

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

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| <p>CXX BXX</p> <p style="text-align:center">Plaintiff,</p> <p>vs.</p> <p>HON. JUDGE XXX, X JUSTICE OF THE PEACE FOR XXX PARISH, in his official capacity, XXX, CONSTABLE FOR THE X JUSTICE OF THE PEACE COURT FOR XX PARISH, in his official capacity, JEFF LANDRY, ATTORNEY GENERAL FOR THE STATE OF LOUISIANA, in his official capacity, and APARTMENT COMPLEX II, INC.</p> <p style="text-align:center">Defendants.</p> | <p>CASE NO.</p> <p>JUDGE:</p> <p>MAGISTRATE JUDGE:</p> |
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COMPLAINT

1. Apartment Complex II, Inc., is Plaintiff's landlord. It is attempting to evict her for behavior that is related to one of her disabilities, and for which she had lost access to treatment during the COVID-19 pandemic. She has since the event at issue arranged for alternative treatment and requested a reasonable accommodation from her landlord to allow her to continue under her lease. The federally subsidized landlord has never responded to the request, in violation of the federal Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

2. The eviction would be filed in the X Justice of the Peace Court in XX Parish. Two of the Defendants are Louisiana elected officials who are charged with administering and operating that court. The other, the Louisiana Attorney General, is charged with training Justices of the Peace. These Defendants have created and maintain a system for processing evictions that during the pandemic violates the Americans with Disabilities Act (ADA), the U.S. Constitution, and the Louisiana Constitution.

3. The United States Supreme Court has made it clear that state and municipal courthouses and courtrooms are subject to the Americans with Disabilities Act (the “ADA”). *Tennessee v. Lane*, 541 U.S. 509 (2004).

4. Plaintiff Ms. BXX is an individual with disabilities that make her more vulnerable to serious illness or death should she be infected with COVID-19. As such, her doctor has ordered her to stay home to minimize exposure.

5. Ms. BXX is facing eviction in Justice of the Peace court, but cannot physically attend her hearing because of her disabilities. She has requested accommodations under the ADA.

6. Defendant Justice of the Peace XXX and Defendant Constable XXX (hereinafter referred to together as “X Justice Court”) illegally require medically vulnerable people to appear in person to contest their impending evictions, and failed to accommodate Plaintiff with a remote hearing by videoconference upon request.

7. The X Justice Court’s methods of administration and failure to accommodate Plaintiff violate the ADA, put the plaintiff’s health at risk, and also endanger the public health due to the risk of community spread.

8. The Attorney General’s methods of administering their Justice of the Peace training program, in accordance with their training mandate under state law, violates the ADA.

9. Access to the courts is a fundamental building block of democracy. Without access to the courts, the rule of law and the ability to seek fair and just resolution of conflict are impossible. It is to the courts that democracy looks for dispute settlement

in a regularized and orderly process of dispute settlement. *Boddie v. Connecticut*, 401 U.S. 371 (1971).

10. COVID-19 has ravaged this community, and the pandemic has only slowed down because of the success of shelter-in-place orders and limitations on the movement of people—especially those whose underlying medical conditions make them most vulnerable to the virus.

11. Without major changes in the administration and operation of the courts to protect people with disabilities, which undersigned counsel have requested in writing, many individuals will be physically barred from court proceedings due to illness, vulnerability to illness, and lack of access to resources and technology.

12. In the face of a pandemic, it is unjust for Defendants to require people with disabilities to risk their health and safety to come to court in order to prevent becoming homeless.

13.

14. Plaintiff seeks declaratory relief, injunctive relief, damages, costs, and attorney fees to enforce her rights under the ADA, U.S. Constitution, Louisiana Constitution, Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and state law.

JURISDICTION AND VENUE

15. Plaintiff brings this civil rights action under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§ 1983 and 1988, the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq*, the Declaratory Judgment Act, 28 U.S.C. § 2201, the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq*, the

Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq*, the Louisiana Constitution and state law.

16. This court has federal question jurisdiction under 28 U.S.C. § 1331 because Plaintiff asserts claims under federal constitutional and statutory law.

17. This court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367.

18. Venue in this court is proper pursuant to 28 U.S.C. § 1391(b)(2) because Defendants' court is located in this district and because Plaintiff's home, from which she may be evicted, is within this district.

PARTIES

18. Plaintiff Ms. BXX is facing eviction from at a senior housing property subsidized by the U.S. Department of Housing and Urban Development ("HUD") in XX Parish. Because of medical vulnerabilities, including pulmonary hypertension and asthma, Ms. BXX is unable to appear in person to defend herself in court. **Exhibit A** **[Affidavit]**.

19. Defendant Kevin J. XXX is the X Justice of the Peace for XX Parish. Defendant is an elected official who presides over evictions in his jurisdiction and administers and operates the court. Defendant Justice of the Peace XXX knows or should know of the illegal practices described in these pleadings and has failed to provide Plaintiff and all other persons with disabilities the legal process to which they are legally entitled. Defendant Justice of the Peace XXX is sued in his official capacity. Defendant is sued for declaratory relief only.

20. Defendant Earl J. XXX is Constable for the X Justice of the Peace Court for Parish. Defendant is an elected official entrusted by law with the responsibilities of drafting and serving notices of hearings on evictions, drafting and serving notices of evictions, and carrying out evictions in XX Parish. Defendant Constable XXX knows or should know of the illegal practices described in these pleadings and has failed to provide Plaintiff and all other persons with disabilities the legal process to which they are legally entitled. Defendant is sued in his official capacity. Defendant is sued for declaratory and prospective injunctive relief.

21. Defendant Attorney General Jeff Landry is the Attorney General for the State of Louisiana. Defendant is an elected official entrusted by law with the responsibility of training Justices of the Peace in their legal obligations. Defendant Attorney General Landry knew or should have known of the illegal practices described in these pleadings and failed to provide relief. Defendant is sued in his official capacity. Defendant is sued for declaratory and prospective injunctive relief.

22. Defendant Apartment Complexs II, Inc. is a Louisiana non-profit corporation that owns and operates Apartment Complex, a HUD-subsidized senior apartment building in Kenner, Louisiana. Defendant is sued for declaratory, injunctive relief, and damages.

FACTS

BACKGROUND ON PEOPLE WITH DISABILITIES IN LOUISIANA AND THE RELATIONSHIP BETWEEN DISABILITY ACCESS AND COVID-19

23. Even before the COVID-19 pandemic erupted, nearly 33% of all residents in Louisiana had disabilities.¹ A significant percentage of these Louisianans have comorbid conditions that increase their risk of serious illness if infected with COVID-19 according to the Centers for Disease Control and Prevention (“CDC”).

24. The number of people with disabilities has dramatically increased since the COVID-19 pandemic began. According to the Louisiana Department of Health, over 48,000 people have been sickened by the virus and over 2,900 people have died.²

25. In XX Parish 477 people have died from COVID-19, and over 8,600 people have tested positive for the virus.³

26. On June 4, 2020, the Governor of Louisiana extended his declaration of a state of emergency:

[A] statewide public health emergency is declared to exist in the State of Louisiana as a result of the continued threat posed to Louisiana citizens as a result of the continued threat posed to Louisiana citizens by COVID-19, the effects of which continue to threaten the lives and health of the citizens of the state.⁴

27. By order of the Governor:

All individuals who are at higher risk of severe illness from COVID-19 should stay at home, unless travelling outside the home for an essential activity.

. . . .

1

Ctrs. for Disease Control & Prevention, *Disability & Health U.S. State Profile Data for Louisiana*, <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/louisiana.html> (last visited June 18, 2020).

2

La. Dep’t of Health, *COVID-19*, <http://ldh.la.gov/Coronavirus/> (last visited June 18, 2020).

3

Id.

4

State of Emergency for COVID-19: Phase 2 of Resilient Louisiana, No. 74 JBE 2020 (June 4, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/74-JBE-2020-State-of-Emergency-COVID-19-Resilient-Louisiana-Phase-2.pdf>

Those individuals who are at higher risk of severe illness, as designated by the Centers for Disease Control (CDC) are those with conditions such as asthma, chronic lung disease, compromised immune system (including from smoking, cancer treatment, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS or use of corticosteroids or other immune weakening medications), diabetes, serious heart disease (including heart failure, coronary artery disease, congenital heart disease, cardiomyopathies, and hypertension), chronic kidney disease undergoing dialysis, liver disease, or severe obesity or those who are 65 or older or living in a nursing home or long-term care facility.⁵

28. Under this definition, a very large percentage of people in XX Parish are at higher risk of severe illness from COVID-19.

29. Racial disparities exacerbate the effects of COVID-19. For example, Black Louisianans are 38% more likely to suffer from diabetes, which has dire implications for COVID-19 infection, than are white Louisianans.⁶

30. At a minimum, thousands of people in XX Parish are not in a position to travel to attend court to appear in person without endangering their health and safety.

31. The pandemic crisis is expected to continue for a year or longer. Recent national figures optimistically estimate that four million individuals will be hospitalized and 500,000 people will die in the United States as a result of the pandemic.⁷

5

Id.

6

United Health Found., *America's Health Rankings*, https://www.americashealthrankings.org/explore/annual/measure/Diabetes/population/Diabetes_Black/statc/LA (last visited June 16, 2020) (reporting that 17.7% of Black Louisianans have diabetes compared with 12.8% of white Louisianans).

7

Liz Essley Whyte, *Scientists Say New, Lower CDC Estimates For Severity of CPVID-19 Are Optimistic*, Nat'l Public Radio (May 22, 2020), <https://www.npr.org/sections/health-shots/2020/05/22/860981956/scientists-say-new-lower-cdc-estimates-for-severity-of-covid-19-are-optimistic>.

32. Epidemiologists and physicians warn of mortal dangers to individuals who are immunocompromised or have comorbid conditions should they be required to physically attend court. **Exhibit B [Declaration of Epidemiologist]**.

33. For the duration of this pandemic, tenants in XX Parish should not be forced to risk serious illness or death in order to avoid ending up homeless due to a judgment entered in their absence in an eviction case.

PLAINTIFF'S DISABILITY AND HER PENDING EVICTION

34. CXX BXX is a 61-year old woman with multiple physical and mental impairments, including schizophrenia, hypertension, and asthma.

35. Due to her asthma, Ms. BXX often has difficulty breathing. She must use an asthma pump approximately three times per day.

36. Ms. BXX rents the unit at XXX in XX, LA, at Apartment Complex. Apartment Complex is a HUD-subsidized senior independent living building. She has resided at the property since 2018.

37. According to her primary care doctor, Ms. BXX's schizophrenia impairs her ability to communicate, concentrate or perform complex tasks. It also impairs her neurological function. **Exhibit C [Medical Professional verification]**.

38. According to her primary care doctor, Ms. BXX's hypertension and moderate asthma impair her ability to breathe. They also impair her respiratory and circulatory functions. **Exhibit C [Medical Professional verification]**.

39. Ms. BXX's hypertension and moderate asthma make her more vulnerable to serious illness or death if infected with COVID-19.

40. Ms. BXX's primary care doctor, Dr. Isolde Butler, instructed Ms. BXX not to leave the house unless it is an absolute necessity because she is "at much higher risk of death or other devastating health outcomes" if infected with COVID-19. **Exhibit C [Medical Professional verification]**.

41. Due to her doctor's instructions, Ms. BXX almost never leaves her apartment.

42. Ms. BXX has been a client of Crescent Care's mental health program since 2010 due to her schizophrenia. The symptoms of Ms. BXX's schizophrenia are controlled under normal circumstances by medication. However, due to COVID-19 her symptoms have gotten worse due to the stress of the pandemic, and her inability to see her psychiatrist.

43. Westminster is aware of Ms. BXX's physical and mental disabilities because...

44. During the pandemic, Ms. BXX has been experiencing visual and audio hallucinations, disorganized behavior, agitation, excitability, lack of restraint, speech disorder, unorganized thoughts, and difficulty communicating. **Exhibit D [Social worker verification]**

45. On June 9, 2020, another resident spilled something on Ms. BXX and verbally provoked her. A physical altercation ensued in which Ms. BXX was accused of slapping the other resident.

46. On June 11, 2020, Apartment Complex issued a 10-Day Notice of Lease Termination of Tenancy requiring that Ms. BXX vacate the premises by June 29, 2020.

47. After the incident, Ms. BXX's social worker, MXX RXX, conducted counseling with her to develop non-violent strategies for managing her stress. Mr. RXX scheduled regular counseling sessions with her moving forward.

48. In addition, Ms. BXX registered for additional phone counseling sessions through XX Parish Human Services Commission.

49. Mr. RXX also scheduled a telehealth session with her psychiatrist in order to make any necessary adjustments to her medication. The mental health interventions have ameliorated the symptoms of Plaintiff's disability that contributed to the physical altercation. On X/X/XX Ms. BXX's counsel sent Apartment Complex I a letter asking the property not to evict Ms. BXX as a reasonable accommodation for her mental disability under the Fair Housing Act, citing the mental health interventions that occurred after the incident.

Exhibit E [Reasonable Accommodation Request to property]

50. Apartment Complex failed to grant her accommodation, or engage in any interactive process regarding her reasonable accommodation request.

51. Ms. BXX wishes to raise a reasonable accommodation defense to her eviction.

52. Ms. BXX also wishes to raise a defense under §4024(c) of the CARES Act, as her property is a Covered Property due to participation in a HUD subsidy program. Therefore the property is barred from issuing notices to vacate until after July 25, 2020, and must give a 30 day notice to vacate, rather than a 10 day notice, as provided.

53. Ms. BXX expects that Apartment Complex will file an eviction against her on June 29, 2020 should she not vacate the property. At that point she will be summoned to Justice of the Peace court for an eviction hearing.

54. Ms. BXX is afraid to attend an in-person court proceeding because her asthma and hypertension make her more vulnerable to death or serious illness if infected by COVID-19. Ms. BXX's doctor has instructed her to stay home.

55. In addition, Ms. BXX has no transportation and would have to take public transportation to get to court, which would put her at further risk of exposure.

56. The property in which Ms. BXX resides falls within the jurisdiction of Justice of the Peace Kevin J. XXX, the X Justice of the Peace for XX Parish.

57. On X/X/XX Ms. BXX, through counsel, sent a letter to Justice of the Peace XXX requesting that remote court proceedings be made available to her as a reasonable accommodation for her disabilities. Exhibit F [JOP reasonable accommodation letter].

58. The reasonable accommodation request was denied. Elaborate on outcome...

59. If Ms. BXX is evicted she will become homeless. This will increase her risk of exposure to COVID-19, and then her risk of exposing others to the virus.

**THE LOUISIANA EVICTION PROCESS AND PROCEDURES FOR JUSTICE
OF THE PEACE COURT**

60. Plaintiff challenges only the discriminatory manner in which the X Justice Court conducts evictions. She does not challenge Title XI of the Louisiana Code of Civil Procedure, which governs evictions.

61. Defendants Justice of the Peace XXX and Constable XXX (hereinafter “X Justice Court”) operate their courthouse and courtrooms in a manner that effectively precludes people with disabilities from accessing the court and participating in their own defense.

62. Defendants X Justice Court have the legal and actual responsibility for administering and operating their court in compliance with the law.

63. Defendant Attorney General Landry has the legal and actual responsibility of training Justices of the Peace on their obligations under the law.

64. Unless waived in a written lease, an eviction in Louisiana begins when a landlord gives a tenant written notice to vacate the premises. La. Code Civ. Proc. art. 4701. The notice must give the tenant at least five days to vacate. *Id.*

65. If a tenant does not to vacate, the landlord must file a Petition for Eviction setting a date for a trial on the landlord’s right to evict a tenant. La. Code Civ. Proc. art. 4731. This trial may be in as little as three days. *Id.* art. 4732.

66. Going in person to present their legitimate legal defenses to evictions risks the health and even the lives of individuals with disabilities in XX Parish. Plaintiff is one of those individuals.

67. The Petition for Eviction and order to show cause served upon tenants facing eviction in XX Parish X Justice Court contains no information for people with disabilities on what accommodations the courts will provide, nor does it identify any person at the Court empowered to grant accommodations to individuals with disabilities who would risk their lives by appearing in person.⁸

68. These defective and illegal notices are prepared by Defendant Justice of the Peace and served by Defendant Constable.

69. Upon information and belief, the form was created and circulated to Justices of the Peace statewide by Defendant Attorney General.

70. Eviction trials are conducted as summary proceedings. La. Code Civ. Proc. art. 4731. From service to the constable's putting one's possessions out can take as little as five days.

71. Given the X Justice Court's denial of plaintiff's request to accommodate her, there is currently no way for individuals like Plaintiff whose disabilities render it unsafe to attend court to defend themselves from eviction in those proceedings.

72. By law, continuances are available to people facing evictions under certain circumstances. La. Code Civ. P. art. 1601; 1602 (discretionary and peremptory grounds for continuances); La. Code Civ. P. art. 2596 (rules of ordinary proceedings apply to summary proceedings unless otherwise specified).

73. No notice of the right to a continuance is given to people with disabilities, including Plaintiff.

74.

75. If the landlord prevails and an eviction is ordered, the tenant may be given as little as twenty-four hours to vacate. If the tenant does not do so, Defendant Justice of the Peace can issue a Warrant for Possession, which allows the constable to physically remove the tenant. La. Code Civ. Proc. art. 4733.

76. No notice of accommodations available to individuals with disabilities is provided during an eviction by the Constable.

77. The lack of an accessibility measures at X Justice Court has dire consequences for tenants. If the tenant does not show up to contest the eviction because court is not accessible to her, the landlord prevails by entry of judgment in her absence. Plaintiff will be evicted from her home in as little as 24 hours.

78. A tenant who is unable to attend the court's hearing is unable to cross-examine the landlord's testimony. A tenant may not be able to offer factual support for her defenses if the tenant or witnesses are unable to come to court due to their disabilities.

79. If a tenant or witness with disabilities is subpoenaed, the tenant or witness risks a contempt citation for ignoring a subpoena.

80. Ms. BXX is in the minority of tenants in that she has an attorney. The vast majority of tenants facing eviction have no attorney to represent them.

81. While a tenant is entitled to a trial *de novo* at Parish Court if she loses at Justice of the Peace Court, no notice is provided of this right. La. Code Civ. P. art. 4924. As a practical matter, it is difficult, if not impossible, for a tenant to successfully navigate the trial *de novo* process at Parish Court without the assistance of an attorney.

82. After trial *de novo* there is no further right of appeal. *Id.*

THE X JUSTICE COURT'S CURRENT COVID-19 POLICIES

83. [Describe current COVID-19 policies of court; if you want to challenge them, they should also be echoed in the ADA section].

THE CARES ACT EVICTION MORATORIUM

84. Many of the people facing evictions in Louisiana have an absolute defense to their evictions if they can present it to the courts.

85. To alleviate the economic and public health consequences of tenant displacement during the COVID-19 outbreak the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”) places a moratorium on evictions.

86. § 4024(b) of the CARES Act prohibits landlords who participate in a covered housing program or who have received federal assistance in the form of a federally backed mortgage loan from filing an eviction against tenants for nonpayment of rent, and from charging late fees, until July 25, 2020.⁹

87. § 4024(c) of the CARES Act prohibits landlords who participate in a covered housing program or who have received federal assistance in the form of a federally backed mortgage loan from issuing notices to vacate until after July 25, 2020. After July 25, 2020, a 30 day notice is required.

88. § 4024(c) does not contain the limiting language in § 4024(b). As such, notices to vacate *for any reason* are prohibited at covered properties until after July 25, 2020. For evictions that require a notice to vacate, § 4024(c) presents a bar to eviction until after July 25, 2020.

89. As a result of the CARES Act, a substantial proportion of the renters in XX Parish, including Plaintiff, reside in properties subject to the moratorium and so have an absolute defense to their eviction.

90. If people with disabilities facing eviction have the opportunity to access the courts, they may present a defense under the CARES Act and prevent their eviction.

⁹

Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4024 (2020), <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>. For an explanation of the moratorium in plain language, see Cong. Research Serv., IN11320, *CARES Act Eviction Moratorium* (2020), <https://crsreports.congress.gov/product/pdf/IN/IN11320>

If they cannot access the courts, this congressionally mandated defense is unavailable to them.

91. Apartment Complex is a CARES Act covered property because it has a HUD-insured mortgage, and a project-based Section 8 subsidy contract with HUD.

**NOTICE, RESOURCES, AND TRAINING OF JUSTICES OF THE PEACE ON
ADA COMPLIANCE**

92. Louisiana law mandates that the Attorney General’s office provide annual training to Justices of the Peace and their constables on the law. La. R.S. § 49:251.1.

93. Part of the way that the Attorney General’s office meets its legal obligations is to produce the Louisiana Justice Court Training Manual, the main training and reference manual for Justices of the Peace (many of whom are not attorneys).¹⁰

94. According to the Attorney General’s website, where the manual is posted, “The Justice Court Manual is the most useful resource for the Justices of the Peace and Constables.”

95. The current version of the Justice Court Manual makes no mention of the ADA or the Court’s obligation to administer its business in compliance with Title II of the ADA, or to accommodate litigants with disabilities.

96. Upon information and belief, since the beginning of COVID-19, the Attorney General’s office has provided no information and guidance to all Justices of the Peace regarding

¹⁰

<https://www.ag.state.la.us/Article/177>

97. A random survey of Justices of the Peace statewide conducted by staff of the undersigned showed that many Justices of the Peace have no understanding of what the ADA is or their obligations under the ADA.

98. The Attorney General's office sent out a "Guide to Reopening Justice of the Peace Courts" with various suggestions for safe reopening in line with CDC guidance. The Guide mentions "vulnerable populations" who are at higher risk of serious illness if infected, but does not mention the ADA or the Court's obligations toward these individuals. It advises the Justices of the Peace to "[p]ost clear and consistent signage on doors and within your office directing those experiencing symptoms to avoid public areas and to self-isolate at home in accordance with CDC guidance." It does not advise of the Louisiana Supreme Court's encouragement of remote proceedings during the pandemic.

99. On June 8, 2020, undersigned counsel sent a letter to Attorney General Jeff Landry, and Assistant Attorney General Erin Day notifying them of the need for immediate training and guidance for Justices of the Peace on their obligations under the ADA during COVID-19.

100. Undersigned counsel has received no response from the Attorney General's office, despite follow-up phone calls.

101. On June 8, 2020, undersigned counsel sent a letter to Justice of the Peace XXX notifying him of his obligations under the ADA with regard to populations vulnerable to serious illness if infected with COVID-19.

102. Justice of the Peace XXX responded to the letter with his desire and intention to comply with the ADA, and stated that he would reach out to the Attorney General's office regarding the matter.

103. Upon information and belief, to date the Attorney General's office has issued no direct guidance on accommodations for medically vulnerable people during COVID-19.

CLAIMS FOR RELIEF

COUNT ONE: APARTMENT COMPLEX'S VIOLATION OF § 504 OF THE REHABILITATION ACT OF 1973

104. Plaintiff incorporates by reference the allegations in the paragraphs above.

18. Ms. BXX has physical and mental impairments that substantially limit major life activities and is therefore an individual with a disability under Section 504. 29 U.S.C. §§ 794(a), 705(20)(B), 42 USCS § 12102; 34 C.F.R. § 104.3(j).

105. Specifically, Ms. BXX has schizophrenia, which substantially limits her ability to communicate, concentrate or perform complex tasks. It also impairs her neurological function.

106. Apartment Complex is a covered "program or activity" as defined by 29 U.S.C. § 794(b)(3) because the building receives federal financial assistance in the form of a Section 8 Project-Based Rental Assistance contract to provide housing to low-income individuals.

107. Apartment Complex violated, and is presently violating, Ms. BXX's rights under the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations, by failing to process and grant Ms. BXX's reasonable accommodation request to not evict her for her alleged disability-related lease violation.

108. Apartment Complex's method of administering its housing program, in particular its failure to consider, process, and grant reasonable accommodations for

program participants, has the effect of subjecting Ms. BXX and other qualified individuals with disabilities to discrimination on the basis of disability. See 34 C.F.R. § 104.4(b)(4).

109. As a result, Ms. BXX has been excluded from the participation in, and denied the benefits of a program receiving federal financial assistance because of her disability in violation of Section 504.

110. Ms. BXX has a private right of action to pursue her claim for declaratory and injunctive relief under 29 U.S.C. § 794a(a)(2).

COUNT TWO: APARTMENT COMPLEX'S VIOLATION OF THE FAIR HOUSING ACT

111. Plaintiff incorporates by reference the allegations in the paragraphs above.

112. Ms. BXX is a person with mental and physical impairments that substantially limit major life activities. Specifically, Ms. BXX has schizophrenia, which substantially limits her ability to communicate, concentrate or perform complex tasks, and which impairs her neurological function. In addition, Ms. BXX has pulmonary hypertension and asthma, which substantially limit her ability to breathe.

113. Ms. BXX is a person with a handicap as defined by 42 U.S.C. § 3602(h).

114. Specifically, Ms. BXX has schizophrenia, which substantially limits her ability to communicate, concentrate or perform complex tasks. It also impairs her neurological function. Apartment Complex is prohibited from “refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B).

115.

116. On X/X/2020, Ms. BXX requested that she not be evicted from her apartment due to her disability-related alleged lease violation as a reasonable accommodation for her disability.

117. The accommodation was necessary to afford Ms. BXX an equal opportunity to use and enjoy the dwelling, as without such an accommodation, she would be unable to remain in her home.

118. In light of the ameliorative steps taken or about to be taken at the time of the request, Ms. BXX's continued tenancy did not constitute a direct threat to the health or safety of other individuals nor would her continued tenancy result in substantial physical damage to property.

119. The accommodation was reasonable because it did not impose an undue burden nor would fundamentally alter Apartment Complex's program.

120. Westminster denied Ms. BXX's request for accommodation [elaborate, or was the denial constructive?].

121. Apartment Complex further failed to enter into or otherwise engage in an interactive process with Ms. BXX to determine if the requested accommodation was reasonable or whether an alternative accommodation was possible. In order to defend her tenancy, Westminster has hailed Ms. BXX into a forum that is inaccessible to her. Because of her asthma and hypertension she is at high risk of Covid-19 when in public spaces. In order to accommodate her disabilities, she is supposed to stay at home under guidance of the Centers for Disease Control, the Governor, and her physician, and cannot defend her eviction.

122. On X/X/2020, Ms. BXX requested that Westminster refrain from filing for eviction until a forum became accessible as an accommodation for her disability.

123. The accommodation was necessary because, without such an accommodation, Ms. BXX would be unable to defend her eviction, which would result in a default judgment of eviction against her, thereby making the dwelling unavailable. 130

124. Ms. BXX's requested accommodation was reasonable because it did not impose an undue burden nor would fundamentally alter Apartment Complex's program.

125. By forcing Ms. BXX to defend her tenancy in an inaccessible forum that will not accommodate her disability, Westminster has refused Ms. BXX's request for accommodation and made housing unavailable to her on the basis of her disability in violation of 42 U.S.C. § 3604(f).

126. As a result of Westminster's actions, Ms. BXX has suffered injury, including emotional distress, fear and anxiety of losing her housing, fear and anxiety of morbidity and death from COVID-19, and worsening disability. Ms. BXX has also suffered a loss of her civil right to be free from housing discrimination on the basis of disability. Ms. BXX's imminent eviction will cause injuries in the form of monetary damages, emotional distress, and lost housing opportunity.

127. Ms. BXX has a private right of action to pursue her claim for declaratory and injunctive relief, and damages under 42 U.S.C § 3613(a).

**COUNT THREE: APARTMENT COMPLEX'S ATTEMPTED WRONGFUL
EVICTION IN VIOLATION OF THE CARES ACT**

128. Plaintiff incorporates by reference the allegations in the paragraphs above.

129. § 4024(c) of the CARES Act prohibits covered properties from issuing a notice to vacate until after July 25, 2020. See P.L. 116-136 § 4024(c).

130. The CARES Act preempts state law governing contracts and evictions, and modifies or overrides the terms of Ms. BXX's lease.

131. Apartment Complex issued a Notice to Vacate on June 11, 2020 in violation of § 4024(c) of the CARES Act.

132. Ms. BXX has a claim under state law to declaratory and injunctive relief as to the current requirements of her lease, and the state statutory provisions at issue, and as to whether Westminster has attempted wrongful eviction.

133. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. §1367.

COUNT FOUR: JUSTICE OF THE PEACE XXX, CONSTABLE XXX, AND ATTORNEY GENERAL LANDRY'S VIOLATION OF TITLE II OF THE ADA

134. Plaintiffs incorporate by reference the allegations in the paragraphs above.

135. Under Title II of the Americans with Disabilities Act (ADA), "no qualified individual with a disability shall by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

136. Congress crafted a broad definition of disability: a mental or physical impairment which substantially limits on or more major life activities of an individual. 42 U.S.C. § 12102(1)(A). Major life activities include the operation of major bodily functions such as the immune, respiratory, and circulatory systems, all systems whose dysfunction renders a person more susceptible to COVID-19. 42 U.S.C. § 12102(2)(B).

137. Plaintiff has physical impairments that substantially limit her major life activities by limiting her ability to breathe- namely pulmonary hypertension and asthma. These impairments limit the operation of a major bodily function- namely the pulmonary

and respiratory system. As such, she is a qualified individual with disabilities for the purposes of the Americans with Disabilities Act (“ADA”).

138. Defendants Justice of the Peace XXX, Constable XXX, and Attorney General Landry, sued in their official capacity, are public entities for the purposes of the ADA.

139. Title II of the ADA requires public entities, such as courts, use methods of administration that provide access to people with disabilities, and make accommodations to ensure meaningful access for individuals with disabilities.

140. Due to the failure of the Sixth Justice Court to adopt and make available a policy of court accessibility and accommodations for litigants with disabilities that make them more vulnerable to serious illness if infected with COVID-19, and its failure to adequately respond to Plaintiff’s request for accommodation, Plaintiff is being denied meaningful access to government services and programs on the basis of her disabilities.

141. By requiring tenants with disabilities that render them more susceptible to COVID-19 and its consequences to choose between risking their health by attending court and accepting homelessness as a result of a default judgment of eviction, Defendants deny such tenants meaningful access.

142. Due to the lack of meaningful access for people with disabilities, the X Justice Court’s methods of administering and operating their courthouse and courtrooms, in providing notice of impending eviction, in conducting eviction proceedings, and in executing eviction judgments, violate Title II of the ADA.

143. Accommodations are necessary to enable Plaintiff and those like her to obtain meaningful access to the Court. Plaintiff requested that her eviction hearing be

held by remote videoconference so that she could meaningfully participate as a person with disabilities. By failing to provide this accommodation, the Justice of the Peace Court violated Title II of the ADA.

144. The Attorney General is responsible for training Justices of the Peace, many of whom are non-attorneys. The Attorney General must provide annual training to Justices of the Peace. La. R.S. § 49:251.1. The Attorney General must also provide an opinion in writing on any question of law to a Justice of the Peace who requests one within 30 days. La. R.S. § 49:251.

145. The Attorney General's methods of administering its training program violate the ADA, as they do not adequately train Justices of the Peace on their courts' obligations under the ADA, as made evident during this global pandemic where people with certain disabilities may be more vulnerable to serious illness or death if they leave their homes to go to court.

146. Plaintiff is entitled to a declaration that the XX Parish X Justice of the Peace Court and the Attorney General's office Justice of the Peace training program are operating in violation of the ADA.

147. Plaintiff is also entitled to anPlaintiff's rights under the ADA are enforceable under 42 U.S.C. § 12133. *See Frame v. City of Arlington*, 657 F.3d 215, 223 (5th Cir. 2011) ("It is established that Title II of the ADA and § 504 of the Rehabilitation Act are enforceable through an implied private right of action.")

COUNT FIVE: JUSTICE OF THE PEACE XXX AND CONSTABLE XXX'S VIOLATION OF PROCEDURAL DUE PROCESS

148. Plaintiff incorporates by reference the allegations in the paragraphs above.

149. Under Louisiana law persons with leases have a property interest in the lease until they either abandon the property or a court has terminated the tenancy through eviction. Plaintiff thus has a property interest in continued possession of her home.

150. Defendants' actions and inactions fail to provide tenants such as Plaintiff with fair notice and a meaningful opportunity to be heard by failing to indicate that accommodations are available to them in lieu of personally appearing in court and by failing to make those accommodations available.

151. Further, Defendants have a policy of prohibiting persons with indicia of Covid-19 from entering their Court. Yet they provide no procedure to allow these individuals a hearing on their cases or if witnesses, to provide testimony.

152. An eviction order by the X Justice Court against a tenant such as Plaintiff operates as a deprivation of a property interest in the home.

153. Such a deprivation is preventable by establishing different pre-deprivation processes.

154. The same barriers to court set out in this complaint also prevent many of the affected individuals from obtaining post-deprivation due process.

155. Thus, defendants violate the due process rights of plaintiffs secured by the Fourteenth Amendment to the U.S. Constitution.

156. Plaintiff is entitled to a declaration that the Court is denying her and other tenants with disabilities procedural due process and an injunction mandating that constitutionally sufficient process be provided.

157. Plaintiff's Fourteenth Amendment due process rights are enforceable through 42 U.S.C. § 1983.

**COUNT SIX: JUSTICE OF THE PEACE XXX AND CONSTABLE XXX'S
VIOLATION OF RIGHT OF PETITION**

158. Plaintiff incorporates by reference the allegations in the paragraphs above.

159. The First Amendment to the U.S. Constitution protects the right to petition the government for redress of grievances. Access to the courts is a component of this right.

160. Defendants' X Justice Court and the Attorney General violate Plaintiff's right to petition the government for redress of grievances by denying her access to their court. They similarly deny this right to other individuals with similar disabilities.

161. Because Plaintiff cannot safely attend court due to her disability and because no accommodations have been offered or made that would allow her to participate remotely, she has been denied her right to petition the X Justice of the Peace Court to protect her from eviction.

162. Plaintiff's right to petition cannot be satisfied through written pleadings because she must have the opportunity to present witness testimony and to cross-examine or assist in the cross-examination of any witnesses testifying against her.

163. Plaintiff is entitled to a declaration that the X Justice of the Peace Court Court is infringing on the right of her and other tenants with disabilities to petition for redress of grievances and an injunction mandating that accommodations be provided to secure that right.

164. Plaintiff's First Amendment right to petition the court is enforceable through 42 U.S.C. § 1983.

**COUNT SEVEN: JUSTICE OF THE PEACE XXX AND CONSTABLE XXX'S
VIOLATION OF FREE SPEECH**

165. Plaintiff incorporates by reference the allegations in the paragraphs above.

166. The Free Speech Clause prohibits the government from enacting prior restraints on speech except under the most strict conditions.

167. Defendants' policies and procedures act as a prior restraint on Plaintiff's speech because she is effectively prevented from addressing the Sixth Justice Court.

168. As a result, Defendants' policies and procedures act as a prior restraint on the speech of Plaintiff and other tenants with disabilities facing eviction in the Sixth Justice Court.

169.

170. It is unreasonable for the Sixth Justice Court to fail to put in place policies and procedures that ensure that Plaintiff and other tenants with disabilities can speak.

171. By denying Plaintiff and those like her the right to speak to contest her eviction, Defendants violate the Free Speech Clause.

172. Plaintiff is entitled to a declaration that the Sixth Justice Court is infringing on the right to free speech of Plaintiff and other tenants with disabilities and an injunction barring the prior restraint.

173. Plaintiff's First Amendment right to free speech is enforceable through 42 U.S.C. § 1983.

174. Plaintiff incorporates by reference the allegations in the paragraphs above.

175. There is a fundamental right of access to the Court that all persons, including Plaintiff and other tenants with disabilities, possess.

176. Defendants' policies and procedures fail to take into account Plaintiff's disability and fail to provide her alternatives to personally appearing in court at dire risk to her health.

177. As a result, Defendant's policies and procedures deprive Plaintiff and those like her of their right of access to the Sixth Justice Court.

178. There is no compelling objective served by policies that deny tenants with disabilities like Plaintiff from the ability to participate in their own eviction hearings and, even if there were, Defendants' policies and procedures are not narrowly tailored to serve them.

179. Defendant Sixth Justice Court's policies and procedures are not rationally related to a legitimate objective because they are based on an irrational fear and hatred of any person who may have symptoms of COVID-19.

180. Hence, Defendants have violated the right of Plaintiff and other tenants with disabilities to access the Courts in the same manner as their counterparts without disabilities.

181. As a result, Plaintiff is entitled to a declaration that the Sixth Justice Court is infringing on her fundamental right of access to the Sixth Justice Court and an injunction providing means to secure that right.

182. Plaintiff's Fourteenth Amendment due process rights are enforceable through 42 U.S.C. § 1983.

COUNT EIGHT JUSTICE OF THE PEACE XXX AND CONSTABLE XXX'S VIOLATION OF ARTICLE I § 22 OF THE LOUISIANA CONSTITUTION

183. Plaintiff incorporates by reference the allegations in the paragraphs above.

184. Article I § 22 of the Louisiana Constitution states "All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."

185. Plaintiff's access to the courts has been barred due to the Sixth Justice Court's failure to provide accommodations and make court accessible to people with disabilities, and the Attorney General's failure to properly train Justice of the Peace on their obligation to do so.

186. These defendants' action or failure to act thereby violated § 22 of the Louisiana Constitution.

187. Plaintiff is entitled to declaratory and injunctive relief.

188. This Court has supplemental jurisdiction over Plaintiff's state constitutional claims under 28 U.S.C. §1367.

**COUNT NINE: JUSTICE OF THE PEACE XXX AND CONSTABLE XXX'S
VIOLATION OF ARTICLE I § 3 OF THE LOUISIANA CONSTITUTION**

189. Plaintiff incorporates by reference the allegations in the paragraphs above.

190. Article I § 3 of the Louisiana Constitution states:

191. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliationT

192. Ms. BXX and other people with disabilities are denied equal protection of the laws in violation of the Louisiana Constitution because, unlike litigants without disabilities, they cannot access court due to their disabilities. No provision has been made to provide for access to Sixth Justice Court for people with comorbid health conditions that increase their risk of serious illness or death if infected with COVID-19.

193. Plaintiff is entitled to declaratory and injunctive relief.

194. This Court has supplemental jurisdiction over Plaintiff's state constitutional claims under 28 U.S.C. §1367.

COUNT TEN: ATTORNEY GENERAL LANDRY'S NEGLIGENT FAILURE TO TRAIN

195. Plaintiff incorporates by reference the allegations in the paragraphs above.

196. The Attorney General has a statutory duty to train Justices of the Peace and to respond timely to their questions regarding the law. La. R.S. § 49:251 et. seq.

197. Attorney General Landry and his staff negligently failed to properly train Louisiana Justices of the Peace in their obligations under the Americans with Disabilities Act.

198. The Louisiana Justice Court Manual contains no mention of the ADA or the Court's obligations toward litigants with disabilities.

199. During COVID-19 the Attorney General has failed to provide any guidance to Louisiana Justices of the Peace regarding their obligations under the ADA toward medically vulnerable individuals.

200. The Attorney General's failure to adequately train Justices of the Peace in how to process reasonable accommodation requests caused Ms. BXX to not be able to access the court to defend herself due to her disability.

201. Ms. BXX is entitled to declaratory and injunctive relief.

202. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. §1367.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff request this Court issue the following relief:

One. Grant leave for plaintiff to proceed *in forma pauperis*.

Two. Issue a temporary restraining order, a preliminary injunction, and, in due course, a permanent injunction enjoining:

1. Defendant Apartment Complex from filing any eviction against Ms. BXX prior to complete and interactive consideration of Ms. BXX's request for a reasonable accommodation, or prior to issuance of a Notice to Vacate on or after July 25, 2020.
2. Defendant Constable from processing evictions in any way, including preparing notices of proceedings, serving notices of proceedings, serving notices of evictions, and assisting in any way with an eviction process against Plaintiff and other individuals with disabilities unless and until Defendants come into full compliance with the ADA; and

Three. Issue a declaratory judgment against Defendants XXX and XXX stating that:

1. Defendants' administration and operation of the Sixth Justice Court violate the ADA;
2. Defendants' failure to give individuals with disabilities actual notice whenever an official document is served on them that they are entitled to accommodations along with instructions for accessing those accommodations violates the ADA;
3. Defendants' failure to have a qualified person in the courthouse with detailed information on alternative options that will enable tenants such as Plaintiff to access eviction proceedings without risking health and safety by appearing in person at the courthouse violates the ADA;

4. Defendants' failure to provide accommodations to individuals with disabilities such as Plaintiff in the process of calling witnesses, producing documents, appearing in court, and fully defending themselves violates the ADA;
5. Defendants' actions and inactions violate due process rights of Plaintiff and other tenants with disabilities;
6. Defendants' actions and inactions violate the right to petition the government for redress of grievances possessed by Plaintiff and other tenants with disabilities;
7. Defendants' actions and inactions violate the free speech rights of Plaintiff and other tenants with disabilities;
8. Defendants' actions and inactions violate the fundamental right of access to the courts that belongs to Plaintiff and other tenants with disabilities; and
9. Defendants' actions and inactions violate the right to individual dignity and access to the courts under the Louisiana Constitution.

Four. Issue a declaratory judgment against Attorney General Landry stating that:

1. Defendant's methods of administering Justice of the Peace training violate the ADA; and
2. Defendant's failure to adequately train Justices of the Peace on their ADA obligations was negligent under state law.

Five: Issue a declaratory judgment against Apartment Complex II, Inc. stating that:

1. Its failure to accommodate Ms. BXX's disability violates § 504 of the Rehabilitation Act of 1973; and

2. Its failure to accommodate Ms. BXX's disability violates the Fair Housing Act.

Six. Award Ms. BXX appropriate special and general damages for Apartment Complex's violation of the Fair Housing Act under 42 U.S.C. § 3613(c)(1).

Seven. Award reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, 42 U.S.C. § 3613(c)(2) and 29 U.S.C. 794a(b); and

Eight. Grant all other relief this Court deems just and proper.

Date: _____

Respectfully submitted,

/s/ William P. Quigley

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Add verified complaint materials