

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Michael Lowery and Marilyn Lowery,	)	Case.: 06-13408-NGE-MKM
	)	
Plaintiffs	)	
	)	
vs.	)	Judge NANCY G. EDMUNDS
	)	
Beztak Properties, Inc.; Beztak Companies, Inc.)	)	
Biltmore Properties Companies, Inc.	)	Magistrate MONA MAZOUB
Uptown Investors L.L.C., Monogram Homes	)	
Warner, Cantrell, & Padmos, Inc.,	)	
Looney, Ricks, Kiss, and Canton Township,	)	<b>JURY DEMANDED</b>
	)	
Defendants	)	

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**SECOND AMENDED COMPLAINT**

### **Preliminary Statement**

Plaintiffs Michael Lowery and Marilyn Lowery allege:

1. In the state of Michigan and nationwide there is an acute shortage of accessible rental housing available to persons with disabilities and their families. As a result, Congress directed over ten years ago that newly constructed multi-family housing units on ground floors must meet accessibility standards. The State of Michigan soon thereafter issued its own laws requiring the similar accessibility. Unfortunately, many architects, builders and apartment companies have wantonly ignored the law, and continue to construct ground floor multi-family housing that is not accessible to persons with mobility impairments. This is illegal discrimination, and denies housing to persons with disabilities. In addition, non-disabled tenants who rent these inaccessible apartments are unable to host friends and family who have mobility impairments. This failure to build apartments so that they are accessible stigmatizes persons with disabilities and their families and friends. This lawsuit is brought to help remedy this wanton discrimination in Southeastern Michigan.
2. This action is brought to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 ("FHAA"), 42 U.S.C. §§ 3601-3619; Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181- 12189; and the Michigan Persons With Disabilities Civil Rights Act ("PWDCRA"), MCL Section 37.1301-1303 relating to the business office and MCL Section 37.1501-1507 relating to multifamily housing.

3. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 3614(a), and 42 U.S.C. § 12188(b)(1)(B). The Court has supplemental jurisdiction over the Michigan law claim because the claim arises 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**

4. Plaintiff Michael Lowery is a U.S. citizen and a resident of the Uptown Apartments in Canton Michigan. He has a mobility impairment and requires a wheelchair for ambulation. He is a person with a disability as that term is defined by the FHAA, ADA, Section 504 of the Rehabilitation Act, and the PWDCRA.

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

6. Defendant Beztak Properties, Inc. is a corporation organized under the laws of Michigan that conducts business in the Eastern District of Michigan. Defendant Beztak Properties is responsible for the design, construction, building,

and/or operation of a number of apartment complexes, including the Uptown Apartments, located in Canton Michigan, where Plaintiff Mike Lowery lives.

7. Defendant Beztak Companies, Inc. engaged in a joint venture with Defendant Biltmore Properties Corporation and some or all of the other Defendants to design, construct, build and/or to operate the Uptown Apartments and/or nearby adjacent sidewalks and facilities that are not reasonably accessible to and usable by Plaintiff Lowery.

8. Defendant Biltmore Properties Companies, Inc. engaged in a joint venture with Defendant Beztak Companies and some or all of the other Defendants to design, construct, build and/or to operate the Uptown Apartments and nearby adjacent sidewalks and facilities that are not reasonably accessible to and usable by Plaintiff Lowery.

9. Defendant Uptown Investors L.L.C. is a corporation organized under the laws of Michigan that conduct business in the Eastern District of Michigan. Defendant Uptown Investors L.L.C is or was the owner of Uptown Apartments or is or has been responsible for the design, construction, building, and/or operation of the Uptown Apartments, located in Canton Michigan, where Plaintiff Mike Lowery lives.

10. Defendant Monogram Homes is a Michigan Corporation. Defendant Monogram Homes is responsible for the design, construction, building, and/or operation of the Uptown Apartments, located in Canton Michigan, where Plaintiff Mike Lowery lives.

11. Defendant Warner, Cantrell, & Padmos, Inc., is a civil engineering firm. Upon information and belief, it is responsible for the design, construction, building, and/or operation of the Uptown Apartments and adjacent facilities, located in Canton Michigan, where Plaintiff Mike Lowery lives.

12. Defendant Looney Ricks Kiss is the architect for the Uptown Apartments and adjacent facilities. It is responsible for the design, construction, building, and/or operation of the Uptown Apartments and adjacent facilities, located in Canton Michigan, where Plaintiff Mike Lowery lives.

13. Defendants Beztak Properties, Inc., Beztak Companies, Inc., and Uptown Investors I and have the same address, and upon information and belief, many of the same employees and principals.

14. Each of the above Defendants is sued under the FHAA (Count 1), Title III of the ADA (Count 2), and under the Michigan PWDCRA (Count 3). None of the above Defendants is sued under the governmental entity claim (Count 4).

15. Defendant Canton Township is a Defendant only and the only Defendant pursuant to Count 4 below, under Title II of the ADA and under Section 504 of the Rehabilitation Act. Canton Township is a Michigan "municipal corporation" pursuant to M.C.L.A. 691.1401(1)(a) and is a "public entity" as that term is defined under 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104. Upon information and belief, the City has received and will continue to receive federal funds for purposes of the Rehabilitation Act and for the Civil Rights Restoration Act, 29 U.S.C. § 794(b)(1)(A). Upon information and belief, the inaccessible curb ramps and sidewalks directly adjacent to Uptown Apartments and Ridge Road, and

adjacent to Cherry Hill Road and Uptown Apartments, were constructed or altered by, on behalf of, or for the use of Canton Township. Canton Township is sued pursuant only to Count 4 below, and not sued pursuant to the FHAA, Title III of the ADA, nor the Michigan PWDCRA.

### **FACTS**

16. Each Defendant either designed, built, constructed, and/or operates the Uptown Apartments or some of the sidewalks and other facilities adjacent thereto in Canton, Michigan. These apartments and facilities suffer from numerous defects in design or construction that make the facilities not accessible to nor readily usable to Plaintiff Lowery nor by most persons with disabilities. The Uptown Apartment complex consists of approximately 30 apartment buildings, containing a total of approximately 300 apartments. The complex also contains a pool, club house, exercise gym, meeting areas and a business office. The Uptown Apartments complex has several streets and intersections, and sidewalks throughout.

17. The Uptown Apartments became available for first occupancy approximately when Mike Lowery moved in late 2005, although several buildings and ground floor apartments were built for first occupancy well after he moved in. Plaintiff Mike Lowery has been a tenant there for the last several months. Mr. Lowery uses a wheelchair to ambulate. Because there are no elevators and no ramps or any other way for a person using a wheelchair to access the second and third floor apartments at Uptown, Mr. Lowery needs a ground floor unit.

18. When he first inquired about renting an apartment at Uptown, the rental agent told Mr. Lowery that the complex had “three handicap accessible apartments” in the complex. The law requires that *all* ground floor units in a complex like Uptown must be accessible; Uptown should have had at least ninety accessible units, not just three.

19. The rental agent showed Mr. Lowery one of the three units identified by Uptown’s rental agent as being “handicap accessible.” The agent assured Mr. Lowery that this apartment was specifically designed for tenants who use a wheelchair. Mr. Lowery agreed to rent the unit. Mr. Lowery discovered that the route into the apartment was steeper than 8.33% and threatened to throw his wheelchair over. A few days later, Uptown informed Mr. Lowery that another of the three “handicap accessible” apartments was available, and Mr. Lowery agreed to rent that unit instead. He has lived there at all times since.

20. Soon after taking occupancy, Mr. Lowery discovered that there is no accessible route into his apartment and from his apartment to Uptown’s rental offices, its clubhouse, its pool, its exercise room, its playground, its picnic area, or its dog walking park. The curb ramps, parking spaces, sidewalks and pathways suffer from cross slopes exceeding 2% and approaching 18% in places, nine times steeper than the maximum permitted by law. These items suffer from running slopes exceeding 18%, nearly four times steeper than the maximum permitted by law. In addition, there are steps throughout the accessible routes. In sum, the routes into and from his apartment and to

common areas of Uptown Apartments is not usable by him nor by most persons with disabilities.

21. As a result, Mr. Lowery is virtually trapped in his apartment and has been since the day he moved in. He has no access to the pool, exercise room, club house or meeting rooms. Even his mail box is not accessible to him. There is no accessible parking on any accessible route. He has no accessible route to the nearby ice cream shop, barber shop, community theater, and convenience store, or to public transportation. His apartment, its sidewalks, parking and other common use facilities are not usable by him nor by most other persons with disabilities.

22. The inside of his apartment is not accessible to him nor to most persons with disabilities. For example, the bedroom and bathroom doors are too narrow, causing Mr. Lowery to scrape his fingers, toes, knees and chair wheels against the door frames when he tries to maneuver through them. Mr. Lowery can not use some of his closets, because they are deeper than 24 inches but the doors are not at least 31 and 5/8 inches wide. He can not unlock his windows, because the hardware is 60 inches from the floor. He can reach only one of the electrical outlets in his kitchen, and as a result he often shorts out his electricity when using more than two appliances in the kitchen. The thresholds to his entrance doors are too high, jostling him every time he enters or leaves his apartment. Both of his bathrooms lack proper grab bars and also lack proper blocking for their later installation, and both toilets are improperly located. As a result, transferring from his chair to the toilet and using the shower are



dangerous activities for Mr. Lowery. Because of these and numerous other accessibility defects, the apartments are not usable by Mr. Lowery nor by most persons with disabilities. Upon information and belief, all of the ground floor apartments at Uptown suffer from some or all of these defects.

23. None of Uptown's apartments is accessible to Mr. Lowery, so he can not rent another Uptown unit. Mr. Lowery is unable to visit his neighbors. There are steps blocking the front access to his and to each of the neighboring ground floor apartments. Virtually every ground floor apartment at Uptown suffers from these defects. If he enters those apartments through the garage, he risks damaging the door posts and he scrapes his fingers and toes. Because he can not access Uptown's common areas, it is virtually impossible for him to meet and interact with his neighbors. Since he can only use his back door, his only chance to meet his neighbors as they come and go is to lurk behind the apartments in the steeply sloping parking lots, dodging cars. This is just the sort of isolation the Fair Housing Act and the Americans With Disabilities Act and the Michigan PWDCRA were passed to eradicate.

24. Mr. Lowery has repeatedly complained to Uptown about these and other accessibility defects. Mr. Lowery and his mother Plaintiff Marilyn Lowery even gave Uptown's agent a newspaper clipping from the Detroit Free Press about a lawsuit that the United States Attorney brought against another Southeastern Michigan apartment builder. The lawsuit was *United States vs. Edward Rose and Sons*, and was filed in Federal Court in Detroit. The article explains the accessibility requirements for new apartment complexes, and what happens

when builders ignore the law. Despite this notice and Mr. Lowery's requests, Defendants have consistently refused to correct any of the accessibility defects.

25. The sidewalks and other facilities adjacent to Uptown Apartments lack any accessible route and are not accessible to and readily usable by Mr. Lowery, and are not usable by him nor most other persons with disabilities.

26. **Plaintiff Marilyn Lowery Facts:** Plaintiff Marilyn Lowery is the mother of Plaintiff Mike Lowery. She is older than 65 years of age, and is a post polio survivor. For many years, on advice of her medical providers, the State of Michigan has issued her a disability parking placard, permitting her to park in all designated accessible parking. Her mobility is never very good, and on some days her condition deteriorates, especially when she is fatigued. On these days, she can not readily navigate a step or a curb, and she must avoid slopes when possible. The steeper the slope, the higher the risk she will harm herself attempting to negotiate it.

27. Mrs. Lowery is a retired nurse. She visits Mike Lowery often, and when his health aids fail to appear, she is often pressed into service to minister to her son's health and hygiene needs. Thus, she must park near his apartment and must enter and leave it often, under all sorts of inclement weather conditions. She needs an accessible parking space as close as possible to Mr. Lowery's apartment, and on the shortest possible fully accessible route.

28. Defendants have designated two parking spaces as accessible in the parking lot directly adjacent to Mike Lowery's apartment building. These parking spaces and their access aisle suffer from slopes exceeding 2% and up to nearly

6%, nearly three times the maximum permitted by law. In addition, the route from these designated parking spaces to Mr. Lowery's apartment is not the "shortest possible" as required by the law, and the route contains a step, and contains running slopes in excess of 18% and cross slopes in excess of 14%, nearly seven times in excess of the maximum permitted by law. As a result, this route is not usable by Mrs. Lowery, by Mr. Lowery, nor by the majority of persons with disabilities.

29. Mrs. Lowery often assists Mike Lowery with his financial affairs. Sometimes she needs to access Uptown's Rental offices. Originally, Uptown's rental office was in building # 1X. The designated accessible parking spaces for the rental office suffered from slopes in excess of 2% up to exceeding 9%, four and one half times the maximum permitted by law. The adjacent curb ramp had no level landing, and the ramp to the office lacked required handrails and suffered from cross slopes exceeding 4% (twice that permitted by law), and running slopes exceeding 7%, much more than the maximum 5% permitted by law. Therefore, the old rental offices violated federal and Michigan minimum accessibility standards, and were never accessible to, nor readily usable by, the Plaintiffs Lowery.

30. Compounding problems, around the beginning of year 2007, Defendants moved their rental office from building 1X into the Clubhouse, Building 65 XIII. This building has no designated accessible parking whatsoever, and lacks any accessible parking space on any accessible route into the office. Its front door is blocked by several steps. There is a large concrete ramp leading from a

sidewalk to the porch of the Clubhouse. The sidewalk is not connected in any way to any accessible parking space. The large ramp suffers from cross slopes exceeding 4% (double the permitted maximum cross slope) and suffers from running slopes exceeding 9%, nearly double the permitted maximum running slope of 5%. Therefore, the rental offices were never accessible to, nor readily usable by the Plaintiffs Lowery, and are not currently accessible to them. Plaintiffs need the offices to be made accessible immediately.

31. **Defendant Canton Township Facts.** The Uptown Apartments sit at the intersection of Cherry Hill Road with Ridge Road in Canton Township. When the Plaintiffs Lowery leave the Uptown Apartments site, the first sidewalks they encounter run adjacent to those two roads. Upon information and belief, these sidewalks and their curb ramps were built “by, on behalf of, or for the use of” Canton Township. Canton Township failed to ensure that these sidewalks were built in strict conformance with the ADAAG or the UFAS, because the sidewalks suffer from cross slopes in excess of 2% and running slopes in excess of 5% and even in excess of 8.33%. These sidewalks and curb ramps are not accessible to and readily usable to the Plaintiffs Lowery, and must be made compliant so that the Lowery’s can access the sidewalks and the businesses and facilities adjacent thereto. Upon information and belief, these violations are part of an overarching pattern and practice of discrimination by Canton Township by failing to ensure that its sidewalks and curb ramps meet accessibility standards.

### COUNT 1: FAIR HOUSING ACT CLAIMS

32. This claim is brought against all Defendants except Canton Township. Uptown Apartments contains residential apartment units that are "dwellings" within the meaning of 42 U.S.C. § 3602(b).

33. 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).

34. 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.

35. 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 in such a manner that:

(a) the 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 the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by most persons in wheelchairs; and

(c) 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.

36. 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 Plaintiff Mike 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 in compliance with the requirements mandated by 42 U.S.C. § 3604(f)(3)(C).

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

38. 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.

39. Defendants' conduct described above was intentional, willful, and taken in disregard for the rights of others, including the Plaintiffs Lowery.

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

40. This count is brought against all Defendants except Canton Township. The two rental offices at the Uptown Apartments are a sales or rental establishment, the operations of which affect commerce, and therefore are "public accommodations" within the meaning of 42 U.S.C. § 12181(7).

41. The rental offices at the Uptown Apartments were each designed and constructed for first occupancy after January 26, 1993. The rental offices and the facilities, privileges, and accommodations provided for the public appurtenant to the use of the rental offices, including the parking and sidewalks are covered by the prohibition on 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).

42. The Defendants failed to design and construct both rental offices and their appurtenant parking and sidewalks in such a manner that the facilities are readily accessible to and useable by individuals with disabilities.

43. 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).

44. The conduct described in paragraphs above constitutes a violation 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)**

45. **Covered Multifamily Ground Floor Apartments.** This claim is brought against all Defendants except Canton Township. 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.

46. Defendants discriminated against Plaintiffs by designing, constructing and/or maintaining Uptown's ground floor apartments, and/or their on-site facilities, common use areas, features, parking, and sidewalks serving the Uptown Apartments in violation of the applicable accessibility standards and not to be accessible to and readily usable by Plaintiffs.

47. **Uptown's Rental/Business Offices.** This claim is brought against all Defendants except Canton Township. Plaintiffs bring this claim pursuant to the



Article 3 of the Michigan PWDCRA, M. C.L. §§ 37.1301-37.1303, which requires the rental/business offices at Uptown Apartments in Canton to meet detailed accessibility requirements including, among others, the Michigan Building Code, incorporating the ICC/ANSI A117.1-1998, or the ADAAG, whichever provides for greater accessibility.

48. When Mike Lowery first rented his apartment at Uptown, the rental/business office lacked accessible parking on an accessible route into the offices. The designated parking and route into the offices suffered from cross slopes well in excess of 2%, the ramps were too steep, and the route into the offices was not usable by Plaintiffs and most persons with disabilities, and was not accessible to and readily usable by Plaintiffs and others.

49. Within the last few months, Defendants moved Uptown Apartments' Rental/Business offices from their original location and into the Clubhouse building. The Clubhouse violates applicable Michigan accessibility requirements, including but not limited to, that there is no accessible parking, and no accessible route into the Rental/Business offices. Defendants were well aware that the Clubhouse lacks any accessible parking, and has no parking on any accessible route into the rental offices, but Defendants transferred their rental offices into this inaccessible Clubhouse anyway.

50. Defendants' conduct described above was intentional, willful, and taken in disregard for the rights of others, including Plaintiffs. Neither the ground floor apartments, their adjacent facilities, nor their rental offices are accessible to, nor readily usable by Plaintiffs nor other persons with disabilities. These facilities are

not usable by most persons with disabilities. Plaintiffs are entitled to declaratory and injunctive relief, compensatory, punitive and exemplary damages, as well as a reasonable attorneys fee and costs.

#### **COUNT 4: CLAIMS AGAINST CANTON TOWNSHIP**

51. This claim is brought only against Defendant Canton Township. Plaintiffs bring this count under Title II of the Americans With Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and under Michigan law. These claims are for declaratory and injunctive relief, and for damages.

52. 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 Canton Township as a “public entity.” 42 U.S.C. § 12131(1). Canton Township’s sidewalks are public “service, program or activity” subject to the Act.

53. Title II of the Americans With Disabilities Act requires that when a public entity builds or alters any part of a facility after January 26, 1992, it shall to the maximum extent possible, be altered so that it is readily accessible to and usable by 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)(City must install ADA-compliant curb ramps at all resurfaced intersections). The curb cuts 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). Canton Township has resurfaced or otherwise altered the intersections and sidewalks described above, but failed to install proper sidewalks and curb cuts.

54. Also, Canton Township has failed to construct and to maintain its sidewalks and curb ramps in a form that is “accessible to and readily usable” by Plaintiffs. Among other places in Canton Township, the sidewalks adjacent to Uptown Apartments, and to Cherry Hill and Ridge Roads, have cross slopes exceeding 2% and running slopes exceeding 8.33%. 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).

55. By their actions complained of herein, Defendant Canton Township has intentionally discriminated against Plaintiffs due to their disabilities. Plaintiffs are entitled to injunctive relief ordering Canton Township to bring these and future services, programs or activities into compliance, compensatory damages and attorneys fees and costs.

56. 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 accessible to and usable by individuals with disabilities. 29 U.S.C. § 794. “[n]o otherwise qualified

individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a). Upon information and belief, the Canton Township receives Federal financial assistance. 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).

57. As described above, Canton Township has created, maintained, or altered intersections and sidewalks including those adjacent to Uptown Apartments, without installing sidewalks and curb cuts that meet the required accessibility standards and codes. Each of these failures by the Canton Township has made each of these new or altered services, programs or activities not readily accessible to and usable by Plaintiffs. By their actions complained of herein, Defendant has intentionally discriminated against Plaintiffs due to their disabilities. Plaintiffs are entitled to injunctive relief ordering the Canton Township to bring these services, programs or activities into compliance, individual compensatory damages, and attorneys fees and costs.

58. Also, the above complained of failure by the Canton Township to construct, alter and maintain its services, programs or activities to be accessible to Plaintiffs also violates Michigan law at M.C.L. § 37.1301-02. Plaintiffs are entitled to compensatory damages, as well as injunctive and declaratory relief, attorneys fees and costs.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter an order that:

1. Declares that Defendants' policies and practices, as alleged herein, violate the Fair Housing Act, the Americans With Disabilities Act and the Michigan Persons With Disabilities Civil Rights Act;

2. Enjoins Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with Defendants, from:

(a) Failing or refusing to bring the business office, the covered dwelling units, their accessible routes, and public use and common use areas at Uptown Apartments into immediate compliance with the requirements of the Fair Housing Act, including but not limited to, 42 U.S.C. § 3604(f)(3)(C), and also applicable Michigan law;

(b) Failing or refusing to take such affirmative steps as may be necessary to restore Plaintiff to the position he would have been in but for the discriminatory conduct; and

(c) Failing or refusing to design and construct any covered multi-family dwellings in the future in compliance with the requirements set forth in 42 U.S.C. § 3604(f)(3)(C), its implementing guidelines, and with applicable Michigan accessibility standards;

3. Awards such damages as would fully compensate Plaintiff for his injuries and damages resulting from Defendants' discriminatory conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B) and applicable Michigan law;

4. Awards Plaintiff punitive and or exemplary damages because of the intentional and willful nature of Defendants' conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B) and applicable Michigan law; and

5. Declares that practices of the Defendants relating to their rental/business offices, as alleged herein, violate Title III of the ADA and applicable Michigan law;

6. Enjoins the Defendants and all other persons in active concert or participation with it, from:

(a) Failing or refusing to bring the rental offices at the subject complex and others, and the parking, sidewalks leading to and from the rental offices, into compliance with the requirements of 42 U.S.C. § 12183(a)(1) and applicable Michigan standards;

(b) Failing or refusing to take such affirmative steps as may be necessary to restore Plaintiff, as nearly as practicable, to the position he would have been in but for the discriminatory conduct; and

(c) Failing or refusing to design and construct any public accommodations in the future in compliance with the requirements of 42 U.S.C. § 12183(a)(1) and applicable Michigan law;

7. For Canton Township, order the Township to correct all defective sidewalks and curb ramps, and to ensure in the future that all resurfacing or other alterations result in sidewalks and curb ramps that are readily usable by and accessible to Plaintiffs; Ensure that a plan is in place to correct all sidewalks and curb ramps that violate the ADAAG and the UFAS.

Plaintiff requests a jury trial of all issues triable thereby.

Plaintiff further prays for such additional relief as the interests of justice may require.

Respectfully

submitted,

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/s/ J. Mark Finnegan  
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