



out of the same factual situation as the Federal claims. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the subject apartment complex and its adjacent facilities are located in Canton Township, Michigan, and each Defendant resides in or does business in the Eastern District of Michigan.

### **PARTIES**

3. This Third Amended Complaint reflects that now former Defendants BILTMORE PROPERTIES COMPANIES and the CHARTER TOWNSHIP OF CANTON, MICHIGAN, have each paid money and settled with the Plaintiffs Lowrey and have each been dismissed with prejudice. In addition, this Third Amended Complaint adds as a party-Defendant WAYNE COUNTY, through its Director of Public Services and its Director of Roads.

### **PLAINTIFFS:**

4. Plaintiff Michael Lowery is a U.S. citizen, was a resident of the Uptown Apartments, and lives in Canton Township, Michigan. He has a mobility impairment and requires a wheelchair for ambulation. He has attempted without success to use Canton Township's theater and retail district, and intends to do so when the district is brought into compliance with the FHAA, ADA, Section 504 of the Rehabilitation Act, and the PWDCRA. He is a person with a disability as that term is defined by each of the laws at issue in this lawsuit.

5. Plaintiff Marilyn Lowery is a U.S. citizen and the mother of Plaintiff Mike Lowery. She frequently visited Uptown Apartments to visit and to care for her son, and needed to access his apartment and its adjacent parking, as well as the rental offices and other common use areas of Uptown Apartments. She needs

accessible parking on accessible routes to utilize the retail and theater district, and intends to patronize the district when it is made accessible according to law. She has mobility impairment and for at least ten years has been issued a disability placard by the State of Michigan. She is a person with a disability as that term is defined by the FHAA, the ADA and the PWDCRA.

### **THE CORPORATE DEFENDANTS**

6. Defendants Uptown Investors LLC, Beztak Properties, Inc., Beztak Companies, Inc., and Monogram Homes are each corporations organized under the laws of Michigan that conduct business in the Eastern District of Michigan. Each engaged in an over-arching pattern and practice of discrimination against plaintiffs by hiring and paying private contractors to design and/or construct several of the inaccessible facilities challenged in this lawsuit.

7. Defendants Warner, Cantrell, & Padmos, Inc., and Looney, Rick, Kiss designed, and/or hired private contractors to design or construct several of the inaccessible facilities challenged in this lawsuit.

### **THE GOVERNMENTAL DEFENDANTS**

8. Defendants Wayne County Department of Public Services is a "public entity" as that term is defined under 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104. James A. Jackson, in his official capacity as Director of Wayne County's DPS, and Lorenzo Blount in his official capacity as Director of Roads for Wayne County's DPS have the authority to order changes in the policies and to the facilities constructed on behalf of defendant Wayne County. Many of the inaccessible facilities challenged in this lawsuit exist inside of Wayne County's

ROW along Cherry Hill Road and North and South Ridge Roads, and were designed and built pursuant to construction permits issued by Wayne County. The County engaged in an over-arching pattern and practice of discrimination against plaintiffs when Wayne County then inspected and accepted the final facilities as built under these permits. These inaccessible facilities were built by, on behalf of, or for the use of Wayne County. This Defendant is sued for injunctive relief, attorneys' fees and costs—but not for damages—under the ADA and under Section 504 Rehabilitation Act. This Defendant is sued for injunctive relief, attorneys fees, costs—and for monetary damages—under Michigan's PWDCRA. For convenience, this combination of defendants shall be referred to in this Complaint as defendant "Wayne County".

## **FACTS**

### **Defendants' Theater and Retail District—the "District".**

9. In 1974, Congress passed the Rehabilitation Act. In 1976, Michigan passed its PWDCRA, in 1988, Congress passed the FHAA, and in 1990 Congress passed Title II and Title III of the ADA. Each of these laws required defendants to meet strictly specific, detailed, accessibility codes when building ground floor apartments or public use sidewalks, parking lots and vehicular ways.

10. More than ten years later, beginning in year 2004 and continuing to present, each of the Defendants designed and/or constructed their "Cherry Hill Village Center Theater and Retail District—the "District". A digital map as well as an aerial map of the district is attached hereto as Exhibits 1 and 2. Each Defendant—ignoring each of the detailed, mandatory accessibility building

codes—designed and/or constructed throughout the district hundreds of inaccessible curb ramps, sidewalk portions, parking spaces and other public use facilities that violate the Rehabilitation Act, FHAA, ADA, and the PWDCRA's accessibility codes. The locations of these violations are set forth on the maps of the district attached hereto as Exhibits 1 and 2.

11. **The Lowreys Encounter the District.** During August 2005—when the district was only about one-half built and was actively undergoing massive design and construction—Plaintiff Mike Lowrey moved into Uptown Apartments which is located in the middle of the district. See Exhibit 1, designating the location of Plaintiff Lowrey's apartment. Mr. Lowrey was the first tenant in his apartment building, which was still being completed when he moved in. Mr. Lowrey and his mother Marilyn both have mobility impairments.

12. Many signs and other markers throughout the District explicitly proclaimed that the district facilities were "handicap" accessible. Unfortunately, the Lowreys quickly discovered that each of these markers was wrong; in fact, they discovered that there are hundreds of barriers to access throughout the district. Mr. Lowrey's apartment lacked any accessible parking and any accessible route to any of Uptown Apartment's common-use amenities. And Uptown Apartments was surrounded by the district, which also lacked any accessible parking and any accessible routes to the district's public-use amenities. Thus, the Lowreys were and remain segregated from all common-use and public-use facilities at Uptown Apartments and throughout the district. The Lowreys intend to use the district's

common use and public use facilities as soon as they are made accessible by law.

13. **Examples of the District's Inaccessible Facilities that are Located Inside the Wayne County Right of Way (ROW).**

- (a) Sidewalks and curb ramps with running slopes exceeding 8.33% up to 15%. The federal government has conclusively stated that any portion of a pedestrian way with a "running slope exceeding 8.33% is not usable by most persons with disabilities and cannot be considered part of an accessible route";
- (b) Sidewalks with cross slopes exceeding 12%, six times steeper than the maximum permitted by law;
- (c) Curb ramps with transitions up to three inches above the street, twelve times steeper than the maximum permitted by law;
- (d) Drainage grates located inside painted cross walks that catch front wheels of wheelchairs, with openings eight times wider than the maximum permitted by law;
- (e) "Handicapped" parking spaces and adjacent access aisles with slopes exceeding 3% and up to 12%, six times the maximum slope permitted by law. In addition, not one of these parking spaces is on an accessible route to anything in the district;
- (f) Pedestrian activation buttons located many feet from the sidewalk they serve, far out of reach of wheelchair users;
- (g) Orphan curb ramps that lack an answering curb ramp, leaving the Lowreys and others trapped in the intersection with no way out;

**Retaliation Against Lowreys By Defendants Beztak and Uptown Investors LLC for Lowreys Asserting Legal Rights.**

14. Despite repeated requests by the Lowreys, Defendants have refused to correct the vast majority of violations throughout the district. Instead, defendants Uptown Investors LLC, and their employees have engaged in a continuing pattern of harassment that includes selective enforcement of Uptown

Apartments' policies and filing a false police report against Mike Lowrey on August 1, 2008, and then lying about it, and then continuing until they drove Mike Lowrey out of his apartment in the dead of winter.

**15. Governmental Permits for District's Inaccessible Facilities.** Some of the district's facilities challenged by the Lowreys exist within the Wayne County Rights-of-Way (ROW) along Cherry Hill Road and along North Ridge Road and South Ridge Road. See Exhibits 1 (Map of District facilities) and 2 (Aerial Map of District). For each of these facilities, Wayne County reviewed the design plans, issued permits to some of the other Defendants to construct or to otherwise perform work inside the County ROW, and the County inspected the final product.

16. The remaining portion of the district's facilities challenged by plaintiffs exist outside of the Wayne County ROW, and are on Canton Township property (e.g. parking lot "C"), or on Uptown Investors LLC's property (e.g. parking lot "K"), or on Cherry Hill Investors LLC's property (e.g. West Road). For each of these facilities, Canton Township reviewed the design plans, issued permits to build, and inspected and accepted the final product.

**17. Actual Construction of District's Inaccessible Facilities.** No defendant actually constructed any part of the district; instead, defendants hired and paid private contractors for all construction.

(A) **Canton Township.** Canton Township obtained written permits from Wayne County, and then hired and paid contractors to design and to build the great majority of the district's inaccessible facilities located within the Wayne County ROW (e.g., the curb ramps, stop light, and pedestrian

activation buttons located at the intersection of Cherry Hill Road with South Ridge Road);

(B) **Uptown Investors, LLC, Beztak, Beztak, and Monogram.** These defendants hired and paid contractors to design and to build most of the inaccessible facilities located north of Cherry Hill Road and east of North Ridge Road (e.g., Presidential Way, its adjacent sidewalks, and parking lots “H” through “L”). Some of this design and construction (e.g., the large streetscape sidewalks fronting Liner Buildings A and B) took place within the Wayne County ROW, pursuant to permits issued by Wayne County to some or all of these Defendants;

(C) **Biltmore Properties Company.** This former defendant hired and paid contractors to design and to build most of the inaccessible facilities located west of North Ridge Road (e.g., West Road, Independence Avenue and their adjacent sidewalks, the “Village Square”, and parking lots “D” through “G”);

(D) **Warner, Cantrell & Padmos and Looney, Ricks, Kiss.** These defendants engineered or designed some of the district’s inaccessible facilities (e.g. the large Streetscape sidewalks fronting Liner Buildings A and B, the Village Square, the intersection of Cherry Hill Road with North Ridge Road, parking lots “H” through “L”); and,

(E) **Wayne County.** Wayne County never hired or paid any private contractor to design or to construct any portion of the district; instead, it issued permits to some of the other defendants to construct or to otherwise work inside the County ROW—such as issuing the permit to Uptown Investors LLC to build the large streetscape sidewalks fronting Liner Buildings A and B, as well as the permit to reconstruct and to widen Cherry Hill Road, North Ridge Road, and to install the traffic signals and the pedestrian push buttons at the intersection of Cherry Hill Road with South Ridge Road.

18. **Township and Other Defendants Indemnify Wayne County.** As a part of the permitting process, the township and the corporate defendants in writing specifically indemnified and agreed to “hold harmless” Wayne County for any problems arising from the district’s facilities built within Wayne County’s ROW.



19. **Canton Township Control of District's Inaccessible Facilities.** Every inaccessible facility in the district was built pursuant to two "planned development agreements" (PDA). In exchange for the township's permission to the private defendants to build their residential housing units, these two PDA's granted the township an absolute right to force defendants Biltmore, Beztak, and Uptown to construct each of the inaccessible facilities at issue here. In addition, the township has the responsibility to maintain each of the sidewalks at issue herein, and has the right (through its "sidewalks replacement program") to order defendant Uptown to replace defective sidewalks and curb ramps located on those defendants' private property. Also, the township has permanent easements or other written agreements to use each many of the defendant's private roads and parking lots.

20. **Defendant Wayne County Facts—Intentional Violation of Controlling Accessibility Law and Regulations for purposes of monetary relief under Michigan's PWDCRA.**

Plaintiffs do not seek damages against Defendant Wayne County under the ADA or Section 504 of the Rehabilitation Act. Plaintiffs are seeking damages against Defendant Wayne County under Michigan's PWDCRA. Plaintiffs Lowrey allege that the township intentionally violated the controlling accessibility standards by ignoring those standards or by failing to ensure that the standards were met when the facilities at issue in this lawsuit were designed and constructed by, on behalf of, or for Wayne County's use.

- (a) Each of the facilities at issue herein was designed, constructed or otherwise altered by, on behalf of, or for the use of the County well after after January 2001;
- (b) On January 26, 1991, Title II of the ADA became effective against the County. This was after a thirty month period for the County to become compliant with Title II;
- (c) By 1991, pursuant to express authority from Congress, the United States Department of Justice issued implementing regulations binding the County, including 28 C.F.R § 35.151, requiring that whenever any facilities were designed, constructed or altered by, on behalf of, or for the use of the township, that those facilities strictly meet the mandatory requirements of 28 C.F.R. part 36, Appendix A—the ADDAG;
- (d) In 1993, the Third Circuit Court of Appeals analyzed 28 C.F.R § 35.151, and ruled that public entities must install curb ramps at all resurfaced or otherwise altered intersections. *Kinney v. Yerusalim*. This ruling should have put the County on notice that 28 C.F.R § 35.151 was binding;
- (e) On May 17, 2004, the United States Supreme Court ruled that 28 C.F.R § 35.151 was binding on public entities, and that public entities must remove barriers to access in the manner set forth in 28 C.F.R § 35.151. *Tennessee v. Lane*, 124 S.Ct. at 1993;
- (f) In July/August of 2004, a private contractor hired by the township resurfaced the Cherry Hill and Ridgely Road S.A.D. Board Proceedings, June 22, 2004, Item # 9;
- (g) On October 1, 2004, extensively citing *Lane*, the Sixth Circuit held that constructed or otherwise altered curb ramps and sidewalks that violate the ADAAG/UFAS violate the ADA, and must be rebuilt to meet the ADAAG/UFAS. *Ability Center v. Sandusky*, 385 F.3d at 907-908;
- (h) On December 14, 2004, the township voted to accept its private contractor's work on the S.A.D. and to make its final payment to the contractor;
- (i) On March 24, 2006, the Michigan Department of Transportation (MDOT) issued its "Construction Advisory CA 2006-03", stating that up until that date, ***"MDOT's [public sidewalk and curb***

***ramp] construction standards were not in full compliance with the Americans with Disability Act Accessibility Guidelines [the ADAAG]. Use the new standards in all instances and take extra care in the construction of the [curb] ramp to ensure that the standard is followed”***  
Emphasis added.

- (j) During August 2006, the township obtained a permit from the County to work within the County ROW, and hired and paid a private contractor to install new sidewalks and curb ramps at the intersection of Cherry Hill Road with South Ridge Road, and running to the east. These new sidewalks and curb ramps violate virtually every applicable provision of the ADAAG/UFAS and Michigan accessibility standards (e.g. running slopes exceeding 15%, cross slopes exceeding 8%, changes in level of three inches, no level landings, counter slopes exceeding 7%, etc.), and are not readily usable by and accessible to the Lowreys;
- (k) In April, 2007, plaintiffs served the draft Second Amended Complaint purporting to add the township to this lawsuit and detailing myriad ADAAG/UFAS violations on township property, and on facilities built by, on behalf of, or for the use of the township;
- (l) In July/August 2007, the township issued construction permits to the private Defendants to rebuild sidewalks and curb ramps throughout the Uptown Apartments site. The township required the private Defendants to meet detailed accessibility standards on these sidewalks and curb ramps, but at the same time the township itself was hiring and paying private contractors to install inaccessible curb ramps and sidewalks at near its Farmer's Market site. For example;
- (m) In September 2007, the township obtained a permit to construct inside the County ROW. See Exhibit # 3, Affidavit of township Engineer Casari, and including two Wayne County Permits to construct, attached hereto. Pursuant to those permits the township hired and paid private contractors to design and to construct (on the west border of its Farmers' Market site) a new sidewalk and curb ramp at the intersection of Roanoke Avenue with North Ridge Road and running north. This curb ramp is an "orphan ramp" that leads into the roadway, but lacks any answering curb ramp, leaving the Lowreys trapped in traffic with no way out, and the ramp has a 10% counter slope and lacks a

level landing among other ADAAG/UFAS violations, and neither the curb ramp nor the sidewalk is readily usable by and accessible to the Lowreys;

- (n) **Wayne County Executive Robert Ficano—Completely Ignoring this Lawsuit—Personally Conducts Wayne County Business at Inaccessible Village Theater.** Despite each of the above notifications that Canton Township's Village Theater, its parking, its adjacent sidewalks and traffic signals violated each and every accessibility requirement of the ADAAG/UFAS/MDOT R-28-E and MBC, on February 12, 2009, Wayne County Executive conducted his annual "State of the County" Address at the Village Theater. The County advertised that: "The Village Theater at Cherry Hill holds about 400 people. The event is open to the public." See Exhibit # 4—Press Advisory. As stated in detail above, there is not one single barrier free parking space on an accessible route serving the Village Theater, and both of the Theater's public entrances grossly violate the ADAAG/UFAS accessibility codes.

21. Thus, it could not be clearer that Defendant Wayne County was on multiple notices that federal and Michigan law both required the County to meet the ADAAG standards when designing, constructing or otherwise altering public sidewalks, parking lots, and curb ramps. Nevertheless, in late 2004 the County issued permits to the township to design and to construct the S.A.D. not in compliance with the controlling ADAAG/UFAS standards. Also, in late 2006 and again in late 2007, the County issued permits to the township which installed brand new pedestrian push buttons, curb ramps and sidewalks within the County ROW at the intersections of Cherry Hill Road with South Ridge Road, and at North Ridge Road and Roanoke Avenue, and these curb ramps and sidewalks grossly violate the ADAAG and Michigan standards, including transitions of nearly three inches, running slopes exceeding 14%, adjoining surfaces exceeding 10%, no level landings, etc. The pedestrian buttons are far outside

the reach of wheelchair users, including Mike Lowrey. These 2004, 2006 and 2007 installed sidewalks and curb ramps are not usable by either of the Lowreys.

22. Likewise, none of the curb ramps, sidewalks and parking spaces in the district are readily usable by and accessible to the Lowreys, and each of these facilities were constructed by, on behalf of, or for the use of the township, after 2002.

23. The County knew that federal and Michigan standards controlled accessibility along its ROW in the district. The County issued permits to the township and to Uptown Investors LLC to build curb ramps and barrier free parking spaces within the County ROW throughout the District. This is proof that the township understood that there were legal requirements governing accessible features in public construction.

24. Thus, although the County was on repeated notices, and the County referred to some accessibility standards in design and construction of the district, the County wantonly and egregiously failed to ensure that the sidewalks, parking spaces and curb ramps designed and constructed on behalf of, or for the use of the County inside its ROW met the ADAAG/MDOT standards. And, to add insult to injury, on February 12, 2009, County Executive Robert Ficano elected to give his "State of the County" address at the grossly inaccessible Village Theater. His calloused disregard for accessibility meets any negligence, deliberate indifference, and/or intentionality requirements justifying an award against Wayne County of compensatory and other damages under Michigan's PWDCRA.

### COUNT 1: FAIR HOUSING ACT CLAIMS

**25. Uptown Apartments' Ground Floor Units and their Common-Use**

**Sidewalks, Vehicular Ways, Parking, and Parking Lots.** This claim is brought against only Defendants BEZTAK PRO PERTIES, INC.; BEZTAK COMPANIES, INC.; UPTOWN INVESTORS L.L.C.; MONOGRAM HOMES; WARNER, CANTRELL, & PADMOS, INC.; and LOONEY, RICKS, KISS. Uptown Apartments contains residential apartment units that are "dwellings" within the meaning of 42 U.S.C. § 3602(b).

26. The ground floor units at Uptown Apartments that were designed and constructed for first occupancy after March 13, 1991 are "covered multi-family dwellings" within the meaning of 42 U.S.C. § 3604(f)(7)(A) and are subject to the requirements of 42 U.S.C. § 3604(f)(3)(C).

27. Uptown Apartments comprises approximately 30 buildings containing residential rental dwellings built since the effective date of the accessible design requirements of the Fair Housing Act. These buildings contain approximately 100 ground floor units that are subject to the accessibility requirements of the Fair Housing Act. These units, including the one rented by Mr. Lowery were built for first occupancy close to the time Plaintiff Lowery moved in, and after.

28. Defendants failed to design and to construct the covered dwelling units, their parking, sidewalks, dog walking areas, clubhouse, pool and other common use and public use areas in the Uptown Apartments and on these defendants' private property in the district in such a manner that:

(a) public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons, and are usable by most persons with disabilities;

(b) all premises within such dwellings contain the following features of adaptive design:

(i) an accessible route into and through the dwelling;

(ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) reinforcements in bathroom walls to allow later installation of grab bars; and

(iv) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

29. In addition, Defendants Uptown Properties LLC and its employees repeatedly retaliated against the Lowreys because they asserted their rights under the FHAA.

30. Defendants, through the actions described above, have:

(a) Discriminated in the rental of, or otherwise made unavailable or denied, dwellings to Plaintiffs and to persons because of handicap, in violation of 42 U.S.C. § 3604(f)(1);

(b) Discriminated against the Plaintiffs Lowery in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with the rental of a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2); and

(c) Failed to design and construct dwellings and their accessible routes in compliance with the requirements mandated by 42 U.S.C. § 3604(f)(3)(C).

31. The conduct of Defendants described above constitutes a violation of the Fair Housing Act.

32. As persons who have been the victims of Defendants' discriminatory housing practices, Plaintiffs Michael Lowery and Marilyn Lowery are aggrieved persons as defined in 42 U.S.C. § 3602(i) and have suffered injuries as a result of Defendants' conduct described above.

33. Defendants' conduct described above was intentional, willful, and taken in disregard for the rights of others, including the Plaintiffs Lowery. Plaintiffs are entitled to compensatory, exemplary and punitive damages, and attorneys fees and costs.

**COUNT 2: TITLE III OF THE AMERICANS WITH DISABILITIES ACT CLAIMS**

34. This count is brought against all Defendants EXCEPT the governmental defendants. Each of the corporate defendants has designed or constructed throughout the district numerous public use sidewalks, parking spaces, parking lots, park areas, vehicular ways and sidewalks. Some examples of these are designated on the Exhibit Map as Parking lots "H" through "L", Presidential Way, and the sidewalks that connect these to the retail shops and the Village Theater. Each of these facilities are covered by the prohibition against discrimination in 42 U.S.C. § 12182(a), and are subject to the design and construction requirements of 42 U.S.C. § 12183(a)(1) and 28 C.F.R. § 35.151.



35. The corporate Defendants failed to design and construct these facilities in such a manner that the facilities are “readily usable by and accessible to” plaintiffs and other individuals with disabilities. Additionally, Defendants Uptown Investors LLC, Smith and Doe retaliated against the Lowreys for asserting their rights under the act;

36. The actions of the Defendants, as described above, constitute:

(a) Discrimination against Plaintiffs and against the majority of individuals with disabilities in the full and equal enjoyment of the services, facilities, privileges, and accommodations of a place of public accommodation, in violation of 42 U.S.C. § 12182(a); and

(b) A failure to design and construct public accommodations in compliance with the requirements mandated by 42 U.S.C. § 12183(a)(1).

37. The conduct described in paragraphs above constitutes a violation of Title III of the Americans with Disabilities Act, entitling Plaintiffs to declaratory and injunctive relief, and a reasonable attorneys fee and costs.

**COUNT 3: MICHIGAN PERSONS WITH DISABILITIES CIVIL RIGHTS ACT  
(PWDCRA)**

38. **Covered Multifamily Ground Floor Apartments.** This claim in this paragraph is brought against BEZTAK PROPERTIES, INC.; BEZTAK COMPANIES, INC.; UPTOWN INVESTORS L.L.C.; MONOGRAM HOMES; WARNER, CANTRELL, & PADMOS, INC.; and LOONEY, RICKS, KISS. Plaintiffs bring this claim pursuant to the Article 5 of the Michigan PWDCRA, M.C.L. §§ 37.1501- 37.1507, which requires all ground floor apartments at

Uptown Apartments in Canton to meet detailed accessibility requirements, including, among others, those set forth in the Michigan Building Code, adopting the ICC/ANSI A117.1-1998. Defendants have constructed and continue to operate all of the ground floor apartments—including Plaintiff Mike Lowery's apartment—to violate all applicable Michigan accessibility standards. In addition, defendants Uptown Investors LLC, Beztak and Beztak retaliated against the Lowreys for asserting their rights.

**39. District's Common-use Sidewalks, Parks, Parking, Vehicular Ways.**

This claim in this paragraph is brought against ALL DEFENDANTS. Defendants discriminated against Plaintiffs by designing, constructing, operating and/or maintaining the district's remaining facilities, common use areas, features, vehicular ways, parking, and sidewalks serving the district in violation of the applicable Michigan accessibility standards and not to be accessible to a and readily usable by Plaintiffs. Solely as to Defendant Wayne County, Plaintiffs seek relief only for the facilities, services, programs or activities within the Wayne County ROW within the District.

40. The PWDCRA entitles the plaintiffs to injunctive relief, and an award of damages, and attorneys fees are defined as damages under the act.

**COUNT 4: CLAIMS AGAINST ONLY UPTOWN INVESTORS, LLC, AND THE  
BEZTAK DEFENDANTS, FOR RETALIATION AGAINST THE PLAINTIFFS  
LOWREY FOR ASSERTING THEIR RIGHTS UNDER COUNTS 1, 2, & 3  
ABOVE**

41. The claim in this Count is brought only against Defendant Uptown Investors LLC, and the Beztak Defendants. These defendants conspired to retaliate against and/or to otherwise coerce the Lowreys for asserting their rights under the three Counts above. This conduct included, but is not limited to, threatening to tow Ms. Lowrey's car, to remove Mr. Lowrey's companion animal from the Uptown Apartments, to evict Mr. Lowrey, filing a false police report against Mr. Lowrey on August 1, 2009—and then lying by denying any involvement with the confrontation with police, when in fact it was entirely instigated by Uptown Apartments Manager Kelly Tobin-Smith, by ratifying her retaliatory actions by keeping her employed after receiving incontrovertible proof of her retaliatory mendacity in the August 1, 2008 incident, by putting her in charge of driving out Mike Lowrey from the Uptown Apartments, and by driving in December 2008 Mike Lowrey from his apartment home of three years, into the dead of winter.

42. Each of the three above Counts have specific, explicit prohibitions against these Defendants' coercive, retaliatory conduct against the Lowreys, and entitle the Lowreys to declaratory and injunctive relief and full attorneys fees and costs under all of the Counts, as well as to compensatory, punitive and exemplary monetary damages under the FHAA and under Michigan's PWDCRA.

**COUNT 5: CLAIMS SOLELY AGAINST DEFENDANT WAYNE COUNTY,  
PURSUANT TO TITLE II OF THE ADA, SECTION 504 OF THE  
REHABILITATION ACT AND MICHIGAN'S PWDCRA**

43. This claim is brought only against Defendants WAYNE COUNTY DEPARTMENT OF PUBLIC SERVICES, and JAMES A. JACKSON and LORENZO BLOUNT, in their official capacities. Plaintiffs bring this count under Title II of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and under Michigan law.

44. **Violations of ADA Title II.** Title II of the ADA provides that “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. Title II of the ADA defines Wayne County DPS as a “public entity.” 42 U.S.C. § 12131(1). Within its ROW, Wayne County’s sidewalks are a public “service, program or activity” subject to the Act.

45. Title II of the Americans With Disabilities Act requires that when any facility (including sidewalks and barrier free parking spaces) is built or altered by, on behalf of, or for the use of a public entity after January 26, 1992, it shall to the maximum extent possible, be altered so that it is readily usable by and accessible to individuals with disabilities. 42 U.S.C. §§ 12146 & 12147; 28 C.F.R. § 35.151(a), (b) & (e); *Ability Center of Greater Toledo v. City of Sandusky, Ohio*, 133 F.Supp. 2d 589, 591-92 (N. D.Ohio 2001), *aff'd* 385 F.3d 901 at 904 (6<sup>th</sup> Cir. 2004)(Public entities must install ADA-compliant curb ramps at all resurfaced intersections). The curb cuts, sidewalks and parking spaces must meet specific

federal building and design standards, 28 C.F.R. § 35.151(c); *Tennessee v. Lane*, 541 U.S. 509, 124 S.Ct. 1978, 1993 (2004). Many of the districts' vehicular ways, parking lots, sidewalks and other facilities within Wayne County's ROW have been built by, on behalf of, or for the use of, Wayne County, pursuant to permits issued by the County.

46. Wayne County has failed to insure that sidewalks, barrier free parking and curb ramps within its ROW inside the District were constructed and/or have been maintained so that each is "readily usable by and accessible to" Plaintiffs. Among other places in the district, the sidewalks fronting Uptown Investors' Liner Buildings A and B and within the Wayne County ROW along the north sidewalk of Cherry Hill Road and the east side of North Ridge Roads, suffer from cross slopes exceeding 11% and running slopes exceeding 14%. This violates both Title II of the ADA as well as Section 504 of the Rehabilitation Act. See *Barden v. City of Sacramento*, 292 F.3d 1073, 1076-77 (9<sup>th</sup> Cir. 2002), *cert. denied*, 539 U.S. 958 (2003)(explaining broad definition of "public service, program, or activity" under the ADA and under Section 504 and finding that "maintaining accessibility of sidewalks for individuals with disabilities" fits that definition).

47. By its actions complained of herein, Defendant Wayne County has engaged in an over-arching pattern and practice of discrimination against Plaintiffs due to their disabilities. Plaintiffs are entitled to injunctive relief against Defendant Wayne County ordering it to bring each of the facilities, services, programs or activities inside the District and also within its ROW into compliance

according to law, to attorneys fees and cost s for pursuing this relief. Plaintiffs do not seek damages under Title II of the ADA against Wayne County.

48. **Violations of Section 504 of the Rehabilitation Act.** Additionally, the Rehabilitation Act requires that when a public entity that receives federal funding builds or alters any part of a facility, it shall to the maximum extent possible, be made so that it is readily access ible to and usable by individual s with disabilities. 29 U.S.C. § 794. “[n]o otherwise qualified individual with a disability...shall, solely by reason of her or his di sability, be excluded from the participation in, be denied the benefits of, or be subjected to discrim ination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a). At all relevant times, Defendant Wayne County has received milli ons of dollars from the federal government. The Rehabilitation Act defines “program or activity” as “all of the operations of” a qualifying local government. 29 U.S.C. § 794(B)(1)(A).

49. As described above, numerous facilities have been built by, on b ehalf of, or for the use of defendant Wayne County throughout the distri ct and within the County ROW, without meeti ng the required accessibility standards and codes. Each of these failures by them has made each of these new or altered ser vices, programs or activities not readily accessibl e to and usable by Plaintiffs. By its actions complained of herein, Defendant Wayne County has engaged in an over-arching pattern and practice of discrimination against Plaintiffs due to their disabilities. Plaintiffs are entitled to injunctive relief against De fendant Wayne County ordering it to bring each of the faci lities, services, programs or activities inside the District and also within its ROW into compliance according to la w, to

attorneys fees and costs for pursuing this relief. Plaintiffs do not seek damages under Section 504 of the Rehabilitation Act against Wayne County.

50. **Violations of Michigan's PW DCRA.** Also, the above complained of failure by Wayne County to construct, alter and maintain services, programs or activities to be accessible to Plaintiffs also violates Michigan law at M.C.L. § 37.1301-02. According to the P WDCRA, Plaintiffs are entitled to compensatory, exemplary and punitive damages, as well as injunctive and declaratory relief, attorneys' fees and costs. The PWDCRA specifically identifies attorneys' fees and costs as "damages" under the Act.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court order against each defendant the appropriate injunctive, declaratory and or damages relief.

Respectfully

submitted,

/s/  
J.  
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**Certificate of Service**

I hereby certify that on this 4<sup>th</sup> day of May, 2009 the foregoing Plaintiffs' Third Amended Complaint was filed electronically. Parties will receive notice of the filing through the Court's electronic filing system and may access the document through the Court's electronic filing system. In addition it was served by hand-delivery upon the Wayne County Defendants at their offices.

/s/

J. Mark Finnegan