UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

METRO GARDENS NEIGHBORHOOD ASSOCIATION, et. al,

Plaintiff,

v. Case No.: 3:25-cv-692-WWB-SJH

CITY OF JACKSONVILLE
Duval County, Florida,

Defendant.
_____/

DEFENDANT CITY OF JACKSONVILLE'S MOTION TO DISMISS

Defendant, City of Jacksonville (City), pursuant to Rules 8(a)(2), 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (Rule(s)), hereby moves to dismiss the Complaint of *pro se* Plaintiff, Lydia Bell et al. (Doc. 1). Plaintiffs assert that the City's decision to allow a medical examiner's facility to be located and operated the City's Brentwood neighborhood violated Title VI of the Civil Rights Act, *see* 42 U.S.C. § 2000d; the Fourteenth Amendment's Procedural Due Process clause; as well as local zoning laws.

This matter is due to be dismissed. The Complaint fails to satisfy federal pleadings standards; this Court lacks jurisdiction over the matter because Plaintiffs lack standing; the Plaintiffs have failed to state claims against the City for which relief can be granted; and Plaintiffs cannot demonstrate they are entitled to

preliminary injunctive relief. The City, therefore, respectfully requests that this Court dismiss the Complaint with prejudice.

MEMORANDUM OF LAW

I. STANDARD OF REVIEW

In order to state a claim, Rule 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." To satisfy this standard, a complaint must contain sufficient factual allegations to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.* at 679. "[B]are assertions" which "amount to nothing more than a 'formulaic recitation of the elements'" of a claim, should therefore be rejected as "conclusory and not entitled to be assumed true." *Id.* at 681.

Rule 12(b)(1) motions asserting a court's lack of subject matter jurisdiction can come in two forms: "facial" and "factual" attacks. *See Lawrence v. Dunbar,* 919 F.2d 1525, 1528–29 (11th Cir.1990). As relevant here, "[f]acial attacks challenge subject matter jurisdiction based on the allegations in the complaint, and the district court takes the allegations as true in deciding whether to grant the motion." *Morrison v. Amway Corp.*, 323 F.3d 920, 925 n.5 (11th Cir. 2003). In this regard, "a court assessing a facial attack on jurisdiction is to assume the allegations in the

complaint are true and not look outside the pleadings and attached exhibits." *Schmidt v. Multimedia Holdings Corp.*, 361 F. Supp. 2d 1346, 1348 (M.D. Fla. 2004) (citing *Lawrence*, 919 F.2d at 1529), *abrogated on other grounds by Kehoe v. Fid. Fed. Bank & Tr.*, 421 F.3d 1209 (11th Cir. 2005).

Similarly, in ruling on a motion to dismiss under Rule 12(b)(6), a district court is required to construe the complaint broadly, *Levine v. World Fin. Network Nat'l Bank*, 437 F.3d 1118, 1120 (11th Cir. 2006), viewing the factual allegations in the complaint as true and in the light most favorable to the plaintiff. *Burban v. City of Neptune Beach*, 920 F.3d 1274, 1278 (11th Cir. 2019). While a court must accept well-pled facts as true, it is not, however, required to accept a plaintiff's legal conclusions. *Iqbal*, 556 U.S. at 678 (noting that "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions"). Nor is a court "required to draw plaintiff's inference." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1260 (11th Cir. 2009) (internal citation and quotations omitted). Further, "Rule 8 . . . demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. Indeed, allegations showing "[t]he mere possibility the defendant acted unlawfully [are] insufficient to survive a motion to dismiss." *Sinaltrainal*, 578 F.3d at 1261; *see also Iqbal*, 556 U.S. at 678 (holding that "[w]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" (quoting *Twombly*, 550 U.S. at 557)). Thus, "[t]hreadbare recitals of the elements of a cause of action, supported

by mere conclusory statements," do not suffice. *Id.* at 663.

Accordingly, to survive a motion to dismiss, a complaint must plead enough factual matter that, if taken as true, suggests the elements of the cause of action will be met. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1296 (11th Cir. 2007). Nonetheless, "a court's duty to liberally construe a plaintiff's complaint in the face of a motion to dismiss is not the equivalent of a duty to re-write it for her." *Peterson v. Atlanta Hous. Auth.*, 998 F.2d 904, 912 (11th Cir. 1993). "Thus, the well-pleaded factual allegations must be taken as true, and the alleged facts must suggest the required elements of the causes of action on which Plaintiff can recover." *Jones v. Jenne*, No. 07-60839-CIV, 2008 WL 2323890, at *1 (S.D. Fla., June 2, 2008).

Finally, when a party proceeds *pro se*, opposing parties and the court are bound to construe the *pro se* party's pleadings liberally. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Faulk v. City of Orlando*, 731 F.2d 787, 789-90 (11th Cir. 1994); *Bailey v. Wictzcak*, 735 F. Supp. 1016, 1018 (M.D. Fla. 1990). Regardless, even when reviewing a *pro se* plaintiff's complaint under the less stringent standard of *Estelle*, a court should dismiss the complaint for failure to state a claim if it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Bailey*, 735 F. Supp. at 1018 (internal quotations and citations omitted).

II. SUMMARY OF PLAINTIFFS' ALLEGATIONS

The Metro Gardens Neighborhood Association (Metro Gardens), along with twenty residents of Duval County, appear to have sued the City for alleged injuries related to the City's site selection and pending operation of a medical examiner's office in the Brentwood neighborhood. Plaintiffs, proceeding *pro se*, assert that the City's decision to "place the facility in Brentwood was made without public notice, environmental impact review, or meaningful community consultation." Doc. 1 at 10; *see also id.* at 10-11 (providing chronology of site selection, zoning, and building process). Plaintiffs further suggest that the City is the recipient of federal funds subject to oversight pursuant to 42 U.S.C. § 2000d, and its decision to place the facility in Brentwood has a "disparate racial impact on a protected class." *Id.* at 10. Finally, Plaintiffs assert that the process for selecting the facility site violated municipal zoning law. *Id.* at 11. All told, Plaintiffs contend the facility's "proposed use threatens the health, safety, and dignity of Brentwood residents," irreparably harms the community, and "perpetuates a pattern of discriminatory land use [by] placing undesirable facilities in majority Black neighborhoods . . . ." *Id.* at 10-11.

Based on these allegations, Plaintiffs assert three claims against the City: (1) violation of Title IV of the Civil Rights Act, 42 U.S.C. § 2000d; (2) violation of the procedural due process clause of the Fourteenth Amendment; and (3) violation of City zoning laws. *Id.* at 10-11. Plaintiffs seek as remedies "declaratory and injunctive relief to prevent the operation of the facility as a Morgue and Forensic

Lab to ensure that the building . . . [be] repurposed for a use that benefits . . . the community." *Id.* at 10. They also request declaratory relief that the City has violated their rights under Title VI, the Fourteenth Amendment, and City zoning laws. Additionally, they request the Court order the City to "conduct a full racial and environmental justice impact assessment, with community oversight," *id.* at 12, ask the Court to "[m]andate a transparent and inclusive community process to identify alternative, community-benefitting uses for the already constructed building," *id.*, along with waiving any administrative fees, costs, or bond requirements associated with the lawsuit. *Id.* They also ask for attorneys' fees and costs pursuant to 42 U.S.C. § 1988. *Id.*

Plaintiffs have not sufficiently pleaded that the Court has jurisdiction over this matter, nor have they sufficiently pleaded claims against the City for which relief can be granted. The City therefore asks that the Court grant its Motion and dismiss the Complaint with prejudice.

III. ANALYSIS

A. The Complaint should be dismissed for failure to satisfy federal pleading standards as it relates to *pro se* parties

The Complaint does not comply with federal law or the Federal Rules regarding *pro se* Plaintiffs. The Complaint does not make clear who the Plaintiff is, or if instead, there are multiple Plaintiffs. To the extent the Plaintiff is Metro Gardens, that entity cannot bring suit without an attorney. Alternatively, should the action include the twenty individually named *pro se* plaintiffs, only one has signed

the Complaint. As a result of these deficiencies, the Complaint is due to be dismissed.

At the outset, it is not clear from the face of the Complaint whether the party bringing the action is Metro Gardens, or Lydia Bell along with the nineteen other individuals named in the Complaint. *See* Doc. 1 at 1, 6-8. In filling out a pre-printed *pro se* "Complaint for a Civil Case" form, Bell hand wrote "Metro Gardens Neighborhood Association, et al." as the Plaintiff in the case caption. *Id.* at 1. Later in the form, under the heading "The Plaintiff(s)," Bell lists herself, as well as nineteen other individuals. *Id.* at 1, 6-8. This portion of the Complaint, however, does not identify or list Metro Gardens. *See id.* at 6-8. Finally, the only person who signed the Complaint was Bell. *Id.* at 5. From this perspective alone, the City is unable to determine who has filed suit against it.

If the intended Plaintiff is Metro Gardens, the current Complaint cannot stand. Construing the complaint liberally, as this Court must, *see Estelle*, 429 U.S. at 106, it appears that Metro Gardens is an unincorporated artificial entity or association. It is well established, however, that "an artificial entity . . . can act only through agents, cannot appear *pro se,* and must be represented by counsel." *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985).

Moreover, to the extent Bell seeks to represent Metro Gardens in her *pro se* capacity, she cannot. While federal law permits a party to represent herself, *see* 28 U.S.C. § 1654, a *pro se* litigant may not represent others. *See Franklin v. Garden State Life Ins.*, 462 F. App'x 928, 930 (11th Cir. 2012) ("Section 1654

authorizes parties in federal cases to 'plead and conduct their own cases personally or by counsel"); *Timson v. Samson*, 518 F.3d 870, 873-74 (11th Cir. 2008) (the right to proceed *pro se* in federal court under § 1654 is "a personal right that does not extend to the representation of the interest of others"); *CFTC v. Alista Grp., LLC*, No. 2:20-cv-503-FtM-29NPM, 2020 WL 8617560, at *1 (M.D. Fla. Dec. 28, 2020) ("Under 28 U.S.C. § 1654, a party may appear and conduct their own cases personally. But a lay person cannot represent any other person or entity"); *U.S. ex. rel. Stonstorff v. Blake Medical Center*, No. 8:01-cv-844-T23MSS, 2003 WL 21004734, at *1 (M.D. Fla. Feb. 13, 2003) ("Axiomatically, a lay person is entitled to represent only himself, not any other person or entity"). As the Complaint currently stands, therefore, Metro Gardens cannot proceed without being represented by counsel.

If instead, the intended Plaintiffs in this action are the twenty individuals listed in the Complaint, the pleading fails to satisfy Rule 11(a). That rule requires that "[e]very pleading . . . must be signed by . . . a party personally if the party is unrepresented." FED.R.CIV.P. 11(a). *See also Perez v. Onewest Bank*, No. 3:13-cv-705-J-39JBT, 2014 WL 12873173, at *1 (M.D. Fla. Mar. 13, 2014) (finding that each of the plaintiffs must sign all filings with the court) (citing *Day v. Wall*, No. 08-cv-904, 2008 WL 4773054, at *1 (D.R.I. Oct. 30, 2008)) (noting that Rule 11 requires parties not represented by an attorney to sign every pleading, written motion, and other paper and "[i]n the case of multiple *pro se* plaintiffs, each plaintiff must sign each pleading, written motion and other paper")). Here, Bell is the only

party who signed the pleading. Doc. 1 at 5. Again, however, Bell cannot, as a *pro se* party, represent the other individuals listed in the Complaint. *See e.g.*, *Perez*, 2014 WL 12873173 at *1 (*pro se* litigants may not appear for others). At present, therefore, Bell is the only Plaintiff who has satisfied the standards of 28 U.S.C. § 1654 and Rule 11.

Accordingly, as for Metro Gardens and the nineteen *pro se* individuals who did not sign the Complaint, the pleading is due to be dismissed.

B. The Complaint should be dismissed pursuant to Rule 12(b)(1) for lack of jurisdiction as the Plaintiffs have not sufficiently alleged they have standing to bring this action

Regardless of whether the Plaintiff in this action is Metro Gardens, Bell, or includes the other nineteen individuals listed in the Complaint, this Court lacks jurisdiction over this matter pursuant to Rule 12(b)(1). The purported Plaintiffs have failed to sufficiently allege they have standing to bring this action.

"Standing is the threshold question in every federal case, determining the power of the court to entertain the suit. In the absence of standing, a court is not free to opine in an advisory capacity about the merits of a plaintiff's claims, and the court is powerless to continue." *CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1269 (11th Cir. 2006) (citing *Warth v. Seldon*, 422 U.S. 490, 499 (1975), *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005), *Univ. of S. Ala. v. Am. Tobacco Co.,* 168 F.3d 405, 409 (11th Cir.1999)). In order to satisfy standing, a plaintiff must have "(1) suffered an injury in fact, (2) that is fairly

traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. As the parties invoking federal court jurisdiction, the plaintiffs bear the burden of establishing these elements." *Debernardis v. IQ Formulations, LLC*, 942 F.3d 1076, 1083 (11th Cir. 2019) (internal citations and quotations omitted). Likewise, "[w]here, as here, a case is at the pleading stage, the plaintiff must clearly allege facts demonstrating each element." *Id.* Plaintiffs have failed to do so.

In particular, the Plaintiffs have not sufficiently alleged they can satisfy the injury requirement for standing.

> To establish an injury in fact, a plaintiff must allege that he suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical. For an injury to be concrete, it must be *de facto*; that is, it must actually exist. The Supreme Court has explained that the injury must be real, and not abstract.

Id. at 1083–84 (internal citations and quotations omitted). In this regard, it is the plaintiff's burden to "allege specific, concrete facts demonstrating that the challenged practices harm[ed] [it]." *Tokyo Gwinnett, LLC v. Gwinnett Cnty., Georgia*, 940 F.3d 1254, 1263–64 (11th Cir. 2019) (citing *Warth*, 422 U.S. at 508). Moreover, a plaintiff

> does not meet this burden by merely outlining in a complaint facts from which [the court] could *imagine* an injury sufficient to satisfy Article III's standing requirements, since [the court] should not speculate concerning the existence of standing, nor should [the court] imagine or piece together an injury sufficient to give plaintiff standing when it has demonstrated none.

Id. at 1263–64 (citations and quotations omitted; emphasis in original). Here,

neither the individual Plaintiffs nor Metro Gardens have alleged specific concrete facts demonstrating they have been harmed by the City.

As to Metro Gardens, there is nothing in the Complaint alleging that Metro Gardens has standing to sue. *See e.g.*, *Doe v. Stincer*, 175 F.3d 879, 882 (11th Cir. 1999) (detailing elements required for associational standing). All the Complaint does is list Metro Gardens in its caption, and references the organization twice in terms of its involvement in City Planning Commission meetings. *See* Doc. 1 at 1, 11. None of these allegations however, identify Metro Garden's membership, or asserts that its members have standing to sue in this action. *See Doe*, 175 F.3d at 882. Nor does the Complaint contain allegations sufficiently alleging that in bringing this action, Metro Gardens is seeking to protect interests germane to its purpose, or that it does not need its individual members to participate in the lawsuit. *Id.* Therefore, to the extent Metro Gardens is named as a Plaintiff, it has failed to sufficiently allege associational standing.

As to Bell and the nineteen other people listed in the Complaint, there are no allegations identifying why or how these individuals have been harmed by the City's decision to place a medical examiner's facility in the Brentwood neighborhood. The Complaint suggests the location of the "undesirable" facility in Brentwood "threatens the health, safety and dignity" of local residents, causes "irreparable harm," imposes a "disparate racial impact on a protected class," and would "add to Brentwood's cumulative environmental and health burden." Doc. 1 at 10-11. The Complaint further asserts that the process by which the City decided

to locate the facility in Brentwood denied its residents "notice, a hearing, or any formal opportunity to object." *Id.* at 10. However, beyond these general assertions, the Complaint does not lay out specific facts supporting Plaintiffs' conclusory allegations of harm. *See Iqbal*, 556 U.S. at 678 ("Rule 8 . . . demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.").

Even if the Complaint did sufficiently allege a concrete and particularized harm, the Complaint does not contend that the listed Plaintiffs live in the neighborhood where the facility is located or that they have otherwise suffered injuries as a result of the facility's location. As the Complaint currently stands, its allegations of harm are no different than that for any other resident in the City and therefore are best described as generalized grievances.

"A generalized grievance is undifferentiated and common to all members of the public," *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 575 (1992)), and is insufficient to establish standing. *Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1333 (11th Cir. 2007) (generalized grievances insufficient to establish standing). At most, the Complaint suggests that the named Plaintiffs are dissatisfied with the City's process and ultimate decision to place the facility in Brentwood. *See e.g.*, *Wood*, 981 F.3d at 1314 (generalized grievance where plaintiff based standing on his interest to ensure that only lawful ballots are counted); *Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 810 (11th Cir. 1993) (claim that Forest Service failed to comply with statutory procedures represented a

generalized grievance); *Chiles v. Thornburgh*, 865 F.2d 1197, 1205 (11th Cir. 1989) (right to see that laws are complied with are nothing more than a generalized grievance). Without more, Plaintiffs have failed to sufficiently allege they have suffered an injury. Therefore, they do not have standing to bring this action.

In the absence of a plaintiff with standing, this Court lacks power to exercise jurisdiction over this matter and should dismiss the Complaint. *See Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008) ("Because standing is jurisdictional, a dismissal for lack of standing has the same effect as a dismissal for lack of subject matter jurisdiction under FED.R.CIV.P. 12(b)(1).").

C. The Complaint should be dismissed pursuant to Rule 12(b)(6) because Plaintiffs failed to state a claims for which relief can be granted

1. Title VI, Civil Rights Act, 42 U.S.C. § 2000d

The Plaintiffs have failed to sufficiently allege that the City violated Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, when it selected the Brentwood neighborhood for the location of the medical examiner's facility. Accordingly, the Court should dismiss this claim.

Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, "'prohibits discrimination on account of race, color, or national origin in all programs and activities receiving federal financial assistance.'" *Humphrey v. United Parcel Serv.,* 200 F. App'x 950,

952 (11th Cir. 2006) (quoting *Robinson v. Vollert,* 602 F.2d 87, 89 (5th Cir.1979)).[1] The Supreme Court has recognized that § 2000d grants a private right of action, but that a plaintiff must prove intentional discrimination to prevail on such a claim. *See Alexander v. Sandoval*, 532 U.S. 275, 280 (2001). *See also Methelus v. Sch. Bd. of Collier Cnty., Fla.*, 243 F. Supp. 3d 1266, 1277 (M.D. Fla. 2017) (detailing pleading requirements for § 2000d claim); *Jumbo v. Alabama State Univ.*, 229 F. Supp. 3d 1266, 1271–72 (M.D. Ala. 2017) (same); *Sirpal v. Univ. of Miami*, 684 F. Supp. 2d 1349, 1357 (S.D. Fla. 2010) (same). Here, Plaintiffs fail to state a claim under 42 U.S.C. § 2000d.

Significantly, Plaintiffs allege that the City's action has "a *disparate racial impact* on a protected class." Doc. 1 at 10 (emphasis added). Supreme Court precedent, however, directs that "there is no private right of action to enforce disparate impact regulations." *Alexander*, 532 U.S. at 285. Therefore, by the very nature of their pleadings, Plaintiffs' "Title VI claim is due to be dismissed with prejudice because it is not cognizable under the law." *Cano-Diaz v. City of Leeds, Ala.*, 882 F. Supp. 2d 1280, 1291 (N.D. Ala. 2012).

Plaintiffs' other allegations regarding this count also warrant dismissal for failure to state a claim. Plaintiffs allege in a conclusory fashion that the City "receive[s] federal funds and [is] subject to Title VI oversight," and that the City's

[1] In *Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit issued before October 1, 1981.

process of selecting the site for the medical examiner's office "violated Title VI requirements for federally funded entities." Doc. 1 at 10. These allegations are insufficient to make out a Title VI claim.

A Title VI claim requires that the plaintiff prove she was denied participation, based on her race, in a federally funded program for which she was otherwise qualified. *Humphrey*, 200 F. App'x at 952. There is nothing in the instant Complaint, however, that suggests the City participated in a federal program that funded, implicated, guided, or supported its decision to locate the medical examiner's facility in Brentwood. Rather, Plaintiffs' allegations represent "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, [which] do not suffice" to withstand a 12(b)(6) motion to dismiss. *Twombly*, 550 U.S. at 555. *See also e.g.*, *Humphrey*, 200 F. App'x at 952 (plaintiff failed to sufficiently plead Title VI case where he merely alleged the defendant received some federal assistance); *Walton v. Sec'y Veterans Admin.*, 187 F. Supp. 3d 1317, 1331 (N.D. Ala. 2016) (plaintiff unable to sufficiently plead Title IV case based on conclusory statements and naked assertions without supporting factual allegations).

Plaintiffs' Title VI claim, therefore, should be dismissed for failure to state a claim for which relief can be granted.

2. Fourteenth Amendment, Procedural Due Process

The Plaintiff's Fourteenth Amendment Procedural Due Process claim is also due to be dismissed. Under a heading titled "Violation of Procedural Due Process

(U.S. Const. Amend. XIV)," Plaintiffs assert that the "siting and approval process [of the medical examiner's facility] violated the rights of Brentwood residents by denying them notice, a hearing, or any formal opportunity to object." Doc. 1 at 10. Plaintiffs then provide a timeline of events that appear to be associated with the City's site selection and zoning process to locate the medical examiner's facility in the Brentwood neighborhood. These allegations are insufficient to state a procedural due process violation.

A claim alleging a denial of procedural due process "requires proof of three elements: (1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." *Arrington v. Helms*, 438 F.3d 1336, 1347–48 (11th Cir. 2006) (internal citations omitted). Here, Plaintiffs have not alleged facts that allow for the plausible inference that in the process of selecting Brentwood as the location for the medical examiner's facility, the City deprived the Plaintiffs of a protected property or liberty interest. *See Paul v. Davis*, 424 U.S. 693, 701-02, 712 (1976); *Board of Regents v. Roth*, 408 U.S. 564, 573, 577 (1972).

Additionally, Plaintiffs have not alleged, nor can they, that "no adequate state remedies are available." *Flagship Lake County Dev. Number 5, LLC v. City of Mascotte, Fla.*, 559 Fed. Appx. 811, 815 (11th Cir. March 13, 2014) (citing cases). *See also Cotton v. Jackson*, 216 F.3d 1328, 1330-31 (11th Cir. 2000); *McKinney v. Pate*, 20 F.3d 1550, 1563 (11th Cir. 1994); *Dibbs v. Hillsborough Cnty., Fla.*, 67 F. Supp. 3d 1340, 1353–54 (M.D. Fla. 2014); *Bee's Auto, Inc. v. City of Clermont*,

927 F. Supp. 2d 1318, 1332–33 (M.D. Fla. 2013). Here a state remedy exists, and Plaintiffs have availed themselves of it. Prior to instigating the present litigation, several of the individuals in the instant action, with assistance of counsel, filed suit in state court posing similar challenges to the City's decisions and process regarding the location of the facility. *See Metro Gardens Neighborhood Ass'n et al., v. City of Jacksonville*, 2024-ca-3437 (Fla. 4th Cir. Ct.) (filed June 20, 2024).[2]

Accordingly, Plaintiffs have failed to sufficiently allege a procedural due process claim. They have not pleaded enough factual matter, that, if taken as true, suggests the elements of the cause of action will be met. *Watts,* 495 F.3d at 1296. The Court, therefore, should dismiss this count.[3]

3. Violation of City zoning laws

Plaintiffs also assert that the City violated zoning laws when it decided to locate the medical facility in Brentwood. *See* Doc. 1 at 11. As with their other allegations against the City, this claim falls short of the pleading standards required

[2] Courts may judicially notice a fact that cannot be reasonably disputed because it either is generally known or can be readily and accurately determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b)-(d). This Court may also take judicial notice of filings in state court. More particularly, in deciding whether to dismiss a case, a court may judicially notice information about a state case from the state court's database. *Crenshaw v. City of Defuniak Springs*, No. 3:13-cv-50-MCR/EMT, 2014 WL 667689, at *3 n.1 (N.D. Fla Feb. 20, 2014) (unpublished) (citing cases).

[3] Even if the Plaintiffs are ultimately successful on either of their federal claims against the City, the Court should not entertain their request for attorney's fees. Doc. 1 at 12. "[A] a *pro se* litigant who is *not* a lawyer is *not* entitled to attorney's fees." *Kay v. Ehrler*, 499 U.S. 432, 435, 111 S. Ct. 1435, 1436, 113 L. Ed. 2d 486 (1991) (emphasis in original).

by *Iqbal* and *Twombly*. The Complaint describes in conclusory fashion how the medical facility would "add to Brentwood's cumulative environmental and health burden." *Id.* The Complaint does not, however, contain anything to put the City on notice of the zoning laws it violated. In this regard, Plaintiffs' Complaint barely satisfies the description of an "unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. As such, the claim should be dismissed.

4. Requests for preliminary injunctive relief

Plaintiffs' scattered requests throughout the Complaint for injunctive relief are insufficient and should be rejected. *See* Doc. 1 at 10, 12. These requests include a plea to be excused from the preliminary injunction bond requirement laid out in Rule 56, *id.* at 12, and that the Court "prevent the operation of the facility as a Morgue and Forensic Lab to ensure that the building – already constructed – [is] repurposed for a use that benefits . . . the Brentwood community." *Id.* at 10.

To the extent Plaintiffs are requesting the Court grant them preliminary injunctive relief, they have not complied with Rule 56 or Middle District of Florida Local Rule 6.02. Moreover, even the most liberal construction of the Complaint cannot allow for a conclusion that Plaintiffs have sufficiently alleged they satisfy the elements for a preliminary injunction. *See Seigel v. LePore*, 234 F.3d 1163, 1175-76 (11th Cir. 2000) (detailing elements for a preliminary injunction).

Due to their unexplained delay in bringing this action, Plaintiffs have failed to allege how they are would be – or are – irreparably harmed by the City's actions. *See Antion on behalf of I.A. v. Sch. Bd. of Collier Cnty.*, 301 F. Supp. 3d 1195,

1199 (M.D. Fla. 2018) ("A showing of irreparable injury is the *sine qua non* of injunctive relief."). A party's delay in seeking preliminary injunctive relief undermines an assertion of irreparable harm. *Id.* at 1202.

As relevant here, it has been over a year since the last event listed in Plaintiffs' proffered chronology related to the site selection process for the medical facility. *See* Doc. 1 at 11. Without any explanation for the delay, Plaintiffs are now seeking injunctive relief from this Court. Such a lengthy and unjustified delay undermines Plaintiffs' argument regarding irreparable harm, and consequently their ability to seek preliminary injunctive relief. *See Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016); *People's Party of Fla. v. Fla. Dep't of State*, 608 F. Supp. 3d 1195, 1199 (M.D. Fla. 2022); *Malicious Women Candle Co., LLC v. Cox*, 506 F. Supp. 3d 1245, 1247-48 (M.D. Fla. 2020); *Antion*, 301 F. Supp. 3d at 1202.

These deficiencies, read in concert with the other shortcomings detailed in this Motion, justify dismissal of Plaintiffs' Complaint.

5. Amendment is futile

Finally, the City acknowledges that generally, Rule 15 permits a party to amend their complaint "once as a matter of course." *See* Rule 15(a)(1). In such settings, Rule 15 directs that a "court should freely give leave when justice so requires." Rule 15(a)(2). Accordingly, the rule "severely restricts a district court's discretion to dismiss a complaint without first granting leave to amend." *Sibley v.*

Lando, 437 F.3d 1067, 1073 (11th Cir. 2005)). Likewise, "[a] *pro se* plaintiff must ordinarily be given one chance to amend his or her complaint if a district court dismisses the complaint." *Dennis v. Brevard Ctny.*, No. 6;17-cv-1971-Orl-37GJK, 2018 WL 1939490, at *4 (M.D. Fla. March 23, 2018) (citing *Silva v. Bieluch*, 351 F.3d 1045, 1048-49 (11th Cir. 2003)). However, a court is not required to permit amendment where to do so would be futile. *Id. See also Chang v. JPMorgan Chase Bank, N.A.*, 845 F.3d 1087, 1094 (11th Cir. 2017); *Sibley*, 437 F.3d at 1073; *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237, 1239 - 40 (11th Cir. 2000). Futility exists when the amended complaint would still be subject to dismissal. *Chang*, 845 F.3d at 1094; *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007); *Sibley*, 437 F.3d at 1073.

In light of the arguments laid out above regarding Plaintiffs' lack of standing and failure to state claims for which relief can be granted, the City contends that even if the Court were to allow Plaintiffs to amend their Complaint, the new pleading would still be subject to dismissal. As such, any amendments are futile. The Court, therefore, should decline to allow Plaintiffs to amend their Complaint.

IV. CONCLUSION

For all the foregoing reasons, Defendant City of Jacksonville respectfully requests the Court to enter an Order dismissing with prejudice Plaintiffs' Complaint.

Submitted this date: JULY 15, 2025

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LOCAL RULE 3.01(g) CERTIFICATION

The undersigned sought to confer with Lydia Bell, *pro se* Plaintiff, via email exchanges (July 9, 10, 14, and 15) and telephone messages (July 10, 11, and 14). At the time of filing, Ms. Bell had not responded as to her position on the City's Motion.

/s/ Mary Margaret Giannini
Assistant General Counsel

CERTIFICATION OF SERVICE

Pursuant to Fed. R. Civ. P. 5(d)(1)(B)(i), the undersigned certifies that a copy of this Motion has been served to *pro se* Plaintiff, Lydia Bell, by certified mail to 530 Linwood Avenue, Jacksonville, FL 32206.

/s/ Mary Margaret Giannini
Assistant General Counsel