

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT  
No. 11-1159**

MT. HOLLY GARDENS CITIZENS IN ACTION, INC., a New Jersey non-profit corporation,  
ANA AROCHO, VIVIAN BROOKS, GEORGE CHAMBERS, DOROTHY CHAMBERS,  
SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY  
LOPEZ, DOLORES NIXON, LEONARDO PAGAN, JAMES POTTER, HENRY SIMONS,  
JOYCE STARLING, ROBERT TIGAR, TAISHA TIRADO, RADAMES TORRES BURGOS,  
LILLIAN TORRES-MORENO, DAGMAR VICENTE, ALANDIA WARTHEN, SHEILA  
WARTHEN, CHARLIE MAE WILSON and LEONA WRIGHT,

*APPELLANTS,*

vs.

TOWNSHIP OF MOUNT HOLLY, a municipal corporation of the State of New Jersey,  
TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, as governing body of the  
Township of Mount Holly, KATHLEEN HOFFMAN, as Township Manager of the Township of  
Mount Holly, JULES THIESSEN, as Mayor of the Township of Mount Holly, KEATING  
URBAN PARTNERS, L.L.C., a company doing business in New Jersey, TRIAD  
ASSOCIATES, INC., a corporation doing business in New Jersey,

*APPELLEES.*

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
Case No. 08-cv-02584 (NLH)**

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**BRIEF ON BEHALF OF APPELLANTS**

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**STATEMENT OF SUBJECT MATTER  
AND APPELLATE JURISDICTION**

Jurisdiction over the Plaintiffs-Appellants' ("Residents") claims is conferred on this court by 28 U.S.C. § 1331 (federal question jurisdiction) in that this action arises under the Constitution and laws of the United States; 28 U.S.C. § 1343(a)(4) as the Plaintiffs seek equitable and other relief under Acts of Congress providing for the protection of civil rights under, 42 U.S.C. § 3601 *et seq.*; 42 U.S.C. § 3613 for civil actions under 42 U.S.C. § 3601 *et seq.*; and 42 U.S.C. §1983, which provides redress for the deprivation, under color of state law, of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and laws of the United States.

This appeal is taken from a final judgment of the District Court of New Jersey, entered on Jan. 3, 2011, granting summary judgment to Defendants and dismissing all of Residents' claims. The Notice of Appeal was filed in a timely manner pursuant to F.R.A.P 4 on Jan.19, 2011.

**STATEMENT OF ISSUES**

1. Whether the District Court, in dismissing Residents' Title VIII disparate impact claims on summary judgment, misapplied well settled precedent by: (a) conflating "disparate treatment" with "disparate impact"; and (b) determining that governmental action disproportionately displacing minorities by eliminating lower income housing is not actionable under Title VIII?

2. Whether the District Court erred in finding that Residents, in opposing summary judgment, had failed to establish any genuine issue of material fact regarding their *prima facie* case of Title VIII disparate impact where Residents had presented uncontroverted expert evidence showing that the Township's redevelopment is having a "severe" disparate impact upon African-American and Hispanic residents?

3. Whether the District Court erred in finding that there was no genuine issue of material fact concerning redevelopment alternatives where Residents had presented expert evidence showing that the Township could have taken less destructive redevelopment alternatives having less discriminatory impact?

4. Whether the District Court erred in finding there was no genuine issue of material fact that Township officials had undertaken the Gardens redevelopment with discriminatory intent where residents had presented circumstantial evidence of discriminatory motive meeting the Arlington Heights factors?

5. Whether the District Court erred in converting a motion to dismiss to a summary judgment motion and rendering final judgment in the case even though Residents had been denied any opportunity for discovery?

### **STATEMENT OF THE CASE**

This is a civil rights action challenging Defendant-Appellee Mount Holly Township's ("Township") wide-scale redevelopment of the predominately

African-American and Hispanic, low and moderate income neighborhood known as Mt. Holly Gardens (“Gardens”). Plaintiffs-Appellants are an association of residents, Mt. Holly Gardens Citizens in Action, Inc., (“CIA”), and 23 current and former individual residents of the Gardens. The Township and its selected redevelopers, Defendant-Appellees Keating Urban Partners, LLC and Triad Associations, Inc. (“Keating,” “Triad,” or collectively, “Redevelopers”), are seeking to acquire and demolish all 329 homes within the Gardens redevelopment area that are affordable to current and displaced families to make way for new, much higher-priced market rate homes intended for more affluent households. If the redevelopment project proceeds as planned, the Township will succeed in irrevocably tearing down the most identifiable minority community within Mt. Holly, permanently displacing hundreds of lower income minority residents.

In prior state court litigation, in 2005 the Superior Court upheld the Township’s finding that the Gardens neighborhood met New Jersey’s state law criteria for designation as an “area in need of redevelopment.” JA 1360-70; (#18-09, pp. 1-10 (5/5/05 Op.)). The Trial court dismissed without prejudice the Residents’ civil rights and other substantive challenges to the redevelopment plan as not being ripe for adjudication. JA 1952-64, #84-04, pp. 1-13 (8/30/05 Op.). These rulings were affirmed on appeal. JA 1114-1132, #17-31, pp. 1-19 (App. Div. Op.); JA 1133, #17-32, p. 1 (Sup. Ct. Order).

The Residents filed their Complaint in federal District Court on May 27, 2008, alleging both disparate impact and intentional discrimination in violation of Title VIII, (First Count), the Civil Rights Act of 1866, as amended, 42 U.S.C. §1982, (Second Count), and violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution because of race, ethnicity and/or national origin, actionable pursuant to 42 U.S.C. §1983. (Third Count) JA 39-40 (Dkt.)<sup>1</sup> Residents and CIA sought, among other things, declaratory and injunctive relief invalidating the redevelopment plan, mandating that the Township carry out redevelopment in the Gardens in a manner having the least discriminatory adverse impact upon African-American and Hispanic households, and prohibiting implementation without providing adequate affordable replacement housing for all current and displaced Gardens residents. Residents and CIA also sought damages and/or just compensation sufficient for Residents to secure permanent replacement housing in the local housing market.<sup>2</sup>

On July 18, 2008, the Residents moved for preliminary injunctive relief and the Defendants moved to dismiss the claims. JA 42 (Dkt.); JA 56-1343; JA 1349-

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<sup>1</sup> Residents also included two additional constitutional claims (Tenth and Thirteenth Counts) and nine supplemental state law claims. These claims were dismissed early in the litigation and are not the subject of this appeal. JA 39-40 (Dkt.)

<sup>2</sup> The Complaint was amended on June 10, 2008 to add additional plaintiffs. JA 41 (Dkt.)

70. After the Township formally amended its redevelopment plan in September, 2008, Residents moved to amend their complaint. JA 46 (Dkt.). On October 28, 2008, the District Court granted in part and denied in part the motions to dismiss, finding that it had subject matter jurisdiction over the Residents' discrimination claims, and dismissing certain other claims as moot or as not yet ripe for adjudication. JA 46 (Dkt.). On November 25, 2008 the Court granted in part the motion for leave to amend. JA 48 (Dkt.). On November 26, 2008 Residents requested emergency relief to stop demolitions of Township-owned properties, which was denied. JA 48 (Dkt.); JA 1732-1787. On December 4, 2008 and January 14, 2009, Defendants filed motions to dismiss the Second Amended Complaint. JA 50-51 (Dkt.); JA 1949-1968. On February 13, 2009, the District Court issued an Opinion denying preliminary injunctive relief. JA 1969-83, #114, pp. 1-15 (Pr. Inj. Op.). On October 23, 2009, the District Court converted the motions to dismiss the federal discrimination claims to a summary judgment motion, while dismissing the remaining state law and constitutional claims. JA 53 (Dkt.). Summary judgment in favor of the Defendants was entered on January 3, 2011. JA 3-31, #114, pp. 1-29 (SJ Op.); #115, p. 1 (SJ Order).

Residents filed their Notice of Appeal on January 19, 2011, and applied to this Court for a stay pending appeal on January 27, 2011. The Township's subsequent Motion to Clarify the Stay was denied and the appeal was expedited.

## **STATEMENT OF FACTS**

Originally consisting of 329 rowhomes, the Gardens neighborhood in Mount Holly Township, at one time housed the largest concentration of African-American and Hispanic residents living within the Township. JA 71, 105; #17-04, p. 16, 50 (Beveridge Pr. Inj. Dec. & Exh. G). In the Gardens, Whites comprised only 19.7% of the population, while African-Americans comprised 46.1% and Hispanic comprised 28.8%. This is in stark contrast to the Township, where Whites comprised 66.2%, African-Americans comprised 20.8%, and Hispanics comprised 8.8% of the population, and to Burlington County, where Whites comprised 76.3%, African-Americans comprised 14.8%, and Hispanics comprised 4.2% of the population. JA 68-69; #17-04, pp. 13-14. The Gardens homes were generally affordable to its predominately low and moderate income residents. JA 64-65, #17-04, pp. 9-10 (Beveridge Pr. Inj. Dec.); JA 555-56, #17-08, pp. 1-2 (Arocho Pr. Inj. Dec.); JA 578, #17-09, p. 5 (Brooks Pr. Inj. Dec.); JA 611, #17-11, p.2 (Simons Pr. Inj. Dec.); JA 621, #17-12, p. 2 (Vicente Pr. Inj. Dec.); JA 632, #17-14, p. 2 (Wright Pr. Inj. Dec.); JA 1104-1108, #17-30, pp. 1-4 (Res.Survey).

In 2000, the Township abandoned efforts to preserve and rehabilitate the neighborhood and instead embarked on a plan to acquire and demolish all Gardens homes and relocate all Gardens residents – the only redevelopment project of that nature pursued by the Township. JA 673-714, #17-17, pp. 1-42 (2000 Red. Rpt.);

JA 1222-29, #17-35, pp. 1-8 (Acq. Prog.Memo); JA 1253, #17-36, p. 24 (Master Plan); JA 2134-4, #106-08, pp. 2-12 (Pipes SJ Dec.) In 2002, the Township declared the area blighted, or “in need of redevelopment,” pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (“LRHL”). JA 773-815, #17-21, pp. 1-42 (2002 Red. Rpt.); JA 2175, #106-12, p.1 (Res. 2002-166); JA 2201-03, #106-14, pp. 1-3(Res. 2002-10); JA 2204, #106-15, p. 1 (Res. 2002-17). The Township subsequently adopted its first redevelopment plan in 2003, and amended it in 2005 and 2008. JA 842-866; #17-23, pp. 1-25 (GA Red. Plan); JA 951-953, #17-25, pp. 1-3 (Am. Ord. 2003-12); JA 954-980, #17-26, pp. 1-27 (WR Red. Plan); JA 1033-34, #17-29, pp. 1-3 (Ord. 2005-07); JA 1572-75, #37-01, pp. 1-4 (Ord. 2008-05); JA 1576-1618, #37-02, pp. 1-43 (Rev. WR Red. Plan). All three plans, adopted despite strong resident opposition, have called for the Township’s acquisition of all Gardens homes by purchase or eminent domain, the Township’s displacement and relocation of all Gardens residents out of the community, total demolition of all Gardens homes and replacing them with newly constructed, more expensive housing beyond the financial reach of current Gardens residents. JA 842-866, #17-23, pp. 1-25 (GA Red. Plan); JA 914- 931, #17-24, pp. 10-65 (8/11/03 Mtg. Trans.); JA 954-980, #17-26, pp. 1-27 (WR Red. Plan); JA 996-1010, #17-27, pp. 16-30 (2/21/05 Mtg. Trans.); JA 1019-1030; #17-28, pp. 2-13 (3/14/05 Mtg. Trans.); JA 1576-1618, #37-02, pp. 1-43 (Rev. WR Red. Plan);

JA 2264-66, # 106-21, pp. 8-10 (9/15/08 Mtg. Min.); JA 2271-72, #106-22, pp. 3-4 (9/22/08 Mtg. Min.).

The current version of the plan provides for construction of 292 townhouses and 226 apartments, of which the Township has designated only 28 owner-occupied and 28 rental units as “low” and “moderate income housing.” JA 1587-88, #37-02, pp. 12-13 (Rev. WR Red. Plan); JA 1601, #37-02, p. 26 (Rev. WR Red. Plan; JA 2254; #106-20, p. 1 (Twp. Press Rel.). Only the eleven households who currently live in deed-restricted Gardens units are provided a preference for the subsidized units. JA 1601; #37-02, p. 26 (Rev. WR Red. Plan). Furthermore, the Township has not guaranteed that even these “low and moderate income” units will be realistically affordable to most Gardens residents. JA 64-66, 98-100, #17-04, pp. 9-11, 43-46 (Beveridge Pr. Inj. Dec. & Exh. D); JA 1601; #37-02, p. 26 (Rev. WR Red. Plan); JA 2044, #106-02, p. 4 (Beveridge SJ Dec.). The remaining market-rate townhouses are expected to sell for \$200,000 to \$270,000 and apartment rentals to start at \$1,230 per month, rendering this housing clearly out of reach for current Gardens residents. JA 66-67, #17-04, pp. 11-12 (Beveridge Pr. Inj. Dec.); JA 1141; #17-33, p. 8 (12/6/07 Twp. Letter to NJ Publ. Adv.); JA 2948; #106-02, p. 8 (Beveridge SJ Dec.).

In 2005, the Township selected Keating as the master redeveloper. JA 2206-2248; #106-17, pp. 1-43 (Red. Agreem.). The redevelopment is to be done in



phases, with the first phase to take place on vacant land immediately north of the Gardens. JA 2254, #106-20, p. 1 (9/9/08 Twp. Press Rel.). Even though the Township and Keating did not need the land that Residents were occupying within the Gardens until later in the redevelopment process, the Township nonetheless started to aggressively implement the redevelopment plan against Gardens residents soon after hiring Keating.

In 2006, the Township adopted a Workable Relocation Assistance Plan (“WRAP”), prepared by Triad. JA 1035-1054, #17-29, pp. 1-39. The Township then began to acquire large numbers of Gardens houses and to move out Gardens residents. JA 1098-99, #17-30, pp. 6-7 (Twp. Status Rpt); JA 1371, #30-02, p. 2 (Hoffman Pr. Inj. Dec.). The Township offered property owners only between \$32,000 and \$49,000 for their homes, prices based on recent sales to the Township in the redevelopment area and reflecting the impossibility of selling the homes on the private market. JA 591-606, #17-10, pp. 8-23 (Cruz Pr. Inj. Dec., Exh. A); JA 2308-2362, #106-27, pp. 1-55 (Acq. Res.). The Township vacated and warehoused properties it acquired, allowing them to deteriorate, greatly increasing the vacancy rate, and exacerbating blighted conditions. JA 389, 391-94, #17-06, pp. 7, 9-12 (Smith Pr. Inj. Dec.); JA 557-558, #17-08, pp. 3-4 (Arocho Pr. Inj. Dec.); JA 576-77, #17-09, pp. 3-4, 8 (Brooks Pr. Inj. Dec.); JA 586-87, #17-10, pp. 3-4 (Cruz Pr. Inj. Dec.); JA 622-23, #17-12, pp. 3-4 (Vicente Pr. Inj. Dec.); JA 2373, 2379-80;

#106-30, pp. 7, 13-14 (Smith SJ Dec.). The Township also demolished many of its newly acquired and vacated rowhome properties – even though numerous Gardens homeowners still lived in adjoining attached houses – failing to properly restore sidewalks and the walls and roofs of the remaining occupied homes, causing extensive damage to some houses, and further isolating Gardens residents within their community. JA 398, #17-06, pp. 16 (Smith Pr. Inj. Dec.); JA 557, #17-08, p. 4 (Arocho Pr. Inj. Dec.); JA 578-79, #17-09, pp. 5-7 (Brooks Pr. Inj. Dec.); JA 586, #17-10, p. 3 (Cruz Pr. Inj. Dec.); JA 623, #17-12, p. 4 (Vicente Pr. Inj. Dec.); JA 1096, 1098-99, #17-30, pp. 4, 6-7 (Twp. Status Rpt); JA 1137, 1140-41, #17-33, pp. 4, 7-8 (12/6/07 Twp. Letter to NJ Publ. Adv.); JA 1147, #17-33, p. 14 (12/12/07 Twp. Statement to NJ Publ. Adv.); JA 1372, #30-02, p. 2 (Hoffman Pr. Inj. Dec.); JA 2130-32, #106-07, pp. 3-5 (Cruz SJ Dec.); JA 2365-66, #106-28, pp. 1-2 (11/26/08 Letter); JA 2374- 79; #106-30, pp. 8-13 (Smith SJ Dec.).

Many property owners, living under increasingly unlivable conditions and the threat of eminent domain, sold their Gardens homes. JA 1098-99, #17-30, pp. 6-7 (Twp. Status Rpt.); JA 1372, #30-02, p. 2 (Hoffman Pr. Inj. Dec.). By August, 2008 the Township was able to acquire 232 of the 355 Gardens lots, leaving approximately 100 families still living in the Gardens. JA 1372, #30-02, p. 2 (Hoffman Pr. Inj. Dec.). Gardens residents had difficulty finding replacement housing in the area. JA 626-630, #17-13, pp. 1-5 (Warthen Pr. Inj. Dec.); JA 1688-

1731, #54-02, pp. 1-44 (NJ Publ. Adv. Rpt). Relocation assistance was provided only to persons residing in the Gardens as of August 1, 2006. JA 1043, #17-29, p. 9 (WRAP). Although in prior surveys Gardens residents had expressed a strong desire to remain in the neighborhood, most Gardens residents were relocated out of Mount Holly Township. JA 739-765, #17-19, pp. 1-27 (2000 Resident Survey); JA 1104-1108, #17-30, pp. 1-5 (Resident Survey); JA 1158, #17-33, p. 23 (1/24/08 Twp. Resp. to NJ Publ. Adv.); JA 1160-64, #17-33, pp. 1-5 (Reloc. Chart).

The Township and Keating could have adopted less drastic redevelopment alternatives instead of the total demolition they are implementing in the Gardens that would have been much less destructive to the Gardens neighborhood, allowing many Gardens residents to remain a part of the redeveloped community. JA 399-407, #17-06, pp.17-25 (Smith Pr. Inj. Dec.); JA 656-669, #17-16, pp. 14-27 (Mallach Rpt); JA 1165-1216, #17-34, pp. 1-52 (Biber Plan); JA 2133-44, #106-08, pp. 2-12 (Pipes SJ Dec.); JA 2380-90, #106-30, pp. 14- 24 (Smith SJ Dec.). Such alternatives included a rehabilitation component, combining new construction with rehabilitation, phasing of redevelopment so that Gardens residents would not have to move out of the area while construction was in progress, providing affordable replacement units for displaced residents, and providing adequate compensation and relocation assistance to enable Gardens residents to find replacement housing in the redeveloped area or immediate vicinity. JA 399-407;

#17-06, pp.17-25 (Smith Pr. Inj. Dec.); JA 656-669, #17-16, pp. 14-27 (Mallach Rpt); JA 2380-90, #106-30, pp. 14- 24 (Smith SJ Dec.). The Township did not meaningfully consider such alternatives and selected a redevelopment strategy that effectively has had the greatest adverse and disparate impact on Gardens residents. JA 75-76, #17-04, pp. 20-21 (Beveridge Pr. Inj. Dec.); JA 399-400, #17-06, pp. 17-18 Smith Pr. Inj. Dec.); JA 656-669, #17-16, pp.6-19 (Mallach Rpt.); JA 1508-19, #34-03, pp. 4-15 (Smith Pr. Inj. Reply Dec.); JA 2047-48, #106-02, pp. 7-8 (Beveridge SJ Dec.); JA 2133-47, #106-08, pp. 2-15 (Pipes SJ Dec.); JA 2380-90, #106-30, pp. 14- 24 (Smith SJ Dec.).

The Township officials, in adopting and implementing the redevelopment plans for the Gardens, intended to rid the Township of what they viewed as an undesirable population. JA 1222-29, #17-35, pp. 1-8 (Prop. Acq. Memo); JA 2145-47, #106-08, pp. 13-15 (Pipes SJ Dec.); JA 2249-50, #106-18, pp. 1-2 (Boas Memo). They knew that Gardens residents had limited financial means and would not be able to afford either the new replacement units or most of the housing for sale or rent in the Township. JA 643-650, #17-16, pp. 1-8 (2/21/05 SJLS Comments); JA 739-765, #17-19, pp. 1-27 (2000 Survey); JA 875- 79, 882-86, 890-95, 898-905, 908, 910-11, 913-15, 917-19, 930-31, 937-38; #17-24, pp. 9-13, 16-20, 24-29, 32-39, 42, 44-45, 47-49, 51-53, 64-65, 71-72 (8/11/03 Mtg. Trans.); JA 1000, 1002, 1004-09; #17-27, pp. 20, 22-23, 24-29, 108-113 (2/21/05 Mtg.

Trans.); JA 1020-25, 1028-29; #17-28, pp. 3-8, 11-12 (3/14/05 Mtg. Trans.); JA2159-2166; #106-10, pp. 1-8 (8/11/03 SJLS Comments); JA 2167-2174, #106-11, pp. 1-8 (3/14/05 SJLS Comments); JA 2264-66, # 106-21, pp. 8-10 (9/15/08 Mtg. Min.); JA 2271-72, #106-22, pp. 3-4 (9/22/08 Mtg. Min.). They also paid the property owners inadequate compensation that did not enable them to purchase comparable replacement housing in the Township or the immediate vicinity, while creating unsafe and undesirable conditions and thus putting increased pressure on Gardens residents to give up and sell their homes. JA 73-74, #17-04, pp. 18-19 (Beveridge Pr. Inj. Dec.); JA 558-60, #17-08, pp. 4-6 (Arocho Pr. Inj. Dec.); JA 587-589, 591-609, #17-10, pp. 4-6, 18-26 (Cruz Pr. Inj. Dec. & Exh. A-B); JA 613, #17-11, p. 3 (Simons Pr. Inj. Dec.); JA 633-34, #17-14, pp. 3-4 (Wright Pr. Inj. Dec.); JA 1688-1731, #54-02, pp. 1-44 (NJ Publ. Adv. Rpt); JA 2047-51, #106-02, pp. 7-11 (Beveridge SJ Dec.); JA 2371- 80, #106-30, pp. 5-14 (Smith SJ Dec.).

#### **STATEMENT OF RELATED CASES AND PROCEEDINGS**

Counsel for appellants are not aware of any other case or proceeding that is in any way related, completed, pending, or about to be presented before this Court or any other court or agency, state or federal.

#### **STATEMENT OF STANDARD FOR REVIEW**

In reviewing a District Court's grant of summary judgment, the Third Circuit applies "the same test that the District Court should have utilized initially."

Olson v. General Elec. Astrospace, 101 F.3d 947, 951 (3d Cir.1996) The Third Circuit’s review of the grant of summary judgment is plenary. Id. Under F.R.C.P. 56(c), summary judgment “is proper only where there is no genuine issue of material fact for the factfinder to decide” and the moving party is entitled to judgment as a matter of law. Olson, at 951. “The inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Chambers v. Philadelphia Board of Education, 587 F.3d 176, 181 (3d Cir. 2009) The reviewing court “should not weigh the evidence and determine the truth itself, but should instead determine whether there is a genuine issue for trial.” Doebler’s Pennsylvania Hybrids, Inc. v. Doeblor, III, 442 F.3d 812, 820 (3d Cir. 2006). Further, the non-moving party’s competent facts presented in opposition “are taken as true and inferences are drawn in a light most favorable to the non-movant.” General Ceramics Inc. v. Firemen’s Fund Ins. Companies, 66 F.3d 647, 651 (3rd Cir. 1995) ; Olson, at 951. In discrimination cases, “[t]his standard is applied with added rigor. . . where intent and credibility are crucial issues.” Stewart v. Rutgers University, 120 F.3d 426, 431 (3d Cir. 1997).

### **SUMMARY OF ARGUMENT**

In granting summary judgment dismissing Residents’ housing discrimination claims under Title VIII of the Civil Rights Act of 1968, the District

Court misapplied well settled Third Circuit disparate impact precedent established under Resident Advisory Board v. Rizzo, 564 F.2d 126 (3d Cir. 1977), cert. denied, 435 U.S. 908 (1978). Contrary to Rizzo, the court conflated “disparate treatment” with “disparate impact” under Title VIII and ignored Rizzo and settled authority from around the country in reasoning that governmental action disproportionately displacing minorities by eliminating lower income housing is not actionable under Title VIII.

The District Court also improperly disregarded the Residents’ expert’s comprehensive analysis and opinion establishing Residents’ Title VIII *prima facie* case that the Township’s redevelopment plan is having a “severe” disparate impact on minority residents of the Gardens neighborhood, Mount Holly Township and Burlington County, and ignored genuinely disputed issues of material fact that, under Rizzo, the Township could have taken and still can take less destructive redevelopment alternatives having less of a discriminatory impact.

The District Court further erred in granting summary dismissing Residents’ intentional discrimination claims against the Township under Title VIII and the Equal Protection Clause of 14<sup>th</sup> Amendment to the United States Constitution. The Residents had presented circumstantial evidence meeting the factors that the Supreme Court had established in Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252, 265-69 (1977) (“Arlington

Heights”) for proving discriminatory intent sufficient to preclude summary judgment, as well evidence showing that the foreseeable result of the Township’s actions supported an inference of discriminatory motive.

The District Court also misapplied summary judgment standards by impermissibly weighing the evidence and erroneously drawing inferences in favor of the Township as moving party rather than in favor of Residents in opposing summary judgment, as well improperly granting summary judgment dismissing Resident’s claims without allowing Residents the reasonable opportunity to conduct any discovery in this case.

### **ARGUMENT**

#### **I. THE THIRD CIRCUIT SHOULD REVERSE THE DISTRICT COURT’S SUMMARY JUDGMENT DECISION DISMISSING RESIDENTS’ TITLE VIII DISPARATE IMPACT HOUSING DISCRIMINATION CLAIMS.**

In 1968, Congress enacted the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.*, to combat housing discrimination throughout the nation. Title VIII makes it “unlawful to refuse to sell or rent . . . *or otherwise make unavailable or deny* a dwelling to any person because of race, color, religion, sex, familial status, or national origin.” 42 U.S.C. § 3604(a). The “broad remedial intent of Congress” is “embodied in the Act,” Havens Realty Corp. v. Coleman, 455 U.S. 363, 381 (1982) and as such Title VIII’s scope is “broad and inclusive” and should be given “a generous construction.” City of



Edmonds v. Oxford House, Inc., 514 U.S. 725, 731 (1995). See also Hovsons, Inc. v. Brick Township, 89 F. 3d 1096, 1106 (3d Cir. 1996) (acknowledging broad Congressional remedial intent underlying Title VIII); Lakeside Resorts Enterprises, L.P. v. Board of Supervisors of Palmyra Township, 455 F.3d 154, 157 (3d Cir. 2006) (“we are to give a ‘generous construction’ to the statute’s ‘broad and inclusive’ language”) (quotation omitted).

In the Third Circuit, it has long been established that a plaintiff may establish a *prima facie* case of housing discrimination under Title VIII by showing discriminatory effect, i.e. “adverse disparate impact,” without having to demonstrate any discriminatory intent, i.e., “disparate treatment.” Resident Advisory Board v. Rizzo, 564 F.2d 126, 147-49 (3d Cir. 1977), cert. denied, 435 U.S. 908 (1978). The Rizzo court explained that “[e]ffect, not motivation, is the touchstone because a thoughtless housing practice can be as unfair to minority rights as a willful scheme.” Id. at 148, n. 31. Further, under Rizzo, if a plaintiff establishes a *prima facie* case, the burden shifts to defendant to demonstrate justification that “must serve, in theory and practice, a legitimate, bona fide interest of the Title VIII defendant, and the defendant must show that no other alternative course of action could be adopted that would enable that interest to be served with less discriminatory impact.” Id. at 149. “If the defendant does introduce evidence that no such alternative course of action can be adopted, the burden will once again

shift to the plaintiff to demonstrate that other practices are available.” Id. at 149 n. 37. See also, Lapid-Laurel, L.L.C v. Zoning Board of Scotch Plains, 284 F.3d 442, 466-67 (3d Cir. 2002).

**A. The District Court Misapplied Well-Settled Third Circuit Disparate Impact Precedent Established Under Rizzo By Erroneously Conflating “Disparate Treatment” With “Disparate Impact” Under Title VIII.**

The District Court acknowledged that “the Gardens redevelopment has had an effect on low-income families, and correspondingly, minority families” and that “being forced from one’s home is a difficult and emotional issue, compounded by the fear of being unable to afford a comparable place to live.” JA 6, #114, p. 3 (SJ Op.). The court nevertheless concluded that the redevelopment plan did not have a disparate impact upon minority residents because “importantly for the plaintiffs’ FHA claim of disparate impact, the redevelopment plan does not apply differently to minorities than non-minorities” residing in the Gardens. JA 14, #114, p. 11 (SJ Op.). The court emphasized that “it is not just the African-American and Hispanic plaintiffs who are impacted by the increased housing prices – it is all Gardens residents, including the Caucasian residents.” JA 15, #114, p. 12 (SJ Op.).

The District Court’s interpretation of Title VIII improperly conflates “disparate treatment” With “disparate impact. The essence of disparate impact under Title VIII is a *facially neutral* governmental action that adversely *and disproportionately* affects a protected group. Rizzo, supra. Disparate impact does

not require that the challenged action must absolutely and exclusively impact a protected minority group; rather, disparate impact is established by showing the *relative comparative harm*, i.e., that the group of persons adversely affected, compared to the larger relevant population, is comprised disproportionately of members of a protected class. See Rizzo, supra, (disparate impact found in favor of minority public housing applicants despite white public housing applicants also adversely affected); Lapid Laurel, supra, at 466-67 (applying Rizzo, “the plaintiff must show that the Township's action had a greater adverse impact on the protected group . . . than on others). See also, Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 938 (2d Cir. 1988), aff'd in part, 488 U.S. 15 (1988) (proper focus is on “disproportionate burden on minorities”).

Indeed, the Eighth Circuit in Charleston Housing Authority v. U.S. Dept. of Agriculture, 419 F.3d 729 (8<sup>th</sup> Cir. 2005) expressly rejected the same flawed interpretation of Title VIII that the District Court adopted below. The Housing Authority argued on appeal that the minority tenants' disparate impact claims challenging demolition should fail because the tenants did not demonstrate that similarly situated non-minority persons were being treated any differently. In rejected this argument, the Court explained that the “Tenants, however, did not allege disparate treatment, they alleged disparate impact....[T]he Tenants need prove no more than that the conduct of the defendant actually or predictably results

in discrimination; in other words, that it has a discriminatory effect.” Charleston, at 741. See also Metropolitan Housing Dev. Corp. v. Village of Arlington Heights, 558 F.2d 1283, 1291 (7th Cir. 1977) (Arlington Heights II) (“the fact that the conduct complained of adversely affected white as well as nonwhite people, however, is not by itself an obstacle to relief under the Fair Housing Act”). Accordingly, the District Court below seriously misconstrued Title VIII disparate impact law, mandating reversal.

**B. The District Court Erroneously Reasoned That Governmental Action Disproportionately Displacing Minorities By Eliminating Lower Income Housing Is Not Actionable Under Title VIII.**

The District Court further erred in ruling that the Township’s destruction of the Gardens is not actionable under Title VIII because “the real effect of the Gardens redevelopment is that there will be less lower-income housing in Mt. Holly” and “reduction of low-income housing is not a violation of the FHA” which “does not speak to income.” JA 14, #114, p. 11 (SJ Op.). The District Court cited no support for this proposition and inexplicably ignored significant federal court decisions over the past 30 years repeatedly ruling that destruction or exclusion of low and moderate income housing *does* in fact violate disparate impact under Title VIII where protected lower income minorities would be disproportionately adversely affected by the loss or denial of such housing.

Indeed, the Third Circuit’s decision in Rizzo is just such a case. The Third

Circuit found that the housing authority's refusal to permit construction of public housing in a predominantly white neighborhood had a much greater adverse effect on minorities because more minorities had lower incomes qualifying them for public housing. See also, Arlington Heights II, *supra*, at 1291 (minority plaintiffs had actionable Title VIII claim where municipality's zoning preventing construction of low-cost housing disproportionately excluded lower income African-Americans in need of such housing); Huntington Branch, *supra*, 938 (municipality violated Title VIII by refusing to allow low-income subsidized housing in a predominately white neighborhood since minorities, because of their lower income status, were more likely to be in need of and eligible for such housing); Dews v. Town of Sunnyvale, Texas, 109 F. Supp. 2d 526, 565-66 (N.D. Tex. 2000) (zoning ordinance effectively banning apartments found to have a discriminatory effect upon African-Americans because they were in greater need of rental housing); Rivera v. Incorporated Village of Farmingdale, 571 F.Supp.2d 359, 369 (E.D.N.Y. 2008) (challenge to redevelopment project eliminating housing occupied by lower income Latino workers and replacing it with higher priced units unaffordable to such residents actionable under Title VIII because even if the municipality "had the best of intentions, the result of the plan disproportionately injured the Latino population in need of low income housing"). Thus, the District Court's reasoning is fundamentally flawed and contrary to settled Title VIII law.

**C. The District Court Improperly Disregarded Resident's Expert's Comprehensive Analysis And Opinion Establishing Residents' Title VIII *Prima Facie* Case That The Township's Redevelopment Plan Is Having A "Severe" Disparate Impact On African-American And Hispanic Residents Of The Gardens Neighborhood, Mount Holly Township And Burlington County.**

A prima facie case of Title VIII disparate impact can be established through statistical data comparing the relative percentage of protected class members versus non-protected class members affected. See Huntington Branch, *supra*, at 937-38; see also Hispanics United v. Addison, 988 F. Supp. 1130, 1156-57 (N.D. Ill. 1997) ("using town-wide demographics for comparison to the affected population is a perfectly legitimate method of establishing discriminatory effect"); Rivera v. Incorporated Village of Farmingdale, \_\_\_ F.Supp.2d \_\_\_, 2011 WL 1260209, at \*7-\*9 (E.D.N.Y. March 30, 2011)(in denying Village's summary judgment motion, court accepted plaintiff's expert's statistical demographic analysis that redevelopment plan eliminating rental housing would disproportionately harm Village's Hispanic residents).

In opposing summary judgment, the Residents presented uncontroverted expert evidence that the Township's redevelopment project "is having a severe disparate impact on African-American and Hispanic residents in the Gardens, in Mount Holly Township and in Burlington County." JA 68, #17-04, p. 13 (Beveridge Pr. Inj. Dec.); JA 2044; # 106-02, p. 4 (Beveridge SJ Dec.). Residents' expert, Dr. Andrew Beveridge, demonstrated that as of the 2000 Census nearly

75% of the people living in the Gardens were minority residents—46% African-American and 28.8% Hispanic – and thus “the Gardens contains a highly concentrated minority population (African-American and Hispanic), indeed more so than any other area of Mt. Holly.” JA 71, #17-04, p.16 (Beveridge Pr. Inj. Dec.). Further, Dr. Beveridge showed that while the Gardens’ demolition will affect only about 2.7% of all non-Hispanic White households in Mt. Holly, it has and will impact 22.5% of all African-American households and 32.3% of all Hispanic households living in Mt. Holly. JA 71, #17-04, p.16 (Beveridge Pr. Inj. Dec.). Thus, Dr. Beveridge concluded by demolishing the Gardens, “African-Americans are more than 8 times more likely to be negatively affected, and the Hispanics are more than 11 times more likely to be negatively affected, than are non-Hispanic Whites.” JA 71, #17-04, p.16 (Beveridge Pr. Inj. Dec.). Dr. Beveridge subsequently affirmed that 2008 census data demonstrated that the “same pattern of results found in 2000 hold for 2008.” JA 2046, #106-02, p. 6 (Beveridge SJ Dec.).

Furthermore, Dr. Beveridge demonstrated that the Township’s redevelopment project is displacing minority families from homes that have been affordable to them. Gardens residents “were and are mainly a group of extremely and very low income homeowners and tenants,” with median household incomes significantly less compared to Mt. Holly Township and Burlington County, most

with annual household incomes less than \$40,000 and almost half less than \$20,000. JA 64, #17-04, p. 9 (Beveridge Pr. Inj. Dec.). Existing homes in the Gardens have been “generally affordable either as rentals or as ownership units” to households “with even lower incomes,” since the homeowner “monthly expenses are very low, and the rentals are among the lowest in Burlington County.” JA 64, #17-04, p. 9 (Beveridge Pr. Inj. Dec.). Thus, “for families with limited means,” the Gardens “represented a very attractive affordable housing opportunity.” JA 65; #17-04, p. 10 (Beveridge Pr. Inj. Dec.).

The market rate units called for in the revised WR Redevelopment Plan to be built where the Gardens now stands will sell for \$200,000 to \$270,000. The monthly rents for the new apartments will be at least \$1,320. As Dr. Beveridge explained, these prices are “well out of reach” of almost all Gardens residents, especially since the Township is paying Gardens homeowners only \$32,000, \$39,000 and \$49,000 for existing one, two and three bedroom homes respectively. JA 66, #17-04, p. 11 (Beveridge Pr. Inj. Dec.); JA 2044, 2049, #106-02, pp. 4, 9 (Beveridge SJ Dec.). In addition, the relocation assistance that the Township provides for in the WRAP “is woefully inadequate to make the market rate units affordable to low income households like those in the Gardens” JA 66, #17-04; p. 11 (Beveridge Pr. Inj. Dec.) and do “little to mitigate the severe disparate impact on African-American and Hispanic residents.” JA 2049, #106-02, p. 9 (Beveridge



SJ Dec.). Thus, except for the few proposed affordable units, “there is no possibility that the current residents could afford moving into the new housing without substantial additional resources,” JA 2048, #106-02, p. 8 (Beveridge SJ Dec.). Even this small number are targeted to benefit households earning 80% of the median area income, which would still be unaffordable to most Gardens families, the vast majority of whose household incomes are less than 50% of the median area income. JA 65-66, #17-04, pp. 10-11 (Beveridge Pr. Inj. Dec.).

Dr. Beveridge further opined that since “only those households with incomes above 80 percent of area median income will be able afford to move to the redeveloped community” under the proposed market prices, “approximately only 21% of African-American and Hispanic households would be able to afford the new market rate housing, compared to approximately 79% non-Hispanic White households.” JA 2048, #106-02, p. 8 (Beveridge SJ Dec.). Since the Gardens was comprised of nearly 75% African-American and Hispanic residents prior to redevelopment, JA 71, #17-04, p. 16 (Beveridge Pr. Inj. Dec.), “the redeveloped area will be mostly non-Hispanic White and will have drastically less African-Americans and Hispanic residents than before redevelopment.” JA 2048, #106-02, p. 8 (Beveridge SJ Dec.).

Similarly, the price of available owner-occupied and rental units in the rest of Mt. Holly and immediate surrounding area are unaffordable to Gardens

residents. As Dr. Beveridge showed, only a handful of market rate units in the local area would be affordable to Gardens residents, with the “overwhelming of majority” of market rate units “far beyond their reach, even taking into account the current provision of relocation assistance in the WRAP.” JA 73-74, #17-04, pp. 18-19 (Beveridge Pr. Inj. Dec.). Dr. Beveridge’s analysis of updated area home listings is consistent with his earlier findings “as to the scarcity of affordable housing options for displaced Gardens residents in the Mt. Holly area.” JA 2049, #106-02, p. 9 (Beveridge SJ Dec.). Thus, the redevelopment project “has and will continue to remove from the current and past residents of the Gardens affordable housing opportunities, while forcing them to search, often in vain, for comparable housing.” JA 68, #17-04, p. 13 (Beveridge Pr. Inj. Dec.). See also JA 560, # 17-08, p. 6 (Arocho Pr. Inj. Dec.); JA 624-0625, #17-12, pp. 5-6 (Vicente Pr. Inj. Dec.); JA 628, # 17-13, p. 3 (Warthen Pr. Inj. Dec.).

Therefore, the “ongoing destruction of affordable housing by the WR Redevelopment Project has had and will continue to have serious consequences for all low income residents, most particularly including African American and Hispanic residents of the region, who are more likely to be low-income.” JA 75, #17-04, p. 20 (Beveridge Pr. Inj. Dec.). “Especially hard hit” have been “African-American and Hispanic households who had lived and currently live in the Gardens” who “have virtually no chance of replacing their current housing with

housing equally affordable.” JA 75, #17-04, p. 20 (Beveridge Pr. Inj. Dec.). Thus, according to Dr. Beveridge, “[m]y conclusions set forth in the [earlier] Declaration regarding the severe disparate impact of African-American and Hispanic residents in the Gardens, in Mt. Holly Township, and in Burlington County similarly still hold true.” JA 2044, #106-02, p. 4 (Beveridge SJ Dec.).

Since on summary judgment “[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn” in the Residents’ favor, Chambers, supra, 587 F.3d at 181, this expert evidence, establishing Residents’ *prima facie* Title VIII disparate impact claim, clearly sufficed to defeat summary judgment. Indeed, the Township never challenged the underlying statistical demographic data or presented any competent expert evidence refuting Dr. Beveridge, and the District Court acknowledged that Residents have made a showing that a greater percentage of minority Township residents have been affected by the redevelopment. JA 15, #114, p. 12, fn. 8. (SJ. Op.).<sup>3</sup> Therefore, there was no basis whatsoever for granting the Township summary judgment.

The District Court, however, impermissibly “weigh[ed] the evidence” to “determine the truth” of Dr. Beveridge’s opinion rather than simply determining

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<sup>3</sup> The District Court dismissed this evidence without further discussion, stating that “[E]ven if this statistic was sufficient to establish a *prima facie* case, the plaintiffs’ FHA claim fails for reasons other than the disparate impact analysis,” JA 15, #114, p. 12, fn. 8 (SJ Opinion), thus ignoring well-settled precedent where comparable statistics establishes a *prima facie* case, as previously discussed above.

“whether there [was] a genuine issue for trial.” Doebler’, *supra*, 442 F.3d at 820. The Trial Court *sua sponte* critiqued Dr. Beveridge’s methodology and concluded that Dr. Beveridge’s statistical evidence – showing that only a small percentage of African-American and Hispanic households in the County (21%) would be able to afford the new homes to be built in the redeveloped neighborhood, while a much higher percentage of white residents (79%) would be able to afford those same homes – “hold little validity to show disparate impact.” JA 16; #114, p. 13 (SJ Op.). Without citing any legal or other support, the Court criticized Dr. Beveridge’s selection of the comparison population (County wide) without any explanation as to why such a county wide analysis would not be appropriate. JA 16; #114, p.13 (SJ Op.). The Court further contended that the expert analysis did not account for minorities who will move into Mt Holly from outside the County, without offering any proof that the demographics of the surrounding counties differ from those of Burlington County so significantly as to alter the expert’s conclusions. JA 16; #114, p. 13 (SJ Op.).

The District Court also incorrectly stated that Dr. Beveridge’s analysis did not account for the 11% deed-restricted unit, ignoring the evidence that showed that the deed-restricted units would be affordable to households earning up to 80% of median income, while most Gardens residents had incomes below 50% of median income. JA 64; #17-04, p. 9 (Beveridge Pr. Inj. Dec); JA 66; #17-04, p.

11(Beveridge Pr. Inj. Dec). The court further criticized Dr. Beveridge for not accounting for the possibility of minority renters, although the townhouses are, according to the Township's plan, designed for homeownership, and there is no reason to assume that the new townhouses would rent at prices affordable to a significant number of minority residents.<sup>4</sup> The Court below also claimed that the Residents' expert did not consider the fact that minorities are moving (presumably from the Gardens) within Mt. Holly, even though the data in the record showed that less than 1/3 of Gardens residents were being relocated within Mt Holly. JA 1160; #17-33, pp. 27-31 (Reloc. Chart); JA 1156; #17-33, p. 23(1/24/08 Twp. Resp. to NJ Publ. Adv.).

Finally, the District Court referred to recent census data to argue that because there are almost 17,000 African-American and Hispanic households in the County who could afford the new homes, a minority population could theoretically occupy all 464 market rate houses, improperly considering only the *numbers* of the minority population, rather than the manner in which they are *disproportionately*

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<sup>4</sup> Indeed, Dr. Beveridge has shown that the new proposed rental units, considerably smaller in size than the townhouses, are out of reach for Gardens residents and for most minority households, so there is no reason to expect the townhomes to be more accessible to minority renters. JA 2048; #106-02, p. 11 (Beveridge SJ Dec.).

affected, as required under a disparate impact analysis.<sup>5</sup> JA 16; #114, p. 13 (SJ Op.). The court's severely flawed critique of Residents' expert evidence, neither grounded in legal precedent nor supported by professional opinion, at most sets a framework for a material dispute, but cannot justify the District Court's outright rejection of Residents' expert proofs and grant of summary judgment.

**D. The District Court Improperly Ignored Genuinely Disputed Issues Of Material Fact That, Under Rizzo, The Township Could Have Taken And Still Can Take Less Destructive Redevelopment Alternatives Having Less Discriminatory Impact.**

The District Court similarly erred in holding that the Residents "have not shown how an alternative course of action would have a lesser impact" under Rizzo. JA 17; #114, p. 14 (S J Op.). In doing so, the court again failed to accept as true the analysis and opinions of Residents' planning expert, failed to draw all reasonable inferences in Residents' favor, and improperly weighed and assessed the truth of Mr. Smith's opinions.

Mr. Gray Smith, Residents' planning expert, described various options for rehabilitating and improving the Gardens neighborhood and eliminating or reducing the blighted conditions in a less costly manner without wholesale acquisition and demolition of all existing houses and relocation of all residents. JA 399-407; #17-06, pp. 17-25 (Smith Pr. Inj. Dec.); JA 2380, #106-30, pp.14-15

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<sup>5</sup> The District Court also ignored the fact that Dr. Beveridge had updated his Declaration to include the newer census information. JA 2044-2045; #106-02 pp. 4-5.( Beveridge SJ Dec.).

(Smith SJ Dec.). According to the expert, a redevelopment plan that focused primarily on rehabilitation of existing Gardens homes and additional neighborhood amenities, combined with limited and targeted acquisition, selective demolition and new construction and including many more infill affordable units would “meet the stated goals of the Township's original Redevelopment Plan” and would “eliminate blight and comply with state and local public policy criteria” under the LRHL. JA 406-407; #17-06, pp. 24-25 (Smith Pr. Inj. Dec.); JA 2382; #106-30, p. 16 (Smith SJ Dec.). Further, despite “the damages caused by recent Township and Redeveloper actions,” such an “alternative neighborhood redevelopment plan” currently “is viable and still implementable,” would be “considerably less costly, easier to accomplish,” and would “retain local residents” while providing “modern affordable housing.” JA 406-407, #17-06, pp. 24-25 (Smith Pr. Inj. Dec.); JA 2382; #106-30, p. 16 (Smith SJ Dec.) In his declaration, the expert provided planning recommendations for a rehabilitation approach, listed potential funding sources, and identified developers engaged in housing rehabilitation. JA 399-407; #17-06, pp. 17-25 (Smith Pr. Inj. Dec.).

Moreover, Dr. Beveridge, in reviewing the alternatives that the planning expert had outlined, stated that in his opinion such less drastic measures would permit many more minority Gardens residents “to stay either in their current affordable units or move into newly constructed or substantially renovated

affordable homes, and therefore not be permanently displaced from their community.” JA 75; #17-04, p. 20 (Beveridge Pr. Inj. Dec.). In addition, these alternatives would significantly lessen the adverse impact of African-American and Hispanic families in the region, since affordable housing opportunities for low income residents would be eliminated.” JA 75; #17-04, p. 20 (Beveridge Pr. Inj. Dec.). Accordingly, Dr. Beveridge states that in his opinion “if these alternatives had been or were to be implemented, it would significantly lessen the adverse impact of the Project upon African-American and Hispanic households and families.” JA 75; #17-04, p. 20 (Beveridge Pr. Inj. Dec.); JA 2047-48; #106-02, pp. 7-8 (Beveridge SJ Dec.).

The Township disputed the viability of these alternative approaches to redevelopment through the Certifications of Kathleen Hoffman, Township Manager (stating belief as to why Mt Holly 2000 rehabilitation program too costly, disputing some of Mr. Smith’s statements regarding availability of housing subsidies, and concluding that complete redevelopment with demolition and relocation was needed) and Redeveloper Michael Scencindiver (after looking at some deteriorated, vacant property in the Gardens, decided that rehabilitation would be too costly, and stating that new construction is favored by federal and state entities over rehabilitation.). JA 1376-77; #30-02, pp. 6-7 (Hoffman Pr. Inj. Dec.); JA 1416; #30-04, p. 5 (Sencindiver Pr. Inj. Dec.). In response, Residents’



expert stated, inter alia, that the Township's witnesses were not experts, that there were inconsistencies between the estimate by the City employee and the actual experience of the Township in rehabilitating homes, that the witnesses evaluated only the most seriously deteriorated and vacant properties, that the comparisons between rehabilitation and new construction costs were inaccurate, and that rehabilitation was encouraged by HUD and undertaken by many developers. JA 1507-08; #34-03, pp. 3-4 (Smith 2d Pr. Inj. Dec.); JA 2381-82; #106-30, pp. 15-16 (Smith SJ Dec.). At best, the "evidence" presented by the Township's witnesses simply showed that material factual disputes existed regarding redevelopment alternatives, and in no way justified the Trial Court's grant of summary judgment.

In addition, Residents showed through expert evidence that there were other ways in addition to a rehabilitation approach that the Township could lessen the discriminatory impacts. "Even if the Township proceeds with 100% demolition of the existing housing and 100% relocation of existing residents, it is a feasible alternative to construct a new residential community....within a sequential plan that allows new units to be built without disturbing the existing community." JA 2389; #106-30, p. 23 (Smith SJ Dec.). The Township also could pay residents sufficient compensation and relocation assistance to enable them to purchase a replacement unit within or in the vicinity of the redevelopment area. JA 2389; #106-30, p. 23 (Smith SJ Dec.). Instead, even though the Gardens homes are not

needed for phase one of construction, the Township “made every effort to dismantle the existing community before even beginning construction of the new units, JA 2390; #106-30, p. 24 (Smith SJ Dec.), conducting destructive demolitions and reducing services, while, as discussed above, providing inadequate compensation and relocation benefits. JA 72- 75; #17-04 pp. 17-20 (Beveridge Pr. Inj. Dec.); JA 2049; #106-02, p. 9 (Beveridge SJ Dec.).

Residents also presented evidence that Township never meaningfully considered a rehabilitation approach and repeatedly rejected less destructive approaches to addressing problems in the Gardens. JA 2136; #106-06, pp. 4-5 (Pipes SJ Dec.); JA 2386-2387; #106-30, pp. 21-22 (Smith SJ Dec.). Indeed, the Residents’ evidence credibly demonstrated that the Township had pursued a course having the *most* discriminatory impact – exacerbating blight, conducting destructive demolitions, and pressuring residents to move out even before the Township was ready to move ahead with construction, while offering inadequate compensation and relocation – evidencing the greatest disregard for the needs and interests of Gardens residents.

Instead of recognizing that this record clearly demonstrated “sufficient disagreement” on the issue of redevelopment alternatives, Chambers, supra, at 181, the District Court misapplied the law, improperly analyzed and weighed the evidence, and erroneously drew all inferences in favor of the moving party. First,

the Court erred in relying on the findings of the state court, contending that the adequacy of the redevelopment plan, as opposed to the rehabilitation plan” had been extensively litigated, even while noting that the issues in state court were limited to technical compliance with the LRHL. JA 18-19; #114, pp. 15-16 (SJ Op.).<sup>6</sup> Next, the District Court misinterpreted the evidence, contending that the Residents “propose a plan, as pointed out by defendants, that relies upon government subsidies and upon costs based on property conditions in 1989,” even though the Residents had proffered the 1989 Biber Plan not as a blueprint to be followed, but as evidence the Township refused to consider viable alternatives. JA 19; #114, p. 16 (SJ Op.).

The Court further erroneously contended Residents’ plan did not consider rehabilitation costs and did not account for temporary relocation. JA 19; #114, p. 16 (SJ Op.). In addition, the Court impermissibly weighed the evidence regarding the feasibility of a rehabilitation alternative. The Court accepted without question the Township’s representations regarding rehabilitation costs of \$2.5 million, while summarily rejecting Mr. Smith’s expert testimony comparing relative costs and

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<sup>6</sup> In fact, the state courts only examined the validity of the blight designation and the conformity of the plan with the technical requirements of the LRHL, and expressly refused to consider the Residents’ Title VIII claims for lack of ripeness. JA 1952-64, #84-04, pp. 1-13 (8/30/05 Opinion); JA 1114-1132, #17-31, pp. 1-19 (App. Div. Op.). At no time, therefore, did the state courts analyze whether rehabilitation was a feasible, less discriminatory alternative.

finding that acquisition, demolition, relocation, site preparation, and new construction is more expensive than a scaled-down rehabilitation plan. JA 406-407; #17-06, pp. 24-25; JA 1508-19, #34-03, pp. 4-15 (Smith Pr. Inj. Reply Dec.)<sup>7</sup>

The Court also impermissibly drew inferences favorable to the moving party. The Court relied on self-serving statements of the Township Council contained in the public hearing Transcripts about the Township's consideration and rejection of "small scale efforts" to infer that the Township had no viable alternatives to its redevelopment proposal, while failing to consider other evidence in those Transcripts that showed that the Council completely ignored the valid objections of every Gardens resident who testified regarding the redevelopment plan and their proposals for less discriminatory approaches for eliminating blight. JA 19; #114, p. 16 (SJ Op.); JA 0652; #17-16, p. 10 (Mallach Report); JA 2536-37, 2540-41; #112-03, pp. 57-58, 61-62 (9/8/03 Mtg. Trans.); JA 2136; #106-06, pp. 4-5 (Pipes SJ Dec.) In addition, the Court relied on language in the New Jersey Appellate Division decision upholding the blight designation to conclude that rehabilitation was not feasible, even though the appellate court did not rule on that

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<sup>7</sup> In a footnote, the District Court rejected Mr. Smith's expert analysis and expressed its own opinion regarding the feasibility of rehabilitation, without citing any legal or expert support, stating that at this stage relocation was the "only real practical remedy." JA 20; #114, p. 17 (SJ Opinion). The Court again engaged in impermissible weighing and evaluating the evidence, instead of recognizing the clear dispute of material fact created by the conflicting opinions of Mr. Smith and the Township's and Redevelopers' representatives.

issue, as well ignoring evidence presented by Residents' experts as to how those blighted conditions could be otherwise addressed through rehabilitation.<sup>8</sup> JA 399; #17-06, p. 17 (Smith Pr. Inj. Dec.)

In addition, the Court misstated the law when it concluded that even if a disparate impact had been shown, Residents "failed to offer sufficient evidence to rebut the Township's legitimate governmental purpose or demonstrate illegitimate discriminatory intent." JA 21; #114, p. 18 (SJ Op.). First, as discussed above in Point I-A, Rizzo does not require any showing of "illegitimate discriminatory intent" under a disparate impact claim. Second, under Rizzo, even if the Township has a legitimate government purpose, that does not negate the *Township's* burden of showing there are no less discriminatory alternatives.

The District Court additionally misinterpreted Title VIII by inaccurately characterizing Residents' argument that any action to "ameliorate a blighted area inhabited mostly by minorities" would not be permitted under Title VIII. JA 16; #114, p. 13 (SJ Op.). However, Residents have never argued that there must be

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<sup>8</sup> In addition to Mr. Smith, Residents had also previously retained another planning expert, Mr. Alan Mallach, AIA, AICP. In 2005, Mr. Mallach prepared two reports that the Residents submitted as comments on the second version of the redevelopment plan and he testified before the Township Planning Board at the time they were reviewing that plan in February, 2005. Mr. Mallach advised the Board that there were many viable alternatives to total destruction of the Gardens that would correct the blighted conditions identified by the Township in the Gardens. JA 652; #17-16, p. 10 (Mallach Report); JA 670; #17-16, p. 28 (Mallach Supp. Report); JA 990; #17-27, p. 10 (2/21/05 Mtg. Trans.).

absolutely no discriminatory effect, but rather under Rizzo the Township must utilize realistic alternatives having *the least* discriminatory effect. Indeed, as Residents' experts had demonstrated in the record below, the Township could have used any one of several less discriminatory alternatives to eliminate blight than total demolition of the Gardens.

Accordingly, the District Court's erroneous analysis of law and evidence is fatally flawed and this Court should reverse the District Court's grant of summary judgment dismissing Residents' Title VIII disparate impact claims.

**II. THE DISTRICT COURT ERRED IN GRANTING THE TOWNSHIP SUMMARY JUDGMENT DISMISSING RESIDENTS' CLAIMS BECAUSE THERE ARE DISPUTED MATERIAL FACTS THAT THE TOWNSHIP HAS INTENTIONALLY DISCRIMINATED AGAINST AFRICAN-AMERICAN AND HISPANIC RESIDENTS.**

**A. The Residents Have Presented Circumstantial Evidence Meeting The Arlington Heights Factors Creating Genuine Factual Disputes That The Township Acted With Discriminatory Intent In Carrying Out Its Redevelopment Of The Gardens Sufficient To Preclude Summary Judgment.**

Separate from the Title VIII disparate impact discrimination claim discussed above in Point I, Residents brought three additional claims asserting that the Township has intentionally discriminated against them based on race and national origin in violation of Title VIII , 42 U.S.C. § 3601 et seq., 42 U.S.C. §1982; and equal protection under of 14<sup>th</sup> Amendment to the United States Constitution.

Although these claims have their unique elements, proof of intentional discrimination is a critical component of each. See Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252, 265-69 (1977) (“Arlington Heights”); see also Rizzo, *supra*, 546 F.2d at 140, 144-45.

In proving intentional discrimination, a plaintiff need not show “that the challenged action rested solely on racially discriminatory purposes.” Arlington Heights, at 265. Proof that purposeful discrimination was a “motivating factor” is sufficient. Arlington Heights, at 265-66. See also Community Services, Inc. v. Wind Gap Municipal Authority, 421 F.3d 170, 177 (3d Cir. 2005).

Further, direct evidence alone is not required to establish intentional discrimination, but rather “demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” Arlington Heights, at 266; Rizzo, at 141. See Smith v. Town of Clarkton, 682 F.2d 1055, 1066 (4<sup>th</sup> Cir 1982) (in opposing public housing, court found Mayor’s statements expressing concern about “an influx of undesirables” and residents’ public hearing statements expressing concerns that the “new people” would “dilute” their schools and threaten their safety were “camouflaged racial expressions”); Greater New Orleans Fair Housing Action Center v. St. Bernard Parish, 641 F.Supp.2d 563, 571-72 (E.D. La. 2009)(within historical context of passing municipal ordinance banning construction of multi-family rental housing, court found references to “ghetto,”

“crime,” “blight,” and “shared values” as being “racially-loaded”).<sup>9</sup>

The Supreme Court in Arlington Heights enumerated the following factors that could establish discriminatory intent: 1) the disparate impact of the decision, i.e. whether it bears more heavily on one race than another; 2) the historical background of the decision, especially if it reveals a series of official actions taken for invidious purposes; 3) the specific sequence of events leading up to the challenged decision, which could shed light on the decision maker’s purposes; 4) departures from the normal procedural sequence; and 5) substantive departures, such as when factors usually considered important by the decision maker strongly favor a decision contrary to the one reached. Id. at 267-68.<sup>10</sup> The Arlington Heights factors are not intended to be “exhaustive” and a plaintiff need not establish each and every factor to show that racially discriminatory intent existed.

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<sup>9</sup> Indeed, “blight” historically has been “a facially neutral term infused with racial and ethnic prejudice” that has been often used “to justify the removal of blacks and other minorities from certain parts of the city.” Wendell E. Pritchett, The “Public Menace” of Blight, 21 Yale L. & Pol’y Rev. 1, 6 (2003). See also Kelo v. City of New London, 545 U.S. 469, 521-22 (2005) (Thomas, J., dissenting) (“Urban renewal projects have long been associated with the displacement of blacks. . .”). One scholar has estimated that 1,600 African-American neighborhoods have been destroyed since the 1960s in the name of urban renewal. Mindy Thompson Fullilove, Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It 17 (2004).

<sup>10</sup> The same Arlington Heights factors establishing intentional discrimination under equal protection are applicable as well to Residents’ claims under Title VIII and the Civil Rights Act of 1866. See Rizzo, supra, at 140, 144-45; Greater New Orleans, supra, at 568-77.



Id. at 268. See Rizzo, supra, at 140-45; Pryor v. National Collegiate Athletic Association, 288 F.3d 548, 562-65 (3d Cir. 2002).

**1. Compelling adverse disparate impact upon African-American and Hispanic residents.**

The “impact of the official action” and “whether it bears more heavily on one race than another” is the “important starting point” for assessing discriminatory purpose. Arlington Heights at 267-68. In Reno v. Bossier Parish School Bd., 520 U.S. 471 (1997), the Court explained that the “impact of an official action is often probative of why the action was taken in the first place since people usually intend the natural consequences of their action.” Id. at 487.

In Point I, Residents compellingly demonstrated that the Township’s Gardens redevelopment project disproportionately adversely impacts African-American and Hispanic residents in the Township and County. These proofs are sufficient to infer discriminatory intent to defeat summary judgment and present this issue for trial. See 2922 Sherman Ave. Tenants’ Ass’n v. District of Columbia, 444 F.3d 673, 682-85 (D.C. Cir. 2006); The Committee Concerning Community Improvement v. City of Modesto, 583 F.3d 690, 702-06 (9<sup>th</sup> Cir. 2009).

**2. Historical background of the Gardens redevelopment project.**

The Residents also presented a history of the Gardens community that created inferences of discriminatory motives. Township officials were fully aware

of the demographics of the neighborhood, based upon observations of the neighborhood and the participation of Gardens residents at public meetings and hearings.<sup>11</sup> One Township official stated that “the Gardens and the residents of the Gardens were a matter of distaste, scorn, embarrassment, and neglect.” JA 2249, #106-13, p. 1 (Boas Memo)<sup>12</sup> As discussed in Point I-D above, officials gave minimal support for community-led initiatives to revitalize the community, and as early as 2000, before instituting any formal planning process to determine whether the neighborhood was blighted, completely abandoned efforts to rehabilitate the Gardens. JA 673-714, #17-17, pp. 1-42 (2000 Red. Rpt.); JA 1222-29, #17-35, pp. 1-8 (Acq. Program Memo); JA 2134-4, #106-08, pp. 2-12 (Pipes SJ Dec.) The Township even repudiated approximately \$2 million it received through state Regional Contribution Agreements that was expressly intended for rehabilitating lower-income homes in Mt. Holly. JA 2142, #106-18, p. 10 (Pipes SJ Dec.) The Township’s refusal to seriously consider alternative solutions to improve the quality of life in the Gardens community and eliminate blight without displacing residents is indicative of the Township’s intent to dismantle and destroy this minority community.

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<sup>11</sup> JA 767-71, #17-20, p. 2-6 (9/16/02 Mtg. Min.); JA 874-931, 934-36, #17-24, pp. 8- 65, 68-70 (8/11/03 Mtg. Trans.).

<sup>12</sup> Without benefit of discovery, Residents have not been able to confirm the author or establish the date of this memo obtained from the Township, but from the context, it is assumed that it was written by then-council member Joan Boas.

**3. Sequence of events leading to the Township's decision to demolish the Gardens.**

The Residents further presented circumstantial evidence showing that several years before the redevelopment plan was adopted in 2003, the Township undertook a series of actions with discriminatory intent. The Township began acquiring residential properties through tax foreclosures and purposefully warehousing the properties as vacant rather than returning the properties to the market. By the time that Township had declared the Gardens blighted in 2002, the Township's own vacant properties amounted to a vacancy rate of 7% – exacerbating blighted conditions within the Gardens.<sup>13</sup> During this same time, the Township also began reducing municipal services to residents. JA 557, #17-08, p. 3 (Arocho Pr. Inj. Dec.); JA 576-77, #17-09, pp. 3-4 (Brooks Pr. Inj. Dec.); JA 2138, 2140-41, 2143, 2147, #106-08, pp. 6, 8-9, 11, 15 (Pipes SJ Dec.).

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<sup>13</sup> In 2000, the Gardens had a vacancy rate of 14%, with most of the vacant properties were privately owned.. JA 677, 704-14, #17-19, pp. 5, 32-42 (2000 Red. Rpt). By 2002, the vacancy rate had risen to 18%. JA 777, #17-21, p. 5 (2002 Red. Rpt.) While the Township's redevelopment studies blame the vacancies on the prevalence of absentee owners and deterioration of properties, the 2002 Report acknowledges that the Township had acquired 23 units of the 327 units in the Gardens, or 7%, and had kept these units vacant. JA 781, #17-21, p. 9. In addition, Residents submitted a memo obtained from the Township entitled "Mount Holly Gardens Acquisition Program" which admits that the Township was considering a plan to purchase and demolish 15 units in anticipation of future redevelopment, and recognized that acquiring and "banking" properties would reduce future relocation costs. JA 1224, #17-35, p. 8. (Acq. Prog. Memo). Although the memo is undated, the context makes clear it was written after 1999 and before early 2001. JA 1223, #17-35, p. 7. Without benefit of discovery, Residents do not have more information regarding the author or other circumstances surrounding the memo.

Further, many Gardens residents had strongly voiced concerns at public hearings that they feared they would be forced out of their community. JA 767-71, #17-20, p. 2-6 (9/16/02 Mtg. Min.); JA 914- 931, #17-24, pp. 10-65 (8/11/03 Mtg. Trans.). In order to reduce opposition to the redevelopment project, Township officials gave residents false assurances – first, that that the project did not necessarily involve eminent domain, and later, when the plan was unveiled, that the plan was developed with residents’ interests in mind, that residents would not be displaced from the community, and would be provided replacement housing. JA 767, 772, #17-20, pp. 2, 7 (9/16/02 Mtg. Min.); JA 871-72, 934, 936, 938, 941-43, #17-24, pp. 5-6, 68, 70, 72, 75-77 (8/11/08 Mtg. Trans.). While residents testified about the diverse minority composition of the Gardens, the Township specifically targeted the Gardens – the neighborhood with the highest concentration of African-American and Hispanic residents – as the *only* neighborhood slated for drastic and destructive redevelopment in the Township. JA 771, #17-20, p. 6 (9/16/02 Mtg. Min.); JA 911, 923, #17-24, pp. 47, 57 (8/11/03 Mtg. Trans.); JA 997, 1000, #17-27, pp. 17, 24, (9/21/05 Mtg. Trans.); JA 1022, #17-28, p. 4-5 (3/14/05 Mtg. Trans.); JA 1253, #17-36, p. 24 (Master Plan).

#### **4. Township’s disregard of procedural norms under state redevelopment law**

The Residents’ evidence further demonstrates that the Township did not conduct this redevelopment planning process in an open, transparent process

consistent with all requirements of the LRHL, N.J.S.A. 40A:12A-1 et. seq. The LRHL mandates that a municipal governing body must first pass a resolution authorizing its planning board to conduct a preliminary study to determine whether blight criteria are met. N.J.S.A. 40A:12A-6(a). The planning board must then hold public hearings regarding its blight findings. N.J.S.A. 40A:12:A-6(b). The LRHL further mandates that “[n]o redevelopment project shall be undertaken or carried out” until after the planning board hearing process is completed, the governing body formally declares the area blighted, and then adopts by ordinance after public comment a redevelopment plan. N.J.S.A. 40A:12:A-7(a). See generally, Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344, 924 A.2d 447 (2007).

In this case, however, in 2000 the Township Council conducted its own blight study out of public view, without the required referral to the planning board and without any public hearings. Although the Township Council eventually “cured” its failure to comply with the LRHL’s procedures two years later in 2002 by passing the required resolution authorizing the planning board to conduct the “preliminary study,” by that time the Township had in effect already begun to implement its redevelopment agenda contrary to the LRHL by acquiring and warehousing vacant properties in the Gardens, as discussed above. JA 2175, #106-

12, p. 1 (Res. 2002-166).<sup>14</sup>

In addition, the Township and Redevelopers proceeded with relocation in a manner deviating from state law. They submitted a relocation plan that contained significant inconsistencies with the redevelopment plan then in effect, such as the discrepancies as to number of units to be built in the redeveloped community, and that failed to provide meaningful information about the opportunities for replacement housing.<sup>15</sup> Without instituting condemnation proceedings or giving residents notice to vacate that would trigger eligibility for relocation, as contemplated by N.J.A.C. 5:11-2.1(a), the Township picked an arbitrary date of August 1, 2006 to trigger eligibility for relocation assistance. JA 1043, #17-29, p. 9 (WRAP). As a result, the Township did not provide assistance to the approximately 92 resident households who had moved out prior to August, 2006, while offering relocation to those willing to move in anticipation of eventually

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<sup>14</sup> Residents are not relitigating this issue decided in state court, but rather use these facts to demonstrate that the Township's procedures were unusual.

<sup>15</sup> The redevelopment plan called for 228 new units, while the WRAP anticipated 520 units. JA 962, #17-26, p. 9; (WR Red. Plan); JA 560, #17-29, p. 6 (WRAP). While the WRAP contained a provision regarding first refusal for newly constructed units, it never specified whether any of the new units would be realistically affordable to Gardens residents or available prior to displacement, nor did it warn residents that if they needed relocation benefits to make the initial move out of the Gardens, they would receive no further assistance to enable them to buy a replacement unit. JA 145-46, #17-26, p.11-12.

being forced out through eminent domain.<sup>16</sup>

This evidence regarding deviations from procedural norms supports an inference that although the Township was outwardly going through the motions of conducting public hearings and complying with relocation requirements, it had privately decided to dismantle the Gardens neighborhood and displace its predominately minority residents from the municipality.

#### **5. Township's departure from substantive planning norms.**

One of redevelopment's stated goals is "promoting the physical development that will be most conducive to the social and economic improvement of the State and its several municipalities." N.J.S.A. 40A:12A-2. See, Gallenthin, supra. As discussed under Point I-D, the record demonstrates that instead of using the redevelopment process to advance this goal, the Township officials selected a method of redeveloping the community that is most harmful to residents and most costly to the taxpayers and general public. Their refusal to consider less destructive alternatives is contrary to "responsible and reasonable Township planning process, in accordance with sound, comprehensive, professional and ethical planning principles," JA 2386. #106-30, p. 20, and thus a departure from substantive norms.

Furthermore, even assuming that the Township had no choice but to pursue

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<sup>16</sup> According to the 2002 Study, there were 269 households living in the Gardens, while the WRAP states there were 177 households remaining in 2006. JA 777, #17-21, p. 5; JA 1039, #17-29, p. 5.

total acquisition and demolition of the Gardens, the Residents presented ample evidence illustrating how the Township's *timing* and *manner* in implementing the plan also constituted a departure from substantive norms. Instead of preserving the neighborhood until residents could be relocated and building replacement houses for existing residents before their housing was demolished, the Township chose to start aggressively acquiring and demolishing properties while the Gardens neighborhood was still intact, several years before actually needing the land where the occupied homes stood. JA 2254, #106-20, p. 1 (9/9/08 Twp. Press Rel.); JA 2389-90, #106-30, pp. 23-24 (Smith SJ Dec.)

The Residents' expert also established that the Township conducted demolitions that were either not necessary or required solely due to Township's own failure to properly secure and maintain its vacant properties. JA 392, 396, 398 #17-06, pp. 10, 14, 16 (Smith Pr. Inj. Dec.); JA 2374-75, #106-30, pp. 7-8 (Smith SJ Dec.). Further, the demolitions were disruptive, and caused damage to adjoining houses and removal of sidewalks.<sup>17</sup> After demolishing the homes, the Township did not properly even seal the roofs and newly exposed exterior walls of the

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<sup>17</sup> JA 398, #17-06, p. 16 (Smith Pr. Inj. Dec.); JA 558, #17-08, p. 4 (Arocho Pr. Inj. Dec.); JA 578- 80, #17-09, pp. 5-7 (Brooks Pr. Inj. Dec.); JA 586- 87, #17-10, pp. 3- 4 (Cruz Pr. Inj. Dec.); JA 2130- 31, #106-07, pp. 3-4 (Cruz SJ Dec.); JA 2374-75, #106-30, pp. 8-9 (Smith SJ Dec.)



remaining occupied homes,<sup>18</sup>

The Residents also demonstrated that the Township's redevelopment-related activity lowered the real estate values, so that it became impossible for residents to sell their homes on the private real estate market.<sup>19</sup> The Township took advantage of this situation by pressuring residents to sell their homes at deflated prices that did not represent fair market value, and were insufficient to purchase a replacement house in the surrounding area, ensuring that most Gardens residents would be forced to move out of the Township.<sup>20</sup> At the same time, the increasingly blighted conditions the Township created in the Gardens gave residents little incentive to invest in their properties and added pressure on them to move.<sup>21</sup> As a result, the Township succeeded in displacing approximately 169 households even without

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<sup>18</sup>JA 2130- 31, #106-07, pp. 3-4 (Cruz SJ Dec.); JA 2375- 79, #106-30, pp. 9-13 (Smith SJ Dec.).

<sup>19</sup> JA 591-606, #17-10, pp. 8-23 (Cruz Pr. Inj. Dec., Exh. A).

<sup>20</sup> JA 73-74, #17-04, pp. 18-19 (Beveridge Pr. Inj. Dec.); JA 558-60, 567-73, #17-08, p. 4-6, 13-19 (Arocho Pr. Inj. Dec. & Exh G); JA 588-89, 591-609, #17-10, pp. 5-6 (Cruz Pr. Inj. Dec. & Exh. A-B); JA 612, 614-19, #17-11, pp. 3, 5-10 (Simons Pr. Inj. Dec. & Exh. A-B); JA 1990-95, #106-02, pp. 7-11 (Beveridge SJ Dec.); JA 2131-32, #106-07, p. 4-5 (Cruz SJ Dec.)

<sup>21</sup> JA 391-95,398-99 #17-06, pp. 9-13, 16-17 (Smith Pr. Inj. Dec.); JA 558, #17-08, p. 4 (Arocho Pr. Inj. Dec.); JA 581-83, #17-09, p. 8-10 (Brooks Pr. Inj. Dec.); JA 587, #17-10, p. 4 (Cruz Pr. Inj. Dec.); JA 2379-80, #106-30, pp. 13-14 (Smith SJ Dec.).

resorting to eminent domain.<sup>22</sup>

Residents have thus clearly presented sufficient evidence that the Township not only demonstrated a glaring lack of concern for the needs and interests of the residents, but conveyed the message that the Residents were obstacles to and not participants in the redevelopment process. Such behavior of governmental officials towards their constituents must by all standards of civil decency be a deviation from the norm sufficient to infer discriminatory purpose.

**B. Evidence Of The Foreseeable Results Of The Township's Actions Support A Finding Of Intent And Creates A Sufficient Material Factual Dispute To Render Summary Judgment Inappropriate.**

The Supreme Court has recognized the probative value of evidence that a defendant acted with knowledge of the likely result of its action as a means of proving discriminatory purpose. While it is true that voluntary acts and "awareness of consequences" *alone* do not necessitate a finding of discriminatory intent, Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 279 (1979), "actions having foreseeable and anticipated disparate impact are relevant evidence to prove the ultimate fact, forbidden purpose." Columbus Board of Education v. Penick, 443 U.S. 449, 464 (1979). See also, Ammons v. Dade County, 783 F.2d 982 (11<sup>th</sup> Cir. 1986); Dowdell v. City of Apopka, 698 F.2d 1181 (11<sup>th</sup> Cir. 1983).

As discussed above, Township officials knew that the Gardens was a diverse

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<sup>22</sup> JA 777, #17-21, p. 5 (2000 Red. Rpt); JA 1372, #30-02, p. 2 (Hoffman Pr. Inj. Dec.).

low-income community with a high proportion of African-American and Hispanic residents who would have difficulty in finding affordable housing within the Township. Residents have thus shown that the discriminatory effects of the Township's actions – removal of low income minority population from the Township – were undeniably foreseeable,

**C. The District Court Misapplied Summary Judgment Standards by Ignoring Material Facts In Dispute, Impermissibly Weighing The Evidence, And Erroneously Drawing Inferences In Favor Of The Township As Moving Party Rather Than In Favor of Residents.**

The Court erroneously stated that the Residents had failed to support their claims with any documentary evidence, ignoring the volumes of Township documents such as Transcripts, resolutions, ordinances, reports, plans, and internal memos that the Residents had proffered into evidence, cited throughout this brief. JA 24, #114, p. 21 (SJ Op.). The Court incorrectly contended, for example, that the Residents' claims that the Township lowered the prices of the Gardens homes through its redevelopment activities and pressured them to sell at less than fair market value were based upon "opinions" and "beliefs" set forth in "conclusory, self-serving affidavits." JA 24, #114, p. 21, fn. 15 (SJ Op.). The Court ignored the Township's own appraisal report that contained an unambiguous admission that that the Township's redevelopment project was adversely affecting property values and making it impossible to sell Gardens homes on the private market. It was this

appraisal which served as the basis for the Township's valuation of the homes, and as the sale price for the unit in question was determined based upon the Township's recent acquisitions of other Gardens homes, this valuation that would clearly not constitute just compensation in a condemnation proceeding. Village of South Orange v. Alden Corp., 71 N.J. 362, 367-68, 365 A.2d 469 (1976); Jersey City Red. Agency v. Kugler, 58 N.J. 374, 277 A.2d 833 (1971).<sup>23</sup>

Next, the Court improperly concluded that residents were being successfully relocated. It impermissibly relied on its prior findings in its Preliminary Injunction Opinion to conclude that residents were "pleased" with their new homes, enjoyed improved living situations, and were even better off financially. JA 25, #114, p. 22, fn. 16 (SJ Op.). These findings were presumably based on the Certification of Ms. Marcia Holt, an employee of Keating, submitted in opposition to the Preliminary Injunction Motion. Ms. Holt's self-serving characterizations of Gardens residents' motives for moving and their attitudes toward their new place

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<sup>23</sup> The Township's appraisal stated that "market values in the Mount Holly Gardens neighborhood have declined during recent years because approximately half of the units are vacant and boarded up. As the units are acquired by the Township, and the revitalization project gets closer to its start date, the primary market for the available units will be the Township." JA 593, #17-10, p. 10. The appraisal further noted an "adverse site condition" – "[A]s mentioned throughout this report, the subject neighborhood is part of a Township revitalization program. Approximately half of the units in the Mount Holly Gardens neighborhood are boarded up and vacant. The neighborhood is no longer attractive or feasible for future homebuyers and/or investors." JA 593, #17-10, p. 10.

of residence is pure hearsay.<sup>24</sup> F.R.E. 801, 802. Furthermore, Ms. Holt provided only anecdotal evidence regarding selected residents, and while she mentioned there were a few instances where the household's monthly housing costs remained the same or decreased, she did not ever discuss whether any homeowners were forced to assume significant new debt in order to relocate.<sup>25</sup>

Furthermore, while accepting Ms. Holt's testimony at face value, the District Court ignored evidence that raised clear factual disputes as to whether the relocation was successful and whether residents were "pleased," including the Declaration of a former Gardens resident, Ms. Alandia Warthen, and the Report of the New Jersey Public Advocate. JA 626-630, #17-13, pp. 1-6; JA 1688-1731, #54-

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<sup>24</sup> While evidentiary standards may be relaxed for purposes of preliminary injunction motions, these statements were not competent evidence and should not have been considered for purposes of summary judgment. Kos Pharmaceuticals v. Andrx Corporation, 369 F.3d 700 (3d Cir 2004).

<sup>25</sup> The only direct evidence of former residents' satisfaction with their new living arrangement is one Certification formerly submitted by the Township in state court proceedings made by a tenant made in 2007 shortly after relocating to a new unit, and even that statement contains no information about whether the tenant's housing costs and general financial circumstances changed after moving from the Gardens. JA 2559-2562, #112-03, pp. 77-80 (Bryant Cert.). The Township also submitted one hearsay document, a letter from a Gardens property owner expressing interest in selling her property to the Township, and again offering no information about her circumstances after relocation. JA 2563-64; #112-03, pp. 81-82 (Brito Letter).

02, pp. 1-44 (NJ Publ. Adv. Rpt) <sup>26</sup> Finally, the Court accepted without question the Township's representation that residents who wanted to remain in Mount Holly were able to do so. JA 25, #114, p. 22, fn. 16 (SJ Op.). At the same time, it ignored all of the evidence submitted by Residents to the contrary, including the statistical data that showed that two-thirds of the displaced residents were relocated outside of the Township, the resident surveys and public meeting Transcripts where Gardens residents expressed a strong desire to remain in the neighborhood, the expert testimony regarding the shortage of affordable housing in the region, and the Declarations of Gardens residents describing their limited income and difficulty in finding affordable housing in the Township.<sup>27</sup>

The Court also erroneously characterized the testimony before the Council and Planning Board in an unjustifiably favorable light for the benefit of the

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<sup>26</sup> The NJ Public Advocate Report is admissible pursuant to F.R.E. 803(8) as a public record or report of a public agency setting forth factual findings resulting from an investigation made pursuant to authority granted by law.

<sup>27</sup> JA 67-68, 71-75, #17-04, pp. 12-13, 16-20 (Beveridge Pr. Inj. Dec.); JA 560, #17-08, p. 6 (Arocho Pr. Inj. Dec.); JA 578, #17-09, p. 5 (Brooks Pr. Inj. Dec.); JA 588-89, #17-10, pp. 5-6 (Cruz Pr. Inj. Dec.); JA 624-625, #17-12, pp. 5-6 (Vicente Pr. Inj. Dec.); JA 633, #17-14, p. 3 (Wright Pr. Inj. Dec.); JA 739-765, #17-19, pp. 1-27 (2000 Resident Survey); JA 914- 931, #17-24, pp. 10-65 (8/11/03 Mtg. Trans.); JA 996-1010, #17-27, pp. 16-30 (2/21/05 Mtg. Trans.); JA 1019-1030; #17-28, pp. 2-13 (3/14/05 Mtg. Trans.); JA 1104-1108, #17-30, pp. 1-5 (Resident Survey Results); JA 1158, #17-33, p. 23 (1/24/08 Twp. Resp. to NJ Publ. Adv.); JA 1160-64, #17-33, pp. 1-5 (Reloc. Chart); JA 2044, 2046-51, #106-02, pp. 4, 6-11 (Beveridge Summ. Jdg. Dec.); JA 2264-66, # 106-21, pp. 8-10 (9/15/08 Mtg. Min.); JA 2271-72, #106-22, pp. 3-4 (9/22/08 Mtg. Min.).

Township, stating that “many viewpoints were expressed” and some were “supportive and hopeful,” while in reality, every Gardens resident who spoke at the hearings opposed the plan that called for their forced relocation, and their input was ignored.<sup>28</sup> The Court inferred without basis that Township officials “welcomed and encouraged” residents’ input, even though the public hearings in question were mandated by the LRHL, N.J.S.A 40A:12A-6, 7. JA 26, #114, p. 23 (SJ Op.)<sup>29</sup> The Court further assumed that the Township officials acted out of “significant concern for the Gardens residents’ welfare” JA 27, #114, p. 24 (SJ Op.), accepting at face value their self-serving statements, while completely ignoring the evidence presented by the Residents that showed these statements were directly contradicted by the officials’ actions, as discussed in detail above. Similarly, the Court interpreted the Township’s revisions of the redevelopment plan to mean that the Township was interested in public input, JA 28, #114, p. 25 (SJ Op.). The District Court ignored evidence that the Redevelopers had prepared “concept plans” upon which the revisions were based, ignoring residents’ concerns, and the Court failed

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<sup>28</sup> JA 26, #114, p. 23 (SJ Opinion); JA 914- 931, #17-24, pp. 10-65 (8/11/03 Mtg. Trans.); JA 996-1010, #17-27, pp. 16-30 (2/21/05 Mtg. Trans.); JA 1019-1030; #17-28, pp. 2-13 (3/14/05 Mtg. Trans.); JA 2264-66, # 106-21, pp. 8-10 (9/15/08 Mtg. Min.); JA 2271-72, #106-22, pp. 3-4 (9/22/08 Mtg. Min.).

<sup>29</sup> There were 3 resident meetings conducted outside the statutorily mandated process, but they were conducted by Keating and not by the Township. JA 1094-95, #17-30, pp. 2-3 (Twp Status Rpt. ); JA 1432-1437; #30-11, pp. 1-3; #30-12, pp. 1-3 (Mtg. Notices). The Court also did not consider Residents’ evidence that their input was largely ignored. JA 589-90, #17-10, pp. 6-7 (Cruz Pr. Inj. Dec.).

to draw inferences favorable to the non-moving party that the redevelopment plan was amended to accommodate the needs of the selected redevelopers rather than out of concern for the residents. JA 1102-03, #17-30, pp. 10-11 (Twp. Suppl. Status Rpt); JA 1139-41, #17-33, pp. 6-8 (12/6/07 Twp Letter to NJ Publ. Adv.).

**III. THE COURT BELOW ERRED IN GRANTING SUMMARY JUDGMENT WITHOUT ALLOWING RESIDENTS REASONABLE OPPORTUNITY FOR DISCOVERY.**

F.R.C.P. 56(c), governing summary judgment, provides for the entry of summary judgment, *after adequate time for discovery*. Celotex Corporation v. Catrett, 477 U.S. 317, 322 (1986) (emphasis added). Where the party opposing the motion demonstrates that for specified reasons it is unable to present facts essential to its opposition, the court is obligated to deny the motion, order a continuance for appropriate discovery or provide another just order. F.R.C.P 56(d); Bradley v. United States, 299 F.2d 197, 206-07 (3d. Cir 2002). See also F.R.C.P 12(d).

The Residents were most significantly prejudiced by lack of discovery regarding their intentional discrimination claims, as these involve the state of mind of municipal actors and critical facts exclusively within the Township's knowledge and control. Although Residents presented sufficient proofs of circumstantial evidence under the Arlington Heights test, as discussed above, Residents were denied opportunity for discovery of direct evidence from the Township. The District Court's reason for denying discovery, that it doubted that a Township



official would ever admit to racial animus in a deposition, is in direct contradiction to F.R.C. P 26(b). JA 24-25, #114, p. 21-22 (SJ Op.).<sup>30</sup>

The District Court also erroneously decided that discovery was not warranted because the Residents had already been in litigation over the redevelopment plan for several years and could obtain certain Township documents through Open Public Records requests, even though the scope of discovery is far wider than that of public information requests. United States v. Weber Aircraft Corp., 465 U.S. 792, 803 (1984). JA 9-10, #114, p. 6-7 (SJ Op.).

Finally, the District Court summarily concluded that no discovery “appeared calculated or even remotely likely to provide the missing proofs,” without discussing the specific discovery proposed in Residents’ Rule 56 Declaration. JA 29, #114, p.26 (SJ Op.). The District Court’s ruling is inconsistent with Rule 26 and Rule 56 and mandates reversal of summary judgment.

### **CONCLUSION**

For all the foregoing reasons, it is respectfully requested that the Order granting Appellees summary judgment be reversed, and the matter be remanded for discovery and a plenary trial.

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<sup>30</sup> As explained in the Resident’s Rule 56(f) Declaration, no discovery had been conducted in this case. JA 2424-31, #106-41, pp. 1-8. Indeed, during the two and a half years the matter was in litigation, the Defendants had never even answered the Complaint.

Dated: May 27, 2011

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**COMBINED REQUIRED F.R.A.P. & 3<sup>RD</sup> CIR. L.A.R CERTIFICATIONS**

In accordance with the Federal Rules of Appellate Procedure and the 3<sup>rd</sup> Circuit Local Appellate Rules, I hereby certify that:

1. I am a member in good standing of the Bar of the United States Court of Appeals for the Third Circuit.

2. This Brief complies with type-volume limitations of F.R.A.P. 32(a)(7)(B) because the principal portions of the Brief contain 13,887 words according to the “Word Count” function of the MS Office Word 2007 software program, excluding the parts of the brief exempted by F.R.A.P. 32(a)(7)(B)(iii).

3. This Brief complies with the type-face limitations of F.R.A.P. 32(a)(5) and the type-style requirements of F.R.A.P. 32(a)(6) because the brief has been prepared in proportionally spaced typeface using 14 point Times New Roman in MS Office Word 2007.

4. This Brief complies with 3<sup>rd</sup> Cir. L.A.R 31.1(c) because text in the electronic copy of this Brief is identical to the text in the paper copies. The electronic copy of this Brief was scanned for viruses by Norton Anti-Virus Internet Security (Version 17.8.0.5) and no viruses were detected.

Dated: May 27, 2011

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**CERTIFICATION OF SERVICE**

I certify that in addition to electronic service and in accordance with F.R.A.P. 25(c)(1)(B) & (4) and 3<sup>rd</sup> Cir. L.A.R. 31.1(a), one paper copy of Appellants' Brief was served on May 27, 2011, to each of the following counsel of record for Appellees by first class regular mail at their offices listed below:

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**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT  
Case No: 11-1159**

MT. HOLLY GARDENS CITIZENS IN ACTION, INC., a New Jersey non-profit corporation, ANA AROCHO, VIVIAN BROOKS, GEORGE CHAMBERS, DOROTHY CHAMBERS, SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, DOLORES NIXON, EONARDO PAGAN, JAMES POTTER, HENRY SIMONS, JOYCE STARLING, ROBERT TIGAR, TAISHA TIRADO, RADAMES TORRES BURGOS, LILLIAN TORRES-MORENO, DAGMAR VICENTE, ALANDIA WARTHEN, SHEILA WARTHEN, CHARLIE MAE WILSON and LEONA WRIGHT,

*APPELLANTS,*

vs.

TOWNSHIP OF MOUNT HOLLY, a municipal corporation of the State of New Jersey, TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, as governing body of the Township of Mount Holly, KATHLEEN HOFFMAN, as Township Manager of the Township of Mount Holly, JULES THIESSEN, as Mayor of the Township of Mount Holly, KEATING URBAN PARTNERS, L.L.C., a company doing business in New Jersey, TRIAD ASSOCIATES, INC., a corporation doing business in New Jersey,

*APPELLEES.*

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
Case No. 08-cv-02584 (JHR)**

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ON BEHALF OF APPELANTS**

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE  
Case No.: 1:08-cv-02584**

**MT. HOLLY GARDENS CITIZENS IN ACTION, INC.**, a New Jersey non-profit corporation, **ANA AROCHO, VIVIAN BROOKS, GEORGE CHAMBERS, DOROTHY CHAMBERS, SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, DOLORES NIXON, LEONARDO PAGAN, JAMES POTTER, HENRY SIMONS, JOYCE STARLING, ROBERT TIGAR, TAISHA TIRADO, RADAMES TORRES BURGOS, LILLIAN TORRES-MORENO, DAGMAR VICENTE, ALANDIA WARTHEN, SHEILA WARTHEN, CHARLIE MAE WILSON and LEONA WRIGHT,**

*Plaintiffs,*

vs.

**TOWNSHIP OF MOUNT HOLLY**, a municipal corporation of the State of New Jersey, **TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY**, as governing body of the Township of Mount Holly, **KATHLEEN**

District Judge: HON. NOEL L. HILLMAN, U.S.D.J.

**NOTICE OF APPEAL**

**HOFFMAN**, as Township Manager of the Township of Mount Holly, **JULES THIESSEN**, as Mayor of the Township of Mount Holly, **KEATING URBAN PARTNERS, L.L.C.**, a company doing business in New Jersey, **TRIAD ASSOCIATES, INC.**, a corporation doing business in New Jersey,

*Defendants.*

Notice is hereby given that Mt Holly Gardens Citizens in Action, Ana Arocho, Vivian Brooks, Santos Cruz, Mattie Howell, Nancy Lopez, Dolores Nixon, James Potter, Henry Simons, Robert Tigar, Radames Torres Burgos, Lillian Torres-Moreno, Charlie Mae Wilson, Alandia Warthen, Sheila Warthen, and Leona Wright, plaintiffs in the above named case, hereby appeal to the United States Court of Appeals for the Third Circuit from the final judgment granting defendants summary judgment and dismissing all of plaintiffs' claims entered in this action on January 3, 2011.

Dated: January 17, 2011

**SOUTH JERSEY LEGAL SERVICES, INC.**

*Attorneys for Plaintiffs:* Mt. Holly Gardens Citizens In Action, Inc., Ana Arocho, Vivian Brooks, Bernice Cagle, George Chambers, Dorothy Chambers, Elida Echevaria, Norman Harris, Leonardo Pagan, Joyce Starling, Taisha Tirado, Dagmar Vicente, Charlie Mae Wilson, Mattie Howell, Nancy Lopez, Henry Simons, Alandia Warthen, Sheila Warthen, and Leona Wright

By: /s/ Olga D. Pomar  
OLGA D. POMAR, ESQUIRE

**POTTER AND DICKSON**

*Attorneys for Plaintiffs:* Santos Cruz, Dolores Nixon, James Potter, Robert Tigar, and Radames Torres Burgos

By: /s/ R. William Potter  
R. WILLIAM POTTER, ESQUIRE

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

MT HOLLY CITIZENS IN ACTION,	:	
INC., et al.,	:	
	:	Civil Action No.
Plaintiffs,	:	<b>08-2584 (NLH) (JS)</b>
	:	
v.	:	
	:	
TOWNSHIP OF MOUNT HOLLY,	:	
et al.,	:	<b>ORDER</b>
	:	
Defendants.	:	
	:	

For the reasons expressed in the Court's Opinion filed today,

**IT IS HEREBY** on this   3rd   day of January, 2011

**ORDERED** that defendants' converted motions for summary judgment [74, 84, 86, 112] are GRANTED; and it is further

**ORDERED** the Clerk of the Court shall mark this matter as CLOSED.

                  s/ Noel L. Hillman                  

At Camden, New Jersey

NOEL L. HILLMAN, U.S.D.J.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

MT HOLLY CITIZENS IN ACTION,	:	
INC., et al.,	:	
	:	
Plaintiffs,	:	Civil Action No.
	:	<b>08-2584 (NLH) (JS)</b>
	:	
v.	:	
	:	
TOWNSHIP OF MOUNT HOLLY,	:	
et al.,	:	<b>OPINION</b>
	:	
Defendants.	:	
	:	

**Appearances:**

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**HILLMAN, District Judge**

This case involves the redevelopment of the Mount Holly Gardens neighborhood (the "Gardens") in Mount Holly, New Jersey. Plaintiffs are low-income, African-American, Hispanic and "white" residents of the Gardens, who object to the plan because they claim they are being forcibly removed from their homes, which are being replaced in large part with new, much higher-priced market rate homes.

Currently before this Court are defendants' motions for summary judgment, which had been converted from motions to dismiss on four of plaintiffs' claims.<sup>1</sup> The Court provided the plaintiffs with additional time to respond to the converted motions, and then allowed defendants to file reply briefs. The supplemental briefing is completed, and the remaining claims that

---

<sup>1</sup> The other five counts were dismissed. Since this case was filed over two years ago, it has been extensively litigated with several hearings, the denial of a TRO and preliminary injunction, the filing of a second amended complaint, and the issuance of numerous written Opinions. Litigation over the Gardens redevelopment also precedes this case in New Jersey state court. Overall, the concerns of several Gardens residents have caused the dispute over the blighted neighborhood's redevelopment plan to spend ten years in the courts.

are now ready for final resolution are plaintiffs' claims for violations of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act or FHA), 42 U.S.C. § 3601 et seq. (Count One against all defendants); the Civil Rights Act of 1866, 42 U.S.C. § 1982 (Count Two against the Township); the Equal Protection Clause of the U.S. Constitution, brought pursuant to 42 U.S.C. § 1983 (Count Three against the Township); and Equal Protection Clause of the New Jersey State Constitution (Count Five against the Township), as well a claim for punitive damages.

As this Court previously expressed on several occasions, we recognize that the Gardens redevelopment has had an effect on low-income families, and, correspondingly, minority families. The Court also recognizes that being forced from one's home is a difficult and emotional issue, compounded by the fear of being unable to afford a comparable place to live. However, as the Court has also expressed previously, plaintiffs have failed to demonstrate that the Township, or the entities assisting the Township in the redevelopment and relocation services, has implemented a plan that has a disparate impact on the Gardens residents as the law defines it. Nor have they shown that the defendants have not been proceeding pursuant to a legitimate governmental interest in the least restrictive way, or have otherwise acted with discriminatory intent. Consequently, as explained more fully below, defendants' motions will be granted,

and the case will be closed.

## DISCUSSION<sup>2</sup>

### **A. Standard for Summary Judgment**

Summary judgment is appropriate where the Court is satisfied that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 330 (1986); Fed. R. Civ. P. 56(c).

An issue is "genuine" if it is supported by evidence such that a reasonable jury could return a verdict in the nonmoving party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" if, under the governing substantive law, a dispute about the fact might affect the outcome of the suit. Id. In considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the non-moving party's evidence "is to be believed and all justifiable inferences are to be drawn in his favor." Marino v. Industrial Crating Co., 358 F.3d 241, 247 (3d Cir. 2004)(quoting Anderson, 477 U.S. at 255).

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<sup>2</sup> Because the background and procedural history have been laid out in the Court's previous Opinions, they will not be restated here.



Initially, the moving party has the burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met this burden, the nonmoving party must identify, by affidavits or otherwise, specific facts showing that there is a genuine issue for trial. Id. Thus, to withstand a properly supported motion for summary judgment, the nonmoving party must identify specific facts and affirmative evidence that contradict those offered by the moving party. Anderson, 477 U.S. at 256-57. A party opposing summary judgment must do more than just rest upon mere allegations, general denials, or vague statements. Saldana v. Kmart Corp., 260 F.3d 228, 232 (3d Cir. 2001).

**B. Analysis**

**1. Count One - Fair Housing Act**

This Court has already analyzed plaintiffs' Fair Housing Act claim substantively in the context of plaintiffs' motion for a preliminary injunction. That analysis was adopted in the Court's most recent Opinion, which converted defendants' motions to dismiss into ones for summary judgment. That analysis found that plaintiffs had not demonstrated that the redevelopment has had a disparate impact on a protected group, or that defendants did not have a legitimate interest in the redevelopment, or that no alternative course of action would have a lesser impact. Recognizing that plaintiffs' Fair Housing Act claim had only been

considered in the context of a preliminary injunction, the Court afforded plaintiffs time to gather specific facts to show a genuine issue for trial on these issues. The Court now affirms its prior decision on plaintiffs' FHA claim because plaintiffs have not provided the requisite proof to take the issues to a jury.

As a preliminary matter, plaintiffs argue that they should be afforded time for discovery, and are prejudiced in their ability to oppose the converted motions because of the lack of discovery. Plaintiffs contend that they require a look into the defendants' state of mind and intentions, as well as documents that are only within the control of defendants and, thus, unavailable to plaintiffs. Without this information, plaintiffs argue that summary judgment is premature, which is further evidenced by the fact that defendants have not even filed their answers to plaintiffs' complaint.

Although the Court recognizes the peculiar procedural history that has led to the resolution of summary judgment motions without the filing of answers or the undertaking of formal discovery, this is not a case where plaintiffs are neophytes filing an initial challenge to the Gardens redevelopment plan. Not only has there been extensive proceedings over two years in this Court, most of these issues have been thoroughly litigated in New Jersey state court over the

course of several years preceding this case.<sup>3</sup> As pointed out by defendants, plaintiffs have already had the ability to obtain the information they seek through Open Public Records Act requests, as well as through the previous state court litigation. Further, much of the information is available by other means, including from the residents themselves or the Public Advocate, who undertook an investigation of the Township's relocation practices.<sup>4</sup>

Moreover, plaintiffs do not specifically identify what information defendants hold to support their claims, and instead request discovery generally, such as depositions of key officials in order to acquire testimony as to their intent to "rid [the Township] of a minority community." (Pomar Cert., Docket No. 106-41) ("Residents are severely prejudiced by being unable to probe, at a deposition, the attitudes, intent, and motives of the Township officials who made the critical decisions to pursue the Gardens redevelopment project."). Discovery, however, cannot serve as a fishing expedition through which plaintiffs search for

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<sup>3</sup> The Court recognizes that the state court case was more narrow than this one, and the civil rights claims had been dismissed as unripe, but none of the discovery plaintiffs contend they need here to supplement the discovery from the state court litigation would save their otherwise deficient claims.

<sup>4</sup> In the Court's February 13, 2009 Opinion, the Court considered and referenced the Public Advocate's report, which was provided by plaintiffs pursuant to the Court's November 25, 2008 Order granting plaintiffs' request to supplement the record with the report.

evidence to support conclusory speculations. Giovanelli v. D. Simmons General Contracting, 2010 WL 988544, \*5 (D.N.J. 2010). Further, such depositions may be barred by a privilege afforded to decision-making government officials. See, e.g., U.S. v. Sensient Colors, Inc., 649 F. Supp. 2d 309, 316 (D.N.J. 2009).<sup>5</sup>

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<sup>5</sup> Indeed, in addressing the same argument by plaintiffs in the earlier state court litigation, Judge Sweeney explained,

There are many reasons why discovery is the exception rather than the rule in actions such as this one. First, a public official's state of mind is rarely an issue and can usually be determined from the record below. There are transcripts, tapes, minutes and the like. Secondly, and no less important, is the consideration that members of the municipal governing bodies and local boards serve without significant remuneration. They would be far less likely to serve if their official actions frequently subjected them to the arduous discovery process. Interrogatories would have to be answered and depositions attended after usual hours of public service. It would place a chilling effect on public service.

Here, I am convinced that the discovery sought would burden the officials involved to a degree that would be totally disproportionate to any usable information that could be recovered. Furthermore, there has already been one hearing in this matter. Although I limited plaintiffs to two expert witnesses, I also afforded them the right to call township officials to testify. They elected, for whatever reason, not to do so. Following that hearing, I determined that the designation of the Gardens as an area in need of redevelopment had substantial credible support in the record, was a designation made in accordance with statutory criteria, and I found no evidence of racial or ethnic bias or animus in the testimony of . . . the town

Overriding all these points with specific reference to plaintiffs' FHA claim, however, is that in order to prove their claim, none of the discovery plaintiffs claim they lack would save their allegations, as plaintiffs must present their own proof of disparate impact and a more-viable alternative. Stated several times before, Section 3604(a) of the Fair Housing Act makes it unlawful to "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a) (emphasis added). The FHA can be violated by either intentional discrimination or if a practice has a disparate impact on a protected class. Community Services, Inc. v. Wind Gap Mun. Authority, 421 F.3d 170, 176 (3d Cir. 2005).

Plaintiffs here contend that the Gardens redevelopment plan has a disparate impact on the minorities living in the Gardens. In order to prove their claim, plaintiffs must first establish a prima facie case of disparate impact. Resident Advisory Board v. Rizzo, 564 F.2d 126, 148 (3d Cir. 1977). To show disparate impact, plaintiffs must show that the Township's actions have had

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planner.

(August 30, 2005 Opinion, L-3027-03, at 6-7, Def. Ex. A, Docket No. 84-3.)

a greater adverse impact on the protected groups (here, African-Americans and Hispanics) than on others. Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Tp. of Scotch Plains, 284 F.3d 442, 466-67 (3d Cir. 2002).

If a plaintiff establishes his prima facie case, the burden shifts to the defendant to demonstrate justification. The "justification must serve, in theory and practice, a legitimate, bona fide interest of the Title VIII defendant, and the defendant must show that no other alternative course of action could be adopted that would enable that interest to be served with less discriminatory impact." Rizzo, 564 F.2d at 149. Finally, "[i]f the defendant does introduce evidence that no such alternative course of action can be adopted, the burden will once again shift to the Plaintiff to demonstrate that other practices are available." Id. at 149 n.37. "If the Title VIII prima facie case is not rebutted, a violation is proved." Id. at 149.

Thus, it is plaintiffs' burden to show disparate impact, and if they do, it is their burden to rebut the Township's position<sup>6</sup> and demonstrate a more-viable alternative course of action. Plaintiffs have done neither.

To support disparate impact, plaintiffs argue that the

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<sup>6</sup> In the October 23, 2009 Opinion, the Court found that the Township had already met its burden based on the record before the Court at that time. As explained more fully herein, plaintiffs' supplemental briefing does not demonstrate a material issue of fact regarding the Township's legitimate interest and alternative choices.

redevelopment more negatively affects minorities in Mt. Holly than non-minority residents because the redevelopment is driving out the minority population of Mt. Holly. Plaintiffs also argue that the redevelopment plan has a disparate impact on minorities because the plan is targeted at an area that is populated by mostly minorities. To support their position, plaintiffs had previously presented a report of a demographic and statistical expert, Andrew A. Beveridge, Ph.D. Dr. Beveridge opined that the redevelopment of the Gardens effectively and significantly reduces the minority population in Mt. Holly.

The Court had rejected that proof. The Court explained,

Even though plaintiffs have pointed out that the redevelopment of the Gardens has reduced the minority population of Mt. Holly, they have not accounted for how many minorities will move into the new housing. Furthermore, and more importantly for the plaintiffs' FHA claim of disparate impact, the redevelopment plan does not apply differently to minorities than non-minorities. Several plaintiffs classify themselves as "white," yet the plan affects them in the exact same way as their minority neighbors. The real effect of the Gardens redevelopment is that there will be less lower-income housing in Mt. Holly. Although the Township may have some obligation with regard to providing a certain number of low-income housing pursuant to other law, the reduction of low-income housing is not a violation of the FHA. The FHA prohibits the Township from making unavailable a dwelling to any person because of race--it does not speak to income. Redevelopment of blighted, low-income housing is not, without more, a violation of the FHA. Here, where fourteen homes are occupied by African-American plaintiffs, thirteen homes are occupied by Hispanic plaintiffs, and six homes are occupied by "white" plaintiffs, and all are affected in the same way by the redevelopment, the Court cannot find, on the current record at this preliminary injunction stage,

that plaintiffs will succeed on their disparate impact FHA claim.

(Feb. 13, 2009 Op. at 7-8.)

In their opposition to the converted motions, plaintiffs present the same statistics, and further argue that there is disparate impact on minorities because the displaced plaintiffs will not be able to afford the new \$200,000+ homes, or the \$1,300 to rent these same properties.<sup>7</sup> As explained before, however, if none of the plaintiffs can afford the new homes, it is not just the African-American and Hispanic plaintiffs who are impacted by the increased housing prices--it is all Gardens residents, including the Caucasian residents.<sup>8</sup> Additionally, as also explained before, plaintiffs have not demonstrated that the Township is preventing minorities from purchasing or moving into the new homes, or otherwise limiting the new residents to non-minorities. Plaintiffs have not provided any proof or statistics to suggest that the new homes created by the redevelopment will be financially out-of-reach for all or most minorities.<sup>9</sup>

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<sup>7</sup> Although 464 units will be market rate, 56 will be deed-restricted affordable housing units.

<sup>8</sup> Relatedly, plaintiffs argue that because a greater percentage of minority Township residents have been affected by the redevelopment they have demonstrated a disparate impact. Even if this statistic was sufficient to establish a prima facie case, plaintiffs' FHA claim fails for reasons other than the disparate impact analysis.

<sup>9</sup> Plaintiffs present statistics that only 21% of African-American and Hispanic households in Burlington County would be



Furthermore, under plaintiffs' logic, any action by the Township to do anything with regard to the Gardens would result in a disparate impact, simply because of the racial composition of the Gardens. The FHA (or any other civil rights law) does not contemplate that a town will never be permitted to ameliorate a blighted area inhabited mainly by minorities simply because it will affect minorities. See, e.g., City of Memphis v. Greene, 451 U.S. 100, 128 (1981) ("Because urban neighborhoods are so frequently characterized by a common ethnic or racial heritage, a regulation's adverse impact on a particular neighborhood will often have a disparate effect on an identifiable ethnic or racial group. To regard an inevitable consequence of that kind as a form of stigma so severe as to violate the Thirteenth Amendment

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able to afford the new houses, because that percentage of African-American and Hispanic population earns above 80% of the median income (\$44,580). (Bev. Cert., Ex. B-2, Docket No. 106-4.) This is in contrast to 79% of white Burlington County residents who earn above 80% of the median income. (Id.) These statistics hold little validity to show a disparate impact on the Township's minority population for several reasons: (1) they take into account the entire population of Burlington County, rather than only Mt. Holly Township, and the towns in Burlington County are of various economic and racial compositions; (2) they do not account for minorities who will move into Mt. Holly Township from outside Burlington County; (3) they do not account for the deed restricted units that will be more affordable; (4) they do not account for a non-minority purchaser who rents to a minority; (5) they do not account for the minorities who will move elsewhere within Mt. Holly Township; and (6) more recent population survey data (from 2008, compared to the 2000 Census data used by plaintiffs' expert) shows 16,744 African-American and Hispanic households in Burlington County have incomes exceeding \$45,000, evidence of the minority population's ability to occupy all 464 market rate homes.

would trivialize the great purpose of that charter of freedom.”).

Finally, it is important to point out that none of the plaintiffs has been forced out of their homes by the Township without the offer of relocation services. The FHA makes it unlawful to otherwise make unavailable or deny a dwelling to any person because of race. The Township has advised the residents not to move until directed by the Township so that they will be eligible for relocation assistance. All plaintiffs, save for one who was told to leave by her landlord, are still residing in the Gardens. Thus, on this basis alone, plaintiffs’ FHA claim fails.

But even if plaintiffs were able to establish their prima facie case, they have not rebutted the Township’s legitimate interest in the redevelopment, and they have not shown how an alternative course of action would have a lesser impact. Plaintiffs cannot refute that redevelopment of the community to remove blight conditions is a bona fide interest of the state, as explained previously by this Court and by the New Jersey Appellate Division. (See Feb. 13, 2009 Op. at 9, citing Wilson v. City of Long Branch, 142 A.2d 837, 842 (N.J. 1958) (“Community redevelopment is a modern facet of municipal government. Soundly planned redevelopment can make the difference between continued stagnation and decline and a resurgence of healthy growth. It provides the means of removing the decadent effect of slums and blight on neighboring property values, of opening up new areas

for residence and industry."); Citizens In Action v. Township Of Mt. Holly, 2007 WL 1930457, \*13 (N.J. Super. Ct. App. Div. July 5, 2007) (finding that "[t]he dilapidated, overcrowded, poorly designed community [the Gardens], in addition to the high level of crime in the area, is clearly detrimental to the safety, health, morals and welfare of the community".) It is clear that the Township has a legitimate interest in the redevelopment of the Gardens.

With regard to alternatives, plaintiffs have not identified disputed issues of fact concerning whether the Township failed to show "that no alternative course of action could be adopted that would enable that interest to be served with less discriminatory impact." Rizzo, 564 F.2d at 149. The adequacy of the redevelopment plan, as opposed the rehabilitation plan advocated by Plaintiffs, was extensively analyzed in New Jersey state court. See Citizens In Action v. Township Of Mt. Holly, 2007 WL 1930457, 14 (N.J. Super. Ct. App. Div. 2007) (finding that "the redevelopment designation is based on a record that provides substantial evidence in support of the determination").<sup>10</sup>

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<sup>10</sup>Even though that analysis was performed in the context of plaintiffs' claims under New Jersey's Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 to -73 (LHRL), the issue of the sufficiency of the 2005 redevelopment plan was extensively litigated. Thus, collateral estoppel principles may also apply. See In re Graham, 973 F.2d 1089, 1097 (3d Cir. 1992) (citations omitted) (explaining that issue preclusion applies when "(1) the issue sought to be precluded is the same as that involved in the prior action; (2) that issue was actually litigated; (3) it was determined by a final and valid judgment; and (4) the

Plaintiffs have not presented any plan more viable than the one implemented by the Township.<sup>11</sup> They advocate rehabilitation, but have proposed a plan, as pointed out by defendants, that relies upon governmental subsidies and upon costs based on property conditions in 1989. It also does not take into account rehabilitation costs to rehab owner-occupied homes, which is an additional \$2.5 million, and it does not account for temporary

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determination was essential to the prior judgment"). The Court, however, refrains from considering this issue because plaintiffs' FHA claim, which also concerns the 2008 revised redevelopment plan, was not litigated in state court.

<sup>11</sup>The Township has shown that several organizations have attempted to rehabilitate the Gardens in the last 15 or so years. These small scale efforts were ineffective in curing the overall blight of the community, which was a frustrating result for the organizations, the Township, and the residents. (See Sept. 8, 2003 Town Council meeting transcript at 25-26, 31-32, Def. Ex. B.). Plaintiffs argue that it is not their burden to prove a better alternative. Although it is true that the Township must show the other alternatives they considered and rejected, and that the alternative course of action could not "be adopted that would enable that interest to be served with less discriminatory impact," once that showing is made, the ultimate burden "once again shift[s] to the Plaintiff to demonstrate that other practices are available." Rizzo, 564 F.2d at 149. Thus, plaintiffs in this case have the obligation to show what alternatives would have better served the community. Of course, this analysis was intended to be performed after a finding of disparate impact, which causes this "alternative course of action" analysis to make more sense in that context--that is, if disparate impact is shown, the Township has the burden of showing it had no choice but to proceed in its chosen path despite the disparate impact. Here, where no disparate impact has been shown, this analysis devolves into plaintiffs' personal disagreement with the plan, and an argument as to what they believe to be the best course of action. The fact that the Township did not follow a plan sanctioned by the plaintiffs is not the standard for a FHA claim.

relocation costs.<sup>12</sup> Simply because the properties could have been rehabilitated does not mean that rehabilitation was the feasible option.<sup>13</sup>

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<sup>12</sup> Plaintiffs' residential planning expert, Gary Smith, AIA, AICP, relates in his updated certification that the Township is violating several building codes in its demolition process. The legality of how the Township is currently proceeding under its redevelopment plan is not before the Court. Mr. Smith also opines that the redevelopment plan should be halted, and redirected to save the existing housing stock for rehabilitation. As the Court commented before, however, "[e]ffectively, plaintiffs are seeking to remain living in the blighted and unsafe conditions until they are awarded money damages for their claims and sufficient compensation to secure housing in the local housing market. Although couched at times like an effort to have the development go up around them, like a highway built around a protected tree, or to have their units rehabilitated, this makes little if no practical sense after years of litigation, approved redevelopment plans, and the expenditure of significant public resources. At this late stage, the only real practical remedy is for plaintiffs to receive the fair value for their home as well as proper and non-discriminatory relocation procedures and benefits. . . . The relief they are seeking is inconsistent with proving the fourth element of their FHA claim--namely, that an alternative course of action to eminent domain and relocation is viable." (Feb. 9, 2009 Op. at 10-11.)

<sup>13</sup> The state appellate court commented,

Photographic evidence reveals areas within the Gardens that are dilapidated. Additionally, there was testimony that there was overcrowding and excessive land coverage because of the way the units were arranged in blocks in fee simple ownership. Accordingly, a dilapidated home on one lot had a serious effect on homes on either side of it. Excessive land coverage was also evident where a majority of the rear yards were paved or covered with gravel to accommodate additional parking spaces. Finally, the alleyways created a faulty arrangement or design for the Gardens because it increased the amount of crime in the area. The dilapidated, overcrowded, poorly designed

In short, Plaintiffs have failed to show an impermissible disparate impact. Even if they have made such a showing, they have failed to offer sufficient evidence to rebut the Township's legitimate governmental purpose or demonstrate illegitimate discriminatory intent. Therefore, plaintiffs have not demonstrated that material disputed facts exist as to their FHA claim. Accordingly, summary judgment must be entered in favor of defendants on this claim.<sup>14</sup>

**2. Counts Two, Three, Five - Civil Rights Act and State and Federal Equal Protection Clause**

Plaintiffs claim that the Township violated the Civil Rights Act of 1866, 42 U.S.C. § 1982, the Equal Protection Clause of the U.S. Constitution, brought pursuant to 42 U.S.C. § 1983, and the Equal Protection Clause of the New Jersey State Constitution. In

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community, in addition to the high level of crime in the area, is clearly detrimental to the safety, health, morals and welfare of the community.

Citizens In Action v. Township of Mt. Holly, 2007 WL 1930457, \*13 (N.J. Super. Ct. App. Div. 2007).

<sup>14</sup> Plaintiffs' FHA claim was lodged against all defendants, including the construction company selected to undertake the redevelopment, Keating Urban Partners, LLC, and the company hired by Keating to conduct the relocation activities, Triad Associates, Inc. In their previous motion to dismiss, Triad argued, and Keating joined in that argument, that it cannot be held liable under the FHA because it had no part in the drafting and adoption of the Township's redevelopment plan, and its actions with regard to the relocation activities do not fall within the province of the FHA-protected conduct. Because the Court has found no FHA violation, Triad's argument will not be considered.

order to prove such claims, plaintiffs must show that they were the target of intentional, purposeful discrimination by the Township. City of Cuyahoga Falls, Ohio v. Buckeye Community Hope Foundation, 538 U.S. 188, 194 (2003) (citation omitted) (“‘Proof of racially discriminatory intent or purpose is required’ to show a violation of the Equal Protection Clause.”); Bradley v. U.S., 299 F.3d 197, 205 (3d Cir. 2002) (stating that in order to establish a claim under the Equal Protection Clause, a plaintiff needs to prove that the actions (1) had a discriminatory effect and (2) were motivated by a discriminatory purpose); Brown v. Philip Morris Inc., 250 F.3d 789, 797 (3d Cir. 2001) (citations and quotations omitted) (“In order to bring an action under § 1982, a plaintiff must allege with specificity facts sufficient to show or raise a plausible inference of (1) the defendant's racial animus; (2) intentional discrimination; and (3) that the defendant deprived plaintiff of his rights because of race.”); Greenberg v. Kimmelman, 494 A.2d 294, 308 (N.J. 1985) (stating that if a law is facially neutral, “an equal protection claim could succeed only if the statute had an invidious purpose”).

Plaintiffs claim that through the redevelopment plan the Township is intentionally seeking to deprive plaintiffs and other African-Americans and Hispanics of the right to property and equal protection under the law. In the Court’s prior Opinion denying plaintiffs’ request for preliminary injunction, the Court

found that plaintiffs did not demonstrate that the Township "implemented the development plan to intentionally or effectively drive out the minority population of Mt. Holly." (Feb. 9, 2009 Op. at 7.) Thus, as with their FHA claim, the Township's motion to dismiss these claims was converted to one for summary judgment, and the Court afforded plaintiffs the opportunity to provide other proof to support their claims of intentional discrimination.

In their response, plaintiffs have failed to provide such proof. As discussed above, plaintiffs first argue that summary judgment is premature, because their ability to prove these intentional discrimination claims is thwarted by the lack of discovery--namely, the depositions of Township officials. As also discussed above, however, even if such depositions were permitted, the Court doubts that any Township official will testify to his or her "discriminatory purpose" in approving the redevelopment plan. See, e.g., Smith v. Town of Clarkton, N.C., 682 F.2d 1055, 1064-65 (4th Cir. 1982) (in an FHA case, stating, "Municipal officials acting in their official capacities seldom, if ever, announce on the record that they are pursuing a particular course of action because of their desire to discriminate against a racial minority. Even individuals acting from invidious motivations realize the unattractiveness of their prejudices when faced with their perpetuation in the public



record. It is only in private conversation, with individuals assumed to share their bigotry, that open statements of discrimination are made, so it is rare that these statements can be captured for purposes of proving racial discrimination in a case such as this.").

With regard to other methods for proving discriminatory intent, plaintiffs have had years to gather such proof, including obtaining affidavits from Gardens residents or other people who have been involved in the Gardens redevelopment process. Instead, plaintiffs' brief details the Township's alleged discriminatory actions, but none of the claims are supported by any documentary or other evidence.<sup>15</sup> Rather, plaintiffs tell a

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<sup>15</sup> Several affidavits by plaintiffs were submitted in support of their motion for preliminary injunction. In their brief, plaintiffs specifically refer to one of them by Santos Cruz to support the claim that the Township's redevelopment activities lowered the property values of the remaining homes, and the Township took advantage of that situation by pressuring residents to sell their homes at deflated prices that did not represent fair market value. (Pl. Opp. at 31.) This conclusion is based on Mr. Cruz's "belief." (Cruz Cert., Docket No. 17-9 ("I believe the houses are worth much more than the Township is offering.") The other affidavits by plaintiffs in the record contain similar statements as to their "beliefs" and "feelings." See Ancho Cert., Docket No. 17-7, ¶ 18, "I believe that my home is worth much more than that [\$39,000 to \$42,000 offered to others] because we invested a great amount of money to make it comfortable for our retirement"); Simons Cert., Docket No. 17-10, ¶ 14, "I believe my house is worth a great deal more than what the Township is offering me," because it has three bedrooms, a large lot, and it has undergone "costly upgrades.") These affidavits are insufficient to defeat a summary judgment motion. Celotex, 477 U.S. at 332 ("[C]onclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment. Instead, the affiant must set forth specific facts that reveal a genuine issue of material fact.").

story, long on accusations and suppositions but short on proof, of the Township's ten-year, insidious desire to displace the minority population of Mt. Holly. If there were merit to these claims, plaintiffs would be able to annotate their allegations with factual evidence that would infer such discriminatory motive.<sup>16</sup> They have not done so. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266-67 (1977) (explaining that the determination as to "whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available," and identifying objective factors that may be probative of racially discriminatory intent: (1) the racial impact of an official action; (2) the historical

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Incidentally, these affidavits relate the plaintiffs' extensive participation in numerous meetings with the Township and the builders over the years.

<sup>16</sup> For example, plaintiffs state that "the Township failed to provide adequate compensation and relocation assistance to enable residents to purchase a replacement house in the Township or surrounding region." (Pl. Opp. at 38.) In the Court's prior Opinion, however, the Court noted, "The evidence on the record shows that other Garden residents whose homes have been acquired by the Township and have been relocated are pleased with both their compensation and place of relocation. In fact, the evidence demonstrates that many residents now have significantly improved living conditions and are in better circumstances financially. Additionally, the defendants represent, and plaintiffs do not dispute, that none of the people who have been relocated and wanted to remain in Mt. Holly were unable to." (Feb. 9, 2009 Op. at 12 n.5.) Moreover, it is an undisputed fact that New Jersey statute only requires the Township to pay \$4,000 in relocation benefits to tenants, and \$15,000 in relocation benefits to homeowners, but the Township has paid \$7,500 to tenants and \$35,000 to homeowners. (See Def. Statement of Facts, ¶ 23, at 31.)

background of the decision; (3) the sequence of events leading up to the challenged decision, including departures from normal procedures and usual substantive norms; and (4) the legislative or administrative history of the decision).

In contrast, the Township provides transcripts of town council and planning board meetings, where concerned citizens and council members discussed the plans for the Gardens. The Township has also provided letters and affidavits from former Gardens residents, as well as certifications from individuals involved with the redevelopment plan implementation and relocation process. These documents range in date from 2002 through early 2010. The documents show that from the very beginning, the planning board was aware of the sensitive issues that would arise as they undertook the process, the desire to have direct communication with Gardens' residents, and the Township's consideration of the residents' concerns. (See, e.g., Sept. 8, 2003 Town Council meeting transcript at 36-44, Def Ex. B.) Although many viewpoints were expressed by the Gardens' residents and community activists, with some being supportive and hopeful, while other disenfranchised residents speaking emphatically and eloquently on their negative opinion on the redevelopment plan, their input was welcomed and encouraged.<sup>17</sup>

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<sup>17</sup> Plaintiffs refer to the Township's "secret," off-the-record meetings among Township officials and the redevelopers where decisions were made without input from the community, and where they presume the true discriminatory intent of the Township

Furthermore, nowhere in plaintiffs' recitation of the Township's motives do plaintiffs specifically acknowledge the extensive deterioration, crime, and overall unsafe living conditions the Township was endeavoring to cure. Although plaintiffs feel that the Township simply wishes to remove all minorities from the town, evidence in the record supports an opposing viewpoint--that but-for the significant concern for the Gardens' resident's welfare, and the desire to make the Township as a whole a safe and pleasant town for all of its citizens, minority and non-minority, the Township would have never undertaken the long-overdue project, particularly considering the challenges that the redevelopment would, and did, inspire.<sup>18</sup> Additionally, as noted above and previously, evidence in the record shows that many relocated residents have been pleased with

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was revealed. Although "New Jersey has a strong, expressed public policy in favor of open government, as evidenced by our Open Public Meetings Act, N.J.S.A. 10:4-6 to -21," Times of Trenton Pub. Corp. v. Lafayette Yard Community Development Corp., 874 A.2d 1064, 1070 (N.J. 2005) (citation omitted), the OPMA sets forth specific instances where closed-door sessions are appropriate, see N.J.S.A. 10:4-12, -13. It is unclear whether these alleged "secret" meetings met the requirements of New Jersey's OPMA. The Township's compliance with OPMA is not before the Court, however, and plaintiffs' allegations concerning these meetings as evidence of discriminatory intent are speculative, and, therefore, of insufficient weight to defeat summary judgment.

<sup>18</sup> It seems that plaintiffs could not dispute the ironic observation that if the Township had allowed the Gardens to continue to deteriorate as it had over the years, that it might then be fairly characterized as having a discriminatory intent toward its minority, low-income residents.

the process, and are now in a much better place as a result.

It also cannot be forgotten that the redevelopment plan has gone through three machinations, from the Gardens Area Redevelopment Plan ("GARP") in 2003, to the West Rancocas Redevelopment Plan ("WRRP") in 2005, and then to the Revised West Rancocas Redevelopment Plan in September 2008. For each of these plans, the Township Council and the builder heard extensive public comment, testimony, and written objections (as intricately detailed in plaintiffs' complaint), and even though the 2005 WRRP was approved by the New Jersey Department of Community Affairs and affirmed by the New Jersey state trial and appellate courts, the Township and redevelopers conducted a reevaluation of the plan which resulted in the 2008 Revised WRRP. Despite plaintiffs' claims that all the plans were adopted without meaningful consideration of the residents' objections, it seems specious to believe that the Township extensively reevaluated and revised its plans while entertaining numerous opportunities for public comment and objection simply as a ruse to mask its ultimate purpose of "ridding" Mt. Holly of its minority population.

The Court acknowledges that for every governmental action, people will object, for personal reasons, or as a champion for those who cannot speak out for themselves. The Court also acknowledges that governing officials are often not the most

efficient or pragmatic in their decision-making process. When people's homes are at stake, and when issues concerning race and economic status are involved, the emotions of everyone are amplified. This is evidenced not only by the 10-year litigation concerning the Gardens' redevelopment, but by the voices of the residents who have expressed the extremes of satisfaction and displeasure with the plan. In addition to the people who feel benefitted by the Township, it is undisputable that people have felt unjustifiably wronged by the Township, which has had to make some hard decisions along the way.

The Court, however, must view the case under the legal framework that constrains this Court's consideration of these issues, rather than under the emotional contours of the situation. At this summary judgment stage in the context of what proof has been provided, and in deciding what material issues of fact need to be resolved, the weight of the record evidence demonstrates that no reasonable juror could find that the Township acted with intentional discrimination in the development and implementation of the Gardens' redevelopment plan. Moreover, no additional discovery appears calculated or even remotely likely to provide the missing proofs. Consequently, summary judgment must be entered in favor of the Township on plaintiffs' intentional discrimination claims.

### 3. Punitive damage claims

Plaintiffs are also seeking punitive damages for all of their claims. The Township had moved to dismiss plaintiffs' request for punitive damages, arguing that under various legal principles, punitive damages cannot be imposed against a municipality. In the Court's previous Opinion, all of plaintiffs' punitive damages requests were dismissed, except for those relating to plaintiffs' FHA and Civil Rights Act claims (Counts One and Two). The Court reserved decision on these two claims pending consideration of the converted motions.

Even though "punitive damages can be awarded in a civil rights case where a jury finds a constitutional violation, even when the jury has not awarded compensatory or nominal damages," Alexander v. Riga, 208 F.3d 419, 430 (3d Cir. 2000) (citing Curtis v. Loether, 415 U.S. 189 (1974)) (both discussing FHA claims), a finding of a violation is a mandatory prerequisite to any possibility of punitive damages. Because the Court has not found defendants to be liable for plaintiffs' FHA and civil rights claims, plaintiffs' punitive damages claims fail as well.<sup>19</sup>

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<sup>19</sup>For punitive damages, plaintiffs would also need to prove that defendants' "conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." Alexander v. Riga, 208 F.3d 419, 430 (3d Cir. 2000) (quoting Smith v. Wade, 461 U.S. 30, 56 (1983)). Plaintiffs cannot make this showing.

**CONCLUSION**

For the reasons expressed above, defendants' converted motions for summary judgment shall be granted on the four remaining claims in plaintiffs' complaint. An appropriate Order will be entered.

Date: January 3, 2011

s/ Noel L. Hillman

At Camden, New Jersey

NOEL L. HILLMAN, U.S.D.J.



**U.S. District Court  
District of New Jersey [LIVE] (Camden)  
CIVIL DOCKET FOR CASE #: 1:08-cv-02584-NLH-JS**

MT HOLLY GARDENS CITIZENS IN ACTION, INC. et al v. Date Filed: 05/27/2008  
TOWNSHIP OF MOUNT HOLLY et al Date Terminated: 01/03/2011  
Assigned to: Judge Noel L. Hillman Jury Demand: Plaintiff  
Referred to: Magistrate Judge Joel Schneider Nature of Suit: 443 Civil Rights:  
Cause: 42:405 Fair Housing Act Accommodations  
Jurisdiction: Federal Question

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**DAVID M. PODELL**  
(See above for address)  
ATTORNEY TO BE NOTICED

**Plaintiff**

**Vivian Brooks**

represented by **OLGA D. POMAR**  
(See above for address)

*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**DAVID M. PODELL**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Angelo Nieves**

represented by **OLGA D. POMAR**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**DAVID M. PODELL**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Dolores Nixon**

represented by **OLGA D. POMAR**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**DAVID M. PODELL**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Robert Tigar**

represented by **OLGA D. POMAR**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**DAVID M. PODELL**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**James Potter**

represented by **OLGA D. POMAR**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**DAVID M. PODELL**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Phyllis Singleton**

represented by **OLGA D. POMAR**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**DAVID M. PODELL**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Flavio Tobar**

represented by **OLGA D. POMAR**  
(See above for address)  
*LEAD ATTORNEY*

ATTORNEY TO BE NOTICED

**DAVID M. PODELL**  
(See above for address)  
ATTORNEY TO BE NOTICED

**Plaintiff**

**Marlene Tobar**

represented by **OLGA D. POMAR**  
(See above for address)  
LEAD ATTORNEY  
ATTORNEY TO BE NOTICED

**DAVID M. PODELL**  
(See above for address)  
ATTORNEY TO BE NOTICED

**Plaintiff**

**Radames Burgos**

represented by **OLGA D. POMAR**  
(See above for address)  
LEAD ATTORNEY  
ATTORNEY TO BE NOTICED

**DAVID M. PODELL**  
(See above for address)  
ATTORNEY TO BE NOTICED

**Plaintiff**

**Sheila Warthen**

represented by **OLGA D. POMAR**  
(See above for address)  
LEAD ATTORNEY  
ATTORNEY TO BE NOTICED

**DAVID M. PODELL**  
(See above for address)  
ATTORNEY TO BE NOTICED

**Plaintiff**

**Alandia Warthen**

represented by **OLGA D. POMAR**  
(See above for address)  
LEAD ATTORNEY  
ATTORNEY TO BE NOTICED

**DAVID M. PODELL**  
(See above for address)  
ATTORNEY TO BE NOTICED

V.

**Defendant**

**TOWNSHIP OF MOUNT HOLLY**  
*a municipal corporation of the State of  
New Jersey*

represented by **M. JAMES MALEY , JR.**  
MALEY & ASSOCIATES  
931 HADDON AVENUE  
SUITE 210  
COLLINGSWOOD, NJ 08108-2111  
856-854-1515  
Email: [jmaley@maleyassociates.com](mailto:jmaley@maleyassociates.com)  
LEAD ATTORNEY  
ATTORNEY TO BE NOTICED

**Defendant**

represented by

**TOWNSHIP COUNCIL OF  
TOWNSHIP OF MOUNT HOLLY**  
*as governing body of the Township of  
Mount Holly*

**M. JAMES MALEY , JR.**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**KATHLEEN HOFFMAN**  
*as Township Manager of the Township of  
Mount Holly*

represented by **M. JAMES MALEY , JR.**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**BROOKE TIDSWELL III**  
*as Mayor of the Township of Mount Holly*

represented by **M. JAMES MALEY , JR.**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**KEATING URBAN PARTNERS,  
L.L.C.**  
*a company doing business in New Jersey*

represented by **WILLIAM J DESANTIS**  
BALLARD SPAHR LLP  
210 LAKE DRIVE EAST  
SUITE 200  
CHERRY HILL, NJ 08002-1163  
856-761-3400  
Email: [desantisw@ballardspahr.com](mailto:desantisw@ballardspahr.com)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**TRIAD ASSOCIATES, INC.**  
*a corporation doing business in New  
Jersey*

represented by **GAETANO MERCOGLIANO**  
SWEENEY & SHEEHAN  
SENTRY OFFICE PLAZA  
SUITE 701  
216 HADDON AVE.  
WESTMONT, NJ 08108  
856-869-5600  
Email: [guy.mercogliano@sweeneyfirm.com](mailto:guy.mercogliano@sweeneyfirm.com)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**M. JAMES MALEY , JR.**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**JULES K. THIESSEN**  
*as Mayor of the Township of Mount Holly*

represented by **M. JAMES MALEY , JR.**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
05/27/2008	<u>1</u>	COMPLAINT against TOWNSHIP OF MOUNT HOLLY, TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, KATHLEEN HOFFMAN, BROOKE TIDSWELL III, KEATING URBAN PARTNERS, L.L.C., TRIAD ASSOCIATES, INC. ( Filing fee \$ 350 receipt number 2013968.) JURY DEMAND, filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ,



		VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, LISSETTE RODRIGUEZ, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH. (SUMMONS NOT SUBMITTED)(Attachments: # <u>1</u> Civil Cover Sheet)(nf, ) (Entered: 05/28/2008)
05/29/2008	<u>2</u>	NOTICE of Appearance by DAVID M. PODELL on behalf of CHRISTINE BARNES, BERNICE CAGLE, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, PEDRO AROCHO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO (PODELL, DAVID) (Entered: 05/29/2008)
05/29/2008	<u>3</u>	Request for Summons to be Issued by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, LISSETTE RODRIGUEZ, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH as to TOWNSHIP OF MOUNT HOLLY. (PODELL, DAVID) (Entered: 05/29/2008)
05/29/2008	<u>4</u>	Request for Summons to be Issued by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, LISSETTE RODRIGUEZ, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH as to TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY. (PODELL, DAVID) (Entered: 05/29/2008)
05/29/2008	<u>5</u>	Request for Summons to be Issued by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, LISSETTE RODRIGUEZ, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH as to KATHLEEN HOFFMAN. (PODELL, DAVID) (Entered: 05/29/2008)
05/29/2008	<u>6</u>	Request for Summons to be Issued by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, LISSETTE RODRIGUEZ, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN

		TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH as to BROOKE TIDSWELL III. (PODELL, DAVID) (Entered: 05/29/2008)
05/30/2008	<u>7</u>	Summons Issued as to TOWNSHIP OF MOUNT HOLLY, TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, KATHLEEN HOFFMAN, BROOKE TIDSWELL III. Days Due – 20. (js) (Entered: 05/30/2008)
06/04/2008	<u>8</u>	AFFIDAVIT of Service for Summons and Complaint on Defendants Township of Mount Holly, Township Council of Township of Mount Holly, Mount Holly Township Manager Kathleen Hoffman, and Mount Holly Township Mayor Brooke Tidswell, III by Amy Pinkas, Paralegal, South Jersey Legal Services, Inc., served on Vicki Conover, Mount Holly Township Deputy Clerk on June 3, 2008, filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, LISSETTE RODRIGUEZ, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH. (PODELL, DAVID) (Entered: 06/04/2008)
06/10/2008	<u>9</u>	AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL against all defendants all defendants., filed by MT HOLLY GARDENS CITIZENS IN ACTION, INC..(POMAR, OLGA) (Entered: 06/10/2008)
06/12/2008	<u>10</u>	CERTIFICATE OF SERVICE by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH re <u>9</u> Amended Complaint (POMAR, OLGA) (Entered: 06/12/2008)
06/19/2008	<u>11</u>	Application and Proposed Order for Clerk's Order to extend time to answer. (MALEY, MAURICE) (Entered: 06/19/2008)
06/19/2008	<u>12</u>	Clerk's Order to extend time to answer as to TOWNSHIP OF MOUNT HOLLY answer due 7/18/2008; TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY answer due 7/18/2008; KATHLEEN HOFFMAN answer due 7/18/2008; BROOKE TIDSWELL III answer due 7/18/2008. (js) (Entered: 06/20/2008)
06/27/2008	<u>13</u>	MOTION for Leave to Appear Pro Hac Vice by David M. Podell and South Jersey Legal Services, Inc. for Susan Ann Silverstein and AARP Foundation Litigation by BERNICE CAGLE, LEON CALHOUN, SANTOS CRUZ, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ROSEMARY ROBERTS, WILLIAM ROBERTS, EFRAIM ROMERO, HENRY SIMONS, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH. (Attachments: # <u>1</u> Certification of Susan Ann Silverstein, # <u>2</u> Certification of Douglas E. Gershuny, # <u>3</u> Proposed Order, # <u>4</u> Certificate of Service)(PODELL, DAVID) (Entered: 06/27/2008)
06/27/2008		Setting Deadlines as to <u>13</u> MOTION for Leave to Appear Pro Hac Vice by David M. Podell and South Jersey Legal Services, Inc. for Susan Ann Silverstein and AARP Foundation Litigation. Motion Hearing set for 7/21/2008 before Magistrate Judge Ann Marie Donio. PLEASE BE ADVISED THIS MOTION WILL BE DECIDED ON THE PAPERS UNLESS OTHERWISE NOTIFIED BY THE COURT. (js) (Entered: 06/30/2008)

07/16/2008	<u>14</u>	Letter from Counsel for Plaintiffs to The Honorable Joseph H. Rodriguez, in lieu of a formal motion, requesting leave, pursuant to L.Civ.R. 7.2(b), to file a brief in excess of the 40-page limit, in support of a motion for a preliminary injunction (faxed and mailed today both to Chambers and Defendants). (Attachments: # <u>1</u> Receipts for Fax of Letter to Chambers and all Defendants)(PODELL, DAVID) (Entered: 07/16/2008)
07/17/2008	<u>15</u>	Letter from M James Maley. (MALEY, M.) (Entered: 07/17/2008)
07/17/2008	<u>16</u>	LETTER ORDER addressed to Counsel permitting the filing of a brief in excess of the page limitations. Signed by Judge Joseph H. Rodriguez on 7/17/08. (js) (Entered: 07/18/2008)
07/18/2008	<u>17</u>	MOTION for Preliminary Injunction by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, LISSETTE RODRIGUEZ, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH. (Attachments: # <u>1</u> Brief in Support of Preliminary Injunction, # <u>2</u> Text of Proposed Order, # <u>3</u> Declaration of Andrew A. Beveridge, Ph.D. with Exhibits A-J, # <u>4</u> Declaration of Andrew A. Beveridge, Ph.D. Exhibits K-M, # <u>5</u> Declaration of Gray Smith, AIA, AICP with Exhibit A, # <u>6</u> Declaration of Gray Smith, AIA, AICP Exhibit C, # <u>7</u> Declaration of Ana Arocho, # <u>8</u> Declaration of Vivian Brooks, # <u>9</u> Declaration of Santos Cruz, # <u>10</u> Declaration of Henry Simons, # <u>11</u> Declaration of Dagmar Vicente, # <u>12</u> Declaration of Alandia Warthen, # <u>13</u> Declaration of Leona Wright, # <u>14</u> Declaration of Olga D. Pomar, Esq., # <u>15</u> Declaration of Olga D. Pomar, Esq. Exhibits A-C, # <u>16</u> Declaration of Olga D. Pomar, Esq. Exhibit D-1, # <u>17</u> Declaration of Olga D. Pomar, Esq. Exhibit D-2, # <u>18</u> Declaration of Olga D. Pomar, Esq. Exhibit E, # <u>19</u> Declaration of Olga D. Pomar, Esq. Exhibit F, # <u>20</u> Declaration of Olga D. Pomar, Esq. Exhibit G-1, # <u>21</u> Declaration of Olga D. Pomar, Esq. Exhibit G-2, # <u>22</u> Declaration of Olga D. Pomar, Esq. Exhibit H, # <u>23</u> Declaration of Olga D. Pomar, Esq. Exhibit I, # <u>24</u> Declaration of Olga D. Pomar, Esq. Exhibit J, # <u>25</u> Declaration of Olga D. Pomar, Esq. Exhibit K, # <u>26</u> Declaration of Olga D. Pomar, Esq. Exhibit L, # <u>27</u> Declaration of Olga D. Pomar, Esq. Exhibits M & N, # <u>28</u> Declaration of Olga D. Pomar, Esq. Exhibits O & P, # <u>29</u> Declaration of Olga D. Pomar, Esq. Exhibits Q R S T, # <u>30</u> Declaration of Olga D. Pomar, Esq. Exhibit U, # <u>31</u> Declaration of Olga D. Pomar, Esq. Exhibit V, # <u>32</u> Declaration of Olga D. Pomar, Esq. Exhibits W X Y Z, # <u>33</u> Declaration of Olga D. Pomar, Esq. Exhibit AA, # <u>34</u> Declaration of Olga D. Pomar, Esq. Exhibits BB CC DD, # <u>35</u> Declaration of Olga D. Pomar, Esq. Exhibits EE & FF, # <u>36</u> Declaration of Olga D. Pomar, Esq. Exhibits GG HH II, # <u>37</u> Certificate of Service for Electronic Filing)(PODELL, DAVID) (Entered: 07/18/2008)
07/18/2008	<u>18</u>	First MOTION to Dismiss <i>for lack of jurisdiction failure to state a claim</i> by TOWNSHIP OF MOUNT HOLLY, TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, KATHLEEN HOFFMAN, BROOKE TIDSWELL III. Responses due by 8/4/2008 (Attachments: # <u>1</u> Brief, # <u>2</u> Certification, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit, # <u>15</u> Exhibit, # <u>16</u> Exhibit, # <u>17</u> Exhibit, # <u>18</u> Exhibit, # <u>19</u> Exhibit, # <u>20</u> Text of Proposed Order)(MALEY, M.) (Entered: 07/18/2008)
07/18/2008		Setting Deadlines as to <u>17</u> MOTION for Preliminary Injunction. Motion Hearing set for 8/18/2008 before Magistrate Judge Ann Marie Donio. PLEASE BE ADVISED THIS MOTION WILL BE DECIDED ON THE PAPERS UNLESS OTHERWISE NOTIFIED BY THE COURT. (js) (Entered: 07/21/2008)
07/18/2008		Setting Deadlines as to <u>18</u> First MOTION to Dismiss <i>for lack of jurisdiction failure to state a claim</i> . Motion Hearing set for 8/18/2008 before Judge Joseph H. Rodriguez. PLEASE BE ADVISED THIS MOTION WILL BE DECIDED ON

		THE PAPERS UNLESS OTHERWISE NOTIFIED BY THE COURT. (js) (Entered: 07/21/2008)
07/21/2008	<u>19</u>	CERTIFICATE OF SERVICE by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, LISSETTE RODRIGUEZ, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH re <u>17</u> MOTION for Preliminary Injunction by <i>Sylvanna R. Scott, Office Manager, South Jersey Legal Services, Inc. on Defendants Keating Urban Partners, L.L.C. and Triad Associates, Inc. by 2-3 day priority mail</i> (PODELL, DAVID) (Entered: 07/21/2008)
07/28/2008	<u>20</u>	Rule 7.1 Letter for extension of return date re <u>18</u> First MOTION to Dismiss <i>for lack of jurisdiction failure to state a claim</i> filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH. (PODELL, DAVID) (Entered: 07/28/2008)
07/29/2008	<u>21</u>	WAIVER OF SERVICE Returned Executed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH. KEATING URBAN PARTNERS, L.L.C. waiver sent on 5/30/2008, answer due 7/29/2008. (PODELL, DAVID) (Entered: 07/29/2008)
07/29/2008	<u>22</u>	Letter from M. James Maley, Jr., Attorney for Township Defendants, Requesting Adjournment of Plaintiffs' Motion for Preliminary Injunction. (MALEY, M.) (Entered: 07/29/2008)
07/30/2008	<u>23</u>	Letter from David M. Podell, attorney for Plaintiffs, to The Honorable Joseph H. Rodriguez requesting that Defendants' Motion To Dismiss and Plaintiffs' Motion for a Preliminary Injunction be considered contemporaneously (faxed and mailed to all parties) re <u>20</u> Rule 7.1 Letter,, <u>22</u> Letter. (PODELL, DAVID) (Entered: 07/30/2008)
08/01/2008	<u>24</u>	Letter from M. James Maley. (MALEY, M.) (Entered: 08/01/2008)
08/01/2008	<u>25</u>	WAIVER OF SERVICE Returned Executed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH. TRIAD ASSOCIATES,



		INC. waiver sent on 6/13/2008, answer due 8/12/2008. (PODELL, DAVID) (Entered: 08/01/2008)
08/04/2008	<u>26</u>	ORDER granting <u>13</u> Motion for Leave to Appear Pro Hac Vice. Signed by Magistrate Judge Joel Schneider on 8/4/08. (js) (Entered: 08/04/2008)
08/07/2008		Judge Magistrate Judge Joel Schneider added. Judge Magistrate Judge Ann Marie Donio no longer assigned to case. (th, ) (Entered: 08/07/2008)
08/07/2008	<u>27</u>	MOTION to Dismiss <i>Pursuant to Fed.R.Civ.P. 12(b)(6)</i> by KEATING URBAN PARTNERS, L.L.C.. Responses due by 8/19/2008 (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Certificate of Service)(DESANTIS, WILLIAM) (Entered: 08/07/2008)
08/07/2008		Setting Deadlines as to <u>27</u> MOTION to Dismiss <i>Pursuant to Fed.R.Civ.P. 12(b)(6)</i> . Motion Hearing set for 9/2/2008 before Judge Joseph H. Rodriguez. PLEASE BE ADVISED THIS MOTION WILL BE DECIDED ON THE PAPERS UNLESS OTHERWISE NOTIFIED BY THE COURT. (js) (Entered: 08/08/2008)
08/11/2008	<u>29</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Judge Noel L. Hillman for all further proceedings. Judge Judge Joseph H. Rodriguez no longer assigned to case. Signed by Chief Judge Garrett E. Brown, Jr. on 8/11/08. (js) (Entered: 08/14/2008)
08/14/2008	<u>28</u>	MOTION to Dismiss by TRIAD ASSOCIATES, INC.. (Attachments: # <u>1</u> Notice of Motion, # <u>2</u> Order, # <u>3</u> Brief Brief, # <u>4</u> Certificate of Service, # <u>5</u> Proof of Mailing, # <u>6</u> Exhibit Exhibit A)(MERCOGLIANO, GAETANO) (Entered: 08/14/2008)
08/14/2008		Setting Deadlines as to <u>28</u> MOTION to Dismiss. Motion Hearing set for 9/15/2008 before Judge Joseph H. Rodriguez. PLEASE BE ADVISED THIS MOTION WILL BE DECIDED ON THE PAPERS UNLESS OTHERWISE NOTIFIED BY THE COURT. (js) (Entered: 08/14/2008)
08/14/2008		Pro Hac Vice fee as to Susan Ann Silverstein: \$ 150, receipt number 100 307911 (js) (Entered: 08/14/2008)
08/19/2008	<u>30</u>	BRIEF in Opposition re <u>17</u> MOTION for Preliminary Injunction filed by TOWNSHIP OF MOUNT HOLLY. (Attachments: # <u>1</u> Certification of Kathleen Hoffman, # <u>2</u> Certification of Marcia Holt, # <u>3</u> Certification of Micheal Sencindiver, # <u>4</u> Certification of Jim Maley, # <u>5</u> Exhibit A to Jim Maley Cert, # <u>6</u> Exhibit B to Maley Cert, # <u>7</u> Exhibit C to Maley Cert, # <u>8</u> Exhibit D to Maley Cert, # <u>9</u> Exhibit E to Maley Cert, # <u>10</u> Exhibit F to Maley Cert, # <u>11</u> Exhibit G to Maley Cert, # <u>12</u> Exhibit H to Maley Cert, # <u>13</u> Certificate of Service)(MALEY, M.) (Entered: 08/19/2008)
08/19/2008	<u>31</u>	BRIEF in Opposition re <u>18</u> First MOTION to Dismiss <i>for lack of jurisdiction failure to state a claim</i> , <u>27</u> MOTION to Dismiss <i>Pursuant to Fed.R.Civ.P. 12(b)(6)</i> filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (Attachments: # <u>1</u> Certificate of Service)(POMAR, OLGA) (Entered: 08/20/2008)
08/20/2008	<u>32</u>	Rule 7.1 Letter for extension of return date re <u>28</u> MOTION to Dismiss <i>by Defendant Triad Associates Inc.</i> filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES

		TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, KATHLEEN HOFFMAN, ANA AROCHO. (PODELL, DAVID) (Entered: 08/20/2008)
08/21/2008	<u>33</u>	Letter from Olga D. Pomar, Esq., Counsel for Plaintiffs, with Joint Request of Counsel to Extend Deadlines for Filing of Reply Briefs from August 26 to August 29, 2008, for Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction and Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion to Dismiss (faxed and mailed to all parties and chambers) re <u>30</u> Brief in Opposition to Motion,, <u>31</u> Brief in Opposition to Motion,, (PODELL, DAVID) (Entered: 08/21/2008)
08/22/2008		(TEXT ORDER) ORDERED that plaintiffs' reply in support of their motion for preliminary injunction shall be due August 29, 2008, and defendants' reply brief in support of their motion to dismiss shall be due August 29, 2008. By Judge Noel L. Hillman on 8/22/08. (sa, ) (Entered: 08/22/2008)
08/29/2008	<u>34</u>	REPLY to Response to Motion re <u>17</u> MOTION for Preliminary Injunction filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (Attachments: # <u>1</u> Declaration of Olga D. Pomar (Second), # <u>2</u> Declaration of Gray Smith (2), # <u>3</u> Certificate of Service)(POMAR, OLGA) (Entered: 08/29/2008)
08/29/2008	<u>35</u>	REPLY to Response to Motion re <u>18</u> First MOTION to Dismiss <i>for lack of jurisdiction failure to state a claim</i> filed by TOWNSHIP OF MOUNT HOLLY. (Attachments: # <u>1</u> Certificate of Service For Reply Brief)(MALEY, M.) (Entered: 08/29/2008)
09/19/2008	<u>36</u>	RESPONSE in Opposition re <u>28</u> MOTION to Dismiss <i>by Defendant Triad</i> filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (Attachments: # <u>1</u> Certificate of Service)(POMAR, OLGA) (Entered: 09/19/2008)
09/29/2008	<u>37</u>	Letter from M. James Maley, Jr.. (Attachments: # <u>1</u> Ordinance 2008-25 Approving Redevelopment Plan, # <u>2</u> West Rancocas Redevelopment Plan Part I, # <u>3</u> West Rancocas Redevelopment Plan Part II)(MALEY, M.) (Entered: 09/29/2008)
10/03/2008	<u>38</u>	ORDER directing deft. Twp. of Mt. Holly to file a brief by 10/10/08. Signed by Judge Noel L. Hillman on 10/3/08. (js) (Entered: 10/07/2008)
10/09/2008	<u>39</u>	BRIEF <i>Letterbrief to Judge Hillman Pursuant to October 3, 2008 Order</i> filed by TOWNSHIP OF MOUNT HOLLY. (Attachments: # <u>1</u> Certificate of Service)(MALEY, M.) (Entered: 10/09/2008)
10/17/2008	<u>40</u>	BRIEF <i>in response to Township Letter Brief</i> filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR

		VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (Attachments: # <u>1</u> Certificate of Service)(POMAR, OLGA) (Entered: 10/17/2008)
10/17/2008	<u>41</u>	MOTION to Amend/Correct <u>9</u> Amended Complaint by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (Attachments: # <u>1</u> Brief, # <u>2</u> Proposed Second Amended Complaint, # <u>3</u> Text of Proposed Order, # <u>4</u> Certificate of Service)(POMAR, OLGA) (Entered: 10/17/2008)
10/17/2008		Setting Deadlines as to <u>41</u> MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint. Motion Hearing set for 11/17/2008 before Magistrate Judge Joel Schneider. PLEASE BE ADVISED THIS MOTION WILL BE DECIDED ON THE PAPERS UNLESS OTHERWISE NOTIFIED BY THE COURT. (js) (Entered: 10/20/2008)
10/22/2008	<u>42</u>	Letter from M. James Maley, Jr. regarding Judge Hillman's Recusal Issues. (MALEY, M.) (Entered: 10/22/2008)
10/23/2008	<u>43</u>	Letter from Plaintiffs' Counsel Regarding Recusal Issues. (POMAR, OLGA) (Entered: 10/23/2008)
10/24/2008	<u>44</u>	Letter from counsel for Keating Urban Partners, LLC regarding recusal. (DESANTIS, WILLIAM) (Entered: 10/24/2008)
10/24/2008	<u>45</u>	Letter from Gaetano Mercogliano, Counsel for Triad Associates, regarding recusal. (MERCOGLIANO, GAETANO) (Entered: 10/24/2008)
10/28/2008	<u>46</u>	OPINION FILED. Signed by Judge Noel L. Hillman on 10/28/08. (js) (Entered: 10/28/2008)
10/28/2008	<u>47</u>	ORDER granting in part and denying in part <u>18</u> Motion to Dismiss; granting in part and denying in part <u>27</u> Motion to Dismiss; granting in part and denying in part <u>28</u> Motion to Dismiss. Signed by Judge Noel L. Hillman on 10/28/08. (js) (Entered: 10/28/2008)
11/02/2008	<u>48</u>	Rule 7.1 Letter for extension of return date re <u>41</u> MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint filed by TOWNSHIP OF MOUNT HOLLY. (MALEY, M.) (Entered: 11/02/2008)
11/03/2008	<u>49</u>	ORDER granting request to obtain an automatic extension to respond to motions. Signed by Judge Noel L. Hillman on 11/3/08. (th, ) (Entered: 11/04/2008)
11/07/2008	<u>50</u>	Letter from Gaetano Mercogliano, counsel for Triad Associates request for automatic extension. (MERCOGLIANO, GAETANO) (Entered: 11/07/2008)
11/07/2008	<u>51</u>	Rule 7.1 Letter for extension of return date re <u>41</u> MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint <i>Request for Automatic Extension to file a response to Plaintiff's Motion for Leave to Amend and Supplement the Complaint</i> filed by TRIAD ASSOCIATES, INC.. (MERCOGLIANO, GAETANO) (Entered: 11/07/2008)
11/14/2008	<u>52</u>	RESPONSE to Motion re <u>41</u> MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint <i>Defendant Triad Associates, Inc.'s Response to Plaintiffs' Motion to Amend and Supplement Complaint</i> filed by TRIAD ASSOCIATES, INC.. (Attachments: # <u>1</u> Certificate of Service Certificate of Service, # <u>2</u> Proof of Mailing, # <u>3</u> Exhibit A)(MERCOGLIANO, GAETANO) (Entered: 11/14/2008)

11/17/2008	<u>53</u>	BRIEF in Opposition re <u>41</u> MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint filed by TOWNSHIP OF MOUNT HOLLY. (Attachments: # <u>1</u> Certificate of Service)(MALEY, M.) (Entered: 11/17/2008)
11/18/2008	<u>54</u>	MEMORANDUM in Support re <u>17</u> MOTION for Preliminary Injunction <i>Requesting to Supplement Record</i> filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (Attachments: # <u>1</u> Declaration of Counsel, # <u>2</u> Exhibit Public Advocate Report)(POMAR, OLGA) (Entered: 11/18/2008)
11/24/2008	<u>55</u>	Letter from Plaintiffs' Counsel regarding Preliminary Injunction Motion re <u>17</u> MOTION for Preliminary Injunction. (POMAR, OLGA) (Entered: 11/24/2008)
11/24/2008	<u>56</u>	REPLY BRIEF to Opposition to Motion re <u>41</u> MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint <i>Replying to Defendant Triad</i> filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO, LYRA BAEDRESINGH. (Attachments: # <u>1</u> Certificate of Service)(POMAR, OLGA) (Entered: 11/24/2008)
11/24/2008	<u>57</u>	REPLY BRIEF to Opposition to Motion re <u>41</u> MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint MOTION to Amend/Correct <u>9</u> Amended Complaint <i>Replying to Defendant Township</i> filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (Attachments: # <u>1</u> Certificate of Service)(POMAR, OLGA) (Entered: 11/24/2008)
11/25/2008	<u>58</u>	Letter from M. James Maley in Response to re <u>54</u> Memorandum in Support of Motion,,. (MALEY, M.) (Entered: 11/25/2008)
11/25/2008		NOTICE of Hearing on Motion <u>17</u> MOTION for Preliminary Injunction : Motion hearing set for 12/5/2008 3:00 PM in Camden – Courtroom 3A before Judge Noel L. Hillman. Telephone Conference set for 11/25/2008 2:00 PM Lead Counsel Olga Pomar, Esq. to initiate call before Judge Noel L. Hillman.(gn, ) (Entered: 11/25/2008)
11/25/2008	<u>60</u>	Minute Entry for proceedings held before Judge Noel L. Hillman: Telephone Conference held on 11/25/2008 re: <u>17</u> Preliminary Injunction Motion issues on demolitions. Plaintiff's <u>41</u> Motion to Amend Complaint–Granted in part Denied in part. Ordered motion hearing set for December 5, 2008 at 3:00 PM. Orders to be entered. (Court Reporter/Recorder Ted Formaroli.) (gn, ) (Entered: 11/26/2008)



11/25/2008	<u>61</u>	OPINION filed. Signed by Judge Noel L. Hillman on 11/25/2008. (gn, ) (Entered: 11/26/2008)
11/25/2008	<u>62</u>	ORDER granting in part and denying in part <u>41</u> Plaintiff's Motion to Amend. Signed by Judge Noel L. Hillman on 11/25/08. (gn, ) (Entered: 11/26/2008)
11/25/2008	<u>63</u>	ORDER Plaintiff's to file a letter by 4 p.m. on November 26, 2008 clarifying the effects of this Court's opinion of October 28, 2008 and the amendment of the complaint on pending motion preliminary injunction. Signed by Judge Noel L. Hillman on 11/25/2008. (gn, ) (Entered: 11/26/2008)
11/25/2008	<u>64</u>	ORDER Granting Plaintiff's request to supplement the record <u>54</u> advocates report, without prejudice. Signed by Judge Noel L. Hillman on 11/25/2008. (gn, ) (Entered: 11/26/2008)
11/26/2008	<u>59</u>	Letter from Defendant, Triad Assoc., Inc.. (MERCOGLIANO, GAETANO) (Entered: 11/26/2008)
11/26/2008		NOTICE of Hearing on Motion <u>17</u> MOTION for Preliminary Injunction : Motion hearing set for 12/5/2008 03:00 PM in Camden – Courtroom 3A before Judge Noel L. Hillman. (gn, ) (Entered: 11/26/2008)
11/26/2008	<u>65</u>	MOTION for Temporary Restraining Order by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, BROOKE TIDSWELL III, ANA AROCHO. (Attachments: # <u>1</u> Memorandum of Law, # <u>2</u> Declaration of Counsel, # <u>3</u> Exhibit A to Declaration of Counsel, # <u>4</u> Exhibit B to Declaration of Counsel, # <u>5</u> Exhibit C to Declaration of Counsel, # <u>6</u> Exhibit D to Declaration of Counsel, # <u>7</u> Exhibit E to Declaration of Counsel, # <u>8</u> Exhibit F to Declaration of Counsel, # <u>9</u> Declaration of Plaintiff Nancy Lopez, # <u>10</u> Certificate of Service)(POMAR, OLGA) (Entered: 11/26/2008)
11/26/2008	<u>66</u>	Letter from Plaintiffs' Counsel re <u>17</u> MOTION for Preliminary Injunction, <u>63</u> Order,. (POMAR, OLGA) (Entered: 11/26/2008)
11/26/2008	<u>67</u>	BRIEF in Opposition re <u>65</u> MOTION for Temporary Restraining Order filed by TOWNSHIP OF MOUNT HOLLY. (Attachments: # <u>1</u> Certification of M. James Maley, Jr., # <u>2</u> Certification of Scott Kipp, # <u>3</u> Certification of Thomas Casey)(MALEY, M.) (Entered: 11/26/2008)
11/26/2008	<u>68</u>	Minute Entry for proceedings held before Judge Noel L. Hillman: Motion Hearing held on 11/26/2008 re <u>65</u> MOTION for Temporary Restraining Order filed by EFRAIM ROMERO, VINCENT MUNOZ, MT HOLLY GARDENS, et al. Ordered Motion Denied. Ordered preliminary injunction hearing set for December 5, 2008 at 3:00 PM. Order to be entered. (Court Reporter/Recorder Frank Gable.) (gn) (Entered: 11/26/2008)
11/26/2008	<u>69</u>	ORDER Denying <u>65</u> Motion for TRO. Signed by Judge Noel L. Hillman on 11/26/08. (gn, ) (Entered: 11/26/2008)
12/02/2008	<u>70</u>	BRIEF <i>as a Supplement to the Township's Motion to Dismiss</i> filed by TOWNSHIP OF MOUNT HOLLY. (Attachments: # <u>1</u> Certification of Counsel, # <u>2</u> Certificate of Service)(MALEY, M.) (Entered: 12/02/2008)
12/02/2008	<u>71</u>	AMENDED COMPLAINT <i>Second Amended Complaint and Demand for Jury Trial in compliance with Court's Order of 11-25-2008 (Documents 61 and 62)</i> against all defendants all defendants., filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO,

		HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO.(PODELL, DAVID) (Entered: 12/02/2008)
12/03/2008	<u>72</u>	Letter from M. James Maley, Jr.. (MALEY, M.) (Entered: 12/03/2008)
12/03/2008	<u>73</u>	AMENDED COMPLAINT <i>Re-Filing of Second Amended Complaint and Demand for Jury Trial in compliance with Court's Order of 11-25-2008 (Documents 61 and 62) (Added new parties on Docket)</i> against JULES K. THIESSEN, TOWNSHIP OF MOUNT HOLLY, TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, KATHLEEN HOFFMAN, KEATING URBAN PARTNERS, L.L.C., TRIAD ASSOCIATES, INC., filed by Maria Arocho, Vivian Brooks, Angelo Nieves, Dolores Nixon, Robert Tigar, James Potter, Phyllis Singleton, Flavio Tobar, Marlene Tobar, Radames Burgos, Sheila Warthen, Alandia Warthen, CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO.(PODELL, DAVID) (Entered: 12/03/2008)
12/04/2008	<u>74</u>	MOTION to Dismiss <i>Notice of Defendant Triad Associates, Inc. to Dismiss Plaintiffs' Second Amended Complaint</i> by TRIAD ASSOCIATES, INC.. (Attachments: # <u>1</u> Order, # <u>2</u> Notice of Motion to Dismiss, # <u>3</u> Brief in Support of Motion, # <u>4</u> Certificate of Service Certificate of Service, # <u>5</u> Proof of Mailing, # <u>6</u> Exhibit A, # <u>7</u> Exhibit B)(MERCOGLIANO, GAETANO) (Entered: 12/04/2008)
12/04/2008	<u>75</u>	MOTION to Seal or Otherwise Restrict Public Access by JULES K. THIESSEN, TOWNSHIP OF MOUNT HOLLY, TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, KATHLEEN HOFFMAN, BROOKE TIDSWELL III. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order, # <u>2</u> Brief Brief in Support of Motion to Seal, # <u>3</u> Certification Certification of Service)(MALEY, M.) (Entered: 12/04/2008)
12/04/2008	<u>76</u>	BRIEF in Opposition re <u>17</u> MOTION for Preliminary Injunction filed by JULES K. THIESSEN, TOWNSHIP OF MOUNT HOLLY, TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, KATHLEEN HOFFMAN, BROOKE TIDSWELL III. (Attachments: # <u>1</u> Certification Certification of Marcia Holt - REDACTED, # <u>2</u> Exhibit Exhibits to Holt Certification - REDACTED, # <u>3</u> Certification Certification of Thomas Mastrangelo, # <u>4</u> Certification Certification of Carlos Rodriguez, # <u>5</u> Certificate of Service Certificate of Service)(MALEY, M.) (Entered: 12/04/2008)
12/04/2008	<u>77</u>	CERTIFICATION in Opposition re <u>75</u> MOTION to Seal or Otherwise Restrict Public Access filed by JULES K. THIESSEN, TOWNSHIP OF MOUNT HOLLY, TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, KATHLEEN HOFFMAN, BROOKE TIDSWELL III. (Attachments: # <u>1</u> Exhibit Exhibits A-D of Holt Certification, # <u>2</u> Exhibit Exhibit E of Holt Certification, # <u>3</u> Exhibit Exhibits F-Q of Holt Certification, # <u>4</u> Exhibit Exhibit R of Holt Certification)(MALEY, M.) (Entered: 12/04/2008)
12/04/2008	<u>78</u>	Letter from Plaintiffs' counsel re <u>72</u> Letter, <u>17</u> MOTION for Preliminary Injunction, <u>70</u> Brief, <u>76</u> Brief in Opposition to Motion,,. (POMAR, OLGA) (Entered: 12/04/2008)
12/04/2008		Setting Deadlines as to <u>75</u> MOTION to Seal or Otherwise Restrict Public Access AND <u>74</u> MOTION to Dismiss <i>Notice of Defendant Triad Associates, Inc. to Dismiss Plaintiffs' Second Amended Complaint</i> . Motion set for 1/5/2009 before Judge Noel L. Hillman. The motion will be decided on the papers. No appearances required unless notified by the court. (js) (Entered: 12/05/2008)

12/05/2008	<u>79</u>	Minute Entry for proceedings held before Judge Noel L. Hillman: Motion Hearing held on 12/5/2008 re <u>65</u> MOTION for Temporary Restraining Order filed by EFRAIM ROMERO, VINCENT MUNOZ, MT HOLLY GARDENS CITIZENS IN ACTION, INC., LEON CALHOUN, ELIDA ECHEVARIA, CHRISTINE BARNES, LEONA WRIGHT, NORMAN HARRIS, ELMIRA NIXON, LILLIAN TORRES-MORENO, JOYCE STARLING, SANTOS CRUZ, RADAMES TORRES-MORENO, ROSEMARY ROBERTS, BERNICE CAGLE, NANCY LOPEZ, MATTIE HOWELL, WILLIAM ROBERTS, LEONARDO PAGAN, ANA AROCHO, DAGMAR VICENTE, PEDRO AROCHO, CHARLIE MAE WILSON, TAISHA TIRADO, GEORGE CHAMBERS, REYNALDO AROCHO, BROOKE TIDSWELL III, DOROTHY CHAMBERS, HENRY SIMONS. (Court Reporter Carl Nami) (js) (Entered: 12/08/2008)
12/09/2008	<u>80</u>	Letter from Gaetano Mercogliano and Shaena Doherty. (MERCOGLIANO, GAETANO) (Entered: 12/09/2008)
12/17/2008	<u>81</u>	MEMORANDUM in Support re <u>17</u> MOTION for Preliminary Injunction <i>in Response to Holt Certification</i> filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, Maria Arocho, Vivian Brooks, Angelo Nieves, Dolores Nixon, Robert Tigar, James Potter, Phyllis Singleton, Flavio Tobar, VINCENT MUNOZ, Marlene Tobar, Radames Burgos, Sheila Warthen, Alandia Warthen, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (Attachments: # <u>1</u> Declaration of counsel, # <u>2</u> Exhibit A)(POMAR, OLGA) (Entered: 12/17/2008)
12/17/2008	<u>82</u>	Rule 7.1 Letter for extension of return date re <u>74</u> MOTION to Dismiss <i>Notice of Defendant Triad Associates, Inc. to Dismiss Plaintiffs' Second Amended Complaint</i> filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, Maria Arocho, Vivian Brooks, Angelo Nieves, Dolores Nixon, Robert Tigar, James Potter, Phyllis Singleton, Flavio Tobar, VINCENT MUNOZ, Marlene Tobar, Radames Burgos, Sheila Warthen, Alandia Warthen, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, LISSETTE RODRIGUEZ, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (POMAR, OLGA) (Entered: 12/17/2008)
12/30/2008	<u>83</u>	RESPONSE in Opposition re <u>74</u> MOTION to Dismiss <i>Notice of Defendant Triad Associates, Inc. to Dismiss Plaintiffs' Second Amended Complaint</i> filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, Maria Arocho, Vivian Brooks, Angelo Nieves, Dolores Nixon, Robert Tigar, James Potter, Phyllis Singleton, Flavio Tobar, VINCENT MUNOZ, Marlene Tobar, Radames Burgos, Sheila Warthen, Alandia Warthen, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (Attachments: # <u>1</u> Certificate of Service)(POMAR, OLGA) (Entered: 12/30/2008)
01/14/2009	<u>84</u>	Second MOTION to Dismiss <i>Plaintiffs' 2nd Amended Complaint, Motion Date 2/17/09</i> by TOWNSHIP OF MOUNT HOLLY. Responses due by 2/2/2009 (Attachments: # <u>1</u> Brief in Support of Motion to Dismiss 2nd Amended Complaint,

		# <u>2</u> Certification of Counsel, # <u>3</u> Exhibit A of Cert of Counsel, # <u>4</u> Exhibit B to Cert of Counsel, # <u>5</u> Exhibit C to Cert of Counsel, # <u>6</u> Exhibit D to Cert of Counsel, # <u>7</u> Exhibit E to Cert of Service, # <u>8</u> Exhibit F of Cert of Counsel, # <u>9</u> Text of Proposed Order for Motion to Dismiss 2nd Amended Complaint, # <u>10</u> Certificate of Service)(MALEY, M.) (Entered: 01/14/2009)
01/14/2009		Setting Deadlines as to <u>84</u> Second MOTION to Dismiss <i>Plaintiffs' 2nd Amended Complaint. Motion set for 2/17/2009 before Judge Noel L. Hillman. The motion will be decided on the papers. No appearances required unless notified by the court. (js)</i> (Entered: 01/15/2009)
01/16/2009	<u>85</u>	Letter from J. Connell. (Attachments: # <u>1</u> Subpoena)(CONNELL, JOHN) (Entered: 01/16/2009)
01/16/2009	<u>88</u>	Transcript of Proceedings held on 11/25/2008, before Judge Noel L Hillman. Court Reporter/Transcriber Ted Formaroli, Telephone number 856-635-9054. <b>NOTICE REGARDING REDACTION OF TRANSCRIPTS:</b> The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this Transcript. If no such notice is filed, the transcript will be made remotely available in electronic format to the public without redaction after ninety(90) calendar days. The redaction policy is located on our website at www.njd.uscourts.gov. Transcripts may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for release of transcript restriction. After that date it may be obtained through PACER. Redaction Request due 2/6/2009. Redacted Transcript Deadline set for 2/17/2009. Release of Transcript Restriction set for 4/16/2009. (nf, ) (Entered: 01/21/2009)
01/20/2009	<u>86</u>	MOTION to Dismiss by KEATING URBAN PARTNERS, L.L.C.. (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Certificate of Service)(DESANTIS, WILLIAM) (Entered: 01/20/2009)
01/20/2009	<u>87</u>	Letter from M. JAMES MALEY, JR. re <u>85</u> Letter. (MALEY, M.) (Entered: 01/20/2009)
01/20/2009		Setting Deadlines as to <u>86</u> MOTION to Dismiss. Motion set for 2/17/2009 before Judge Noel L. Hillman. The motion will be decided on the papers. No appearances required unless notified by the court. (js) (Entered: 01/22/2009)
01/21/2009	<u>89</u>	Letter from Plaintiffs' Counsel re <u>87</u> Letter, <u>85</u> Letter. (Attachments: # <u>1</u> Exhibit December 23 2008 letter, # <u>2</u> Exhibit December 30 2008 Letter, # <u>3</u> Exhibit January 15 2009 E-mail)(POMAR, OLGA) (Entered: 01/21/2009)
01/22/2009	<u>90</u>	Rule 7.1 Letter for extension of return date re <u>84</u> Second MOTION to Dismiss <i>Plaintiffs' 2nd Amended Complaint, Motion Date 2/17/09</i> , <u>86</u> MOTION to Dismiss filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, Maria Arocho, Vivian Brooks, Angelo Nieves, Dolores Nixon, Robert Tigar, James Potter, Phyllis Singleton, Flavio Tobar, VINCENT MUNOZ, Marlene Tobar, Radames Burgos, Sheila Warthen, Alandia Warthen, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (POMAR, OLGA) (Entered: 01/22/2009)
01/22/2009	<u>91</u>	Letter from John Connell, Esquire. (CONNELL, JOHN) (Entered: 01/22/2009)
01/28/2009	<u>92</u>	Letter from Plaintiffs' counsel. (POMAR, OLGA) (Entered: 01/28/2009)
01/30/2009	<u>93</u>	Letter from M. James Maley to Olga Pomar re <u>92</u> Letter. (MALEY, M.) (Entered: 01/30/2009)
02/13/2009	<u>94</u>	OPINION FILED. Signed by Judge Noel L. Hillman on 2/13/09. (js) (Entered: 02/13/2009)



02/13/2009	<u>95</u>	ORDER denying <u>17</u> Motion for Preliminary Injunction; granting <u>75</u> Motion to Seal. Signed by Judge Noel L. Hillman on 2/13/09. (js) (Entered: 02/13/2009)
02/13/2009	<u>97</u>	Transcript of Proceedings held on 12/5/2008, before Judge Noel L. Hillman. Court Reporter/Transcriber Carl J. Nami, Telephone number 856-757-5019. <b>NOTICE REGARDING REDACTION OF TRANSCRIPTS:</b> The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this Transcript. If no such notice is filed, the transcript will be made remotely available in electronic format to the public without redaction after ninety(90) calendar days. The redaction policy is located on our website at www.njd.uscourts.gov. Transcripts may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for release of transcript restriction. After that date it may be obtained through PACER. Redaction Request due 3/6/2009. Redacted Transcript Deadline set for 3/16/2009. Release of Transcript Restriction set for 5/14/2009. (nf, ) (Entered: 02/20/2009)
02/17/2009	<u>96</u>	RESPONSE in Opposition re <u>84</u> Second MOTION to Dismiss <i>Plaintiffs' 2nd Amended Complaint, Motion Date 2/17/09</i> , <u>86</u> MOTION to Dismiss filed by CHRISTINE BARNES, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, MT HOLLY GARDENS CITIZENS IN ACTION, INC., SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, Maria Arocho, Vivian Brooks, Angelo Nieves, Dolores Nixon, Robert Tigar, James Potter, Phyllis Singleton, Flavio Tobar, VINCENT MUNOZ, Marlene Tobar, Radames Burgos, Sheila Warthen, Alandia Warthen, ELMIRA NIXON, LEONARDO PAGAN, ROSEMARY ROBERTS, WILLIAM ROBERTS, PEDRO AROCHO, LISSETTE RODRIGUEZ, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, REYNALDO AROCHO, ANA AROCHO. (Attachments: # <u>1</u> Certificate of Service)(POMAR, OLGA) (Entered: 02/17/2009)
02/23/2009	<u>98</u>	Letter from M. James Maley Jr. re: Adjournment of Motion to Dismiss Plaintiffs' Second Amended Complaint re Set/Reset Motion and RRDeadlines/Hearings, <u>96</u> Response in Opposition to Motion,,, <u>84</u> Second MOTION to Dismiss <i>Plaintiffs' 2nd Amended Complaint, Motion Date 2/17/09</i> . (Attachments: # <u>1</u> Text of Proposed Order Order Extending Motion Date to March 16, 2009)(MALEY, M.) (Entered: 02/23/2009)
02/24/2009	<u>99</u>	ORDER resetting defendant's motion to dismiss to 3/16/09. Signed by Judge Noel L. Hillman on 2/24/09. (js) (Entered: 03/03/2009)
03/09/2009	<u>100</u>	REPLY BRIEF to Opposition to Motion re <u>84</u> Second MOTION to Dismiss <i>Plaintiffs' 2nd Amended Complaint, Motion Date 2/17/09</i> filed by TOWNSHIP OF MOUNT HOLLY. (Attachments: # <u>1</u> Certificate of Service for Reply Brief)(MALEY, M.) (Entered: 03/09/2009)
04/01/2009		CLERK'S QUALITY CONTROL MESSAGE: GAETANO MERCOGLIANO, does not have a correct e-mail address listed with the court and is not receiving his/her notices of electronic filing in this case. Pursuant to local rule 10.1 and court procedures, counsel and unrepresented parties are required to notify the court of any mailing or e-mail address changes. The court has deleted the invalid e-mail address. Attorneys should review the ECF link on our web site for information on maintaining your account and unrepresented parties, or those attorneys without access to maintaining their account, should notice the Clerk. (sa, ) (Entered: 04/01/2009)
04/21/2009		CLERK'S QUALITY CONTROL MESSAGE: GAETANO MERCOGLIANO, does not have a correct e-mail address listed with the court and is not receiving his/her notices of electronic filing in this case. Pursuant to local rule 10.1 and court procedures, counsel and unrepresented parties are required to notify the court of any mailing or e-mail address changes. The court has deleted the invalid e-mail address. Attorneys should review the ECF link on our web site for information on maintaining your account and unrepresented parties, or those attorneys without access to maintaining their account, should notice the Clerk. (sa, ) (Entered: 04/21/2009)

07/29/2009	<u>101</u>	Letter from M. James Maley – Re: Supplement to Motion to Dismiss re <u>84</u> Second MOTION to Dismiss <i>Plaintiffs' 2nd Amended Complaint, Motion Date 2/17/09</i> . (Attachments: # <u>1</u> Certification of Service)(MALEY, M.) (Entered: 07/29/2009)
10/23/2009	<u>102</u>	OPINION FILED. Signed by Judge Noel L. Hillman on 10/23/09. (js) (Entered: 10/26/2009)
10/23/2009	<u>103</u>	ORDER granting in part and denying in part and continued in part <u>74</u> Motion to Dismiss ; <u>84</u> Motion to Dismiss and <u>86</u> Motion to Dismiss, etc. Signed by Judge Noel L. Hillman on 10/23/09. (js) (Entered: 10/26/2009)
11/13/2009	<u>104</u>	Letter from Plaintiffs' counsel re <u>102</u> Opinion. (POMAR, OLGA) (Entered: 11/13/2009)
11/16/2009	105	TEXT ORDER: ORDERED that plaintiffs' request for an extension of time to submit supplemental briefing is GRANTED; plaintiffs' brief shall be due by December 21, 2009, and defendants' response shall be due January 20, 2010. By Noel L. Hillman, on November 16, 2009 (gn) (Entered: 11/16/2009)
12/22/2009	<u>106</u>	BRIEF in Opposition to Summary Judgment Motion filed by ANA AROCHO, PEDRO AROCHO, REYNALDO AROCHO, Vivian Brooks, Radames Burgos, BERNICE CAGLE, LEON CALHOUN, DOROTHY CHAMBERS, GEORGE CHAMBERS, SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, MT HOLLY GARDENS CITIZENS IN ACTION, INC., VINCENT MUNOZ, ELMIRA NIXON, Angelo Nieves, Dolores Nixon, LEONARDO PAGAN, James Potter, ROSEMARY ROBERTS, WILLIAM ROBERTS, LISSETTE RODRIGUEZ, EFRAIM ROMERO, HENRY SIMONS, JOYCE STARLING, Phyllis Singleton, JULES K. THIESSEN, TASHA TIRADO, LILLIAN TORRES-MORENO, RADAMES TORRES-MORENO, Robert Tigar, Flavio Tobar, Marlene Warthen, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, Alandia Warthen, Sheila Warthen. (Attachments: # <u>1</u> Statement Responding Statement of Material Facts, # <u>2</u> Declaration Decl of A. Beveridge, # <u>3</u> Exhibit Beveridge Exh A, # <u>4</u> Exhibit Beveridge Exh B, # <u>5</u> Exhibit Beveridge Exh C, # <u>6</u> Exhibit Beveridge Exh D, # <u>7</u> Declaration Decl of S Cruz, # <u>8</u> Declaration Decl of K Pipes, # <u>9</u> Declaration Decl of O Pomar, # <u>10</u> Exhibit Pomar Exh A, # <u>11</u> Exhibit Pomar Exh B, # <u>12</u> Exhibit Pomar Exh C, # <u>13</u> Exhibit Pomar Exh D, # <u>14</u> Exhibit Pomar Exh E, # <u>15</u> Exhibit Pomar Exh F, # <u>16</u> Exhibit Pomar Exh G, # <u>17</u> Exhibit Pomar Exh H, # <u>18</u> Exhibit Pomar Exh I, # <u>19</u> Exhibit Pomar Exh J, # <u>20</u> Exhibit Pomar Exh K, # <u>21</u> Exhibit Pomar Exh L, # <u>22</u> Exhibit Pomar Exh M, # <u>23</u> Exhibit Pomar Exh N, # <u>24</u> Exhibit Pomar Exh O, # <u>25</u> Exhibit Pomar Exh P, # <u>26</u> Exhibit Pomar Exh Q, # <u>27</u> Exhibit Pomar Exh R, # <u>28</u> Exhibit Pomar Exh S, # <u>29</u> Exhibit Pomar Exh T, # <u>30</u> Declaration Decl of G Smith, # <u>31</u> Exhibit Smith Exh A1, # <u>32</u> Exhibit Smith Exh A2, # <u>33</u> Exhibit Smith Exh A3, # <u>34</u> Exhibit Smith Exh A4, # <u>35</u> Exhibit Smith Exh A5, # <u>36</u> Exhibit Smith Exh A6, # <u>37</u> Exhibit Smith Exh A7, # <u>38</u> Exhibit Smith Exh A8, # <u>39</u> Exhibit Smith Exh A9, # <u>40</u> Exhibit Smith Exh A10, # <u>41</u> Declaration R 56(f) Decl of Pomar, # <u>42</u> Certificate of Service)(POMAR, OLGA) (Entered: 12/22/2009)
01/15/2010	<u>107</u>	Letter from M. James Maley, Jr. re <u>106</u> Brief,,,,,,,,, 105 Docket Annotation,. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order for Extension of Time to File Response)(MALEY, M.) (Entered: 01/15/2010)
01/19/2010	108	TEXT ORDER: ORDERED that all defendants' replies to plaintiffs' opposition to the converted summary judgment motion shall be due on February 19, 2010. By Judge Noel L. Hillman on 1/19/2010. (gn ) (Entered: 01/19/2010)
01/19/2010		MOTION for Summary Judgment by JULES K. THIESSEN, BROOKE TIDSWELL III, TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, TOWNSHIP OF MOUNT HOLLY, TRIAD ASSOCIATES, INC.(SEE DOC. NO. <u>112</u> BRIEF/CONVERTED SUMMARY JUDGMENT MOTION (gn ) (per Chambers of Judge Noel L. Hillman) (Entered: 10/04/2010)
02/18/2010	<u>109</u>	Letter from M. James Maley, Jr. re: Request to File Oversized Brief re <u>106</u> Brief,,,,,,,,,. (MALEY, M.) (Entered: 02/18/2010)

02/18/2010	110	TEXT ORDER: ORDERED that defendant's request <u>109</u> to file an over-length brief is GRANTED; defendant's brief shall not exceed 50 pages. By Judge Noel L. Hillman on February 18, 2010. (gn) (Entered: 02/18/2010)
02/19/2010	<u>111</u>	Letter from Brief to Plaintiffs' Responding Statement of Material Facts in Opposition to the Motion for Summary Judgment re <u>106</u> Brief,,,,,,. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K)(MERCOGLIANO, GAETANO) (Entered: 02/19/2010)
02/19/2010	<u>112</u>	BRIEF <i>in Support of Summary Judgment</i> filed by KATHLEEN HOFFMAN, JULES K. THIESSEN, BROOKE TIDSWELL III, TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, TOWNSHIP OF MOUNT HOLLY. (Attachments: # <u>1</u> Statement of Undisputed Facts, # <u>2</u> Certification of M. James Maley, Jr., # <u>3</u> Exhibit A through E and G through P to Maley Cert., # <u>4</u> Exhibit Exhibit F to Maley Cert., # <u>5</u> Certificate of Service)(MALEY, M.) (Entered: 02/19/2010)
02/24/2010	<u>113</u>	AMENDED DOCUMENT by KATHLEEN HOFFMAN, JULES K. THIESSEN, BROOKE TIDSWELL III, TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY, TOWNSHIP OF MOUNT HOLLY. Amendment to <u>112</u> Brief, <i>Amended Certificate of Service</i> . (MALEY, M.) (Entered: 02/24/2010)
01/03/2011	<u>114</u>	OPINION. Signed by Judge Noel L. Hillman on 1/3/2011. (drw, ) (Entered: 01/03/2011)
01/03/2011	<u>115</u>	ORDER granting Defts' converted motions for summary judgment <u>74</u> , <u>84</u> , <u>86</u> & <u>112</u> . The Clerk shall CLOSE this matter. Signed by Judge Noel L. Hillman on 1/3/2011. (drw, ) (Entered: 01/03/2011)
01/03/2011		***Civil Case Terminated. (drw, ) (Entered: 01/03/2011)
01/19/2011	<u>116</u>	NOTICE OF APPEAL by ANA AROCHO, Vivian Brooks, Radames Burgos, DOROTHY CHAMBERS, GEORGE CHAMBERS, SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, MT HOLLY GARDENS CITIZENS IN ACTION, INC., Dolores Nixon, LEONARDO PAGAN, James Potter, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, LILLIAN TORRES-MORENO, Robert Tigar, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, Alandia Warthen, Sheila Warthen. Filing fee \$ 455, receipt number 0312-3520549. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. Appeal Record due by 2/2/2011. (POMAR, OLGA) (Entered: 01/19/2011)
01/19/2011	<u>117</u>	MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) by ANA AROCHO, Vivian Brooks, Radames Burgos, DOROTHY CHAMBERS, GEORGE CHAMBERS, SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, NANCY LOPEZ, MT HOLLY GARDENS CITIZENS IN ACTION, INC., Dolores Nixon, LEONARDO PAGAN, James Potter, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, LILLIAN TORRES-MORENO, Robert Tigar, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, Alandia Warthen, Sheila Warthen. (Attachments: # <u>1</u> Declaration of Santos Cruz, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Declaration of Nancy Lopez, # <u>5</u> Declaration of Counsel, # <u>6</u> Exhibit A, # <u>7</u> Exhibit B, # <u>8</u> Exhibit C, # <u>9</u> Exhibit D, # <u>10</u> Exhibit E, # <u>11</u> Exhibit F, # <u>12</u> Exhibit G, # <u>13</u> Exhibit H, # <u>14</u> Brief in support of stay motion, # <u>15</u> Text of Proposed Order granting stay)(POMAR, OLGA) (Entered: 01/19/2011)
01/19/2011	<u>118</u>	MOTION to Stay re <u>117</u> MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) <i>Certificate of Service</i> by ANA AROCHO, Vivian Brooks, Radames Burgos, DOROTHY CHAMBERS, GEORGE CHAMBERS, SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, MT HOLLY GARDENS

		CITIZENS IN ACTION, INC., Dolores Nixon, LEONARDO PAGAN, James Potter, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, LILLIAN TORRES-MORENO, Robert Tigar, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, Alandia Warthen, Sheila Warthen. (POMAR, OLGA) (Entered: 01/19/2011)
01/20/2011		<b>CLERK'S QUALITY CONTROL MESSAGE</b> – The Motion to Stay # <u>118</u> filed by O.Pomar on 01/19/2011 was submitted incorrectly as a Motion. PLEASE RESUBMIT THE Certificate Of Service USING Certificate of Service found under the Service of Process menu. This submission will remain on the docket unless otherwise ordered by the court. (tf, ) (Entered: 01/20/2011)
01/20/2011		Set Deadlines as to <u>117</u> MOTION to Stay re <u>116</u> Notice of Appeal (USCA). Motion set for 2/22/2011 before Judge Noel L. Hillman. The motion will be decided on the papers. No appearances required unless notified by the court. (tf, ) (Entered: 01/20/2011)
01/20/2011	<u>119</u>	CERTIFICATE OF SERVICE by ANA AROCHO, Vivian Brooks, Radames Burgos, DOROTHY CHAMBERS, GEORGE CHAMBERS, SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, MT HOLLY GARDENS CITIZENS IN ACTION, INC., Dolores Nixon, LEONARDO PAGAN, James Potter, HENRY SIMONS, JOYCE STARLING, TAISHA TIRADO, LILLIAN TORRES-MORENO, Robert Tigar, DAGMAR VICENTE, CHARLIE MAE WILSON, LEONA WRIGHT, Alandia Warthen, Sheila Warthen re <u>117</u> MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) (POMAR, OLGA) (Entered: 01/20/2011)
01/20/2011	<u>120</u>	Letter from Counsel requesting expedited hearing on motion for stay re <u>117</u> MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) MOTION to Stay re <u>116</u> Notice of Appeal (USCA), Notice of Appeal (USCA), Notice of Appeal (USCA) (POMAR, OLGA) (Entered: 01/20/2011)
01/31/2011	<u>121</u>	MEMORANDUM OPINION & ORDER Denying <u>117</u> Motion to Stay. Signed by Judge Noel L. Hillman on 1/31/11. (js) (Entered: 01/31/2011)
02/03/2011	<u>122</u>	TRANSCRIPT REQUEST by ANA AROCHO et al (UNNECESSARY FOR APPEAL PURPOSES) re: <u>16</u> Notice of Appeal (lec) (Entered: 02/03/2011)
03/16/2011	<u>123</u>	ORDER of USCA as to <u>116</u> granting a Stay and Injunctive Relief Pending Appeal.(Craven, Shannon) (Entered: 03/16/2011)