

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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CURRENT AREA RESIDENTS EAST OF THE RIVER (“CARE”), NEAR BUZZARD POINT RESILIENT ACTION COMMITTEE (“NeRAC”), PAULETTE MATTHEWS, TENDANI MPULUBUSI EL, MICHELLE HAMILTON, GERALDINE McCLAIN, SYLVIA CARROLL, RHONDA HAMILTON, GRETA FULLER, SHANIFINNE BALL, TAMIA WELLS, ARIYON WELLS,

Plaintiffs, on behalf of themselves and all others similarly situated,

v.

DISTRICT OF COLUMBIA, DISTRICT OF COLUMBIA HOUSING AUTHORITY,

Defendants.

Civil Action No. 1:18-cv-00872 (EGS)

**JURY TRIAL DEMANDED**

**SECOND AMENDED CLASS ACTION COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND DAMAGES**

The District of Columbia has staked its future on attracting a “Creative Class” of millennials who work in so-called creative professions. In pursuit of this vision of a younger and wealthier D.C., the District of Columbia’s agencies have leveraged land use and housing policies to create segregated enclaves for 18 to 34 year-olds in favored professions at the expense of long time African American residents. In this chase for residents the District government considers more desirable, the District has consistently and repeatedly violated both federal and D.C. law.

Specifically, over the past twelve years, the Zoning Commission has violated its statutory duties in assessing the adverse impacts of Planned Unit Developments (PUDs), including displacement and gentrification. It has cast aside even fundamental administrative functions like the assignment of party status and Advisory Neighborhood Commission (ANC) review. Moreover, in zoning cases for Planned Unit Developments in predominantly African American communities, the Zoning Commission has ignored the mandates of 11 DCMR X-308.4 most relevant to the concerns of African American residents, even as the Commission has obeyed the mandates of 11 DCMR X-308.4 most relevant to the concerns of white residents. In doing so, the Zoning Commission has failed to obtain statutorily-required reports before approving land use changes that invariably impact the real lives of tens of thousands of people. These violations have perpetuated a pattern of racial segregation in the District of Columbia, have violated residents' Equal Protection rights, and have had a clear disparate impact on African Americans and likely residents with families as well.

Plaintiffs do not challenge the administration's power and discretion to favor the Creative Class over DC's established communities. Indeed, Plaintiffs recognize that it may be the mayor's prerogative to define DC's strategy, concluding there's no room for those residents and their families who long made DC their home and sustained neighborhoods during DC's lean, hard years. However, the administration may not violate the law, and this is precisely what the District has done.

The District of Columbia has adopted and carried out its Creative Class Agenda to the detriment and exclusion of vulnerable, long-time residents, particularly African American residents. As illustrated by specific actions in predominantly African American neighborhoods, the District of Columbia's policies unlawfully and discriminatorily harm these residents through

systematic and repeated violation of the District's own laws and regulations in order to steamroll neighborhood-wide redevelopment in historically African American communities targeted by the Creative Class Agenda. Ultimately, the District's actions have resulted and will continue to result in the perpetuation of racial segregation and the extreme racial gentrification of these neighborhoods, not integrating but unlawfully flipping neighborhoods from predominantly and historically African American to predominantly white, and knowingly displacing African American residents in the process.

### **PRELIMINARY STATEMENT**

This is a lawsuit challenging Defendants' violation of the U.S. Constitution and the laws of the United States and the District of Columbia. Defendants have repeatedly violated the District's own laws governing zoning and land use, illustrating a pattern and practice of discrimination and disparate treatment against African American residents living in predominantly African American neighborhoods that can only be remedied by a federal civil action.

### **JURISDICTION**

1. This action arises under the Fifth Amendment to the U.S. Constitution; The Fair Housing Act, 42 U.S.C. § 3604(b); 42 U.S.C. § 1983.
2. This Court has original jurisdiction over Plaintiffs' constitutional claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.
3. This Court has supplemental jurisdiction over Plaintiffs' District of Columbia law claims pursuant to 28 U.S.C. § 1337(a), which are part of the same case and controversy as Plaintiffs' federal claims.

## **VENUE**

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and (e)(1)(B).

## **PARTIES**

### **A. Near Buzzard Point Resilient Action Committee (“NeRAC”)**

5. Plaintiff Near Buzzard Point Resilient Action Committee (“NeRAC”) is a community-based nonprofit organization that advocates for D.C. residents’ environmental health and safe housing, with a particular focus on residents of Buzzard Point.

### **B. Current Area Residents East of the River (“CARE”)**

6. Plaintiff Current Area Residents East of the River (“CARE”) is a community-based nonprofit organization that advocates for the preservation of affordable housing and seeks to improve quality of life for area residents. CARE is a member organization of Plaintiff NeRAC.

### **C. Barry Farm Tenants and Allies Association (“BFTAA”)**

7. Plaintiff Barry Farm Tenants and Allies Association (“BFTAA”) is an Association organized under Section 501 (c)(4) created by Barry Farm residents to address the rights of current residents and former residents of Barry Farm.

### **D. Individual Plaintiffs: Barry Farm**

8. Plaintiff Paulette Matthews is African American, a current Barry Farm resident, and a BFTAA member.
9. Plaintiff Tendani Mpulubusi El is African American. He is a former resident of the Barry Farm neighborhood who is currently housing insecure. He is a member of CARE. He appeared at the Zoning Commission in opposition to ZC 16-29.

10. Plaintiff Michelle Hamilton is African American. She is a former Barry Farm resident and BFTAA member.

**E. Individual Plaintiffs: Buzzard Point**

11. Plaintiff Geraldine McClain is African American and a current Buzzard Point resident.
12. Plaintiff Sylvia Carroll is African American and a current Buzzard Point resident.
13. Plaintiff Rhonda Hamilton is African American and a current Buzzard Point resident, Area Neighborhood Commissioner (“ANC”) for her neighborhood, and member of NeRAC. She appeared at the Zoning Commission in opposition to the DC Soccer Stadium.

**F. Individual Plaintiffs: Poplar Point**

14. Plaintiff Greta Fuller is African American. She is a Historic Anacostia resident, business owner, and was at the time, an ANC for the Commission in which the Poplar Point development is being built. She is also a member of CARE. She appeared at the Zoning Commission in opposition to ZC 16-29.

**G. Individual Plaintiffs: Union Market**

15. Plaintiff Shanifinne Ball is African American and is a current resident of the Union Market neighborhood. She is a member of Union Market Neighbors.

**H. Individual Plaintiffs: Housing Insecure Plaintiffs**

16. Plaintiff Tamia Wells is an African American tenant who cannot find safe, affordable housing for her family.
17. Plaintiff Ariyon Wells is an African American tenant who cannot find safe, affordable housing.

## I. Defendants

18. Defendant District of Columbia is a municipal corporation empowered to sue and be sued on behalf of its subdivisions, including the District of Columbia Office of Planning (hereinafter “DCOP”), the District of Columbia Zoning Commission (“DCZC” or “Zoning Commission”), the District of Columbia Department of Housing and Community Development (“DHCD”), the Mayor of the District of Columbia in her or his official capacity, and the Deputy Mayor for Economic Development (“DMPED”).
19. Defendant District of Columbia Housing Authority (“DCHA”) is an independent governmental agency operating in the District of Columbia to “provide[] quality affordable housing to extremely low- through moderate-income households, foster[] sustainable communities, and cultivate[] opportunities for residents to improve their lives.”<sup>1</sup>

## STATEMENT OF THE CASE

20. Historically, urban renewal projects<sup>2</sup> in the District of Columbia have been enforced and carried out to the detriment of communities, often resulting in widespread community destruction and large-scale exodus of African American residents. This unjust pattern spans from the early days immediately after the Civil War, when freedmen were forcibly removed from the “shanties and shacks” they built when seeking freedom in the capital

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<sup>1</sup>DCHA Mission Statement, available at [www.dchousing.org/search.aspx?str=mission%20statement](http://www.dchousing.org/search.aspx?str=mission%20statement)

<sup>2</sup> Infamously called “negro removal” by James Baldwin.

city,<sup>3</sup> to the placement of former slaves at Barry Farm as a freedman’s colony,<sup>4</sup> to the removal of African-American residents from Reno City in Tenleytown,<sup>5</sup> to today.

21. Countless communities have been shattered and traumatized in the name of urban renewal.
22. While it is the government’s prerogative to select appropriate redevelopment policies, the District of Columbia has adopted and carried out its Creative Class Agenda to the detriment and exclusion of African American residents, many of whom are long-term District residents.
23. In the modern day, not only should the District of Columbia strive, as a matter of policy, to do better by its historic residents who have been moved around like “potted plants”<sup>6</sup> but, as a matter of law, it cannot illegally and discriminatorily harm African American residents by perpetuating racial segregation and repeatedly violating its own laws and regulations to steamroll neighborhood-wide redevelopment in pursuit of the Creative Class Agenda.
24. Ultimately, Defendants’ actions have resulted and will continue to result in extreme racial gentrification of neighborhoods — not integrating, but impermissibly flipping neighborhoods from predominantly and historically African American to predominantly white, all the while knowingly displacing African American residents.

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<sup>3</sup> Barbara Newsom, *The Art Museum as Educator: A Collection of Studies as Guides to Practice Policy* 187 (1978).

<sup>4</sup> See, e.g., DC Cultural Tourism: Barry Farm Site, African Heritage Trail, available at [www.culturaltourismdc.org/portal/barry-farm-site-African-American-heritage-trail](http://www.culturaltourismdc.org/portal/barry-farm-site-African-American-heritage-trail)

<sup>5</sup> See, e.g., Neil Flannagan, *The Battle of Fort Reno*, Washington City Paper, November 2, 2017, available at [www.washingtoncitypaper.com/news/article/20981322/the-battle-of-fort-reno](http://www.washingtoncitypaper.com/news/article/20981322/the-battle-of-fort-reno).

<sup>6</sup> Paulette Matthews

25. This pattern has gross and devastating consequences that unnecessarily perpetuate generations of instability and cyclic poverty. Moreover, such policies replace existing community ecosystems with meant-to-be luxury single bedroom and studio units explicitly fashioned for residents that are “creatives,” that are a part of the 18 to 34 year-old demographic, and skew white.
26. Census tract level data shows that the Creative Class Agenda, which seeks to re-zone neighborhoods in and around areas that have zoning designations of Production, Distribution, and Repair (PDR), or Industrial, is ultimately a hardship for African American residents living in historically African American neighborhoods.
27. The number of African Americans living in neighborhoods in and around Industrial sites is part of a legacy of housing discrimination for African-American residents. Thus, strategies to radically alter these neighborhoods without notice to communities about potential impacts has ended up displacing African American residents at a staggering rate, even as the white population soars.
28. The Zoning Commission’s repeated failure to follow its governing laws and regulations, such as obtaining appropriate reports from the Department of Housing and Community Development (DHCD), treating applicants for party status disparately dependent upon the race of the applicant, and generally abusing procedure to suppress dissent from residents who will suffer from the Zoning Commission’s decisions, has injured African American residents of the District of Columbia by accelerating neighborhood change beyond what even policy called for. This significantly limits African American residents’ ability to absorb the rapid change caused by the Creative Class Agenda, accelerating the pace of

change to an unfathomable rate, causing great hardship and extreme displacement for African American residents of the District.

## **FACTUAL ALLEGATIONS & BACKGROUND**

### **A. The Creative Class Agenda**

29. Beginning in 2007, the District of Columbia adopted the “Creative Action Agenda” (hereinafter “Creative Class Agenda” or “Agenda”) in a series of statements, planning summits, and formal planning documents by Mayor Adrian Fenty’s administration and under the leadership of Harriet Tregoning as Director of the District of Columbia Office of Planning.
30. Upon adoption of the new, far-reaching Agenda, the District of Columbia issued a series of statements and planning documents confirming that each of its relevant agencies were cooperating to carry out the Agenda, including the District of Columbia Office of Planning (hereinafter “DCOP”), the District of Columbia Zoning Commission (“DCZC” or “Zoning Commission”), the District of Columbia Department of Housing and Community Development (“DHCD”), the Mayor of the District of Columbia, the Deputy Mayor for Economic Development (“DMPED”), DC Commission on the Arts and Humanities, and the Washington DC Economic Partnership.<sup>7</sup>

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<sup>7</sup> See generally Press Release, District Launches Creative Economy Initiative DC’s Focus on Idea People Can Transform Neighborhoods.

31. The Agenda relies heavily on the work of urban planner Richard Florida, who has promoted human creativity as an engine of economic growth.<sup>8</sup>
32. In May 2010, DCOP published a commissioned report, the Creative DC Action Agenda, which served as a blueprint for the Creative Class Agenda. It is one of the guiding documents defining how the District of Columbia would carry out redevelopment.<sup>9</sup>
33. In this document, DCOP cites Richard Florida's theories in its plan to make District of Columbia neighborhoods, particularly the neighborhoods surrounding the Metro's Green Line, "vibrant", "rejuvenated", and places where people "want to live." The report borrows heavily from Florida's work, especially under the heading "Attracting Talent."<sup>10</sup>
34. The District of Columbia has released two policy documents further documenting its Creative Class Agenda, including the Creative Economy Strategy (2014) and the Creative Plan DC (2016).
35. The Creative Economy Strategy outlined DCOP's accomplishments pursuant to the Agenda, and promulgated updated strategies based on the lessons of the past four years.
36. Under the heading "Changing Demographics," the document institutionalizes Richard Florida's theories and asserts the importance of attracting millennials to the city, calling them the "basis" of the desired "creative class."<sup>11</sup>

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<sup>8</sup> See, e.g., Richard Florida, *The Rise of the Creative Class: And How it's Transforming Work, Leisure, Community, and Everyday Life* (Basic Books 2002).

<sup>9</sup> See "Creative Capital: The Creative DC Action Agenda." District of Columbia Office of Planning, May 2010.

<sup>10</sup> *Id.* at 27.

<sup>11</sup> Office of the Deputy Mayor for Planning and Economic Development. (2014, July). *Creative Economy Strategy for the District of Columbia*, pp. 12-13. Retrieved from [https://dmped.dc.gov/sites/default/files/dc/sites/dmped/publication/attachments/Creative%20Economy%20Strategy%20of%20the%20District%20of%20Columbia%20Full%20Report\\_0626.pdf](https://dmped.dc.gov/sites/default/files/dc/sites/dmped/publication/attachments/Creative%20Economy%20Strategy%20of%20the%20District%20of%20Columbia%20Full%20Report_0626.pdf).

37. The Creative Economy Strategy places an emphasis on affordable living space for “creative businesses,” and lays out a plan to modify zoning laws to achieve this goal.<sup>12</sup>

## **B. The Creative Class Agenda is Inherently Discriminatory and Segregative**

38. The Creative Class Agenda represented a significant paradigm shift in planning and redevelopment. The Agenda frames planning policy around what constitutes the highest and best use of one’s personhood, predicated land use policy on the predilections of a certain class of individual rather than the equal and inherent worth of every person as a member of the community.
39. As a part of this overreach, a person’s chosen profession, age (i.e. status as a “millennial”), familial status, and educational attainment became considerations in determining who would receive priority in access to quality housing, public amenities, environmental health, and public transit.
40. The Agenda expressed an explicit preference for attracting and incentivizing the relocation of millennial workers whose income derives from innovative and non-traditional jobs.
41. In a series of public statements and documents regarding the Agenda, Harriet Tregoning publicly expressed a preference for attracting young people who are highly educated.
42. By 2014, Florida’s research showed that not only was there a direct correlation between segregation and concentrations of the Creative Class, but that Creative Class clusters perpetuated and worsened segregation patterns.<sup>13</sup>

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<sup>12</sup> *Id.* at 50 (“By changing zoning regulations in industrial areas and allowing residential use, the District will increase affordable space for creative businesses . . . and creative uses, including make/live space. . . . If viable, the District will work to update zoning regulations to reflect the recommendations that come out of this report.”).

### C. The New Communities Initiative: Implementing the Creative Class Agenda

43. In 2006, the District launched the New Communities Initiative (“NCI”), a program designed to revitalize severely distressed subsidized housing and redevelop communities plagued with concentrated poverty, high crime, and economic segregation.
44. The hallmark policy of the New Communities Initiative is to “Build First” in order to prevent displacement caused by redevelopment and allow for the continuity of communities.
45. The NCI is run through a partnership between the Deputy Mayor for Planning and Economic Development (“DMPED”) and the District of Columbia Housing Authority (“DCHA”).<sup>14</sup>
46. The initiative targets four neighborhoods in the District: Barry Farm in Ward 8, Lincoln Heights/Richardson Dwellings in Ward 7, Northwest One in Ward 6, and Park Morton in Ward 1.
47. Each of these public housing projects is a close-knit community inhabited by people largely without formal education. Residents of these projects tend to be non-creatives who often find work in the service industry as babysitters, barbers, dental assistants, fast food restaurant workers, and security guards, etc.

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<sup>13</sup> See, e.g. Richard Florida, *The Racial Divide in the Creative Economy*, CityLab (The Atlantic), May 9, 2016, available at [www.citylab.com/life/2016/05/creative-class-race-black-white-divide/481749/](http://www.citylab.com/life/2016/05/creative-class-race-black-white-divide/481749/); Richard Florida, Zara Matheson, Patrick Adler & Taylor Brydes, The Divided City and the Shape of the New Metropolis (Sept. 6, 2014), available at <http://martinprosperity.org/content/the-divided-city-and-the-shape-of-the-new-metropolis/>; see also Richard Florida, *The New Urban Crises: How Our Cities Are Increasing Inequality, Deepening Segregation, and Failing the Middle Class—And what we can Do About it* (Basic Books 2017).

<sup>14</sup> See generally DC’s *New Communities Initiative, Explained* [Press Release]. 14 February 2017. Available at: <https://dmped.dc.gov/release/dc%E2%80%99s-new-communities-initiative-explained>.

48. The residents of the neighborhoods targeted by the New Communities Initiative are disfavored by the Creative Class Agenda, which has the goal of attracting young, college-educated creative workers who skew white.
49. By implementing the Creative Class Agenda through the New Communities Initiative, and by concomitantly failing to honor its “Build First” policy, the District and the DCHA have effectively targeted these African American communities for elimination through displacement and further segregation.

**D. The Creative Class Agenda Has Caused Significant City-Wide Demographic Shift**

50. In 2010 the District of Columbia had a total population of 584,400 residents. By 2018 the total population was 684,498. A growth rate of 17.1%.
51. Not all races equally participated in the population boom. Between 2010 and 2018 the white population increased by 26.1%. Whereas the African American population grew by 3.9%.
52. Still, between 2010 and 2018 approximately 39,000 African Americans were displaced from DC.
53. Since the Creative Class Agenda was adopted, the District has seen significant demographic changes in the race, age, and occupations of its residents. These changes have exacerbated existing segregation and have even resegregated some neighborhoods.
54. Between 2010 and 2014, the D.C. Creative Class population grew from 38.8% to 44.6% of the workforce.
55. White residents of the DC metro area are 34% more likely to be Creative Class members than African American residents.

56. Between 2009-2013, two years after DC launched the “Creative Economy Initiative” to attract “high knowledge” and “high value” “creatives,” the number of 18 to 34 year-olds in the city was at its highest level in over 30 years of tracking the statistic despite the overall amount of 18 to 34 year-olds in the United States being at its lowest since tracking began.<sup>15</sup>
57. In 2000, the number of 18 to 34 year-olds made up 30.5% of the DC population and 23.7% of the US population yet by 2009-2013 the 18 to 34 year-old population within DC had risen to 35.0% despite the overall numbers of 18 to 34 year-olds in the country dropping by .3% to 23.4% and being on a steady decline since 1980 when the 18 to 34 year-old population of the country was 29.6%.<sup>16</sup>
58. Between 2009-2013 the gap between the percentage of 18 to 34 year-olds living in the District versus the rest of the country was +11.6%. However, historically, from 1980 until 2009, the 18 to 34 year-old population in the District versus the rest of the country had hovered between +5-7%.

**E. The Creative Class Agenda Has Caused Localized Demographic Shift Where PUD Development Has Taken Place**

59. While the total amount of African Americans living in the District grew by 3.9% between 2010 and 2018, many areas with a high density of PUD approvals experienced a heavy loss of African American residents.
60. While the total amount of white residents living in the District grew by 26.1% between

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<sup>15</sup> Joy Phillips, PhD, DC Office of Planning/State Data Center, DC’s Millennial Population Ages 18-34: Then and Now, available at [https://planning.dc.gov/sites/default/files/dc/sites/op/page\\_content/attachments/Millennials%20Demographic%20Characteristics%20DC%20vs%20US.pdf](https://planning.dc.gov/sites/default/files/dc/sites/op/page_content/attachments/Millennials%20Demographic%20Characteristics%20DC%20vs%20US.pdf).

<sup>16</sup> *Id.*

2010 and 2018, many areas with a high density of PUD approvals experienced a much higher rate of growth for white residents.

61. The Creative Class Agenda explicitly calls for the rezoning of industrial areas to allow for high-density, mixed-use residential and commercial space. In the course of pursuing this Agenda, Defendants have failed to follow zoning regulations and have destroyed affordable housing, causing extreme displacement in many historically African American neighborhoods.
62. There are 181 census tracts in the District.
63. The Union Market Neighborhood and the single-family-zoned census tracts surrounding it comprise fourteen census tracts.<sup>17</sup>
64. The tracts are 58, 47.01, 46, 33.02, 87.01, 87.02, 88.03, 88.02, 84.10, 84.02, 83.02, 83.01, 47.02, and 106.
65. Altogether, the fourteen census tracts comprise 2.34 square miles.
66. Between 2010 and 2018 there were ninety PUDs proposed and approved in the District of Columbia.<sup>18</sup>
67. If the ninety PUDs approved in the District of Columbia between 2010 and 2018 were equally distributed throughout the District this would equate to 1.78 PUDs per square mile.<sup>19</sup>

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<sup>17</sup> Excluding the census tract that runs from North Capitol Hill to Virginia, includes the mall and capitol, is 2.3 square miles, and only has 60 residents, none of which were African American either in 2010 or 2018.

<sup>18</sup> OpenData.DC.Gov

<sup>19</sup> The District is 68.34 square miles and includes 18 square miles of Federal land where PUDs cannot currently be built. The District has 50.34 square miles where PUDs can be built.

68. Twenty of the ninety PUDs approved between 2010 and 2018 occurred inside *two* (106 and 88.03) of the fourteen census tracts comprising the 2.34 square miles that is the Union Market focus area.
69. The Union Market Neighborhood and immediately adjacent census tracts average 6.43 PUDs per square mile. This represents a 361% increase in PUDs compared to what might be expected if PUDs were evenly distributed throughout the District.
70. Twelve of the ninety PUDs approved between 2010 and 2018 occurred inside *seven* (106 and 88.03) of the eleven census tracts comprising the 3.13 square miles that is the Navy Yard – Buzzard Point focus area.
71. The Navy Yard – Buzzard Point neighborhoods and immediately adjacent census tracts average 3.83 PUDs per square mile. This represents a 215% increase in PUDs compared to what might be expected if PUDs were evenly distributed throughout the city.
72. Fifty of the ninety PUDs were approved in two of the District's eight wards: Wards 5 and 6, where the Union Market and Navy Yard-Buzzard Point focus areas are located.<sup>20</sup>
73. The majority of census tracts in both focus areas were predominately African American in 2010.
74. In the twenty-three census tracts comprising West of Rock Creek Park (13.92 square miles) only three PUDs were approved (.22 PUDs per square mile) or just 12% of what might be expected if PUDs were evenly distributed in the city between the years of 2010 and 2018.
75. The racial demographics of West of the Park stayed stable between 2010 and 2018.

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<sup>20</sup> Includes census tract with Historic Anacostia.

76. In 2010, 86,244 out of 102,371 (84.3%) West of the Park residents were white. In 2018, 87,425 out of 108,949 residents (80.2%) West of the Park residents were white.
77. West of the Park also grew at a significantly slower pace between 2010 and 2018 compared to the rest of the District. Between 2010-2018, West of the Park's total population grew by 6%, while the population of the District of Columbia grew by 17.1% (584,400 to 684,498).
78. Predominately white Wards 2, 3, and 4 also had far fewer PUD approvals. A total of eight PUDs were approved between 2010 and 2018. Three sets of two PUDs each were located in areas already deemed commercial. Two by upper Wisconsin Avenue in Tenleytown, two by West End, and two in Downtown. The remaining two were also located in areas already deemed commercial but were spread further apart: one Downtown between Farragut Square and McPherson Square, and the other on Georgia Avenue and Randolph Avenue, by Petworth.
79. In the forty-eight census tracts comprising Wards 7 and 8 (16.72 square miles) only fifteen PUDs were approved (.9 PUDs per square mile) or just 51% of what might be expected if PUDs were evenly distributed in the city between the years of 2010 and 2018.
80. Among the fifteen PUDs that were approved, all of them were more than 50% affordable housing and contained significant amounts of family sized units. Ward 7 and 8 are not yet the subject of the Creative Class Agenda, which requires small unit sizes, market rate units, and proximity to amenities and the Metro. That notwithstanding, Ward 8 (particularly Historic Anacostia, which is closest to Navy Yard) has had several Creative Class Agenda styled PUDs proposed at ZC 14-02, ZC 16-29, and ZC 08-07 as Navy Yard reaches full build-out. If there is no intervention, the single-family neighborhoods

surrounding these PUDs will flip. Since DCHA has already failed to honor “Build First” and constructively evicted Barry Farm residents, there will be no bastion of affordability to stave off resegregation.

81. The racial demographics of East of the River stayed stable between 2010 and 2018.
82. In 2010, 130,710 out of 138,140 (94.6%) Ward 7 and Ward 8 residents were African American. In 2018, 150,630 out of 165,109 residents (91.1%) Ward 7 and Ward 8 residents were African American.
83. Ward 7 and Ward 8 grew at a faster pace between 2010 and 2018 compared to the rest of the District. Between 2010-2018, the total population of Ward 7 and Ward 8 grew by 19.5%, while the population of the District of Columbia grew by 17.1% (584,400 to 684,498).
84. Wards 7 and 8 have a low density of PUDs (.9 per square mile); rather, the mechanism for growth in Wards 7 and 8 has been displacement from other historically African American neighborhoods in the city.
85. As a legacy of racial discrimination, African Americans are often relegated to residential areas in and around environmental hazards. Areas zoned for Production, Distribution or Repair, or Industrial use contain such hazards. When the District government endeavored to radically transform Industrially-zoned areas, it was code for the same kind of development James Baldwin once deemed “negro removal,” since historically it is predominately African Americans who live in the polluted neighborhoods near Industrial and Production zones.
86. The Zoning Commission intentionally withheld pertinent written DHCD reports about adverse impacts of PUDs carried out pursuant to the Creative Class Agenda in order to

obfuscate their actions. Seemingly overnight, the Zoning Commission utilized a confusing process to change historically African American neighborhoods from sleepy low-lying two-story areas to areas overwhelmed by nine and ten story buildings. Through that transformation, interpersonal relationships, local culture, thriving businesses, and households were wiped clean from the city even as white residents were granted information and access to the Zoning process denied to African American residents.

- 87. Between 2010 and 2018, the Union Market focus area had the highest density of PUDs in the city. Numerically, between 2010 and 2018, no clustering of census tracts in the District displaces as many African American residents and adds as many white residents as the Union Market focus area.
- 88. Between 2010 and 2018, the Navy Yard – Buzzard Point focus area had the second highest density of PUDs in the city. Numerically, between 2010 and 2018, only the Union Market focus area contains a clustering of census tracts in the District that displaces as many African American residents and adds as many white residents as the Navy Yard – Buzzard Point focus area.

#### **F. The Creative Class Agenda and the New Communities Initiative Disproportionately Impact African American Residents**

##### **Union Market focus area**

- 89. In 2010 the Union Market focus area had a population of 31,870 people. Of those 31,870 people, 20,344 of them were African American (63.8%) and 9,068 were white (28.5%).
- 90. By 2018 the total population for the Union Market focus area was 42,630. Of those 42,630 people, in 2018, 17,439 of them were African American (28.5%) and 21,048 of them were white (49.4%).

91. Despite the Union Market focus area adding 10,850 people to its total population (25.4%), the area lost 2,905 of its African American population (14.2%). By contrast, the white population soared, with an increase of 11,980 white people (132%) residing in the Union Market focus area in 2018 as compared to 2010.
92. Of the fourteen census tracts, six tracts gained a total of 1,463 African American people between 2010 and 2018, whereas eight of the fourteen census tracts lost 4,195 African Americans between 2010 and 2018.
93. See the table below for the population of African Americans in the Union Market focus area over the relevant time period:

Census Tract	2010	2018
58	161	334
47.01	3387	2760
46	1688	1376
33.02	1347	860
87.01	1840	1231
87.02	1347	1635
88.03*	977	1692
88.02	3779	3067
84.10	1316	538
84.02	1171	584

83.02	231	436
83.01	316	233
47.02	952	985
106	1993	2042

94. Other demographics were affected within the Union Market focus area as well, as the Creative Class Agenda served its purpose of increasing professionals and the 18 to 34 year-old demographic.
95. In 2010, 10,966 out of 31,870 (34.4%) of residents in the Union Market focus area were aged 18-34.
96. In 2018, 19,192 out of 42,630 (44.7%) of residents in the Union Market focus area were aged 18-34.
97. In the two census tracts where the twenty PUDs within the Union Market focus area were built (106 and 88.03), in 2010 2,212 out of 5,210 residents were aged 18-34 (42.4%).
98. By 2018 census tracts 106 and 88.03 had 10,583 total residents. Out of the 10,583 residents 5,798 residents were aged 18-34 (54.7%).
99. The two census tracts within the Union Market focus area that contained twenty PUD's had an 18 to 34 year-old population that grew 12.3% more than the average for the Union Market focus area. The next closest census tract has 49.8% of its residents being 18 to 34 year-old (census tract 47.02).

100. In 2010, 9,522 out of 16,348 (58.2%) of employed residents in the Union Market focus area would have been considered Creative Class.<sup>21</sup>
101. In 2018, 18,975 out of 27,127 (69.9%) of employed residents in the Union Market focus area would have been considered Creative Class.
102. In 2010, within the two census tracts where the twenty PUDs within the Union Market focus area were built (106 and 88.03), 1,409 out of 2,931 residents would have been considered Creative Class (48.1%).
103. By 2018, census tracts 106 and 88.03 had 6,928 total employed residents. Out of the 6,928 employed residents, 4,673 residents would have been considered Creative Class (67.5%).
104. The two census tracts within the Union Market focus area that contained twenty PUD's had 2.4% less professionals in the Creative Class than the rest of the Union Market focus area. However, between 2010 and 2018 the proportion of Creative Class professionals within the two census tracts which contained the twenty PUD's grew by 19.4%, whereas the rest of the Union Market focus area had a Creative Class population that grew by 11.7%.

#### **Navy Yard – Buzzard Point focus area**

105. In 2010 the Navy Yard – Buzzard Point focus area had a population of 29,016 people.
106. Of those 29,016 people, 13,089 were African American (45.1%) and 13,637 were white (47%).
107. By 2018 the total population for the Navy Yard – Buzzard Point focus area was 34,426.

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<sup>21</sup> “Creative Class” is broad and includes any person that would be considered a white collar or creative “professional” as opposed to a service-class or working-class individual.

108. Of those 34,426 people, by 2018, only 11,720 of them were African American (34%) whereas 19,613 of them were white (57%).
109. Despite the Navy Yard – Buzzard Point focus area adding 5,410 people to its total population (15.7%), the area lost 1,917 of its African American population (14.6%). By contrast, the white population soared with an increase of 5,976 white people (43.8%) now residing in the Navy Yard – Buzzard Point focus area in 2018 as compared to 2010.
110. Of the eleven census tracts, four tracts gained a total of 1,208 African American residents between 2010 and 2018.
111. Whereas seven of the eleven census tracts lost 2,547 African Americans between 2010 and 2018.
112. Displacement of African American residents would have been even worse than it was in the Navy Yard – Buzzard Point focus area if not for the presence of Greenleaf Public Housing and James Creek Public Housing complexes (Census Tract 72). Unlike the Union Market focus area, the Navy Yard – Buzzard Point focus area contains bastions of affordability. This illustrates the significance of DCHA choosing not to conduct repairs at Barry Farm and other housing sites, thereby constructively evicting public housing residents, while also choosing not to honor Build First for public housing residents. It also illustrates how both unspoken policies benefit the Creative Class Agenda, which is to rapidly turn over historically African American neighborhoods and to resegregate historically African American neighborhoods.
113. It is also worth noting that Greenleaf Public Housing within the Navy Yard-Buzzard Point focus area is slated for redevelopment and it is unclear whether DCHA will honor the over decades-long promise to “Build First”.

114. See the table below for the population of African Americans in the Navy Yard – Buzzard Point focus area over the relevant time period:

Census Tract	2010	2018
64	1716	1950
110	1992	1132
71	2352	1982
70	253	178
74.01	2106	1732
102	1136	817
105	2011	1782
65	80	336
69	760	440
66	0	38
72	683	1363

#### **G. Defendants Were Fully Aware of the Creative Class Agenda’s Segregative and Gentrifying Effects**

115. In 2012, the DHCD observed in its Analysis of Impediments to Fair Housing Choice (“AI”) that “the District of Columbia consists of hypersegregated Black neighborhood clusters in which African Americans constitute 93 percent to over 98 percent of the

population. In these clusters, the proportion of African Americans is typically more than 60 percentage points higher than would be expected in a free housing market without discrimination while the percentage of Caucasians is 51 to 59 percentage points lower than would be expected.”<sup>22</sup> This “extreme degree of segregation is the District’s greatest fair housing challenge.”<sup>23</sup> It goes on to state that, “the District’s goal should be to achieve the racial and ethnic composition throughout the city that would exist in a genuinely free housing market not distorted by racial discrimination.”

- 116. The AI likewise acknowledged that areas that were once integrated had become, through gentrification, resegregated with predominantly white residents, as opposed to historically African American residents.<sup>24</sup>
- 117. The District of Columbia’s own planning documents, including the Analysis of Impediments to Fair Housing Choice (hereinafter AI), illustrate Defendants’ awareness of the impact of its policies.
- 118. In response to the AI, on November 14, 2016, the U.S. Department of Housing and Urban Development warned the District that its 2016 Consolidated Plan and Annual Action Plan failed to fully address the impediments identified in the District’s 2012 AI, which includes “the District’s duty to affirmatively further fair housing” by “tak[ing]

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<sup>22</sup> District of Columbia Department of Housing and Community Development, Fair Housing Analysis of Impediments (2006-2011), at 178, available at [https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/DC\\_AI\\_2012\\_-FINAL.pdf](https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/DC_AI_2012_-FINAL.pdf)

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* at 174.

appropriate actions to overcome the effects of impediments identified through its AI.”<sup>25</sup>

In the letter, HUD warned the District that it had failed to adequately address its:

- a. “entrenched dual housing market,”
- b. “high cost of housing leading to displacement of low to middle income residents,”
- c. overuse of exemptions to the District’s inclusionary zoning ordinance,
- d. lack of clear goals and objectives to achieve stable, racially-integrated neighborhoods,
- e. severe concentrations and discrimination caused by the District’s zoning treatment of “community based residential facilities,” and
- f. lack of a cogent, pro-integrative policy for siting public housing and the use of Housing Choice Vouchers.

119. DMPED and the DHCD formed the Consolidated Plan in 2016, but the DHCD has advocated for racially integrating communities since 2012’s AI. Yet, in the very same document, DHCD warns that “[T]he in-migration by wealthier whites is producing gentrification that is reducing the Districts supply of housing affordable to households with modest incomes and threatens to resegregate these gentrifying neighborhoods as virtually all-white.”<sup>26</sup>

120. Yet, despite warnings from HUD, and despite warnings from its own government agencies, the District government took great pains to avoid providing information to the

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<sup>25</sup> HUD letter to Mayor Muriel Bowser, November 14, 2016.

<sup>26</sup> Department of Housing and Community Development, FY 2016-FY 2020 Consolidated Plan, p. 137, available at <https://dhcd.dc.gov/service/consolidated-plan-housing-and-community-development>. *Id.*

general public about displacement or segregation via written Department of Housing and Community Development reports that are mandatory under 11 DCMR x-308.4.

121. Residents in ZC-16-29 and 08-07 asked as late as 2017 and 2019, respectively, for a written report from DHCD to address segregation and their requests were coldly ignored. Nonetheless, it is not like the Zoning Commission is unaware of 11 DCMR x-308.4.
122. Indeed, the Commission took a different tact with white property owners seeking to protect property values via the very same statute. 11 DMCR x-308.4. The Zoning Commission freely provides Historic Preservation Office (hereinafter HPO) written reports to residents living in one of the thirty-eight historic districts, of which thirty-six are predominately white. These lucky residents do not even have to ask for the information; it is simply provided as a matter of course.
123. In fact, the plain language of 11 DCMR x-308.4 explicitly requires written reports from both DHCD *and* HPO.<sup>27</sup>
124. The Commission's conflicting interpretations of 11 DCMR x-308.4 depending on who is asking and why sum up the Creative Class Agenda and its influence on African Americans' relationship with the District government: African American residents in African American neighborhoods seek and ask yet are denied and displaced from DC. White residents, whether long-time or newcomer, freely receive without effort as they are lured to DC, and kept in DC through the offer of exclusive segregated communities made possible through policies like the Creative Class Agenda.

#### **H. The Office of Planning and Zoning Commission Have Repeatedly Violated Statutory Duties in Pursuit of the Creative Class Agenda**

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<sup>27</sup> HPO required if the PUD is in a Historic District. DHCD is required all the time.

125. In pushing the Creative Class Agenda forward, the DCOP and the Zoning Commission constantly ignore their statutory duties.
126. The DCOP and the Zoning Commission have routinely undermined the process by which African American residents from historically African American communities voice their concerns about redevelopment policies under which recent history has shown, and more distant history has shown, their quality of lives and livelihoods will suffer.
127. Between 2010 and the present, the Zoning Commission made a series of arbitrary and capricious decisions which ignored the obvious consequences of redevelopment, including: gentrification, displacement, tax increases, dislocation, and related consequences that disproportionately affect African American residents of the District.
128. This disregard for current residents' concerns was calculated to carry out the Creative Class Agenda to attract and settle creative-class millennials in housing close to amenities, public facilities, public transportation, and nature. In the process, the Commission displaced African American residents from historically African American communities. The Commission frequently makes arbitrary findings so contrary to their own stated rules and procedures that it would require an impossible suspension of disbelief to remain confident that the process is sound and not being motivated by some other underlying factors.
129. The Zoning Commission has in concert with the Office of Planning repeatedly made arbitrary rulings on party status, the mechanism which allows residents affected by

planned development to cross-examine witnesses and introduce expert testimony at Zoning Commission hearings.<sup>28</sup>

130. The Zoning Commission habitually accepts party status requests from white residents in white neighborhoods without putting up a fuss. On the other hand, even when the Zoning Commission grants African American residents party status, it is only after much hassle and questioning.
131. The Zoning Commission has in concert with the Office of Planning routinely made arbitrary findings – or no findings at all – on issues related to gentrification and displacement, despite these issues clearly falling within its statutory authority and despite provisions in the Comprehensive Plan specifically calling on the Zoning Commission to protect residents from displacement and gentrification.<sup>29</sup>
132. The Zoning Commission has refused the requests of African American residents to produce a statutorily required agency report, but freely provides statutorily required agency reports for white residents. Even though both statutorily required reports are requirements of the same exact statute, 11 DCMR 308.4, the Zoning Commission only

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<sup>28</sup> ZC No.14-02 (FFCL.FF.8.P1,2; FFCL FF.9,10,12,13.P2) (prejudiced by initial denial of party status for not being "uniquely" impacted despite being Barry Farm residents); ZC No.15-24 (ex. 27A.p1-17); *see also* ZCO.FF.9.P3 (denying party status due to not being impacted despite UMN having membership living one block and a half from 1000-unit luxury development).

<sup>29</sup> ZC No. 14-02; ZCO.FF.P53, 1003; *see also* ZC No.15-24 (arbitrarily finding that there would be no displacement to the surrounding area because the site in question was currently empty, despite no statutorily-required DHCD report and despite the Court of Appeals remanding the *Friends of McMillan* case so that the Commission could conduct a gentrification study on surrounding area while construction site was empty) (ex. 27 . p 2-3, 7-18).

gives the reports to white residents addressing concerns that come from overwhelmingly white neighborhoods.<sup>30</sup>

133. In steamrolling the Creative Class Agenda, the Zoning Commission actively treated African American residents who appeared before them differently from white residents that appeared before them. Despite adamant pleas from community members who often tearfully gave testimony out of concern for their homes and neighborhoods to no effect, the Zoning Commission callously ignored African Americans advocating for their communities and in doing so displayed racial animus.

## **I. Specific Instances of Unsettling Arbitrary Findings, Rulings, and Conflicts of Interest**

### **i. Barry Farm**

134. Zoning Commission case 14-02 involved a PUD application submitted by both Defendants, in partnership with two private developers, for the redevelopment of the Barry Farm neighborhood in accordance with the Creative Class Agenda and the New Communities Initiative.
135. Initially, the Zoning Commission denied BFTAA party status, purportedly for failing to meet the “uniqueness” requirement. In the past, the Zoning Commission has essentially found that residents living within 200 feet of the planned development are presumed to be “uniquely affected” by it.<sup>31</sup>
136. Commissioner May disagreed with the majority’s vote, stating: “[W]e have often granted party status to individuals who are in close proximity to projects or are directly affected

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<sup>30</sup> See generally (ZC Nos. 14-02, 16-13, 16-09, 15-27, 15-24, 16-02, 16-07, 15-29, 15-28, 15-16, 15-22, 16-20, 13-14, 16-29 (no DHCD reports).

<sup>31</sup> See Transcript: Public Hearing, Case No. 15-28, June 20 2016, pp. 6-7 (Chairman Hood: “[I]t’s usually . . . 200 feet that we give precedence to with regard to the impact of a development.”).

by projects, and we also sometimes have multiple citizens groups who gain party status to represent particular positions on a given project. And that's happened on multiple occasions. I think that on paper, a case has been made that [BFTAA] is entitled to representation.”<sup>32</sup>

- 137. As a reason for the denial of party status, Vice-Chair Cohen stated that according to their application, “a lot of people that are part of this organization did not even live in Barry Farm.”<sup>33</sup>
- 138. This was flatly untrue; BFTAA’s application for party status states clearly that only one out of the eight residents on the party status application did not live in a home that was slated for demolition as a result of ZC 14-02.<sup>34</sup>
- 139. Even years later, Chairman Hood continued to characterize the members of BFTAA as outsiders to their own community, stating that “fifty percent of the people” who applied for party status in ZC 14-02 “didn't live nowhere in Barry Farms.”<sup>35</sup>
- 140. In order to meet the uniqueness requirement, residents are generally forced to band together and form an organization to represent them before the Zoning Commission. By arbitrarily denying party status to BFTAA, the Zoning Commission denied each of its members their only feasible mechanism of contemporaneously cross-examining witnesses and introducing expert testimony.
- 141. In the end, the Zoning Commission reversed this denial and granted party status to BFTAA - however, it only made residents aware of this reversal on the date of the

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<sup>32</sup> Transcript: Public Hearing, Case No. 14-02, June 20 2014, p. 42.

<sup>33</sup> *Id.* at 12.

<sup>34</sup> ZC 14-02, Exh. 27.

<sup>35</sup> Transcript: Zoning Commission Public Meeting, June 11 2018, pp. 37-38.

subsequent hearing, residents' final opportunity to be heard before the Commission. As a result, BFTAA and its members could not adequately prepare testimony, expert witnesses, or cross-examination.

142. The Zoning Commission also failed to provide residents with findings of fact regarding gentrification and the development's impact on housing. When testifying residents raised concerns regarding dislocation and displacement, the Commission responded that these issues were "not in [their] purview." This is clearly false by way of organic statute and the Comprehensive Plan.
143. Alternatively, the Commission found that even if displacement or dislocation was in its purview, the Applicant met its burden to "avoid displacement" by mitigating the effects of dislocation with wrap-around services. In the order, the Zoning Commission included no citation for their legal reasoning besides a general cite to the Uniform Relocation Assistance and Real Property Acquisition Act ("URA") explaining that it took precedence over local law. On the contrary, the URA has an explicit provision for local agencies to work with and cooperate with HUD pursuant to local relocation procedures.

## **ii. McMillan**

144. Zoning Commission case 13-14 involved a PUD application submitted by the District of Columbia, in partnership with a private developer, for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site.
145. The Zoning Commission failed to provide residents with findings of fact regarding gentrification and the development's impact on housing. Rather, the Commission ruled that community organization Friends of McMillan's concerns about gentrification were

unfounded because they failed to prove conclusively that the development would lead to gentrification.

146. By finding that the burden of proof rested not on the Applicant but on members of the community, the Commission departed from foundational administrative law norms.
147. In *Friends of McMillan v. DC Zoning Commission* (2016), the District of Columbia Court of Appeals held that the Comprehensive plan required that the Commission weigh the effects of gentrification, both through the lens of relevant Comprehensive Plan provisions, and through the lens of the adverse impact statute.<sup>36</sup>
148. The court also found that the Commission could not shift the burden from the Applicant to community members when it came to assessing the impacts of gentrification such as dislocation, displacement, and increased property taxes.<sup>37</sup>

### **iii. Buzzard Point**

149. Zoning Commission case 16-02 involved a PUD application submitted by developer DC Stadium, LLC, for the construction of a new soccer stadium in the Buzzard Point neighborhood.
150. The Zoning Commission failed to provide residents with findings of fact regarding gentrification and the development's impact on housing. Even after the *Friends of McMillan* ruling and court-provided guidance that the Zoning Commission must weigh the impacts of gentrification, the Commission issued yet another arbitrary ruling, finding that there was no risk of displacement since the homes adjacent to the soccer stadium would not be demolished.

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<sup>36</sup> Friends of McMillan v Zoning Commission, 149 A.3d 1027, 1036-1038 (2016).

<sup>37</sup> *Id.*

151. There was no study conducted to determine if the Zoning Commission's conclusion was correct, although nearly a dozen community members testified that the stadium project was likely to result in gentrification and displacement.
152. It is a significant departure from foundational administrative law for the Commission to make findings without basing them on substantial evidence on the record. Moreover, the reason stated by the Commission - that displacement only happens when homes are demolished - is beyond absurd.

#### **iv. Union Market**

153. In the Union Market cases, the Zoning Commission approved high-density projects, including 6,000 units of studio and one-bedroom apartments as part of a plan to resegregate the area without considering any of the Union Market Neighborhood's (UMN's) concerns about gentrification. In the UMN cases the Zoning Commission went so far as to deny party status to residents who lived within 200 feet of a 1000 unit development because they were not "uniquely affected", much the same as they denied party status in the Barry Farm case when residents actually lived in the public housing that was to be redeveloped. Nor did the Commission provide written reports pursuant to 11-DCMR x-308.4.

### **J. Repeated Violations and Disparate Treatment are Evidence of Animus**

154. These systematic and repeated violations of federal and D.C. law have only negatively impacted predominantly African American communities; predominantly white areas of D.C. have not been subject to these arbitrary rulings and procedural deficiencies.
155. Plaintiffs were able to identify seventy-seven instances where the Zoning Commission ruled on applications for party status between 2013 and 2020. In that time, the Zoning

Commission has never denied an application for a party in support of a PUD; they have only ever denied applications for parties in opposition.

156. Of the fifteen applications for party status in PUD cases in Wards 2 and 3, only one was denied by the Zoning Commission, even though three of these applications were technically deficient. Of the 53 applications for party status in PUD cases in Wards 5, 6, and 8, nearly half of those (23) were denied. The primary reason cited by the Zoning Commission is lack of uniqueness, but it has also cited the same timeliness and notice issues that it has overlooked in other applications for party status.
157. The Zoning Commission has frequently been willing to waive its own rules regarding timeliness and proper documentation for parties in support of PUD approval.
158. 11 DCMR X-308.4 states: “If a public hearing is granted, the Office of Planning shall coordinate a review of the application and prepare an impact assessment of the project, which shall include reports in writing from relevant District of Columbia departments and agencies, including, but not limited to, the Departments of Transportation and Housing and Community Development, and if a historic district or historic landmark is involved, the Historic Preservation Office.”
159. The Department of Housing and Community Development’s (DHCD) mission is to create and preserve opportunities for affordable housing and economic development to revitalize underserved communities in Washington DC.
160. The communities most in need of the affordable housing and economic development for which DHCD is responsible are predominantly African American.

161. The residents of historic districts in DC are predominantly white; there is only one historic district whose population is predominantly African American (Historic Anacostia).
162. In every PUD case in predominantly white areas designated as historic districts, the Zoning Commission sought – and the HPO provided – a detailed report assessing the impacts of the development, for the purposes of ensuring that the character of the neighborhood would be preserved.<sup>38</sup>
163. However, for PUD cases in predominantly African American neighborhoods such as Poplar Point, Union Market, and Reunion Square, the Zoning Commission did not seek – nor did DHCD provide – a report assessing the impacts of the development on housing in the neighborhood, even when such a report was specifically requested by residents.
164. As a result, the predominantly white residents of historic districts were provided important information about the impact of PUDs on their neighborhood. Similar information was denied to the predominantly African American residents of neighborhoods targeted for redevelopment, in violation of DC law.
165. This unequal application of its own rules and processes by the Zoning Commission is evidence of racial animus, as it is not possible to explain the pattern of arbitrary decisions but for the existence of animus against African American residents and predominantly African American communities.
166. Plaintiffs and other similarly situated residents of the District have been subjected to disparate treatment from their white counterparts.

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<sup>38</sup> See Zoning Commission Case Nos. 11-24, 14-08, and 14-09.

**K. Defendants Have Intentionally and Knowingly Pursued the Discriminatory Creative Class Agenda to the Continued Detriment of African American and Low-Income Residents**

167. Defendants have enacted policies that they know to be hostile to non-favored individuals, particularly long-time, African American residents.
168. The Zoning Commission and Office of Planning have systematically, repeatedly, and knowingly violated D.C. law and regulations governing zoning and land use.
169. As a result, Defendants have caused deleterious injury to historically African American communities in violation of D.C. law and the Constitution.
170. The destruction of established African American communities has a deep and long-lasting impact on collective progress, negatively influencing residents' ability to build and maintain businesses, to build and maintain interpersonal relationships, to keep stable work, to grow culture and support systems and reputations and goodwill, to have familiarity, peace and non-violence, and to pass on shared heritage.
171. African American residents of the District have remained in a constant state of flux since slavery. They have seen their communities repeatedly uprooted, compounding injury and insidiously contributing to the conditions used as justification for racist policies such as the Creative Class Agenda.
172. Defendants have mission and vision statements purporting to promote economic and racial integration but are knowingly causing economic inequality and racial segregation.
173. It is African American neighborhoods that are targeted for the Creative Class Agenda, and then further disadvantaged by unspoken policies that treat African American residents from African American neighborhoods differently from white residents from white neighborhoods. This results in long-time African American residents having to

experience displacement, hardship, and waning of opportunity, in continuance of a historical pattern causing a depressing multiplication of indignities over the generations.

174. This destruction of community in the name of the Creative Class Agenda is ongoing and has no end in sight.
175. The newest close-knit African American community slated for destruction through intentional District policy is further east, in Historic Anacostia.
176. Up until 2017, all of the PUDs proposed in the area were affordable and provided family-sized units. However, several market rate PUDs in the same studio/one-bedroom vein as the PUDs in the Union Market and Navy Yard – Buzzard Point focus areas are being proposed in Historic Anacostia with predictable results for the adjacent single family neighborhoods located nearby.
177. Defendants have adopted and carried out the Creative Class Agenda to the detriment and exclusion of African American residents and to the great benefit of white residents.
178. As illustrated by specific actions in predominantly African American neighborhoods, Defendants' actions have unlawfully and discriminatorily harmed African American residents by perpetuating racial segregation, and by systematically and repeatedly violating the District of Columbia's own laws and regulations to radically alter communities through neighborhood-wide redevelopment.
179. Ultimately, Defendants' actions have resulted and will continue to result in the extreme racial gentrification and segregation of neighborhoods - not integrating, but impermissibly flipping neighborhoods from predominantly and historically African American to predominantly white and knowingly displacing African American residents in the process.

**L. The Harm Done to Plaintiffs Can Be Redressed Through Prophylactic and Structural Relief**

180. Defendants must consider the segregative effects of gentrification in approving all future PUD applications. The discriminatory conduct by the Defendants, from which Plaintiffs' injuries arise, constitutes a pattern of intentional gentrification of predominantly African American neighborhoods and displacement of African American residents. Throughout the Zoning Commission cases at the heart of this case, Defendants demonstrated a complete lack of regard for the impact of gentrification.
181. Defendants also failed to make findings of fact regarding the segregative effects of development on predominantly African American neighborhoods. An order requiring that Defendants gather the appropriate DHCD reports would ensure that African American residents are not kept in the dark while their communities are snatched out from under them.
182. Plaintiffs seek an order that all outstanding Requests for Proposals be halted and investigated for Creative Class preferences. Since the adoption of the Creative Class Agenda, the vast majority of PUD approvals have been in predominantly African American neighborhoods. This disparate impact demonstrates that the PUD approval process is suspect as a result of its reliance on the discriminatory Creative Class Agenda. Auditing outstanding requests for PUD proposals to ensure that they are not driven by an intent to favor a particular race, age, or professional class would ensure that PUDs are not being evaluated by impermissible criteria and would prevent future harm to Plaintiffs that would otherwise result from continuing displacement.
183. Plaintiffs seek an order that DC residents receive a fully staffed independent People's Counsel before the Zoning Commission. All of the party status applications that the

Zoning Commission denied between 2013 to 2020 were parties in opposition to development. Among the reasons cited for these denials, the Commission frequently cited technical deficiencies in the application. There is clearly a gross imbalance of power between moneyed developers and the residents of neighborhoods targeted for urban renewal. An order that DC residents be assigned a People's Counsel in Zoning Commission cases would help to correct that imbalance and ensure that Plaintiffs and other residents of DC are able to fully exercise their rights before the Zoning Commission, preventing future harm as a result of arbitrary and capricious rulings regarding party status and access to information, *inter alia*.

## **INDIVIDUAL ALLEGATIONS**

### **A. Near Buzzard Point Resilient Action Committee (“NeRAC”)**

184. Plaintiff Near Buzzard Point Resilient Action Committee (“NeRAC”) is a community-based nonprofit organization that advocates for D.C. residents’ environmental health and safe housing, with a particular focus on residents of Buzzard Point. Its members have been actively in this cause since 2016 and formally organized as NeRAC in January 2018.
185. NeRAC has an interest in protecting its members and area residents from environmental damage caused by redevelopment, including by not limited to toxic air resulting from construction dust and diesel fumes emitted by construction vehicles.
186. NeRAC advances its interest through grassroots organizing, leadership development, community education, and providing resident testimony at Zoning Commission meetings.

187. NeRAC interests having been thwarted by Defendants' redevelopment decisions that have negatively affected the health of its members and area residents.
188. NeRAC has expended its resources in response to, and to counteract, the negative effects of defendants' actions.
189. Defendants' gentrifying and segregative housing policies injure not only NeRAC's individual members but NeRAC itself. NeRAC, an organization of predominantly African-American residents, is no less acutely harmed than its members by being denied equal protection under the law. Furthermore, by adopting policies which displace NeRAC's members from their neighborhoods, Defendants weaken the organization and threaten its very existence.

#### **B. Current Area Residents East of the River ("CARE")**

190. Plaintiff Current Area Residents East of the River ("CARE") is a community-based nonprofit organization that advocates for the preservation of affordable housing and seeks to improve quality of life for area residents. CARE is a member organization of Plaintiff NeRAC.
191. CARE's members are African-American residents living east of the Anacostia River.
192. CARE members meet both formally and informally. Formally, they have testified before various governmental bodies on the effects of gentrification. Informally, they gather on neighborhood streets to raise awareness among community members unable or not inclined to attend civic meetings. As such, CARE members are a valuable part of the communication network between neighbors regarding current events.
193. CARE advances its interests through grassroots organizing, leadership development, community education, and testifying at various governmental meetings.

194. Its interests have been thwarted by Defendants' development decisions that have negatively affected the housing of CARE members. It has expended its resources in response to, and to counteract, the negative effects of Defendants' actions.
195. Defendants' gentrifying and segregative housing policies injure not only CARE's individual members but CARE itself. CARE, an organization of predominantly African-American residents, is no less acutely harmed than its members by being denied equal protection under the law. Furthermore, by adopting policies which displace CARE's members from their neighborhoods, Defendants weaken the organization and threaten its very existence.

### **C. Barry Farm Tenants and Allies Association (“BFTAA”)**

196. Plaintiff Barry Farm Tenants and Allies Association (“BFTAA”) is a 501 (c)(4) BFTAA is an entirely African American organization with a mission that includes but is not limited to protecting and preserving public housing as well as the history and culture of Barry Farm.
197. BFTAA’s members have testified before the Zoning Commission on the effects of proposed PUD approval on the Barry Farm neighborhood.
198. BFTAA advances its interests through grassroots organizing, leadership development, community education, and testifying at various governmental meetings.
199. Its interests have been thwarted by Defendants' development decisions that have negatively affected the housing of BFTAA members. It has expended its resources in response to, and to counteract, the negative effects of Defendants' actions.
200. Defendants' gentrifying and segregative housing policies injure not only BFTAA's individual members but BFTAA itself. BFTAA, an organization of predominantly

African American residents, is no less acutely harmed than its members by being denied equal protection under the law. Furthermore, by adopting policies which displace BFTAA's members from their neighborhoods, Defendants weaken the organization and threaten its very existence.

**D. Individual Plaintiffs: Barry Farm**

**i. Plaintiff Paulette Matthews**

201. Plaintiff Paulette Matthews is a founding BFTAA (Barry Farm Tenants and Allies Association, Inc.) and CARE member.
202. She has lived in the Barry Farm neighborhood for two decades and strongly desired to continue living there during redevelopment. She is a non-millennial and has never attended college. She lives in subsidized housing and cannot afford market rate rent.
203. Additionally, Defendants' disparate treatment of Ms. Matthews has caused Constitutional injury to Ms. Matthews when she was denied access to information.
204. As well, the Creative Action Agenda has disparately impacted African American residents in engaged with the housing market.
205. Due to the unspoken Creative Class Agenda to destroy communities "inimical" to the Creative Class, "Build First" was shunned causing Ms. Matthews great emotional hardship when she was separated from her community.
206. Also, Ms. Matthews has Constitutional injury from when she was treated disparately based on race when the group she is a member of (BFTAA) was denied party status from the Zoning Commission.
207. Ms. Matthews suffers the injuries of a person living in a city that perpetuates segregation.

**ii. Plaintiff Tendani Mpulubusi El**

208. Plaintiff Tendani Mpulubusi El is a former Barry Farm resident who is currently housing insecure and a member of CARE.
209. He is an established artist and served as a Commissioner on the DC Commission on the Arts and Humanities.
210. Mr. Mpulubusi El has suffered Constitutional injuries.
211. As well, the Creative Class Agenda, which has an unspoken policy of arbitrary and capricious zoning decisions, has disproportionately impacted African American residents in the market for housing.
212. Also, Mr. Mpulubusi El has Constitutional injury from when he was treated disparately based on race when he was denied access to information from the Zoning Commission (ZC 16-29).
213. Mr. Mpulubusi El suffers the injuries of a person living in a city that perpetuates segregation.

**iii. Plaintiff Michelle Hamilton**

214. Plaintiff Michelle Hamilton is a founding member of BFTAA and member of NeRAC.
215. Michelle Hamilton was a resident of Barry Farm who moved out of Barry Farm because her unit was filled with mold, which DCHA failed to adequately address despite numerous requests.
216. Michelle Hamilton is African-American. She is a non-millennial.
217. Defendants' disparate treatment of BFTAA, of which Ms. Hamilton is a member, has caused Constitutional injury to her based on BFTAA's denial of party status by the Zoning Commission.

218. As well, the Creative Class Agenda has disparately impacted African American residents in engaged with the housing market.
219. Moreover, due to the unspoken Creative Class Agenda to destroy communities “inimical” to the Creative Class, “Build First” was shunned causing Ms. Hamilton great emotional hardship when she was separated from her community.
220. In addition to the gross disrepair she has endured, she has suffered a loss of neighbors and friends, thus undermining her social network and quality of life. This is a particular hardship because she is disabled and wheelchair-bound, making it especially difficult to maintain a social network that has been scattered.
221. Ms. Hamilton suffers the injuries of a person living in a city that perpetuates segregation.

#### **E. Individual Plaintiffs: Buzzard Point**

##### **i. Geraldine McClain**

222. Plaintiff Geraldine McClain is a sixty-seven-year-old woman who has resided in Buzzard Point since 1986.
223. Ms. McClain is a member of NeRAC . She is a non-millennial.
224. As a direct result of Defendants’ decisions, Ms. McClain has lived at the center of constant redevelopment construction since 2015.
225. The environment has negatively affected Ms. McClain’s health. For example, construction trucks idle next to her house for long periods of time, resulting in polluted air that forces her to close her windows. The pollution in the air is so palpable that Ms. McClain states that she can practically “taste it.” The construction has exacerbated her allergies, caused headaches, and caused emotional stress and a sense of voicelessness and hopelessness.

226. Redevelopment construction has frequently involved digging for underground pipes. The digging has interrupted Ms. McClain's power on at least three occasions for hours at a time, and once interrupted the gas line. In that event, Ms. McClain had to hire a professional to restore her gas so she could operate her furnace. The construction has also shaken her house and caused her backyard fence to fall down, decreasing her quality of life and resulting in economic harm.
227. Ms. McClain also suffers from the loss of social network as individuals leave Buzzard Point.
228. The Creative Class Agenda, which includes arbitrary and capricious decisions, has disparately impacted African American residents such as Ms. McClain and injured them by changing the character of their long-time neighborhoods.
229. Ms. McClain suffers the injuries of a person that lives in a city that perpetuates segregation.

**ii. Sylvia Carroll**

230. Plaintiff Sylvia Carroll is African American and has also been a Buzzard Point resident since 1986.
231. Ms. Carroll is a member of NeRAC. She is a non-millennial.
232. The Creative Class Agenda, which includes arbitrary and capricious decisions, has disparately impacted African American residents such as Ms. Carroll and injured them by changing the character of their long-time neighborhoods.
233. Ms. Carroll suffers the injuries of a person that lives in a city that perpetuates segregation.

**iii. Rhonda Hamilton**

234. Plaintiff Rhonda Hamilton is a resident of Buzzard Point and founding member of NeRAC.
235. Rhonda Hamilton is African American. She is a non-millennial.
236. Like other plaintiffs living in Buzzard Point, Rhonda Hamilton experiences environmental hazards like bad air from construction.
237. Rhonda Hamilton also suffers from the loss of social network as individuals leave Buzzard Point.
238. Moreover, after testifying before the D.C. Zoning Commission on several occasions, Rhonda Hamilton's negative experience with Defendants' decisions and the planning process have led to emotional stress and fear that she and her community are voiceless about the future of their neighborhood. In particular, they are witnessing the destruction and intentional redesign of their neighborhood, which is changing its character from a close-knit community of neighbors to blocks of high-density luxury buildings that she and her neighbors cannot afford, which will imminently require them to move out of their neighborhood or imminently undermine their social networks.
239. In addition to being a resident, Rhonda Hamilton is an Area Neighborhood Commissioner (ANC) (suing in her individual capacity). Because she has made it a priority as a representative to her constituency to protect the character of her neighborhood, the existing and imminent construction and redevelopment has undermined Rhonda Hamilton's standing and reputation in the community, an additional injury.

240. The Creative Class Agenda, which includes arbitrary and capricious decisions, has disproportionately impacted African American residents such as Ms. Hamilton and injured them by changing the character of their long-time neighborhoods.
241. Also, Ms. Hamilton has Constitutional injury from when she was treated disparately based on race when she was denied access to information from the Zoning Commission.
242. Ms. Hamilton suffers the injuries of a person that lives in a city that perpetuates segregation.

## **F. Individual Plaintiffs: Poplar Point**

### **i. Plaintiff Greta Fuller**

243. Plaintiff Greta Full Greta Fuller is a Historic Anacostia resident and business owner.
244. Ms. Fuller is an African American, non-millennial professional whose business is not considered a “creative business” by the D.C. Office of Planning.
245. In addition to the injury Ms. Fuller faces as a non-“creative business” owner, she is also an ANC 8A Commissioner, the region where the Poplar Point development is being built (suing in her individual capacity). She has dedicated hours as a representative to her constituency to protecting the character of her neighborhood, and the existing and imminent construction and redevelopment has undermined Ms. Fuller’s standing and reputation in the community.
246. Additionally, Ms. Fuller faces humiliation and stress resulting from her efforts to educate through her testimony the D.C. Zoning Commission about the serious negative implications of its decision-making, which ultimately resulted in Ms. Fuller’s concern that the zoning process is a sham and her strenuous efforts were futile.

247. Ms. Fuller has Constitutional injury from when she was treated disparately based on race when she was denied access to information from the Zoning Commission.

248. Ms. Fuller suffers the injuries of a person that lives in a city that perpetuates segregation.

## **G. Individual Plaintiffs: Union Market**

### **i. Plaintiff Shanifinne Ball**

249. Plaintiff Shanifinne Ball is a resident of the Union Market neighborhood.

250. Ms. Ball is African American. She is a non-millennial.

251. Ms. Ball is not employed and lives on a fixed income.

252. In Ms. Ball's community, multi-PUD developments are currently underway, located less than two blocks from her home. As a direct result of Defendants' decisions, she lives in reasonable fear about several aspects of her imminently changing neighborhood: environmental degradation similar to other plaintiffs, increased taxes that she will not be able to afford on her home, and the changing character of her neighborhood, the loss of nearby business at which she engages in commerce, and break-up of her social network.

253. The Creative Class Agenda, which includes arbitrary and capricious decisions, has disparately impacted African American such as Ms. Ball residents and injured them by changing the character of their long-time neighborhoods.

254. Also, Ms. Ball has Constitutional injury from when she was treated disparately based on race when she was denied access to information and denied party status from the Zoning Commission.

## **H. Individual Plaintiffs: Housing Insecure Plaintiffs**

### **a. Tamia Wells**

255. Plaintiff Tamia Wells is a low-income tenant who cannot find safe, affordable housing for her family.
256. Tamia Wells is a mother with a minor child who seeks to rent in a racially integrated neighborhood.
257. Tamia Wells is African American.
258. As a result of Defendants' decisions—including but not limited to the D.C. Zoning Commission's custom and practice of not conducting comprehensive reviews of projects that account for the impact of "Creative Class" development on lower income families' racial segregation—there are very few affordable multi-bedroom rental units available for low-income African Americans in racially integrated neighborhoods.
259. Ms. T. Wells suffers the injuries of a person that lives in a city that perpetuates segregation.
260. The Creative Class Agenda has disproportionately impacted African American such as Ms. T. Wells and injured them by segregating them and displacing them from the city, like Ms. T. Wells was.

**i. Ariyon Wells**

261. Plaintiff Ariyon Wells is the adult daughter of Tamia Wells.
262. Ariyon Wells is also a low-income tenant who cannot find safe, affordable housing.
263. Ariyon Wells seeks to rent in a racially integrated neighborhood.
264. Ariyon Wells is African American.
265. As a result of Defendants' decisions—including but not limited to the D.C. Zoning Commission's custom and practice of not conducting comprehensive reviews of projects that account for the impact of "Creative Class" development on low-income families'

racial segregation—there are very few affordable multi-bedroom rental units available for low-income African-Americans in racially integrated neighborhoods.

266. Ms. A. Wells suffers the injuries of a person that lives in a city that perpetuates segregation.
267. The Creative Class Agenda has disparately impacted African American such as Ms. A. Wells and injured them by segregating them and displacing them from the city, like Ms. A. Wells was.

### **CLASS ALLEGATIONS**

268. Plaintiffs CARE, NeRAC, BFTAA, Paulette Matthews, Tendani Mpulubusi El, Michelle Hamilton, Geraldine McClain, Sylvia Carroll, Rhonda Hamilton, Greta Fuller, Shanifinne Ball, Tamia Wells, and Ariyon Wells, bring this action on behalf of themselves and all others similarly situated pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, or in the alternative as a hybrid class under Rule 23(a) and 23(b)(2) and (c)(4), on behalf of the following subclasses:
  - a. Residents in Opposition Subclass: All residents who have appeared before the Zoning Commission since 2006, who when they appeared before the Zoning Commission lived in a community that was targeted for economic redevelopment pursuant to the Creative Action Agenda, Creative Economic Strategy, and Cultural Plan DC by virtue of it being in or directly adjacent to an industrial-zoned district and were subjected to arbitrary and capricious PUD decisions that did not make findings of fact for contested issues on the record or did not make findings based on substantial evidence on the record

regarding the issue of gentrification, displacement, and adverse environmental impacts.

- b. Legacy Residents in Opposition Subclass: All residents who have appeared before the Zoning Commission since 2006, who 1.) testified as to their concerns about gentrification and displacement when they appeared before the Zoning Commission, 2.) lived in the community where the PUD project was being proposed for greater than 10 years, 3.) at the time of the project proposal said community had a majority of black residents, and 4.) were subjected to arbitrary and capricious PUD decisions that either did not make findings of fact for contested issues on the record or did not make findings based on substantial evidence on the record regarding the issues of gentrification and displacement.
- c. Residents Seeking Fair Housing Subclass: All residents who have been seeking affordable family housing in non-segregated neighborhoods since 2006, have been on the affordable housing waitlist for longer than one year, and have been unable to find affordable family housing in a non-segregated community as the result of discriminatory District of Columbia governmental policy to produce housing for residents directly based on source of income and age and indirectly based on family size, race, and religious background.

269. The Residents in Opposition Subclass seek monetary damages for all members of the proposed subclass so that all members of the proposed subclass will have recompense for injuries to their physical health and mental health and the future harm that will result from the injuries they have suffered from environmental pollutants including, but not

limited to, adverse impacts from air pollution, soil pollution, water pollution, flooding, and noise pollution traceable at least in part to construction projects that went forward as a result of customs and policies of the Zoning Commission to not make findings on the record or not make findings based on substantial evidence on the record regarding adverse environmental impacts to PUD projects. The Residents in Opposition Subclass also seek permanent injunctive relief for individuals who oppose future projects arguing for consideration of adverse environmental impacts so that the Zoning Commission must at least make findings on the record considering adverse environmental impacts pursuant to DC regulations and common law. Also, the Residents in Opposition Subclass seek permanent injunctive relief for individuals who oppose future projects arguing for consideration of adverse impacts arising from environmental pollutants so that the Zoning Commission must receive written reports from relevant District of Columbia Agencies assessing project impacts pursuant to statute, in this instance receive written reports from DDOE.

270. The Legacy Residents in Opposition Subclass seek monetary damages for all members of the proposed subclass so that all members of the proposed subclass will have recompense for loss of social support networks, including like-kind exchange and business opportunities, traceable to PUD approvals that came as a result of customs and policies of the Zoning Commission to not make findings on the record or not make findings based on substantial evidence on the record regarding gentrification and displacement arising from PUD projects. The Legacy Residents in opposition subclass also seek permanent injunctive relief for individuals who oppose future projects arguing for consideration of gentrification and displacement so that the Zoning Commission must at least make

findings on the record considering adverse impacts from gentrification and displacement pursuant to DC regulations and common law. Also, the Legacy Residents in Opposition Subclass seek permanent injunctive relief for individuals who oppose future projects arguing for consideration of adverse impacts arising from gentrification and displacement so that the Zoning Commission must receive written reports from relevant District of Columbia Agencies assessing project impacts pursuant to statute, in this instance receive written reports from DHCD.

271. Residents Seeking Fair Housing Subclass seek permanent injunctive relief for all members of the proposed subclass so that all members of the proposed subclass stop being discriminated against by District of Columbia governmental policies that have direct preferences based on age and source of income with respect to real property transactions. The residents Seeking Fair Housing subclass seek permanent injunctive relief whereby the District of Columbia government must immediately cease linking discriminatory Creative Class policy to zoning land use so that the subclass can seek housing in a housing market where the government is not perpetuating racial segregation. The Residents Seeking Fair Housing Subclass also seek monetary damages for actual costs spent seeking housing including travel expenses and time off work to make appointments. The Residents Seeking Fair Housing Subclass also seek monetary damages for the mental distress that arises from housing instability caused at least partially by discriminatory housing policy propagated by the District of Columbia government.
272. This action is properly maintainable as a class action, because the requirements of Rule 23(a) and Rule 23(b) of the Federal Rules of Civil Procedure can be satisfied.

273. The subclasses are so numerous that joinder of all members is impracticable.
274. There are numerous questions of law and fact that are common to each member of the proposed Subclasses.
275. The District of Columbia's customs, policies, and practices to either not make findings of fact for contested issues on the record or not make findings based on substantial evidence on the record regarding the issue of adverse environmental impacts have the same impact on all Residents in Opposition Subclass members, as the District of Columbia's uniform policy to transform industrially zoned neighborhoods pursuant to discriminatory Creative Class policy leads to reduced air quality from construction dust and diesel emissions, ceaseless noise, and mental distress. In particular, common questions of law and fact that apply to each subclass member include, but are not limited to:
- a. Whether Defendants' policy or practice of transforming industrially zoned neighborhoods pursuant to discriminatory Creative Class policy results in arbitrary and capricious rulings for residents in or directly adjacent to those neighborhoods?
  - b. Whether arbitrary and capricious rulings regarding environmental impacts from PUD approvals cause harm to residents in or adjacent to neighborhoods targeted for transformation by discriminatory Creative Class policy?
  - c. Whether the District of Columbia Government may be enjoined from proceeding with transforming industrially zoned neighborhoods without giving fair hearings?
276. Whether the District of Columbia has legitimate non-discriminatory reasons for their conduct?

277. The Zoning Commission has intentionally and systematically failed to either make findings of fact for contested issues on the record or not make findings based on substantial evidence on the record regarding the issues of gentrification and displacement in furtherance of discriminatory Creative Class policies that have preferences based on age, source of income, and desirability of certain residents over others with respect to real property transactions. The Zoning Commissions actions therefore will continue to segregate and break apart long standing communities and will have the same impact on all Legacy Residents in Opposition subclass. In particular, common questions of law and fact that apply to each subclass member include, but are not limited to:

- a. Whether Defendants' policy or practice of transforming neighborhoods inimical to discriminatory Creative Class policy results in arbitrary and capricious rulings for residents in or directly adjacent to those neighborhoods?
- b. Whether arbitrary and capricious rulings regarding gentrification or displacement from PUD approvals cause harm to residents in or adjacent to neighborhoods targeted by discriminatory policy as result of their neighborhoods being inimical to Creative Class growth?
- c. Whether the District of Columbia Government may be enjoined from proceeding with transforming neighborhoods inimical to Creative Class growth without giving fair hearings at the Zoning Commission?

278. Whether the DCHA and District of Columbia government have legitimate non-discriminatory reasons for their conduct?
279. The District of Columbia government has intentionally propagated discriminatory Creative Class policies that have preferences based on age, source of income, and

desirability of certain residents over others with respect to real property transactions.

Upon information and belief, the District of Columbia government's actions have disproportionately impacted blacks who are non-creative and non-millennial and earn incomes which qualify them for affordable housing assistance, the same, and thus the afore-named Residents Seeking Fair Housing Subclass. In particular, common questions of law and fact that apply to each subclass member include, but are not limited to:

- a. Whether the District of Columbia's intentionally discriminatory Creative Class policies that have preferences based on age, source of income, and desirability of certain residents over others with respect to real property transactions has resulted in the perpetuation of segregation?
- b. Whether the District of Columbia's intentionally discriminatory Creative Class policies that have preferences based on age, source of income, and desirability of certain residents over others with respect to real property transactions has exacerbated income inequality and led to housing instability?
- c. Whether the District of Columbia Government may be enjoined from proceeding with intentionally discriminatory Creative Class policies that have preferences based on age, source of income, and desirability of certain residents over others with respect to real property transactions?
- d. Whether the District of Columbia government's actions disproportionately impact African American residents?
- e. Whether the District of Columbia government has legitimate non-discriminatory reasons for their conduct?

280. The claims of the named Residents in Opposition Subclass, Legacy Residents in Opposition Subclass, and the Residents Seeking Fair Housing Subclass are typical of the claims of the other putative and respective Subclass Members they seek to represent.
- a. Residents in Opposition Subclass challenge a single policy and practice of the Zoning Commission through which the Zoning Commission has chosen to purposefully not make findings of fact for contested issues on the record or not make findings based on substantial evidence on the record regarding the issue of adverse environmental impacts in order to transform industrially zoned neighborhoods pursuant to discriminatory Creative Class policy that was implemented by the District of Columbia government. Plaintiffs' civil rights were accordingly violated in the same manner as all other Residents in Opposition Subclass Members, who were subjected to the Zoning Commission's same policy or practice.
  - b. Legacy Residents in Opposition Subclass challenge the Zoning Commission's practice through which it has chosen to not make findings on the record or not make findings based on substantial evidence on the record regarding gentrification and displacement arising from PUD projects in order to effectuate discriminatory District of Columbia Creative Class policy to break apart long standing communities that are inimical to Creative Class growth. Plaintiffs' civil rights were accordingly violated in the same manner as all other Legacy Residents in opposition Subclass Members, who were subjected to Defendant DCHA's same policy or practice.

- c. Residents Seeking Fair Housing Subclass challenge discriminatory District of Columbia policies that have preferences based on age, source of income, and desirability of certain residents over others with respect to real property transactions and that were intentionally propagated pursuant to the Creative Action Agenda, Creative Economy Strategy, and the Cultural Plan DC. Each policy document being an iterative update to the same underlying policy and civil rights violation.
281. The named Residents in Opposition Subclass, Legacy Residents in Opposition Subclass, and Residents Seeking Fair Housing Subclass will fairly and adequately protect the interests of the proposed Subclasses. The named Residents in Opposition Subclass, Legacy Residents in Opposition Subclass, and Residents Seeking Fair Housing Subclass Plaintiffs are aware of no conflict with any other member of the respective subclasses. The named Residents in Opposition Subclass, Legacy Residents in Opposition Subclass, and Residents Seeking Fair Housing Subclass Plaintiffs understand their obligations as proposed Subclass Representatives, have already taken steps to fulfill them, and are prepared to continue to fulfill their duties as proposed subclass representatives.
282. Defendants have no unique defenses against the named Residents in Opposition Subclass, Legacy Residents in Opposition Subclass, and Residents Seeking Fair Housing Subclass Plaintiffs that would interfere with them serving as Class Representatives of their respective subclasses.
283. Class Plaintiffs' counsel are inexperienced in federal court class-action litigation. However, this matter being a case of public interest Class Plaintiffs' counsel has received

several co-counsel and of-counsel offers. Should the case proceed to class certification, Plaintiffs' counsel anticipates being fully prepared to handle such a matter.

284. This action may be maintained as a class action pursuant to Rule 23(b)(3) of because the questions of law and fact common to members of the subclasses predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient resolution of this controversy.
285. This action may alternatively be maintained as hybrid subclasses under Rule 23(b)(2) and 23(b)(3), in which the Court certifies a Rule 23(b)(2) subclass with respect to the claims for injunctive or declaratory relief for each subclass and a Rule 23(b)(3) subclass with respect to the monetary claims for each subclass, and grants the right to opt out to subclass members regarding monetary relief.
  - a. The Zoning Commission's actions whereby they have chosen to purposefully not make findings of fact for contested issues on the record or not make findings based on substantial evidence on the record regarding the issue of adverse environmental impacts in order to more quickly transform industrially zoned neighborhoods pursuant to discriminatory Creative Class policy that was implemented by the District of Columbia government applies generally to the members of the Residents in Opposition Subclass. Final injunctive or declaratory relief, therefore, is appropriate with respect to the subclass as a whole. The proposed Residents in Opposition Subclass can satisfy Rule 23(b)(3)'s requirements of predominance and superiority, and to the extent that some of the members of the Proposed Residents in Opposition Subclass

have damages, their claims for damages can be adjudicated consistent with Rule 23(b)(3).

- b. The Zoning Commission's actions whereby they have chosen to not make findings on the record or not make findings based on substantial evidence on the record regarding gentrification and displacement arising from PUD projects in order to effectuate discriminatory District of Columbia Creative Class policy to break apart long standing communities that are inimical to Creative Class growth applies generally to the members of Legacy Residents in Opposition Subclass. Final injunctive or declaratory relief, therefore, is appropriate with respect to the subclass as a whole. The proposed Conditions Tenants Subclass can satisfy Rule 23(b)(3)'s requirements of predominance and superiority, and to the extent that some of the members of the Legacy Residents in Opposition Subclass have damages, their claims for damages can be adjudicated consistent with Rule 23(b)(3).
286. The District of Columbia governmental actions whereby they have propagated policies that have preferences based on age, source of income, and desirability of certain residents over others with respect to real property transactions pursuant to the Creative Action Agenda, Creative Economy Strategy, and the Cultural Plan DC applies generally to the members of Residents seeking Fair Housing Subclass. Final injunctive or declaratory relief, therefore, is appropriate with respect to the subclass as a whole. The proposed Residents seeking Fair Housing Subclass can satisfy Rule 23(b)(3)'s requirements of predominance and superiority, and to the extent that some of the members of the Legacy

Residents in Opposition Subclass have damages, their claims for damages can be adjudicated consistent with Rule 23(b)(3).

287. Finally, this action may alternatively be maintained as hybrid subclasses pursuant to Rule 23(b)(2) and (c)(4). Because final injunctive or declaratory relief is appropriate with respect to each respective subclass as a whole, the proposed Residents in Opposition Subclass, Legacy Residents in Opposition Subclass, and Residents Seeking Fair Housing Subclass may seek injunctive and declaratory relief pursuant to Rule 23(b)(2) for each respective subclass. In addition, the Court may certify issue subclasses pursuant to Rule 23(c)(4), which states that “an action may be brought or maintained as a class action with respect to particular issues,” while resolving on an individual basis the claims for damages that some of the proposed Subclass Members or each subclass may have.
288. By resolving the common issues described herein through a single class proceeding, each member of the Residents in Opposition Subclass will receive a determination of whether the Zoning Commissions policy or practice of not making findings of fact for contested issues on the record or not make findings based on substantial evidence on the record regarding the issue of adverse environmental impacts in order to more quickly transform industrially zoned neighborhoods pursuant to discriminatory Creative Class policy that was implemented by the District of Columbia government violates the Fair Housing Act and 5th amendment and whether Defendants should be enjoined from linking source of income preference, age preference, and resident desirability preferences to zoning decisions involving residential housing.
289. By resolving the common issues described herein through a single class proceeding, each member of the Legacy Residents in Opposition Subclass will receive a determination of

whether the Zoning Commission's policy or practice of not making findings of fact for contested issues on the record or not make findings based on substantial evidence on the record regarding the issue of adverse impacts of gentrification and displacement in order to break apart communities seen as inimical to discriminatory Creative Class policy that was implemented by the District of Columbia government violates the Fair Housing Act and whether Defendants should be enjoined from linking source of income preference, age preference, and resident desirability preferences to zoning decisions involving residential housing.

290. By resolving the common issues described herein through a single class proceeding, each member of the Residents Seeking Fair Housing Subclass will receive a determination of whether District of Columbia Governmental policy or practice policies that have preferences based on age, source of income, and desirability of certain residents over others with respect to real property transactions pursuant to the Creative Action Agenda, Creative Economy Strategy, and the Cultural Plan DC violates the FHA and whether Defendants should be enjoined from linking source of income preference, age preference, and resident desirability preferences to zoning decisions involving residential housing.
291. Members of the proposed Subclasses do not have a significant interest in controlling the prosecution of separate actions, as a single injunction will provide all Residents in Opposition Subclass, Legacy Residents in Opposition Subclass, and Residents Seeking Fair Housing Subclass the primary respective relief that they seek for the respective subclasses in this litigation.
292. This is the second civil rights litigation involving the redevelopment of Barry Farm. However, this case brings entirely different causes of action.

293. There are no difficulties in managing the subclasses as a class action.

**COUNT ONE**  
**EQUAL PROTECTION – PARTY STATUS**  
**FIFTH AMENDMENT VIOLATION**  
**RACE-BASED DISCRIMINATION – DISPARATE TREATMENT**

Plaintiffs – BFTAA, Paulette Matthews, Michelle Hamilton  
Defendants – District of Columbia

294. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.
295. The District of Columbia government has violated the Fifth Amendment's guarantee of Equal Protection on the basis of race through their pattern of denying party status in Zoning Commission cases to African American residents in predominantly African American communities, while granting party status to white residents in predominantly white communities.
296. As part of this pattern, the Zoning Commission denied BFTAA party status in ZC 14-02. In doing so, it denied Ms. Matthews, Ms. Hamilton, and other residents the only feasible means to contemporaneously cross-examine witnesses and introduce expert testimony.
297. This pattern of disparate treatment has adversely affected Plaintiffs and other residents, particularly those living in historically and predominantly African American communities that are targeted for redevelopment.
298. These unlawful practices would not otherwise occur but for, wholly or partially, discriminatory reasons, and cannot be explained but for animus on the basis of race against African American residents.

299. As a result of Defendants' disparate treatment, Plaintiffs face present and future injuries as described in the individual allegations.

**COUNT TWO**  
**EQUAL PROTECTION – ACCESS TO INFORMATION**  
**FIFTH AMENDMENT VIOLATION**  
**RACE-BASED DISCRIMINATION – DISPARATE TREATMENT**

Plaintiffs – All Plaintiffs  
Defendants – District of Columbia

300. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.
301. The District of Columbia government violated the Fifth Amendment's guarantee of Equal Protection on the basis of race through their pattern of denying residents in predominantly African American communities access to information regarding the impact of PUD approval on housing prices and neighborhood character, while affording the same to residents in predominantly white communities, in violation of DC law.
302. In accordance with this pattern, the Zoning Commission took several intentional actions against Plaintiffs in Zoning Commission Cases 14-02, 15-28, 16-02, and 16-29, including but not limited to:
- a. Failing to address resident concerns about displacement and gentrification despite these concerns being raised repeatedly at hearings.
  - b. Failing to provide residents with a DHCD impact study pursuant to 11 DCMR X-308.4, or any other kind of study regarding gentrification or displacement, before ruling on PUD applications. In ZC 16-29, CARE requested a DHCD written report to address the segregative impact of the PUD; the Zoning Commission failed to respond to the request.

- c. Arbitrarily concluding that concerns about displacement were addressed by developer contributions to community organizations that have as their mission preservation of historic homes and have no known connection to anti-displacement efforts for current residents.
- d. Incorrectly stating on the record several times that relocation, displacement, and gentrification were outside of its purview, when those issues clearly were within its purview.<sup>39</sup>
- e. Making arbitrary and capricious findings of fact and erroneous and egregious conclusions of law.

303. This disparate treatment whereby African American residents have been kept in the dark about the consequences of the complicated processes that are transforming their communities has adversely affected Plaintiffs and other residents, particularly those living in historically and predominantly African American communities that are targeted for redevelopment.
304. These unlawful practices would not otherwise occur but for, wholly or partially, discriminatory reasons, and cannot be explained but for animus on the basis of race against African American residents.
305. As a result of Defendants' disparate treatment, Plaintiffs face present and future injuries as described in the individual allegations.

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<sup>39</sup> Friends of McMillan v Zoning Commission, 149 A.3d 1027, 1036-1038 (2016).

**COUNT THREE**  
**FAIR HOUSING ACT, 42 U.S.C. § 3604 et seq.**  
**DISPARATE IMPACT ON BASIS OF RACE RESULTING FROM THE CREATIVE**  
**CLASS AGENDA**

Plaintiff – All Plaintiffs  
Defendant – All Defendants

306. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.
307. The Fair Housing Act, 42 U.S.C. § 3604 et seq., prohibits discrimination on the basis of race in the sale or rental of housing, making it illegal to refuse to sell, rent, negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person on the basis of race. The Act also prohibits discrimination on the basis of race 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.
308. Census tract level data overlaid with PUD approval information shows that the Creative Class Agenda disproportionately impacts African Americans, in violation of 42 U.S.C. § 3604.
309. Defendants' adoption and enforcement of the Creative Class Agenda disproportionately makes housing unavailable to African Americans in violation of 42 U.S.C. § 3604(a). It also disproportionately impacts African Americans in the privileges of housing, as well as in the provision of services in connection with the housing, in violation of 42 U.S.C. § 3604(b).

**COUNT FOUR**  
**FAIR HOUSING ACT, 42 U.S.C. 3604 et seq.**  
**PERPETUATION OF RACIAL SEGREGATION – SEGREGATIVE EFFECT**

Plaintiff – All Plaintiffs  
Defendant – All Defendants

310. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.
311. The Fair Housing Act prohibits policies that illegally perpetuate race-based segregation.
312. Defendants' adoption and enforcement of the Creative Class Agenda perpetuates the District of Columbia's longstanding racial segregation in housing without justification, in violation of 42 U.S.C. § 3604(a) by erecting arbitrary barriers to housing choices among African American residents.
313. These arbitrary barriers to housing—which include both the Creative Class Agenda as a policy and the specific Zoning Commission and other actions taken in pursuit of enacting the Agenda—have caused or predictably will cause a discriminatory effect in perpetuating racial segregation.
314. The Creative Class Agenda is only promulgated in African American neighborhoods that exist near white neighborhoods. African American neighborhoods that are isolated from white neighborhoods are devalued through government policies such as refusal to repair public housing or concentration of affordable housing, until the African American neighborhood near the white neighborhood is turned white through the machinations of the Creative Class Agenda. Then the process repeats itself.
315. Meanwhile, neighborhoods West of the Park never receive such accelerated development and community destabilization. In that way, communities West of the Park remain

preserved, pristine, and segregated, while areas with a plurality that includes a heavy African American presence are flipped to a white majority.

316. This process continues Eastward, always maintaining a three-tiered housing market. One that is preserved and segregated to be white West of the Park; one that is an in-flux plurality subject to rapid transformation until a critical mass of white population is reached and a critical mass of African Americans have been displaced; and another one that is devalued, and kept ripe for the Creative Class Agenda with depressed land values and high levels of racial segregation.
317. There is not a legally sufficient, non-discriminatory justification for the segregative effect of the Creative Class Agenda, which only operates in neighborhoods with an African American plurality. Even if there were, the arbitrary barriers could be served by another practice with a less discriminatory effect.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs request the following relief:

- A. Determine that Plaintiffs prevail on all counts of the Complaint.
- B. Or, order that in the alternative this court issue an immediate injunction against the DCZC enjoining it from further activity regarding phase one PUD approvals.
- C. Order that Defendants must consider the segregative effects of gentrification in approving all future developments, as required by law.
- D. Order that all outstanding Requests for Proposals be halted and investigated for Creative Class preferences.
- E. Order that DC residents receive a fully staffed independent People's Counsel before the Zoning Commission.
- F. Order Barry Farm Plaintiffs the following specific performance:
  - i. DCHA to develop in place so residents do not have to leave the neighborhood;

- ii. DCHA to cease all pre-construction activity at Barry Farm;
  - iii. DCHA to make every resident current on their rent and utility bills as recompense for DCHA's years of neglecting the site;
  - iv. DCHA to make timely and necessary repairs on every unit;
  - v. DCHA provide adequately funded prepaid phones to permissively track residents if they ever are required to leave the Barry Farm site; and
  - vi. DCHA to regularly restore and maintain the conditions of the property that has fallen into disrepair.
- G. Grant Plaintiffs class certification.
- H. Award monetary damages in the amount to be determined by the Court.
- I. Award attorneys' fees and court costs.
- J. Award awarded such additional relief as the Court deems just.

/s/

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