

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

GREATER NEW ORLEANS FAIR HOUSING  
ACTION CENTER, and  
WALLACE RODRIGUE,

Plaintiffs,

vs.

ST. BERNARD PARISH and ST. BERNARD  
PARISH COUNCIL,

Defendant.

\* CIVIL ACTION  
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\* NO. 2:06-CV-07185  
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\* SECTION C  
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\* JUDGE BERRIGAN  
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\* MAGISTRATE JUDGE SHUSHAN  
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION TO ENFORCE CONSENT DECREE**

**INTRODUCTION**

In the wake of Hurricane Katrina, St. Bernard Parish passed an ordinance that prohibited any St. Bernard Parish resident from renting a single-family residence to anyone other than a blood relative. The effect and purpose of the ordinance was to “maintain demographics” by preventing African Americans from moving into the Parish. Plaintiffs Greater New Orleans Fair Housing Action Center (“GNOFHAC”) and Wallace Rodrigue sought a preliminary injunction to enjoin St. Bernard Parish from enforcing its ordinance. Their efforts were successful. Defendants repealed the ordinance and agreed to a Consent Order, which enjoined the Parish from violating the Fair Housing Act, and 42 U.S.C. §§ 1981, 1982, and 1983 for a period of three years, beginning on February 27, 2008.

With the ink barely dry on the Consent Order, St. Bernard Parish is at it again. In a clear end run around the failed blood relative ordinance, Plaintiffs have now learned that the Parish has passed a moratorium on the construction of structures with more than 5 units. The new ordinance has precisely the same disparate impact on minorities as the blood relative ordinance. Ninety percent of structures with more than 5 units in the New Orleans metropolitan area are rental housing. Fifty-one

percent of those who live in these units are African American, compared to 25% who are white. African Americans are twice as likely to live in rental housing as whites. The discriminatory intent of this ordinance, particularly when viewed in light of St. Bernard's recent efforts to close the door on minority renters, is obvious. It is for this reason that GNOFHAC has filed this motion; absent the Court's intervention, the hard won gains reflected in the February 27, 2008 Consent Order will be lost.

The moratorium also affects the interests of Provident Realty Advisors, Inc. ("Provident"), which has moved to intervene in this case. Provident is an affordable housing provider that is currently in the process of trying to build four affordable housing developments through the use of the first and only housing tax credits awarded in St. Bernard Parish to date. The moratorium halts those developments, which allocate the majority of their units to lower income renters. African American families are far more likely to have incomes within the ranges for the proposed affordable housing developments. For example, 14.29% of African American families fall within the lowest income range, compared to only 4.6% of white families. Among those who need affordable housing the most, African American families are more than three times as likely to be affected by the moratorium as white families.

The new moratorium is in clear violation of the Fair Housing Act and the Consent Order. If the moratorium is allowed to remain, it will eviscerate the purpose of the Consent Order and render the challenge to the blood relative ordinance a nullity. The moratorium is simply another attempt to achieve the discriminatory purpose that the Consent Order was designed to prevent. It represents a continuation of the Parish's prior efforts to perpetuate segregation, though this time it not only prohibits the availability of rental housing generally, it also takes aim at specific projects designed to alleviate the desperate need for affordable housing in post-Katrina New Orleans. For those reasons, and those explained more fully below, GNOFHAC and Provident bring this Motion and ask the Court to enforce the Consent Order and request that the Court direct St. Bernard Parish to rescind the

moratorium.

## **FACTUAL BACKGROUND**

### **I. Plaintiffs' Successful Challenge to the Blood Relative Ordinance**

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, St. Bernard Parish officials constructed blockades to prevent African Americans from entering, even authorizing sheriff deputies to shoot to kill. Lee Hancock, *In a City Split and Sinking Before Storm, Racial Issues Boil*, Dallas Morning News (Dec. 4, 2005). Despite the desperate need for housing, the Parish reinforced these barriers by moving quickly to enact various ordinances that restricted the construction, rehabilitation, and rental of housing in the Parish.

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. (Exh. 27.) The blood relative ordinance was only one of many ordinances enacted for the purpose of restricting the rental, rehabilitation, and/or construction of dwellings within St. Bernard Parish. An ordinance passed on November 1, 2005, for example, placed a twelve-month moratorium on the new construction of multi-family dwellings and prohibited the rehabilitation of any preexisting multi-family dwellings without first receiving the approval of the St. Bernard Parish Council ("Council"). (Exh. 28.) 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." (Exh. 29.) Four months later, 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. (Exh. 30.) All of these ordinances were passed as part of an effort to exclude African Americans who had been displaced after Hurricane Katrina from settling in

St. Bernard Parish.

A recent study confirms that the African American population in New Orleans suffered a substantially disproportionate share of the displacement caused by Hurricane Katrina. 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). In Orleans Parish, an estimated 272,000 African Americans were displaced, constituting 73% of the population affected by the hurricane in that Parish. Thomas Gabe et al., *Hurricane Katrina: Social-Demographic Characteristics of Impacted Areas*, CRS Report for Congress, at 16 (Nov. 4, 2005). Post-Katrina, the African American population of the City of New Orleans declined by 57% compared to a 36% decline in the white population, even after the return of many evacuees. *Resettling New Orleans*, at 7. The New Orleans metropolitan area also experienced a decrease in the African American population, from 38% in 2005 to 31% in 2006. *Id.* In contrast, the white population of the metropolitan area increased from 53% to 65%. *Id.*

Census data from 2000 reveals that whites constitute 88.3% of the population of St. Bernard Parish while African Americans constitute 7.6%. (*See* C. Bradford Decl. 6-7.) This is in stark contrast to the surrounding areas of Orleans, Plaquemines and Jefferson Parishes. (*Id.* at 6.) For example, according to the same census data, 67.3% of the population in Orleans Parish is African American, and 28.1% is white. (*Id.* at 6-7.) The contrast between the racial composition of households in St. Bernard Parish, the New Orleans Metropolitan Statistical Area (“MSA”)<sup>1</sup>, and Orleans Parish is also startling, with 6.1% of households in St. Bernard Parish African American, 33.4% in New Orleans MSA, and 60.1% in Orleans Parish. (*Id.* at 7.) 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 City, including St. Bernard Parish, did not

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<sup>1</sup> The New Orleans MSA includes Orleans, Jefferson, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, and St. Tammany. *See Id.* at 6.

change, with African Americans and Hispanics still a minority of the population. *Resettling New Orleans*, at 7-8. The estimated percentage of African Americans displaced by Katrina is fourteen times greater than the estimated percentage of African American homeowners in St. Bernard Parish. (Docket # 6-4, C. Bradford Aff., at 13.) To this day, St. Bernard Parish remains a highly segregated community.

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% of African American owner-occupied housing in the Parish. (*Id.* at 12.) At the same time, the blood relative ordinance lacked any legitimate justification. The Council's purpose in enacting the blood relative ordinance was ostensibly to re-establish "pre-existing neighborhoods," and to maintain the "integrity," "quality of life," "family atmosphere" and "quiet enjoyment" of their "long established neighborhoods." (Exh. 27.) There was no explanation, of course, as to why renters who were related by blood to the owners would better serve those goals than renters who were not related. One did not have to look far to divine the true purpose. A Council member who voted against the ordinance stated that it was passed "to block the blacks from living in these areas." 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." *New Law in St. Bernard Parish Stirs Controversy* (Sept. 28, 2006), available at <http://www.wwltv.com/local/stories/ww1092806jblaw.27895d18.html>.

On November 3, 2006, GNOFHAC and Wallace Rodrigue (an individual denied the opportunity to rent his property because of the blood relative ordinance) filed a motion for a preliminary injunction asking this Court to strike down the ordinance. Plaintiffs argued that the ordinance violated the Fair Housing Act of 1968 as amended, 42 U.S.C. § 3601 et seq.; 42 U.S.C. §§

1981, 1982, and 1983.<sup>2</sup> After a year of contentious litigation, St. Bernard Parish finally capitulated and permanently rescinded the single-family ordinances and the blood relative ordinance. The Plaintiffs and Defendants 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. 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.

Now, mere months after the Court entered the Consent Order in this case, the Council has passed a new ordinance, this time in the form of a moratorium prohibiting the construction of multi-family dwellings with 5 units or more. For the reasons discussed in detail below, this new moratorium has the same purpose and effect as the blood relative ordinance; it represents simply another effort on the part of St. Bernard Parish to "maintain the demographics" and keep African Americans from resettling within the Parish.

## **II. Despite the Desperate Need for Affordable Housing in the Parish and the New Orleans Metropolitan Area, the Parish Enacted a New Moratorium on Rental Housing that Stops the Construction of Multi-Family Housing and Operates to Disproportionately Exclude Minority Families Seeking to Live in St. Bernard Parish**

### **A. The Need for Housing in St. Bernard Parish**

The aftermath of Katrina has created a desperate need for affordable housing in the New Orleans metropolitan area. A recent Louisiana Housing Finance Agency housing needs assessment concluded that: "[b]ased on the loss of affordable housing as a result of storm damage and changing market conditions, the New Orleans metro area will need an additional 29,000 to 50,000 rental units affordable to low income households to reach pre-Katrina levels." Louisiana Housing Finance

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<sup>2</sup> The multi-family ordinance passed on November 1, 2005, expired on November 1, 2006. 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.

Agency, *Louisiana and New Orleans Metro Housing Needs Assessment*, at 1, 12 (Feb. 15, 2008) (hereinafter *Housing Needs Assessment*), available at [http://www.edsuite.com/proposals/proposals\\_264/122\\_2\\_2-27-08\\_louisiana\\_housing\\_needs\\_assessment\\_final.pdf](http://www.edsuite.com/proposals/proposals_264/122_2_2-27-08_louisiana_housing_needs_assessment_final.pdf). The availability of affordable housing is essential to the region's recovery. See Amy Liu & Allison Plyer, *A Review of Key Indicators of Recovery Two Years After Katrina*, Brookings Institution Metropolitan Policy Program, at 18, available at [http://www.brookings.edu/reports/2007/~media/Files/rc/reports/2007/08\\_neworleansindex/200708\\_katrinaES.pdf](http://www.brookings.edu/reports/2007/~/media/Files/rc/reports/2007/08_neworleansindex/200708_katrinaES.pdf) ("Increasing the supply of affordable housing and ameliorating the overall cost of living in the region for teachers and nurses, waiters and child care workers remains paramount to the social and economic recovery of the region"). Yet affordable housing is severely lacking and homelessness is on the rise. Susan Saulny, *New Orleans Hurt by Acute Rental Shortage*, New York Times (Dec. 3, 2007) (quoting executive director of Unity of Greater New Orleans, "virtually no new affordable housing has yet appeared in New Orleans to replace what was lost," and noting the homeless population in New Orleans has nearly doubled).

Ninety-three percent of renter households in St. Bernard Parish sustained major and severe housing damage from Katrina. It is estimated that an additional 2,625 additional affordable rental units are needed in St. Bernard Parish, just to get back to pre-Katrina levels in the Parish. *Housing Needs Assessment*, at 3, 13.<sup>3</sup> Not surprisingly, when the St. Bernard Parish Department of Housing and Redevelopment recently held a lottery for federal housing choice vouchers, hundreds of people showed up for a chance at the 140 vouchers that would be awarded. *Hundreds lined up for housing vouchers in St. Bernard*, Times-Picayune (Dec. 4, 2008).<sup>4</sup>

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<sup>3</sup> Another estimate from 2006 measured the percentage of renter-occupied housing units in St. Bernard Parish with minor, major or severe/destroyed damage at 97%. Greater New Orleans Community Data Center, *Current Housing Unit Damage Estimates: Hurricanes Katrina, Rita, and Wilma*, at 25 (Feb. 12, 2006, rev. April 7, 2006), available at [http://www.dhs.gov/xlibrary/assets/GulfCoast\\_HousingDamageEstimates\\_021206.pdf](http://www.dhs.gov/xlibrary/assets/GulfCoast_HousingDamageEstimates_021206.pdf).

<sup>4</sup> GNOFHAC Executive Director and President of the Louisiana Housing Alliance, James Perry, has testified before Congress that "the process of rebuilding affordable rental housing has been extremely difficult, because Louisiana municipalities have sought to limit the construction of affordable housing. Anti-affordable housing efforts, often termed 'not in my backyard' (NIMBY) have slowed and in some instances stopped the development process."

In the face of this overwhelming need for affordable housing, on September 16, 2008, St. Bernard Parish passed a moratorium prohibiting “all R-3 (Multiple-Family Residential), and/or any housing developments with five (5) or more units for up to twelve (12) months or until such time as the Council approves these structures in the zoning updates to the St. Bernard Parish Code of Ordinances.”<sup>5</sup> (Exh. 31.) This moratorium is essentially the same as the moratorium on multi-family housing passed in 2005. (See Exh. 28.) Like the 2005 ordinance, the current ordinance prohibits all construction of any multi-family housing, in this case, with five or more units.

After learning of the moratorium, GNOFHAC and Provident contacted the Parish to advise it of their concerns. At approximately the same time, GNOFHAC was contacted by Provident. As explained below, Provident stands to lose its investment in four affordable housing projects it has initiated in St. Bernard Parish if the moratorium is permitted to stand.

### **B. History of Provident’s Proposed Developments**

Provident, a developer of multi-family properties, established PRA-SE Development, LP (“PRA-SE”) in 2006 to develop properties in Louisiana. (M. Harris Decl. at ¶ 5.) PRA-SE learned in early 2008 that St. Bernard Parish was likely to be targeted for federally funded affordable housing support in recognition of the need for such housing as a result of Hurricane Katrina. (*Id.* at ¶ 8.) PRA-SE accordingly contacted local landowners in March 2008 about purchasing property for multi-family developments and established four entities to own and operate four proposed apartment complexes. (*Id.* at ¶ 9.) After PRA-SE learned in May that St. Bernard Parish had indeed been selected for federal incentives it proceeded to enter into contracts to purchase the land and commissioned market studies of the proposed developments. (*Id.* at ¶¶ 11-13.) The market studies confirmed the need for affordable housing in the Parish and the economic feasibility of the developments. (*Id.* at ¶ 13.)

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Testimony of James Perry, *Emergency CDBG Funds in the Gulf Coast: Uses, Challenges, and Lessons for the Future: Hearing Before the Subcomm. on Hous. and Cmty Opp. of the Comm. on Fin. Serv.*, 100<sup>th</sup> Cong. 240 (2008).  
<sup>5</sup> R-3 refers to zoning that includes multiple-family dwellings, apartments, hotels, boardinghouses, convalescent and nursing homes. St. Bernard Parish Code of Ordinances, Ch. 22-5-6, Figure 1.

On July 14, 2008, Matthew Harris, a Provident Managing Director, and another Provident employee met with Parish Council President Craig Taffaro, Parish Sheriff Jack Stephens, and Parish Councilmen Ray Lauga and George Covinnac to discuss the proposed developments. (*Id.* at ¶ 15.)

On July 23, 2008, the Council confirmed to Provident that its proposed developments were in conformance with local zoning laws. (M. Harris Decl. at ¶ 16 & Exh. 6 thereto.)

On August 7 and 10, 2008, Provident ran public notices in support of contemporaneous applications for housing tax credits and CDBG funds needed to develop the affordable housing communities. (*Id.* at ¶ 18.) In response, an editorial appeared in The St. Bernard Voice questioning the developments and asking: “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?” (*Id.* at ¶ 19 & Exh. 11.) The editorial went on to state that “[t]he 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 background of the intended occupants.” (Exh. 11.) The editorial then 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.*) On August 19, 2008, three days after the editorial appeared, Councilman Lauga introduced the multi-family moratorium. (*Id.* at ¶ 20.)

Mr. Harris made a presentation on August 26, 2008 to Council President Taffaro, Parish Sheriff Jack Stephens, Councilman Lauga, as well as several others, and answered their questions about the proposed developments. (*Id.* at ¶ 21.) After the meeting, Councilman Lauga stated that the moratorium was a necessary step in the process for him to sell his constituents and get approval for the Affordable Housing Communities. (*Id.* at ¶ 23.) Pursuant to that understanding, on September 9, 2008, Mr. Harris sent Councilman Lauga draft “standards” for the developments. (*Id.* at ¶ 24.) However, the next day, the Executive Finance Committee recommended approval of the moratorium and on September 16, the Council unanimously voted in favor of the moratorium. It passed as

Ordinance SBPC #905-09-08. (*Id.* at ¶ 25.) Upon information and belief, the PRA-SE developments are currently the only housing developments affected by the moratorium.

Mr. Harris made a presentation about Provident and the proposed developments at the Parish Council meeting on October 7, 2008. (*Id.* at ¶ 27.) A PRA-SE employee attended a public meeting held in Councilman Lauga's district on October 16, 2008, to answer questions about the proposed developments. (*Id.* at ¶ 29.) There was substantial public comment in opposition to the developments at that meeting. (*Id.*) At that meeting, Councilman Lauga indicated he was considering PRA-SE's proposed standards. (*Id.*) However, on November 12, 2008, the day that the tax credits and CDBG funds were to be awarded, the Council faxed a copy of the moratorium along with a cover letter to the Louisiana Housing Finance Agency, objecting to any funding of the proposed developments in St. Bernard Parish. (*Id.* at ¶ 31 & Exh. 15.) Specifically, the letter stated that:

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 ... 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 Parish does not have full health care or support services in place).

(Exh. 15.) Despite the Parish's opposition, PRA-SE's proposed developments were awarded the tax credits and CDBG funding. (M. Harris Decl. at 31.)

On November 21, 2008, Mr. Harris and counsel met with Parish officials, including Parish President Taffaro and Parish Legal Counsel Michael Gorbaty, and notified them that PRA-SE believed the moratorium violated the Fair Housing Act. (*Id.* at ¶ 34.) They suggested that PRA-SE meet with other Council members and indicated that the matter would be considered in executive session at the next Council meeting. (*Id.*) Accordingly, Mr. Harris scheduled another meeting with Council members. (*Id.* at ¶ 35.) On November 25, 2008, Mr. Harris and legal counsel appeared for

the scheduled meeting, but only one of the three Council members who had agreed to attend showed up. (*Id.* at ¶ 36.) PRA-SE contacted GNOFHAC on December 1, 2008, and learned that GNOFHAC was also concerned about the moratorium.<sup>6</sup>

By letter of December 1, 2008, GNOFHAC notified the Council that it objected to the multi-family moratorium and detailed how it violated the Fair Housing Act. GNOFHAC also put the Council on notice that it was in violation of the February 27, 2008 Consent Order. (Exh. 32.) GNOFHAC did not receive a response to its letter.

### **C. Efforts to Confer With Parish Counsel**

On December 2, counsel for GNOFHAC and Provident contacted Michael Gorbaty, counsel for St. Bernard Parish, to notify the Council of its view that the enactment of the multi-family moratorium likely violated the Consent Order and to request an opportunity to discuss their concerns. (Exh. 33.) Counsel made clear that timing was of the essence in order to avoid harm to Provident. (*Id.*) On December 3, Mr. Harris learned that the Council had discussed the moratorium in an executive session the prior evening, but had not repealed it. (M. Harris Decl. at ¶ 39.)

Counsel for GNOFHAC, Provident and the Council conferred telephonically on December 4, 2008. Council President Craig Taffaro and Councilman Ray Lauga participated in the call. Counsel for GNOFHAC and Provident explained that the moratorium would have a disproportionate impact on minorities and that it therefore violated the Fair Housing Act. Counsel further explained that because the developers have to incur 10% of the projected costs for the affordable housing communities by December 15,<sup>7</sup> the moratorium must be repealed immediately.

That same day, counsel for GNOFHAC and Provident asked counsel for the Parish, Michael Gorbaty, to post notice of two special council meetings on December 9 and 12 to announce the repeal of the moratorium and vote on the repeal. (Exh. 34.) As of December 9, the Council had not

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<sup>6</sup> GNOFHAC had already independently contacted the Council about the moratorium. (*Id.* at 37.)

<sup>7</sup> The deadline was changed to December 31.

indicated whether it would repeal the moratorium. (Exh. 35.) Accordingly, counsel for GNOFHAC and Provident contacted counsel for the Parish again and repeated their request. (*Id.*) Counsel for the Parish responded by stating “[t]he proposed revisions to the code will be introduced to the Council at its next meeting on December 16, 2008, and will follow the procedures required by our Home Rule Charter.” (Exh. 36.) Counsel for GNOFHAC and Provident informed counsel for the Parish on December 10, 2008, that the response did not resolve their concerns. (Exh. 37.)

First, the response did not indicate whether the Council had decided to repeal the moratorium. (*Id.*) Second, it did not provide a specific timeline for any possible repeal. (*Id.*) Third, it suggested that the repeal of the moratorium was dependent on the adoption of design standards that Councilman Lauga had previously mentioned to Mr. Harris, and did not address the concern that the moratorium violates the Fair Housing Act. (*Id.*) Finally, it neither provided details about the standards themselves, nor indicated whether there would be any opportunity for Provident or GNOFHAC to comment on the standards. (*Id.*)

Counsel for all parties spoke again on December 10, 2008, and counsel for the Parish indicated that the repeal of the moratorium was indeed dependent on the adoption of design standards. (Exh. 38.) When counsel for Provident and GNOFHAC insisted that with or without design standards, the moratorium was illegal, counsel for the Parish responded “Your words, not mine.” (*Id.*) Counsel for the Parish provided the draft design standards to counsel for GNOFHAC and Provident later that day. (Exh. 39.)

On December 11, 2008, counsel for GNOFHAC and Provident again asked for clarification of the Council’s intent and its proposed timeline, and warned the Council again that it was in violation of the Consent Order. (Exh. 38.) Counsel for GNOFHAC and Provident made clear that “[t]he proposed regulations not only impose design standards, but also appear to set up an arduous and extremely time-consuming process before any affordable housing project can move forward, which it will presumably apply to Provident’s four developments in St. Bernard Parish.” (*Id.*) In

addition, counsel noted that the new regulations appeared to set up a process in which it would take 120 days in a perfect scenario for a development application to be approved and that Provident had an obligation to move forward with the developments or lose its tax credits and CDBG funding before the 120 days would expire. (*Id.*)

As things now stand, Provident must begin construction of the developments by February 1, 2009, for the Housing Tax Credit financing and by March 31, 2009, in order to receive CDBG funds. (Harris Decl. at ¶ 42.) It is likely that the earliest the passage of the new regulations could occur is sometime in January, at which point Provident would have to begin the process outlined in the regulations. Even if the process only takes 120 days, the deadlines for construction will have passed, with no guarantee that the developments will be approved by the Council.

**D. The Multi-Family Moratorium Has a Disparate Impact on African Americans**

An analysis of publicly available demographic data demonstrates that the moratorium has a disproportionate adverse effect on African Americans. First, the moratorium's restriction on the supply of housing units in complexes with more than 5 units disproportionately disadvantages African American households in the New Orleans metropolitan area. (C. Bradford Decl. at 10.) Over 17% of African American households in the New Orleans metropolitan area live in structures with 5 or more units, compared to only 9.54% of whites. (*Id.*) This is statistically significant at the 99% confidence level,<sup>8</sup> with a disparity ratio of 1.85. It means that African American households are 85% more likely to live in structures with more than 5 units. (*Id.* at 10.)

Second, because over 90% of structures with more than 5 units contain rental units, the moratorium's ban on those structures is effectively a ban on the construction of rental units. (*Id.* at 10.) Over 51% of African American households in the New Orleans metropolitan area live in rental units, compared to just over 25% of whites. (*Id.* at 10-11.) That difference is statistically significant

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<sup>8</sup> Conducting statistical tests at the 99% confidence level, as opposed to the 95% confidence level, is the more conservative method. Tests performed at the 95% confidence level would be more likely to show statistically significant differences than those performed at the 99% level. (C. Bradford Decl. at 9.)

at the 99% confidence level. (*Id.* at 11.) The disparity ratio is 2.06, meaning that African American households are twice as likely as whites to live in rental housing. (*Id.*)

Third, the moratorium's restriction would halt four proposed developments that would provide low income housing and therefore have a disproportionate effect on African Americans. Fifty percent of the units in each of the four proposed developments are reserved for households who earn 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 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.) Census estimates reveal that 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 whites. (*Id.* at 12.) Focusing on families as opposed to households, 14.29% of African American families<sup>9</sup> 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 to have incomes within the lowest range. (*Id.* at 13.)

In the next highest income range, the difference is also significant. Twenty-one percent of African American households fall within that income category as compared to 14.28% of white households. (*Id.* at 12.) Again, focusing on families as opposed to households, the difference is significant, with 22.17% of African American families falling within the low 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 range than white families. (*Id.* at 13.) Comparing the racial disparity ratios for every income in the range between \$10,000 and \$34,999 (e.g. \$10,000 to \$14,999, \$15,000 to \$19,999), the disparities increase as the income level decreases, from a ratio of 1.5 to 4.11. (*Id.* & Table 6.) In each case the disparity disadvantages African

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<sup>9</sup> Families are defined as one or more persons related by blood, marriage or adoption, but unlike households, does not include single individuals or a group of individuals living together who are not related.

Americans.

The point is clear: St. Bernard Parish's moratorium has a disparate impact on African Americans. It ensures that no affordable housing will be built there. The lack of affordable housing disproportionately denies African Americans access to housing.

### **ARGUMENT**

The Consent Order entered by the Court on February 27, 2008 provides that St. Bernard Parish has continuing obligations until February 27, 2011. (Docket Entry #114.) The Order enjoined St. Bernard Parish from, *inter alia*, violating the Fair Housing Act. (Order at 6.) Thus, if the St. Bernard Parish Council violates the Fair Housing Act, it violates this Court's Order. As the following discussion shows, the Council has violated the Fair Housing Act through the passage of its 2008 multi-family moratorium, which has both the intent and effect of discriminating against African Americans. Each day that the moratorium remains in place is another day that the Council is in violation of this Court's Order.

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

The Council'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 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." A party violates the Fair Housing Act by taking actions that have a discriminatory effect, even if there is no evidence of intent to discriminate. *Cox v. City of Dallas*, 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. BlackJack*, 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)).

A plaintiff must make a prima facie showing of discriminatory effect to establish a violation of the Fair Housing Act. *Huntington Branch, NAACP v. Huntington*, 844 F.2d 926, 939 (2d Cir. 1988). The burden then shifts to the defendants to present “bona fide and legitimate justifications for its action with no less discriminatory alternatives available.” *Huntington*, 844 F.2d at 939. The relevant factors in assessing whether St. Bernard Parish has violated the Fair Housing Act 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. *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1290-1293 (7th Cir. 1977) (hereinafter *Arlington Heights II*). In order to conform with the purpose of the Fair Housing Act in providing fair and integrated housing, courts “must decide close cases in favor of integrated housing.” *Id.* at 1294.

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

The moratorium has precisely the same significantly disproportionate impact that the blood relative ordinance had. Like the blood relative ordinance, it 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. 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. (C. Bradford Decl. at 10.) This 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.*)

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 is also statistically significant. It means that African American households are twice as likely as whites to live in rental housing. (*Id.* at 11.)

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.)

In the next highest income range, the difference is also 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 difference is also significant, with 22.17% of African American families falling within the next highest 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.*)

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

The significant disparate impact clearly supports an inference that the moratorium was enacted with a discriminatory purpose. Statistics demonstrating that official action has a disproportionate impact on minorities is evidence of discriminatory intent. *See Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977) (hereinafter *Arlington Heights I*); *Resident Adv. Bd. v. Rizzo*, 564 F.2d 126, 143 (3d Cir. 1977). Although the statistics in this case make a strong enough case to satisfy the standard set forth in *Arlington Heights I*, there are additional

factors that demonstrate discriminatory intent behind the ordinance. The timing of the passage of the moratorium, the history of racial hostility in St. Bernard Parish, and the lack of a legitimate justification for the moratorium all support a finding that the Council acted with discriminatory intent. The Court should consider these factors as a whole in determining whether discrimination was “a motivating factor.” *Arlington Heights I*, 429 U.S. at 265-67 (emphasis added); *see also Rizzo*, 564 F.2d at 143; *United States v. Pelzer*, 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 the passage of the moratorium indicates a discriminatory motive*

On July 23, 2008, the Council confirmed to Provident that its proposed developments were in conformance with local zoning laws. (M. Harris Decl. at ¶ 16 & Exh. 6.) It was only after an editorial appeared in *The St. Bernard Voice* on August 16, 2008, that Councilman Lauga introduced the multi-family moratorium. (*Id.* at ¶ 19.) The editorial suggested the proposed developments could bring “crime” and “blight” to the Parish and asked: “Ours was a crime free community of homeowners with a deep appreciation for shared values ... Is that now threatened?” (Exh. 11.) The references to “crime,” “blight,” and “shared values” are nothing more than “camouflaged racial expressions.” *Smith v. Clarkton*, 682 F.2d 1055, 1066 (4th Cir. 1982) (affirming finding 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 (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”).

After that editorial appeared, Councilman Lauga informed Mr. Harris that the moratorium was necessary “to sell his constituents and get approval for the Affordable Housing Communities.”

(M. Harris Decl. at ¶ 23.) This statement, coupled with the timing of the moratorium, amounts to a virtual admission that the moratorium was a procedural ruse to assuage the discriminatory opposition in the community. In addition, the supposed need for design standards that would update the zoning regulations is inconsistent with the prior certifications from the Council that the properties were properly zoned for the proposed projects. (Exh. 6.)

2. *St. Bernard Parish has a history of perpetuating segregation*

St. Bernard Parish has a history of using zoning ordinances to perpetuate segregation. 2000 census data reveals that 88.3% of the population in St. Bernard Parish is white and only 7.6% is African American. (C. Bradford Decl. 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.) St. Bernard Parish has persistently tried to maintain these demographics. As discussed above, the Council passed ordinances in 2005 and 2006 with similar restrictions on rental housing that disproportionately affected African Americans. 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.

Council President Taffaro was the Councilman who introduced the blood relative ordinance. He admitted the purpose of the blood relative ordinance was to “maintain demographics.” *New Law in St. Bernard Parish Stirs Controversy*, available at <http://www.wwltv.com/local/stories/ww1092806jblaw.27895d18.html>. Another Council member revealed the same intent, stating that “[w]e don’t want to change the aesthetics of a neighborhood.” 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 an intent to perpetuate segregation. “Conduct that has the necessary and foreseeable consequence of perpetuating segregation” constitutes a

violation of the Fair Housing Act. *Arlington Heights II*, 558 F.2d at 1289; *see also Mitchell*, 580 F.2d at 79; *United States v. City of Black Jack*, 508 F.2d 1179, 1186 (holding that 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).

3. *The impact of the moratorium was clearly foreseeable*

The foreseeability of the moratorium’s discriminatory impact is further evidence of discriminatory intent. In *United States v. 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.*

As discussed above, the Council’s appreciation of the impact of the moratorium is shown by Councilman Lauga’s statement that the moratorium was passed in order to appease opposition of his constituents (M. Harris Decl. at ¶ 23), and the timing of the introduction of the moratorium. And knowing from nearly two years of litigation with GNOFHAC that the previous blood relative ordinance had a discriminatory impact, the Council nonetheless passed the current moratorium. 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. Since that time, GNOFHAC and Provident have repeatedly told the Council that the moratorium had an adverse impact and asked them to repeal it, all to no avail.

**C. The Council Does Not Have Any Legitimate Justification for The Moratorium**

The Council's justifications are anything but "bona fide and legitimate." *Huntington*, 844 F.2d at 939. As demonstrated above, the Council's proffered justifications are belied by statistics demonstrating the need for affordable housing in St. Bernard Parish, close examination of the facts, and common sense. The Council's proffered justifications for the passage of the multi-family moratorium are three-fold. Two justifications are stated in a letter objecting to the provision of tax credits and the third is reflected in a statement from Councilman Lauga to Matt Harris. The Council stated in a letter to the Louisiana Housing Finance Agency that it objected to the four proposed developments essentially for two reasons: (1) St. Bernard Parish does not need new rental units; and (2) "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)."<sup>10</sup> (Exh. 15.)

In support of the first point, the Council claims that its "rental stock is flush with available properties in all price ranges which go unrented." (*Id.*) That claim is squarely rebutted by a 2008 Housing Needs Assessment conducted by the Louisiana Housing Finance Agency, which found that an additional 2,625 affordable rental units are needed in St. Bernard Parish in order to return to pre-Katrina levels. *Housing Needs Assessment*, at 3, 13. As if to prove the point, just recently hundreds

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<sup>10</sup> The Council also intimates in the letter that the four developments somehow threaten efforts to stabilize "the housing and/or rental market" and 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." (Exh. 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 in that case and the court there noted it was therefore "restricted to the deferential rational basis review" on the substantive due process claim. *Id.* at 27. In fact, the ordinance in that case is included within the Consent Order in this case; GNOFHAC is monitoring the Council's decisions on the permissive use permits and the Council is required to provide it with copies of all applications. That case is irrelevant to the issue presented in this Motion – that the Council passed a moratorium on the construction of rental housing that constitutes discrimination against African Americans under the Fair Housing Act. Moreover, the Council cannot excuse its actions by claiming it acts pursuant to legitimate zoning powers to protect property values; if its intent was discriminatory, it violates the Fair Housing Act. *See LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 425 (2d Cir. 1995).

of people showed up for a chance at federal housing choice vouchers in St. Bernard Parish.

*Hundreds lined up for housing vouchers in St. Bernard*, Times-Picayune (Dec. 4, 2008).

It is also inconsistent with Council President Taffaro's statements to the Louisiana Housing Finance Agency on October 9, 2008, that the Parish had sufficient infrastructure and "look[ed] forward to the agency's decision on these projects to coordinate our recovery accordingly." (Exh. 14.) Finally, Provident conducted market studies to ensure the economic feasibility of its developments and made the decision to go forward with the developments because it found a demonstrated need for affordable housing. (M. Harris Decl. at ¶ 13.) See *Black Jack*, 508 F.2d at 1188 (rejecting "assertion that there were already 'too many' apartments in Black Jack").

The second proffered justification, if accepted, would permanently bar any affordable housing developments from the St. Bernard Parish community. The suggestion that the funds could be "better applied" elsewhere is simply another way of saying "not in my backyard." The true justification comes instead from the editorial in *The St. Bernard Voice*, which 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?" (Exh. 11.) Just three days after the editorial appeared, on August 19, 2008, Councilman Lauga introduced the multi-family moratorium. (M. Harris Decl. at ¶ 20.) The close proximity between that editorial and the introduction of the moratorium strongly suggests that the Council was motivated by racial stereotypes and not legitimate governmental objectives. The fact that the moratorium was not enacted until after plans for the project were revealed is "further evidence of discriminatory intent." *Arlington Heights II*, 558 F.2d at 1292 (discussing *Black Jack*, 508 F.2d 1179).

Finally, Councilman Lauga's suggestion to Matt Harris that approval turns on design standards is belied by the facts. The Council passed a moratorium that lasts for an entire year or until "the Council approves these structures in the zoning updates to the St. Bernard Parish Code of Ordinances." (Exh. 31.) The "zoning updates" referred to are not specified anywhere in the

moratorium, and essentially leave the Council free to adopt any measure, no matter how onerous or unnecessary, in order to stop an affordable housing project. Nor does the moratorium place any requirements on when the Council must pass the zoning updates, leaving the possibility that no construction of multi-family housing will occur for another year. There was no mention of a need for zoning updates to Provident until after the moratorium was introduced, despite the fact that Provident had met with Parish Council President Craig Taffaro and other council members, including Councilman Lauga, to tell them about the proposed developments on July 14, 2008. (M. Harris Decl. at ¶ 15.) That “zoning updates” are suddenly needed is also inconsistent with the Council’s earlier confirmation to Provident that the proposed developments met with local zoning requirements. (*Id.* at ¶ 16.) The real purpose of these “zoning updates” is to create a procedural mechanism for blocking Provident’s development; the “zoning updates” contain not only new design standards, but also set up a detailed approval process that would take – in a best case scenario – 120 days to complete. (*Id.* at 41.) The Council has the opportunity at several points throughout the process to delay or deny approval, based on no standards other than its own discretion. As the Council is aware, Provident has an obligation to move forward with its developments or it will lose its tax credits and other funding before the 120 days expire. (*Id.*)

These proffered justifications are thus neither bona fide nor legitimate and should be rejected. *See Huntington*, 844 F.2d at 939. The Council’s excuses are clear pretext. Its intent is discriminatory, and in passing the moratorium it has violated the Fair Housing Act. *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.

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

The fourth factor also weighs heavily in favor of the movants here. GNOFHAC and

Provident are not asking the Council to affirmatively provide integrated housing, but rather for the Council to stop blocking Provident's and other potential housing providers' attempts to build affordable housing in St. Bernard Parish. *See Arlington Heights II*, 558 F.2d at 1293. "[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." *Id.*

**II. In Light of the Clear Violation of This Court's Order, GNOFHAC and Provident Request That the Court Enforce the Consent Order By Enjoining the Moratorium and Schedule A Hearing to Show Cause Why the Council Should Not Be Held in Contempt**

In light of the foregoing, GNOFHAC and Provident respectfully move this Court to enforce the Consent Order and request that the Court order the St. Bernard Parish Council to repeal the multi-family moratorium forthwith. *See Easton v. Sanders*, 67 F.3d 97, 100 (5th Cir. 1995) (affirming order granting motion to enforce consent decree). The Court retains jurisdiction over the matter for three years from the effective date of the Order – February 27, 2011 – and therefore has authority to enforce the Order. The Council has the power to repeal the moratorium by calling a special meeting and introducing an ordinance to repeal the moratorium. Home Rule Charter, Art. II, §§ 2-07(a); 2-11. It can then repeal the moratorium at a hearing held two weeks after it introduces the repeal. *Id.* at § 2-12(b).

It is essential that the Council be ordered to act quickly. GNOFHAC represents the interests of the greater New Orleans community in working to ensure compliance with fair housing laws by combating housing discrimination; its interests are directly threatened by the 2008 multi-family moratorium. Provident has incurred significant costs in the proposed developments, and continues to do so. (M. Harris Decl. at ¶ 45.) By December 31, it must incur 10% of its projected costs for the developments to meet requirements of the Low Income Housing Tax Credit program and owes a tax credit reservation fee of over \$50,000 for each of its four developments by January 5, 2009. (*Id.*) If Provident is not able to develop these affordable housing communities, it will incur penalties that will hinder its ability to obtain funds to develop affordable housing communities in the future. (*Id.* at

¶ 46.) Injury to both GNOFHAC and Provident can be avoided if the Court acts now to enforce compliance with the Consent Order by issuing an injunction, restraining the Council from enforcing the moratorium until such time as it has been repealed, and ordering the St. Bernard Parish Council to repeal its multi-family moratorium within 15 days of the Court's order.

The Court has inherent authority as well as authority pursuant to 18 U.S.C. § 401 to enforce compliance with its orders. *Shillitani v. United States*, 384 U.S. 364, 370 (1966); 18 U.S.C. § 401. A party commits contempt when he or she “violates a definite and specific court order requiring him to perform or refrain from performing a particular act or acts with knowledge of that order.” *Whitfield v. Pennington*, 832 F.2d 909, 913 (5th Cir. 1987).<sup>11</sup> Therefore, in addition to the relief requested above, GNOFHAC and Provident respectfully request that the Court schedule a show cause hearing for the Council to appear and show cause why it should not be held in contempt of the February 27, 2008 Order of this Court and required to pay damages, fees, costs, and any other sanctions deemed appropriate by the Court.

### CONCLUSION

For all of the foregoing reasons, Plaintiff GNOFHAC and Movant Provident respectfully request that the Court grant its Motion to Enforce the Consent Order.

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<sup>11</sup> Contempt may be civil or criminal based on the character, nature and purpose of the relief. *Hicks on behalf of Feiock v. Feiock*, 485 U.S. 624, 631 (1988). Criminal contempt is punitive and requires a “contemptuous act and a willful, contumacious, or reckless state of mind.” *In the Matter of Joyce*, 506 F.2d 373, 378 (5<sup>th</sup> Cir. 1975). Civil contempt is remedial and requires proof by clear and convincing evidence: “(1) that a court order was in effect; (2) that the order required certain conduct by the respondent; and (3) that the respondent failed to comply with the court's order.” *Petroleos Mexicanos v. Crawford Enter.*, 826 F.2d 392, 401 (5<sup>th</sup> Cir. 1987).

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Respectfully submitted,

/s/ John P. Relman

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