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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATIONAL FAIR HOUSING ALLIANCE,
ET AL.,

No. C 16-06969 JSW

Plaintiffs,

v.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION (“FANNIE MAE”),

**ORDER DENYING IN PART AND
GRANTING IN PART FANNIE
MAE’S MOTION TO DISMISS**

Defendant.

Now before the Court is the motion to dismiss filed by Defendant Federal National Mortgage Association (“Fannie Mae”). Having considered the parties’ arguments, relevant legal authority, the Court hereby DENIES IN PART and GRANTS IN PART Fannie Mae’s motion to dismiss.

BACKGROUND

Plaintiffs National Fair Housing Alliance, Inc., Fair Housing Advocates of Northern California, Connecticut Fair Housing Center, Denver Metro Fair Housing Center, Fair Housing Center of Central Indiana, Fair Housing Center of the Greater Palm Beaches, Fair Housing Center of West Michigan, Fair Housing Continuum, Inc., Greater New Orleans Fair Housing Action Center, HOPE Fair Housing Center, Housing Opportunities Made Equal of Virginia, Housing & Research Advocacy Center, Miami Valley Fair Housing Center, Metro Fair Housing Services, Inc., Metropolitan Milwaukee Fair Housing Council, North Texas Fair Housing Center, Open Communities, South Suburban Housing Center, and Toledo Fair Housing Center

1 (collectively “Plaintiffs”) here allege that, after the housing crisis in 2008, in violation of the
2 Fair Housing Act, Fannie Mae failed to perform basic maintenance on foreclosed properties it
3 suddenly owned in minority neighborhoods around the country, even while it did perform
4 routine maintenance on properties it came to own in predominantly white neighborhoods.

5 When a home mortgage owned by Fannie Mae goes into default and foreclosure, Fannie
6 Mae obtains the title to the home and, after a completed foreclosure sale, the home is referred to
7 as “Real Estate Owned” or “REO.” (Complaint ¶ 4.) As a result of the housing crisis, Fannie
8 Mae obtained title to a “significant number of REO dwellings covered by the Fair Housing
9 Act.” (*Id.*) Once an REO property, Fannie Mae “assumes all duties and responsibilities of
10 ownership, including ordinary maintenance, while it markets the dwelling for sale to the general
11 public.” (*Id.* ¶ 5.) Fannie Mae’s stated strategy is to “maintain each property in [its] inventory
12 at a level of market-readiness both inside and outside of the property, supporting neighborhood
13 stabilization.” (*Id.*) The stated mission of the maintenance team is “to ensure the quality of our
14 REO property maintenance services, consistently producing best-in-class, market-ready
15 properties and maintaining them until removal from our inventory.” (*Id.*)

16 Plaintiffs allege that Fannie Mae is required, under the Fair Housing Act, to maintain all
17 REO properties, regardless of their location, “without regard to race, color, . . . or national
18 origin.” (*Id.* ¶ 7.) Between July 2011 and October 2015, Plaintiffs allege that they “conducted
19 a comprehensive investigation of [Fannie Mae]’s real estate related activities in communities of
20 color, including predominantly African-American and Latino neighborhoods, and
21 predominantly white neighborhoods in 38 metropolitan areas throughout the United States.”
22 (*Id.* ¶ 3.) Plaintiffs allege that over the course of four years, they investigated over 2,300
23 properties owned and maintained by Fannie Mae, and accumulated over 49,000 photographs.
24 (*Id.* ¶ 7.) Plaintiffs allege that their investigation revealed that “Fannie Mae has failed to
25 conduct routine exterior maintenance and marketing of REO properties in communities of color,
26 thereby leaving those REOs in a state of neglect, while satisfactorily conducting routine exterior
27 maintenance and marketing of its REO properties in predominantly white neighborhoods,
28 therefore leaving those REOs in a materially better condition.” (*Id.* ¶ 8.)

1 Although Plaintiffs alerted Fannie Mae regarding the findings of their investigation in
2 order to secure voluntary compliance with the Fair Housing Act, Plaintiffs allege that Fannie
3 Mae “did not change its behavior. With deliberate indifference to the purpose and effects of its
4 discriminatory policies and practices, Fannie Mae continued to maintain its REO properties
5 differently based on the predominant race and national origin of neighborhoods.” (*Id.* ¶ 19.) As
6 a result of these practices, Plaintiffs allege that “Fannie Mae stigmatizes communities of color
7 as less desirable than predominantly white neighborhoods. The prospects for integration in the
8 affected neighborhoods are reduced because white buyers are deterred from purchasing homes
9 in neighborhoods with poorly maintained REO properties, leaving the existing segregated racial
10 composition of these neighborhoods unchanged.” (*Id.* ¶ 23.)

11 Plaintiffs, a collection of twenty-one fair housing community organizations, allege that
12 they have expended considerable resources and time away from their other projects and
13 programs and have forgone other opportunities in an effort to address the effects of Fannie
14 Mae’s conduct. Plaintiffs set out in detail the frustration of their mission and purpose in the
15 diversion of resources to address Fannie Mae’s alleged conduct and remediation. (*Id.* ¶¶ 142-
16 150, 152-247.) In addition, Plaintiffs further allege that the “discriminatory conduct extends
17 beyond Plaintiffs, also harming the communities Plaintiffs serve. Defendant’s failure to
18 maintain REO properties in communities of color has created deteriorating eye sores and
19 depressed property values in communities of color, undermining neighborhood stabilization,
20 and curtailing economic recovery.” (*Id.* ¶ 248.)

21 Plaintiffs filed suit to allege violation of the Fair Housing Act which makes it unlawful
22 to discriminate against any person in the terms, conditions, or privileges of sale or rental of a
23 dwelling, or in the provision of services or facilities in connection therewith, because of race or
24 national origin. (*Id.* ¶ 261, citing 42 U.S.C. § 3604(b).) Plaintiffs allege that Fannie Mae’s
25 conduct discriminates in the marketing and sale of dwellings to persons because of race or
26 national origin. (*Id.*) Plaintiffs allege that Fannie Mae has “designed a national practice and
27 policy of having its lower-level agents and employees determine whether to conduct an REO
28 exterior maintenance task and how to conduct it. Fannie Mae’s practice thus gave these agents

1 and employees the ability to exercise high levels of discretion with minimal input from Fannie
2 Mae. [This] practice and policy . . . ha[s] caused a disproportionately adverse impact on
3 communities of color.” (*Id.* ¶ 128.) This unguided delegation of discretion without independent
4 quality checks “resulted in REO properties in communities of color receiving less exterior
5 maintenance than REO properties in predominantly white neighborhoods. The observed
6 disparities persist even after a regression analysis for non-racial factors.” (*Id.* ¶ 131.)

7 The complaint is replete with allegations that the maintenance decisions were delegated
8 to low-level employees and agents to decide when and how maintenance tasks would be
9 undertaken. Plaintiffs allege that Fannie Mae did not specify when exterior REO maintenance
10 should be performed, where in contrast, “Fannie Mae provided detailed instructions to its agents
11 with regard to other REO services, including directing them to perform tasks on a monthly
12 basis.” (*Id.* ¶ 129.) The complaint details Fannie Mae’s practices which allowed for little or
13 any knowledge of whether properties actually required exterior maintenance and their failure to
14 perform independent quality control on the majority of the properties. (*Id.* ¶ 130.) Plaintiffs
15 also detail how, after a report by the Office of the Inspector General of the Fair Housing
16 Finance Agency criticized Fannie Mae’s quality control protocol, “noting that there was
17 ‘significant risk’ that it would be insufficient to assess the quality of REO maintenance
18 activities over a sustained period of time,” Fannie Mae still did not alter its practices. (*Id.*)

19 Plaintiffs further allege that the data from their investigation establishes that “the
20 exterior maintenance of REO properties under Fannie Mae’s maintenance practices and policies
21 varied based on the age and/or the value of the properties.” (*Id.* ¶ 132.) Plaintiffs allege that
22 “Fannie Mae’s maintenance policies and practices are the direct and proximate cause of the
23 statistical disparities in the maintenance of properties in the neighborhoods with different racial
24 and ethnic compositions as alleged [in the complaint] and revealed by Plaintiffs’ investigation.”
25 (*Id.* ¶ 76.)

26 After a temporary stay of the case, Fannie Mae moved to dismiss all claims pursuant to
27 Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim and pursuant to Rule
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1 12(b)(1) for failure of Plaintiffs to establish standing. The Court shall address other specific
2 facts as necessary in the remainder of its order.

3 **ANALYSIS**

4 **A. Applicable Legal Standard on Motion to Dismiss.**

5 A motion to dismiss is proper under Rule 12(b)(6) where the pleadings fail to state a
6 claim upon which relief can be granted. The complaint is construed in the light most favorable
7 to the non-moving party and all material allegations in the complaint are taken to be true.
8 *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). However, even under the liberal
9 pleading standard of Federal Rule of Civil Procedure 8(a)(2), “a plaintiff’s obligation to provide
10 the ‘grounds’ of his ‘entitle[ment] to relief” requires more than labels and conclusions, and a
11 formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v.*
12 *Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

13 Pursuant to *Twombly*, a plaintiff must not merely allege conduct that is conceivable but
14 must instead allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at
15 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the
16 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
17 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). “The
18 plausibility standard is not akin to a probability requirement, but it asks for more than a sheer
19 possibility that a defendant has acted unlawfully. ... When a complaint pleads facts that are
20 merely consistent with a defendant’s liability, it stops short of the line between possibility and
21 plausibility of entitlement to relief.” *Id.* (quoting *Twombly*, 550 U.S. at 556-57) (internal
22 quotation marks omitted). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss
23 does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his
24 ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of
25 the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 544. If the allegations are
26 insufficient to state a claim, a court should grant leave to amend, unless amendment would be
27 futile. *See, e.g., Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss*
28 *& Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

1 **B. Organizational Standing.**

2 Fannie Mae seeks dismissal of Plaintiffs’ complaint for lack of organizational standing.
3 For purposes of ruling on a motion to dismiss for lack of standing, the Court must accept as true
4 all material allegations of the complaint and must construe the complaint in favor of the
5 complaining party. *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011) (“At the
6 pleading stage, general factual allegations of injury resulting from the defendant’s conduct may
7 suffice, for on a motion to dismiss we presume that general allegations embrace those specific
8 facts that are necessary to support the claim.”).

9 In order to allege organizational standing under Article III, plaintiffs must demonstrate
10 “(1) frustration of its organizational mission; and (2) diversion of its resources to combat”
11 defendant’s alleged wrongful conduct. *See Smith v. Pacific Properties & Dev. Corp.*, 358 F.3d
12 1097, 1105 (9th Cir. 2004) (citing *Fair Housing of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir.
13 2002)). In brief, plaintiffs must allege “a concrete and demonstrable injury to its activities, not
14 simply a setback to the organization’s abstract social interests.” *Project Sentinel v. Evergreen*
15 *Ridge Apartments*, 40 F. Supp. 2d 1136, 1138 (N.D. Cal. 1999). Standing under the Fair
16 Housing Act is liberal as “Congress intended standing under the FHA to extend to the full limits
17 of Article III.” *Walker v. City of Lakewood*, 272 F.3d 1114, 1123 (9th Cir. 2001) (citing *Havens*
18 *Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982)). Allegations that a fair housing
19 organization must devote significant resources to identifying and counteracting discriminatory
20 practices, thus requiring the diversion of resources from the organization’s counseling and
21 referral services is sufficient to establish sufficient injury to allege organizational standing. *See*
22 *Havens Realty*, 455 U.S. at 379 (holding that “[s]uch concrete and demonstrable injury to the
23 organization’s activities – with the consequent drain on the organization’s resources –
24 constitutes far more than simply a setback to the organization’s abstract social interests.”)
25 (citing *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)).

26 Here, Plaintiffs adequately allege diversion of their resources and frustration of their
27 mission. (*See* Complaint ¶¶ 142-150, 152-247.) Accordingly, at the pleading stage, Plaintiffs’
28 allegations are sufficient to establish organizational standing.

1 **C. Fair Housing Act Claim.**

2 The Fair Housing Act was enacted in response to the 1960s period of “considerable
3 social unrest” and to respond to “both open and covert racial discrimination prevent[ing] black
4 families from obtaining better housing and moving to integrated communities.” *Texas*
5 *Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, 135
6 S. Ct. 2507, 2516 (2015) (“*Inclusive Communities*”). In response, President Lyndon Johnson
7 established the National Advisory Commission on Civil Disorders which identified residential
8 segregation and the importance of unequal housing and economic conditions as underlying
9 causes of social unrest. *Id.* The Commission further noted that “[o]ur Nation is moving toward
10 two societies, one black, one white – separate and unequal.” *Id.* (citing Report of the National
11 Advisory Commission on Civil Disorders 1, 91 (1968)). In order to reverse “[t]his deepening
12 racial division,” the Commission recommended enactment of a “comprehensive and enforceable
13 open-occupancy law making it an offense to discriminate in the sale or rental of any housing . . .
14 on the basis of race, creed, color, or national origin.” *Id.*

15 Section 804 of the Fair Housing Act makes it unlawful to “otherwise make unavailable
16 or deny, a dwelling to any person because of race [or] national origin.” 42 U.S.C. § 3604(2).
17 The regulations promulgated by the United States Department of Housing and Urban
18 Development provide in pertinent part that “[i]t shall be unlawful because of race [or] national
19 original . . . to discourage or obstruct choices in a community, neighborhood or development.”
20 24 C.F.R. § 100.70(a). Such acts “include, but are not limited to: (1) discouraging any person
21 from inspecting, purchasing, or renting a dwelling . . . because of the race [or] national origin
22 . . . of persons in a community, neighborhood, or development.” 24 C.F.R. § 100.70(c)(1). A
23 disparate impact claim serves not only “to uncover unconscious or consciously hidden biases,
24 but also targets ‘artificial, arbitrary, and unnecessary barriers’ to minority housing and
25 integration that can occur through unthinking, even if not malignant, policies of developer and
26 governmental entities.” *Ave. 6E Investments, LLC v. City of Yuma, Arizona*, 818 F.3d 493, 203
27 (9th Cir. 2016) (citing *Inclusive Communities*, 135 S. Ct. at 2522). It is in this way that
28 disparate impact claims “recognize that the arbitrary quality of thoughtlessness can be as

1 disastrous and unfair to private rights and the public interest as the perversity of a willful
2 scheme.” *Id.* (citing *United States v. City of Black Jack, Mo.*, 508 F.2d 1179, 1185 (8th Cir.
3 1974)).

4 Disparate impact liability under the Fair Housing Act “can be proven under a burden-
5 shifting framework analogous to that used in employment discrimination cases: the plaintiff
6 must plead a prima facie case of discrimination, the defendant may rebut by presenting non-
7 discriminatory reasons for the challenged policy, and the plaintiff bears the ultimate burden of
8 persuasion.” *Nat’l Fair Housing Alliance v. Travelers Indem. Co.*, 261 F. Supp. 3d 20, 28
9 (D.D.C. 2017) (citing 24 C.F.R. § 100.500(c); *Inclusive Communities*, 135 S. Ct. at 2522-23).
10 Under the rubric of the *Inclusive Communities* decision, to establish a prima facie case of
11 disparate treatment, plaintiffs must show more than a statistical disparity; they must instead
12 demonstrate that defendant’s policy or policies cause that disparity. 135 S. Ct. at 2523. “A
13 robust causality requirement ensures that ‘[r]acial imbalance . . . does not, without more,
14 establish a prima facie case of disparate impact’ and thus protects defendants from being held
15 liable for racial disparities they did not create.” *Id.* (citing *Wards Cove Packing Co. v. Atonio*,
16 490 U.S. 642, 653 (1989)). The Court must “examine with care whether a plaintiff has made
17 out a prima facie case of disparate impact and prompt resolution of these cases is important. A
18 plaintiff who fails to allege facts at the pleading stage or produce statistical evidence
19 demonstrating a causal connection cannot make out a prima facie case of disparate impact.” *Id.*

20 Fannie Mae argues that Plaintiffs fail to make out a prima facie case of disparate impact
21 because they have failed to identify a cognizable policy or practice that they allege causes the
22 discrimination in housing. Fannie Mae contends that the policy identified by Plaintiffs –
23 delegation of discretion or failure to supervise and differential maintenance based on the
24 properties’ age and value – is insufficient as a matter of law. Fannie Mae argues that the mere
25 delegation of authority over decisions regarding maintenance is insufficient as a policy to
26 withstand dismissal. However, the Court finds this argument unpersuasive. *See, e.g.*,
27 *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 488-90 (7th Cir.
28 2012) (holding that company-wide policy delegating discretion and allowing members to chose

1 their own teams was sufficient basis to state a potential claim for disparate impact based on
2 race); *Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 531-33 (N.D. Cal. 2012) (holding that
3 company-wide practice of abandoning normal hiring procedures and removing safeguards for
4 hiring, may be the basis for claim of sex discrimination); *see also Wal-Mart Stores, Inc. v.*
5 *Dukes*, 564 U.S. 338, 357 (2011) (“[I]n appropriate cases,’ giving discretion to lower-level
6 supervisors can be the basis of Title VII liability under a disparate-impact theory – since ‘an
7 employer’s undisciplined system of subjective decisionmaking [can have] precisely the same
8 effects as a system pervaded by impermissible intentional discrimination.’”) (quoting *Watson v.*
9 *Fort Worth Bank and Trust*, 487 U.S. 977, 990-91 (1988)). At this procedural posture, the
10 Court finds that Plaintiffs have sufficiently alleged facts to support their theory that the policy
11 of delegation of discretion or failure to supervise and differential maintenance based on the
12 properties’ age and value as the robust cause of discriminatory impact. *See Nat’l Fair Housing*
13 *Alliance*, 261 F. Supp. 3d at 28-29.

14 Second, Fannie Mae contends that, regardless of the policy stated, Plaintiffs have failed
15 to pled sufficient facts tending to show causation. The Court finds, however, that Plaintiffs
16 have sufficiently alleged statistical evidence demonstrating a causal connection between the
17 delegation of duties and the differential maintenance. Ultimately, “the question of causation –
18 to what extent the discrepancy is explainable by objective data or race – is premature. It seems
19 clear that Plaintiff’s complaint gives rise to a fair inference of causation; the question of proof
20 will become an issue at later stages in the proceedings.” *Miller v. Countrywide Bank, N.A.*, 571
21 F. Supp. 2d 251, 259 (D. Mass. 2008). Considering the breadth and extensive coverage of the
22 investigation, Fannie’s Mae’s contentions regarding whether the Plaintiffs’ methodology is
23 flawed are best reserved for resolution at summary judgment. The Court finds the specific
24 contentions about alleged deficiencies in methodology go to the weight of the evidence and are
25 not dispositive of the determination whether Plaintiffs have adequately pled discrimination at
26 this procedural stage. *See, e.g., Maduka v. Sunrise Hospital*, 375 F.3d 909, 912-13 (9th Cir.
27 2004) (holding that Federal Rule of Civil Procedure 8 applies to pleading requirements for
28 discrimination at the motion to dismiss stage).

1 Third, Fannie Mae argues that Plaintiffs have alleged facts that would fall outside the
2 statute of limitations time period – earlier than May 12, 2013 – two years before Plaintiffs filed
3 their administrative claim before the Department of Housing and Urban Development. *See* 42
4 U.S.C. § 3613(a). Plaintiffs allege a continuing violation of the Fair Housing Act on the basis
5 of a policy and practice that extends beyond the statute of limitations period, although it clearly
6 includes conduct during the actionable time period. There is “no legal bar to the use of pre-
7 liability period evidence in this case.” *Ellis*, 285 F.R.D. at 528 (citations omitted). “[P]re-
8 statute of limitations data is generally both relevant and frequently used in such matters as
9 evidence of the alleged discriminatory practice, even when a plaintiff may not directly recover
10 as to events occurring outside the applicable time period.” *Id.* (citing *Chin v. Port Authority of*
11 *New York & New Jersey*, 685 F.3d 135, 150 (2d Cir. 2012)) (“It is well established . . . that so
12 long as it least ‘one alleged adverse employment action . . . occurred within the applicable filing
13 period[,] . . . evidence of an earlier alleged [discriminatory] act may constitute relevant
14 ‘background evidence in support of [that] timely claim.’”) (internal citations omitted). Based
15 on the Court’s review of the allegations, the factual background facts outside of the limitations
16 period may relevant even when they do not form the basis for independent liability and are not
17 grounds for dismissal.

18 Lastly, in its motion to dismiss on other grounds, Fannie Mae essentially assumes that
19 Plaintiffs did not intend to allege a disparate treatment claim. (Motion at 19 n.3.) However, in
20 response, Plaintiffs contends that the complaint repeatedly alleges that Fannie Mae intentionally
21 discriminates based on race. In order to show disparate treatment based on race, “a plaintiff
22 must establish that the defendant was *motivated* to discriminate against the plaintiff on the basis
23 of race.” *Garcia v. Country Wide Financial Corp.*, 2008 WL 7842104, at *7 (C.D. Cal. Jan. 17,
24 2008) (citing *AFSCME v. State of Washington*, 770 F.2d 1401, 1406-07 (9th Cir. 1985)
25 (emphasis in original)). “Where a plaintiff challenges a defendant’s policy, the plaintiff must
26 establish that the defendant implemented the policy ‘because of, and not merely in spite of,’ its
27 adverse effect on the protected group.” *Id.* (citing *Personnel Administrator of Massachusetts v.*
28

1 *Feeney*, 442 U.S. 256, 279 (1979)). “Proof of discriminatory motive is crucial to a disparate
2 treatment claim.” *Gamble v. City of Escondido*, 104 F.3d 300, 305-06 (9th Cir. 1997).

3 In response, Plaintiffs indicate that there are multiple allegations in the complaint
4 regarding their observations of “differing treatment” and “differing maintenance” throughout
5 the various neighborhoods. (See Complaint ¶¶ 9, 11, 13, 14, 62, 67, 73, 75, 77, 78, 89.)
6 However, the allegation of differing treatment, while providing support for a disparate impact
7 claim, does not necessarily indicate a discriminatory motive. See, e.g., *Thomas v. San*
8 *Francisco Housing Authority*, 2017 WL 878064, at *4-5 (N.D. Cal. Mar. 6, 2017) (dismissing
9 disparate treatment claim on the basis that impact-related allegations do not suffice to allege
10 intentionally discriminatory conduct); see also *Hamilton v. Lincoln Mariners Assocs. Ltd.*, 2014
11 WI 5180885, at *5 (S.D. Cal Oct. 14, 2014) (holding that dismissal was proper where the
12 complaint failed to allege sufficient factual material to permit the inference that defendants’
13 action were “more likely than not motivated by discriminatory criteria”). The Court finds that
14 the allegations as currently pled do not create an inference of discriminatory intent.
15 Accordingly, the motion to dismiss as to the disparate treatment claim is GRANTED.

16 **CONCLUSION**

17 For the foregoing reasons, the Court DENIES IN PART and GRANTS IN PART the
18 City’s motion to dismiss the Complaint. Although the Court finds that the allegations regarding
19 a disparate treatment claim are insufficient to state a claim, the Court grants Plaintiffs leave to
20 amend. See, e.g., *Reddy*, 912 F.2d at 296. Plaintiffs shall file an amended complaint, if any,
21 within twenty days of the date of this Order. If Plaintiffs file an amended complaint in
22 accordance with this Order, Fannie Mae shall file its response within twenty days of service of
23 the amended complaint.

24 **IT IS SO ORDERED.**

25 Dated: March 21, 2018

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27 _____
28 JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

