IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ADELL RAYMOND and BRAD RAYMOND AS ADMINISTRATOR OF THE ESTATE OF MICHELLE RAYMOND[1],	:	
Plaintiffs,	:	CIVIL ACTION NO. 1:20-cv-4317-AT
v.	:	
STATE FARM FIRE AND CASUALTY COMPANY,	:	
Defendant.		

ORDER

This insurance dispute arises from a fire that occurred at Plaintiffs' home in Newnan, Georgia in December 2019. Plaintiffs assert claims for breach of contract, housing discrimination, declaratory judgment, and equitable relief, as well as derivative claims for punitive damages and attorneys' fees. After the fire, State Farm paid to Plaintiffs the policy limits on the dwelling, and also made a number of payments for personal property losses and additional living expenses before ultimately discontinuing payments on August 31, 2020. At issue in this litigation is whether State Farm failed to pay *all* of the personal property losses and

[1] Michelle Raymond passed away in October 2021. The Court subsequently granted Plaintiffs' Motion to Substitute Party, substituting Brad Raymond as Administrator of the Estate of Michelle Raymond as a plaintiff in this action [Doc. 73]. The Clerk is **DIRECTED** to correct the docket to indicate this change.

additional living expenses that Plaintiffs were entitled to under the policy, and also whether State Farm engaged in impermissible housing discrimination in violation of state and federal law. Now before the Court is Defendant's Motion for Summary Judgment [Doc. 59]. For the reasons that follow, the motion is **GRANTED**.

I. Factual Background[2]

Plaintiff Adell Raymond and her daughter, Plaintiff Michelle Raymond, owned a home located at 443 Stillwood Drive in Newnan, Georgia that sustained damage from a fire that occurred on December 8, 2019. (Consolidated Statement of Material Fact, Doc. 71-1 ¶ 1.) Bernard Raymond and Sammie Raymond, Jr. (sons of Adell and brothers of Michelle) also lived at 443 Stillwood Drive at the time of the fire. (*Id.* ¶ 7; *see also* Deposition of Michelle Raymond ("Michelle Dep."), Doc. 66 p. 23:12-16.) At the time of the fire, Plaintiff Adell Raymond was 82 years old. (Michelle Dep., Doc. 66 p. 72:20.) During the course of the litigation, Plaintiff Michelle Raymond was disabled and had been diagnosed with lupus, resulting in her losing her ability to walk, her losing two kidneys, and her undergoing a kidney transplant. (Michelle Dep., Doc. 66 pp. 15:9; 16:2-4; 16:12-19.) Also at some point in the litigation, Plaintiff Michelle Raymond was diagnosed with Hodgkin's

[2] Keeping in mind that when deciding a motion for summary judgment, the Court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion (here, Plaintiffs), the Court provides the following statement of facts. *See Optimum Techs., Inc. v. Henkel Consumer Adhesives, Inc.*, 496 F.3d 1231, 1241 (11th Cir. 2007) (observing that, in connection with summary judgment, the court must review all facts and inferences in the light most favorable to the non-moving party). This statement does not represent actual findings of fact. *In re Celotext Corp.*, 487 F.3d 1320, 1328 (11th Cir. 2007). Instead, the Court has provided the statement simply to place the Court's legal analysis in the context of this particular case.

lymphoma and subsequently passed away on October 1, 2021. (Suggestion of Death, Doc. 57.)

At the time of the fire, Plaintiffs' home was insured by State Farm under a homeowner's insurance policy that provided coverage for the building structure, contents, and additional living expenses resulting from a loss. (Consolidated SOMF, Doc. 71-1 ¶¶ 2-3.) While Plaintiff's homeowner's policy is the primary policy at issue here, Bernard Raymond also had a separate renters' insurance policy with State Farm. (*Id.* ¶ 8.) After the fire, Bernard Raymond reported the loss to State Farm pursuant to his renter's insurance and State Farm issued a payment to him for $15,529.49 for damage to his personal property. (*Id.* ¶ 9.)

A. The Homeowner's Policy Language

The homeowner's policy first outlines the scope of coverage after a loss. (Policy, Doc. 7-1 at ECF 30-33.) As to the parameters of the coverage, the policy explains that, State Farm "*will not be liable* to the insured: (a) for an amount greater than the insured's interest; or (b) *for more than the applicable limit of liability*." (*Id.* at ECF 30) (emphases added; other emphases omitted).

Besides outlining the above limits on the scope of coverage, the policy delineates the insured's various duties after a loss, including, as relevant here, duties to: (1) prepare an inventory of personal property losses, (2) provide specifically requested documentation, (3) sit for an examination under oath, and (4) provide a sworn proof of loss document. Specifically, the policy states:

Your Duties After Loss. After a loss to which this insurance may apply, you must cooperate with us in the investigation of the claim and also see that the following duties are performed:

a. give immediate notice to us or our agent . . .

b. protect the property from further damage or loss . . .

c. *prepare an inventory* of damaged or stolen personal property:

(1) showing in detail the quantity, description, age, replacement cost, and amount of loss; and
(2) *attaching all bills, receipts, and related documents that substantiate the figures in the inventory*;

d. as often as we reasonably require:

(1) exhibit the damaged property;
(2) *provide us with any requested records and documents* and allow us to make copies;
(3) while not in the presence of any other insured:
  (a) give statements; and
  (b) *submit to examinations under oath*; and

(4) produce employees, members of the insured's household, or others for examination under oath to the extent it is within the insured's power to do so; and

e. *submit to us, within 60 days after the loss, your signed, sworn proof of loss* that forth, to the best of your knowledge and belief:

(1) the time and cause of loss;
(2) interest of the insured and all others in the property involved and all encumbrances on the property;
(3) other insurance that may cover the loss;
(4) changes in title or occupancy of the property during the term of this policy;
(5) *specifications of any damaged structure and detailed estimate for repair of the damage*;
(6) an inventory of damaged or stolen personal property, described in 2.c;
(7) *receipts for additional living expenses incurred and records supporting the fair rental value loss*; and

> (8) evidence or affidavit supporting a claim under **SECTION I – ADDITIONAL COVERAGES, Credit Card, Bank Fund Transfer Card, Forgery, and Counterfeit Money** coverage, stating the amount and cause of loss.

(*Id.* at ECF 30-31) (emphases added; other emphases omitted).

The policy also contains a provision addressing suits brought against State Farm under the policy, stating that "No action will be brought against us unless there has been full compliance with all of the policy provisions." (*Id.* at ECF 32) (emphasis added).

In addition to outlining the insured's duties in the event of a loss and the pre-suit requirements, the State Farm policy includes a separate section specifically addressing coverage for living expenses after a loss. (*Id.* at ECF 18.) In the coverage for "Loss of Use" section, the policy states that the most State Farm will pay for the sum of all losses "combined under Additional Living Expense, Fair Rental Value, and Prohibited Use" is the liability limit shown in the Declarations. (*Id.*) The Declarations here provide that the total "Loss of Use" limit is $84,990. (*Id.* at ECF 3.)

The policy then specifically addresses "Additonal Living Expense," stating:

> When a loss insured causes the residence premises to become uninhabitable, we will pay the reasonable and necessary increase in cost incurred by an insured to maintain their normal standard of living for up to 24 months. *Our payment is limited to incurred costs for the shortest of*:
>
> a. *the time required to repair or replace the premises;*
> b. *the time required for your household to settle elsewhere; or*
> c. *24 months*.

(*Id.* at ECF 18) (emphases added). Besides the "Loss of Use" liability limit of $84,990, the policy Declarations provide a liability limit for the dwelling of $283,300 and a liability limit for personal property of $212,475. (*Id.* at ECF 3.)

B. Plaintiffs' Reporting of the Loss, and Issues Related to Dwelling Coverage

Plaintiff Michelle Raymond reported the loss to State Farm the same day the fire occurred, December 8, 2019. (Consolidated SOMF, Doc. 71-1 ¶ 6.) Immediately after, a State Farm representative contacted Plaintiffs and asked if they needed immediate housing. (Affidavit of Van Westmoreland, Doc. 59-3 ¶ 10.) Plaintiff Michelle Raymond told the representative that she owned another property close by and that the family was staying there for the time being. (*Id.*) As to the other property, Michelle Raymond later testified that, besides the home at 443 Stillwood Drive (where the fire occurred) she also owned a home at 370 Stillwood Drive and that she "stayed most of my time at 370; [but] both residences belong to me." (Deposition of Michelle Raymond ("Michelle Dep."), Doc. 66 p. 30:3-18); (*see also id.* p. 7:8-11) (stating that she has lived at 370 Stillwood Drive for over ten years). Accordingly, at the time of the fire, Adell, Bernard, and Sammie Jr. Raymond were living at the 443 Stillwood Drive residence and Michelle Raymond was "living back and forth between [the] two houses." (*Id.* p. 23:12-17.)

On December 10, 2019, two days after the fire, State Farm Claim Specialist Van Westmoreland conducted an onsite inspection of the 443 Stillwood Drive property, along with an independent adjustor, David Bragg. (Consolidated SOMF, Doc. 71-1 ¶ 13.) Westmoreland and Bragg evaluated the scope of the damage to the

structure of the home (*Id.*) After the inspection, Westmoreland made the *initial* determination that the property/home was reparable and that a portion of the home could be salvaged for those repairs. (Westmoreland Aff., Doc. 59-3 ¶ 12.) Westmoreland then met with Michelle Raymond and Bernard Raymond to go over the homeowner's policy and informed them that he believed the house was reparable. (Consolidated SOMF, Doc. 71-1 ¶¶ 15-17.) Plaintiff Michelle Raymond, however, believed that "it was a complete and total loss" and explained as much to Westmoreland. (Michelle Dep., Doc. 66, p. 53:10-16.) Westmoreland told Michelle that once she settled on a contractor or other licensed professional, he would reconcile his opinion with that individual's scope of damage assessment and would consider reinspection. (Westmoreland Aff., Doc. 59-3 ¶ 14.)

At some point around this time, Plaintiffs hired an individual named Bruce Fredrics as an appraiser and/or a public adjuster. On January 4, 2020, Fredrics sent State Farm an email on behalf of Plaintiffs, requesting a certified copy of the homeowner's policy and demanding an appraisal of the property. (Consolidated SOMF, Doc. 71-1 ¶ 27.) Shortly thereafter, however, on January 14, Plaintiffs' first attorney emailed Fredrics seeking to rescind Plaintiffs' contract with him; State Farm was copied on this email. (*Id.* ¶ 29.) Further, Plaintiff Michelle Raymond testified that she fired Fredrics only a few days after signing an initial retainer with him on December 31, 2019. (Michelle Dep., Doc. 66, p. 79:6-15.)[3]

[3] Plaintiffs later filed a complaint against Fredrics and his company with the Georgia Department of Insurance. State Farm received this complaint on January 31. (Consolidated SOMF, Doc. 71-1

Later, on February 5, 2020, State Farm conducted a second inspection of the property, this time with a professional engineer, who inspected the structural damage to the property. As a result of this second inspection, State Farm determined that the fire had in fact caused the property to be totally destroyed and informed Plaintiffs that it would issue payment for the full policy limit for damage to the dwelling minus Plaintiffs' deductible. (Consolidated SOMF, Doc. 71-1 ¶ 41.) This conversation was memorialized in a letter from State Farm's attorney dated February 12, 2020. (Dietrichs 2/12 Letter, Doc. 59-4 at ECF 25-27.) In the letter, the State Farm attorney explains that the amount covered under the policy for total loss to the dwelling was $286,416.00, and that after subtracting Plaintiffs' deductible, State Farm would make a payment to Plaintiffs for $283,583.00. (*Id.*) State Farm issued payment to Plaintiffs for the amount of $283,583.00 on February 25, 2020. (Consolidated SOMF, Doc. 71-1 ¶ 45.) After State Farm issued the check for the full coverage of the dwelling unit, Plaintiff Adell Raymond signed the check and gave it to Michelle Raymond; Michelle kept the funds except for $2,000 that Adell used to purchase new clothing. (*Id.* ¶ 77.)

C. Issues Related to Coverage for Personal Property Losses

On December 10, 2019, when State Farm Claim Specialist Van Westmoreland conducted his initial onsite inspection of the destroyed property, he

¶ 36.) In light of this advisement, State Farm sent notification to the Georgia Department of Insurance when it ultimately issued payment to Plaintiffs for the dwelling costs. (*Id.*) (Dietrichs 2/12 Letter, Doc. 59-4 at ECF 25-27.)

also conducted an initial inspection of the personal property contents of the home and prepared a room-by-room contents list. (Consolidated SOMF, Doc. 71-1 ¶ 21.) Westmoreland discovered several items of value: two firearms, three pairs of diamond earrings ($3,600 total), a diamond ring ($900), a birthstone ($600), a grandfather clock ($500), an art table ($300), a guitar and speaker ($700), and eight flat-screen TVs. (*Id.* ¶ 22.) After this initial inspection, State Farm issued an advance payment for certain personal property in the amount of $5,000. (*Id.* ¶ 24.) This was State Farm's second payment: it had issued an initial advance payment of $1,000 to Plaintiffs on the date of the fire, December 8. (*Id.* ¶ 6.) As noted above, State Farm also issued a payment to Bernard Raymond for his personal property under a separate renter's insurance policy in the amount of for $15,529.49.

Also noted above, the homeowner's policy at issue provided coverage for certain personal property losses as supported by proper documentation, including an inventory, substantiating documents, and a sworn proof of loss. (Policy, Doc. 7-1 at ECF 30-31). On January 20, 2020, approximately six weeks after the fire, Plaintiff Michelle Raymond used the State Farm online template to upload an inventory of all personal property losses resulting from the fire; the document submitted indicate personal property losses in the amount of $32,163.64. (January 20 Personal Property Inventory, Doc. 66-1 at ECF 24-29.) In putting together the January 20 inventory, Michelle Raymond included items that her mother, Adell, and her brother Sammy Jr., had included on handwritten lists that they provided to her. (Michelle Dep., Doc. 66 p. 58:18.) Michelle Raymond testified that she had

trouble uploading the document and that, when the document was uploaded, "it multiplied things; it kept multiplying the same thing or it erased an entire section." (Michelle Dep., Doc. 66 p. 58:21-25.) There is no evidence in the record that Plaintiffs ever informed State Farm that Michelle Raymond had difficulties uploading the inventory that caused it to be in any way inaccurate.

Seven days later, on January 27, 2020, Fredrics (the public adjuster), submitted a second inventory of Plaintiffs' damaged personal property, purportedly on behalf of Plaintiffs. (Fredrics Email and Property Inventory, Doc. 66-1 at ECF 41-52.) The total replacement cost value on Fredrics's inventory was $101,030.16. (*Id.*) However, Michelle Raymond later testified that Fredrics submitted this without authority because she had in fact fired him only a couple days after the initial retainer agreement was signed on December 31, 2019. (Michelle Dep., Doc. 66, p. 79:6-15) (agreeing that she signed the retainer agreement on December 31, 2019, "and a couple of days later, I fired him after he started asking me for a power of attorney, which had nothing to do with him doing what he had promised to do.").

On February 6, 2020, State Farm rejected Plaintiffs' second inventory of personal property damages submitted by Fredrics because: it was unsupported by proper ownership documentation; it did not include the age of each item listed; and it included items that belonged to Bernard Raymond, which had already been

reimbursed under Bernard's rental insurance policy. (*Id.* ¶ 37.)[4] Accordingly, State Farm requested that Plaintiffs sign each page of this second property inventory and swear to the accuracy of the information contained therein, and requested additional information as to the age of items and documentation verifying purchase/ownership. (*Id.* ¶ 38.) However, the next day, February 7, Michelle Raymond requested that State Farm *disregard the second personal property inventory* submitted by Fredrics and instead requested that State Farm consider only her initial inventory of $32,163.64. (*Id.* ¶ 39.) At some point after the above correspondence, State Farm, pursuant to Michelle Raymond's January 20 personal property inventory, issued Plaintiffs an initial payment for $16,181.57 for what it determined at the time was the actual cash value of Plaintiffs' damaged personal property. (*Id.* ¶ 40.)

Later, however, on May 21, 2020, State Farm issued an additional payment for personal property actual cash value damage in the amount of $14,563.42, along with a "notice of an additional recovery of replacement cost benefits up to $9,982.37 when personal property items were replaced." (Consolidated SOMF, Doc. 71-1 ¶ 54.) At this time, State Farm also issued payments to Plaintiffs in the amounts of $3,906.43 for damage to landscaping on the property and $192.70 for actual cash value for damage to a dwelling extension. (*Id.*)

[4] As noted previously, at this time, State Farm had been copied on an email from Plaintiffs' first lawyer to Fredrics rescinding the parties' agreement. (Consolidated SOMF, Doc. 71-1 ¶ 29.)

Nearly two months after that, on July 14, Plaintiffs submitted a *third* inventory of personal property contents resulting from the fire, this time in the amount of $241,694.60. (*Id.* ¶ 57.) This third inventory included a number of items not referenced in the two prior inventories, including Tiffany & Co. paperclips ($9,000); a cushion set ($11,940); Gucci side tables ($7,000); Louis Vuitton ping-pong paddles ($2,210); a Hermes lantern ($20,200); Louis Vuitton pajamas ($13,500); fur coats ($3,000) and more. (*Id.* ¶ 49 at ECF 53-54.) In addition, many items on the third inventory were duplicated or misstated because of computer issues, according to Michelle Raymond. (*Id.* ¶ 58[5].) Michelle Raymond also acknowledged that several items did not belong to her or her mother but belonged to a woman and her children who briefly resided at the house but were not related to Plaintiffs. (*Id.* ¶ 59.) State Farm did not issue any payments in connection with this third inventory. As described below, State Farm continued to request that Plaintiffs complete a sworn proof of loss and also requested that Plaintiffs submit for an examination under oath, as provided by the policy, especially in light of inconsistencies in the property inventories. (Westmoreland Aff., Doc. 59-3 ¶ 41.)

D. Issues Related to Coverage for Additional Living Expenses

As outlined above, the homeowner's policy provides that State Farm will pay for certain additional living expenses for the loss of use of Plaintiffs' property up to a policy limit of $84,990. (Policy, Doc. 7-1 at ECF 3.) The policy specifically provides that State Farm will pay additional living expenses to maintain the

[5] This paragraph was improperly numbered in the initial SOMF, as there were two paragraph 58s.

insured's normal standard of living for the shortest of either: (1) the time required to repair/replace the premises; (2) the time required for the "household to settle elsewhere"; or (3) 24 months. (*Id.* at ECF 18) (emphasis added). As noted, immediately after the fire State Farm inquired if Plaintiffs needed immediate housing. (Affidavit of Van Westmoreland, Doc. 59-3 ¶ 10.) Michelle Raymond told the representative that the family was staying at her other home on Stillwood Drive. (*Id.*)

State Farm had initially issued Plaintiffs a first advance of $1,000 on the date of the fire for any immediate costs. (Consolidated SOMF, Doc. 71-1 ¶ 6.) On December 20, 2019, State Farm issued another advance payment of $4,725 to Plaintiffs to assist with a refundable deposit for Plaintiffs' temporary housing. (*Id.* ¶ 25.) About two weeks later, on January 3, 2020, Adell, Bernard, and Sammie Jr. Raymond moved into temporary housing located at 39 Belltree Circle in Newnan, Georgia. (*Id.* ¶ 26.) Plaintiff Michelle Raymond did not reside in the temporary housing and remained in her other home at 370 Stillwood Drive. (*Id.*)

From December 20, 2019 through approximately August 31, 2020, State Farm issued regular payments for Plaintiffs' additional living expenses. In mid-February, in the same letter where State Farm advised Plaintiffs that it would pay out the policy limits for the cost of the dwelling, State Farm also identified November 30, 2020 as a reasonable date by which Plaintiffs should rebuild the home, if Plaintiffs decided to rebuild. (Dietrichs 2/12 Letter, Doc. 59-4 at ECF 25-27.) However, the letter explained that, if Plaintiffs instead determined to relocate,

"the time frame for which State Farm would cover Additional Living Expenses would be adjusted to 90 days from the date the structural settlement was issued." (*Id.*) As noted, the "structural settlement" payment — for the full cost of the dwelling policy limits — was then issued on February 25. (Consolidated SOMF, Doc. 71-1 ¶ 45.) Thus, if Plaintiffs were to relocate (rather than rebuild), State Farm agreed to cover Plaintiffs' Additional Living Expenses until approximately May 31, 2020. (*Id.* ¶ 47.)

At the time of the February 12 letter, Plaintiffs had not determined whether to rebuild or relocate. (Consolidated SOMF, Doc. 71-1 ¶ 44.) Two and a half months later, on April 24, 2020, Plaintiffs requested that State Farm extend the Additional Living Expenses benefits for an additional 6 to 9 months past May 31, 2020. (*Id.* ¶ 47.) In response, State Farm sent a letter to Plaintiffs on April 24 requesting information related to Plaintiffs' efforts to rebuild or relocate: specifically, State Farm requested copies of any contracts between Plaintiffs and any contractors that established projected costs and scope of reconstruction, as well as information related to demolition of the property. (*Id.* ¶ 48.) Plaintiffs did not respond to State Farm's inquiry or provide the requested documents or information. (*Id.*)

Three days later (April 27), Plaintiffs again requested an extension of their living expense benefits, this time for 3 to 6 additional months past May 31. (*Id.* ¶ 49.) At the same time, Plaintiffs also submitted a non-itemized invoice for demolition of the house but did not provide any other information requested by State Farm. (*Id.*) Michelle Raymond also represented that Plaintiffs would

determine whether to rebuild or relocate after Georgia's statewide COVID-19 shutdown was to be lifted on April 30, 2020. (*Id.*)

On May 5, Plaintiffs again requested an extension of their living benefits for temporary housing. (*Id.* ¶ 50.) Plaintiffs' attorney explained that because of the COVID-19 pandemic and Plaintiffs' preexisting medical conditions, Plaintiffs were requesting that State Farm continue to pay the additional living expense benefits. (Deposition of Van Westmoreland, Doc. 70 pp. 198:18-199:11.) State Farm responded, indicating that, in light of the impact of the COVID-19 pandemic, it would extend Plaintiffs' additional living expense benefit payments for temporary housing from May 31, 2020, for 3 additional months — until August 31, 2020. (Westmoreland Aff., Doc. 59-3 ¶ 36; Consolidated SOMF, Doc. 71-1 ¶ 51.) This determination was sent to Plaintiffs from State Farm via letter on May 26, 2020. (Dietrichs 5/26 Letter, Doc. 59-4 at ECF 32-33.) The May 26 letter reiterated that the homeowner's policy only provides coverage for additional living expenses for the *shortest* of either: (1) the time to repair or replace the premises; (2) the time required for the household members to relocate; or (3) 24 months. (*Id.*) The letter further warned that State Farm was granting the 90-day extension but that:

> Ms. Raymond needs to use this additional time to either begin repairs on the insured location or find a new location where she can permanently relocate. State Farm will not continue to extend the deadline for additional living expense coverage when Ms. Raymond is making no effort to utilize the funds which State Farm has paid for her to repair the house or obtain alternative housing. The purpose of the [dwelling] Coverage A payments was to give her the funds needed to start this process as quickly as possible.

(*Id.*) The letter also requested that Plaintiffs provide information regarding utility expenses at their temporary housing since the date of the fire so that State Farm could ensure that payments for additional living expenses accurately reflected the cost of Plaintiffs' standard living expenses in accordance with the policy provisions. (*Id.*) Plaintiffs did not respond or provide any of the requested documentation — regarding their plans to rebuild or relocate, or regarding the requested utility information.

A month later, on June 25, 2020, State Farm sent Plaintiffs a letter notifying them that their additional living expense benefits were being decreased for July and August because Plaintiffs had not provided the previously-requested documentation to substantiate the utility expenses. (*Id.* ¶ 55.) However, State Farm explained that, if provided with documentation, it would issue a refund to Plaintiffs for any utility expenses. (*Id.*) The June 25 letter also again requested information and documentation as to Plaintiffs' decision whether to rebuild or relocate. (*Id.* ¶ 56.)

Plaintiffs did not respond to the June 25 letter or provide any of the requested documentation or information. A month later, on July 29, Plaintiffs again requested that State Farm extend additional living expense coverage, this time from the August 31, 2020 date to November 30, 2020. (*Id.* ¶ 61.)

Two days later, on July 31, 2020, State Farm sent Plaintiffs a letter requesting a sworn statement of proof of loss; the examination of Michelle and Bernard Raymond under oath; and the production of relevant documents. (*Id.* ¶

63.) The letter warned that any additional payments would be stopped until Plaintiffs produced the relevant documents and submitted to examinations under oath. (*Id.*) The specific documents requested were: a sworn proof of loss; the original insurance policy; proof of value, including bills, receipts, and related substantiating documentation in connection with claimed personal property; documentation supporting efforts to repair or rebuild the property; documentation supporting efforts to relocate to a new home; all invoices reflecting monthly utility expenses; all expenses in removing debris; documentation reflecting value of landscaping; any other documents. (*Id.* ¶ 65.) In addition, State Farm, in the letter, set the under-oath examinations of Michelle and Bernard Raymond for August 18 at 10:00 a.m. and 2:00 p.m. respectively. (*Id.* ¶ 64.) The letter further offered that, if the arrangement was not convenient, State Farm would reschedule upon request. State Farm also offered to postpone the examinations due to the COVID-19 pandemic, until a time when the Raymonds felt comfortable. (*Id.*)

Again, there is no record evidence that Plaintiffs submitted any documentation to State Farm related to their efforts to rebuild or relocate, receipts for costs of continued living expenses, or receipts or documentation related to personal property. (*Id.* ¶ 66.) On August 18, Michelle and Bernard Raymond failed to appear for the scheduled under-oath examinations. (*Id.* ¶ 68.) At 2:08 p.m., Plaintiffs' counsel contacted Defendant's counsel and requested that any under-oath examination occur by video; Plaintiffs' counsel did not explain the Raymonds' absences or provide a reason for the failure to produce any requested

documentation. (*Id.* ¶ 69.) The same afternoon, State Farm explained that it could not proceed with additional payments until the examinations had been rescheduled and the documents at issue produced. (*Id.* ¶ 70.) Neither Plaintiffs nor Plaintiffs' counsel ever contacted State Farm to reschedule the under-oath examinations or to produce the requested documentation. (*Id.* ¶ 71.)

On August 31, 2020, State Farm ceased the additional living expense coverage that had been provided for the temporary housing at 39 Belltree Circle. (*Id.* ¶ 72.) After that time, Adell, Bernard, and Sammie Raymond continued to reside in the temporary housing at Belltree Circle and paid the utilities and rent themselves, with Bernard paying the majority of the cost. (*Id.* ¶ 73.) Over 7 months after the fire, State Farm paid Plaintiffs approximately $30,834.15 for additional living expenses, in addition to the payments for the dwelling and numerous payments for personal property losses. (*Id.* ¶ 67.) Adell, Bernard, and Sammie Raymond continued to live at Belltree Circle until Bernard Raymond purchased a home located on Colonial Drive in Newnan, Georgia for $220,000 on March 12, 2021. (*Id.* ¶ 76.) At that time, the three Raymonds moved into the Colonial Drive home. (*Id.*) Michelle Raymond continued to live at her other residence on Stillwood Drive. (*Id.* ¶ 26.)

Accordingly, in total, State Farm made the following payments to Plaintiffs or members of the household:

- Advance payment of $1,000 on December 8, 2019, the date of the fire (Consolidated SOMF, Doc. 71-1 ¶ 6);

- Payment of $15,529.49 to Bernard Raymond under separate renter's insurance policy (*id.* ¶ 9);
- Advance payment of $5,000 for personal property losses on December 10, 2019 (*id.* ¶ 24);
- Payment of $4,725 on December 20, 2019 to assist with refundable deposit for temporary housing (*id.* ¶ 25);
- Payment of $16,181.57 for personal property losses pursuant to January 20, 2020 letter (*id.* ¶ 40);
- Payment of $283,583 for the policy limits for dwelling coverage, minus the deductible, on February 25, 2020 (*id.* ¶ 45);
- Payment of $3,906.43 for damaged landscaping on May 21, 2020 (*id.* ¶ 54);
- Payment of $192.70 for damage to dwelling extension on May 21, 2020 (*id.*);
- Payment of $14,563.42 for personal property damage with notice of additional replacement cost benefits up to $9,982.37 when personal items were replaced, on May 21, 2020 (*id.*);
- Payments totaling $30,834.15[6] for Plaintiffs' additional living expenses for a period of over seven months (*id.* ¶ 47, 67).

On September 14, 2020, approximately two weeks after State Farm ceased additional living expense payments, Plaintiffs filed this lawsuit in Gwinnett County Superior Court. (*Id.* ¶ 74.) Plaintiffs bring claims for: declaratory judgment (Count I); housing discrimination in violation of the Federal Fair Housing Act and Fair Housing Amendments Act of 1988, 42 U.S.C. § 3604(b) and the Georgia Fair

[6] It is not entirely clear to the Court whether the $30,834.15 paid for additional living expenses includes the initial $4,725 paid for the refundable temporary housing deposit, or whether the housing deposit was an additional payment.

Housing Act, O.C.G.A. § 8-3-222 (Count II); equitable relief (Count III); breach of contract (Count IV); punitive damages (Count V); and attorneys' fees (Count VI). (Complaint, Doc. 1-2.) The case was then removed to this Court in October 2020. (Doc. 1.)

II. Legal Standard for Summary Judgment

The Court may grant summary judgment only if the record shows "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is genuine if there is sufficient evidence for a reasonable jury to return a verdict in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is material if resolving the factual issue might change the suit's outcome under the governing law. *Id.* The motion should be granted only if no rational fact finder could return a verdict in favor of the non-moving party. *Id.* at 249.

When ruling on the motion, the Court must view all the evidence in the record in the light most favorable to the non-moving party and resolve all factual disputes in the non-moving party's favor. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). The moving party need not positively disprove the opponent's case; rather, the moving party must establish the lack of evidentiary support for the non-moving party's position. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets this initial burden, in order to survive summary judgment, the non-moving party must then present

competent evidence beyond the pleadings to show that there is a genuine issue for trial. *Id.* at 324-26. The essential question is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52. Finally, "[s]peculation does not create a *genuine* issue of fact; instead it creates a false issue, the demolition of which is a primary goal of summary judgment." *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) (quoting *Hedberg v. Ind. Bell Tel. Co.*, 47 F.3d 928, 931–32 (7th Cir. 1995) (emphasis in original)).

III. Discussion

Plaintiffs assert claims for breach of contract; discrimination in violation of the federal Fair Housing Act, 42 U.S.C. § 3604, and the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 *et seq.*; Declaratory Judgment; equitable relief under O.C.G.A. § 23-2-1; punitive damages; and attorneys' fees. The Court addresses each count, beginning with the breach of contract claim.

A. Breach of Contract (Count IV)

State Farm argues that Plaintiffs cannot recover for breach of contract because (1) Plaintiffs have not provided evidence that State Farm breached any particular obligation under the contract and, additionally and alternatively, (2) Plaintiffs failed to comply with express conditions precedent of the policy to cooperate with State Farm's investigation and provide the requisite documentation, and therefore, Plaintiffs are precluded from bringing suit for breach of contract. (Br. in Support of MSJ, Doc. 59-1 at 10.) In their eight-page

response to Defendant's summary judgment motion, Plaintiffs contend that there is a fact question as to whether Plaintiffs failed to comply with the condition precedent of the policy regarding cooperation with State Farm's investigation. (Pl. Resp., Doc. 63 at 5.)

"The elements of a breach of contract claim in Georgia are (1) a breach of a contract (2) resulting in damages to (3) 'the party who has the right to complain about the contract being broken.'" *Matthews v. State Farm Fire and Cas. Co.*, 500 F. App'x 836, 840 (11th Cir. 2012) (citing *Kuritzky v. Emory Univ.*, 669 S.E.2d 179, 181 (Ga. Ct. App. 2008)). Insurance contracts are governed by the same rules of construction and interpretation as those that apply to other contracts. *Youhoing v. Travelers Prop. Cas. Ins. Co.*, 2010 WL 11500940, at *3 (N.D. Ga. Dec. 9, 2919) (Pannell, J.) (internal citation omitted). It is well-established under Georgia law that insurance contracts may require an insured to comply with all terms of the policy before filing a lawsuit. *Townley v. Patterson*, 228 S.E.2d 164, 165 (Ga. Ct. App. 1976); *see also Farmer v. Allstate Ins. Co.*, 396 F. Supp. 2d 1379, 1382 (N.D. Ga. 2005); *Hill v. Safeco Ins. Co. of America*, 93 F. Supp. 2d 1375, 1383 (M.D. Ga. 1999).

Here, the policy clearly includes such a condition precedent, stating that "No action will be brought against [State Farm] unless there has been full compliance with all of the policy provisions." (Policy, Doc. 7-1 at ECF 32.) "Such clauses are conditions precedent to recovery and are binding against the insured." *Townley*, 228 S.E.2d at 165; *Farmer*, 396 F. Supp. 2d at 1382; *Roberts v. State Farm Fire &*

Cas. Co., 2011 WL 6215700, at *5 (M.D. Ga. Dec. 14, 2011) ("Failure to comply with policy provisions which are conditions precedent to bringing suit is a breach which precludes recovery as a matter of law.").

Georgia courts have held that insurance provisions requiring an insured to cooperate with an insurer's investigation — by, for example, submitting requested records or sitting for an examination under oath — are valid condition precedents to recovery. *Hall v. Liberty Mut. Fire Ins. Co.*, 2009 WL 235640, at *3 (11th Cir. Feb. 3, 2009) ("Under Georgia law, an insurer may require its insured to abide by the terms of his policy and cooperate with the insurer's investigation, as a precondition to recovery") (citing *KHD Deutz of Am. Corp. v. Utica Mut. Ins. Co., Inc.* 469 S.E.2d 336, 339 (Ga. Ct. App. 1996)). *See also Halcome v. Cincinnati Ins. Co.*, 334 S.E.2d 155, 157 (Ga. 1985) (on certified question, finding that plaintiffs breached their insurance contract by failing and refusing to provide material information related to their income, as requested by insurance company during investigation); *Youhoing*, 2010 WL 11500940, at *3 (finding that plaintiff's failure to provide material financial documents and failure to appear for oral examination under oath, prior to filing suit, constituted a "total failure to comply with policy provisions" thereby precluding recovery); *Farmer*, 396 F. Supp. 2d at 1382-83 (finding that plaintiff breached condition precedent when she refused to provide requested financial documents in connection with fire); *Roberts*, 2011 WL 6215700, at *6 (finding that plaintiff breached insurance contract and failed to

comply with condition precedent when she failed to provide bank records, debt statements, expense documents in connection with home fire).

However, while failure to provide requested material documents may constitute a breach of a condition precedent, where the evidence demonstrates that an insured has cooperated "to some degree or provide[d] an explanation for [her] noncompliance, a fact question is presented for resolution by the jury." *Diamonds & Denims, Inc. v. First of Georgia Ins. Co.*, 417 S.E.2d 440, 441-42 (Ga. Ct. App. 1992). Relatedly, an *insurer*'s "failure to act with diligence and good faith in securing the necessary information" may also preclude summary judgment for the insurer. *Id.* (finding that fact question existed where evidence showed that requested records were destroyed in the fire, that insurer failed to request documents with any specificity, and that other requested records were in possession of third parties).

Even so, where a fact question exists as to whether the insured cooperated with the insurer's investigation in connection with supplying requested documents, where a plaintiff nevertheless fails to submit to requested examination under oath without legal justification, she fails to comply with the policy's condition precedent and cannot recover. *See Lucas v. State Farm Fire and Cas. Co.*, 864 F. Supp. 2d 1346, 1355-56 (M.D. Ga. 2012) (granting summary judgment to insurer where plaintiff failed to submit for examination under oath, noting that plaintiff's proffered medical excuse was insufficient where plaintiff never notified insurer that he suffered from illness or disability and no medical evidence

demonstrated that he was physically or mentally disabled such that he could not sit for an oral examination).

Here, the homeowner's policy in question explicitly required Plaintiffs to cooperate with State Farm's investigation of the claim by *inter alia*: (1) "attaching all bills, receipts, and related documents that substantiate the figures in the [personal property] inventory"; (2) providing State Farm with "any requested records and documents"; (3) "submit[ting] to an examination under oath"; (4) submitting, within 60 days after the loss, a "signed, sworn proof of loss." (Policy, Doc. 71 at ECF 30-31). In connection with the second requirement above — that Plaintiffs provide requested documents and records — the evidence in this case demonstrates that State Farm requested that Plaintiffs provide a number of specific documents, including:

- a sworn proof of loss;
- proof of value of personal property, for example, receipts, bills, or similar substantiating documentation;
- documents supporting efforts to rebuild or relocate, such as contracts, quotes, or communications with any building contractors or documents related to the expected demolition costs;
- any documentation supporting efforts to relocate to a new home;
- invoices for monthly utility expenses; and more.

(Consolidated SOMF, Doc. 71-1 ¶ 65.) State Farm relies on evidence that it requested these documents on numerous occasions. (*Id.*)

Plaintiffs have pointed to no evidence that they provided the requested documentation or provided a sworn proof of loss before filing the instant lawsuit. Moreover, it is undisputed that Plaintiffs did not appear for the scheduled examination under oath and made no attempts to reschedule the examination, despite State Farm's request and offer to reschedule. Instead, Plaintiff's filed the instant lawsuit on September 14, 2020.

The Court also notes that, at the time Plaintiffs filed suit, State Farm had paid to Plaintiffs the full policy limits on the dwelling costs, and had made a number of payments related to personal property lost in the fire and additional living expenses for Plaintiffs' temporary housing. At the time of the lawsuit, Plaintiffs had submitted three separate personal property inventories, with wildly different amounts, the third of which included a number of expensive, luxury items not included on the first two inventories. State Farm was within its rights under the policy to seek substantiation of these claimed items and a sworn proof of loss. *See Hill*, 93 F. Supp. 2d at 1383-84 (noting that insurance company was objectively reasonable in seeking substantiating documents where there was extreme change from original estimate for number and value of certain personal property items covered under policy).

As to the additional living expenses, the policy required that State Farm pay additional living expenses to maintain a normal standard of living for the *shortest of either*: (1) the time required to repair/replace the premises; (2) the time required to relocate; (3) or 24 months. (Policy, Doc. 7-1 at ECF 18.) State Farm paid

Plaintiffs additional living expenses for approximately seven months after the fire before terminating those benefits at the end of August 2021. At the time Plaintiffs filed suit in September 2021, State Farm had requested on numerous occasions any documentation demonstrating that Plaintiffs intended to rebuild (such as building quotes or communications with contractors), any documentation that Plaintiffs intended to relocate (offers on housing, attempts to obtain a mortgage loan, *etc.*), and additionally any documentation related to the current additional living expenses, specifically utility bills.[7] There is no record evidence that Plaintiffs responded to these requests or provided any of the requested documentation at all. Even so, State Farm extended Plaintiffs' additional living expenses beyond the additional deadline, by three months.

Thus, the evidence demonstrates that, in accordance with its investigation, State Farm requested: specific documentation relating to efforts to claimed property losses, efforts to rebuild or relocate; a sworn proof of loss; and an examination under oath in connection with Plaintiffs' requests for additional payments for personal property losses and living expenses. It is undisputed that Plaintiffs never sat for an examination or attempted to reschedule the missed examinations, never provided a sworn proof of loss, and never provided a series of requested documents, such as utility bills or evidence of intent to rebuild or relocate. As such, Plaintiffs failed to comply with the policy's condition precedent

[7] State Farm argues that the payment for the dwelling was intended to assist Plaintiffs in advancing their efforts to locate a new home or rebuild.

that they cooperate with State Farm's investigation. In light of this failure, Plaintiffs cannot recover absent a recognized legal justification or excuse. *See Hill*, 93 F. Supp. 2d at 1384 (granting summary judgment where insured failed to provide any requested documents and did not contact insurer with objections to the production of documents before filing suit, and noting that plaintiff's "justification of irrelevancy and over-burdensomeness is not a sufficient justification"); *Farmer*, 396 F. Supp. 2d at 1382-83 (granting summary judgment to insurer where plaintiff failed to provide material information requested by insurer without legal justification); *See Lucas*, 864 F. Supp. 2d at 1355-56 (granting summary judgment to insurer where plaintiff failed to submit for examination under oath especially where insurer made attempts to accommodate plaintiff); *Pervis v. State Farm Fire & Cas. Co.*, 901 F.2d 944, 946 (11th Cir. 1990) (finding that plaintiff's failure "to submit to the requested examination under oath constitutes a breach of the insurance contract unless some privilege excuses plaintiff's failure to comply with the contractual condition").

Here, Plaintiffs' primary justification is that State Farm did not give them enough time to comply. But there is no evidence that Plaintiffs requested additional time from State Farm to provide documents or ever attempted to reschedule the examinations under oath, as State Farm suggested and offered. Instead, Plaintiffs filed a lawsuit. As noted above, a justification that production of documents would be overly burdensome is not a sufficient basis to excuse noncompliance with a condition precedent. *See Hill*, 93 F. Supp. 2d at 1384. And

even where documents are not in the possession of the plaintiff, a plaintiff has an obligation under the policy to "cooperate with the defendant in tracking down those documents." *Youhoing*, 2010 WL 11500940 (granting summary judgment to insurer where plaintiff totally failed to produce documents requested by defendant because they were irrelevant or in the possession of her husband); *see also Hall v. Liberty Mut. Fire Ins. Co.*, 2009 WL 235640, at *2 (11th Cir. 2009) ("When documents are unavailable, the insured has a duty to cooperate with the insurer to obtain or reconstruct the information needed from other available sources") (internal quotation omitted).

Plaintiffs also appear to argue that their failure to comply should be excused because of Plaintiff Adell Raymond's age and Plaintiff Michelle Raymond's disabilities. But here, there is no record evidence that Plaintiffs ever informed State Farm of Michelle Raymond's health status or disability or requested any related accommodation to allow Plaintiffs more time to produce the required documents or sit for an examination. Based on the evidence and under Georgia law, Plaintiffs have not pointed to, let alone provided evidence to support, a recognized excuse for failing to cooperate with State Farm's investigation. *See Lucas*, 864 F. Supp. 2d at 1356 (noting that plaintiff provided no admissible evidence that he suffered from diagnosed medical condition that prevented him from complying with the policy). The Court again notes that State Farm did in fact provide Plaintiffs a three-month extension of additional living expense benefits in light of the COVID-19 pandemic.

Accordingly, because Plaintiffs failed to comply with conditions precedent to bringing a lawsuit under the plain terms of the policy — namely, the conditions to cooperate with State Farm's investigation by providing certain documents (sworn or otherwise) and to sit for an examination under oath — they breached the terms of the policy. Defendant is entitled to summary judgment on Plaintiffs' breach of contract claim.

B. Housing Discrimination (Count II)

In Count II, Plaintiffs assert a claim for discrimination under the Federal Fair Housing Act and Fair Housing Amendments Act of 1988, 42 U.S.C. § 3604(b), and the Georgia Fair Housing Act, O.C.G.A. § 8-3-222. Plaintiffs allege that State Farm discriminated against them on the basis of "race, age, and health condition" by (1) failing to provide full payment on the dwelling initially and (2) by denying additional living expense payments. (Compl., Doc. 1-2 ¶¶ 26-31.) State Farm argues that Plaintiffs have failed to point to a shred of evidence of discriminatory conduct by State Farm; that age and "health condition" are not protected categories; and that its full payment of the policy limits for the dwelling less than 60 days after the fire renders any allegations of discrimination based on the dwelling evaluation moot because Plaintiffs cannot show injury on that point. (MSJ, Doc. 59-1 at 20-23.)

As the Federal Fair Housing Act and the Georgia Fair Housing Act are "nearly identical," they are interpreted by the same standards. *Horne v. Harbour Portfolio VI, LP*, 304 F. Supp. 3d 1332, 1342 (N.D. Ga. 2018) (Story, J.); *Lowman*

v. Platinum Prop. Mgmt. Servs., Inc., 166 F. Supp. 3d 1356, 1360 (N.D. Ga. 2016); *Steed v. EverHome Mort. Co.*, 2011 WL 13176721, at *5 (N.D. Ga. May 18, 2011) ("Since the Georgia Act and the Federal act are nearly identical, Georgia courts consider cases construing the Federal Act as persuasive precedent and rely upon federal cases construing the Federal Act for their decisions under the Georgia Act."). Both statutes protect individuals from discrimination based on "race, color, religion, sex, disability, familial status, or national origin." O.C.G.A. § 8-3-202; 42 U.S.C. § 3604(b). Accordingly, here, Defendant is correct that *age* is not a protected category and thus cannot provide a basis for Plaintiffs' claims. "Health condition" is also not a protected category. However, the Court construes Plaintiffs' allegations related to "health condition" as an allegation of disability discrimination, in addition to allegations of race discrimination.

"In order to prevail on a claim under the FHA, a plaintiff must demonstrate 'unequal treatment on the basis of race that affects the availability of housing.'" *Bonasera v. City of Norcross*, 342 F. App'x 581, 583 (11th Cir. 2009) (quoting *Jackson v. Okaloosa County Fla.*, 21 F.3d 1531, 1542 (11th Cir. 1994)). The Fair Housing Act "is not limited to discriminatory practices by actual lessors and vendors of dwellings," but also prohibits "practices with racially discouraging effects." *Lowman*, 166 F. Supp. 3d at 1361 (citing *Evans v. Tubbe*, 657 F.2d 661, 663 n.3 (5th Cir. 1981)).[8] A plaintiff "can establish a violation under the FHA by

[8] In *Bonner v. City of Pritchard*, the Eleventh Circuit adopted as binding precedent all cases decided by the former Fifth Circuit before Oct. 1, 1981. *See* 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*).

proving (1) intentional discrimination, (2) discriminatory impact, or (3) a refusal to make a reasonable accommodation." *Bonasera,* 342 F. App'x at 583 (citing *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1216 (11th Cir. 2008) and *Hallmark Developers, Inc. v. Fulton Co., Ga.*, 466 F.3d 1276, 1283 (11th Cir. 2006)).[9]

Here, Plaintiffs make no allegations of disparate impact or failure to accommodate and appear to pursue their claims based on a theory of intentional disparate treatment.[10] To establish a prima facie case of disparate treatment, in the context of the present case, Plaintiffs must demonstrate that: (1) their "rights are protected under the [statutes];" and, (2) "as a result of defendant's discriminatory conduct, [Plaintiffs] ha[ve] suffered a distinct and palpable injury." *Ford*, 2014 WL 4311275, at *5; *see also Bailey v. Stonecrest Condominium Ass'n, Inc.*, 696 S.E.2d 462, 468 (Ga. Ct. App. 2010). If a plaintiff successfully proves a prima facie case of discrimination by a preponderance of the evidence, the burden shifts to the defendant to articulate a legitimate nondiscriminatory reason for its

[9] Other courts have outlined potential FHA violations as only either disparate treatment or disparate impact. *Ford v. 1280 West Condominium Ass'n, Inc.*, 2014 WL 4311275, at *5 (N.D. Ga. Sept. 2, 2014); *Stewart v. McDonald*, 779 S.E.2d 695, 698 (Ga. Ct. App. 2015).

[10] Plaintiffs present no evidence or even argument that they requested any particular accommodation in connection with Michelle Raymond's health status. Without citation to evidence, Plaintiffs claim that Michelle Raymond had problems with the online submission of the personal inventory. But the evidence demonstrates that Plaintiffs did in fact successfully submit an online inventory; there is no record evidence that Plaintiffs informed State Farm that they believed there were any difficulties or errors in connection with this submission such that any accommodation would have been required. Moreover, State Farm does in fact offer insureds the opportunity to submit a handwritten inventory as an alternative. As noted, Plaintiffs never requested this option and State Farm was not aware that Plaintiffs had any difficulties with submission.

action; if such a reason is provided, the plaintiff must show that the proffered reason is in fact a pretext for discrimination. *Steed v. EverHome Mortgage Co.*, 2011 WL 13176721, at *5 (N.D. Ga. May 18, 2011) (citing *Steed v. EverHome Mortgage Co.*, 308 F. App'x 364, 368 (11th Cir. 2009) and *Secretary, U.S. Dept. of Housing and Urban Dev. v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990)).

A claim for disparate treatment in housing "requires a plaintiff to show that he has actually been treated differently than similarly situated" individuals outside of his protected class. *Ford*, 2014 WL 4311275, at *5 (N.D. Ga. Sept. 2, 2014) (quoting *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1216 (11th Cir. 2008)); *see also Bonasera*, 342 F. App'x at 584 ("To show intentional discrimination, 'a plaintiff has the burden of showing that the defendants actually intended or were improperly motivated in their decision to discriminate against persons protected by the FHA'") (internal citation omitted). Where a plaintiff fails to present sufficient evidence, either direct or circumstantial, to demonstrate that the decisionmaker was improperly motivated by discriminatory intent, her claim fails. *Bonasera*, 342 F. App'x at 586; *Steed*, 2011 WL 13176721, at *6 (granting summary judgment to defendant on FHA claim where plaintiff presented no evidence that alleged practice or conduct was applied to African Americans more often than to individuals of other races).

Based on the record presented before the Court, Plaintiffs have presented no evidence — direct or circumstantial — that they were treated worse than any other individuals based on their race, Michelle Raymond's disabilities, or any other

protected category, in connection with any of State Farm's decisions. The Court notes once again that State Farm in fact paid the full policy amount for the cost of the dwelling less than two months after the fire occurred. And as outlined above, State Farm provided additional living expenses for more than four months, and then extended those payments an additional three months upon Plaintiffs' request, even when State Farm had not received requested documentation. Plaintiffs have not provided any evidence or reason to believe that State Farm's ultimate termination of benefits was different than it would have been for any other insured. Accordingly, State Farm is entitled to summary judgment on Plaintiffs' housing discrimination claim (Count II).

C. Declaratory Judgment and Equitable Relief (Counts I, III)

Count I of the Complaint seeks declaratory judgment that Plaintiffs are entitled to reimbursement for certain "personal property, loss of use and all other coverages validly claimed under the policy." (Compl. ¶ 25.) Count III seeks equitable relief for Defendant's "failure to pay for loss of use Policy proceeds" which "effectively [] evict[ed] Plaintiffs from their temporary home." (*Id.* ¶ 35.)

State Farm contends first that Plaintiffs are not entitled to declaratory judgment because Georgia law provides a clear answer to the legal dispute; Plaintiffs failed to make a proper demand for payment; and there is no legitimate question as to coverage in this matter. (MSJ, Doc. 59-1 at 18-19.) As to equitable relief, State Farm argues that there is no evidence Plaintiffs were evicted, as alleged. Rather, the evidence demonstrates that State Farm paid Plaintiffs for the

dwelling coverage and seven months of additional living expenses; that Michelle Raymond never lived in the temporary housing; and that Adell Raymond continued to reside at the temporary housing until her son (Bernard Raymond) purchased a new home in March 2021. (*Id.* at 19.)

Plaintiffs did not respond whatsoever to Defendant's motion for summary judgment arguments as to Counts I and III. Accordingly, Plaintiffs have effectively abandoned these claims. *Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995) (explaining that parties bear the burden formulating arguments at summary judgment and grounds alleged in the complaint but not relied upon in summary judgment are deemed abandoned). Even if Plaintiffs had not abandoned these claims, summary judgment would still be warranted. As Defendant notes, Georgia courts have identified four factors in considering that a declaratory action is appropriate, including whether: (1) a demand for payment has been made; (2) the company has not yet acted to deny the claim; (3) legitimate questions exist about the validity of a policy clause; and (4) Georgia law does not provide a clear answer. *Adams v. Atlanta Cas. Co.*, 484 S.E.2d 302, 305 (Ga. Ct. App. 1997) (citing *Atlanta Cas. Co. v. Fountain*, 413 S.E.2d 450, 452 (Ga. 1992)). Here, Plaintiffs have not identified a proper demand for payment; State Farm has acted to deny future payments for additional living expenses, and Georgia law provides an answer to the contract dispute regarding whether State Farm breached its contract when it refused to pay additional personal property or additional living expense payments.

Besides having been abandoned, Count III fails because Plaintiffs have not identified any legal basis for equitable relief. The Court notes that the record evidence demonstrates that State Farm paid Plaintiffs over $283,000 for the dwelling policy limit plus $30,834.15 in additional living expenses, among other payments. The record also demonstrates that Plaintiff Michelle Raymond never lived in the temporary housing (paid for by the additional living expenses) and instead resided in her alternative residence. Further, there is no evidence in the record that Plaintiff Adell Raymond was evicted; rather, the evidence indicates that Adell Raymond lived in the temporary housing, paid for by her son Bernard after State Farm discontinued benefits, up until Bernard Raymond purchased a new home in March 2021. Accordingly, summary judgment is granted on Counts I and III.

D. Plaintiffs' Dependent Claims (Counts V and VI)

In the Complaint, Plaintiffs assert a claim for punitive damages (Count V) and attorneys' fees (Count VI) for bad faith and stubborn litigiousness under O.C.G.A. § 13-6-11 and O.C.G.A. § 9-5-14. As Plaintiffs fail to state a substantive claim, their derivative claims for punitive damages and attorneys' fees fail as well. *See Andrew Lunsford Properties, LLC v. Davis*, 572 S.E.2d 682, 685 (Ga. Ct. App. 2002).

Additionally, as to attorneys' fees, Georgia law is clear that the exclusive manner by which an insured can recover attorneys' fees in connection with allegations that the insurer failed to pay or was stubbornly litigious is through

O.C.G.A. § 33-4-6. *See Thompson v. Homesite Ins. Co. of Ga.*, 812 S.E.2d 541, 546 (Ga. Ct. App. 2018) ("[A]bsent a special relationship beyond that of insurer and insured, if such claims are predicated on the insurer's failure to pay a claim, O.C.G.A. § 33-4-6 is the exclusive vehicle through which the insured may make a claim for attorney fees against the insurer."); *Howell v. S. Heritage Ins. Co.*, 448 S.E.2d 275 (Ga. Ct. App. 1994) (same). For the first time in their response to summary judgment, Plaintiffs state that they seek attorneys' fees for bad faith refusal to pay an insurance claim under O.C.G.A. § 33-4-6. Plaintiffs did not raise this claim in the Complaint. However, even if they had, to recover fees for a bad faith failure to pay claim under O.C.G.A. § 33-4-6, an insured must show that a proper demand for payment was made against the insurer at least 60 days prior to the filing of suit. *Cagle v. State Farm Fire & Cas. Co.*, 512 S.E.2d 717, 718 (Ga. Ct. App. 1999). Plaintiffs here have made no such showing, nor have they presented any evidence that any failure to pay was motivated by bad faith. Indeed, "statutory penalties for bad faith refusal to pay a claim are not authorized where the insurance company has any reasonable ground to contest the claim." *Farmer*, 396 F. Supp. 2d at 1383. As the Court reasoned above, State Farm was reasonable to contest any claims for additional payments for personal property losses or additional living expenses where Plaintiffs failed to cooperate with State Farm's investigation. Summary judgment is granted on Counts V and VI.

IV. Conclusion

Plaintiffs have not established that Defendant breached any provision of the insurance contract, proffered any evidence that Defendant engaged in housing discrimination, or provided argument that they are entitled to declaratory or equitable relief. Accordingly, Defendant's Motion for Summary Judgment [Doc. 59] is **GRANTED in full**. The Court **ENTERS** judgment in favor of Defendant and against Plaintiffs. The Clerk is **DIRECTED** to close this case.

IT IS SO ORDERED this 1st day of July, 2022.

Honorable Amy Totenberg
United States District Judge