

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

GREATER NEW ORLEANS FAIR HOUSING ACTION CENTER, and WALLACE RODRIGUE,	*	CIVIL ACTION
	*	
	*	NO. 2:06-CV-07185
	*	
Plaintiffs,	*	SECTION C
	*	
and PROVIDENT REALTY ADVISORS, INC.,	*	JUDGE BERRIGAN
Plaintiff-Intervenor,	*	
	*	MAGISTRATE JUDGE SHUSHAN
	*	
vs.	*	
	*	
ST. BERNARD PARISH and ST. BERNARD	*	
PARISH COUNCIL,	*	
	*	
Defendants.	*	

**PLAINTIFFS' PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

PROPOSED FINDINGS OF FACT

I. Background

A. The Blood Relative Ordinance

1. Census data from 2000 reveals that whites constituted 88.3% of the population of St. Bernard Parish while African Americans constituted 7.6%. (Pls.' Evid. Hr'g Ex. 40 at 6-7.) This is in stark contrast to the surrounding areas of Orleans and Plaquemines Parishes, which are predominately African-American. Although the demographics of other areas in Louisiana changed after Hurricanes Katrina and Rita, recent census estimates reveal that the racial demographics of areas outside New Orleans, including St. Bernard Parish, did not change, with African Americans and Hispanics still a minority of the population. (Motion to Enforce, Docket #126-1 at 4-5); William H.

Frey, Audrey Singer and David Park, *Resettling New Orleans: The First Full Picture from the Census*, The Brookings Institution, Special Analysis in Metropolitan Policy, at 7 (Sept. 2007).

2. After Hurricane Katrina devastated the New Orleans area in August 2005, thousands of evacuees fled New Orleans. When many attempted to flee the Lower Ninth Ward, a predominately African-American neighborhood, St. Bernard Parish officials constructed blockades to prevent African Americans from entering, even authorizing sheriff deputies to shoot to kill. (Motion to Enforce at 3); Lee Hancock, *In a City Split and Sinking Before Storm, Racial Issues Boil*, Dallas Morning News (Dec. 4, 2005).

3. After the hurricane, the Parish moved quickly to maintain its virtually all white demographic by enacting various ordinances that restricted the construction, rehabilitation, and rental of housing in the Parish.

4. An ordinance passed on November 1, 2005 placed a twelve-month moratorium on the new construction of multi-family dwellings and prohibited the rehabilitation of any preexisting multi-family housing without first receiving the approval of the St. Bernard Parish Council. (Pls.' Evid. Hr'g Ex. 28.)

5. Another ordinance, passed on March 7, 2006, placed a moratorium on the conversion of single-family homes into rental properties "until such time as the post Katrina real estate market in St. Bernard Parish stabilizes." (Pls.' Evid. Hr'g Ex. 29.)

6. On July 6, 2006, the Council passed an ordinance permitting owners to rent their single-family dwellings only if they obtained a conditional use permit from the Parish, but set no guidelines as to when the permits would be granted. (Pls.' Evid. Hr'g Ex. 30.)

7. On September 19, 2006, the St. Bernard Parish Council passed an ordinance that barred any member of its nearly all white community from renting a single-family residence to anyone other than a blood relative. (Pls.' Evid. Hr'g Ex. 27.) The blood relative ordinance was only one of several ordinances enacted for the purpose of restricting the rental, rehabilitation, and/or construction of dwellings within St. Bernard Parish.

8. The blood relative ordinance was introduced by then Councilman Craig Taffaro. (Tr. of Mar. 12 Hr'g at 41-42.) Mr. Taffaro is currently the President of St. Bernard Parish. (Tr. of Mar. 11 Hr'g at 209.)

9. All of these ordinances had the clear effect of excluding African Americans who had been displaced after Hurricane Katrina from settling in St. Bernard Parish. The blood relative ordinance proved to be a particularly effective means of ensuring that St. Bernard Parish remained virtually all white. The ordinance had the effect of restricting the availability of rental housing to the 4.1% of African-American owner-occupied housing in the Parish. (C. Bradford Affidavit, Docket #6-4 at 2.) A Council member who voted against the ordinance stated that it was passed "to block the blacks from living in these areas." (Motion to Enforce at 5); Michelle Chen, *Housing Watchdogs Call Post-Katrina Ordinance 'Racist,'* The New Standard (Oct. 6, 2006). The member of the Council who authored and sponsored the ordinance, Craig Taffaro, confirmed that "[A]ll we're doing is saying we want to maintain the demographics." (Tr. of Mar. 12 Hr'g at 44); *New Law in St. Bernard Parish Stirs Controversy* (Sept. 28, 2006), available at <http://www.wvltv.com/local/stories/wwl092806jblaw.27895d18.html>.

10. On October 3, 2006, the Greater New Orleans Fair Housing Action Center ("GNOFHAC") and Wallace Rodrigue (an individual denied the opportunity to rent his

property because of the blood relative ordinance) filed a complaint challenging the ordinances under, among other statutes, the Fair Housing Act of 1968 as amended, 42 U.S.C. § 3601 et seq. (Docket #1.)

11. On November 3, 2006, GNOFHAC and Mr. Rodrigue filed a motion for a preliminary injunction asking this Court to strike down the ordinance. The preliminary injunction sought to enjoin the enforcement and implementation of the blood relative ordinance as well as the other single family ordinances, in the event those other ordinances remained in effect. (Docket #6.) The multi-family ordinance passed on November 1, 2005 had expired by the time of the filing of the motion for preliminary injunction.

12. After a year of contentious litigation, Plaintiffs were successful and St. Bernard Parish permanently rescinded the blood relative ordinance. The parties entered into a Consent Order that was approved by the Court on February 27, 2008. (Docket #114.) The Consent Order enjoined St. Bernard Parish from violating the Fair Housing Act as well as 42 U.S.C. §§ 1981, 1982, and 1983. The Parish's obligations under the Order continue until February 27, 2011. As part of the Order, St. Bernard Parish also agreed to pay Plaintiffs \$32,500 in settlement of their damages claims. Four months later, the Court directed the Parish to pay Plaintiffs \$123,771.92 in attorneys' fees and costs. (Docket #123.)

B. Provident Realty Advisors, Inc.

13. Provident Realty Advisors, Inc. ("Provident") is a developer of real estate. Provident's many projects include multi-family housing developments. (M. Harris Decl., Docket #126-5 at ¶ 2.) Provident has successfully developed more than 2,600 mixed-

income and affordable apartments. It currently has under construction in Louisiana five apartment properties totaling 918 units. (Tr. of Mar. 11 Hr'g at 10.) Three of the properties are 250-unit mixed income developments: The Marquis Apartments in New Orleans, Lakeside Apartments in Slidell, and Stone Bridge Apartments in Abbeville. (*Id.* at 10-11.)

14. Affordable housing properties are financed primarily through the use of tax credits and other federal subsidies. For example, the proposed Provident developments are funded through Low-Income Housing Tax Credits ("Housing Tax Credits") and Community Development Block Grant ("CDBG") funds. (*Id.* at 16-18.)

15. The tax credits are sold to private investors, who receive a tax credit that is of value to them. (*Id.* at 17-18.) Because the affordable housing is financed through private investors, the local community does not have to spend any money on the developments. (Tr. of Mar. 12 Hr'g at 16.)

16. Under the tax credit program, Provident must hold and maintain the property for a period of 15 years. Failure to meet this requirement will result in investors losing their ability to claim a tax credit. Provident, therefore, has a financial incentive to maintain its properties. If Provident does not maintain its ownership of the properties for 15 years, the tax benefits will be lost and investors will be less likely to invest with Provident in the future. It also has an incentive to maintain the properties in order to preserve its reputation. A good reputation ensures Provident's ability to attract investors in the future. (Tr. of Mar. 11 Hr'g at 19-23.)

17. The multi-family housing developments that Provident has built under tax credit programs consist of garden style apartments. The community amenities include

swimming pools, clubhouses, fitness centers, playgrounds, and business centers. The apartment amenities include nine-foot ceilings, patios and balconies, ceiling fans with light fixtures in all bedrooms and living rooms, microwaves, washers and dryers, frost-free refrigerators, ranges and ovens, and garbage disposals. (Pls.' Evid. Hr'g Ex. 13.)

18. A typical tax credit property built by Provident will include a mix of affordable and fair market rental apartments. The affordable apartments are priced according to guidelines set by the relevant state housing agency, based in turn on a calculation that is tied to the average median income of the area where the housing is located.

C. Provident Identifies St. Bernard Parish as a Favorable Place to Build

19. In early 2008, Provident learned that due to a shortage of affordable housing developments resulting from the devastation incited by Hurricanes Katrina and Rita, the Louisiana Housing Finance Agency and the Louisiana Recovery Authority would likely set aside Housing Tax Credits and CDBG funds to encourage affordable housing development in St. Bernard Parish. (M. Harris Decl. at ¶ 8; Tr. of Mar. 11 Hr'g at 11-12.)

20. Provident was attracted to building in St. Bernard Parish because of the great unmet need for affordable housing, particularly in light of the significant loss of housing after Hurricane Katrina. (Tr. of Mar. 11 Hr'g at 11:18-23.)

21. Accordingly, Provident began making preparations to develop four affordable housing communities in St. Bernard Parish. (M. Harris Decl. at ¶¶ 9-16.)

22. Mr. Harris went to St. Bernard Parish, spoke to members of the community, and saw the need for affordable housing. (Tr. of Mar. 11 Hr'g at 12.) He

observed that there is a strong job base in the Parish and that many people have to commute long distances to St. Bernard to work there. (*Id.* at 12-13.) He also knew that a hospital was being planned. (*Id.* at 27.)

23. Provident conducted market studies that showed a strong need for affordable housing in St. Bernard Parish. (*Id.* at 13-14.) The market studies found that there was twenty times more demand for apartments than the supply of apartments Provident would provide with its developments. (*Id.* at 14:10-23.)

24. Job vacancies and expected growth in St. Bernard Parish indicate that there will be a need for affordable housing. (Pls.' Evid. Hr'g Ex. 41 at 11-12.) In the latter half of 2008, the New Orleans metropolitan area gained 1.12% in jobs, while the national job market lost 1.24%. (Tr. of Mar. 11 Hr'g at 164.) As of the second quarter of 2008, there were significant job vacancies across the region. In St. Bernard Parish, however, the largest concentration of workers is in many of the same occupations with high job availability (office and administrative support, sales, maintenance and repair, food services, material moving, and construction) as in the metro area. (Pls.' Evid. Hr'g Ex. 41 at 11.)

25. Five hundred businesses have indicated that they would like to reopen in St. Bernard Parish and a new 40 bed hospital will open in the next two years. (*Id.* at 11-12.) President Taffaro testified that as of January 2008 two-thirds of St. Bernard Parish's businesses had reopened. (Tr. of Mar. 12 Hr'g at 2.)

26. The Parish is working on a Memorandum of Understanding regarding redevelopment of the Village Square area that would bring services to the Parish,

including medical, psychiatric, and substance abuse clinics. (Tr. of Mar. 11 Hr'g at 255-256.)

27. St. Bernard Parish has applied for over 1,587 public assistance projects that will draw down nearly \$1 billion of federal funds. These projects will generate the need for workers and services during construction phases, and for staffing of facilities. (Pls.' Evid. Hr'g Ex. 41 at 11-12.)

28. Over 25% of workers in St. Bernard Parish cannot afford a two-bedroom apartment at current market prices. Workers that keep the Parish running, such as hotel and food services, retail, education and other service workers, are unable to afford rental units in the Parish. Retail trade, hotel and food services, public administration, education services, and health care, are critical industry sectors in St. Bernard whose workers cannot afford current market rates, but fall within rent projections of developments like Provident's. (*Id.* at 12-13.)

29. The population of St. Bernard Parish is growing. In the six months from July to December 2008, St. Bernard households increased by 15%, compared to only a 1% increase in the metro region. (*Id.* at 10.)

30. While the number of unemployment claims has soared nationally, it has dropped in the New Orleans metro area. Families that moved elsewhere after the storm may begin to return as layoffs in other area plague their neighborhoods across the country. (*Id.* at 10.)

31. Affordable housing needs projections demonstrate that even if all of the rental units currently in the pipeline for development are built, including the Provident

developments, there will still be an unmet demand for at least 579 units in St. Bernard Parish. (*Id.* at 8.)

32. There are no other mixed income properties in St. Bernard Parish. (Tr. of Mar. 11 Hr'g at 13:5-6.) The only other affordable multi-family property in St. Bernard Parish was in the Village Square area prior to Hurricane Katrina.

33. Village Square is an area of St. Bernard Parish that had a concentration of African Americans prior to the storm. Village Square was where the majority of multi-family housing in the Parish was located. It was comprised mostly of rental housing, and the majority of the rental housing there was destroyed by Hurricane Katrina. Village Square was known in St. Bernard Parish as an African-American community. (*Id.* at 53:2-4; 59-60:2.)

D. The Proposed Provident Developments

34. After assessing the need for housing in St. Bernard Parish and the market conditions, Provident developed plans to build four mixed-income affordable housing communities to be located in the Parish. The proposed developments were sited in the western part of the Parish, but near town centers with many amenities. (*Id.* at 176.)

35. The proposed Provident developments include four apartment complexes with 72 units each. Thirty percent of these units (22) will be priced at fair market rents. Fifty percent (35) will be at 60% of Area Median Income ("AMI"). Twenty percent (15) will be at 30% of AMI. (Pls.' Evid. Hr'g Ex. 12 at 2.)

36. Under its plan, Provident expected to receive \$60 million in funding from two federal programs and a loan in order to develop its proposed properties in St. Bernard Parish. \$20 million would come from Community Development Block Grant funds.

Those funds are supplied through the Louisiana Recovery Development Program. \$30 million would be provided in Low Income Housing Tax Credits. The final \$10 million was expected to come from a permanent loan from Freddie Mac. (Tr. of Mar. 11 Hr'g at 16-19.)

37. If Provident achieves a 90% occupancy rate it will be able to cover its debts and expenses. (*Id.* at 20.) Provident could also lower all of its market rate units to rates at 60% of the AMI and cover its debts and expenses. (*Id.* at 20.) Provident is able to offer lower rents because of the tax credits it receives for the developments.

38. The four Provident developments would provide \$40,000 in property taxes to St. Bernard Parish each year. (Tr. of Mar. 12 Hr'g at 16.)

39. Provident plans on being a long-term holding partner on its proposed properties in St. Bernard Parish. (Tr. of Mar. 11 Hr'g at 21:2-3.) At the conclusion of the 15 year tax credit period, the properties become more valuable to the owners because the debt service is paid off and the profit margin in each building increases. (Tr. of Mar. 12 Hr'g at 16-17.)

E. Provident's Initial Contacts with the Parish

40. Provident's Managing Director, Matt Harris, met with Parish officials on July 14, 2008. Attendees from the Parish included Parish President Taffaro, Parish Sheriff Jack Stephens, and Councilmen Ray Lauga and George Cavignac. (M. Harris Decl. at ¶ 15.) Mr. Harris showed pictures of what the properties would look like. He discussed the amenities and explained that these developments were not government housing. He informed the council members about Provident's incentives to maintain the properties. He explained that Provident was investing \$60 million into St. Bernard Parish.

(Tr. of Mar. 11 Hr'g at 16, 25; Tr. of Mar. 12 Hr'g at 75.) Mr. Harris made clear that the proposed developments would not cost St. Bernard any money. In fact, Mr. Harris explained that each property would actually earn the Parish significant tax revenue (approximately \$40,000 per year for each of the four developments) based on the estimated real estate taxes that the properties would generate. (Tr. of Mar. 12 Hr'g at 16, 76.)

41. At the July 14 meeting, Parish officials asked many questions about the type of people who would rent the properties. Parish officials mentioned that they wanted to avoid "another Village Square." No objections were raised about the alleged lack of need for affordable housing in the Parish, insufficient infrastructure or medical care, or the need to revise Parish zoning laws. Parish officials stated that they wanted to work with Provident to see that the developments were built. (Tr. of Mar. 11 Hr'g at 26-27.)

42. On July 23, 2008, Jerry Graves, Director of Community Development of St. Bernard Parish, wrote a letter to Matt Harris confirming that Provident's proposed developments were consistent with local zoning. (Pls. Evid. Hr'g Ex. 6.) No objections were raised about the density of the proposed developments. Nothing was mentioned about a need for a moratorium in order to revise the zoning code. The purpose of the Graves letter was to inform Provident that its proposed developments as situated and sited in fact complied with all aspects of the Parish's zoning code. (Tr. of Mar. 11 Hr'g at 27; Tr. of Mar. 12 at 90; Pls.' Evid. Hr'g Ex. 6.)

F. Notice to the Community and Public Outcry

43. On August 7, 8, and 9, 2008, Provident ran notices in the Times-Picayune describing its proposed developments. (Pls.' Evid. Hr'g Ex. 59; Tr. of Mar 11 Hr'g at 217-219; Tr. of Mar. 12 Hr'g at 74.) The notices stated that each property "will be a mixed income development" and would "provide supportive services in a community facility, including supportive services such as after school programs on a voluntary basis, adult basic education, and personal finance." (Pls.' Evid. Hr'g Ex. 59.)

44. After the notices appeared in the newspaper, public opposition to the developments erupted. (Tr. of Mar 11 Hr'g at 219.)

45. On August 16, 2008, an editorial appeared in The St. Bernard Voice that described the developments in terms that amounted to camouflaged racial expressions. The editorial referred repeatedly to Village Square, which is known for its African-American residents; raised concerns about a possible "ghetto" and inner city "blight;" lamented the possible introduction of crime and drugs; questioned who would be likely to make use of the "supportive services" offered by Provident; and rhetorically questioned whether St. Bernard's "deep appreciation for shared values" was "now threatened." (Pls.' Evid. Hr'g Ex. 11; Tr. of Mar 11 Hr'g at 219-221.) The editorial stated:

Should St. Bernard residents be concerned? Ours was a crime free community of homeowners with a deep appreciation for shared values... Is that now threatened?

The local newspaper had three entries in its legal notices this past week. All three relate to the use of private and public money to construct a total of 216 apartments in three selected sites in the parish...

The fact that each development mentions that it will provide "supportive services in a community facility including ... after school programs on a voluntary basis,

adult basic education, and personal finance” may provide some insights into the background of the intended occupants ...

Less we forget, Village Square started out as a middle class housing development that catered to teachers, other professionals, and their families. It was a wonderful place to live ... when first opened...

Result: Village Square became what can only be described as a ghetto with drugs, crime, vandalism, and violence.

That is generally the case with high density housing. It was just because such problems persist in that type of environment that HUD demolished the concentrated lifestyles of the “New Orleans Projects.” Is St. Bernard about to buck the trend and construct them here in St. Bernard? What guarantees have the residents of St. Bernard that their tax money is not going to be used to create the kind of blight New Orleans recently destroyed?

But the fact remains that residents know little about what is going on, [and] are not impressed when they hear the term “mixed income development” mentioned in the project description...

(Id.)

46. Mr. Harris became deeply concerned after reading the article in The St. Bernard Voice and feared that it would have an unfavorable impact on the Provident projects and make it more difficult to win approval from the Parish for construction. (Tr. of Mar. 11 Hr’g at 27:25-28:1.)

G. Introduction of Moratorium

47. On August 19, 2008, three days after the editorial appeared, and without any prior consultation or notice to Mr. Harris or Provident, the Parish Council introduced a moratorium prohibiting the construction of multi-family properties of five units or more. Mr. Harris was not aware of any other multi-family developments proposed in St. Bernard Parish at the time. (*Id.* at 29:7-9, 83.) Parrish officials did not tell Mr. Harris that any other developments, besides those planned by provident would be affected by the moratorium. (M. Harris Decl. ¶ 26.)

48. The ordinance provided for a moratorium on all multi-family developments with five or more units for twelve months or until design standards were approved. (Pls.' Evid. Hr'g Ex. 31; Tr. of Mar. 12 Hr'g at 65, 92-93.)

49. At the time the moratorium was introduced, Parish officials were aware of public opposition to the Provident developments. (Tr. of Mar. 11 Hr'g at 219; Tr. of Mar. 12 at 85.) Councilman Lauga admitted that public opposition to the Provident developments was a motivating factor in the introduction of the multi-family moratorium. (Tr. of Mar. 12 Hr'g at 85.)

H. The Parish Reassures Provident that the Developments Will Go Forward

50. On August 26, 2008, Mr. Harris attended a meeting with Parish officials as well as the individual who wrote the August 16 article in The St. Bernard Voice. Attendees from the Parish included President Taffaro, Parish Sheriff Jack Stephens, Councilman Ray Lauga, Rebecca Martin (Director of Economic Development of St. Bernard Parish), and Jerry Graves (Director of Community Development of St. Bernard Parish). (M. Harris Decl. at ¶ 21.) As at the first meeting on July 14, 2008, Mr. Harris gave a presentation about the proposed developments and answered questions. The Parish officials asked questions about who would live in the proposed developments and expressed concerns about the lower income units. (Tr. of Mar. 11 Hr'g at 30-31.)

51. Later at the August 26, 2008 meeting, Parish officials asked Mr. Harris to step out of the meeting. When he was called back into the meeting, Parish officials told Mr. Harris that they thought the Provident developments were a positive thing and that they would work with Provident to "get it done." (*Id.* at 31.) They asked a lot of questions about policies regarding criminal background checks of potential tenants and to

whom Provident would market. Parish officials wanted Provident to pre-lease units in order to fill up the properties with former St. Bernard residents who had been displaced by the hurricanes. In particular, Parish officials asked about ways to pre-lease units to St. Bernard government employees and seniors. Mr. Harris explained that the units had to be open to the public on a first come, first served basis, and that apartments could not be set aside for certain types of workers or certain categories of people that the Parish wanted to pre-designate. (*Id.* at 31-34.)

52. At the August 26th meeting Parish officials did not raise any concerns about zoning, density, lack of infrastructure, the lack of a hospital, or the lack of need for affordable housing. (*Id.* at 34:4-6, 43.)

53. After the August 26th meeting, Councilman Lauga spoke with Mr. Harris and told him that the reason for the moratorium was that it was a necessary step to “buy some time” to appease the public outcry over the planned developments. He stated that once Provident worked out design guidelines with the Parish, the moratorium would be lifted. (*Id.* at 34:10-14.) Councilman Lauga asked Mr. Harris to send him proposed design guidelines. At the evidentiary hearing, Councilman Lauga at first denied that the public outcry over the Provident developments played a role in the passage of the moratorium, and then, upon further questioning, admitted that it did in fact play a role. (Tr. of Mar. 12 Hr’g at 85.)

54. Mr. Harris understood that as long as the moratorium was in place, it would completely block the Provident developments from going forward, but after speaking with Councilman Lauga, was reassured that the Provident developments would

ultimately be allowed to go forward once design standards were submitted and approved. (Tr. of Mar. 11 Hr'g at 34:17-23; M. Harris Decl. at ¶ 23-24.)

55. Anxious to ensure that the proposed developments stayed on track and moved forward expeditiously, on September 9, 2008, Provident employee Paul Knowlton emailed proposed design standards directly to Councilman Lauga. (Pls. Evid. Hr'g Ex. 13, Ex. 7; Tr. of Mar. 12 Hr'g at 86-87.) Councilman Lauga admitted receiving the design standards on that date, and further admitted that he never responded to anyone at Provident about them. (Tr. of Mar. 12 Hr'g at 87.) Mr. Harris never received a response. (M. Harris Decl. at ¶ 24.)

56. The standards prepared by Provident and sent to Councilman Lauga on September 9, 2008 provided for minimum lot size, restrictions on building height, parking, substantial open spaces, varying architectural elements, landscaping, and the use of similar building character, facades and materials to fit the neighborhood. The standards called for exercise facilities, playgrounds, swimming pools, picnic areas, and sport courts and fields. In addition, they required a perimeter fence with controlled access gates at all entrances and a regular security patrol by a licensed officer. (Pls.' Evid. Hr'g Ex. 13; Tr. of Mar. 12 Hr'g at 91.)

57. On September 16, 2008, without notice to Provident, the Council passed the moratorium. Councilmen Lauga, Cavignac, Henderson, Ginart, Everhardt, and Auderer voted for the moratorium. No councilmember voted against it. (Pls.' Evid. Hr'g Ex. 31.) The moratorium stopped the construction of any housing developments with five or more units for up to twelve months "or until such time as the Council approves these structures in the zoning updates to the St. Bernard Parish Code of Ordinances."

(*Id.*) As Parish President, President Taffaro had the power to veto the moratorium but did not do so. (Tr. of Mar. 11 Hr'g at 233.)

58. Both Councilmen Taffaro and Lauga made clear that notwithstanding the reference in the moratorium to zoning updates, the moratorium was to remain in place only until design standards were passed by the Council. It was approval of the design standards that would trigger lifting of the moratorium. (Tr. of Mar. 12 Hr'g at 31, 92-93.)

59. Although President Taffaro denied any knowledge at the time the moratorium was passed that Provident had sent proposed design standards to Councilman Lauga (Tr. of Mar. 11 Hr'g at 238-239), Councilman Lauga-- the member who had initiated the moratorium and requested the design standards from Provident-- admitted that he had received Provident's proposed design standards before the moratorium was enacted. No one from the Council spoke to Provident about the proposed design standards before the moratorium was enacted. (M. Harris Decl. at ¶ 24; Tr. of Mar. 12 Hr'g at 87.)

60. Although concerned about the passage of the moratorium and what it meant for ultimate approval of Provident's proposed developments, Mr. Harris was under the impression, based on the comments of Councilman Lauga, that Provident would be allowed to build the developments once it reached agreements with the Parish on design standards. (Tr. of Mar. 11 Hr'g at 34:17-23.) Mr. Harris was aware that another Council meeting would be held on October 7, 2008 to discuss the developments further.

61. Sometime before the October 7, 2008 Council meeting, Mr. Harris met with Mr. Taffaro to ask him to sign a letter attesting to the Parish's adequate

infrastructure. President Taffaro took the letter and said he would consider signing it.
(*Id.* at 35-36.)

62. At that same meeting with Mr. Harris, President Taffaro advised Mr. Harris that he should emphasize at the next Council meeting that the Provident developments “won’t be like Village Square.” (*Id.* at 240-241.)

63. On October 7, 2008, Mr. Harris attended the Council meeting and presented information about the Provident developments. Members of the public had questions, but Councilman Lauga required that questions be deferred until a later meeting that would be held in his district. (*Id.* at 35-36.)

64. On October 9, 2008, Mr. Harris received a copy of a letter signed by President Taffaro and addressed to Milton Bailey, President of the Louisiana Housing Finance Agency. LHFA was the governmental entity that would be deciding whether Provident received its tax credits. The purpose of the letter was to explain to LHFA that the Parish had adequate infrastructure to support the Provident developments. The letter stated:

As Parish President, I am familiar with the four proposed developments planned by Provident Realty Advisors, Inc. The parish government has the infrastructure necessary to support these projects in its water, sewer, municipal waste pick up, roadways, police and fire protection, and basic EMS services. Several areas of our infrastructure are also being upgraded, including improved drainage, flood control, and hurricane protection systems. St. Bernard Parish looks forward to the agency’s decision on these projects to coordinate our recovery accordingly.

(Pls.’ Evid. Hr’g Ex. 14; Tr. of Mar. 11 Hr’g at 36-37.)

65. On October 16, 2008, a representative from Provident attended a District A meeting held by Councilman Lauga and answered questions from the public about the Provident developments. (M. Harris Decl. at ¶ 29.) Mr. Harris and Provident continued

to believe the assurances they had received from the Parish and Council that, notwithstanding the moratorium, their project would go forward once the design standards were approved. As of this date, Mr. Harris had still not heard back from the Council or Parish about his proposed design standards. (*Id.* at ¶ 24; Tr. of Mar. 12 Hr’g at 87.)

66. On October 22, 2008, State Senator A.G. Crowe sent a letter to Milton Bailey, President of the Louisiana Housing Finance Agency, expressing his support for an allocation of tax credits for the Provident developments. (Pls.’ Evid. Hr’g Ex. 42; Tr. of Mar. 11 Hr’g at 244-246.) President Taffaro stated at the evidentiary hearing that he believed Senator Crowe was a person of integrity who would not state something he knew to be inaccurate or untruthful. (Tr. of Mar. 11 Hr’g at 244.) Senator Crowe stated in his letter that Provident’s proposed developments were much needed; and that they provided the type of safe and affordable housing for teachers, policemen, firefighters, and nurses that were needed for St. Bernard Parish to “come back strong”:

I am writing to express my support for an allocation of Housing Tax Credits for the proposed apartments referenced above.

Since the devastation of Hurricane Katrina there is a well recognized and growing need for quality affordable housing for residents in our area. The funding from your agency will allow for a better and safer quality of life for our citizens. These much needed apartments will give many of our residents who have been forced to relocate the opportunity to finally come home. This quality housing will help St. Bernard in the recruiting of teachers, policemen, firemen, nurses and many other important work force jobs that are needed in order for the Parish to come back strong. It will also give those citizens who remained in St. Bernard Parish and have had to double up with family and friends the opportunity to get back on their feet with a new beginning.

I am asking for your help in making the dream of quality, safe, and affordable housing available for the resilient people of St. Bernard Parish.

(Pls.’ Evid. Hr’g Ex. 42.)

I. The Council Reveals Its True Intent, Making Clear It Had No Intention All Along of Allowing the Provident Developments to Go Forward

67. On November 12, 2008, with no prior warning, notice to, or consultation with Mr. Harris or any representative of Provident, Councilmen Landry and Cavnagac sent an “urgent fax” from Parish Council offices to the Louisiana Housing Finance Agency objecting to the award of tax credits to the Provident developments. (Pls.’ Evid. Hr’g Ex. 15; Tr. of Mar. 11 Hr’g at 39-40.) This was the day on which the LHFA was to award allocations of the low income housing tax credits for the current cycle. The award of tax credit financing was critical to the success of the project, because without approval from LHFA, there would not be adequate funding and the incentive for investors seeking tax credits would be gone. Mr. Harris had explained how critical LHFA funding was to the project in the August and July meetings at which Councilmen Taffaro, Lauga, and Covignac were present. (M. Harris Decl. at ¶ 15, 21; Tr. of Mar. 11 Hr’g at 40.)

68. The November 12 letter asserted a “strong objection” on the part of the Parish to any award by LHFA for any of the four proposed Provident developments based on an alleged lack of need for housing; lack of infrastructure to support those who would live in the proposed developments; and lack of “health care or support services.” The letter did not mention density concerns, zoning issues, or PUD or design standards. (Pls.’ Evid. Hr’g Ex. 15.)

69. The November 12, 2008 letter stated:

Please accept this letter for the record as our **OFFICIAL OBJECTION** to four applications made concerning apartment buildings in St. Bernard Parish.

As we move through our Katrina recovery efforts, a large part of our policy efforts have required diligence to protect the stability of our housing and/or rental market. Suppression of values in both these areas must be constantly guarded

against, especially as we seek to lure our former residents back to our parish. Not only does our parish face the real estate market problems that are afflicting the rest of our nation, we have the added challenge given to us by the destruction of Katrina. Even a recent Federal Court decision in St. Bernard's favor regarding our rental control ordinance recognized the instability of our market and the need for such protection.

At the current time, St. Bernard's rental stock is flush with available properties in all price ranges which go unrented, indicating that demand does not warrant the addition of even one of these proposed 72 unit developments. As an example, we currently have a 91 unit development similar to one of these proposed developments that have been available for approximately one year and still cannot be filled. This is despite even a strongly advertised "Fire Sale" for the apartments which offered a no money incentive for move in. In addition, the monies made available for these apartment projects could be better applied to an area that can support the needs of families taking advantage of the subsidies made available under the program (St. Bernard does not have full health care or support services in place).

In closing, we will reiterate our **STRONG** objections to any award given to one of these proposed St. Bernard Parish developments.

(Pls.' Evid. Hr'g Ex. 15) (emphasis in original).

70. Mr. Harris was shocked by the letter and the manner in which he had been blind-sided by the Parish. The letter spoke for itself – it made clear that the Parish's intent was not to work with Provident as it had until recently promised, but to kill the development by advocating directly to LHFA that it deny Provident essential funding. Mr. Harris and Provident had never heard any of these objections from the Parish or Council before. (Tr. of Mar. 11 Hr'g at 39-40.) The surprise manner in which the letter was sent to LHFA made it all the more damaging.

71. Equally disturbing to Mr. Harris, the asserted objections were contradicted by facts that Mr. Harris knew to be true. For example, as recently as October 9, the Parish President had sent a letter to LHFA asserting that the Parish had adequate infrastructure to support the developments. (Pls. Evid. Hr'g Ex. 14.) Mr. Taffaro himself

admitted on examination at the evidentiary hearing that a hospital deal that would bring a 40 bed hospital to St. Bernard Parish had been reached and announced in June 2008.

(Tr. of Mar. 11 Hr'g at 254:1-6; Tr. of Mar. 12 Hr'g at 9:13-19); that he had been hard at work applying for and winning funding for new infrastructure projects that were going to bring nearly \$1 billion to the Parish in coming months and years (Tr. of Mar. 12 Hr'g at 55-56); that the population was growing and creating an increasing need for housing in the Parish (Tr. of Mar. 11 Hr'g at 257; Tr. of Mar. 12 Hr'g at 2-3, 15); and that a memorandum of understanding had been reached that would create new EMS services in a building located in Village Square (Tr. of Mar. 11 Hr'g at 255-256.) President Taffaro also admitted that beginning in the spring of 2008 he had made repeated public statements about the momentum that was building for re-population and investment in St. Bernard Parish; that growth and re-population in St. Bernard were accelerating; that businesses were returning to St. Bernard; and that substantial progress was being made both in obtaining funding for, and re-building, key infrastructure projects. (Tr. of Mar. 11 Hr'g at 257; Tr. of Mar. 12 Hr'g at 2-3, 15.)

72. Inexplicably, none of these facts were included in the November 12, 2008 objection letter that was sent to LHFA. It was clear from the November 12 letter that the Parish's true concerns were not about infrastructure or hospitals or a surplus of housing in the Parish, but about appeasing a public outcry to the developments that was rooted in concerns about race and class. The Provident developments were identified in the eyes of the public, and the Council, with Village Square as another African American community that would become a "ghetto" of crime and drugs that would threaten the "shared values" of the nearly all-white St. Bernard Parish. (Pls. Evid. Hr'g Ex. 11.)

73. Mr. Harris had met Councilman Cavignac, the second author of the November 12 letter, at the July 14, 2008 Council meeting and he seemed supportive of the Provident developments. (Tr. of Mar. 11 Hr'g at 41.)

74. It was clear to Mr. Harris and Provident that the Council and Parish's real purpose was not to work with Provident to reach agreement on design standards that would end the moratorium, but rather to stop the development by blocking its funding. It is undisputed that the effect of the November 12 letter from Councilmen Landry and Cavignac to the Louisiana Housing Finance Agency, had it been successful, would have dealt a fatal blow to the Provident developments. This fact fully explained why, as of November 12, there had been no response to the design standards submitted to Councilman Lauga on September 9. (M. Harris Decl. at ¶ 24; Tr. of Mar. 12 Hr'g at 87.)

J. Notification to the Council of Fair Housing Act Violations

75. On November 21, 2008, Mr. Harris and his legal counsel met with President Taffaro and Parish legal counsel and provided them with a draft complaint that alleged that the moratorium violated the Fair Housing Act. At the meeting, Mr. Harris asked the Parish Council to repeal the moratorium. (Tr. of Mar. 12 Hr'g at 22-23.)

76. Mr. Harris was told at the November 21, 2008 meeting that repealing the moratorium would require more support from the Council and that additional meetings with the Council might help. (Tr. of Mar. 11 Hr'g at 41-42.)

77. A meeting was scheduled for the next week with Councilmen Lauga, Landry and Michael Ginart. Only Councilman Ginart attended the meeting. Councilman Ginart told Mr. Harris that the Council could not lift the moratorium unless there was

more support from the community for the Provident developments. Councilman Ginart did not state that there was no need for affordable housing in St. Bernard Parish. He expressed no concerns about infrastructure or medical services. Nor did he state that the Parish needed new design standards. (*Id.* at 42-43.)

K. Involvement of GNOFHAC and Continuing Failure To Enact Design Standards

78. Since the entry of a Consent Order in this case on February 27, 2008, the Greater New Orleans Fair Housing Action Center (“GNOFHAC”) had been monitoring the Council’s actions. (*Id.* at 54.)

79. GNOFHAC became concerned upon learning of the passage of the multi-family moratorium in September 2008. It investigated the Council’s meeting minutes to attempt to determine the reason for the moratorium. (*Id.* at 54-55.)

80. On December 1, 2008, GNOFHAC wrote a letter to the Parish Council, stating that it believed the moratorium violated the Fair Housing Act and that the Parish was in violation of the Consent Order. It asked the Parish immediately to repeal the multi-family moratorium. GNOFHAC did not receive a response from the Parish. (*Id.* at 55-57; Pls.’ Evid. Hr’g Ex. 32.)

81. On December 16, 2008, Councilman Lauga introduced proposed design standards. The design standards were substantially similar to the standards prepared by Provident and sent to Councilman Lauga in September. (Tr. of Mar. 12 Hr’g at 32-33, 91.) No explanation was provided as to why the design standards had not been introduced months earlier when they were first sent by Provident to Lauga.

82. It is undisputed that no action was ever taken on the design standards by the Council after they were introduced by Councilman Lauga on December 16. Had they

been approved at any time prior to the evidentiary hearing, the moratorium would have been lifted and the central impediment to the Provident developments would have been removed.

83. As of the date of the evidentiary hearing on the Motion to Enforce the Consent Order, the Council had not passed or otherwise acted on the proposed design standards. (*Id.* at 33, 91-92.) Upon questioning by the Court, no explanation, other than a general reference to the fact that “things take time,” was given at the evidentiary hearing for the failure to act on the design standards. (Tr. of Mar. 12 Hr’g at 61-62, 88-89.) President Taffaro speculated that the matter might be taken up soon by the Council, but he could not say when. (Tr. of Mar. 12 Hr’g at 65.)

84. No Parish official has indicated when, or if, the moratorium will be lifted.

85. GNOFHAC and Provident filed a Motion to Enforce the Consent Order on December 18, 2008. (Docket #126.)

86. Provident moved to intervene in this matter on December 18, 2008. (Docket #125.) The motion was granted on January 15, 2009 by Magistrate Judge Shushan. (Docket #149.)

87. Defendants filed a motion to set aside the order granting intervention on January 24, 2009. (Docket #152.) The Court denied the motion on February 18, 2009. (Docket #174.)

88. The multi-family moratorium blocks the Provident developments in St. Bernard Parish from being constructed. Until the moratorium is lifted, Provident cannot move forward with its developments. (Tr. of Mar. 12 Hr’g at 93-94.) At the present time, if Provident is not able to begin construction on its proposed development by March

31, 2008, it will lose its tax credit funding from LHFA and will not be able to continue with the project. The Council and Parish are aware of this deadline and the consequences to Provident if it is unable to meet the pending deadline for commencement of construction. (Tr. of Mar. 11 Hr'g at 44; M. Harris Decl. at ¶¶ 42,45.)

89. The multi-family moratorium frustrates GNOFHAC's mission to end segregation by keeping the Parish nearly all white. It also interferes with GNOFHAC's mission to provide open, affordable access to rental housing. (Tr. of Mar. 11 Hr'g at 58-59.)

90. GNOFHAC has diverted resources in order to challenge the multi-family moratorium. (*Id.* at 58.)

91. GNOFHAC and Provident filed the pending motion to enforce because they believe that the Consent Order has been violated and both plaintiffs want the moratorium repealed and the Provident developments built. (*Id.* at 60.)

92. An evidentiary hearing was held on The Motion To Enforce on March 11 and 12, 2008.

II. Expert Testimony

A. Dr. Calvin Bradford

93. In support of their contention that the moratorium has a disproportionate adverse effect on African Americans in the New Orleans area, Plaintiffs proffered the expert report and testimony of Dr. Calvin P. Bradford. (Pls.' Evid. Hr'g Ex. 40.) His analysis and conclusions are contained in his expert report. (*Id.*)

94. Dr. Bradford has a Ph.D. in sociology with a specialization in quantitative methods. (Tr. of Mar. 11 Hr'g at 69.)

95. Dr. Bradford has thirty-five years of experience publishing, consulting, teaching, and testifying in court and before Congress in the area of housing discrimination, including financing, foreclosure, housing markets, and disparate impact analysis. (*Id.* at 68-71.)

96. Dr. Bradford has been certified on numerous occasions in both state and federal court as an expert in the areas of housing finance, statistical analysis, disparate impact analysis, and housing discrimination. (*Id.* at 68-72, 76.)

97. After reviewing his qualifications, the Court certified Dr. Bradford as an expert under Federal Rule of Evidence 702 for the purpose of evaluating the disparate impact of the moratorium at issue in the case and in the areas of disparate impact analysis and housing discrimination. (*Id.* at 77-78.)

Methodology

98. In order to determine the effect of the moratorium on African Americans, Dr. Bradford consulted a number of sources. He examined the St. Bernard Parish moratorium on construction of multi-family housing developments of five or more units. (*Id.* at 81.) He reviewed Provident's market studies, which contain the rent limitations on the proposed affordable units. (*Id.*) He referenced HUD documents defining rent levels for various income levels. (*Id.*) He used U.S. Census Bureau data from the 2000 Census and the 2007 American Community Survey for the New Orleans Metropolitan Statistical Area. (Pls.' Evid. Hr'g Ex. 40 at 5.)

99. To analyze the relative impact of the moratorium, Dr. Bradford first defined the appropriate geographic area. He chose to study the New Orleans metropolitan statistical area ("MSA"). (Tr. of Mar. 11 Hr'g at 82-83.) The New Orleans

MSA is made up of the seven parishes containing and surrounding New Orleans. (*Id.* at 85.)

100. In his thirty-five years of experience, Dr. Bradford has always examined the entire MSA when analyzing disparate impact. (*Id.* at 86.) An MSA is generally considered to be the appropriate measure of a housing market. (*Id.*) HUD considers housing markets to be metropolitan-wide and the Supreme Court has approved the use of the MSAs to analyze housing markets. *Hills v. Gautreaux*, 421 U.S. 945 (1975). (*Id.*)

101. Considering the entire MSA in a disparate impact analysis is appropriate because it takes into account the fact that the local economy is contained within the MSA. (*Id.* at 86-87.)

102. In areas where there is a pattern of residential segregation, it is especially important to take into account the entire MSA. (*Id.* at 86, 91.) This is because an analysis of a housing market for the purpose of determining disparate impact should encompass the full range of housing situations in the area. (*Id.* at 86-87.) In segregated areas, populations are not distributed uniformly across the region. (Pls.' Evid. Hr'g Ex. 40 at 6.) Thus, if a small portion of a highly segregated area is analyzed, the analysis will not be representative of the area. (Tr. of Mar. 11 Hr'g at 86-87.)

103. The New Orleans metropolitan area is highly segregated by race. (*Id.* at 91.) The African-American population is highly concentrated in certain sections of Orleans, Plaquemines, and Jefferson Parishes while St. Bernard Parish is overwhelmingly white. (Pls.' Evid. Hr'g Ex. 40 at 6-7.) In 2000, New Orleans was 28.1% white and 67.3% African-American. (*Id.*) St. Bernard Parish was 88.3% white and 7.6% African-American. (*Id.* at 7.)

104. The area of St. Bernard Parish in which Provident's proposed developments would be built, Chalmette, is overwhelmingly white. (Tr. of Mar. 11 Hr'g at 85.) That area of the Parish directly abuts the city of New Orleans. The proposed developments would be less than a mile from the Parish line. (*Id.* at 86.) The area is surrounded by portions New Orleans in which African Americans make up greater than 75% of the population. (*Id.* at 85.)

105. Provident's proposed developments will likely attract residents from the areas of New Orleans that surround the western edge of St. Bernard Parish. There is no barrier between Orleans Parish and St. Bernard Parish that would deter the African Americans who currently live in Orleans Parish from leasing Provident's apartments. (*Id.* at 88.) The most densely populated portion of St. Bernard Parish abuts Orleans Parish and the two populations essentially form one continuous population. (*Id.* at 89.) There are many main roads connecting the two Parishes. (*Id.*) In fact, it is more likely that future residents of Provident's proposed developments will come from the surrounding areas of Orleans Parish than from the less densely populated areas of St. Bernard Parish to the East and South of Chalmette. (*Id.* at 89-90.)

106. A disparate impact analysis that excluded the nearby portions of Orleans Parish that have high concentrations of African Americans would be both inaccurate and flawed because the future residents of Provident's proposed developments will likely come from those areas. Dr. Bradford testified that if he were to analyze the effect of the moratorium on only St. Bernard Parish, he would just be "reshuffling the people who are there and not looking at the larger market of African Americans." The result of such an analysis would be to exclude geographic areas that are close in proximity to Chalmette

and that likely contain rental applicants who are both qualified for the Provident developments and disproportionately African-American. (*Id.* at 87.)

107. Although Dr. Bradford testified that it was inappropriate to conduct a disparate impact analysis using data from only St. Bernard Parish, he noted that data proffered by Defendants indicates that such an analysis would reveal a substantial disparity similar to the disparity he found. (*Id.* at 114-115, 119; Pls.' Evid. Hr'g Ex. 71 at 17-18.)

108. Once he determined the appropriate geographic area to study, Dr. Bradford selected four data pools to compare. These data pools act as proxies for the population groups that are likely to be affected by the moratorium because they contain potential applicants who are qualified to live in the Provident developments. (Pls.' Evid. Hr'g Ex. 40 at 10-13.)

109. First, Dr. Bradford measured the relative effect of the moratorium on households living in structures of five or more units. (*Id.* at 10.)

110. Second, Dr. Bradford measured the relative effect of the moratorium on households that rent. (*Id.*) This data pool is appropriate because 90.08% of units in housing structures with 5 or more units are rental units. (*Id.*)

111. Third, Dr. Bradford measured the relative effect of the moratorium on households with incomes that would likely qualify them to live in Provident's proposed developments. (*Id.* at 11-12.)

112. Fourth, Dr. Bradford measured the relative effect of the moratorium on families with incomes that would likely qualify them to live in Provident's proposed

developments. (*Id.* at 12-13.) A family is defined as a household containing two or more individuals related by marriage or blood. (Tr. of Mar. 11 Hr'g at 109.)

113. For each data pool, Dr. Bradford determined the percentage of African Americans and whites that would be affected. (Pls.' Evid. Hr'g Ex. 40 at 10-13.)

114. To determine the disparity ratio, Dr. Bradford divided the percentage of African Americans affected by the percentage of whites affected. (*Id.* at 10.)

115. A disparity ratio greater than 1.0 indicates that African Americans experience a disproportionate impact. (*Id.*)

116. For each calculation of impact Dr. Bradford measured whether the statistical significance of the disparity ratio met both the commonly accepted 95% confidence level and the more conservative 99% confidence level. (Tr. of Mar. 11 Hr'g at 102-103.)

Findings

117. Dr. Bradford determined that 17.61% of African-American households live in structures with five or more units, compared with 9.54% of whites. (Pls.' Evid. Hr'g Ex. 40 at 10.) The disparity ratio is 1.85. (*Id.*) This means that African-American households are 85% more likely to live in structures with 5 or more units than white households. (*Id.*)

118. Dr. Bradford determined that 51.70% of African-American households are renters, compared with 25.03% of whites. (*Id.* at 10-11.) The disparity ratio is 2.06. (*Id.* at 11.) This means that African-American households are twice as likely to rent as white households. (*Id.* at 11.)

119. Dr. Bradford determined that 38.93% of African-American households have incomes in a range that would likely qualify them to live in the affordable units of Provident's proposed development, compared with 23.55% of whites. (*Id.* at 12.) The disparity ratio is 1.65. (*Id.*) This means that African-American households are 65% more likely to have qualifying incomes than white households. (*Id.*) For the lowest section of the income range, those households earning below 30% of AMI, 17.22% of African-American households would qualify, as compared to 9.27% of white households. (*Id.*) The disparity ratio is 1.86. (*Id.*) This means that African-American households are 86% more likely to have qualifying incomes in the lowest income range than white households. (*Id.*) For the higher income range, those households earning between 30% and 60% of AMI, 21.7% of African-American households have qualifying incomes, as compared to 14.28% of white households. (*Id.*) The disparity ratio is 1.52. (*Id.*) This means that African-American households are 52% more likely to have qualifying incomes in the higher income range than white households. (*Id.*)

120. Dr. Bradford determined that 36.46% of African-American families have incomes in a range that would likely qualify them to live in the affordable units of Provident's proposed development, compared with 16.49% of whites. (*Id.* at 13.) The disparity ratio is 2.21. (*Id.*) This means that African-American families are more than twice as likely to have qualifying incomes as white families. (*Id.*) For the lowest section of the income range, those households earning less than 30% of AMI, 14.29% of African-American families would qualify, as compared to 4.6% of white families. (*Id.*) The disparity ratio is 3.10. (*Id.*) This means that African-American families are three times more likely to have qualifying incomes in the lowest income range than white families.

(*Id.*) For the higher income range, households earning between 30% and 60% of AMI, 22.17% of African-American families have qualifying incomes, as compared to 11.88% of white families. (*Id.*) The disparity ratio is 1.87. (*Id.*) This means that African-American families are 87% more likely to have qualifying incomes in the higher income range than white families. (*Id.*)

121. Dr. Bradford found that all of his disparity ratios were statistically significant at a confidence level of 99%. (Tr. of Mar. 11 Hr'g at 103.) This is more conservative than the 95% confidence level ordinarily used in disparate impact cases and commonly accepted by the courts. (*Id.* at 102.)

122. Dr. Bradford concluded that the moratorium on construction of multi-family housing with five or more units has a disproportionate adverse impact on African Americans in the New Orleans area, and a disproportionate adverse impact on African-American renters both qualified to rent and likely to rent at the developments proposed by Provident to be built in St. Bernard Parish. (Tr. of Mar. 11 Hr'g at 110.)

123. In Dr. Bradford's expert opinion, the moratorium has an exclusionary effect on African Americans in the New Orleans area because it prevents the construction of housing units in which they would disproportionately qualify to live. (*Id.*)

124. In Dr. Bradford's expert opinion, the moratorium also has a segregative effect because it maintains the existing racial segregation of the New Orleans area. (*Id.* at 111.)

Defendants' Evidence With Respect To Impact

125. Defendants proffered an initial and amended expert report prepared by Dr. Wade Ragas. (Pls.' Evid. Hr'g Ex. 62, 71.) The initial report did not mention Dr.

Bradford's analysis. (Pls.' Evid. Hr'g Ex. 62.) The amended report attempted to critique Dr. Bradford's findings. (Pls.' Evid. Hr'g Ex. 71.)

126. At the evidentiary hearing, Dr. Ragas admitted that he had never performed a disparate impact analysis, that he had never been qualified by a court as an expert in the area of disparate impact analysis, that he had never published an article about disparate impact analysis, and that he had never trained anyone to conduct a disparate impact analysis. (Tr. of Mar. 12 Hr'g at 116.)

127. Dr. Ragas further admitted that he attempted to perform a disparate impact analysis in this case based on a methodology sent to him by defense counsel which he adopted without any further examination. (*Id.* at 118.)

128. In light of Dr. Ragas's lack of experience in the area of disparate impact analysis, the Court declined to certify him as an expert under Rule 702 in this area. (*Id.* at 117.)

129. Notwithstanding the lack of certification in this area of testimony, Dr. Ragas testified at the evidentiary hearing that he had no criticisms of Dr. Bradford's methodology and was confident that Dr. Bradford had performed the disparate impact analysis correctly. (*Id.* at 116.)

130. Even if Dr. Ragas were qualified to testify in the area of disparate impact, which the Court has found he is not, the criticisms of Dr. Bradford's analysis that Dr. Ragas offered in his amended report are without merit or basis.

131. First, Dr. Ragas asserted that Dr. Bradford studied the incorrect geographic area. (Pls.' Evid. Hr'g Ex. 71 at 16.) He contended that Dr. Bradford should

have examined the effect of the moratorium on St. Bernard Parish residents and not on residents of the entire New Orleans metropolitan area. (*Id.*) This is clearly incorrect.

132. Dr. Bradford explained that analyzing the effect of the moratorium on St. Bernard Parish rather than the entire New Orleans MSA excludes the populations in surrounding parishes that would likely seek to live in Provident's proposed developments. (Tr. of Mar. 11 Hr'g at 91-92.) Dr. Bradford further explained that in a highly segregated area, such as New Orleans, the entire region must be analyzed in order to get a complete picture of all of the various living situations that exist in the area. (*Id.* at 91.)

133. Dr. Bradford noted that although he disagreed with Dr. Ragas's decision to narrow the disparate impact to the geographic region of St. Bernard Parish, Dr. Ragas's own numbers support the conclusion that the moratorium will have a disparate impact on African Americans. (*Id.* at 114-115.) In fact, Dr. Ragas's numbers show a stronger disparity ratio between African Americans and whites living in St. Bernard Parish. (*Id.* at 119; Pls.' Evid. Hr'g Ex. 71 at 17-18.)

134. Second, Dr. Ragas criticized Dr. Bradford for using a proportionate numbers approach instead of an absolute numbers approach. (Pls.' Evid. Hr'g Ex. 71 at 16.). This is also incorrect, both as a matter of law and methodology.

135. Dr. Bradford explained that the absolute numbers approach would confound the purpose of disparate impact analysis. (Tr. of Mar. 11 Hr'g at 92-93.) He described a hypothetical situation in which every African American would be affected by a seemingly neutral housing policy, but because more whites were affected in absolute numbers, the policy would not be considered to have a disparate impact under the

absolute numbers approach. (*Id.* at 93-95.) This is plainly in direct contradiction to the EEOC's four-fifth's rule for establishing disparate impact in the employment context. (*Id.* at 100.)

136. Defense counsel instructed Dr. Ragas to apply an absolute numbers approach based on a single district court decision, *Summerchase Ltd. Partnership I v. City of Gonzales*, 970 F. Supp. 522, 529 (M.D. La. 1997), that both misunderstood and misapplied disparate impact analysis as it has been applied both under Title VII and the Fair Housing Act. This flawed legal application was the basis for Defendants' pre-hearing motion to strike the testimony of Dr. Bradford. (Docket #183.) The Court denied that motion for the reasons contained in Plaintiffs' opposition to Defendants' motion to strike (Tr. of Mar. 11 Hr'g at 2.) For the same reasons as those relied on by the Court in denying that motion, Dr. Ragas's criticism of Dr. Bradford's analysis is legally flawed. Thus, even if Dr. Ragas were qualified to offer an opinion on Dr. Bradford's disparate impact analysis, the methodology that he employed to critique Dr. Bradford is wrong and entitled to little or no weight.

B. Kalima Rose

137. Plaintiffs presented the testimony and expert report of Kalima Rose to provide an analysis of the need for affordable housing in St. Bernard Parish. (Tr. of Mar. 11 Hr'g at 145:7-10.) Her analysis and conclusions are contained in her expert report. (Pls.' Evid. Hr'g Ex. 41.)

138. Ms. Rose has twenty-five years of experience in the areas of community economic development and housing policy. (*Id.* at 3.)

139. For the last decade, Ms. Rose has led the affordable housing work of PolicyLink, a national policy organization. (*Id.*) She has worked with government officials on the national, state, and local level, and with civic leaders, developers, and non-profit organizations working to provide housing and services to veterans, seniors, workers, and individuals with disabilities. (*Id.*) Her work has consisted of bringing together the best information available on housing need, the distribution of housing at different levels of affordability across jurisdictions and regions, and best practices in housing policy. (*Id.*)

140. After Hurricanes Katrina and Rita, PolicyLink opened an office in New Orleans and established the Louisiana Recovery Initiative to lend housing policy expertise to the State of Louisiana and the City of New Orleans. (*Id.*) Ms. Rose has served as the Senior Director of the Louisiana Recovery Initiative since its inception. (*Id.*) In that capacity, she has advised state and local recovery agencies, including the Louisiana Recovery Authority, the Louisiana Housing Finance Agency, the New Orleans Office of Recovery Disaster Administration, HUD, public officials, civic leaders, non-profit organizations, and foundations about the need for affordable housing in the New Orleans area post-Katrina. (*Id.*) She has monitored and evaluated the housing recovery programs in the New Orleans area in the wake of Hurricanes Katrina and Rita. (*Id.*) She spearheaded two statewide studies of post-Katrina housing recovery programs, which have been widely cited and have provided guidance to state and local leaders. (*Id.*)

141. Ms. Rose has written 16 studies on affordable housing policies that address localities and communities' needs and 15 policy tools that serve as an online resource to policy makers who are involved in evaluating the need for affordable housing

in their communities. (*Id.*; Tr. of Mar. 11 Hr'g at 141:7-10.) She has drafted legislation in the area of affordable housing for use at the state and local level. She has also trained many people in her field. (Tr. of Mar. 11 Hr'g at 141:18-24.)

142. After reviewing Ms. Rose's credentials, the Court certified her as an expert under Federal Rule of Evidence 702 in the area of affordable housing and housing issues affecting the Greater New Orleans area. (*Id.* at 153:21-23.)

Methodology

143. To render her opinion about the need for affordable housing in St. Bernard Parish, Ms. Rose took a multi-faceted assessment approach. She consulted a variety of data sources and examined a variety of relevant factors to support her conclusions. (*Id.* at 157:9-158:4.)

144. Ms. Rose determined the number of households in the region with housing cost burdens. (*Id.* at 157:9-10.) She analyzed the development pattern in the region to determine the rate of new housing construction and the level of affordability of those newly constructed units. (*Id.* at 157:9-12.) She also reviewed various job sectors in the local economy and considered the relationship between conditions in those sectors and the need for affordable housing. (*Id.* at 157:12-14.) She also looked at infrastructure investments in the region and the effect of that investment on job growth. (*Id.* at 157:14-17.) Finally, she evaluated the public and private resources available in the community to meet the need for affordable housing. (*Id.* at 157:18-20.)

145. In conducting her analysis, Ms. Rose considered the unique challenges that exist in a post-disaster community. She accounted for the patterns of return among internally displaced persons, analyzed the obstacles faced by homeowners seeking to

rebuild, and determined the effect of the impending expiration of federal disaster programs. (*Id.* at 157:24-158:4.)

146. Ms. Rose examined data capturing the current state of the housing and job markets in the New Orleans area. She also analyzed the best available data reflecting trends and projections about future job growth and the need for affordable housing in the coming months and years in the New Orleans area and in St. Bernard Parish in particular.

In the Aftermath of Hurricane Katrina, Market Rate Rental Housing is Tight and Not Affordable to Low-Wage Workers in St. Bernard Parish

147. To evaluate the need for affordable housing in St. Bernard Parish, Ms. Rose began by analyzing the current rental housing market. She determined that while unsubsidized, affordable housing existed in the Parish prior to the hurricanes, destruction of the housing stock and the high cost of repair and insurance have given rise to an extremely tight rental market with very few affordable units. (Pls.' Evid. Hr'g Ex. 41 at 4.)

148. Before the hurricanes, there existed plenty of market rate rental housing in St. Bernard Parish that was affordable to low-wage workers. (*Id.*) In other words, rental housing was affordable to low-wage workers without subsidies.

149. There was substantial damage to the housing stock in St. Bernard Parish as a result of Hurricane Katrina. (*Id.*) FEMA estimates that 5,936 rental units in St. Bernard Parish were damaged. (*Id.*)

150. Only a fraction of the rental units that were destroyed will likely be rebuilt. Just 1,201 rental units in St. Bernard Parish have funding allocated to them for rebuilding. (*Id.*) If all of the funded projects are completed, including Provident's

developments, only 20% of the rental units damaged in the hurricanes will be replaced.

(*Id.*)

151. Rents are high for the units that have already come back online after the hurricanes. This is due to high repair costs, elevated insurance rates, and increased operating costs. (*Id.*)

152. Workers from five of the top eight employment sectors in St. Bernard Parish cannot afford market rent in the Parish. (*Id.* at 13.) Over 25% of workers in the Parish cannot afford market rate rents. (*Id.* at 12.)

153. There are very few rental units currently available in St. Bernard Parish. The Disaster Housing Assistance Program estimated that there are fewer than 10 vacant units in the Parish. (*Id.* at 8.) PolicyLink conducted a phone canvassing of local realtors and found few units available. (*Id.*; Tr. of Mar. 11 Hr'g at 191:4-11.)

154. Ms. Rose concluded that given the diminished supply of rental housing and the increased costs associated with such housing, there is little hope that market rate rentals will be affordable to low wage workers in St. Bernard Parish without subsidy. (Pls.' Evid. Hr'g Ex. 41 at 5.)

The Need for Affordable Housing in St. Bernard Parish is Projected to Increase

155. Ms. Rose looked at different data sources to determine the projected need for affordable housing in coming months and years. The Louisiana Housing Finance Agency, for example, conducted an assessment of projected affordable housing need in the New Orleans area. (*Id.* at 8.) The Louisiana Housing Finance Agency assessment took into account proposed construction of multi-family rental housing, including Provident's proposed developments. (*Id.*) The Louisiana Housing Finance Agency

estimates that the need for affordable housing in St. Bernard Parish will grow in the next five years. (*Id.*) Even if Provident's developments go forward, there will be an unmet need of at least 579 rental units. (*Id.*)

156. Ms. Rose identified several factors that will contribute to the need for affordable housing in the future. They include projected job growth in the Parish--resulting in no small part from the \$1 billion in Public Assistance funds awarded to the Parish to rebuild public infrastructure; the failure of federal recovery programs to replace a sufficient number of lost rental housing units; the impending expiration of federal temporary housing assistance programs; and projected population growth.

Projected Growth in Certain Labor Market Sectors Will Increase Demand for Affordable Housing

157. Employment data cited by Ms. Rose supports her projections about the likely need for affordable housing. Despite the national recession, employment continues to grow in the New Orleans region. (*Id.* at 11.) In the second six months of 2008, employment in the New Orleans area grew 1.12% while the national job market shrunk by 1.24%. (*Id.*)

158. FEMA has allocated almost \$1 billion in Public Assistance grants to fund projects replacing and repairing public buildings in St. Bernard Parish. (*Id.*) These funds are legally obligated to be paid. Of the 1,587 projects that the Parish applied for, 1,515 were approved. (*Id.*) They include education facilities, historic and cultural facilities, criminal justice facilities, and public safety facilities. (*Id.*) These projects will likely bring substantial job growth and repopulation to the Parish. (*Id.* at 12.) Initially, they will provide construction jobs. (Tr. of Mar. 11 Hr'g at 159:21-22.) When the projects are completed, there will be administrative, custodial, and other staffing jobs available.

(*Id.* at 159:22-25.) The investment in these federally funded projects will also create collateral jobs in retail and other sectors. (*Id.* at 165:3-8.)

159. Most of the projects are located in the area where Provident's proposed developments would be built. (*Id.* at 159:15-18.) Provident's proposed affordable units will be appropriate for the workers who will fill many of the newly-created jobs. (*Id.* at 161:21-162:5.) Without Provident's affordable units, many of the workers who will fill the newly created jobs will not be able to afford to live in the Parish. (*Id.* at 161:6-12.)

160. In addition to the jobs created by the Public Assistance projects, jobs will be created by other St. Bernard businesses that will likely return to the Parish in the coming years. Workers filling these new jobs, including both low-wage workers and those who can afford market rate rents, will benefit from Provident's proposed housing development.

161. More than 500 St. Bernard businesses have told the Parish that they would like to reopen. (Pls.' Evid. Hr'g Ex. 41 at 11.)

162. The St. Bernard Port, which employed over 1,000 workers pre-Katrina, is rebuilding and 95% of former port tenants want to return. (*Id.*) This should bring "a robust stream of jobs" to the Parish. (Tr. of Mar. 11 Hr'g at 172:20.)

163. A 40-bed hospital will be built in the Parish in the next few years. (Pls.' Evid. Hr'g Ex. 41 at 11.) The construction and staffing of the hospital will bring new jobs to the area. (Tr. of Mar. 11 Hr'g at 172:8-11.)

164. Job growth will increase demand for housing and drive up the cost. (*Id.* at 166:10-16.) The increase in the labor force and lack of housing subsidies will create a greater need for affordable housing in St. Bernard Parish. (*Id.* at 166:17-19.)

165. The types of jobs that are likely to be generated by many of these planned infrastructure and building projects fall into job sectors that typically need subsidized or affordable housing. (*Id.* at 161-162.) These are job sectors that are already heavily represented in St. Bernard Parish. (Pls.' Evid. Hr'g Ex. 41 at 11.) Employers report that the high cost of housing contributes to the difficulty in filling these jobs. (Tr. of Mar. 11 Hr'g at 162:13-15.) If affordable housing is not available, St. Bernard Parish will not be able to provide these jobs to its current and returning residents.

Federal Housing Recovery Programs Will Not Replace a Sufficient Number of Lost Rental Housing Units

166. Two Federal programs fund the construction of rental housing to replace units that were damaged and destroyed in the hurricane. (Pls.' Evid. Hr'g Ex. 41 at 5.) The Large Rental Program is aimed at multi-family developers. (*Id.*) The Small Rental Repair Program is aimed at neighborhood homes and landlords with few properties. (*Id.*) Together, these programs will be unable to replace sufficient rental housing units to meet the demand.

167. Participants in the Large Rental Program have had difficulty obtaining financing for their projects. (*Id.* at 6.) The Large Rental Program is funded in part by tax credits, which developers sell to investors to raise money for their projects. (*Id.*) The downturn in the national economy has caused the market value of the tax credits to decrease substantially. (*Id.*; Tr. of Mar. 11 Hr'g at 22:13-14.) Additionally, the tightening of the national credit market has made it difficult for developers to obtain financing for their projects. (Tr. of Mar. 11 Hr'g at 22:13-17.)

168. Participants in the Small Rental Repair Program have encountered administrative obstacles. (Pls.' Evid. Hr'g Ex. 41 at 6.) Landlords are reimbursed only

after they make repairs to their rental properties and have tenants in place. (*Id.*) As a result of the credit market tightening, landlords have had difficulty obtaining financing to make the necessary repairs. (*Id.*)

169. Ms. Rose concluded that “[b]etween the Large and Small rental programs statewide, current allocations in both the [programs] will only replace 2 of every 5 affordable units lost, while only 1 in 3 affordable rentals in the New Orleans area will be replaced. Parishes particularly far behind in replacement of rental units in the metro region are St. Bernard, Jefferson, and Plaquemines.” (*Id.*)

Land Acquired Through the Land Trust Will Not Create Many Affordable Housing Units

170. Under the Road Home Program, uninsured homeowners may sell their properties back to the state into the Louisiana Land Trust. (*Id.* at 9.) Although the newly acquired Land Trust land could be used to build affordable housing, St. Bernard Parish has chosen not to prioritize this use.

171. Statewide, 9% of homeowners have elected to sell their homes back to the state. (*Id.*) In St. Bernard Parish 38% of Road Home Program applicants have chosen to sell their property back to the state. (*Id.*)

172. St. Bernard Parish developed a plan for disposition of the land in the Land Trust. (*Id.*) The plan sets forth the Parish’s priorities for use of the land.

173. The first priority is to use the land to address water infrastructure needs. (*Id.*)

174. The second priority is to sell the land to adjacent homeowners through the Lot Next Door Program. (*Id.*) This program prohibits development on the lots purchased

by adjacent homeowners. (*Id.*) At least half of the lots in the Land Trust will likely go toward this use, which will decrease the housing stock in the Parish. (*Id.* at 9-10.)

175. The third priority is to use the land for various community uses. (*Id.* at 10.)

176. The Parish's plan for utilizing the Land Trust land acquired through the Road Home Program will have the effect of decreasing the housing stock in the Parish. (*Id.*)

Inadequate Funding of the Road Home Program Will Increase Demand for Affordable Housing

177. The Road Home Homeowner Assistance Program assists uninsured homeowners in repairing the damage to their homes caused by Hurricane Katrina. (*Id.* at 6.) Because of insufficient funding levels and a variety of other factors, many homeowners will have difficulty rebuilding their homes. (*Id.* at 7.) These homeowners will likely need affordable housing. (*Id.*)

178. For homeowners depending solely on the funds provided by the Road Home Program to rebuild their homes, the funding level of the Program is insufficient. (*Id.*) St. Bernard Parish has the highest gap between the average damage estimates given to homes and the grant levels awarded to homeowners to rebuild through the Program. (*Id.*)

179. In addition to inadequate funding, homeowners seeking to rebuild have encountered contractor fraud, a high-cost environment, and an inability to obtain additional credit. (*Id.*)

180. Many homeowners in St. Bernard Parish will likely need affordable rental housing until they are able to rebuild or while they raise the additional funds necessary to rebuild. (*Id.*)

The Expiration of Temporary Housing Programs Will Increase Demand for Affordable Housing

181. There are two temporary housing programs still in operation for victims of Hurricane Katrina. (Tr. of Mar. 11 Hr'g at 154:20-24.) The Disaster Housing Assistance Program ("DHAP") provides temporary housing vouchers and FEMA's Temporary Assistance Program provides temporary housing units. (Pls.' Evid. Hr'g Ex. 41 at 7.) 1,585 families in St. Bernard Parish received assistance from these programs. (*Id.*) Both programs are due to expire in the next several months. (*Id.*) The expiration of these programs will increase the demand for affordable housing. (*Id.* at 7-8.)

182. The DHAP program is set to expire on September 1, 2009. (*Id.* at 7.) Approximately half of the families in the DHAP voucher program will likely qualify for permanent housing choice vouchers. (*Id.*) Over half of those families that do not qualify for the permanent voucher will have difficulty finding affordable housing when DHAP ends. (*Id.*)

183. There are 31,000 families living across the country who were displaced by the hurricane and who received DHAP temporary housing vouchers. (Tr. of Mar. 11 Hr'g at 167: 7-8.) When the housing vouchers expire, many of those families will need to find new jobs and housing and the relatively strong economy in the New Orleans area will likely draw them back. (*Id.* at 167:12-17.) Ms. Rose explained that the expiration of the housing vouchers and the strength of the local job market will be a "catalyst for people returning home." (*Id.* at 167: 20-21.)

184. Many of the families that do not qualify for the permanent housing choice voucher program, but cannot afford market rate rents, will qualify for the affordable units in Provident's proposed developments. (*Id.* at 155-156, 161.)

185. The Temporary Assistance program is set to expire on May 1, 2009. (Pls.' Evid. Hr'g Ex. 41 at 8.) Many of the families currently living in temporary housing are homeowners who are trying to rebuild their homes but have faced obstacles such as insufficient funding and contractor fraud. (*Id.*) Many of those families will need affordable housing until their homes are rebuilt. (*Id.*)

Population Growth Will Increase the Demand for Affordable Housing

186. Although destruction caused by Hurricane Katrina forced many St. Bernard families out of the Parish, strong family and community ties are drawing many back to the Parish. (*Id.* at 10.)

187. Population growth in St. Bernard Parish is accelerating. (Tr. of Mar. 11 Hr'g at 169:10-12.) From July 2008 to December 2008, the number of households in the Parish increased by 15%. (Pls.' Evid. Hr'g Ex. 41 at 10.) By comparison, the number of households in the New Orleans metropolitan region as a whole increased only 1% in the same period. (*Id.*) Given the investment in the work force and the planned rehabilitation of infrastructure needed by displaced residents, population growth will likely continue to increase. (Tr. of Mar. 11 Hr'g at 169: 15-25.)

188. Ms. Rose concluded that given the Public Assistance Funds earmarked for the region and St. Bernard Parish in particular, and given the improving job situation that compares favorably with national trends, it is more likely that many of those who are living in other parts of the country and face impending termination of vouchers will now

return to the New Orleans area-- and St. Bernard Parish-- because they are more likely to find work in these locations. (*Id.* at 167:12-17.) Ms. Rose concluded that the national recession may work as an incentive to bring people home, further increasing the need for affordable housing in St. Bernard Parish. (*Id.* at 167:18-21.)

The Federal Government and the State of Louisiana Have Recognized the Need for Affordable Housing in St. Bernard Parish

189. The federal government and the State of Louisiana have recognized the need for affordable housing in St. Bernard Parish through their allocation of tax credits for the development of affordable housing. (Pls.' Evid. Hr'g Ex. 41 at 8.)

190. The 2007-2008 Gulf Opportunity Zone Qualified Allocation Plan for Low Income Housing Tax Credits disburses tax credits for the development of affordable multi-family housing. (*Id.*) Seventy-five percent of the tax credits were targeted to eight of the 31 parishes that experienced the worst destruction to their housing stock. (*Id.*) St. Bernard Parish was one of those eight. (*Id.*)

191. The Office of Community Development's Piggyback Program is a tax credit program that addresses the needs of seniors, people with disabilities, people with low wage jobs, and people at risk for homelessness. (*Id.* at 5.) Round Two of the Piggyback Program allocated \$16 million for St. Bernard Parish and Plaquemines Parish alone, because neither parish had previously received Piggyback awards. (*Id.* at 8.) Out of the 50 points available to developers on their applications for parish selection, only St. Bernard Parish and Plaquemines Parish received all 50 points. (*Id.*) In other words, the State created a strong incentive to developers to create affordable units in areas where no such housing had been developed since Hurricane Katrina.

192. Having observed the operation of tax credit properties around the country, Ms. Rose has found that these properties provide precisely the type of housing needed to bring first responders, nurses, policemen, firefighters, and other critical community stakeholders into a community. (Tr. of Mar. 11 Hr'g at 161: 25-162:5.) The 15-year claw-back provision of the tax credit program ensures that the developer will stay involved in the operation and maintenance of the property and, from what she has observed, generally, results in quality affordable housing that is well managed and maintained. (*Id.* at 184:7-185:3.)

Ms. Rose's Key Findings

193. Based on her exhaustive review of the many data sources cited in her report and testimony, Ms. Rose made the following key findings with respect to whether there is a need for affordable housing in St. Bernard Parish.

194. First, the imminent phasing out of the Disaster Housing Assistance Program and the FEMA Temporary Assistance Program will leave thousands of families in need of housing that is affordable to households earning between 50 and 100 percent of AMI. In St. Bernard Parish alone, there are 1,585 such families. (Pls.' Evid. Hr'g Ex. 41 at 3.)

195. Second, the tax credit programs that will partially fund Provident's proposed developments serve families in that demographic. (*Id.*)

196. Third, if St. Bernard Parish utilizes all of the allocated federal housing recovery resources, including those allocated for Provident's proposed developments, new construction would replace only 20% of the rental stock lost in the hurricane. (*Id.*)

197. Fourth, twenty-five percent of workers in critical job sectors in St.

Bernard Parish cannot afford current market rate rents. (*Id.*)

198. Fifth, population growth in the region, and in St. Bernard Parish in particular, is expected to continue. (*Id.*)

199. Sixth, FEMA is projected to invest almost \$1 billion in rebuilding public infrastructure in St. Bernard Parish, which will create more jobs in the sectors that are currently unable to afford market rate rents. (*Id.*)

200. Seventh, investing in affordable housing projects now will help meet the projected growth in demand for affordable housing by new workers, households currently burdened by high rents, households transitioning from temporary housing support, and former homeowners who cannot afford to rebuild. (*Id.*)

201. Eighth, while communities should balance planning with the provision of new housing, the severe lack of affordable housing in St. Bernard Parish should compel the Parish to take advantage of the one time, short-term federal investment in housing development. (*Id.* at 4.)

202. Ninth, the extreme loss of rental units, the projected growth in population and jobs, the minimal resources allocated to development of affordable housing, and the housing cost burden currently experienced by workers in the Parish ensure that any affordable units developed will be fully leased. (*Id.*)

203. Tenth, Provident's proposed developments will help close the affordable housing gap in St. Bernard Parish. (Tr. of Mar. 11 Hr'g at 156: 12-15.) Based on all the available data and after examining all relevant socio-economic trends, Ms. Rose expects that when construction is completed, Provident's developments will be fully occupied. (*Id.* at 156: 16-21.)

Defendant's Evidence With Respect To Housing Need

204. Defendants proffered the expert report and testimony of Dr. Wade Ragas to address the issue of housing need. (Pls.' Evid. Hr'g Ex. 62; Pls.' Evid. Hr'g Ex. 71.)

205. Dr. Ragas analyzed a variety of data to determine the current occupancy rates and rental rates of multi-family housing in the New Orleans area, particularly New Orleans East. (Pls.' Evid. Hr'g Ex. 71 at 5-6.) Dr. Ragas conceded that he did not perform an analysis of the long-term feasibility of Provident's proposed developments or the projected need for affordable housing in St. Bernard Parish, and stated that he has no opinion at all as to whether the Provident developments are feasible. (Tr. Mar. 12 Hr'g at 159.)

206. Dr. Ragas opined that St. Bernard Parish is a low density area. (Pls.' Evid. Hr'g Ex. 71 at 2.) He contended that occupancy rates and market rate rents were low for multi-family housing in areas east of the Industrial Canal. (*Id.* at 3-4.) He noted that St. Bernard Parish has sufficient affordable housing stock to meet the need. (Pls.' Evid. Hr'g Ex. 71 at 8-9.) He contended that the lack of demand for additional affordable units is demonstrated by the lack of developers seeking to use low income tax credit programs to build affordable units in the Parish. (*Id.* at 6-7, 9.) Dr. Ragas described the planning and zoning process revision that the Parish was allegedly undergoing and argued that it justified the Moratorium. (*Id.* at 7-8.) He also noted that the infrastructure of St. Bernard Parish was insufficient to support Provident's developments. (*Id.* at 15.)

Ms. Rose's Criticisms of Dr. Ragas's Findings

207. Ms. Rose criticized Dr. Ragas for not examining the impact of job growth, infrastructure development, and population growth on the future need for affordable

housing. (*Id.* at 186:24-187:2.) Rather than citing the redevelopment of public infrastructure and medical facilities as a source of increased demand for affordable housing in the future, Dr. Ragas focused on what he called a current lack of public infrastructure and medical facilities as a justification for halting multi-family housing development. (*Id.* at 187:18-22.) Ms. Rose observed, however, that it will take Provident over a year and a half to complete the proposed developments. (*Id.* at 189:15-23.) By the time they are completed, many of the public infrastructure projects and the proposed medical facilities will be completed or close to completion. (*Id.* at 189:15-23.) Thus, Ms. Rose concluded, the better approach to assessing the need for affordable housing is to take into account current trends reflected in a wide array of socio-economic data and their projected effect on the need for affordable housing in St. Bernard Parish and the region in coming months and years. Limiting the focus to a current snapshot necessarily leads to a flawed assessment.

208. Ms. Rose testified that Dr. Ragas's claim that 1,606 affordable rental units have been developed in St. Bernard Parish since the hurricane is misleading. (*Id.* at 8-9; Tr. of Mar. 11 Hr'g at 181.) Dr. Ragas counted temporary housing vouchers, not actual hard units of affordable housing. (Tr. of Mar. 11 Hr'g at 181:4-8.) Many of the vouchers included in Dr. Ragas's count will soon expire. (*Id.* at 181:5-7.) When this happens, the "affordable units" that Dr. Ragas included in his tally will convert to market rate units, creating a need for additional affordable units. (*Id.* at 181:8-11.) The affordable units that Provident is proposing will remain affordable over time. (*Id.* at 181:12-15.)

209. Ms. Rose testified that Dr. Ragas projected the occupancy rate of Provident's proposed developments using data from apartment buildings and areas that are not comparable. (*Id.* at 175:24-176:10.) Dr. Ragas examined the occupancy rates and rent levels of multi-family apartment buildings in New Orleans East. (Pls.' Evid. Hr'g Ex. 71 at 5-6.)

210. Multi-family units in New Orleans East are located in isolated areas with few amenities and significant abandonment of nearby properties. (Tr. of Mar. 11 Hr'g at 176:11-18.) By contrast, Provident is located in a town center with services and retail stores. (*Id.* at 176:15-18.) The quality of housing in New Orleans East is varied with some substandard housing units that were reopened without renovation and many units that are not ADA compliant. (*Id.* at 176:15-20.) Provident's units will be high quality, ADA compliant, and brand new. Dr. Ragas compares only market rate rents. (*Id.* at 176; Pls.' Evid. Hr'g Ex. 71.) He does not take into account the affordable units, which make up 70% of Provident's proposed units. (Tr. of Mar. 11 Hr'g at 188:22-189:3.)

211. Ms. Rose criticized Dr. Ragas's claim about the use of moratoria during zoning code revisions. When localities are considering changes to their zoning and planning process, it is common to deny requests for variances to the existing code. (*Id.* at 183:9-16.) It is not typical for localities to pass a moratorium on development that is consistent with existing zoning law. (*Id.* at 183:17-19.) Ms. Rose testified that she found it to be highly unusual that the Parish would hamper much-needed development that was funded by a one-time influx of capital in the face of so much need. (*Id.* at 183:20-184:6.) Ms. Rose testified that she found it surprising that the Parish did not, at a minimum, pursue a middle ground approach of allowing some development while it was considering

zoning changes, or move expeditiously to approve the proposed design standards tendered by Provident to the Parish nearly six months before the expiration of funding. (*Id.* at 208:15-209:1.)

212. Ms. Rose criticized Dr. Ragas's characterization of the density of St. Bernard Parish. (*Id.* at 174-175.) Dr. Ragas claimed that the Parish's density is consistent with a rural area, but his characterization did not account for the densely populated town centers where Provident's proposed developments would be located. (*Id.* at 174-175.) The proposed developments would be located in the town center near many services and amenities. (*Id.* at 174-175.) One of the projects will be located across a four-lane highway from a Wal-mart. (*Id.* at 174:3-8.) Apartment complexes of the size and density proposed by Provident are appropriate for such locations. (*Id.* at 174-175.)

213. Dr. Ragas's claim that market viability halted seven low income tax credit developments in the St. Bernard and Eastern New Orleans area was incorrect. (*Id.* at 177:11-14.) Dr. Ragas claimed that the projects did not go forward because they were not viable due to low occupancy rates and low rents in the area. (*Id.* at 177:11-14.) To the contrary, market viability was not a factor in the decision not to complete any of the projects. (*Id.* at 177-179.) One of the projects failed because of an inability to secure additional financing, one relocated, and one project was forced to return its tax credits due to an ethical violation. (*Id.* at 177-178.) Three of the seven projects cited by Dr. Rags are actually going forward. (*Id.* at 177-178.) Dr. Ragas did not dispute Ms. Rose's testimony regarding the status of these projects. (Tr. of Mar. 12 Hr'g at 127.)

PROPOSED CONCLUSIONS OF LAW

I. The Multi-Family Moratorium Violates the Consent Order Because It Has the Clear Intent and Effect of Excluding African Americans From the Parish

214. The Parish's 2008 multi-family moratorium was enacted with the intent, and has the clear effect of, making unavailable and denying African Americans the opportunity to rent apartments in multi-family units. The moratorium therefore violates both the Fair Housing Act, 42 U.S.C. §3604(a), which makes it "unlawful ...[t]o make unavailable or deny ... a dwelling to any person because of race, color, religion or national origin," and the February 2008 Consent Order, which incorporates the very same requirements of the Fair Housing Act.

215. Intentional discrimination can be found from examination of a variety of factors, including: (1) statistics demonstrating disparate impact; (2) the specific sequence leading up to the decision; (3) the historical background of the decision; (4) rejection of a defendant's proffered reason for the actions taken and substantive departures from expected behavior; and (5) contemporary statements of the decision-makers or testimony concerning the purpose of the official action. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977) (hereinafter *Arlington Heights I*); *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 143 (3d Cir. 1977); *Reg'l Econ. Cmty. Action Program v. City of Middletown*, 294 F.3d 35, 49 (2d Cir. 2002). In this case, all five factors weigh in favor of finding that the moratorium was enacted with the purpose and intent of discriminating against African-American renters. The fifth factor – testimony concerning the purpose of the official action – is discussed throughout the section.

A. The Moratorium Has a Statistically Significant Adverse Effect on African Americans.

216. The statistically significant disparate impact demonstrated in this case clearly supports an inference that the moratorium was enacted with a discriminatory purpose. Statistics demonstrating that official action has a disproportionate adverse impact on minorities is evidence of discriminatory intent. *See Arlington Heights I*, 429 U.S. at 266; *Rizzo*, 564 F.2d at 143. Like the blood relative ordinance, the moratorium at issue here has a disproportionate adverse impact on the ability of African Americans to rent housing in St. Bernard Parish. The multi-family moratorium has a clear discriminatory impact at the 99% confidence level when measured any of three ways.

217. First, 17.61 % of African-American households in the New Orleans metropolitan area live in structures with 5 or more units, compared to only 9.54% of white households. (Pls.' Evid. Hr'g Ex. 40 at 10.) This finding is statistically significant. It means that African-American households are 85% more likely to live in structures with more than 5 units than white households. (*Id.*)

218. Second, over 90% of structures with more than 5 units are rental structures. More than 50% (51.7%) of African-American households in the New Orleans metropolitan area live in rental units, compared to just over 25% of white households. (*Id.* at 10-11.) This finding is also statistically significant. It means that African-American households are twice as likely as whites to live in rental housing. (*Id.* at 11.)

219. Third, African-American households are far more likely to have incomes within the income ranges for the proposed affordable housing developments at a statistically significant level. (*Id.* at 11-12.) Just over 17% of African-American households have incomes in the lowest income range served by the affordable housing

developments, compared to 9.27% of white households. (*Id.* at 12.) Focusing on families as opposed to households, 14.29% of African-American families fall within the lowest income range, compared to only 4.6% of whites. Put differently, African-American families are more than three times as likely as white families to have incomes within that range. (*Id.* at 13.)

220. In the higher income range, the disparity is statistically significant. Twenty-one percent of African-American households fall within that income category, compared to 14.28% of white households. Again, focusing on families as opposed to households, the disparity is also statistically significant, with 22.17% of African-American families falling within the higher income range, compared to 11.88% of white families. Phrased differently, African-American families are 87% more likely to have incomes within this next highest income range than white families. (*Id.* at 12-13.)

221. These findings are, for all practical purposes, un rebutted. First, Defendants tendered an expert who lacked the necessary qualifications to perform a disparate impact analysis. (Tr. of Mar. 12 Hr'g at 116-117.)

222. Second, even if Defendants' expert had demonstrated the necessary qualifications, the critique that he offered of Dr. Bradford's analysis in his amended report was premised on a methodology that was flawed as a matter of commonly accepted practice and as a matter of law. Defendants' expert, Dr. Ragas, suggested that a proper analysis would examine only the effect on renters located in St. Bernard Parish. This is clearly incorrect, for it would necessarily exclude large numbers of potentially qualified African-American renters who reside in neighboring parts of Orleans Parish that lie no more than a mile from Provident's proposed developments and within easy access

by car. (Tr. of Mar. 11 Hr'g at 85-90.) Notwithstanding this clear error in methodology, Dr. Bradford pointed out that using Dr. Ragas's own numbers for St. Bernard Parish alone, the moratorium still has a disproportionate adverse impact on likely qualified African-American renters. (Tr. of Mar. 11 Hr'g at 114-115, 119.)

223. Third, upon instruction of defense counsel, Dr. Ragas purported to apply what he termed an "absolute numbers" approach to disparate impact analysis, instead of the commonly accepted proportional analysis. (Tr. of Mar. 12 Hr'g at 118.) Dr. Ragas derived his methodology from a single district court decision, *Summerchase Ltd. Partnership I v. City of Gonzales*, 970 F. Supp. 522 (M.D. La. 1997), that appears to have misunderstood the Supreme Court's holding in *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989) (*superseded by statute on other grounds as recognized in Raytheon Co. v. Hernandez*, 540 U.S. 44, 52-53 (2003)). This Court respectfully disagrees with that aspect of the *Summerchase* holding.

224. The Court in *Wards Cove* found error in the plaintiff's statistical analysis, but the error was in the plaintiff's choice of the qualified labor or applicant pools to compare, not in the plaintiff's use of proportionate numbers. The Court clarified that the proper comparison was between the qualified applicant pool and the pool of workers actually holding the job in question, but the Court still required the use of proportionate numbers in making that comparison. In other words, *Wards Cove* actually supports the proportionate numbers approach, not the absolute numbers approach.

225. For these reasons, the Court finds that Plaintiffs have demonstrated that the moratorium has a clear and statistically significant disproportionate adverse impact on

likely African-American renters who would qualify to rent multi-family units in St. Bernard Parish generally, and at Provident's proposed developments in particular.

B. The Council Passed the Multi-Family Moratorium with the Intent to Perpetuate Segregation

226. Although the statistics in this case are sufficient to satisfy the standard set forth in *Arlington Heights I*, there are additional factors that demonstrate that the moratorium was enacted with the intent to discriminate against African-American renters. The timing of the passage of the moratorium, the history of racial hostility and segregation in St. Bernard Parish, departures from normal procedures, and varied and pretextual justifications from Parish officials about the reasons for the moratorium all support a finding that the Council acted with discriminatory intent. The Court will consider these factors as a whole in determining whether discrimination was “a motivating factor.” *Arlington Heights I*, 429 U.S. at 266 (emphasis added); *see also Rizzo*, 564 F.2d at 143; *United States v. Pelzer Realty Co.*, 484 F.2d 438, 443 (5th Cir. 1973) (holding that a plaintiff need not prove that race was the sole factor motivating the Council's conduct, it need only be a purpose in order to prove discriminatory intent). Each of these factors supports the conclusion that the Council was motivated by a discriminatory purpose.

1. The Timing of Events Surrounding the Introduction and Passage of the Moratorium Indicates a Discriminatory Motive

227. Parish officials met with Mr. Harris on July 14, 2008. (Tr. of Mar. 11 Hr'g at 25-26; Tr. of Mar. 12 Hr'g at 75.) Mr. Harris showed the meeting attendees pictures of what the properties would look like – garden style apartments of approximately two stories. (*Id.*) He explained the amenities of the properties, Provident's incentives to maintain the properties over the long term, and that the

properties constituted an investment into the Parish of \$60 million. (*Id.*) Parish officials stated that they wanted to work with Provident and did not state any concerns about a lack of a need for affordable housing in the Parish or that there was a lack of infrastructure or medical care. (*Id.*)

228. On July 23, 2008, the Council confirmed with Provident that its proposed developments were in conformance with local zoning laws. (Tr. of Mar. 11 Hr'g at 26-27.)

229. On August 7, 8, and 9, 2008, Provident ran notices in the Times-Picayune describing its proposed developments. (Pls.' Evid. Hr'g Ex. 59; Tr. of Mar 11 Hr'g at 217-219; Tr. of Mar. 12 Hr'g at 74.) After the notices appeared, public opposition to the developments came to the attention of the Council. On August 16, 2008, an editorial appeared criticizing the proposed Provident developments. The editorial stated that St. Bernard Parish did not want another community like Village Square, a community that, prior to Hurricane Katrina, was associated with African Americans. (Tr. of Mar. 11 Hr'g at 59-60; Pls.' Evid. Hr'g Ex. 11.) The article referred to Village Square "as a ghetto with drugs, crime, vandalism and violence" and asked "Should St. Bernard residents be concerned? Ours was a crime free community of homeowners with a deep appreciation for shared values...Is that now threatened?" (Pls.' Evid. Hr'g Ex. 11.) It also asked "What guarantees have the residents of St. Bernard that their tax money is not going to be used to create the kind of blight New Orleans recently destroyed?" (*Id.*) The references to "ghetto," "crime," "blight," and "shared values" are similar to the types of expressions that courts in similar situations have found to be nothing more than "camouflaged racial expressions." *Smith v. Town of Clarkton*, 682 F.2d 1055, 1066 (4th Cir. 1982) (affirming

that statements about ““undesirables,”” and concerns about personal safety due to ““new”” people are “camouflaged racial expressions”); *Atkins v. Robinson*, 545 F. Supp. 852, 871-72 (E.D. Va. 1982) (holding that statements such as “these type of people” and “end up stealing the plumbing” made in connection with low income housing are ““camouflaged racial expressions””).

230. Three days after the editorial appeared in the *St. Bernard Voice*, Councilman Lauga introduced the multi-family moratorium. (Pls.’ Evid. Hr’g Ex. 31.) On August 26, 2008, Parish officials told Mr. Harris that they were in favor of the proposed developments. (Tr. of Mar. 11 Hr’g at 31-34.) After that meeting, Councilman Lauga informed Mr. Harris that the moratorium was necessary to appease public opposition of the Provident developments. (Tr. of Mar. 11 Hr’g at 34.) Councilman Lauga admitted at the evidentiary hearing that the public outcry over Provident’s developments played a role in the introduction of the moratorium. (Tr. of Mar. 12 Hr’g at 84-85.) He reassured Mr. Harris that if Provident worked out design standards with the Parish the projects would be allowed to move forward. (Tr. of Mar. 11 Hr’g at 34:17-23; M. Harris Decl. at ¶ 23-24.) However, after Mr. Harris sent proposed design standards on September 9, 2008, Councilman Lauga took no action on the standards and never discussed the proposed standards with Provident. (M. Harris Decl. at ¶ 24; Tr. of Mar. 12 Hr’g at 87.)

231. Instead, the Council passed the multi-family moratorium on September 16, 2008 without notice to or consultation with Provident. The moratorium states that the ban on construction of multi-family housing remains in place for one year “or until such time as the Council approves these structures in the zoning updates to the *St. Bernard*

Parish Code of Ordinances.” (Pls.’ Evid. Hr’g Ex. 31.) Parish President Taffaro and Councilman Lauga both testified that the moratorium would be repealed if design standards were put in place. (Tr. of Mar. 12 Hr’g at 31, 92-93.) Despite receiving Provident’s proposed design standards on September 9, 2008, no design standards were introduced until December 16, 2008 – after the Parish was notified of a potential lawsuit. (Pls.’ Evid. Hr’g Ex. 53.) Those standards were nearly identical to the proposed standards provided by Provident two months earlier. (Tr. of Mar. 12 Hr’g at 32-33, 91.) At the same time, Councilman Lauga also introduced an arduous approval process for any planned unit development in the Parish, which provides the Council the opportunity at several points throughout the application process to delay or deny approval, based on no standards other than its own discretion. (Pls.’ Evid. Hr’g Ex. 53.) The Council has not taken any action on either the design standards or the regulations regarding the application process. (Tr. of Mar. 12 Hr’g at 33, 91-92.)

232. The Parish’s opposition to the proposed developments arose only after there was an outcry of public opposition. A change in position like that of the Parish officials in this case is highly suspect. The Third Circuit has held that a similar change in position was persuasive evidence of discrimination. *Rizzo*, 564 F.2d at 145. In that case, the Court noted that the city had “changed its stance from passive support for the [] project to active opposition only after the initiation of bias-tinged local demonstrations.” *Id.*

2. *The History of Racial Hostility Indicates Discriminatory Intent*

233. In the immediate aftermath of Katrina, Parish officials blockaded entry points to the Parish to prevent African-Americans residents of the Lower Ninth Ward

from entering St. Bernard Parish. (Motion to Enforce at 3); Lee Hancock, *In a City Split and Sinking Before Storm, Racial Issues Boil*, Dallas Morning News (Dec. 4, 2005); (Tr. of Mar. 12 Hr’g at 39-41.) Sheriff Deputies were authorized to shoot to kill. *Id.*

234. St. Bernard Parish reinforced these barriers by enacting zoning ordinances that have the clear effect of perpetuating segregation in the Parish. Year 2000 census data reveals that 88.3% of the population of St. Bernard Parish is white and only 7.6% is African-American. (Pls.’ Evid. Hr’g Ex. 40 at 7.) This is in stark contrast to neighboring Orleans Parish, whose population is 67.3% African-American and 28.1% white. (*Id.* at 6-7.)

235. St. Bernard Parish has persistently tried to maintain these demographics. It passed a multi-family moratorium nearly identical to the current one in 2005. (Pls.’ Evid. Hr’g Ex. 28.) Then, in March and July of 2006, the Council passed two more ordinances restricting the availability of rental units in the Parish. (Pls.’ Evid. Hr’g Exs. 29, 30.) Next, in September 2006, the Council passed the blood relative ordinance. (Pls.’ Evid. Hr’g Ex. 27.) The blood relative ordinance denied African Americans the opportunity to rent in St. Bernard Parish by prohibiting owners of single-family dwellings from renting to anyone but a blood relative. The 2008 multifamily moratorium is the flip side of the same coin; it simply forbids the construction of complexes with 5 or more units – essentially rental housing – in the Parish.

236. Parish President Taffaro was the Councilman who introduced the blood relative ordinance. He admitted that the purpose of the blood relative ordinance was to “maintain demographics.” (Tr. of Mar. 12 Hr’g at 44); *New Law in St. Bernard Parish Stirs Controversy*, available at <http://www.wwltv.com/local/stories/ww>

1092806jblaw.27895d18.html. He is the same individual who supported the current moratorium by failing to exercise his veto power. Consistent with his earlier support for the 2005 moratorium and the blood relative ordinance, President Taffaro admitted upon questioning that while he could have exercised the veto power, he chose not to. (Tr. of Mar. 11 Hr’g at 233.) Another Council member revealed the same intent with respect to earlier ordinances as President Taffaro, stating that “[w]e don’t want to change the aesthetics of a neighborhood.” (Motion to Enforce at 19); Michelle Chen, *Housing Watchdogs Call Post-Katrina Ordinance ‘Racist,’* The New Standard (Oct. 6, 2006). These statements, in light of the racial demographics of St. Bernard Parish, indicate intent to perpetuate segregation. (Tr. of Mar. 11 Hr’g at 58:11-15.) (Testimony of James Perry: “[B]y passing a moratorium on the development of multifamily housing it makes it less likely that there will be housing opportunities for people of color in St. Bernard Parish. So it’s my opinion that [the moratorium] was going to perpetuate segregation in the parish”.) “Conduct that has the necessary and foreseeable consequence of perpetuating segregation” constitutes a violation of the Fair Housing Act. *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1289 (7th Cir. 1977) (hereinafter *Arlington Heights II*); see also *United States v. Mitchell*, 580 F.2d 789, 791 (5th Cir. 1978); *United States v. City of Black Jack*, 508 F.2d 1179, 1186 (8th Cir. 1974) (holding that an ordinance prohibiting the construction of any multi-family dwellings, including low to moderate income housing, “would contribute to the perpetuation of segregation” and therefore had a discriminatory effect).

237. The foreseeability of the moratorium’s discriminatory impact is further evidence of discriminatory intent. In *United States v. City of Birmingham*, the city

council took affirmative steps to interfere with a plan to construct low income family housing. 538 F. Supp. 819, 827 (E.D. Mich. 1982), *aff'd as modified by United States v. City of Birmingham*, 727 F.2d 560 (6th Cir. 1984). The court held that the council's discriminatory purpose could be inferred from the foreseeable effect that its actions would have in keeping Birmingham "a virtually all-white city." *Id.* at 827. It was clear from the council's actions, the court held, that it had "bowed to [the] wishes" of those residents who sought "to exclude black people from the City and maintain the City's virtually all-white character." *Id.*

238. As discussed above, the Council's appreciation of the impact of the moratorium is indicated by Councilman Lauga's statement that the moratorium was passed in order to appease opposition of his constituents (Tr. of Mar. 12 Hr'g at 85.), as well as the timing of the introduction of the moratorium. Moreover, knowing from nearly two years of litigation with GNOFHAC that the previous blood relative ordinance and 2005 moratorium had a discriminatory impact, the Council nonetheless passed the current moratorium. (Tr. of Mar. 11 Hr'g at 233.)

239. The Council was also put on notice as early as November 19, 2008, that its moratorium violated the Fair Housing Act, yet refused to repeal it, or take action to approve design standards that would – under its own terms – have resulted in the lifting of the ban on multi-family housing and allowed the Provident developments to go forward. Since that time, GNOFHAC and Provident have repeatedly told the Council that the moratorium had an unlawful disproportionate adverse impact on African-American renters, and asked them to repeal it, all to no avail. (Pls.' Evid. Hr'g Exs. 32, 33; Tr. of Mar. 11 Hr'g at 55-57.)

3. *Departures From Normal Procedures Indicates Discriminatory Intent*

240. The Parish departed from normal planning procedures by purportedly deciding to revise its zoning code and then waiting five months to impose a moratorium. The Parish hired Donald Poland in April 2008. (Tr. Mar. 12 Hr'g at 130.) It then waited until after Provident moved forward with its development and public opposition to those developments arose to pass a blanket moratorium blocking a project that had already been deemed consistent with the Parish's zoning laws. The normal practice for a municipality seeking to revise its zoning laws is to pass a moratorium first and then study the necessary revisions. (Tr. of Mar. 11 Hr'g at 183.) Moreover, when localities are considering changes to their zoning and planning process, it is common to deny requests for variances to the existing code. (*Id.*) It is not typical for localities to pass a moratorium on a development that is consistent with existing zoning law. (*Id.*)

241. The Parish further departed from normal procedure by failing to consult with Provident about its objections to the Provident developments before sending an official objection letter to the Louisiana Housing Finance Agency, despite prior assurances that the Parish would work with Provident on the developments. The letter that Councilmen Landry and Cavignac sent to the LHFA on November 12 stated their "OFFICIAL OBJECTION" to the Provident developments on the day Provident was to receive an award of tax credits. The self-evident purpose of the letter was to sabotage the Provident developments. (Pls.' Evid. Hr'g Ex. 15.) Yet up until the moment the letter was sent, the Council insisted that its intent had been to work with Provident and had provided assurances that it was in favor of moving forward with the developments. (Tr. of Mar. 11 Hr'g at 34-35, 39-40; Tr. of Mar. 12 at 22.) The Parish had never before

raised any of the objections cited in the letter about a surplus of affordable housing in the Parish or a lack of infrastructure with Provident. (Tr. of Mar. 11 Hr'g at 39-40.)

242. Clearly, had the Parish and Council's true purpose been to work with Provident to find common ground on design standards so that the moratorium could be lifted in time to permit Provident's developments to go forward, council members would not have blindsided Mr. Harris with an eleventh hour letter to the Louisiana Housing Finance Agency that was, on its face, designed to torpedo the funding for the Provident project. All of the council members knew from meetings with Mr. Harris that LHFA financing was essential to the project, and that if the tax credits were not awarded to Provident the housing would not be built, even if the moratorium were lifted.

243. The November 12, 2008 letter is probative of the Council and Parish's purpose for a second reason: it never mentions the lack of design standards or the zoning issues. Instead it raises three entirely new purported justifications for denying tax credits – all reasons that had never been voiced before and that contradicted not just President Taffaro's October 9 letter, but the facts about the need for housing, infrastructure, and the hospital deal that he had publicly asserted for months beginning in early 2008. Had the true intent of the Parish been to work out design standards, it is difficult to understand why the November 12 letter is silent on that subject, and so clearly misleading, untruthful, and hostile to Provident with respect to the new issues that it raises.

244. Finally, the Parish departed from normal procedure by failing to introduce design standards until three months after it had received proposed standards from Provident. If the Parish had not been motivated by a discriminatory purpose, it would have introduced the design standards immediately. Instead, it sat on the standards, taking

no action on them until it was threatened with a lawsuit. And even then, after it finally introduced design standards on December 16 that differed little from those proposed by Provident in September, the Parish took absolutely no action whatsoever to act on the proposed standards, and has to this day still not taken any action to pass or approve the design standards. Upon questioning by the Court, President Taffaro could not explain why no action could be taken, or precisely, when or if action would be taken in the future.

4. *The Parish's Proffered Justifications are Clearly Pretextual*

245. The Parish's proffered justifications for the moratorium have shifted over time. Initially Provident was told that everything looked fine and was given zoning approval. After the publication of the notice, the editorial, and the ensuing outcry, the Parish told Provident that it needed to impose a temporary moratorium until design standards could be agreed upon.

246. On November 12, 2008, Provident learned for the first time that the Parish was objecting to any award of tax credits on the grounds of inadequate infrastructure and medical services and a lack of need for housing.

247. And then, after Provident advised the Parish that it believed the objection to its funding and the accompanying moratorium violated the Fair Housing Act, the Parish once again fell back on the excuse that it was awaiting action on design standards.

248. Finally, at the evidentiary hearing the Council and Parish asserted for the first time that it was the need for a zoning update due to possible concerns about density – all supposedly prompted by a report issued by Donald Poland in May of 2008 – that was the real motivation for the moratorium. Each and every one of these purported justifications is pretextual.

249. The true reason for the moratorium was conceded by Councilman Lauga. He testified that the public outcry over the Provident developments was a motivating factor behind the moratorium. (Tr. of Mar. 12 Hr'g at 85.) Members of the St. Bernard Parish community and the Council itself equated the Provident developments with the Village Square area. (Tr. of Mar. 12 Hr'g at 70, 79.) Village Square was associated with African Americans, in contrast to the surrounding areas of the Parish, which were overwhelmingly white. (Tr. of Mar. 11 Hr'g at 59-60.) The moratorium was introduced just three days after the editorial in the St. Bernard Voice made the connection between the Provident developments and Village Square and used camouflaged racial expressions. These facts point to the conclusion that the moratorium was used as a tool to maintain the demographics of St. Bernard Parish and to preserve the segregation of the Parish. The moratorium, in the end, was nothing more than a re-enactment of the very same ordinances that were passed in 2005 to "maintain demographics."

a. The Need for Affordable Housing in St. Bernard Parish

250. The first justifications offered by the Parish for actually opposing and stopping the Provident developments, as opposed to simply delaying approval until design standards could be worked out, came in the November 12 letter from Councilmen Landry and Cavignac to the LHFA.

251. First, the letter claimed that "St. Bernard's rental stock is flush with available properties in all price ranges which go unrented." (Pls. Evid. Hr'g Ex. 12.) The Court finds that Defendants' assertion that there is no need for affordable housing in St. Bernard Parish is unfounded. The weight of the evidence submitted at the hearing shows that there is a need for affordable housing in the Parish and that the need will grow

substantially in the coming years. The Court finds the approach and conclusions of Plaintiffs' expert, Kalima Rose, to be convincing on this issue.

252. Ms. Rose has considerable experience studying an array of socio-economic data in the New Orleans area for the purpose of advising policy makers and community leaders about the availability of and need for affordable housing. In order to evaluate the need for affordable housing in St. Bernard Parish both at the present and in coming months, Ms. Rose analyzed a variety of data sources that reflect both current conditions and projected trends in the housing market, the job market, state and federal relief programs, and population growth. (Pls. Evid. Hr'g Ex. 41 at 3.) According to those reliable sources, substantial public and private investment in rebuilding of infrastructure and business will spur job creation and draw large numbers of low-wage workers to the area. (Pls. Evid. Hr'g Ex. 41 at 3-4.) The Court finds this methodological approach persuasive.

253. The Court is convinced that the weight of the evidence suggests that the demand for affordable housing will likely outstrip the current stock and the units currently set for construction under federal programs. Ms. Rose also identified gaps in the patchwork of post-disaster housing recovery programs that will result in an increased need for affordable housing in the near future. Her testimony was well-supported and the Court finds persuasive her conclusions that there is an urgent need for affordable housing in St. Bernard Parish and that the need will dramatically increase in the coming years.

254. Trends for future months are particularly important in this case because the housing proposed by Provident is not scheduled to come on line until 2010, and under

the requirements of the tax credit program, Provident must hold the property for a minimum of 15 years.

255. Defendants attempted to support their claim that there is no need for affordable housing in St. Bernard Parish with the testimony and expert report of Dr. Wade Ragas. (Pls. Evid. Hr'g Ex. 71.) Dr. Ragas consulted a much narrower range of sources than Ms. Rose and concluded that there is no need for affordable housing units in St. Bernard Parish. (Pls. Evid. Hr'g Ex. 71 at 21.)

256. Ms. Rose criticized Dr. Ragas's approach on several grounds. Dr. Ragas's count of affordable housing units was misleading because it included units that were subsidized by temporary vouchers that will soon expire. (Tr. of Mar. 11 Hr'g at 181.) Once the vouchers expire, the housing units will be market rate, and thus unaffordable to many first responders and low-wage workers in the Parish. (*Id.*) Dr. Ragas extrapolated occupancy rates for the proposed developments in St. Bernard Parish by examining occupancy rates of multi-family housing in New Orleans East. (Pls. Evid. Hr'g Ex. 71 at 5-6.) This methodology is flawed because it fails to account for the substandard quality of housing units in New Orleans East, the isolated location of many of those units, and the fact that those units are not subsidized. (Tr. of Mar. 11 Hr'g at 176.) Provident's proposed units, in contrast, will be high quality, brand new apartments located near services and amenities in a town center. (*Id.*) Moreover, 70% of Provident's units will be affordable. (Tr. of Mar. 11 Hr'g at 188-189.)

257. Finally, unlike Ms. Rose who considered the impact of expected job growth, returning population, the termination of existing relief programs, and infrastructure development on the need for affordable housing, Dr. Ragas did not

examine those trends and instead cited the current lack of infrastructure as a justification for the moratorium. (Tr. of Mar. 11 Hr'g at 187.) Dr. Ragas focused at best on a snapshot of the data, not on the variety of data sources that one needs to examine in order to reach an informed conclusion about what the likely need for affordable housing will be in coming months and years.

258. Based on these flaws in Dr. Ragas's methodology, the Court does not find his conclusion that there is no need for affordable housing in St. Bernard Parish to be persuasive or supported by the facts in the record. To the contrary, the Court finds that the weight of the evidence supports Ms. Rose's finding that once completed, the Provident developments will likely be fully occupied.

259. In its November 12, 2008 letter, the Council specifically cited the example of the Palm Gardens Apartments, which contains vacant units, as evidence of a supposed glut of affordable housing in the Parish. (Pls. Evid. Hr'g Ex. 15.) The letter stated that: "we currently have a 91 unit development similar to one of these proposed developments that have been available for approximately one year and still cannot be filled." (*Id.*) The Court finds this reference to Palm Garden Apartments unpersuasive.

260. First, Palm Gardens Apartments is not a mixed income development and does not contain any affordable units. (Tr. of Mar. 12 Hr'g at 176-177.) Dr. Ragas admitted that the inclusion of affordable units in a development makes it easier to rent. (Tr. of Mar. 12 Hr'g at 176.)

261. Second, Dr. Ragas's report states that the Palm Gardens Apartments has a 90% occupancy rate. (Pls. Evid. Hr'g Ex. 71 at 10.) According to Mr. Harris and even President Taffaro, a 90% occupancy rate is considered to be quite good for this type of

housing and Provident's proposed developments would be profitable with a 90% occupancy rate. (Tr. of Mar. 11 Hr'g at 20; Tr. of Mar. 12 Hr'g at 12.)

262. Third, Dr. Ragas contended that the market rate rents for Palm Gardens were lower than Provident's projected market rate rents. (Pls. Evid. Hr'g Ex. 71 at 10.) Yet Dr. Ragas acknowledged that the units that Provident planned to develop were larger and contained more amenities than Palm Gardens. (Tr. of Mar. 12 Hr'g at 177-178.) And Mr. Harris testified that Provident's proposed developments would be profitable even if they could charge only the rental rates for 60% of AMI for the market-rate units. (Tr. of Mar. 11 Hr'g at 20.)

263. Implicit in the Parish's "lack of housing need" justification is the suggestion that Provident's developments will eventually become "abandoned" and contribute to blight. This excuse for blocking Provident's planned developments is difficult to understand. Provident's developments will bring \$60 million of private investment capital to the Parish, at no cost to its government or residents, at a time when President Taffaro testified that the Parish needs housing, has a growing population, and faces a potential budget deficit. (Tr. of Mar. 11 Hr'g at 257; Tr. of Mar. 12 Hr'g at 2-3.) The developments will produce tax revenue of \$40,000 per property per year.

264. The financial risk rests solely with Provident, which has a massive financial and business incentive to carefully maintain the property for at least 15 years. Provident relied upon its own privately funded market studies in deciding that St. Bernard was where it wanted to invest. It is highly unusual for a governmental body to deliberately intervene to oppose this type of private investment in its community that is cost-free to the community. In addition, every indication suggests that the proposed

Provident developments would attract critical community stakeholders such as first responders, firemen, policemen, teachers, and nurses to St. Bernard Parish. One would expect the local community to join with a developer like Provident to help bring these stakeholders to their jurisdiction, not block such efforts.

265. Given the incentives for long-term maintenance that are built into the low income housing tax credit program, including the 15-year claw back provision, the Court finds opposition on the grounds that the Parish fears abandonment of the property suspicious at best, and without factual support. (Tr. of Mar. 11 Hr'g at 21, 26; 184-188.) After 15 years, Provident will have no remaining debt on the property and its profits will increase, making the property even more valuable to Provident and worthy of protecting. (Tr. of Mar. 12 Hr'g at 16.) Defendants have offered no basis for their asserted fear that Provident will abandon the buildings as soon as the 15 years are up and at the very moment that they become most profitable. (Tr. of Mar. 12 Hr'g at 16-17.) As President Taffaro conceded, such a decision would not be in Provident's rational business interest. (*Id.*)

266. The Court finds that the need for affordable housing in St. Bernard Parish is more than sufficient to support Provident's proposed developments. Defendants' claim that there is no need for affordable housing is not supported by the record.

b. Lack of Infrastructure and Medical Services

267. The November 12 letter also raised concerns about lack of infrastructure and medical services. Specifically, the letter stated that "the monies made available for these apartment projects could be better applied to an area that can support the needs of families taking advantage of the subsidies available under the program (St. Bernard

Parish does not have full health care or support services in place).”¹ (Pls. Evid. Hr’g Ex. 15.)

268. The statement that St. Bernard Parish does not have adequate infrastructure,² health care or support services is belied by the record. Council President Taffaro wrote a letter to the Louisiana Housing Finance Agency on October 9, 2008 that stated that the Parish had sufficient infrastructure and “look[ed] forward to the agency’s decision on these projects to coordinate our recovery accordingly.” (Pls. Evid. Hr’g Ex. 14.)

269. During the hearing President Taffaro admitted repeatedly that he had been working hard for many months, and with considerable success, to bring funding for infrastructure construction projects to the Parish. President Taffaro agreed with Ms. Rose that nearly \$1 billion in funding for infrastructure projects in the Parish has been obligated to date by state and federal agencies, and that recent months have produced a steady stream of new fire stations, playgrounds, road construction and building projects. These facts were well known to all in the community because President Taffaro had made numerous public statements about the accelerating pace of the recovery, the number of returning businesses, and the continuing stream of completed projects and investment dollars pouring into the Parish.

¹ The Council also points to a “recent Federal Court decision in St. Bernard’s favor ... [that] recognized the instability of our market and the need for such protection.” (Pls. Evid. Hr’g Ex. 15.) The ordinance involved in that case, SBPC #697-12-06 (later amended), prohibited the rental of a single-family residence without first obtaining a permissive use permit from the Council, unless the residence was a rental unit prior to the adoption of the ordinance. *Baker v. St. Bernard Parish Council*, 2:08-cv-01303-SSV-DEK, at 4-5 (Oct. 21, 2008). The Plaintiffs in that case challenged the ordinance as a takings without just compensation and a violation of due process. There were no race discrimination claims or Fair Housing Act claims in that case and the court noted it was therefore “restricted to the deferential rational basis review” on the substantive due process claim. *Id.* at 27. (Tr. of Mar. 12 Hr’g at 19-20.)

² Defendants’ expert D. Ragas referred to a lack of infrastructure in his first report. (Pls. Evid. Hr’g Ex. 62 ¶ 19.)

270. With respect to medical facilities, the November 12 letter did not mention what President Taffaro himself conceded: that a deal to build a new 40 bed hospital in the Parish was announced in June 2008 – well before the passage of the moratorium and before the November 12 letter to the LHFA. (Tr. of Mar. 12 Hr’g at 9.) Councilman Landry, one of the authors of the November 12 letter, clearly knew about the deal, because he was the Council liaison to the Hospital Service District that worked on the hospital project. Finally, President Taffaro testified that a plan was already in place to construct public health, substance abuse, and psychiatric facilities in the Parish. (Tr. of Mar. 11 Hr’g at 255-256.)

c. The Need for Zoning Updates

271. It was not until the evidentiary hearing on the motion to enforce that the Council and Parish raised for the first time their contention that the moratorium resulted from a report first prepared by Donald Poland, at the request of the Parish, in May 2008. Specifically, the Parish argues that it was the need for a new zoning code to address issues of density, and not the public outcry over the Provident developments that sparked the introduction of the moratorium.

272. The Court finds this alleged justification pretextual for several reasons. First, the need for zoning updates was never mentioned to Mr. Harris or Provident at any time prior to the publication of the notices about the developments or the appearance of the inflammatory editorial in the St. Bernard paper. And it was not raised when Provident received zoning approval from the Parish for all four development sites on July 23, 2008.

273. Second, it is difficult to believe that the moratorium would have been introduced a mere three days after the editorial appeared if it had everything to do with a report written months earlier and nothing to do with the public outcry that occasioned the appearance of the editorial. Councilman Lauga clarified his position upon questioning at the hearing and admitted that the introduction of the moratorium was motivated in part by the public outcry to the Provident developments.

274. Third, if the concern had truly been about zoning updates, workable design standards, and “density,” there remains no explanation for why the Council and the Parish sent a letter to LHFA on November 12 designed to stop essential funding for the project. Had the November 12 letter succeeded in its purpose, any possibility of a Provident development would have ended. This result is plainly inconsistent with the stated purpose of reaching agreement on design standards that would have allowed the developments to go forward. And it does not explain why the November 12 letter says nothing about the need for design standards or a zoning update.

275. Fourth, this alleged justification does not explain why the Parish failed to respond or otherwise act on the design standards that Provident submitted to Councilman Lauga in September, or why it failed to act on the design standards that Councilman Lauga finally introduced in December 2008 after the Parish had been notified that Provident and GNOFHAC believed it had violated the Fair Housing Act. The standards introduced on December 16 and upon which the continuation of the moratorium rests are not zoning updates. They make no changes to the zoning of the land on which Provident plans to develop its properties and therefore they do nothing to alter the certification that Provident is in compliance with the Parish’s zoning ordinances.

276. Fifth and finally, the purported justification does not explain why the design standards have still not been enacted to date, more than six months after nearly identical standards were submitted by Provident to the Parish, or why the moratorium has not been lifted. The fact remains that (1) the Parish knows now, and has known for months, of the impending deadline for starting construction and the consequences for Provident's ability to obtain tax credit funding once that deadline passes; and (2) construction cannot start until design standards are approved and the moratorium is lifted.

277. The clear implication of this complete failure to act reveals a true purpose behind the moratorium that is all about stopping the Provident developments, not reaching agreement on acceptable design standards or density concerns.

278. In sum, the Court finds that none of the Parish's proffered justifications are either bona fide or legitimate. *See Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 939 (2d Cir. 1988). The Council's excuses are clear pretext, and from this evidence of pretext intent may be inferred.

279. Based on all of the evidence discussed above, the Court concludes that the Parish and Council's intent in enacting and continuing the moratorium is and was discriminatory, and as such defendants have violated the Fair Housing Act and the terms of the February 2008 Consent Order. *See LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 425 (2d Cir. 1995) ("If the motive is discriminatory, it is of no moment that the complained-of conduct would be permissible if taken for nondiscriminatory reasons."); *Birmingham*, 538 F. Supp. at 830.

II. St. Bernard Parish's Moratorium on Construction of Multi-Family Housing Violates the Fair Housing Act Because It Has an Unjustified Disparate Impact on African Americans

280. A party violates the Fair Housing Act by taking actions that have a discriminatory effect, even if there is insufficient evidence to prove intentional discrimination. *Cox v. City of Dallas, Texas*, 430 F.3d 734, 746 (5th Cir. 2005) (“the FHA . . . does not require proof of both discriminatory impact and intent”); *Simms v. First Gibraltar Bank*, 83 F.3d 1546, 1555 (5th Cir. 1996); *United States v. Mitchell*, 580 F.2d 789, 791 (5th Cir. 1978) (*abrogated on other grounds by statute*); *United States v. City of Black Jack, Missouri*, 508 F.2d 1179, 1185 (8th Cir. 1974) (“Effect, and not motivation, is the touchstone, in part because clever men may easily conceal their motivations”) (internal quotation marks and citation omitted).

281. Thus, even if the Court were to find that there was insufficient evidence that the moratorium was motivated by a discriminatory intent, the moratorium would still violate the FHA if it is found to have an unjustified disparate impact on members of a protected group.

282. There are two leading approaches to analyzing disparate impact under the FHA. In *Metropolitan Housing Development Corporation v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977) (hereinafter *Arlington Heights II*), the Seventh Circuit articulated a four-factor test for disparate impact. *Arlington Heights II*, 558 F.2d at 1290. The relevant factors are: (1) the strength of the showing of discriminatory effect; (2) any evidence of discriminatory intent (the least important factor that need not rise to the level required to prove a discriminatory intent case); (3) the interest of the defendant

in taking the action with the discriminatory impact; and (4) whether the plaintiff seeks to compel the affirmative provision of housing by defendants. *Id.* at 1290-93.

283. In *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 934-35 (2d Cir. 1988), the Second Circuit held that evidence of intentional discrimination is not necessary to prove disparate impact discrimination. *Huntington Branch*, 844 F.2d at 935. The Second Circuit concluded that the *Arlington Heights II* factors placed “too onerous a burden” on plaintiffs and declined to adopt them. *Id.* at 935-36. Instead, the Second Circuit adopted the familiar burden shifting framework from *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973). First, the plaintiff must establish a prima facie case of disparate impact discrimination. *Huntington Branch*, 844 F.2d at 934. Next, the defendant may put forward a legitimate justification with no less discriminatory alternatives. *Id.* at 939. The Court then balances the plaintiff’s showing of adverse effect against the defendant’s explanation. *Id.* at 940.

284. The Fifth Circuit has not yet decided whether to adopt the *Arlington Heights II* or the *Huntington Branch* approach. Because the Court finds that Plaintiffs have met the more onerous *Arlington Heights II* test, it need not decide which approach is preferable.

A. Plaintiffs Have Made a Strong Showing of Discriminatory Effect

285. There are two ways to show that a neutral rule has a discriminatory effect, either of which is sufficient to meet the *Arlington Heights II* test. The first is to show that a facially neutral policy has “a greater adverse impact on one racial group than on another.” *Arlington Heights II*, 558 F.2d at 1290. The second is to show that the policy “perpetuates segregation and thereby prevents interracial association.” *Id.* Plaintiffs

have established that the moratorium has a discriminatory effect both because it has a disproportionately adverse impact on African Americans and because it perpetuates segregation in the New Orleans metropolitan area.

286. The report and testimony of Dr. Calvin Bradford setting forth his statistical analysis of the impact of the multi-family moratorium establishes that the moratorium will have a statistically significant disparate impact on African-American households and families in the New Orleans metropolitan area. Dr. Bradford's analysis also demonstrates that the moratorium serves to reinforce the residential segregation in the New Orleans metropolitan area. As discussed in ¶¶ 125-¶¶ 136 above, Defendants provide no credible evidence disputing Dr. Bradford's analysis or his conclusions.

287. The multi-family moratorium has a discriminatory impact on African Americans that is statistically significant at the 99% confidence level. First, 17.61% of African-American households in the New Orleans metropolitan area live in structures with 5 or more units, compared to only 9.54% of white households. (Pls.' Evid. Hr'g Ex. 40 at 10.) This means that African-American households are 85% more likely to live in structures with more than five units than white households. (*Id.*)

288. Second, over 90% of housing units in structures of more than five units are rental units. More than 50% (51.7%) of African-American households in the New Orleans metropolitan area live in rental units, compared to just over 25% of white households. (*Id.* at 10-11.) This means that African-American households are twice as likely as white households to live in rental housing. (*Id.* at 11.)

289. Third, African-American households are far more likely to have incomes within the income ranges for Provident's proposed affordable housing units. (*Id.* at 11-

12.) Seventy percent of the units in each of the four proposed developments are reserved for households earning between \$12,550 and \$35,880. (*Id.* at 11.) Fifty percent of the units are reserved for households earning no more than 60% of the Adjusted Median Income (“AMI”) established by the Department of Housing and Urban Development, and 20% of the units are reserved for households earning no more than 30% AMI. (*Id.*) Those percentages fall within income ranges of \$20,000 to \$35,000 (low income) for 60% AMI, and \$10,000 to \$20,000 (very low income) for 30% AMI. (*Id.* at 12.) Just under 39% of African-American households have incomes in the range that would likely qualify them to live in the affordable units, as compared to 23.55% of white households. (*Id.*) For the lowest income range served by the affordable housing units, over 17% of African American households have qualifying incomes, compared to 9.27% of white households. (*Id.*) In the higher income range, 21.7% of African-American households fall within that income category, compared to 14.28% of white households. (*Id.*)

290. Fourth, African-American families are more likely to have incomes that fall within the range that would likely qualify them for Provident’s proposed affordable housing units. Over 36% of African-American families have qualifying incomes, compared to 16.49% of white families. (*Id.* at 13.) For the lowest income range, 14.29% of African-American families would likely qualify, compared to only 4.6% of white families. Put differently, African-American families are more than three times as likely as white families to have incomes within that range. (*Id.*) For the higher income range, 22.17% of African-American families would likely qualify, compared to 11.88% of white families. Phrased differently, African-American families are 87% more likely to have incomes within this next highest income range than white families. (*Id.*)

291. Plaintiffs have shown that the moratorium on construction of multi-family housing developments in St. Bernard Parish has a statistically significant adverse disproportionate effect on likely, qualified African American renters. This compelling statistical proof of disparate impact meets the first factor of the *Arlington Heights II* test.

292. Dr. Bradford also demonstrated that the moratorium has a segregative effect on the New Orleans Metropolitan area. The New Orleans area is highly segregated with African-American households highly concentrated in certain sections of Orleans, Plaquemines, and Jefferson Parishes. (Pls.' Evid. Hr'g Ex. 40 at 6.) The rest of the region, including St. Bernard Parish, is overwhelmingly white. (*Id.*) To illustrate, the population of Orleans Parish is 67.3% African American and 28.1% white. (*Id.* at 6-7) By contrast, St. Bernard Parish is 7.6% African American and 88.3% white. (*Id.* at 7.)

293. Dr. Bradford's statistical analysis shows that Provident's proposed developments would likely have an integrative effective on the New Orleans metropolitan area. While St. Bernard Parish is mostly white, it is surrounded to the North and East by areas of Orleans Parish that are more than 75% African American. (Pls.' Evid. Hr'g Ex. 77.) The future residents of Provident's developments are more likely to come from these densely populated areas of Orleans Parish than from the more rural eastern portions of St. Bernard Parish. (Tr. of Mar. 11 Hr'g at 120-122.) Moreover, Dr. Bradford demonstrated that African Americans would disproportionately qualify for the proposed affordable housing units. The affordable housing units will likely attract African Americans to the Parish in numbers that are higher than their current proportion of the population. By drawing African-American residents into St. Bernard Parish, Provident's developments will have an integrative effect on the greater New Orleans

area. The moratorium halts construction of Provident's proposed developments and maintains the highly segregated nature of the area. (*Id.* at 111.)

294. For the reasons stated in ¶ 125-¶ 136 above, the Court finds that Dr. Bradford's findings are persuasive from both a methodological, statistical, and legal standpoint, and were effectively un rebutted by Defendants.

295. Thus, Plaintiffs have demonstrated on two independent grounds—adverse effect and perpetuation of segregation—that the moratorium has a disproportionate adverse impact. They have clearly met the first factor of the *Arlington Heights II* test.

B. Plaintiffs Have Shown Substantial Evidence of Discriminatory Intent

296. The second factor of the *Arlington Heights II* test is whether there is any evidence of discriminatory intent. As discussed in detail in section ¶ 226-¶ 279 above, Plaintiffs have provided a wealth of evidence demonstrating that the moratorium on multi-family housing was passed with the intent to discriminate against African Americans. The timing of the moratorium, the history of racial hostility and segregation in St. Bernard Parish, the Parish's departures from normal procedures, and the pretextual nature of the justifications offered all support the conclusion that Defendants acted with discriminatory intent. For the reasons stated above, the Court finds that there is more than sufficient evidence of intentional discrimination to meet the second *Arlington Heights II* factor.

C. Defendants Have Not Offered a Legitimate Justification For the Moratorium

297. The third *Arlington Heights II* factor pertains to the defendant's justification for taking the discriminatory action. *Arlington Heights II*, 558 F.2d at 1290. For a justification to be considered legitimate it must be "of substantial concern such that

it would justify a reasonable official in making this determination.” *Huntington Branch*, 844 F.2d at 939. Even if a justification is “non-frivolous,” it “may not be sufficient because it is not reflected in the record.” *Id.* Moreover, “[p]ost hoc rationalizations . . . cannot be a bona fide reason for the . . . action.” *Id.* at 940. If local officials did not articulate the justification at the time of the policy or decision, “it was obviously not a legitimate problem.” *Id.*

298. As discussed above, over the course of this litigation, Defendants have put forward the following four reasons for passing the moratorium: (1) there is no need for affordable housing; (2) the Parish lacks adequate infrastructure and medical services; (3) the Parish needs to do a zoning update; and (4) design standards are needed. None of these justifications are legitimate; all are pretextual. The basis for this conclusion is discussed at length in ¶ 245-¶ 279 above and need not be repeated here. Summarized briefly, the reasons for the Court’s findings as to pretext are as follows:

299. First, the testimony of Ms. Rose leaves no doubt that there is a great need for affordable housing in St. Bernard Parish, which will only increase in the coming years. Her approach of collecting data on the current and future trends in the housing and job markets as well as analyzing the impact of government housing recovery programs is more thorough and persuasive than the “snap-shot” approach taken by Defendants’ expert, Dr. Ragas. The Court finds her methodology to be sound and her conclusion that there is an unmet need for affordable housing in the Parish that will continue to grow over the coming years to be persuasive and supported by the evidence.

300. Second, Defendants’ argument that there is insufficient infrastructure and medical services to accommodate the proposed developments is belied by the facts and

testimony of President Taffaro. President Taffaro sent a letter on October 9, 2008 confirming that the Parish had sufficient infrastructure to support the developments. (Pls.' Evid. Hr'g Ex. 14.) Further, Taffaro testified that he has been working tirelessly to attract investment to the Parish in an effort to rebuild the infrastructure and draw people back. (Tr. of Mar. 11 Hr'g at 252-260.) He also admitted that a deal had been reached to build a 40-bed hospital in the Parish and there was a plan in place to construct public health, substance abuse, and psychiatric facilities. (Tr. of Mar. 12 at 9; Tr. of Mar. 11 at 255-256.)

301. Third, the need for zoning updates appears to be a post-hoc rationalization asserted during litigation for the purposes of concealing the Parish's discriminatory intent. In their many conversations about the proposed developments, Parish officials never told Provident about the process of updating the zoning code or indicated that it would delay construction. Indeed, the Parish sent a letter confirming that the proposed developments were consistent with the zoning code. (Pls.' Evid. Hr'g Ex. 6.) Explanations that were not made at the time of the action taken are entitled to little weight.

302. Finally, Defendants' claim that they needed to have design standards in place before the moratorium could be lifted does not explain the failure to respond to design standards that were submitted by Provident in September 2008, and that the Council and Parish conceded were unobjectionable. Both President Taffaro and Councilman Lauga testified that as soon as design standards were passed, the moratorium would be lifted. (Tr. of Mar. 12 Hr'g at 31, 92-93.) Yet when Provident sent Councilman Lauga design standards, no action was taken by the Council to implement

them. (Tr. of Mar. 11 Hr'g at 87-89,) Three months later, Councilman Lauga introduced design standards that were similar in virtually all respects to those submitted by Provident in September. Yet the Council has to this date failed to take any action on those standards. If the Parish and the Council actually intended to work with Provident to facilitate the construction of the developments as they asserted, they would have moved quickly to implement the necessary design standards rather than delaying indefinitely in the face of an impending deadline to obtain tax credit funding.

303. For all of the reasons asserted above and in ¶¶ 245-¶ 279 the Court finds that none of Defendants' alleged justifications for the moratorium is legitimate or bona fide.

D. Even if Defendants Had Asserted a Proper Justification for the Moratorium, Which They Have Not, a Less Discriminatory Alternative Was Available.

304. When evaluating the legitimacy of a defendant's justification for a discriminatory action, courts consider whether there was a less discriminatory alternative available to the defendant that would accomplish the same objective. *See Huntington Branch*, 844 F.2d at 939. Although the Court finds that none of Defendants' alleged justifications for passing the moratorium are legitimate, even if they were legitimate, there was a less restrictive alternative available. Defendants could have expeditiously approved the proposed design standards, which would have automatically resulted in the lifting of the moratorium.

305. The Parish Defendants provided no satisfactory explanation for their failure to work with Provident and approve the proposed design standards before the expiration of Provident's funding. Both Parish President Taffaro and Councilman Lauga

testified that as soon as the design standards were implemented, the moratorium would automatically be lifted. (Tr. of Mar. 12 Hr'g at 30-31; *see also id.* at 92.) Provident provided Councilman Lauga with proposed design standards as early as September of 2008. (Tr. of Mar. 12 Hr'g at 86-87, 91.) Knowing that the moratorium halted construction of Provident's developments, and knowing that a delay in construction would cause Provident to lose its funding, Lauga took no action with respect to the design standards for three months. He never responded to Provident with feedback about the proposed standards and never notified Provident when, three months later, he finally introduced design standards that were very similar to those provided by Provident (Tr. of Mar. 12 Hr'g at 91-92.) Councilman Lauga did not provide a satisfactory explanation for his delay in introducing the design standards in the face of Provident's construction deadlines. Moreover, as of March 12, 2000, there had been no action taken by the Council on the design standards introduced by Councilman Lauga. Lauga failed to provide a satisfactory explanation for this failure to act in the face of Provident's construction deadlines and this litigation.

306. Expeditious adoption of design standards would have been a less discriminatory course of action. Passage of the design standards would have ended the moratorium. As discussed above, the moratorium had a discriminatory impact on African Americans. Shortening the period of the moratorium would have lessened its discriminatory effect on both African-American renters generally, and African-American renters who were qualified to rent at Provident's developments in particular. With the moratorium lifted, Provident could have gone forward with its planned construction and the Parish could have benefited from the desegregative effect of the projects.

307. In the face of great unmet demand for affordable housing, the Parish delayed and obstructed a sorely needed development project funded by a one-time expenditure of federal money. The duration of the moratorium was not necessary to accomplish the Parish's alleged objectives. The Parish could have easily met those objectives through swift implementation of the design standards. Instead, Defendants made no effort to pass the design standards before the expiration of Provident's funding.

E. The Movants Do Not Seek to Compel the Affirmative Provision of Housing, But Rather Ask That the Council Cease Its Interference

308. The fourth *Arlington Heights II* factor weighs heavily in favor of the Plaintiffs. "[T]he courts are far more willing to prohibit even nonintentional action by the state which interferes with an individual's plan to use his own land to provide integrated housing." *See Arlington Heights II*, 558 F.2d at 1293. GNOFHAC and Provident are not asking the Council to affirmatively provide integrated housing, but rather to stop blocking Provident's and other potential housing providers' attempts to build affordable housing in St. Bernard Parish.

309. Plaintiffs have made a convincing showing that all four factors of the *Arlington Heights II* test have been met. Weighing heavily in their favor is the undisputed statistical evidence demonstrating the disproportionate adverse effect of the moratorium on African Americans and its segregative effect on the New Orleans area. Plaintiffs have also provided evidence that the moratorium was passed with the intent to discriminate. None of the Parish or Parish Council's purported justifications for the moratorium are persuasive and even if they were, there was a less discriminatory alternative available. These factors, combined with the fact that Plaintiffs seek only to lift the impediments to affordable housing development imposed by the Defendants,

compel the conclusion that the moratorium has an unlawful and unjustified disproportionate adverse impact on African Americans that violates the FHA.

CONCLUSION

310. For all of the foregoing reasons, the Court finds that the multi-family moratorium enacted by the Parish and Council on September 19, 2008 violates the Fair Housing Act, 42 U.S.C. §3604(a), which makes it “unlawful ...[t]o make unavailable or deny ... a dwelling to any person because of race, color, religion or national origin.” The Consent Order entered by the Court on February 27, 2008 provides that St. Bernard Parish has continuing obligations until February 27, 2011. (Docket #114.) The Order enjoined St. Bernard Parish from, *inter alia*, violating the Fair Housing Act. (*Id.* at 6.) Accordingly, the Court further finds that the Parish and the Council have violated this Court’s Order of February 27, 2008.

311. By separate Order defendants hereby are, and shall be, enjoined from continuing to enforce the September 19, 2008 moratorium on multi-family housing. The Court shall entertain evidence of damages suffered by Plaintiffs at a future hearing date.

Date: March 18, 2009

Respectfully submitted,

/s/ Katherine A. Gillespie

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**CERTIFICATE OF SERVICE
EASTERN DISTRICT OF LOUISIANA**

I hereby certify that a true and correct copy of the foregoing Plaintiffs' Proposed Findings of Fact and Conclusions of Law was filed and served this 18th day of March, 2009, using the CM/ECF system, which will serve as notification of such filing on the following:

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