the Supreme Court has rejected foreseeability as the touchstone of proximate cause "in the RICO context," Hemi Grp., LLC v. City of New York, 559 U.S. 1, 12

Bublick, supra, § 199, at 686 ("Professional usage almost always reduces proximate cause issues to the question of foreseeability. The defendant must have been reasonably able to foresee the kind of harm that was actually suffered by the plaintiff . . ."); see also Pac. Shores Props., 730 F.3d at 1168 & n.32 (noting in the FHA context that "the doctrine of proximate cause serves merely to protect defendants from unforeseeable results" of their unlawful conduct, and that defendants are "liable for foreseeable . . . effects of discrimination.").

Under this standard, the City has made an adequate showing. The complaint alleges that the Bank had access to analytical tools as well as published reports drawing the link between predatory lending practices "and their attendant harm," such as premature foreclosure and the resulting costs to the City, including, most notably, a reduction in property tax revenues. Complaint at 8-9, 26-27, 32-33, 4748, 50. The district court rejected the plaintiffs' claim partly because it failed to "allege facts that isolate Defendants' practices as the cause of any alleged lending disparity." City of Miami v. Bank of America Corp., 2014 WL 3362348, at *5. But as we have said even in the more restrictive RICO context, proximate cause "is not . . . the same thing as . . . sole cause." Cox v. Adm'r U.S. Steel & Carnegie, 17 F.3d 1386, 1399 (11th Cir.), opinion modified on reh'g, 30 F.3d 1347 (11th Cir. 1994); see Dobbs, Hayden & Bublick, supra, § 198, at 683 ("[The proximate cause requirement] does not mean that the defendant's conduct must be the only proximate cause of the plaintiff's injury.").

(2010), but we have already explained why that statutory context does not govern our analysis today.

Instead, a proximate cause is "a substantial factor in the sequence of responsible causation." Cox, 17 F.3d at 1389 (quotation omitted). The City has surely alleged that much: it claims that the Bank's discriminatory lending caused property owned by minorities to enter premature foreclosure, costing the City tax revenue and municipal expenditures. Although there are several links in that causal chain, none are unforeseeable. See Dobbs, Hayden & Bublick, supra, § 204, at 705 (explaining that intervening causes become "superseding" only if they are unforeseeable). And, as we noted in the context of Article III traceability, the City has provided the results of regression analyses that purport to draw the connection between the Bank's conduct toward minority borrowers, foreclosure, and lost tax revenue. This empirical data is sufficient to "raise the pleadings above the speculative level." Dekalb Cnty. v. HSBC N. Am. Holdings, Inc., No. 1:12-CV-03640-SCJ, 2013 WL 7874104, at *7 (N.D. Ga. Sept. 25, 2013); see Twombly, 550 U.S. at 555; cf. Maya v. Centex Corp., 658 F.3d 1060, 1073 (9th Cir. 2011) ("Expert testimony can be used to explain the causal connection between defendants' actions and plaintiffs' injuries, even in the context of other market forces.").[10]

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[10] The Bank also makes much of City of Cleveland v. Ameriquest Mortgage Sec., Inc., 615 F.3d 496 (6th Cir. 2010), a Sixth Circuit case brought by the City of Cleveland against various financial entities that it claimed were responsible for a large portion of the Cleveland subprime lending market and a foreclosure crisis that devastated local neighborhoods. Id. at 498-99. The Sixth Circuit held that the city's claims did not adequately plead proximate cause, in part because "the cause of the alleged harms is a set of actions (neglect of property, starting

In the face of longstanding caselaw drawn from the Supreme Court and this Court permitting FHA claims by so-called third party plaintiffs who are injured by a defendant's discrimination against another person, it is clear that the harm the City claims to have suffered has "a sufficiently close connection to the conduct the statute prohibits." Lexmark, 134 S. Ct. at 1390. Of course, whether the City will be able to actually prove its causal claims is another matter altogether. At this stage, it is enough to say that the City has adequately pled proximate case, as required by the FHA.

3. Statute of Limitations

The FHA also requires that claims be filed "not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice." 42 U.S.C. § 3613(a)(1)(A). The district court concluded, and the parties do not contest, that an FHA claim for

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fires, looting, and dealing drugs) that is completely distinct from the asserted misconduct (financing subprime loans)." Id. at 504. The defendants insist that the same analysis applies here. But City of Cleveland is readily distinguishable. Most glaringly, the city in that case brought a state-law public nuisance claim, not an FHA claim. Id. at 498. Ohio law had adopted its proximate cause test from Holmes, which we have already explained is inapposite, and the court in no way suggested that an identical proximate cause requirement existed in the FHA. Id. at 503. Moreover, the defendants in that case "did not originate the subprime mortgages at issue"—rather, they "finance[ed], purchas[ed], and pool[ed] . . . vast amounts of these loans," creating mortgage-backed securities that were then sold to the public. Id. at 499. It was this financial activity that Cleveland challenged as a public nuisance, not the original issuance of the loans. Thus, the Cleveland defendants' activity was one step further removed than the activity of the Bank in this case, which issued the allegedly predatory loans in the first instance.

issuing a discriminatory loan begins to run from the date that the loan closes. City of Miami v. Bank of America Corp., 2014 WL 3362348, at *6; see Estate of Davis v. Wells Fargo Bank, 633 F.3d 529, 532 (7th Cir. 2011) (calculating FHA statute of limitations for a predatory loan beginning with the date the loan was issued).

This lawsuit was filed on December 13, 2013. Thus, in a traditional statute of limitations analysis, the complained-of loans must have closed after December 13, 2011. The City maintains that it has alleged a pattern and practice of discriminatory lending by the Bank, and its claims, therefore, qualify for the application of the "continuing violation doctrine." The district court disagreed, finding that the City had not alleged facts sufficient to support its allegation that the specific practices continued into the statutory period. We remain unpersuaded.

The complaint alleged that the City had identified 3,326 discriminatory loans issued by the Bank in Miami between 2004 and 2012 that had resulted in foreclosure. Complaint at 50-51. It then listed ten specific property addresses that it claimed "corresponded to these foreclosures," but provided no specific information (e.g., the type of loan, the characteristics that made it predatory or discriminatory, when the loan closed, when the property went into foreclosure, etc.) for each address. Id. at 51. (The City also claimed that "with the benefit of discovery," it "anticipate[d] . . . be[ing] able to identify more foreclosures resulting from the issuance of discriminatory loans." Id. at 51 n.35.) As the district court noted, however, the City failed to allege that any of the loans closed within the limitations period (between December 13, 2011, and December 13, 2013).

On appeal, the City does not contend that its original complaint was adequate; rather, it argues that it could readily cure the statute of limitations flaws if given the opportunity. In support, the City points to the proposed amended complaint that it provided along with its motion for reconsideration and motion to amend. The district court acknowledged that the City might indeed be able to remedy its statute of limitations deficiencies with an amendment, but the court never considered whether the City's proposed amended complaint was sufficient, because it concluded that the City remained outside the statute's zone of interests and had not adequately pled proximate cause. Because the district court erred both as to the zone of interests and proximate cause, we are obliged to remand the cause of action in the first instance to determine whether or not the City could remedy any statute of limitations deficiency. We decline to evaluate the City's proposed amended complaint before the district court has had the opportunity to do so. See Adinolfe v. United Techs. Corp., 768 F.3d 1161, 1172 (11th Cir. 2014) ("[A]s an appellate tribunal, we are generally limited to reviewing arguments and issues that have been raised and decided in the district court.").

In order to provide guidance on remand, we offer this discussion of the application of the continuing violation doctrine to this case. In addition to noting that the City never alleged that any particular loan closed within the limitations period (a deficiency that may well be cured in an amended pleading), the district court also seemingly held that the City's claim could not qualify for the application of the continuing violation doctrine because the complaint did not identify a singular and uniform practice of continuing conduct.

The continuing violation doctrine applies to "the continued enforcement of a discriminatory policy," and allows a plaintiff to "sue on otherwise time-barred claims as long as one act of discrimination has occurred . . . during the statutory period." Hipp v. Liberty Nat. Life Ins. Co., 252 F.3d 1208, 1221 (11th Cir. 2001) (per curiam). The governing law on the continuing violation doctrine in the FHA context is drawn from the Supreme Court's decision in Havens. In that case, three plaintiffs[11]—a black individual looking to rent an apartment, a black "tester," and a white "tester"[12]—brought FHA claims. Havens, 455 U.S. at 368. Their lawsuit was filed on January 9, 1979. Coles v. Havens Realty Corp., 633 F.2d 384, 386 (4th Cir. 1980), aff'd in part, rev'd in part sub nom. Havens, 455 U.S. 363. At the time, the limitations period under the FHA was 180 days. The plaintiffs identified five separate incidents of discrimination: on March 14, March 21, March 23, July 6, and July 13 of 1978. Only the incident on July 13 was within the limitations period. See Havens, 455 U.S. at 380.

On March 14, March 21, and March 23, the two testers asked Havens about available apartments. Each time, the black tester was told that nothing was available, while the white tester was told that there

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[11] As discussed earlier, there was also a fourth plaintiff: a non-profit corporation. Havens, 455 U.S. at 367. Its claim is not relevant to the discussion of the statute of limitations.

[12] The testers posed as renters for the purpose of collecting evidence of unlawful racial steering practices.

were vacancies. Id. at 368. On July 6, the black tester made a further inquiry and was told that there were no vacancies, while another white tester (not a party to the suit) was told that there were openings. Id. Finally, on July 13—the only incident within the limitations period—the black plaintiff who was genuinely looking to rent asked Havens about availability and was falsely told that there was nothing. Id.

All three plaintiffs alleged that Havens's practices deprived them of the benefits of living in an integrated community. Id. at 369. The Supreme Court held that the claims were not time-barred for any of the plaintiffs because they alleged a "continuing violation" of the FHA, despite the fact that only one discriminatory incident was within the limitations window, and that incident involved only one of the three plaintiffs. Id. at 380-81. "[A] 'continuing violation' of the Fair Housing Act should be treated differently from one discrete act of discrimination," the Court explained. Id. at 380. The Court reasoned that "[w]here the challenged violation is a continuing one," there is no concern about the staleness of the plaintiff's claims. Id. Moreover, the Court emphasized "the broad remedial intent of Congress embodied in the [Fair Housing] Act" in rejecting the defendants' "wooden application" of the statute of limitations. Id. The Court concluded: "where a plaintiff, pursuant to the Fair Housing Act, challenges not just one incident of conduct violative of the Act, but an unlawful practice that continues into the limitations period, the complaint is timely when it is filed within [the limitations period, starting at] the last asserted occurrence of that practice." Id. at 380-81.

The case before us—if the City is able to identify FHA violations within the limitations period—is on all fours with Havens. The City has alleged "not just one incident . . . but an unlawful practice that continues into the limitations period." Id. at 381. The City alleges that the Bank has engaged in a longstanding practice of discriminatory lending in which it extends loans to minority borrowers only on more unfavorable terms than those offered to white borrowers. The predatory qualities of the loans have taken slightly different forms over time (e.g., higher interest rates, undisclosed back-end premiums, higher fees, etc.), but the essential discriminatory practice has remained the same: predatory lending targeted at minorities in the City of Miami. The fact that the burdensome terms have not remained perfectly uniform does not make the allegedly unlawful practice any less "continuing." The various instances of discriminatory lending comprise the practice, which continues into the limitations period. At least at the pleading stage, this is enough to plausibly invoke the continuing violation doctrine. See City of Los Angeles, 2014 WL 6453808, at *7 ("The City's allegations of discrimination under the FHA relate to Chase's lending practices overall, not a specific type of loan issued. The Court finds the allegations sufficient to apply the continuing violations doctrine."); City of Los Angeles v. Citigroup Inc., 24 F. Supp. 3d 940, 952 (C.D. Cal. 2014) ("In this case, [the plaintiff] is alleging a pattern and practice of 'discriminatory lending' on the part of Defendants over at least an eight-year period. While the types of loans that Defendants allegedly issued to minority borrowers may have changed during the relevant time period, [the plaintiff] alleges that they remained high-risk and discriminatory. This is sufficient to apply the continuing-violation doctrine."); accord City of Los Angeles v. Bank of Am. Corp., No. CV 13-9046 PA (AGRx), 2014 WL 2770083, at *10 (C.D. Cal. June 12, 2014); City of Los Angeles v. Wells Fargo & Co., 22 F. Supp. 3d 1047, 105859 (C.D. Cal. 2014); see also Hargraves v. Capital City Mortg. Corp., 140 F. Supp. 2d 7, 17-19 (D.D.C. 2000) (applying the continuing violation doctrine to an FHA claim challenging a mortgage company's practice of predatory and discriminatory lending, where that practice took various forms, including charging exorbitant interest rates, fraudulent fees and penalties, inadequate risk assessment, and elevated rates of foreclosure).

4. Remand

Resolving a plaintiffs motion to amend is "committed to the sound discretion of the district court," but that discretion "is strictly circumscribed" by Rule 15(a)(2) of the Federal Rules of Civil Procedure, which instructs that leave to amend should be "freely give[n] when justice so requires." Gramegna v. Johnson, 846 F.2d 675, 678 (11th Cir. 1988); see also Shipner v. E. Air Lines, Inc., 868 F.2d 401, 407 (11th Cir. 1989) ("[U]nless a substantial reason exists to deny leave to amend, the discretion of the district court is not broad enough to permit denial").

As we have explained, we find that the City is within the FHA's zone of interests and has sufficiently alleged proximate causation between its injury and the Bank's conduct. The district court's refusal to allow the City to amend, and its conclusion that any amended complaint would be futile, was legal error and therefore an abuse of discretion. On remand, the City should be granted leave to amend its complaint.

We also note that while this appeal was pending, the Supreme Court handed down a decision that may materially affect the resolution of this case. In Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015), a non-profit organization brought a Fair Housing Act claim against the Texas Department of Housing and Community Affairs, alleging that the Department's allocation of low-income housing tax credits caused racial segregation by "granting too many credits for housing in predominantly black inner-city areas and too few in predominantly white suburban neighborhoods." Id. at 2514. The claim was brought on a disparate-impact theory, alleging not that the Department's practice was driven by a discriminatory intent, but rather that it had a "'disproportionately adverse effect on minorities' and [was] otherwise unjustified by a legitimate rationale." Id. at 2513 (quoting Ricci v. DeStefano, 557 U.S. 557, 577 (2009)). The question before the Court was whether disparate-impact claims are cognizable under the FHA. The Court held that they are. Id. at 2525.

However, in dicta, the Court announced the "proper[] limit[s]" on disparate impact liability under the FHA, needed both to avoid serious constitutional issues and to protect potential defendants from abusive disparate-impact claims. Id. at 2522; see id. at 2522-24. Specifically, the Court noted that defendants must be allowed to "explain the valid interest served by their [challenged] policies," id. at 2522, and that courts should insist on a "robust causality requirement" at the "prima facie stage" linking the defendant's conduct to the racial disparity, id. at 2523. The Court emphasized that disparate-impact claims must be aimed at "removing artificial, arbitrary, and unnecessary barriers," rather than "displac[ing] valid governmental and private priorities." Id. at 2524 (quoting Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971)) (alterations adopted). Any newly pled complaint must take into account the evolving law on disparate impact in the FHA context. Without the new pleadings before us, we have no occasion to pass judgment on how Inclusive Communities will impact this case, but we flag the issue both for the parties and for the district court on remand.

C. Unjust Enrichment Claim

As for the City's state law unjust enrichment claim, we agree with the district court and affirm its ruling. In deciding this claim, we are obliged to apply Florida's substantive law. See Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938). Where the highest state court has not provided the definitive answer to a question of state law, "we must predict how the highest court would decide this case," looking to the decisions of the lower state courts for guidance. See Molinos Valle Del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1348 (11th Cir. 2011). Under Florida law, the doctrine of unjust enrichment (sometimes called a "contract implied in law," "quasi-contract," and various other terms) governs the situation in which one party has conferred a valuable benefit on another in the absence of a contract, but "under circumstances that ma[ke] it unjust to retain it without giving compensation." See Magwood v. Tate, 835 So. 2d 1241, 1243 (Fla. Dist. Ct. App. 2003) (quoting Commerce P'ship 8098 Ltd. P'ship v. Equity Contracting Co., 695 So. 2d 383, 386 (Fla. Dist. Ct. App. 1997)). There are three elements of an unjust enrichment claim under Florida law: first, the plaintiff has conferred a benefit on the defendant; second, the defendant voluntarily accepted and retained that benefit; and, finally, the circumstances are such that it would be inequitable for the defendants to retain the benefit without paying for it. Virgilio v. Ryland Grp., Inc., 680 F.3d 1329, 1337 (11th Cir. 2012) (citing Fla. Power Corp. v. City of Winter Park, 887 So. 2d 1237, 1241 n.4 (Fla. 2004)). As for the first element, the benefit must be conferred directly from the plaintiff to the defendant. Century Senior Servs. v. Consumer Health Ben. Ass'n, Inc., 770 F. Supp. 2d 1261, 1267 (S.D. Fla. 2011) (citing Peoples Nat'l Bank of Commerce v. First Union Nat'l Bank of Fla., N.A., 667 So. 2d 876, 879 (Fla. Dist. Ct. App. 1996)). "At the core of the law of restitution and unjust enrichment is the principle that a party who has been unjustly enriched at the expense of another is required to make restitution to the other." Gonzalez v. Eagle Ins. Co., 948 So. 2d 1, 3 (Fla. Dist. Ct. App. 2006).

The City alleged that the Bank "received and utilized benefits derived from a variety of municipal services, including police and fire protection, as well as zoning ordinances, tax laws, and other laws and services that have enabled [the Bank] to operate and profit within the City of Miami." Complaint at 54. It went on to allege that "[a]s a direct and proximate result of [the Bank's] predatory lending practices, [the Bank] ha[s] been enriched at the City's expense" by utilizing those benefits while denying the City tax revenue and costing it in additional municipal expenditures required to address foreclosed properties. The Bank "failed to remit those wrongfully obtained benefits," the complaint claimed. The City also alleged that it had paid for the Bank's externalities (the costs of the harm caused by the discriminatory lending patterns), that the Bank was aware of this benefit, and that its retention would be unjust. Id. at 55.

The district court dismissed the claim without prejudice, in part because the City had not alleged that it had conferred a direct benefit onto the Bank to which they were not otherwise legally entitled, as required under Florida law. As for the denied tax revenues, the district court noted that such a denial is not a direct benefit conferred on the Bank by the City. As for the municipal services, the district court found that they did not create an unjust enrichment claim for two reasons. First, the municipal services were not benefits conferred directly on the Bank—the services were provided to the residents of Miami, not to the Bank, and any benefit the Bank received was merely derivative. Second, the City had not adequately alleged that the Bank, as a Miami property owner, was not legally entitled to those services. We agree.

The City maintains that its complaint states a cause of action under Florida law, but it has not cited to a single Florida case. The City relies primarily on White v. Smith & Wesson Corp., 97 F. Supp. 2d 816 (N.D. Ohio 2000), where the mayor and City of Cleveland sued various gun manufacturers and dealers alleging, inter alia, unjust enrichment on the ground that the city had conferred a benefit on the defendants by paying for their "externalities": "the costs of the harm caused by Defendants' failure to incorporate safety devices into their handguns and negligent marketing practices." Id. at 829. The Ohio law of unjust enrichment essentially tracks Florida law. See id. ("In order to maintain a cause of action for unjust enrichment under Ohio law, a plaintiff must allege: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and, (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment."). Without citing to a single Ohio state court case in its unjust enrichment analysis, the district court determined that plaintiffs had stated such a claim under Ohio law.

The City cites only two other cases, neither of which were from Florida. See City of Boston v. Smith & Wesson Corp., No. 199902590, 2000 WL 1473568, at *18 (Mass. Super. Ct. July 13, 2000) (allowing an unjust enrichment claim against gun manufacturers under Massachusetts law on the same reasoning as was employed in White); City of New York v. Lead Indus. Ass'n, Inc., 190 A.D.2d 173, 177 (N.Y. App. Div. 1993) (permitting the City of New York's claim for restitution against manufacturers of lead-based paint for the City's expenditures in abating the hazard of lead-based paint and treating the victims). None of these cases, obviously, governs our application of Florida law.

We have not found any case—and the City has provided none—supporting an unjust enrichment claim of this type under Florida law. First, the City alleges that the Bank must pay the City for the tax revenue the City has been denied due to the Bank's unlawful lending practices. Although a deprivation of tax revenue may create an injury in fact under Article

III, such an injury does not fit within the unjust enrichment framework. The missing tax revenue is in no way a benefit that the City has conferred on the Bank. The City has provided no explanation for this incongruity on appeal.

Instead, the City focuses on the municipal services—including police, firefighters, zoning ordinances, and tax laws—that it claims it would not have had to provide if not for the Bank's predatory lending. But this version of the unjust enrichment claim fares no better, for three independent reasons. For starters, it's not clear that municipal expenditures are among the types of benefits that can be recovered by unjust enrichment under Florida law. We have found no Florida case in which a municipality recovered its expenditures on an unjust enrichment theory. Indeed, at least one case suggests that a municipality cannot recover such expenditures without express statutory authorization, which the City has never alleged. See Penelas v. Arms Tech., Inc., No. 99-1941 CA-06, 1999 WL 1204353, at *2 (Fla. Cir. Ct. Dec. 13, 1999) ("[T]he County's claim for damages, based on the costs to provide 911, police, fire and emergency services effectively seeks reimbursement for expenditures made in its performance of governmental functions. Costs of such services are not, without express legislative authorization, recoverable by governmental entities."), aff'd, 778 So. 2d 1042 (Fla. Dist. Ct. App. 2001).

Moreover, the benefits provided by these municipal services were not directly conferred on the Bank, as is required for an unjust enrichment claim under Florida law. See, e.g., Virgilio, 680 F.3d at 1337 (affirming the dismissal of an unjust enrichment claim under Florida law because the plaintiffs only "'indirectly' conferred a benefit on Defendants"); Extraordinary Title Servs. v. Fla. Power & Light Co., 1 So. 3d 400, 404 (Fla. Dist. Ct. App. 2009) (affirming the dismissal of an unjust enrichment claim because the plaintiff "ha[d] not conferred a direct benefit" on the defendant). As the district court correctly noted, municipal police and fire services directly benefit the residents and owners of homes in the City of Miami, not the financial institution that holds the loans on those properties. And tax laws and zoning ordinances are quite clearly not direct benefits conferred on Bank of America: they are laws of general applicability that, indeed, apply to all residents of Miami. No Florida caselaw suggests that these benefits are direct enough to sustain an unjust enrichment claim.

Finally, the City has failed to allege facts to show that circumstances are such that it would be inequitable for the Bank to retain such benefits without compensation. Even assuming that these municipal services did confer a cognizable benefit on the Bank as the owner of foreclosed property, the City does not challenge the district court's determination that the Bank was legally entitled to those services. Cf. State Farm Fire & Cas. Co. v. Silver Star Health & Rehab, 739 F.3d 579, 584 (11th Cir. 2013) ("If an entity accepts and retains benefits that it is not legally entitled to receive in the first place, Florida law provides for a claim of unjust enrichment."). The City has provided no arguments and cited no Florida caselaw explaining why the Bank would not be entitled to police and fire protection like any other property owner.

The Florida Supreme Court has not ruled on whether an unjust enrichment claim exists under these circumstances. But given the complete lack of supporting Florida caselaw, we decline to invent a novel basis for unjust enrichment under Florida law today. Accordingly, we affirm the district court's order dismissing the City's unjust enrichment claim.

IV. Conclusion

Nothing we have said in this opinion should be taken to pass judgment on the ultimate success of the City's claims. We hold only that the City has constitutional standing to bring its FHA claims, and that the district court erred in dismissing those claims with prejudice on the basis of a zone of interests analysis, a proximate cause analysis, or the inapplicability of the continuing violation doctrine.

The judgment of the district court is AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this opinion.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-24506-CIV-DIMITROULEAS

CITY OF MIAMI, a Florida municipal corporation,

Plaintiff,

vs.

BANK OF AMERICA CORPORATION; BANK OF AMERICA, N.A.; COUNTRYWIDE FINANCIAL CORPORATION; COUNTRYWIDE HOME LOANS; and COUNTRYWIDE BANK, FSB,

Defendants.

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ORDER GRANTING MOTION TO DISMISS

THIS CAUSE is before the Court upon a Motion to Dismiss (the "Motion") [DE 33], filed herein on February, 28, 2014 by Defendants Bank of America Corporation ("BoA"), Bank of America, N.A., Countrywide Financial Corporation, Countrywide Home Loans, and Countrywide Bank FSB ("Defendants"). Plaintiff City of Miami ("Plaintiff" or "City") has filed an Opposition [DE 37]. Both parties also filed supplemental briefing. The Court has carefully considered the Motion [DE 33], the Plaintiffs Opposition [DE 37], the Defendants' Reply [DE 41], and the Plaintiffs Surreply [DE 48], and the oral arguments made at the June 20, 2014, hearing. The Court is otherwise fully advised in the premises.

I. BACKGROUND

This suit is brought pursuant to the Fair Housing Act of 1968 ("FHA"), as amended, 42 U.S.C. § 3601, *et seq.,* to seek redress for injuries allegedly caused by Defendants' pattern or practice of illegal and discriminatory mortgage lending. Comp. [DE 1] ¶ 2. Specifically, Plaintiff seeks injunctive relief and damages for financial injuries due to foreclosures on Defendants' loans in minority neighborhoods and to minority borrowers that are the result of Defendants' discriminatory lending practices, including both intentional discrimination and disparate impact discrimination. ¶ 2. Plaintiff alleges that beginning in 2004, Defendants began to flood historically under-served minority communities with high cost and other "predatory" loans, allegedly constituting "reverse redlining." ¶ 7.

Plaintiff alleges that Defendants engaged in both redlining and reverse redlining. ¶ 10. Plaintiff further alleges that Defendants' pattern and practice of reverse redlining has caused an excessive and disproportionately high number of foreclosures on Defendants' loans in the minority neighborhoods of Miami. ¶ 11. Plaintiff also alleges that Defendants' practice of traditional redlining has also caused an excessive and disproportionately high number of foreclosures on Defendants' loans in the minority neighborhoods of Miami. ¶ 12. The Complaint alleges that, since 2004, Defendants have engaged in a continuing and unbroken pattern and practice of mortgage discrimination in Miami that still exists today. ¶ 10.

The Complaint further alleges that Defendants would have comparable foreclosure rates in minority and white communities if they had properly and uniformly applied underwriting practices in both areas. ¶ 13. The Complaint alleges that Defendants' practice of failing to underwrite minority borrowers' applications properly, and of putting these borrowers into loans which: (1) have more onerous terms than loans given to similarly situated white borrowers; and (2) the borrowers cannot afford, leads to foreclosures. ¶ 13.

Plaintiff's Complaint includes data and statistical analysis, as well as statements from Confidential Witnesses to support its claims. For example, a regression analysis that allegedly controls for creditworthiness and other factors is offered to show that an African-American BoA borrower was 1.581 times more likely to receive a predatory loan than a white borrower, and a Latino borrower was 2.807 times more likely to receive such a loan. ¶ 15. Plaintiff alleges that Defendants have intentionally targeted predatory practices at African-American and Latino neighborhoods and residents by targeting these neighborhoods, without regard for credit history, for high-cost loans, for increased interest rates, points, and fees, for disadvantageous loan terms, and for unfair and deceptive lending practices in connection with marketing and underwriting mortgage loans. ¶ 163. Further, the Complaint alleges that the discretionary lending policies and practice of targeting minorities, who received predatory loan terms regardless of creditworthiness, have caused and continue to cause foreclosures in Miami. ¶ 164.

Plaintiff further alleges that the discriminatory practices and resulting foreclosures in the minority neighborhoods have inflicted significant, direct, and continuing financial harm to the City. ¶ 19. Plaintiff seeks damages based on reduced property tax revenues based on: (a) the decreased value of the vacant properties themselves; and (b) the decreased value of properties surrounding the vacant properties. ¶ 20. Plaintiff also seeks damages based on the expenditures of municipal services that have been and will be required to remedy the blight and unsafe and dangerous conditions which exist at vacant properties that were foreclosed as a result of BoA's illegal lending practices. ¶ 20.

Defendants now move to dismiss the Complaint on the grounds that (1) Plaintiff lacks standing[1]; (2) Plaintiffs FHA claim is time-barred by the statute of limitations; and (3) the Complaint fails to state a claim upon which relief can be granted. For the reasons set forth below, the Court grants Defendants' Motion to Dismiss.

II. LEGAL STANDARD

As a threshold matter, the Court must determine if jurisdiction exists before proceeding to the merits of the case. *Sinochem Int 'l Co. v. Malay Int 'l Shipping Corp*, 549 U.S 422, 431 (2007) ("Without jurisdiction the court cannot proceed at all in any cause; it may not assume jurisdiction for the purposes of deciding the merits of the case." (internal quotations omitted)).

[1] In Defendants' Reply and Plaintiff's Surreply, the parties briefed the "zone of interests" issue.

"The burden for establishing federal subject matter jurisdiction rests with the party bringing the claim." *Sweet Pea Marine, Ltd. v. APJMarine, Inc.*, 411 F.3d 1242, 1247 (11th Cir. 2005). Attacks on subject matter jurisdiction under Rule 12(b)(1) are either facial or factual. *Garcia v. Copenhaver, Bell & Assocs., M.D.'s, P.A.*, 104 F. 3d 1256, 1260 (11th Cir. 1997). "Facial attacks on the complaint require the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *Garcia*, F. 3d at 1260 (internal quotations omitted). "Factual attacks, on the other hand, challenge the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered." *Garcia,* F. 3d at 1261 (internal quotations omitted). However, "[w]here the jurisdictional issues are intertwined with the substantive merits, the jurisdictional issues should be referred to the merits." *Eaton v. Dorchester Dev., Inc.*, 692 F. 2d 727, 733 (11th Cir. 1982). Thus, when "an attack on subject matter jurisdiction also implicates an element of the cause of action," the court should apply a Rule 12(b)(6) standard. *Garcia*, 104 F. 3d at 1261.

Regardless of the standard, "federal courts cannot exercise jurisdiction over cases where the parties lack standing." *Fla. Wildlife Fed'n, Inc. v. S. Fla. Water Mgmt. Dist.*, 647 F. 3d 1296, 1302 (11th Cir. 2011). This principle exists because there is "a constitutional limitation of federal-court jurisdiction to actual cases or controversies" and "[o]ne element of the case-or-controversy requirement is that plaintiffs must establish that they have standing to sue." *Clapper v.*

Amnesty Intern. USA, 133 S. Ct. 1138, 1146 (2013) (internal citations and quotations omitted). To establish standing, "a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Fla. Wildlife Fed'n, Inc.*, 647 F. 3d at 1302 (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-181 (2000)). "If at any point in the litigation the plaintiff ceases to meet all three requirements for constitutional standing, the case no longer presents a live case or controversy, and the federal court must dismiss the case for lack of subject matter jurisdiction." *Id.*

Where a plaintiff brings a cause of action pursuant to a federal statute, the plaintiff must establish both Article III standing and statutory standing. *See, e.g., United States v. $38,000.00 in U.S. Currency*, 816 F.2d 1538, 1544 (11th Cir. 1987). Article III of the United States Constitution requires that a litigant have standing to invoke the power of a federal court. *See supra.* In contrast, statutory standing requires the plaintiff to establish that he falls within the class of plaintiffs whom Congress has authorized to sue under that statute. *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1387 (2014).

III. DISCUSSION

1. Count I: Violations of the Federal Fair Housing Act

A. Standing under the Fair Housing Act

In order to have standing for any statutory cause of action, the zone of interests and proximate causation requirements must be met. *Lexmark*, 134 S. Ct. at 1391. Upon application of the appropriate 12(b)(6) standard, this Court finds that neither requirement is met in this case.

i. Zone of Interests

The Supreme Court has made clear that the zone of interests test should be applied to any cause of action being brought under a statute. Courts are to "presume that a statutory cause of action extends only to plaintiffs whose interests 'fall within the zone of interests protected by the law invoked.'" *Lexmark*, 134 S. Ct. at 1388 (citing *Allen v. Wright,* 468 U.S. 737, 751 (1984)). The Supreme Court has stated that the zone of interests test "applies to all statutorily created causes of action; that it is a 'requirement of general application'; and that Congress is presumed to 'legist[e] against the background of the zone-of-interests limitation." *Lexmark*, 134 S. Ct. at 1388 (citing *Bennett v. Spear,* 520 U.S. 154, 163 (1977); *see also Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258, 287-288 (Scalia, J., concurring in judgment)). The test bars a plaintiffs claims when his "'interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that' Congress authorized that plaintiff to sue." *Lexmark*, 134 S. Ct. at 1389 (citing *Match-E-Be-Nash-She-Wish*

Band of Pottawatomi Indians v. Patchak, 132 S.Ct. 2199, 2210 (2012)).

The Fair Housing Act § 812 provides that after the expiration of a period for administrative remedies,

> the person aggrieved may . . . commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint.

In *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 108-09 (1979), the Supreme Court held that § 812 provides "parallel remedies to precisely the same prospective plaintiffs" as does § 810.

This Court's[2] determination of whether Plaintiff has standing to sue under the FHA is guided by the

[2] The district court in *City of Los Angeles v. Bank of America Corp.*, 2014 WL 2770083 (C.D. Cal. Jun. 12, 2014) declined to expand the zone of interests requirement into the analysis of standing under the FHA. *See id.* at *8 ("To the extent that Defendants argue that post- *Thompson* and post- *Lexmark,* a plaintiff needs to meet a separate 'zone of interests' requirement in order to have standing to bring a FHA claim, the Supreme Court has not yet applied that requirement to the FHA. Although the Supreme Court may explicitly require a separate 'zone of interests' statutory standing analysis under the FHA if presented with the issue in the future, this Court declines to do so here."). Unlike the district court in *City of Los Angeles*, this Court is in the Eleventh Circuit so it is bound by the Eleventh Circuit's opinion in *Nasser v. City of Homewood*, 671 F. 2d 432 (11th Cir. 1982), which does apply this requirement to the FHA. *See infra.* If it turns out that the zone of interests for purposes of standing under the FHA is as broad as Article III standing, this court's ruling may very well be different as to the zone of interests analysis, but that would not change the deficiencies in

Eleventh Circuit's opinion in *Nasser v. City of Homewood*, 671 F. 2d 432 (11th Cir. 1982). In that case, the Eleventh Circuit interpreted the FHA's zone of interests in light of the Supreme Court's decisions regarding the topic. In *Nasser*, the plaintiffs brought a claim under the FHA and claimed that they were injured by the diminution in value of their property as a result of the defendants' conduct. *Nasser*, 671 F. 2d at 436.

In deciding *Nasser*, the Eleventh Circuit considered *Trafficante v. Metropolitan Life Ins.* Co., 409 U.S. 205 (1972). In that case, the Supreme Court found that the plaintiffs, a white and a black resident of an apartment complex who alleged that they had lost the social and professional benefits of living in an integrated community, had standing and were within the zone of interests protected by the FHA. The *Nasser* decision noted that, in *Trafficante*,

> The reference to 'the person aggrieved' showed 'a congressional intention to define standing as broadly as is permitted by Article III of the Constitution' . . . insofar as tenants of the same housing unit that is charged with discrimination are concerned.

Nasser, 671 F. 2d at 437 (citing *Trafficante* 409 U.S. at 209).

The Eleventh Circuit also considered *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). In *Nasser*, the Eleventh Circuit explained that the *Gladstone* decision "said that a showing of injury to

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Plaintiff's allegations of proximate cause, as discussed in the following section.

the plaintiffs' community as in *Trafficante* coupled with economic injury to the value of the plaintiffs' homes was sufficient to establish standing under the Fair Housing Act." *Nasser*, 671 F. 2d at 437 (citing *Gladstone,* 441 U.S. at 114-15). However, the Eleventh Circuit continued:

> There is no indication that the Court intended to extend standing, beyond the facts before it, to plaintiffs who show no more than an economic interest which is not somehow affected by a racial interest. There is no suggestion, either in the Act or its legislative history, that Congress intended to entrust the enforcement of the Fair Housing Act to such plaintiffs.

Nasser, 671 F. 2d at 437. Accordingly, the Eleventh Circuit held that the property owner plaintiffs lacked standing under the FHA: "The policy behind the Fair Housing Act emphasizes the prevention of discrimination in the provision of housing on the basis of 'race, color, religion, sex, or national origin.' . . . Simply stated, the plaintiffs offered no evidence that they possess 'rights granted' by the Fair Housing Act. Their interest in value of the property in no way implicates values protected by the Act." *Nasser*, 671 F. 2d at 437.

In this case, the Plaintiff alleges merely economic injuries. [DE 1] ¶¶ 133-159. Plaintiff prays for relief for economic injury from the reduction in tax revenue from the decrease in property values. ¶¶ 133-150. The Plaintiff also prays for relief for injury caused by direct expenditures that the City spent due to the foreclosures. ¶¶ 151-159. Neither of these economic injuries is "somehow affected by a racial interest." In fact, the injury alleged here is very similar to the injury decided to be outside of the FHA's zone of interests in *Nasser:* an economic loss from a decrease in property values.

The policy and purpose of the Fair Housing Act is to "provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C.A. § 3601. The City's complaints of decreased tax revenue and increased municipal services are "so marginally related to . . . the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit suit." *Thompson v. N. Am. Stainless, LP*, 131 S. Ct. 863, 870 (2011). Therefore, this Court finds that the City of Miami's claims fall outside of the zone of interests protected by the FHA; Plaintiff lacks standing to sue under the statute.

ii. Proximate Causation

Courts are also generally to "presume that a statutory cause of action is limited to plaintiffs whose injuries are proximately caused by violations of the statute." *Lexmark*, 134 S. Ct. at 1390. "The judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing." *Associated Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 536 (1983). "Proximate-cause analysis is controlled by the nature of the statutory cause of action. The question it presents is whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits." *Lexmark*, 134 S. Ct. at 1390. As the Supreme Court explained, "the proximate-cause requirement generally bars suits for alleged harm that is 'too remote' from the defendant's unlawful conduct. That is ordinarily the case if the harm is purely derivative of 'misfortunes visited upon a third person by the defendant's acts.'" *Id.* (citing *Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258, 268-269 (1992)). A plaintiff lacks standing where a causal chain is too attenuated and relies on the conduct of third parties. *See Wehunt v. Ledbetter*, 875 F. 2d 1558, 1566-67 (11th Cir. 1989).

In this case, upon consideration of the allegations of the City's Complaint, the Court holds that proximate causation for standing is not adequately alleged. In order to establish proximate causation, Plaintiff must demonstrate that the Defendants' alleged redlining and reverse redlining caused the foreclosures to occur. Here, Plaintiff does not allege facts that isolate Defendants' practices as the cause of any alleged lending disparity. Against the backdrop of a historic drop in home prices and a global recession, the decisions and actions of third parties, such as loan services, government entities, competing sellers, and uninterested buyers, thwart the City's ability to trace a foreclosure to Defendants' activity. The independent actions of this multitude of non-parties break the causal chain. *See Fla. Family Policy Council v. Freeman*, 561 F. 3d 1246, 1253 (11th Cir. 2009) (casual chain cannot rely on "independent action of some third party not before the court").

Even if this first step of proximate causation were shown, Plaintiff would then have to complete the causal connection in its claim by demonstrating that the foreclosures caused the City to be harmed. Instead, the City offers vague and generalized allegations of harm (Comp. ¶¶ 53, 61, 75, 103, 109), statistics and studies that are either not limited to the City of Miami (Comp. ¶¶ 78 (relying on data from Chicago); 84-85 (relying on nationwide data); 16, 37-

41, 8081, 87-88, 110-12), not limited to Defendants' practices (Comp. ¶¶ 11, 19, 22, 80-85, 87-88, 110-11), or do not control for relevant credit factors that undoubtedly affect lending practices (Comp. ¶¶ 119-22; 11, 107-08, 124-25). Although statistical correlations are asserted, they are insufficient to support a causation claim. Moreover, Defendants are not responsible for the actions of intervening actors such as squatters, vandals or criminals that damaged foreclosed properties causing the City's municipal costs to rise. Plaintiffs claim is entirely derivative, emphasizing how inextricably linked the possible effect of reverse redlining is with other economic forces acting upon the market.

B. Statute of Limitations

While the Court is dismissing this action for lack of standing, *see supra,* it also holds that the Complaint is subject to dismissal on statute of limitations grounds.

A limitations clock begins to run "as soon as facts supportive of the cause of action are or should be apparent to a reasonably prudent person similarly situated." *Telesca v. Vill. of Kings Creek Condo. Ass'n*, 390 F. App'x 877, 882 (11th Cir. 2010). For purposes of the FHA, "[a]n aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or termination of an alleged discriminatory . . . housing practice . . . to obtain appropriate relief with respect to such discriminatory housing practice . . . ." 42 U.S.C. § 3613(a)(1)(A). An FHA claim for extending a discriminatory loan begins to run from the date of the loan closing. *Id.; Phan v. Accredited Home Lenders Holding Co.*, 2010 WL

1268013, at *3 (M.D. Fla. Mar. 20, 2010). This suit was filed December 13, 2013. *See* [DE 1]. However, of the ten specific loans securing the identified properties alleged in the Complaint, Plaintiff fails to allege that any of those loans were made later than 2008. Comp. ¶ 160. There are no allegations of specific loans in the Complaint that are alleged to have closed in the two years leading up to the date the suit was filed. Comp. ¶ 160.

While Plaintiff argues that their claim is not time-barred pursuant to the continuing violation doctrine, Plaintiff has failed to allege sufficient facts to support its conclusory allegation that the specific discriminatory loan practices complained of continued into the statutory period. The Complaint contains no allegations of any loan that was closed within the relevant limitations period. Moreover, the Complaint alleges several different types of discriminatory actions or practices in which Defendants engaged, such as redlining and reverse redlining. However, the City has not alleged facts evidencing that each type of alleged discriminatory practice continued into the limitations period.[3] Rather the Complaint merely alleges a generalized policy of discrimination, which is insufficient to state a FHA claim.

2. Count II: Unjust Enrichment

When one party has conferred a valuable benefit on another in the absence of a contract, either express or

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[3] The City does not allege a uniform practice of continuing conduct—that is, a particular form of discrimination by a single actor—that was the type of "discrete unlawful practice" that "continued" and so could be a basis for application of the continuing violations doctrine. *Smithers v. Wynne*, 319 F. App'x 755, 757 (11th Cir. 2008).

implied, the doctrine of unjust enrichment creates a fictional contract, sometimes called a quasi-contract or contract implied in law, to the extent necessary to avoid clear injustice. *Adventist Health System/Sunbelt Inc. v. Medical Sav. Ins. Co.*, 2004 WL 6225293 at *6 (M.D. Fla. Mar. 8, 2004). Under Florida Law, a claim for unjust enrichment has three elements: (1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendants to retain it without paying the value thereof. *Virgilio v. Ryland Group, Inc.*, 680 F. 3d 1329, 1337 (11th Cir. 2010) (citing *Fla. Power Corp. v. City of Winter Park*, 887 So. 2d 1237, 1241 n. 4 (Fla. 2004)). The benefit must be conferred directly. *Century Senior Serv. v. Con. Health Benefit Ass,* 770 F. Supp. 2d 1261, 1267 (S.D. Fla. 2011). Moreover, the benefit accepted by defendants must be one that defendants were "not legally entitled to receive in the first place." *State Farm Fire Cas. Co. v. Silver Star Health and Rehab*, 739 F. 3d 579, 584 (11th Cir. 2013). Finally, the scope of damages is assessed in terms of the value of the benefit conferred upon the recipient, not the cost to the provider of producing that benefit and the fair market value of it. *Tooltrend, Inc. v. CMT Utensili, SRL*, 198 F.3d 802, 807 n. 5 (11th Cir. 1999).

Here, Plaintiff does not allege sufficient facts to support its unjust enrichment claim. As a preliminary matter, Plaintiffs unjust enrichment claim fails due to the same insufficient causal allegations that were fatal to Plaintiffs FHA claim. Plaintiff alleges that the Defendants were enriched at the City's expense by utilizing benefits conferred by the City "[a]s a direct and proximate result of Defendants' predatory lending practices." Comp. ¶ 174. However, Plaintiff fails to adequately allege the requisite causal connection between the terms of Defendants' loans and the City's decreased tax revenue and increased municipal services. *See supra.*

Moreover, the City does not allege that it conferred a direct benefit onto Defendants to which they were not otherwise legally entitled. First, Plaintiff fails to allege that the City conferred any *direct* benefit on the Defendants. "[Den]ying the City revenues it had properly expected through property and other tax payments" is certainly not a direct benefit conferred from the City to Defendants. *See* Comp. ¶ 174. Additionally, the municipal services allegedly provided in the Complaint benefit property owners and residents of the City of Miami. Comp. ¶ 172. Plaintiff alleges that Defendants were aware of and took advantage of the services and laws provided by the City of Miami in order to further their business. Comp. ¶ 173. However, any benefit received by Defendants in this manner would be derivative and insufficient for an unjust enrichment claim. *Century Senior*, 770 F. Supp. 2d at 1267. Next, Plaintiff fails to allege sufficient facts that demonstrate that the City conferred any benefit on the Defendants *to which they were not legally entitled.* Municipal services provided by the City are benefits accruing to the public at large. Plaintiff fails to allege facts to show that the Defendants, to the extent that they owned property in the City of Miami, were not also entitled to the benefit of these municipal services. Although Plaintiff argues that the City paid for Defendants' externalities and this constitutes unjust enrichment, this Court disagrees with this position. *See e.g., Adventist Health Sys.*, 2004 WL 6225293 at *6 n. 8

(M.D. Fla. March 8, 2004) (dismissing unjust enrichment claim because "[e]quity has never required compensation for positive externalities."). For the above reasons, this Court dismisses Plaintiffs Count II: Unjust Enrichment.

IV. CONCLUSION

Based upon the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Defendants' Motion to Dismiss [DE 33] is hereby **GRANTED;**

2. Count I - Violation of the FHA is hereby **DISMISSED WITH PREJUDICE**[4]**;**

3. Count II - Unjust enrichment is hereby **DISMISSED WITHOUT PREJUDICE.**[5]

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida, this 8th day of July, 2014.

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[4] While it is possible that an amendment could remedy the statute of limitations problems the Court has identified with Plaintiff's Complaint, it would not remedy the Plaintiff's lack of standing to bring this action under the FHA.

[5] While it does not appear that Plaintiff can overcome the deficiencies in its claim for unjust enrichment, in an abundance of caution, the Court will dismiss this count without prejudice, with leave to amend in accordance with the analysis set forth this Order. If Plaintiff chooses to file an amended complaint, the deadline to do so is July 21, 2014. As currently pled, Plaintiff's unjust enrichment claim is pled as a supplemental jurisdiction state law claim. The Court takes no position, at this time, as to whether it would exercise supplemental jurisdiction over a complaint that only contains a state law claim.

s/ William P. Dimitrouleas
WILLIAM P. DIMITROULEAS
United States District Judge

Copies to: Counsel of record

APPENDIX D

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-24506-CIV-DIMITROULEAS

CITY OF MIAMI, a Florida municipal corporation,

Plaintiff,

vs.

BANK OF AMERICA CORPORATION; BANK OF AMERICA, N.A.; COUNTRYWIDE FINANCIAL CORPORATION; COUNTRYWIDE HOME LOANS; and COUNTRYWIDE BANK, FSB,

Defendants.

___________________________/

ORDER DENYING MOTION FOR RECONSIDERATION

THIS CAUSE is before the Court upon Plaintiff City of Miami ("Plaintiff" or "City")'s Motion for Reconsideration and Leave to File First Amended Complaint, filed herein on July 21, 2014. [DE 72]. The Court has carefully considered the Motion [DE 72], Defendants Bank of America Corporation ("BoA"), Bank of America, N.A., Countrywide Financial Corporation, Countrywide Home Loans, and Countrywide Bank FSB ("Defendants")'s Opposition [DE 74], Plaintiff's Reply [DE 75], and is otherwise fully advised in the premises.

On December 13, 2013, Plaintiff filed this suit pursuant to the Fair Housing Act of 1968 ("FHA"), as amended, 42 U.S.C. § 3601, *et seq.,* to seek redress for injuries allegedly caused by Defendants' pattern or practice of illegal and discriminatory mortgage lending. [DE 1]. Specifically, Plaintiff sought injunctive relief and damages for financial injuries due to foreclosures on Defendants' loans in minority neighborhoods and to minority borrowers that were the result of Defendants' discriminatory lending practices. Plaintiff sought damages based on reduced property tax revenues based on: (a) the decreased value of the vacant properties themselves; and (b) the decreased value of properties surrounding the vacant properties. Plaintiff also sought damages based on the expenditures of municipal services that have been and will be required to remedy the blight and unsafe and dangerous conditions which exist at vacant properties that were foreclosed as a result of Defendants' illegal lending practices.

Defendants moved to dismiss the Complaint on the grounds that Plaintiff lacked standing under the FHA, Plaintiffs FHA claim was time-barred by the statute of limitations, and the Complaint failed to state a claim upon which relief can be granted. After extensive briefing and oral argument, the Court entered an Order Granting Motion to Dismiss on July 8, 2014. *See* [DE 71].

Therein, the Court held that the City did not meet the zone of interests nor the proximate causation requirements for standing to sue under the FHA. *See Lexmark Intern., Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1387 (2014). In making that ruling, the Court was guided by the Eleventh Circuit's opinion in *Nasser v. City of Homewood*, 671 F. 2d 432 (11th Cir. 1982). The policy and purpose of the Fair Housing Act is to "provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C.A. § 3601. After a thorough review of the Complaint, the Court explained that Plaintiff alleged merely economic injuries—Plaintiff sought relief for economic injury from the reduction in tax revenue from the decrease in property values and for injury caused by direct expenditures that the City spent due to the foreclosures. The Court held that neither of these economic injuries is "somehow affected by a racial interest." Thus, the Court found that the City of Miami's claims fell outside of the zone of interests protected by the FHA, as the City's complaints of decreased tax revenue and increased municipal services are "so marginally related to . . . the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit suit." *Thompson v. N. Am. Stainless, LP*, 131 S. Ct. 863, 870 (2011). Additionally, the Court held that proximate causation for standing was not adequately alleged, as Plaintiffs allegations failed to demonstrate that the Defendants' alleged practices of redlining and reverse redlining caused the foreclosures to occur. Further, the Court noted that the independent actions of a multitude of non-parties -- a historic drop in home prices and a global recession, the decisions and actions of third parties, such as loan services, government entities, competing sellers, and uninterested buyers—break the causal chain, thwarting the City's ability to trace a foreclosure to Defendants' activity. *See Fla. Family Policy Council v. Freeman*, 561 F. 3d 1246, 1253 (11th Cir. 2009) (casual chain cannot rely on "independent action of some third party not before the court”). Moreover, the Court held that Plaintiffs offered vague and generalized allegations of harm, failing to allege facts demonstrating that the foreclosures caused the City to be harmed. Finally, the Court held that the Complaint was also subject to dismissal on statute of limitations grounds, as the Complaint contained no allegations of any loan that was closed within the relevant limitations period. The Complaint merely alleged a generalized policy of discrimination, failing to allege facts evidencing that each type of alleged discriminatory practice continued into the limitations period. The Court dismissed Count I, violation of the FHA, with prejudice, explaining that, while it is possible that an amendment could remedy the statute of limitations problems the Court identified with Plaintiffs Complaint, it would not remedy the Plaintiffs lack of standing to bring this action under the FHA.

The Court’s July 8, 2014 Order Granting Motion to Dismiss also held that Plaintiff failed to allege sufficient facts to support its unjust enrichment claim. That claim suffered the same insufficient causal allegations that were fatal to Plaintiffs FHA claim. Moreover, the City failed to allege sufficient facts demonstrating that the City conferred any benefit on the Defendants to which they were not legally entitled. The Court dismissed Count II, unjust enrichment, without prejudice with leave to amend in accordance with the Court’s Order.

Rather than appeal the Court’s July 8, 2014 Order Granting Motion to Dismiss challenging this Court’s application of *Lexmark* and *Nassar* to the City’s FHA claim, or file an amended complaint as to Plaintiff’s unjust enrichment claim in accordance with the dismissal Order, Plaintiff has moved for reconsideration.

"[R]econsideration of a previous order is an extraordinary remedy to be employed sparingly." *Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1370 (S.D. Fla. 2002) (citing *Mannings v. School Board of Hillsborough County*, 149 F.R.D. 235, 235 (M.D. Fla. 1993)). For a court to reconsider its prior judgment the moving party must present facts or law of a "strongly convincing nature" that would induce a court to reverse its prior decision. *Id.* (citing *Sussman v. Salem Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla 1994)). Three major grounds justify reconsideration: "(1) an intervening change in the controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice." *Burger King,* 181 F. Supp. 2d at 1369. "A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (internal quotation marks omitted).

Plaintiff has not presented strongly convincing arguments in the instant reconsideration Motion that would cause the Court to reconsider its prior Order. The arguments in the Motion are ones that the Plaintiff already made or that it could have, but chose not to, in the extensive process of briefing, supplemental briefing, and oral argument related to Defendants' Motion to Dismiss. Arguing that this Court's reasoning was flawed is not enough for a motion for reconsideration. Furthermore, to the extent that the Plaintiff alternatively seeks to amend its FHA claim to assert it has a generalized non-economic interest in having an integrated community and in racial diversity—claims it never made and amendments it did not previously raise or offer despite ample opportunity—these new matters are improperly raised as grounds for reconsideration.[1]

Finally, regarding Plaintiffs unjust enrichment claim, the Court stated in its July 8, 2014 Order Granting Motion to Dismiss:

> While it does not appear that Plaintiff can overcome the deficiencies in its claim for unjust enrichment, in an abundance of caution, the Court will dismiss this count without prejudice, with leave to amend in accordance with the analysis set forth in this Order. If Plaintiff chooses to file an amended complaint, the deadline to do so is July 21, 2014. As currently pled, Plaintiffs unjust enrichment claim is pled as a supplemental jurisdiction state law claim. The Court takes no position, at this time, as to whether it would exercise supplemental jurisdiction over a complaint that only contains a state law claim.

See case no. 13-24506 at [DE 71], p. 14, n. 2. Thus, the Court has already granted Plaintiff permission to file an amended complaint as to its unjust enrichment

[1] Moreover, sprinkling in allegations that the City has a generalized interest in racial integration falls far short of alleging facts sufficient to demonstrate that Defendants' lending practices adversely affected the racial diversity or integration of the City, nor do those generalized allegations appear to be connected in any meaningful way to the purported loss of tax revenue and increase in municipal expenses allegedly caused by Defendants' lending practices.

claim. If Plaintiff chooses to file such an amended complaint, the Court will extend the deadline to do so until September 15, 2014. Any arguments Defendants have raised in the instant briefing regarding the sufficiency of the unjust enrichment claim set forth in Plaintiffs proposed amended complaint may be reasserted in response to the amended complaint, if one is timely filed.

Based upon the foregoing, it is **ORDERED AND ADJUDGED** that Plaintiffs Motion for Reconsideration and Leave to File First Amended Complaint [DE 72] is **DENIED.**

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida, this 8th day of September, 2014.

s/ William P. Dimitrouleas
WILLIAM P. DIMITROULEAS
United States District Judge

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-14543-CC

CITY OF MIAMI,
a Florida Municipal Corporation,

Plaintiff - Appellant,

versus

BANK OF AMERICA CORPORATION,
BANK OF AMERICA, N.A.,
COUNTRYWIDE FINANCIAL CORPORATION,
COUNTRYWIDE HOME LOANS,
COUNTRYWIDE BANK, FSB,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

Date Filed: August 26, 2019

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARCUS and WILSON, Circuit Judges, and SCHLESINGER,* District Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

s/ Stanley Marcus
UNITED STATES CIRCUIT JUDGE

* Honorable Harvey E. Schlesinger, United States District Judge for the Middle District of Florida, sitting by designation.

APPENDIX F

42 U.S.C. § 3613 provides in pertinent part:

Enforcement by private persons

(a) Civil action

(1) (A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

* * * *

(c) Relief which may be granted

(1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a) of this section, the court, in its discretion, may allow

the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

* * * *

42 U.S.C. § 3614 provides in pertinent part:

Enforcement by Attorney General

(a) Pattern or practice cases

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(b) On referral of discriminatory housing practice or conciliation agreement for enforcement

(1) (A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 3610(g) of this title.

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2) (A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 3610(c) of this title.

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 3610(c) of this title.

* * * *

(d) Relief which may be granted in civil actions under subsections (a) and (b)

(1) In a civil action under subsection (a) or (b), the court—

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter;

(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

(i) in an amount not exceeding $50,000, for a first violation; and

(ii) in an amount not exceeding $100,000, for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28.

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