STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
	SUPERIOR COURT DIVISION
COUNTY OF WAKE	23 CV004711-910

GEORGE C. VENTERS and wife NICKYE Y. VENTERS; GREG LINCOLN PIERCE and wife AMY J. PIERCE; JOHN SOLIC and wife SAMANTHA SOLIC; Plaintiffs, v. CITY OF RALEIGH, a body politic and corporate; 908 WILLIAMSON, LLC, a North Carolina limited liability company; RDU CONSULTING, PLLC, a North Carolina limited liability company; and CONCEPT 8, LLC, a North Carolina limited liability company; Defendants.	**DEFENDANTS 908 WILLIAMSON, LLC, RDU CONSULTING, PLLC AND CONCEPT 8 HOLDINGS, LLC'S MEMORANDUM OF LAW IN SUPPORT OF THEIR AMENDED MOTION TO DISMISS (N.C.R. CIV. P. 12(b)(6)) AND MOTION TO STRIKE (N.C.R. CIV. P. 12(f)) PLAINTIFFS' AMENDED COMPLAINT AND REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

NOW COMES Defendants, 908 Williamson, LLC, RDU Consulting, PLLC, and Concept 8, LLC (collectively the "908 Williamson Defendants"), by and through their undersigned counsel, and hereby submits this Memorandum of Law in Support of their Amended Motion to Dismiss pursuant to N.C.R. Civ. P. 12(b)(6), and Motion to Strike pursuant to pursuant to N.C.R. Civ. P. 12(f), and state as follows:

MOTION TO DISMISS
(Failure to State a Claim Upon Which Relief Can Be Granted - N.C. R. Civ. P. 12(b)(6))

A. Standard of Review.

A motion to dismiss under N.C. R. Civ. P. 12(b)(6) tests the legal sufficiency of the complaint. Asheville Lakeview Properties, LLC v. Lake View Park Commission, Inc., 254 N.C. App. 348, 351-352; 803 S.E.2d 632, 636 (2017). Dismissal of a complaint under Rule 12(b)(6) is

proper when one of the following three conditions is satisfied: (1) the complaint on its face reveals that no law supports the claim; (2) the complaint on its face reveals the absence of facts sufficient to make a valid claim; or (3) the complaint discloses some fact that necessarily defeats the claim. Id.

In deciding a Rule 12(b)(6) motion, the Court must treat the well-pleaded allegations as true and view the facts and permissible inferences in the light most favorable to the non-moving party. Laster v. Francis, 199 N.C. App. 572, 577, 681 S.E.2d 858, 862 (2009) (citations omitted). However, the Court can reject allegations that are contradicted by the documents attached, specifically referred to, or incorporated by reference in the complaint. Id. Additionally, the Court is not required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. Id.

B. The 908 Williamson Defendants Are Not Proper Parties to This Litigation.

Plaintiffs have alleged no substantive claim for declaratory relief against the 908 Williamson Defendants. Instead, Plaintiffs' First, Second and Third Claims for declaratory relief only allege wrongdoing by the City, through its adoption of the Missing Middle Ordinances and the 2023 Ordinance, a process over which Plaintiffs freely admit the 908 Williamson Defendants had no control or involvement. See Complaint at ¶¶ 28-86. Specifically, the First Claim is entitled "The Ordinances were illegally enacted," and seeks a declaration that the City failed to provide Plaintiffs with proper public hearing notices. The Second Claim is entitled "Deprivation of Constitutional Rights" and seeks a declaration that the City denied Plaintiffs their procedural due process rights when it adopted the Ordinances at issue. The Third Claim is entitled "Failure to Provide Uniformity Within Zoning Districts as Required by Law" and seeks a declaration that the City's ordinances are legally deficient on this ground.

Even Plaintiffs' request for injunctive relief in its Fourth Claim for Relief seeks only to force the City to remove the Missing Middle Ordinances from the books, and prohibit the City from processing any additional development approvals related to the 908 Williamson Defendants' townhome project (i.e., building permits), both of which require final action by the City, not final action by the 908 Williamson Defendants. See Complaint at ¶¶ 87-92.

Since Plaintiffs' First, Second and Third Claims only allege wrongdoing by the City, and do not seek declarations against the 908 Williamson Defendants, Plaintiffs' claims have failed to allege an actual controversy between themselves and the 908 Williamson Defendants in this suit. Therefore, the 908 Williamson Defendants have been improperly joined in this lawsuit, and should be dismissed.[1] Fabrikant v. Currituck County, 174 N.C. App. 30, 44; 621 S.E.2d 19, 29 (2005) (an actual controversy between the parties must exist at the time of the filing of the pleading; an actual controversy between the parties is a jurisdictional prerequisite for a proceeding under the Declaratory Judgement Act); Wilson County Bd. of Education v. Retirement Systems Division, 891 S.E.2d 626, 636 (2023) (petition should have been dismissed against two respondents pursuant to Rule 12(b)(6) where respondents were not proper parties to the request for judicial review; petitioners' joinder of the respondents in an "abundance of caution" was improper).

[1] Plaintiffs' dispute with the 908 Williamson Defendants involves the City's subdivision approval (the "December 2022 Approval") that authorizes the 908 Williamson Defendants to construct 17 townhome units adjacent to Plaintiffs' properties (the "Project"). This dispute is the subject of an ongoing administrative appeal in Superior Court (Case No. 23CV025572-910), and will be resolved in that appeal process. Plaintiffs' claims seeking declaratory relief in this case, and the actual controversy in this case, involve the City's adoption of the Missing Middle Ordinances, not the December 2022 Approval. Plaintiffs only have included the 908 Williamson Defendants in this case as a way to collaterally attack the December 2022 Approval, instead of letting that administrative appeal process run its course. This is improper. See discussion on Plaintiffs' failure to exhaust administrative remedies below and Potter v. City of Hamlet, 141 N.C. App. 714, 720, 541 S.E.2d 233, 236 (2001) (plaintiff failed to appeal zoning officer's administrative determination to the board of adjustment and instead pursued a civil action, which was an improper collateral attack on the determination of the zoning officer, and could not stand).

C. Plaintiffs' Request for Permanent Injunctive Relief Against the 908 Williamson Defendants Seeks an Improper Remedy Given No Substantive Claim Has Been Alleged Against Them.

As stated above, Plaintiffs' Fourth Claim for Relief seeks the remedy of permanent injunctive relief against the 908 Williamson Defendants, even though the Amended Complaint contains no substantive claim for declaratory relief against them. Since a request for permanent injunctive relief is only a remedy, and not an independent cause of action, the Fourth Claim for Relief against the 908 Williamson Defendants must be dismissed as well. See e.g., Guilford County, ex rel. Thigpen v. Lender Processing Services, Inc., 2013 WL 2387708, *8 (2013) (unpublished) (where cause of action was fatally flawed and dismissed, request for permanent injunctive relief also was denied as it could not serve as an independent cause of action).

Plaintiffs cite to Charlotte-Mecklenburg Hosp. Auth. v. North Carolina Indus. Comm'n, 336 N.C. 200, 443 S.E.2d 716 (1994) to support their contention that the Court may enter injunctive relief to enforce its declaratory rulings. This case, however, does not support the Plaintiffs' request for permanent injunctive relief against the 908 Williamson Defendants here. The North Carolina Supreme Court specifically held in Charlotte-Mecklenburg Hosp. Auth. that declaratory judgments will be denied, and hence, injunctive relief predicated on declaratory relief will be denied, when no actual controversy exists between the parties. Id. at 336 N.C. 200, 212, 443 S.E.2d 716, 724. Here, Plaintiffs' own allegations admit there is no actual controversy alleged between Plaintiffs and the 908 Williamson Defendants with respect to the City's adoption of the Missing Middle Ordinances, meaning any claim for declaratory relief, and any remedy of injunctive relief relying on the declaratory relief, cannot lie.

D. Plaintiffs' Challenge to Missing Middle 1.0 as a "Zoning Map Amendment" Is Barred by the Applicable Statute of Limitations.

In the First, Second and Fourth Claims for Relief, Plaintiffs allege that Missing Middle 1.0 was a "zoning map amendment" (also known as a rezoning) and not a "text amendment" to the City's Unified Development Ordinance (the "UDO"); that the City failed to provide the statutorily required rezoning notice to affected property owners, and to any other property owners who own property located within 500' feet of the properties being "rezoned", and therefore, the ordinance is void. See Complaint at ¶¶ 28-83 and 87-92. The 908 Williamson Defendants dispute these allegations, but assuming *arguendo* the allegations are true, N.C. Gen. Stat. § 160D-1405(a) provides that: "[a] cause of action as to the validity of any regulation adopting or amending a zoning map adopted under this Chapter … accrues upon adoption of the ordinance and shall be brought within 60 days as provided in G.S. 1-54.1." Here, Missing Middle 1.0 was adopted on July 6, 2021 (See Complaint at ¶ 28), but the Complaint challenging the validity of the ordinance was not filed until on March 9, 2023, over 1.5 years later. Therefore, the First, Second and Fourth Claims for Relief as to Missing Middle 1.0 are time-barred.

Lack of notice on the part of Plaintiffs does not allow them to file their claims late. Specifically, N.C. Gen. Stat. § 160D-1405(a) does not provide extra time to file claims in the event there is an alleged defect in the zoning map amendment adoption process, such as lack of notice, unlike N.C. Gen. Stat. § 160D-1405(b), which does provide for such extra time to challenge a "text amendment." The language of the statute is unambiguous in this regard and is in line with the State of North Carolina's longstanding policy on ensuring the finality of zoning map amendments after a specified period of time. See Templeton v. Town of Boone, 208 N.C. App. 50, 62-63, 701 S.E.2d 709, 717-718 (2010) (citations omitted) (plaintiffs' claims challenging the town's zoning ordinances on grounds that the ordinances changed the zoning and use of plaintiffs' land was

barred by the two-months statute of limitations even though plaintiffs had no notice their properties would be impacted by the change); Potter, 141 N.C. App. at 719; 541 S.E.2d at 236 (courts strictly apply statutes of limitations in zoning cases; plaintiff's challenge to zoning ordinance was time barred where plaintiff filed claim more than four years after ordinance adoption, well past the 60-day statute of limitations deadline).

For these reasons, the 908 Williamson Defendants request that the First, Second and Fourth Claims for Relief as they relate to Missing Middle 1.0 be dismissed with prejudice.

E. Plaintiffs Have Failed to Exhaust Their Administrative Remedies to Challenge the December 2022 Approval Through This Civil Action.

Plaintiffs have failed to exhaust their administrative remedies and cannot challenge the December 2022 Approval through this civil action given that the Approval is the subject of an ongoing administrative appeal. See Complaint at ¶ 11.

Specifically, N.C. Gen. Stat. § 160D-405(a) provides that final administrative decisions made by staff, such as the December 2022 Approval, may be appealed to the City's Board of Adjustment, which will conduct a quasi-judicial evidentiary hearing. Appeals of quasi-judicial land use regulatory decisions then are reviewed by the superior court in proceedings in the nature of certiorari. See N.C. Gen. Stat. § 160D-1402. Nothing in these statutes allow Plaintiffs to collaterally attack the December 2022 Approval through this civil action while the administrative appeal is ongoing. Plaintiffs have alleged no facts justifying avoidance of this administrative procedure.

As a general rule, where the General Assembly has provided for an administrative remedy by statute, that remedy is exclusive and its relief must be exhausted before recourse may be had to the courts. Northfield Development Co., Inc. v. City of Burlington, 165 N.C. App. 885, 887, 599 S.E.2d 921, 925 (2004) (plaintiff could not bypass statutory process to appeal set forth by the

General Assembly and file a civil action; the court held "[w]here a statute stipulates a specific route for an appeal to the superior court for review, this procedure is the exclusive means for obtaining judicial review."). Additionally, the court lacks subject matter jurisdiction and the action must be dismissed where a plaintiff has failed to exhaust its administrative remedies. Justice for Animals, Inc. v. Robeson County, 164 N.C. App. 366, 369; 595 S.E.2d 773, 775 (2004).

For these reasons, Plaintiffs' claims must be dismissed to the extent they challenge the December 2022 Approval.

F. Plaintiffs Have Failed to Properly Plead Standing to Maintain This Action or Any of the Claims for Relief Set Forth Therein.

1. Plaintiffs Have the Burden to Establish Standing.

Standing is a prerequisite to a court's proper exercise of subject matter jurisdiction. Templeton, 208 N.C.App. at 53-54, 701 S.E.2d at 712. The party invoking jurisdiction has the burden of pleading and proving standing. Id. (citations omitted).

In order for Plaintiffs to have standing to challenge the Missing Middle Ordinances through this action, Plaintiffs must establish that they have a "specific personal and legal interest in the subject matter affected by the zoning ordinance and … [are] directly and adversely affected thereby." Cherry Cmty. Org. v. City of Charlotte, 257 N.C. App. 579, 583, 809 S.E.2d 397, 400-01 (2018) citing Taylor v. City of Raleigh, 290 N.C. 608, 620, 227 S.E.2d 576, 583 (1976). In other words, Plaintiffs must establish that the Missing Middle Ordinances have caused them to suffer special damages "distinct from the rest of the community." Id. at 257 N.C. App. at 583, 809 S.E.2d at 401.

Owners of property in the adjoining area affected by an ordinance, in and of itself, does not show special damages. Id. Moreover, zoning effects felt by an area at large, and not just the plaintiff's property, do not amount to special damages sufficient to confer standing. Cherry v.

Wiesner, 245 N.C. App. 339, 351-52, 781 S.E.2d 871, 880 (2016) (allegations that reference generalized damage to the overall neighborhood are insufficient to establish standing to sue). For these reasons, the Court of Appeals has recently stated that "[i]t has become difficult for a neighboring property owner to establish that they have standing to challenge a zoning decision." Violette v. Town of Cornelius, 283 N.C. App. 565, 569, 874 S.E.2d 217, 220 (2022).

2. Plaintiffs' Allegations of Standing.

Plaintiffs allege that the Missing Middle Ordinances apply to every property in the City's zoning jurisdiction that is zoned R-4, including Plaintiffs' properties and the property at 908 Williamson Drive. See Complaint at ¶¶ 13 and 29-32. Despite claiming that the Ordinances impact every single property within the R-4 zoning district, Plaintiffs allege they have standing to challenge the Missing Middle Ordinances and the 2023 Ordinance given that they own property either adjoining the Project at 908 Williamson Drive or within the nearby vicinity of the Project. See Complaint at ¶¶ 19-20. Specifically, Plaintiffs allege that they are "uniquely and adversely affected, and will suffer special damages different than the rest of the community or the public at large" because of impacts from the Project such as: (i) increased traffic and parking on Williamson and Iredell streets; (ii) the decreased safety of the intersection of Williamson and Iredell (which is in the vicinity of the driveway entrances to Plaintiffs' properties); (iii) increases in the rate and flow of stormwater; (iv) a diminution in the value of Plaintiffs' properties; and (v) given the Project changes the nature and character of the immediate Williamson and Iredell neighborhood and specifically the character of the R-4 district relating to the Plaintiffs' properties. Id. at ¶ 20.

3. Plaintiffs Have Failed to Properly Allege Standing to Challenge the Missing Middle Ordinances.

a. Plaintiffs Standing to Bring this Declaratory and Injunctive Relief Action Must Arise from the Adoption of the Ordinances Themselves, not the Subsequently-Issued December 2022 Approval.

Plaintiffs incorrectly conflate the test for standing to challenge the City's zoning ordinances through a declaratory relief action, and standing to file an administrative appeal of a City Staff-issued development approval, like the one Plaintiffs John and Samantha Solic filed with the City's Board of Adjustment to challenge the December 2022 Approval.

Standing to bring an administrative appeal to challenge a City Staff-issued development approval is outlined in N.C. Gen. Stat. §§ 160D-405(b) and 160D-1402(c), and provides that neighbors such as the Plaintiffs have standing to participate in the appeal, which follows a quasi-judicial procedure, if they are a person "who will suffer special damages as the result of the decision being appealed." This type of standing arises from a project-specific, and site-specific development approval, meaning Plaintiffs are required to prove they are uniquely harmed by the December 2022 Approval at 908 Williamson Drive.

Standing to bring a declaratory relief action to challenge the Missing Middle Ordinances, on the other hand, follows a different standard. Assuming *arguendo* the Ordinances are rezonings, like Plaintiffs allege, then Plaintiffs must allege and prove that the adoption of the rezoning ordinance itself caused them special damages distinct from those suffered by the public at large in order to show standing. See Violette, 283 N.C. App. at 571-572, 874 S.E.2d at 222 (plaintiffs, as owners of property abutting, adjacent to, or in close proximity to the rezoned properties failed to make a showing that they would suffer special damages distinct from those to the public at large from the challenged rezoning). The subsequent December 2022 Approval that allowed 17 townhouses to be developed at 908 Williamson Drive has no bearing on this analysis, as that approval occurred long after the Missing Middle Ordinances were adopted.

In other words, Plaintiffs' standing allegations in the Complaint must relate to their special damages arising from the alleged rezoning of the property at 908 Williamson Drive, without regard

to any specific projects (i.e., single-family homes, townhouses or otherwise) that were subsequently approved under those ordinances.

The same standard is true if the Missing Middle Ordinances are text amendments to the City's UDO, as the City advertised them to be during the adoption process. Templeton, 208 N.C.App. at 58, 701 S.E.2d at 714-715 (certain plaintiffs seeking to challenge the procedures the town used to enact zoning ordinances failed to establish that use of their own land was limited by the newly enacted zoning ordinances, and therefore, failed to demonstrate that they had a specific personal and legal interest in the subject matter of the zoning ordinance itself and were directly and adversely impacted thereby).

Since Plaintiffs' allegations focus solely on alleged special damages arising from the December 2022 Approval, and not from the alleged Missing Middle Ordinances themselves, Plaintiffs have failed to properly allege standing to challenge the Missing Middle Ordinances, and their claims should be dismissed.

b. Plaintiffs Failed to Allege Individualized Harm Distinct to Their Individual Properties and to the Community at Large.

Regardless of whether the Missing Middle Ordinances are rezonings or text amendments, Plaintiffs must establish that they each have suffered "special damages" arising from said Ordinances that are distinct from each other and from the community at large. Hoag v. Pitt County, 270 N.C. App. 820, 839 S.E.2d 875 at *3 (2020) (unpublished) (case dismissed for lack of standing where multiple plaintiffs failed to allege "specific, individualized allegations demonstrating the distinctiveness of each injury suffered by each of the Plaintiffs"), citing Mangum v. Raleigh Bd.

of Adjustment, 362 N.C. 640, 644, 699, S.E.2d 279, 283 (each landowner must allege an injury distinct to its individual property and different from the other appellants).[2]

Plaintiffs have lumped their allegations of special damages together, failing to provide specific, individualized factual allegations distinct to their individual properties. The fact that the allegations are pooled, and the fact that the Plaintiffs have all suffered the same alleged damages, indicates that those damages are not in fact "special" or "distinct" between each other as the standing criteria require.

Moreover, Plaintiffs have failed to show their damages are "special" or "distinct" from the community at large by their very own pleading. First and foremost, Plaintiffs have undermined their argument of standing by alleging that every property zoned R-4 is impacted by the Ordinances, meaning there is nothing special or distinct about their situation from the other R-4 properties in the City. See Complaint at ¶¶ 13 and 29-32. Second, Plaintiffs have attached Exhibit 1 to their Complaint, which shows the proximity of their respective properties to the Project at 908 Williamson Drive. The Exhibit clearly demonstrates that if Plaintiffs' allegations of adverse impacts are true, then there are many properties within the vicinity of the Project that could allege the very same impacts. Lloyd v. Town of Chapel Hill, 127 N.C. App. 347, 351, 489 S.E.2d 898, 900-01 (1997) (impacts that affect the community at large do not confer individual standing); Wiesner, 245 N.C. App. at 351-52, 781 S.E.2d at 880 (court held that plaintiffs failed to establish standing to challenge a history commission's approval of construction they contended was contrary to the historic character of the neighborhood on grounds that "reduced property values

[2] Plaintiffs' allegations in this case are very similar to the allegations made by the plaintiffs in Hoag that were found to be insufficient to establish standing. Hoag, 839 S.E.2d 875 at *3 (plaintiffs alleged that the rezoning allowed development that was not in character with the surrounding area; the rezoning would result in a diminution of the value of nearby properties including plaintiffs; and the rezoning would result in development that adversely impacted traffic and stormwater).

and impaired enjoyment of the neighborhood" did not amount to special damages unique to the plaintiffs).

Plaintiffs' own allegations, in fact, contradict their argument that they have been adversely impacted by the Missing Middle Ordinances at all. Plaintiffs have alleged those very same Ordinances increased development rights on all lots zoned R-4, including Plaintiffs' properties, and essentially upzoned Plaintiffs' properties giving them a by-right substantial increase in land use entitlement. See ¶¶ Complaint at 31-32 and 42-43. The fact that Plaintiffs do not like their expanded development rights, or will never use them, does not mean they have not benefitted from an expanded and enhanced use of their land due to those Ordinances.

For these reasons, Plaintiffs have failed to properly allege standing and their claims should be dismissed.

c. Plaintiffs' Conclusory Allegations of Special Damages Are Insufficient to Confer Standing.

Plaintiffs have alleged nothing more than conclusory, unsupported allegations that certain special damages will arise, which are not to be treated as true for purposes of a motion to dismiss. Hoag, 839 S.E.2d at 875; see also Cherry Cmty. Org., 257 N.C. App. at 583, 809 S.E.2d at 400-01 (plaintiffs failed to establish standing to challenge the rezoning petition to build a neighboring mixed-use development by only putting forward conclusory, unsupported allegations that special damages would ensue); Lloyd, 127 N.C. App. at 351, 489 S.E.2d at 900-01 (general allegations of adverse impacts in the "immediate vicinity" such as increased stormwater runoff, traffic and noise are not sufficient to prove standing of an individual property owner). For these reasons, Plaintiffs have failed to properly allege standing and their claims should be dismissed.

MOTION TO STRIKE
(N.C. R. Civ. P. 12(f))

A. Standard of Review.

N.C. R. Civ. P. 12(f) allows the court to strike "from any pleading any insufficient defense or any redundant, irrelevant, immaterial, impertinent, or scandalous matter." Rule 12(f) motions are "addressed to the sound discretion of the trial court and its ruling will not be disturbed absent an abuse of discretion." Reese v. The Charlotte-Mecklenburg Bd. of Education, 196 N.C. App. 539, 555-556, 676 S.E.2d 481, 492 (2009).

B. References to the Townhome Project at 908 Williamson Drive Are Irrelevant and Immaterial and Must Be Stricken from the Complaint.

The 908 Williamson Defendants request that the Court strike Paragraphs 7 through 14, 16, 18 through 20, 59, and 64 and the Fourth Claim for Relief in the Amended Complaint to the extent they refer to and/or challenge the Project or the December 2022 Approval. These allegations are irrelevant and immaterial to Plaintiffs' requests for declaratory relief on the City's adoption of the Missing Middle Ordinances, and further because the December 2022 Approval for the Project is the subject of a separate administrative appeal before the Superior Court and cannot be collaterally attacked through this civil lawsuit. Potter, 141 N.C. App. at 720, 541 S.E.2d at 236.

DEMAND FOR ATTORNEY'S FEES PURSUANT TO N.C. GEN. STAT. § 6-21.5

N.C. Gen. Stat. § 6-21.5 provides that the court "upon motion of the prevailing party, may award a reasonable attorney's fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading." The purpose behind this statute is to "discourage frivolous legal action." McLennan v. C.K. Josey, Jr., 247 N.C. App. 95, 98-99, 785 S.E.2d 144, 148 (2016) (citations omitted) (neighbors' counterclaim in quiet title action, in which they asserted they were fee simple owners of the property, lacked

any justiciable issue and thus supported an award of attorney's fees to the other party; neighbors' claim of ownership was contradicted by ownership records referenced in complaint).

A justiciable issue is one that is "real and present, as opposed to imagined or fanciful." Id. (citations omitted). A complete absence of a justiciable issue exists when either: (1) a plaintiff must reasonably have been aware, at the time the complaint was filed, that the pleading contained no justiciable issue; or (2) a plaintiff must be found to have persisted in litigating the case after the point where he should reasonably have become aware that his pleading no longer contained a justiciable issue. Id. (citations omitted).

Plaintiffs filed their original Complaint for Declaratory and Injunctive Relief on March 9, 2023. The 908 Williamson Defendants filed a Motion to Dismiss and Motion to Strike on May 9, 2023, which sought dismissal of the Complaint on the same grounds as this current Motion (i.e., no substantive claims made against the 908 Williamson Defendants; claims barred by applicable statute of limitations; and failure to exhaust administrative remedies). Plaintiffs knew or should have known their claims against the 908 Williamson Defendants contained a complete absence of a justiciable issue of either law or fact at the time of filing given this State's long-standing and established legal precedent on these issues.

When Plaintiffs filed their Amended Complaint on August 23, 2023, however, they did not dismiss the 908 Williamson Defendants from the lawsuit, or remove the improper references to the December 2022 Approval from the Complaint. Instead, Plaintiffs' Amended Complaint seeks the exact same claims and relief against the 908 Williamson Defendants as in their Original Complaint. As a result, the 908 Willimson Defendants have been forced to expend legal fees for over seven months defending this action when they never should have been made parties in the first place. Moreover, Plaintiffs' Amended Complaint wholly fails to address how the claims

against the 908 Williamson Defendants survive the very clear cut 60-day statute of limitations of N.C. Gen. Stat. § 160D-1405(a), and how the claims are permitted to collaterally attack the December 2022 Approval which is the subject of an ongoing administrative appeal. Plaintiffs appear to have joined the 908 Williamson Defendants in this case solely to make them expend significant time and money in defending against Plaintiff's claims in both the administrative appeal, and this civil action, which is exactly what the exhaustion of administrative remedies doctrine is designed to prevent.

Given Plaintiffs' claims against the 908 Williamson Defendants contain a complete absence of a justiciable issue of either law or fact, and are designed to harass the 908 Williamson Defendants and waste this court's judicial resources, Plaintiffs respectfully request this Court award them their reasonable attorney's fees incurred in defending this action pursuant to N.C. Gen. Stat. § 6-21.5.

CONCLUSION

For the foregoing reasons, the 908 Williamson Defendants pray this Court grant their Amended Motion to Dismiss and Motion to Strike in their entirety, award their reasonable attorney's fees and costs, and grant such other and further relief as deemed just and proper.

RESPECTFULLY SUBMITTED this the 27th day of November, 2023.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Defendants 908 Williamson, LLC, RDU Consulting, PLLC, and Concept 8 Holdings, LLC's Memorandum of Law in Support of Their Amended Motion to Dismiss and to Strike Plaintiffs' Amended Complaint* has been duly served by electronic mail to the following counsel of record:

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This the 27th day of November, 2023.

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