NEW YORK STATE SUPREME COURT
NEW YORK COUNTY: PART 7

TAX EQUITY NOW NY LLC,

Plaintiff,

-against-

CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF FINANCE; STATE OF NEW YORK; and NEW YORK OFFICE OF REAL PROPERTY TAX SERVICES

Defendant.

Index No.: 153759/2017

DECISION/ORDER

Motion Seq. 001 and 004

Recitation, as required by CPLR 2219 (a), of the papers considered in reviewing the Defendants' motions to dismiss:

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Latham & Watkins LLP, New York (James E. Brandt and Jonathan Lippman of counsel), for plaintiffs.
Attorney General of the State of New York (Andrew Amer of counsel) for the State Defendants.
Corporation Counsel for the City of New York (Vincent D'Orazio of counsel) for the City Defendants.

Gerald Lebovits, J.

I. Background

Plaintiff, Tax Equity Now NY LLC ("TENNY"), seeks injunctive and declaratory relief for alleged inequalities in the New York City's property-tax system. TENNY brings four causes of action against the City of New York and the New York City Department of Finance (collectively "City Defendants"). TENNY brings 12 additional causes against the State of New York and the New York Office of Real Property Tax Services ("State Defendants") and the City Defendants. Between the defendants, there are two motions to dismiss all the causes of action, motion sequence 1 and 4. This decision addresses both motions to dismiss and consolidates both motions for resolution.

The New York Real Property Tax Law ("RPTL") governs real property taxation in the state of New York. Under RPTL § 1802 (1),"all real property . . . in a special assessing unit shall be classified" into four classes. Class One properties are "all one, two and three family residential properties. . . except such property held in cooperative or condominium forms of ownership." RPTL § 1802 (1) (a). Class Two properties are condominiums, cooperatives, and rental apartment complexes. Class Three properties are properties owned by utility companies. Class Four properties are commercial properties. A special assessing unit is defined as "an assessing unit with a population of one million or more." RPTL § 1801 (a). New York City is a special assessing unit.

The first four of plaintiff's sixteen claims are against the City of New York only:

(1) New York Constitution, Article XVI, Section 2, as Applied to Class One Properties;
(2) Real Property Tax Law § 305 (2), as Applied to Class One Properties;
(3) Federal Equal Protection Clause, as Applied to Class One Properties; and
(4) State Equal Protection Clause, as Applied to Class One Properties.

TENNY brings 12 additional claims against both the City of New York and the State of New York:

(5) New York Constitution, Article XVI, Section 2, as Applied to Class Two Properties;
(6) Real Property Tax Law § 305 (2), as Applied to Class Two Properties;

(7) Federal Equal Protection Clause, as Applied to Class Two Properties;
(8) State Equal Protection Clause, as Applied to Class Two Properties;
(9) Federal Due Process Clause;
(10) State Due Process Clause;
(11) Federal Equal Protection Clause – Properties in Different Property Classes;
(12) State Equal Protection Clause – Properties in Different Classes;
(13) Real Property Tax Law § 1802;
(14) Federal Fair Housing Act for Class One Properties;
(15) Federal Fair Housing Act for Class Two Properties; and
(16) Federal Fair Housing Act for Segregation.

II. Standing

Both the City Defendants and the State Defendants move to dismiss for lack of standing. They argue that TENNY does not meet the standing requirements for organizations. This court must decide whether TENNY adequately alleges injury-in-fact and whether potentially conflicting interests among TENNY members prevent TENNY from having standing to sue.

To have standing to sue, an organization must show that it itself has standing or that the organization has associational standing. Associational standing has a three-pronged test: (a) at least some of its members would otherwise have standing to sue; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. (*Matter of Dental Soc'y of New York v Carey*, 61 NY2d 330, 333-334 [1984] [adopting test set forth in *Hunt v Washington St. Apple Adv. Comm.*, 432 US 333 [1977]; *accord Soc'y of Plastics Indus. v City of Suffock*, 77 NY2d 761, 775 [1991] [requiring at least one organization member to have standing].)

Financial harms suffered by an organization's members constitute injury-in-fact. Injury-in-fact confers standing. (*Dental Soc'y of New York*, 61 NY2d at 330.) In *Robinson v City of New York*, the First Department found that the plaintiffs, who were renters, did not allege they suffered injury-in-fact because they did not directly pay a property tax. (143 AD3d 641, 641 [1st Dept 2016].) The plaintiffs in *Robinson* did not specify where they lived or how much of their rent went to taxes. (*Id.*) Also, the *Robinson* plaintiffs failed to allege that they paid a higher rent rate than they would have had their landlord's building received a more favorable tax rate. (*Id.*)

The *Hunt* test for associational standing requires that the interests the organization seeks to protect are germane to the organization's purpose. (*See Hunt*, 432 US at 343].) In *Rudder v Pataki*, the Court of Appeals found that the plaintiff organization representing social workers lacked standing because of the members' imperfect alignment of interests combined with the weakness of the members' injury-in-fact claims. (*See* 93 NY2d 273, 280 [1999].) The social worker organization challenged an Executive Order ("EO") that created an Office of Regulatory Reform ("Office"). The EO gave the Office veto power to block proposed rules. The Office struck down a Department of Health proposal that would have required social workers in urban hospitals to have a master's in social work. The Court of Appeals found the members' injuries tenuous. The Court also found that internal conflicts existed within the organization because the organization includes all social workers, those with and without MSW degrees. The Court decided that the internal conflicts weighed against the germaneness prong. The Court of Appeals

held that the organization did not have standing because of its internal conflict combined with negligible injury-in-fact.

This court must decide whether internal conflicts of interest alone is dispositive for organizational standing.

Courts have denied motions to dismiss for lack of standing where internal conflicts among organization members are minimal. (*See e.g. Matter of N.Y. Ind. Contrs. Alliance v Liu*, 43 Misc 3d 443, 455 [Sup Ct, NY County 2013]; *White Plains Downtown Dist. Mgmt. Ass'n, Inc. v Spano*, 15 Misc 3d 733, 739–740 [Sup Ct, Westchester County 2007].)

The Supreme Court has held that requests by an association for declaratory and injunctive relief do not require participation by individual members. (*See Pennell v City of San Jose*, 485 US 1, 7 n 3 [1988].) *Pennell* has been distinguished from cases in which damages are sought. Damage calculations, unlike declaratory or injunctive relief, necessitate the participation of individual members. (*See International Union, United Auto., Aerospace & Agr. Implement Workers of Am. v Brock*, 477 US 274, 287 [1986].) TENNY seeks injunctive and declaratory relief. The relief does not require each injured party to participate individually in the lawsuit. TENNY's claims satisfy the organizational standing test's third prong.

Courts have denied motions to dismiss for lack of standing where the nonmoving party offers affidavits to address the purported defects in standing. (*See e.g. Comm. to Pres. Brighton Beach & Manhattan Beach, Inc. v Planning Comm'n of N.Y.C.*, 259 AD2d 26, 31-32 [1st Dept 1999]; *Liu*, 43 Misc 3d at 455.)

The case at bar is distinguishable from *Rudder v Pataki* (93 NY2d at 279]) and *Robinson v City of New York* (143 AD3d at 641). Unlike the plaintiffs in *Rudder* and *Robinson*, TENNY offers affidavits alleging, to an exact dollar amount, specific injuries. TENNY's Policy Director, who served as the Commissioner of New York City's Department of Finance for several years, calculated how the disparity in property taxes affects TENNY members in Class One and Class Two properties. (Affidavit of Martha Stark at 4-7.) TENNY alleges that the New York City Department of Finance assessed, on average, Class One homes in majority-minority neighborhood at a higher rate than Class One homes in majority white neighborhoods. (*Id.* at 4.) TENNY argues that the Department of Finance's disproportionate assessments in Class One cause TENNY members to be taxed at higher rates than similar properties in majority white neighborhoods. (Opposition at 7.) TENNY members in Class Two properties also suffered financial injury, according to the Martha Starks affidavit. One member in Class Two properties would allegedly have paid "almost $11,000 less [in rental property taxes] . . . if [that member's property] was eligible to receive the same abatement available to the owners of condominiums and cooperatives." (Affidavit of Martha Stark at 6.)

TENNY members' injuries are more direct than the plaintiffs in *Robinson*. Unlike the plaintiffs in *Robinson*, TENNY's members are owners, not renters. Renters are injured only to the extent that a landlord passes the burden of increased taxes to renters through increased prices. The owners' injuries are more directly linked to the property-tax system than the renters' injuries because the owners directly pay property taxes.

The conflict-of-interest arguments are unpersuasive. Among the TENNY members, the conflicts of interest, if existent, are minimal. That ultimate tax reform might affect the financial

situations of TENNY members in a non-uniform way is not enough to destroy organizational standing. Courts have allowed minor discrepancies in organizational standing. (*See e.g. Liu*, 43 Misc 3d at 455; *Spano*, 15 Misc 3d at 739–740].) In *Liu*, the plaintiff was a union arguing against the use of a prevailing wage schedule as opposed to a collective bargaining agreement. (43 Misc 3d at 456-457.) The defendants argued that there was a conflict of interest because one job title within the union would receive higher wages under the prevailing wage schedule than under the collective bargaining agreement. (*Id.*) The court rejected the defendant's argument, explaining that the conflict does not "so undermine the injury incurred by the vast majority of Local 175's members as to deprive the organization of standing." (*Id.*) The State and City Defendants' motions to dismiss for lack of standing are denied. In *Spano*, the court allowed organizational standing, noting that although the plaintiff organization had "a diverse membership with diverse interests," the members come together to protect their common interest. (15 Mis 3d at 740.)

III. City Defendants' Arguments for the First Four Causes of Action

TENNY's complaint contains 16 causes of action against the City Defendants. The first four causes of action involve only the City Defendants, and the first four causes of action refer to Class One properties. Class One properties are one-, two-, and three-family homes and small apartment buildings. TENNY alleges that the difference in tax burdens within Class One properties violates the New York Constitution, Article XVI, Section 2; RPTL § 305 (2); and the state and federal Equal Protection Clauses.

Article XVI, Section 2, of the New York Constitution requires the "equalization of assessments for purposes of taxation." In *Foss v Rochester*, the Court of Appeals held that Article XVI, Section 2, provides that "assessments within the various assessing units must be equalized for taxation purposes." (65 NY2d 247, 259 [1984].) With regard to Class One properties, TENNY argues that the City's "failure to maintain an assessment ratio that promotes equalization of the tax burden . . . results in the substantially disparate assessment and taxation of similarly situated properties." (Complaint at ¶ 238.) This court must construe pleadings liberally, accepting all facts alleged in the complaint as true and give plaintiff the benefit of every possible favorable inference. (*See Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 144 [2017].) If the City Defendants' failure to maintain an assessment ratio that promotes equalization of the tax burden renders the assessments within assessment units unequal, that failure would violate Article XVI, Section 2. The City Defendants' motion to dismiss the first cause of action is denied.

RPTL § 305 (2) provides that "[a]ll real property in each assessing unit shall be assessed at a uniform percentage of value." TENNY argues that City Defendants' conduct violates RPTL § 305 (2) with respect to Class One properties. TENNY contends that the City's property-tax system creates "disparities in the assessment and taxation of similarly situated Class One properties between and within different boroughs throughout the City." (Complaint ¶ 116.) The City Defendants argue that "Class One properties are assessed at 6% of market value and Tax Class Two properties are assessed at 45% of market value." (City MTD 39.) However, in January 2016, the Deputy Director of the New York City Independent Budget Office, George Sweeting, testified before the New York State Assembly Committee on Real Property Taxation that "similar properties will face widely different tax burdens depending on where they are located in the city." (Plaintiff's Exhibit E at 1.) Sweeting testified that for Class One properties in 2016, the citywide median assessment ratio was 5.1% of market value. (*Id.*) The head of the

City's Department of Finance also acknowledged that "homeowners with high-valued units sometimes pay far less in taxes than those with moderately priced homes. (Plaintiff's Exhibit D.) Disparity within a property class would violate § 305 (2)'s requirement of uniformity of assessment rates within each class. Taken as true, TENNY's allegations about Class One properties satisfy the standards for pleadings. The motion to dismiss the second cause of action is denied.

Although the claims from Article XVI, Section 2, focus on assessing properties, the equal protection claims concern taxing those properties. The New York and United States Constitutions' Equal Protection Clauses are identical. They do not require separate analysis. (*See Matter of Walsh v Katz*, 17 NY3d 336, 343 [2011].) In *Foss v Rochester*, the Court of Appeals held that the federal and state Equal Protection Clauses require that "taxes imposed [be] uniform within the class." (65 NY2d at 259.) Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss. (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005].) TENNY's complaint shows the dramatic disparity in tax bills for various Class One properties. The disparity in tax bills within Class Two properties could violate the Equal Protection Clause, as interpreted by the Court of Appeals in *Foss*, because, arguably, it appears at this phase of this action that taxes are being not imposed uniformly within the class. Whether the disparity in effective tax rate indicates a disparity in assessment or taxation is a question for discovery. TENNY's allegations state a cause of action on equal protection grounds for Class One properties. The City Defendants' motion to dismiss plaintiff's third and fourth causes of action is denied.

IV. New York Constitution Article XVI, Section 2, as Applied to Class Two Properties

The fifth through sixteenth causes of action include both the City and the State Defendants. The fifth cause of action alleges that the City and State Defendants are violating the New York Constitution Article XVI, Section 2, with regard to Class Two properties. The City argues that the Department of Finance assesses Class Two properties at 45% of market value. TENNY offers information from the New York City Department of Finance that purports to show otherwise. (*See* NYC Dep't of Finance, NYC Residential Property Taxes: Class Two Guide at 7, *available at* https://www1.nyc.gov/assets/finance/downloads/pdf/brochures/class_2_guide.pdf ("[M]ost Assessed Values for Class 2a, b and c properties are lower than the 45% assessment percentage.") Further, the City assesses condominiums and cooperatives in a way that causes different Class Two properties to be assessed and taxed at different percentages of market value depending on their age and type. (Opposition at 33.) TENNY provides research from the Furman Center for Real Estate & Urban Policy at New York University that reveals "radically different tax treatment of equally valuable properties, depending on the use of the property and the form in which it is owned." (Furman Ctr., *State of New York City's Housing and Neighborhoods 2011 Report* 8 [2011], available at http://furmancenter.org/files/sotc/SOC_2011.pdf (last accessed Sept. 24, 2018.)

As noted above, this court must construe pleadings liberally, accepting all facts alleged in the complaint as true and giving the plaintiff the benefit of every possible favorable inference. (*See Connaughton*, 29 NY3d at 144.) Article XVI, Section 2, requires the "equalization of assessments for purposes of taxation." Taken as true, TENNY's allegations show a lack of equalization in assessments. TENNY's allegations relating to Class Two properties sufficiently

state a cause of action against the City Defendants under Article XVI, Section 2. The City Defendants' motion to dismiss the fifth cause of action is denied.

The State is responsible for the special treatment for condominiums and cooperatives within Class Two only insofar as the State Legislature enacted RPTL § 581. RPTL § 581 requires that cities assess condominiums and cooperatives as if those condo and co-op parcels were rental properties. RPTL § 581 has already withstood equal-protection challenges. The Court of Appeals decided that RPTL § 581 has a rational basis. (*See Greentree at Lynbrook Condominium No. 1 v Bd. of Assessors of Vil. of Lynbrook*, 81 NY2d 1036, 1039 [1993].) The Court of Appeals recognized that the purpose of RPTL § 581 is "to insure that owners of condominium and cooperative properties would be taxed fairly compared to rental properties held in single ownership and not penalized because of the type of ownership involved in their multiple dwellings." (*Matter of D.S. Alamo Assoc. v Commissioner of Finance of the City of New York*, 71 NY2d 340, 347 [1988].)

Because the City is primarily responsible for the assessments, the State Defendants' motion to dismiss the fifth cause of action is granted.

V. RPTL § 305 (2) as Applied to Class Two Properties

RPTL § 305 (2) provides that "[a]ll real property in each assessing unit shall be assessed at a uniform percentage of value." TENNY argues that the City's property-tax system violates RPTL § 305 (2) with respect to Class Two properties, which consist of cooperatives, condominiums, and rental properties. TENNY alleges that the City's assessments within the Class Two properties are not uniform and that the assessments violate § 305 (2)'s uniformity requirement.

TENNY argues that the City's interpretation of RPTL § 581 causes condominiums and cooperatives to be under-assessed compared to other Class Two properties. Under RPTL § 581, cooperatives and condominiums must be assessed at a sum no greater than if the condominium and cooperative properties were rental properties, and not co-operatives or condominiums. The City interprets RPTL § 581 to mean that Class Two condominiums and cooperatives must be valued by reference to rent-regulated apartment buildings. The City does not value Class Two rental apartments as though they are rent-regulated when they are not rent-regulated. The City Defendants defend their interpretation using a case in which the Court of Appeals interpreted RPTL § 581 as requiring 60- and 70- unit condominiums to be assessed as if they were rent stabilized. (*See Greentree at Lynbrook Condominium No. 1*, 81 NY2d at 1039.) In *Greentree at Lynbrook Condominium No. 1*, the Court concluded that condominiums and cooperatives must be valued by reference to rent-regulated apartment buildings because "[a]ll rental apartment buildings in the Village of Lynbrook with at least six units [were] subject to rent regulation." (*Id.*) Unlike the rental apartments in the Village of Lynbrook, not all rental apartments with a certain number of units in New York City are rent-regulated. Therefore, RPTL § 581 does not require that condominium and cooperatives in New York City be assessed as if they were rent-regulated apartments.

If TENNY's allegations are taken as true, the City Defendants are violating RPTL § 305 (2)'s requirement of uniformity in assessment rates within each property tax class. The motion to dismiss the sixth cause of action against the City is denied. The State's involvement in the way

condominiums and cooperatives are taxed is merely the Legislature's enactment of RPTL § 581. The State Defendants' motion to dismiss the sixth cause of action is granted.

VI. Equal Protection Claims

First, TENNY argues that the lack of uniformity within Class Two properties violates the federal and state Equal Protection Clauses. Second, TENNY argues, more broadly, that the supposedly inequitable assessment and taxation of properties across Class One and Class Two properties violates the federal and state Equal Protection Clauses.

TENNY does not challenge RPTL § 581. Rather, TENNY challenges the City's interpretation of RPTL § 581. According to TENNY, the City's interpretation of RPTL § 581 reaches beyond the Court of Appeals' interpretation of RPTL § 581 in *Greentree at Lynbrook Condominium No. 1*. (*See* 81 NY2d at 1039.) TENNY argues that the City assesses cooperatives and condominiums in a way that undervalues those properties compared to other Class Two properties. The City Defendants' motion to dismiss the seventh and eighth causes of action is denied. The State Defendants' motion to dismiss the seventh and eighth causes of action is granted.

TENNY also argues that both State and City Defendants discriminate in favor of certain residential properties due to what the City Defendants contend is a complex statutory formula used to find a property class's proportionate share of all assessed value. RPTL § 1805 (2) establishes a limit on the amount by which the assessed value of a property may change annually. The assessment caps do not apply to new construction or improvements. Assessment caps can also cause rapidly appreciating properties to be taxed at a lower effective rate. TENNY argues that RPTL § 1805 (2) as applied violates equal protection through the state legislators' alleged conduct.

In *Foss v City of Rochester*, the Court of Appeals held that a statute that permitted a city or town to adopt a dual tax-rate violated the Equal Protection Clause because "the taxes levied result[ed] in invidious discrimination between owners of similar properties." (65 NY2d at 257.) The Court considered the disparity between similarly situated properties in different areas to be invidiously discriminatory. However, the Court of Appeals has found that the Legislature considered the enactment of RPTL § 1805 (2) necessary. (*See O'Shea v Bd of Assessors of Nassau County*, 8 NY3d 249, 254-255 [2007].) Therefore, the First Department has held that RPTL article 18 "bears a rational connection to the promotion of a state interest." (*Barklee Realty Co., LLC. v Pataki*, 309 AD2d 310, 318 [1st Dept 2003].)

The City Defendants' motion to dismiss the eleventh and twelfth causes of action is denied. The State Defendants' motion to dismiss the eleventh and twelfth causes of action is granted.

VII. Due Process

TENNY brings due-process claims under both the state and federal constitutions. States are permitted to "divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable." (*Allegheny Pittsburgh Coal Co. v County Com'n of Webster County, W. Va.*, 488 US 336, 344 [1989].) The United States Supreme Court has held unlawful under the Due Process Clause policies that "produce such a

gross and patent inequality" as to be an "arbitrary" use of the taxing power. (*Brushaber v Union Pac. R. Co.*, 240 US 1, 25 [1916].)

TENNY argues that the City admits that the tax burdens imposed "frequently bear no relationship to real market values." (DOF Property Tax 2003 Annual Report.) Defendants argue that the real-property tax system is not so arbitrary that it violates due process. This Court does not find Defendants' argument persuasive at this motion-to-dismiss phase. TENNY adequately alleges due process violations. Both the State and City Defendants' motions to dismiss the ninth and tenth causes of action are denied.

VIII. RPTL § 1802 (1)

RPTL § 1802 (1) provides that "all real property . . . in a special assessing unit shall be classified" into four classes. In its thirteenth cause of action, TENNY alleges that State and City Defendants violate RPTL § 1802. According to them, the "City's property tax system creates innumerable subclasses, assessing and taxing similarly valued property differently based on their age, location, number of units, form of use, and more." (Complaint at ¶ 306.) TENNY does not challenge the City's designation of certain types of properties falling into the scope of one of the four Classes. TENNY alleges that the differences in tax burdens create innumerable subclasses.

Adopting a liberal standard for complaints, as the law requires, this court denies the City's motion to dismiss with regard to the thirteenth cause of action. The State's motion to dismiss the thirteenth cause of action is granted because TENNY fails to allege any action specific to the State Defendants.

IX. FHA Claims

TENNY alleges that the City's property-tax system violates the federal Fair Housing Act (FHA) by imposing a disparate impact on majority-minority neighborhoods within Class One and Class Two properties and by perpetuating racial segregation. First, TENNY alleges that within Class One properties, predominantly minority neighborhoods are assessed at higher rates than the properties in predominantly white neighborhoods. TENNY argues that the difference in the assessments constitutes disparate financial impact, thus violating the FHA, 42 USC § 3601 et seq. Second, TENNY alleges that within Class Two, minorities make up a disproportionately high percentage of the Class Two properties taxed at the highest effective tax rate, while minorities make up a disproportionately low percentage of the Class Two properties taxed at the lowest effective tax rate. TENNY argues that this violates 42 USC § 3604 (a). Third, TENNY argues New York City's property-tax system violates 42 USC § 3604 (a) by perpetuating segregation.

Under 42 USC § 3604 (a), it is unlawful to "[t]o refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color . . . or national origin." In *Texas Dep't of Hou. & Cmty. Affairs v Inclusive Cmtys. Project, Inc.*, the Supreme Court held that 42 USC § 3604 (a) prohibits race-blind housing practices that "'have a disproportionately adverse effect on minorities' and are otherwise unjustified by a legitimate rationale." (135 S Ct 2507, 2513, 2525 [2015], quoting *Ricci v DeStefano*, 557 US 557, 577 [2009].) The *Inclusive Communities* Court emphasized "looking to consequences, not intent," when deciding whether an action or policy makes a dwelling "unavailable." (135 S Ct at 2519.) FHA claims are actionable on disparate-impact theories (1) when a "plaintiff has alleged concrete facts setting

forth a prima facie case" under the FHA and (2) when a plaintiff relies on statistical disparities, whether the "plaintiff can point to a defendant's policy or policies causing that disparity." (*Id.* at 2523.) The Court in *Inclusive Communities* applied disparate-impact liability to "practices includ[ing] zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification." (*Id.* at 2521-2522.) The Court also cautioned against using a disparate-impact FHA claim to "second-guess which of two reasonable approaches a housing authority should follow in the sound exercise of its discretion." (*Id.* at 2522.) The *Inclusive Communities* decision advocates a robust causality requirement. (*Id.* at 2523.)

At this stage, TENNY need not establish a prima facie case for disparate impact under the FHA. TENNY needs merely to allege facts that, taken as true, give rise to an inference that the challenged policy causes a disparate impact. (*See Winfield v City of New York*, 2016 WL 6208564, at *6 [SD NY 2016].)

In *Coleman v Seldin*, residents of Nassau County alleged FHA violations by the county stemming from the county's real-property-tax-assessment system. (*See* 181 Misc2d 219 [Sup Ct, Nassau County 1999].) In that case, the State of New York intervened as a plaintiff. Supreme Court, Nassau County, denied the defendants' motion to dismiss. (*Id.*) Just as the Nassau County Supreme Court allowed an FHA claim against the county's real-property-tax-assessment system to move forward, so too should this court allow TENNY's FHA claim against the City's property-tax-assessment system move forward.

Accepting all facts alleged in the complaint as true and giving the plaintiff the benefit of every possible favorable inference, this court denies the City's motion to dismiss with regard to the fourteenth, fifteenth, and sixteenth causes of action. The State's motion to dismiss the fourteenth, fifteenth, and sixteenth causes of action is granted because TENNY fails to allege any action specific to the State Defendants.

Accordingly, it is hereby

ORDERED that defendants City of New York and the New York City Department of Finance's [redacted] motion to dismiss all sixteen causes of action is denied; and it is further

ORDERED that defendants the State of New York and the New York Office of Real Property Tax Services's motion to dismiss the fifth, sixth, seventh, eighth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, and sixteenth causes of action is granted. The motion to dismiss the ninth and tenth causes of action is denied; and it is further

ORDERED that the parties appear for a preliminary conference on January 9, 2018, at 11:00 a.m., in Part 7, room 345, at 60 Centre Street.

9/24/2018
DATE

GERALD LEBOVITS, J.S.C.

CHECK ONE: [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION

[ ] GRANTED [ ] DENIED [ ] GRANTED IN PART [X] OTHER

APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE