

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HIDDEN VILLAGE, LLC,)	CASE NO.: 1:10-CV-00887
)	
Plaintiff,)	JUDGE JAMES GWIN
)	
vs.)	<u>DEFENDANTS' MOTION FOR</u>
)	<u>SUMMARY JUDGMENT</u>
CITY OF LAKEWOOD, OHIO, et al.,)	
)	
Defendants.)	

Now come Defendants, City of Lakewood, Thomas J. George, Charles E. Barrett and Edward E. Fitzgerald, by and through counsel, Mazanec, Raskin, Ryder & Keller, Co., LPA, and pursuant to Federal Rule of Civil Procedure 56, move this Honorable Court for an Order granting them summary judgment and dismissing with prejudice all of Plaintiff's claims against them. This motion is supported by the attached Brief in Support, exhibits, and affidavits, all of which are attached hereto and fully incorporated herein.

Respectfully submitted,

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BRIEF IN SUPPORT

I. INTRODUCTION

Plaintiff Hidden Village, LLC, owns the Hidden Village apartment complex (“Hidden Village”) located at 11849 Clifton Boulevard, Lakewood, Ohio. The Complaint names as Defendants the City of Lakewood and the following Lakewood Officials (collectively “Lakewood Defendants”) in their individual and official capacities: 1) Former Lakewood Mayor, Thomas George; 2) Former Lakewood Building Commissioner, Charles Barrett; 3) Former Lakewood Housing and Building Administrator Edward E. Fitzgerald.

Hidden Village, LLC, contends that actions taken by the Lakewood Defendants in relation to enforcing the Lakewood Zoning Codes, provision of law enforcement services, and providing inspections to safeguard the health and well being of the public establish racial discrimination and civil rights violations. However, the Lakewood Defendants are entitled to summary judgment on all claims.

II. STATEMENT OF THE CASE.

A. Complaint

Count I of the Complaint attempts to assert that the Lakewood Defendants coerced and intimidated Hidden Village tenants based on race, thereby interfering with Hidden Village, LLC’s, right to rent to African-Americans. (Compl. at ¶¶20, 104.) Count I also alleges that the Lakewood Defendants lacked probable cause for an alleged May 22, 2007 “raid” at Hidden Village. (Id. at ¶78.) Count II contends that Hidden Village, LLC, was deprived of the ability to provide equal opportunity housing and that the Lakewood Defendants tortuously interfered with business and rental activities of Hidden Village, LLC. (Id. at ¶¶116-122.) Count III alleges that

the Lakewood Defendants have a pattern and practice of entering upon Hidden Village without consent and in absence of probable cause. (Id. at ¶124)

As a result of the foregoing allegations, Hidden Village attempts to assert the following federal and state law claims:

- An alleged violation of the Fair Housing Act, 42 USC §3601, et seq.;
- An alleged violation of the Civil Rights Act of 1866, 42 USC §1982;
- An alleged violation of the Civil Rights Act of 1870, 42 USC §1981;
- An alleged violation of the Civil Rights Act of 1871, 42 USC §1983;
- A state law claim of tortuous interference with business relationships; and
- A state law claim of trespass.

For the following reasons, the Lakewood Defendants are entitled to summary judgment.

B. Statement of Facts

1. City of Lakewood Background

Lakewood and its officials have enforced fair housing through testing provided by neutral fair housing advocacy groups and by providing fair housing seminars to local landlords. (E. Barcelona Depo., portions attached as Ex. A, at pp. 16-17.) Lakewood also provides a fair housing hotline to assist citizens with fair housing and a fair housing action plan was implemented following a 2006 analysis of housing impediments. (Id. at 16-20.)

Lakewood and its officials strictly enforce its zoning code in a non-discriminatory manner. Lakewood's Zoning Code promotes and protects the public health, safety, and general welfare of Lakewood residents. (Lakewood Ord. §1101.03 attached as Ex. B.) The Lakewood Zoning Code divides the city into various districts in which only certain uses are permitted. (Id.)

Pursuant to the Lakewood Zoning Code, the permitted use for the Hidden Village zoning district is multi-family high density residential use, to wit:

In the M.H. District no building or premises shall be used or established which is designed, arranged, or intended for other than a medium density

multiple-family residential building, a low density multiple family residential building, a single, or two-family dwelling, adult family home, adult group home, or cluster house development. (Barrett Depo., Ex. C, at pp 25-26, *with attached Plaintiff's Depo. Ex. 16.*)

Edward E. Fitzgerald, as the former Lakewood Housing and Building Administrator, budgeted the administration of the housing/building departments and provided all administrative paperwork for the departments. (Fitzgerald Depo., portions attached as Ex. D, at p. 7.) Former Lakewood Building Commissioner, Charles Barrett, enforced and interpreted the meaning and application of the zoning code, including zoning district boundaries as shown on the zoning map. (Lakewood Ord. 1171.01, attached as Ex. E.) As Building Commissioner, Mr. Barrett was required to provide notifications, revocation notices, stop orders, or citations when a violation of the zoning code occurred. (Lakewood Ord. 1171.01, Ex. E.)

To promote the safety, health and welfare of Lakewood residents, Lakewood Ordinances and the Ohio Revised Code provide for administrative inspections of residential premises. Mr. Barrett, as Building Commissioner, could inspect or cause to be inspected residential premises to verify compliance with the Lakewood Building Code. (Lakewood Ord. 1306.49 attached as Ex. F.) The Chief of Police -- or designated police officer -- is permitted to inspect residential premises to enforce Lakewood's Health Code. (Lakewood Ord. 1783.01 attached as Ex. G.) And Lakewood's Fire Safety Inspector, Scott Gilman, is permitted to inspect residential premises to enforce the fire code. (Lakewood Ord. 1501.04 attached as Ex. H.; R.C. 3737.14(A).) The foregoing administrative inspections may be conducted without prior notice. (L.O. 1306.49, Ex. F; L.O. 1783.01, Ex. G; L.O. 1501.04, Ex. H; R. C. 3737.14(A).)

Lakewood conducts routine joint inspections to enforce the building, health, and fire code. (Fitzgerald., Ex. D, at p 23; Gilman Depo., portions attached as Ex. I, at pp 22, 27; Malley

Depo., portions attached as Ex. J, at pp. 35-36.) The purpose of the joint inspection is to reduce the intrusion upon residential premises and safeguard Lakewood residents. (Buckon Depo., portions attached as Ex. K, at pp. 56-59; Fitzgerald Depo., Ex. D, at pp. 23-24.)

In January 2006, Lakewood Police Sergeant Edward Favre was assigned by Chief Malley to work as a special assistant to Mayor George. (Favre Depo., portions attached as Ex. L, at p. 13.) Sgt. Favre's duties as assistant to Mayor George included coordinating the joint inspection of buildings and enforcement of building regulations in Lakewood. (Id. at p. 13.)

2. Hidden Village Background

Hidden Village, LLC, was formed as an entity in 2001. (M. Priore Depo., portions attached as Ex. M, at p. 9.) The only members of Hidden Village, LLC, are Gary Lieberman and Michael Priore. (G. Lieberman Depo., portions attached as Ex. N, at p. 9.) In 2001, Hidden Village, LLC, purchased Hidden Village. (Id. at pp. 6-7.) The only asset owned by Hidden Village, LLC, is the Hidden Village apartment complex. (Id.)

Hidden Village consists of four separate apartment buildings designated as A, B, C, and D. (Id. at pp. 20-21.) Priore and Lieberman contend that Hidden Village was purchased because the former tenants at Hidden Village were creating a nuisance for the tenants at a neighboring apartment complex owned by a separate Priore and Lieberman organization. Following the purchase of Hidden Village, the tenants were removed and the buildings were renovated. (Id.) Hidden Village, LLC, initially had difficulty finding a market price for the renovated Hidden Village units. (Priore Depo., Ex. M, at pp. 16-19.) However, once YRP became tenants at Hidden Village, the units were at their full occupancy rate and has continued close to full occupancy since. (Id.)

3. Background Regarding Youth Re-Entry Program and Lutheran Metropolitan Ministries

Lutheran Metropolitan Ministries ("LMM") is a church related social services organization. (M. Brauer Depo., portions attached as Ex. O, at pp. 7-8.) LMM operates the Youth Re-Entry Program ("YRP"). (Id.) YRP's goal is to provide instruction and care for youth to transition from supervised living arrangements to living independently. (Id. at 9.) The youth served by YRP are referred to the program as they become too old to remain in foster care or the juvenile justice system's Ohio Department of Youth Services. (Id. at 9.) A number of the YRP youth would be convicted felons if the offenses for which they were confined with ODYS were committed by adults. (Withers Depo., portions attached as Ex. P, at p. 9-10.)

YRP places all youths in a single living facility. (Id.) Beginning in April 2006, YRP occupied Hidden Village. (Id. at pp. 33-34.) The Hidden Village buildings occupied by YRP included an on-site staff of case managers and childcare workers to provide independent living training and general care. (Id. at pp. 37-39). Training and classes for YRP enrollees are conducted at the apartment buildings. (Id.) YRP converted eight apartments into office space and conference rooms. (Withers Depo., Ex. P, at pp. 14-15.) The YRP apartment buildings included 24 hour staff supervision of the enrollees. (Id. at pp. 41-43.) The YRP occupied buildings also included a curfew which restricted the entrance and exit of enrollees. (Id.)

4. Facts

Prior to YRP occupancy at Hidden Village, YRP Director, Mark Brauer, met with Priore to discuss the potential of YRP enrollees becoming tenants of Hidden Village. (Brauer Depo., Ex. O, at pp. 20-21) Following the meeting, Mr. Brauer contacted Lakewood's Health and Family Services Dept. to schedule a meeting with various city officials for the purpose of

establishing a positive relationship. (Id.) Mr. Brauer specifically wanted to meet with the Lakewood Police to discuss YRP. (Id. at pp. 21-23; 32-34.)

On February 14, 2006, the requested meeting was held at Lakewood City Hall. (Id. at pp. 23, 24.) The meeting included YRP officials, Lakewood officials, and Priore. (Id.) Mr. Brauer portrayed the tone of the meeting as civil and he described YRP to Lakewood officials. (Id. at 27.) Following the description of YRP, Mr. Barrett read the Lakewood Zoning Code's permitted use for Hidden Village and stated that YRP did not conform to the permitted use. (Id.) Mr. Barrett explained that YRP was not a residential use because the program required twenty-four hour staff supervision of the enrollees; an entire apartment building would be used to house the enrollees; the building would include conference rooms and office space not typical of a residential apartment building; and the YRP enrollees would be subject to a curfew restricting their ability to enter and exit the apartment buildings. (Barrett Depo., Ex. C, at p. 25-28.)

Despite Mr. Barrett's determination of a non-conforming use, on April 13, 2006, Hidden Village, LLC, allowed YRP to move into a building at Hidden Village. (Priore Depo., Ex. M, at p. 33; Lieberman Depo., Ex. N, at pp. 33-34.) Shortly thereafter, Lakewood was informed of the YRP move-in and Mr. Barrett provided a correspondence to Hidden Village, LLC, again stating that YRP did not conform to the zoning code's permitted use and such non-conforming use should not continue. (Barrett Depo., Ex. C, at p. 25, with *Plaintiff's Depo. Ex. 16.*)

Hidden Village, LLC, appealed Mr. Barrett's determination to the Lakewood Planning Commission. (Id. at 75-76.) Following a hearing, the Lakewood Planning Commission determined that YRP's occupancy in Hidden Village fell within the permitted residential use. (Id.)

Hidden Village was located in an area with a high rate of criminal activity relating to illegal drugs and a high concentration of sexual offenders. (Favre Depo., Ex. L, at p. 38-39.) Hidden Village was also located in a secluded area that was not well lit and could not be properly supervised. (Id. at pp. 31-32.) Due to these threats to minors, Sgt. Favre believed that Hidden Village was not a suitable facility for YRP. (Id. at pp. 31-32; 38-39.) As a result, Lakewood officials offered LMM assistance to relocate YRP to a more suitable area in Lakewood. (Id.)

A February 22, 2007 letter issued by Mayor George expressed concern that YRP moved into Hidden Village despite Mr. Barrett's initial determination that YRP occupancy did not conform to the permitted use. (George Depo., portions attached as Ex. Q, at p.106-107, *with attached Plaintiff's Depo. Ex. 75.*) The letter also expressed concern with an increase of criminal activity and LMM staff being non-cooperative with police inquires regarding potential criminal activity. (Id.) Based upon these concerns, the letter informed LMM that Mayor George would seek to have the program removed from Lakewood. (Id.)

Shortly thereafter, a meeting was held with LMM officials and Lakewood officials. Mayor George and Mr. Brauer were in attendance. (M. Brauer Depo. at pp. 71-74.) The meeting provide an open forum for LMM officials and Lakewood officials to discuss the YRP move-in and to discuss any concerns regarding an increase in crime. (Id.; George Depo., Ex. Q, pp. 110-111.) The LMM officials expressed their opinion that YRP enrollees were not the cause of the increase in criminal activity, while the Lakewood officials expressed their concern that the high rate of crime in the area represented a threat to YRP enrollees. (George Depo. Ex. Q, at p. 113.)

On May 22, 2007, a joint inspection of Hidden Village was conducted by the building, fire, police, and health departments. (Favre Depo., Ex. L, at pp. 59; 62-63.) The joint inspection occurred immediately following the joint inspection of another nearby apartment complex (Id.)

The purpose of the joint inspection was to verify that all health and safety issues were properly addressed and to determine the appropriate fire code building use for the YRP facilities. (Id. at 65-66; Gilman Depo., Ex. I, at p. 36-38; Buckon, at pp. 55-57.) An on-site YRP administrative staff member and Mr. Brauer granted the joint inspection team access to the YRP occupied buildings and apartments. (Withers Depo., Ex. P, at pp. 60-61.) YRP enrollees did not object to the inspection of the apartments and at no time was the joint inspection team asked to leave the premises. (Id. at p. 63-64; Gilman Depo., Ex. I, at p. 36; Watts Depo., Ex. R, at p. 26.)

Due to confusion regarding the fire code use classification of the YRP occupied buildings, Lakewood Fire Inspector Scott Gilman contacted the State Fire Marshall to assist with a classification. (Gilman Depo., Ex. I, at pp. 62-63.) To assist with the fire code use classification, Mr. Gilman and a State Fire Inspector spoke with a YRP administrative staff member at Hidden Village regarding the program and took photos of the buildings' exterior. (Id. at pp. 66-67.) Hidden Village manager Marilyn Watts approached Mr. Gilman and the State Fire Inspector in the parking lot and requested that they leave the property. (Id.; Watts Depo., Ex. R, at pp. 39-43) Mr. Gilman and the State Fire Inspector then left the property. (Id.)

Importantly, there is no evidence that any of the aforementioned actions by the Lakewood Defendants made any dwelling at Hidden Village unavailable to a YRP enrollee. (Lieberman Depo., Ex. N, at p. 140; Brauer Depo., Ex. O, at pp. 79-80.) To the contrary, the number of apartments leased to YRP enrollees has increased from the initial occupancy date. (Priore Depo., Ex. M, at pp. 23-24.) Any fluctuation in YRP tenancy has been the result of LMM funding issues and is completely unrelated to the Lakewood Defendants. (Brauer Depo, Ex. O at p. 91; Withers Depo., Ex. P, at p. 78.) Hidden Village, LLC's, claimed damages relate to its self-serving and attenuated allegation that the Lakewood Defendants' actions resulted in a decrease in

the values of Hidden Village and the Drake apartment complex properties in 2006. (Lieberman Depo., Ex. N at pp. 144-153.) Hidden Village, LLC, does not claim that the Lakewood Defendants' actions deprived a racial minority YRP enrollee from obtaining housing in Lakewood.

III. LEGAL ANALYSIS

A. Standard for Summary Judgment.

Summary judgment is appropriate if the evidence in the record shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). When moving for summary judgment, an adverse party may not rest upon the mere allegations or a denial of the adverse party's pleading. Fed. R. Civ. Pro. 56(e). Instead the non-moving party must set forth specific facts showing there is a genuine issue for trial. *Id.* A fact is material only if its resolution will affect the outcome of the lawsuit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). In these situations there can be no genuine issue as to any material fact, since a complete failure to proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. *Id.*

B. Standards for Fair Housing Act Claim and 42 U.S.C. §§1981 and 1982.

The Fair Housing Act ("FHA"), 42 U.S.C. §3601, et seq., states that it is unlawful to "make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." (Emphasis added.) 42 U.S.C. § 3604(a). Hidden Village,

LLC, also attempts to assert an FHA claim under 42 U.S.C. §3617, which makes it “unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed” his or her rights under the FHA. The Sixth Circuit treats claims under the FHA like disparate treatment claims under Title VII, and applies the burden shifting test of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Campbell v. Robb*, 162 Fed.Appx. 460, 473-74 (6th Cir. 2006).

Hidden Village, LLC, also alleges that the Lakewood Defendants violated 42 U.S.C. §§ 1981 and 1982. The aforementioned *McDonnell Douglas* burden shifting analysis “applies to federal housing-discrimination claims, whether they are brought under the FHA or 42 U.S.C. §§ 1981 or 1982.” *Lindsay v. Yates*, 498 F.3d 434, 438 (6th Cir. 2007). The following will address the fair housing claims under the burden shifting analysis and will refer to such claims collectively as the FHA claims.

Under the burden shifting analysis, the plaintiff first bears the burden of establishing a prima facie case of disparate treatment under the FHA. *Campbell, supra*, 162 Fed.Appx. 460, 473-474 (6th Cir. 2006). To establish a prima facie case, generally the plaintiff must show the following: (1) that plaintiff is a member of a protected class; (2) that plaintiff applied for and was qualified to rent or purchase certain property or housing; (3) that plaintiff was rejected; and (4) that the housing or rental property remained available thereafter. *Maki v. Laakko*, 88 F.3d 361, 364 (6th Cir. 1996). A prima facie case of disparate treatment under the FHA requires the plaintiff to show that the defendant’s conduct resulted in the denial of housing to a protected class or that the defendant’s conduct made housing unavailable to a protected class. *Id.*

If a prima facie case is established, a rebuttable presumption of unlawful discrimination is created. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981). The burden

then shifts to the defendant to articulate a legitimate non-discriminatory basis for the challenged action. *Selden v. U.S. Dep't of Hous. and Urban Dev.*, 785 F.2d 152, 159-160 (6th Cir. 1986).

If the defendant proffers such a basis, the ultimate burden shifts to plaintiff to establish that the articulated non-discriminatory reason is pretextual. *Id.* At this stage, the presumption of discrimination “drops from the case” and “the factual inquiry proceeds to a new level of specificity.” *Id.* at 160-161. **Error! Bookmark not defined.** To prevail, the plaintiff must identify evidence from which a reasonable jury could conclude that the proffered reason is actually a pretext for unlawful discrimination. *Risch v. Royal Oak Police Dep.*, 581 F. 3d 383 (6th Cir. 2009).

C. The FHA claims fail on the merits

1. Hidden Village, LLC, cannot establish a prima facie FHA claim.

To establish a prima facie FHA claim, Hidden Village, LLC, must demonstrate that the actions of the Lakewood Defendants resulted in the denial of housing or made housing unavailable to a protected class. In *Maki*, the Sixth Circuit Court of Appeals held that a landlord could not be in violation of the FHA when there was no evidence that the landlord's actions caused the protected class tenant to leave the rental apartment. *Maki*, 88 F.3d 361, 364. Further, the FHA does not create a right of action for property owners who claim that the value of their property has decreased due to alleged discriminatory actions, as such a claim, standing alone, fails to establish that a protected class was denied housing or that housing was made unavailable to a protected class. *Cox v. Dallas*, 430 F.3d 734, 744 (5th Cir. 2005), citing *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327, 329 (7th Cir. 2004)

The instant case is analogous to *AHF Community Development, LLC v. Dallas*, 633 F.Supp 2d 287 (N.D. Texas, 2009). In *AHF*, the property owner brought a claim against the

municipality alleging that the municipality's property inspections -- or "raids" as termed by the property owner -- along with the municipality's plan to deem the property a nuisance as a result of criminal activity formed the basis of an FHA claim. *Id.* at 289-292. However, the property owner failed to present evidence that the municipality's joint inspections or nuisance plan resulted in a denial of housing or made housing unavailable to a protected class. *Id.* at 300-304. Relying upon case law from the Fifth And Seventh Circuit Court of Appeals, the District Court granted summary judgment in favor of the municipality, holding that the actions of the municipality did not result in the exclusion of African-Americans from the property owner's rental units and, thus, the FHA claim was not viable under either §§3604(a) or 3617. *Id.*

In the instant case, Hidden Village, LLC, has failed to allege or present evidence that the Lakewood Defendants' actions resulted in the exclusion of a YRP enrollee or any other protected class member. Priore and Lieberman confirm that since the initial 2006 lease with LMM the number of YRP enrollees has increased. There is no evidence that a YRP enrollee was denied housing or housing was made unavailable to a YRP enrollee as a result of the Lakewood Defendants' actions. Mr. Brauer, YRP Director, confirms that YRP tenancy has increased at Hidden Village and there have been no instances in which a YRP enrollee was excluded from living at Hidden Village. Because Hidden Village, LLC, has failed to allege or present evidence that the Lakewood Defendants' actions resulted in the exclusion of a protected class member, it cannot establish a prima facie FHA claim. For this reason, the Lakewood Defendants are entitled to summary judgment on all FHA claims. See, *Maki, Cox, Halprin, and AHF*

In addition, Hidden Village fails to establish a prima facie FHA claim because the evidence fails to demonstrate that the Lakewood Defendants acted with a discriminatory intent or purpose against a protected class. *Vill. of Arlington Hts. v. Metro. Housing Dev. Corp.*, 429 U.S.

252, 265 (1977). See, also, *Smith & Lee Associates, Inc. v. City of Taylor, Mich.*, 102 F.3d 781 (6th Cir. 1996). A discriminatory intent or purpose must be at least, in part, a motivating force of the challenged action. *Arlington Hts.*, at 265.

The *Arlington Hts.* Court articulated a multi-factored test for determining whether governmental action was motivated by discriminatory intent/purpose, to wit:

- (1) the racial impact of the decision;
- (2) the historical background of the decision, particularly where it reveals a series of official actions taken for invidious purposes;
- (3) the specific sequence of events leading up to the challenged decision-including departures from the normal procedural sequence; and
- (4) the legislative or administrative history-especially where there are contemporary statements by members of the decision-making body, or minutes of its meetings. *Id.*

First, there was no racial impact resulting from the Lakewood Defendants' actions. The Lakewood Defendants' actions did not result in the denial of housing to a protected class member nor did it make housing unavailable to a protected class member. The allegation made by Hidden Village, LLC, that the Lakewood Defendants' actions had a negative impact on the sale value of Hidden Village fails to demonstrate racial impact.

The legislative and administrative history fails to establish racial discrimination. The Lakewood officials were unaware of the racial make-up of YRP prior to implementing any policy or legislative action. (George Depo., Ex. Q, at pp. 89-90; Barrett Depo., Ex. C, at p. 65; Malley Depo., Ex. J, Favre Depo., Ex. L, at pp. 151-152.) The legislative action by the Lakewood Planning Commission resolved the zoning issue in favor of YRP. The joint inspection was conducted in accord with Lakewood Ordinances and the Ohio Revised Code. There is no administrative or legislative history demonstrating that Lakewood engages in a

pattern or practice of denying fair housing. To the contrary, Lakewood has enforced fair housing through actions such as testing by neutral fair housing advocacy groups, presenting fair housing seminars to local landlords, providing a fair housing hotline for citizen complaints, and implementing a fair housing action plan.

The evidence fails to establish that a racial discriminatory intent/purpose was a motivating factor of any challenged action. Because there is no evidence of a racial discriminatory intent/purpose, Hidden Village cannot present a prima facie FHA claim. For this additional reason, Lakewood Defendants are entitled to summary judgment on the FHA claims.

2. The Lakewood Defendants have established a legitimate non-discriminatory basis for the challenged actions.

All challenged actions taken by the Lakewood Defendants were predicated upon legitimate non-discriminatory grounds. The zoning determination by Mr. Barrett was properly based upon his interpretation of the zoning code. Mr. Barrett explained that YRP, in his opinion, was not a residential use because the program required 24 hour staff supervision; an entire apartment building housed the enrollees; the building included conference rooms and office space; and YRP enrollees were subject to a curfew restricting their ability to enter and exit the apartment buildings. Mr. Barrett, acting under the authority of the Lakewood Zoning Code, provided notification to Hidden Village, LLC, of the non-conforming use. Clearly, Mr. Barrett's actions were based upon legitimate non-discriminatory reasons.

Moreover, the YRP relocation request was based upon initial zoning issues and because the area in which Hidden Village area was located had a high rate of criminal activity. Hidden Village was also located in a secluded area with poor lighting and could not be properly supervised. Due to these potential threats to YRP enrollees, Lakewood officials believed that

Hidden Village was not a suitable facility to house YRP. Again, the relocation proposal was legitimately based upon non-discriminatory reasons.

The joint inspection was conducted in accord with Lakewood Ordinances and the Ohio Revised Code. Notification prior to the joint inspection was not required under either the Ordinances or the Revised Code. The purpose of the joint inspection was to verify that all health and safety issues were properly addressed and to determine the appropriate fire code building use was for the YRP facilities. This evidence shows that the joint inspection was conducted as a result of legitimate non-discriminatory health concerns.

3. Hidden Village, LLC, cannot demonstrate that the Lakewood Defendants legitimate non-discriminatory basis is pretextual.

Hidden Village cannot demonstrate that the aforementioned legitimate non-discriminatory basis is a pretext for unlawful discrimination. Within the context of an FHA claim, pretext can be established by (1) a direct evidentiary showing that a discriminatory reason more likely motivated the defendants or by (2) an indirect evidentiary showing that the defendants' explanation is not credible. *Lindsay v. Yates*, 578 F.3d 407 (6th Cir. 2009), citing *Peters v. Lincoln Elec. Co.*, 285 F.3d 456 (6th Cir. 2002).

Hidden Village, LLC, bears the burden of setting forth evidence that the Lakewood Defendant's legitimate non-discriminatory basis for the challenged actions was a pretext for racial discrimination. Accordingly, the Lakewood Defendants will not engage in speculation and will address pretext in their Reply in Support of Summary Judgment.

D. Hidden Village, LLC, lacks standing to bring claims under 42 U.S. C. §§1981 and 1982.

Unlike standing under the Fair Housing Act, a plaintiff asserting a claim on behalf of a third-party under 42 U.S.C. §§1981 and 1982 must meet prudential standing requirements in

addition to Article III standing requirements. *Warth v. Seldin*, 422 U.S. 490 (1975). Prudential standing requirements are governed by considerations closely related to the question of whether a person in the plaintiff's position would have a right of action on the claim. *Id.* Prudential standing considerations include whether the plaintiff's relationship with the third-party was adversely affected by the defendants' alleged actions against the third-party, and whether the third-party is unable to assert the violation on their own behalf. *Id.* at 510.

Hidden Village, LLC, has failed to meet prudential standing requirements necessary for standing to bring the §§1981 and 1982 claims on behalf of YRP. Specifically, Hidden Village, LLC, has failed to show that its relationship with YRP was adversely affected by the Lakewood Defendants' alleged discriminatory actions. There is no evidence that the Lakewood Defendants' actions caused a reduction in the number of YRP enrollees at Hidden Village. Rather, the YRP enrollees housed at Hidden Village increased from the commencement of LMM's 2006 lease with Hidden Village, LLC. Accordingly, the relationship between Hidden Village, LLC, and LMM/YRP has not been adversely affected.

Furthermore, there is no evidence that LMM is unable to assert a claim under §§1981 and 1982 on behalf of YRP enrollees. LMM, as the custodial entity of YRP enrollees, is the appropriate entity to represent YRP enrollee's rights to fair housing rather than Hidden Village, LLC. For this additional reason, a prudential standing requirement has not been met.

Hidden Village, LLC, has failed to meet the prudential standing requirements necessary for standing to assert §§1981 and 1982 claims on behalf of the YRP enrollees. Thus, the Lakewood Defendants are entitled to summary judgment on the §§1981 and 1982 claims.

E. Hidden Village, LLC, lacks standing to bring a claim under §1983.

A §1983 cause of action is entirely personal to the direct victim of the alleged

constitutional violation. *Claybrook v. Birchwell*, 199 F.3d 350, 357 (6th Cir. 2000). Only the purported victim of the constitutional violation may assert a §1983 claim. *Id.* Indeed, a landlord has no standing to bring a §1983 claim for an alleged violation of his tenants' rights because such a claim is a personal right of action which can only be brought by the individual tenants. *Shamaeizadeh v. Cunigan*, 338 F.3d 535, 544 (6th Cir. 2003) (Landlord had no reasonable expectation of privacy in rented apartment and, therefore, had no standing for §1983 claim for alleged unreasonable search.) See, also, *Bonds v. Cox* (6th Cir. 1994), 20 F.3d 697; *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978); *Purnell v. Akron*, 925 F.2d 941 (6th Cir. 1991).

Here, Hidden Village, LLC, appears to allege that an unreasonable search occurred as a result of the joint inspection at Hidden Village. However, Hidden Village, LLC's, §1983 claim only attempts to defend the Fourth Amendment rights of the YRP enrollees or staff. Absent is any allegation or evidence that Hidden Village, LLC's, Fourth Amendment right against unreasonable searches was violated. Accordingly, Hidden Village, LLC, does not have standing to assert the §1983 claim for an alleged unreasonable search and the claim should be dismissed.

F. The §1983 claim fails to establish a constitutional violation.

The Fourth Amendment provides that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated” and that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” An administrative inspection for possible violations of a municipal building code implicates Fourth Amendment rights against unreasonable searches. *Camara v. Municipal Court*, 387 U.S. 523, 526 (1967).

The Fourth Amendment recognizes a valid warrantless entry and search of premises when police obtain the voluntary consent of an occupant with authority to consent to the search. *Georgia v. Randolph*, 547 U.S. 103, 106 (2006); *Illinois v. Rodriguez*, 497 U.S. 177 (1990). A third party's consent to search an area is valid if he has mutual use of it, with joint access to or control of the area for most purposes. *United States v. Matlock*, 415 U.S. 164, 171, n.7 (1974). In addition, even if the consenting party does not, in fact, have the requisite relationship to the premises, “there is no Fourth Amendment violation if an officer has an objectively reasonable, though mistaken, good-faith belief that he has obtained a valid consent to search the area.” *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990).

Here, the Lakewood Ordinances and Ohio Revised Code governing the joint inspection did not require a warrant. The joint inspection was conducted only after YRP staff and Mr. Brauer consented to their entrance upon the premises. YRP enrollees did not object to the inspection of the individual apartments and at no time was the joint inspection team asked to leave the premises. Fire Inspector Scott Gilman’s subsequent visit with the State Fire Inspector, also comported with the Fourth Amendment. Indeed, Lakewood Fire Inspector Gilman and the State Fire Inspector did not enter any apartment building and left the property when Hidden Village manager, Marilyn Watts, requested that they leave the property.

Based upon the foregoing, Hidden Village LLC, fails to demonstrate that the joint inspection or Scott Gilman violated the Fourth Amendment right to be free from unreasonable searches. For this additional reason, the Lakewood Defendants are entitled to summary judgment on the §1983 claim.

G. The individual capacity Defendants are entitled to Qualified Immunity.

“Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald* (1982), 457 U.S. 800, 818. The question of whether qualified immunity shields a government official’s conduct is a question of law, not fact. *Garvie v. Jackson* (C.A.6, 1988), 845 F.2d 647, 649. See, also, *Buckeye Comm. Hope Foundation v. Cuyahoga Falls*, 970 F.Supp. 1289.

Once a defendant has submitted evidence to show that he or she was acting within the scope of his or her discretionary authority, the plaintiff has the burden of proving that the defendant is not entitled to qualified immunity. *Wegvener v. Covington* (6th Cir., 1991), 933 F.2d 390, 392. The plaintiff can only defeat the qualified immunity defense by establishing that a reasonable official in the defendant’s position should have known that his or her conduct violated a right arising under or protected by the United States Constitution or laws. *Pray v. Sandusky* (6th Cir., 1995), 49 F.3d 1154, 1157. The plaintiff must establish a statutory or constitutional violation by the defendant to overcome qualified immunity. *Siegert v. Gilley* (1991), 500 U.S. 226, 232. Liability may not be based upon a defendant’s mere failure to act or passive action. *Bass v. Robinson* (6th Cir., 1999), 167 F.3d 1041, 1048.

Moreover, the Sixth Circuit has held that §1983 liability will not be imposed solely upon the basis of respondeat superior. *Turner v. City of Taylor*, 412 F.3d 629, 643 (6th Cir. 2005). Instead, there must be a showing that the supervisor encouraged the specific incident of misconduct or in some other way directly participated in it. *Id.* In short, the supervisor must have implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct of the offending subordinate. *Id.*

At the outset, the evidence establishes that all the individually named Lakewood Defendants were acting within the scope of their discretionary authority. To avoid needless repetition, the foregoing analysis relating to the FHA claims and alleged Fourth Amendment violation are incorporated into the individually named Lakewood Defendants' qualified immunity defenses. Because the foregoing analysis has established that there has been no violation of any FHA claim or Fourth Amendment right, all the individually named Lakewood Defendants are entitled to qualified immunity. *Siegert, supra*. Therefore, all Lakewood Defendants are entitled to summary judgment based upon qualified immunity.

1. Thomas George is entitled to qualified immunity.

Mayor George did not play any role in the initial zoning determination by Charles Barrett or the notice to Hidden Village, LLC, that YRP was not a permitted use. (George Depo., Ex. Q, at pp. 46-47.) Moreover, Mayor George did not direct or participate in the joint inspection that occurred at Hidden Village. (*Id.* at pp. 119-120.) The February 22, 2007 letter expressed legitimate concerns regarding the initial improper YRP move-in, an increase in criminal activity near Hidden Village and LMM staff being non-cooperative with police inquires regarding potential criminal activity. Clearly, a reasonable official in Mayor George's position would have no reason to believe that his legitimate concerns regarding compliance with zoning and criminal activity could form the basis of the asserted FHA claims. Thus, Mayor George is entitled to qualified immunity on all federal statutory and constitutional claims.

2. Charles Barrett is entitled to qualified immunity.

Charles Barrett was not present during the joint inspection and played no role in directing the joint inspection. Mr. Barrett was also not involved in the decision to conduct the joint

inspection. As a result Mr. Barrett is entitled to qualified immunity as to the claim of a Fourth Amendment violation.

The only actions taken by Mr. Barrett which relate to the FHA claims is his initial determination that YRP was not a permitted use for Hidden Village and his notification of the non-conforming use. Mr. Barrett's actions were reasonably based upon the Lakewood Zoning Code. As established above, Mr. Barrett provided legitimate reasons why he found a non-conforming use. Clearly, a reasonable official in the Mr. Barrett's position would have no reason to believe that his interpretation and enforcement of the zoning code violated a federal statute or constitutional right. Thus, Mr. Barrett is entitled to qualified immunity on all federal statutory and constitutional claims.

3. Edward E. Fitzgerald is entitled to qualified immunity.

Edward E. Fitzgerald did not play an active or implicit role in the actions forming the basis of the alleged statutory and constitutional violations. There is no evidence that Mr. Fitzgerald directed or participated in any action relating to the initial zoning determination that YRP was not a permitted use, Mr. Barrett's notice that YRP was not a permitted use, the request to relocate YRP, or the joint inspection. (Fitzgerald Depo., Ex. D, at pp. 12-13; 23-25; 35; 49.) The only involvement Mr. Fitzgerald had was suggesting a different interpretation of the Lakewood Zoning Code than Mr. Barrett's interpretation. (Id. at pp. 29-30.) No action was taken by the Lakewood Defendants as a result of Mr. Fitzgerald's separate interpretation of the zoning code. (Id. at p. 40.) Accordingly, Mr. Fitzgerald is entitled to qualified immunity on all federal statutory and constitutional claims.

H. Lakewood is entitled to judgment as to any asserted *Monell* liability.

The claims against Lakewood and the individual defendants, in their official capacities, for alleged constitutional violations are *Monell* claims. For a local government to be held liable under §1983, a plaintiff must show that the government itself caused the constitutional violation at issue. *Canton v. Harris* (1989), 48 U.S. 378. This requires that the plaintiff allege and prove a local government's policy, custom, or procedure was the moving force behind the alleged constitutional deprivation. *Monell v. Dept. of Social Serv.* (1978), 436 U.S. 658. Thus, the plaintiff must show that the governmental action was taken with the requisite degree of culpability and demonstrate a direct causal link between the government action and the deprivation of federal rights. *Bd. of Cty. Commrs. of Bryan Cty. v. Brown* (1997), 522 U.S. 397, 403-404. Indeed, municipal liability for the actions of employees may not be based on a theory of respondeat superior. *Berry v. City of Detroit* (C.A.6, 1994), 25 F.3d 1342, 1345.

In *Los Angeles v. Heller* (1986), 475 U.S. 796, 799, the United States Supreme Court held that if a government official "inflicted no constitutional injury on [the plaintiff], it is inconceivable that [a municipality] could be liable" for a §1983 *Monell* claim. Here, the analysis regarding Plaintiff's §1983 Fourth Amendment claim has established that an unreasonable search did not occur during the joint inspection. Because there is no underlying constitutional violation, the *Monell* claim fails as a matter of law. *Peet v. Detroit* (C.A.6, 2007), 502 F.3d 557, 566. Thus, summary judgment should be granted as to the *Monell* claim.

Even assuming that Hidden Village, LLC's, Fourth Amendment rights were violated – which is expressly denied – the *Monell* claim still fails as a matter of law. "Section 1983 limits municipal liability to the violation of some 'official policy' attributable to the municipality, which may originate from acknowledged government lawmakers or those in positions of responsibility 'whose edicts may fairly be said to represent official policy.'" *Young v. Mahoning*

Cty. (N.D. Ohio 2005), 418 F.Supp.2d 948. As a result, a plaintiff attempting to establish municipal liability pursuant to §1983 may demonstrate three categories of “official policy”: (1) an express policy or custom of the municipality; (2) a final policymaker’s conduct; or (3) the municipality's failure to train employees. *Young, supra*, at 956.

Notably, a government official’s mere authority to exercise discretion while performing the particular functions of his or her job does not make the official a final policy maker – unless such decisions are final and unreviewable and are not constrained by the official policies of superior officials. *Feliciano v. Cleveland* (6th Cir., 1993), 988 F. 2d 649, 655. “Discretion to act is not to be confused with policymaking authority; no municipal liability results where an official merely has discretion to act because subjecting a municipality to liability in such a situation would be ‘indistinguishable’ from respondeat superior liability.” *Id.* at 656.

Here, the joint inspection was conducted in accord with Lakewood Ordinances and the Ohio Revised Code. There is no evidence that either the Lakewood Ordinances or the Revised Code were the driving force behind a constitutional violation. Moreover, the discretionary decision to conduct a joint inspection at Hidden Village cannot form the basis of a *Monell* claim. There is no evidence that the decision to conduct the joint inspection represents final policy for Lakewood. Finally, there is no evidence that a lack of training resulted in a joint inspection which caused a constitutional violation. Accordingly, for this additional reason, the *Monell* claim fails as a matter of law and the Lakewood Defendants are entitled to summary judgment.

I. Lakewood and the individual Defendants in their official capacity are immune from the state law claims.

Lakewood is a political subdivision under R.C. §2744.01(F) and is entitled to immunity under R.C. §2744.02. The Defendants named in their official capacities are also entitled to

immunity under R.C. §2744.02. *Lambert v. Clancy* (2010), 125 Ohio St.3d 231. Section 2744.02(A)(1) provides immunity to political subdivisions from tort liability. *Franks v. Lopez* (1994), 69 Ohio St.3d 345, 347. The R.C. §2744.02(A)(1) immunity is subject to the five exceptions set forth in R.C. §2744.02(B). *Hill v. Urbana* (1997), 79 Ohio St.3d 130, 133. If none of the exceptions apply, the analysis ends and the political subdivision is immune from liability. *Cater v. Cleveland* (1998), 83 Ohio St.3d 24, 28.

Section 2744.02(B) revokes immunity for losses caused by the negligent operation of a motor vehicle, losses due to the negligent performance of employees with respect to proprietary functions of the political subdivision, losses due to a subdivision's failure to keep public roads in repair, losses due to injury occurring as a result of a physical defect within or on the grounds of buildings used for governmental functions, or where civil liability is expressly imposed by another provision of the Revised Code. None of these exceptions apply in the present case.

The claims relate to Lakewood's administrative inspection of Hidden Village, as well as the provision of police services. These allegations clearly do not involve the operation of a motor vehicle, the failure to keep a public road in repair, or injuries caused by a physical defect in a public building. Likewise, there is no statutorily-imposed liability.

Finally, this case does not involve a negligently performed proprietary function. The definition of governmental function expressly includes

- (a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

- (p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or

structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures; (R.C. §2744.02(C)(2).)

The joint inspection and the police presence at the apartment buildings fall under these definitions of governmental functions. As these activities are expressly defined as governmental functions, they cannot be classified as proprietary functions. R.C. §2744.01(G)(1)(a). As such, none of the enumerated exceptions to immunity contained in R.C. §2744.02(B) apply.

To the extent that the Complaint alleges a claim for an intentional tort, an intentional tort is also not an exception to the broad immunity generally enjoyed by political subdivisions as all immunity exceptions only apply to negligence. *Wilson v. Stark County Dept. of Human Services* (1994) 70 Ohio St.3d 450. Because the state law claims of trespass and tortious interference with business relations are framed as intentional torts, none of the immunity exceptions apply.

As no exception to Lakewood's immunity applies, Lakewood and the individual Defendants in their official capacities are immune from Plaintiff's state law claims. Accordingly, summary judgment is appropriate.

J. The individual Defendants in their individual capacity are immune from Plaintiff's state law claims.

Section 2744.03(A)(6) provides immunity from liability to employees of political subdivisions. Mayor George, Mr. Barrett and Mr. Fitzgerald, named in their individual capacities as employees of Lakewood, are entitled to immunity under R.C. §2744.03(A)(6) unless one of the following exceptions apply:

- (a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;
- (b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

- (c) Liability is expressly imposed upon the employee by a section of the Revised Code.

None of the exceptions apply to this case. No section of the Revised Code expressly imposes liability on these individuals for their actions and it is undisputed that the individual Lakewood Defendants were acting within the scope of their employment.

There is also no evidence that these Defendants acted with a malicious purpose, in bad faith or in a wanton or reckless manner. “Malice” is defined as the willful and intentional design to harm another by inflicting serious injury without excuse or justification. *Garrison v. Bobbitt* (1999), 134 Ohio App.3d 373, 384. “Bad faith” implies sinister motive and also refers, by way of analogy to insurance law, to that which has “no reasonable justification.” *Hicks v. Leffler* (1997), 119 Ohio App.3d 424, 429. “Wanton” misconduct refers to a failure to exercise any care whatsoever. *Fabrey v. McDonald Vill. Police Dept.* (1994), 70 Ohio St.3d 351, 356. “Recklessness” is a perverse disregard of a known risk with the actor being conscious that his conduct will in all probability result in injury. *O’Toole v. Denihan* (2008), 118 Ohio St.3d 374.

The state law claims are for tortious interference with business relationships and trespass. As describe under the qualified immunity analysis, Mr. Fitzgerald did not participate in the actions that form the basis of the state law claims. Accordingly, it cannot be shown that Mr. Fitzgerald acted recklessly/wantonly, maliciously, or in bad faith as to the state law claims. Also, the qualified immunity analysis shows that neither Mayor George nor Mr. Barrett had any involvement with the joint inspection. Thus, Mayor George or Mr. Barrett cannot have acted recklessly/wantonly, maliciously, or in bad faith with respect to the state law claim of trespass.

The evidence does not demonstrate that Mr. Barrett acted with recklessness/wantonness, maliciousness or bad faith due to his interpretation of the Lakewood Zoning Code and his notice of the non-permitted use. Mr. Barrett’s actions conformed to his authority under the zoning code

and were based upon legitimate concerns of a non-permitted use. Thus, Mr. Barrett is also entitled to immunity as to the state law claim of tortious interference with business relationships.

Likewise, the evidence does not demonstrate that Mayor George acted with a level of culpability which equates to recklessness/wantonness, maliciousness or bad faith due to his February 22, 2007 letter. The letter was predicated upon Mayor George's legitimate concerns regarding zoning and criminal activity at Hidden Village. As a result, Mayor George is also entitled to immunity as to the claim of tortious interference with business relationships.

Based upon the foregoing, the individually named Lakewood Defendants are entitled to immunity under R.C. Chapter 2744 as to all state law claims. Thus, summary judgment is appropriate on all state law claims against the individually named Lakewood Defendants.

K. Plaintiff cannot succeed on its claim for tortious interference with business relationships.

The elements for tortious interference with a business relationship are: (1) a business relationship; (2) the defendant's knowledge thereof; (3) an intentional interference causing a termination of the relationship; and (4) damages resulting therefrom. *Chandler & Assoc., Inc. v. America's Healthcare Alliance, Inc.* (1997), 125 Ohio App. 3d 572, 583. A "tortious interference" action requires that an individual induces or purposely causes a third party to terminate a business relationship with another. *Id.*

Hidden Village, LLC, cannot succeed on its tortious interference claim as YRP did not terminate its relationship with Hidden Village, LLC. The evidence is that Hidden Village, LLC's, business relationship with YRP **increased**. Absent is evidence that a YRP tenant terminated a lease or declined to renew a lease due to a Lakewood Defendant's actions. As

Hidden Village, LLC, cannot show a terminated business relationship, Hidden Village, LLC, cannot maintain its claim for tortious interference with business relationships.

L. Lakewood Defendants were privileged to enter onto Plaintiff's property such that Plaintiff cannot maintain its claim for trespass.

Hidden Village, LLC, also cannot succeed on its trespass claim as the Lakewood Defendants were privileged to enter onto the property to conduct inspections. Trespass is the unlawful entry upon the property of another. *Kramer v. Angel's Path, L.L.C.* (2007), 174 Ohio App. 3d 359, 369. A trespass occurs when a person, without authority or privilege, unlawfully enters the private premises of another directly causing damages. *Id.*

Neither Mayor George, Mr. Barrett nor Mr. Fitzgerald participated in the inspection. Thus, Hidden Village, LLC, is unable to show that any of these named Defendants entered onto its property. As to Lakewood, the joint inspection team had authority to and were privileged to via Lakewood Ordinances and the Ohio Revised Code. The joint inspection was granted access by LMM/YRP staff and none of the YRP enrollees objected to the inspection. In short, the joint inspection team acted within the scope of their legal authority and was privileged to enter the property to conduct the inspections. For this additional reason, the trespass claim fails. *Chalker v Howland Township Trustees* (1995), 74 Ohio Misc.2d 5.

IV. CONCLUSION

In conclusion, there are no genuine issues of material fact and the Lakewood Defendants are entitled to judgment as a matter of law on all claims asserted by Hidden Village, LLC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2010, a copy of the foregoing Motion for Summary Judgment was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/John D. Pinzone

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MIDW-080408/RMotion SJ