

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

YASMIN VOGLEWEDE; S.C.M., §
individually and as parent and next friend §
of T.M., Z.M., S.M., and J.M.; §
NICHOLAS DEFOSSET; §
TERESA MAGUIRE; and §
HEATHER ALBRIGHT, §

Plaintiffs, §

CIVIL ACTION NO. 5:23-cv-00108

v. §

CITY OF SAN ANTONIO, TEXAS, §

Defendant. §

COMPLAINT

INTRODUCTION

1. The City of San Antonio's emergency planning continues to leave of its residents with disabilities out in the cold. Whether it is harsh winter storms shutting down power for days, brutal heat waves, massive floods, or any of the many other major emergencies that this area has faced, the needs of those who rely on electrical equipment, accessible transportation, or other critical assistance during these disasters are unfortunately ignored by the City of San Antonio.

2. Federal law prohibits disability discrimination. The Americans with Disabilities Act of 1990 was passed by Congress to address the "serious and pervasive social problem" of discrimination against individuals with disabilities because, "historically, society has tended to isolate and segregate individuals with disabilities." 42 U.S.C. § 12101(a). Moreover, this discrimination continues to persist in "critical areas" such as "access to public services," and individuals with disabilities "continually encounter various forms of discrimination," including

outright exclusion, other barriers, and the “failure to make modifications to existing . . . practices, . . . segregation, and relegation to lesser services, programs, activities, . . . or other opportunities.” *Id.*

3. Despite the ADA’s “clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities,” 42 U.S.C. § 12101(b)(1), the City of San Antonio discriminates against people with disabilities by denying equitable opportunities, outcomes, or even consideration in disaster and emergency planning, response, and recovery programs, services, and activities. Although the City has an emergency plan for the majority of its residents, it has continually failed to adequately plan to meet the needs of the hundreds of thousands of residents with disabilities. The City has specifically failed to assess and identify the needs of persons with disabilities in the disaster and emergency planning process to ensure the City’s Emergency Operations Plan (“EOP”) is accessible and affords meaningful access to individuals with disabilities.

4. This discrimination was particularly evident during February of 2021 Winter Storm Uri, with dire results. While planning for persons without disabilities, the City’s disaster and emergency planning failed to include and prepare for in its disaster and emergency operation plan the needs of persons with disabilities, including several critical areas: (1) accessible emergency sheltering operations; (2) the impact sheltering-in-place during sustained power outages has on persons with disabilities, specifically individuals who rely on power due to their disabilities, compared to individuals without disabilities, (3) accessible transportation and evacuation plans; (4) provide outreach inclusive to persons with disabilities needs in designing their own personal plans in advance of a disaster; (5) provide adequate content in emergency communications, about accessible shelter and other disaster services to persons with disabilities; (6) provide meaningful

access to commodities distribution for necessities such as food, clean and sterile water; and (7) provide meaningful assessments and self-evaluations by the City for persons with disabilities when the City is assessing its jurisdictional threat/risk assessment in the emergency planning process to develop the City’s Emergency Operation Plan, .

5. Even after experiencing the harmful results of these failure, the City still has not taken the necessary steps to eliminate its discrimination and ensure equitable treatment and outcomes in disaster planning, response and recovery programs, services, and activities by implementing an inclusive disaster and emergency planning process to produce an accessible Emergency Operation Plan for persons with disabilities.

6. Plaintiffs challenges the long-standing failure by the City of San Antonio to address their needs as persons with disabilities in planning for emergencies and disasters. Plaintiffs—all of whom have disabilities—have been ignored in the City’s disaster planning and have been and will be harmed by City’s discrimination. Plaintiffs seek declaratory and injunctive relief to remedy the City’s violations of Title II of the ADA and its implementing regulations and to require the City to make its disaster and emergency plan accessible and inclusive for Plaintiffs and all others with disabilities.

JURISDICTION

7. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1331, 1343, 2201–02 because Plaintiffs’ lawsuit involves federal-question and civil-rights claims arising under Title II of the Americans with Disabilities Act Amendments Act of 2008 (hereafter “ADA”) seeking declaratory and injunctive relief.

VENUE

8. Venue of this action is proper pursuant to 28 U.S.C. § 1331(b)(2) because all of the events and omissions complained of arise within this district and division, specifically, San Antonio, Texas.

PARTIES

I. Plaintiffs

9. Plaintiff Yasmin Voglewede is a resident of the City of San Antonio. She is a person with significant mobility and circulatory impairments that impact her ability to walk. She relies on electricity to power her wheelchair. Her disabilities also limit her ability to dress, independently use the toilet, feed herself, and get into or out of bed without assistance.

10. Plaintiff S.C.M. is a resident of the City of San Antonio. She is the mother of four children with various disabilities, two of whom are particularly impacted by power emergencies. She also has a disability, as she experiences depression and anxiety, especially relating to the well-being of her four children, which exacerbates during a disaster.

11. Plaintiff T.M. is a minor child of Plaintiff S.C.M. residing in the City of San Antonio. T.M. has various significant disabilities, which require refrigerated medicine, the use of an electric oxygen-monitoring device for sleep apnea, and an electrically-powered “sleep safe” bed that elevates him to aid with severe reflux.

12. Plaintiff Z.M. is a minor child of Plaintiff S.C.M. residing in the City of San Antonio. Z.M. requires the use of a G-tube for nutrition. He also requires the use of a feeding pump.

13. Plaintiff J.M. is a minor child of Plaintiff S.C.M. residing in the City of San Antonio. J.M. is diagnosed with attention deficit disorder and mood disorder, which impacts J.M.’s ability to concentrate, sleep, and regulate emotional and mental behavior.

14. Plaintiff S.M. is a minor child of Plaintiff S.C.M. residing in the City of San Antonio. She is diagnosed with attention deficit disorder, which impacts her ability to sleep and regulate emotional and mental behavior.

15. Plaintiff Nicholas Defosset is a resident of the City of San Antonio. He has spinal-cord injuries, uses a wheelchair, and is substantially limited in mobility, and in providing self-care.

16. Plaintiff Teresa Maguire is a resident of the City of San Antonio. She has spastic quadriplegic cerebral palsy, which substantially limits her mobility and presents fall risk. Ms. Maguire relies on various electrical equipment for her disabilities. She is also immunocompromised and thus requires clean and sterile water.

17. Plaintiff Heather Albright is a resident of the City of San Antonio. Ms. Albright is blind and hard of hearing. She is also immunocompromised and requires clean and sterile water. Ms. Albright uses an electrical device to receive effective accessible communications due to her visual and hearing impairments.

II. Defendant

18. Defendant City of San Antonio, Texas (“San Antonio” or the “City”) is the public entity and political subdivision of Texas that created and retains control over the City’s agent for municipal electric utilities.

19. San Antonio is a home rule city and is charged with meeting the emergency needs of persons in its jurisdiction.

20. The City is a “public entity” as defined by 42 U.S.C. § 12131(1)(A).

21. The City's emergency plans, emergency services, and emergency management functions are all programs, services, or activities of the City and its departments. The City and its departments also distribute emergency assistance to persons in San Antonio, pursuant to the City's basic emergency plan.

22. Under state law, the City is required to "prepare and keep current an emergency management plan for its area providing for disaster mitigation, preparedness, response, and recovery." Tex. Gov't Code § 418.106.

23. The City's Office of Emergency Management ("SAOEM") provides a basic plan for emergency preparedness, and the SAOEM states that its purpose is "to coordinate activities of the City departments responsible for continued operations during disasters, coordinate agreements for the use of resources, communicate with State and Federal agencies, and provide education and training to citizens and municipal employees." But in fact, as shown below, the plan fails and neglects to provide for persons with disabilities.

STATEMENT OF FACTS

I. City of San Antonio's Disaster Planning Fails to be Inclusive and denies Equal Access to Persons with Disabilities

A. Introduction

24. According to the City, more than 230,000 of its residents (15.6% of the City's population) have one or more disabilities. This includes nearly 60,000 who are deaf or hard-of-hearing; almost 75,000 people with a vision disability; over 87,000 people with a cognitive disability; nearly 110,000 people with an ambulatory disability; almost 43,000 people with a self-care disability; and almost 75,000 with an independent-living disability.

25. Disasters affecting the City are a common occurrence. By its own admission, the City lists the following disasters, those that most commonly occur within its limits: floods, heatwaves, thunderstorms and lightning, tornadoes, winter storms, and extreme colds, wildfires, and earthquakes. Recent disaster incidences include: tornadoes, extreme heat and drought, wildfires, mass shooting, winter storms, cybersecurity attacks, mass flooding, large thunderstorms with lightning as offshoots from gulf-coast hurricanes. Further, numerous government agencies, both state and federal, warn of severe heat during summers that could place stress on energy and other critical infrastructure, causing systemic-wide power outages and other damages. That danger remains for all extreme events that push our utilities beyond normal operational capacities.

26. Emergency Management is an essential government function for dealing with and avoiding risks. Thus, with any type of event or hazard specific to geographic area, the local entities have an affirmative legal obligation to its residents in preparation, response, and recovery measures to minimize and mitigate potential injury and threats to life and property. Core Capabilities, Emergency Support Functions, and Community lifelines are the foundation emergency management framework is built on. Community lifelines are the critical services that the City must stabilize or reestablish to alleviate threats to life and property which are identified by the core capabilities of the jurisdiction and coordination of the responsible entity or department to fulfill emergency support functions.

27. The City of San Antonio Office of Emergency Management (“SAOEM”) provides advanced planning for emergency preparedness in case of disaster, in the form of (1) a Basic Plan; (2) attached Annexes to the Basic Plan that cover specific emergency operation and support service responsibilities (e.g., Shelters, Evacuation, Utilities, Transportation, etc.); (3) memorandums of understanding with third parties (such as the American Red Cross) to provide emergency services;

and (4) other emergency documents. But as detailed below, these plans fail to provide meaningful access for persons with disabilities to disaster response and recovery programs, services and activities.

28. The City's Basic Plan was approved by the San Antonio City Council on December 10, 2015, by Resolution 2015-12-10-0065R, and revised in September 2016. Final Basic Plan PS-BPP 1, available at <https://www.saoemprepare.com/Plans/BasicPlan>. The City's description of the Basic Plan states:

This Emergency Management Basic Plan outlines the City of San Antonio's (COSA) approach to emergency operations. It provides general guidance for emergency management activities and an overview of COSA methods on mitigation, preparedness, response, and recovery. The plan describes the COSA emergency response organization and assigns responsibilities for various emergency tasks. This plan is intended to provide a broad framework for more specific functional Annexes that describe in more detail who does what, when, and how. This plan applies to all COSA officials, departments, and agencies.

Final Basic Plan, page 8.

29. The City admits that it cannot refuse to include the needs of persons with disabilities in its emergency planning. In 2018, the City claimed that rather than create a separate emergency plan for people with disabilities, it would produce and implement a 'Whole Community' Plan that would incorporate "the needs of people with disabilities into all aspects of emergency planning." The City represented that this plan would be released at the end of December 2018. As of the filing of this Complaint, no known plan has been released.

30. The lack of inclusive planning is evident in the City's failure to stabilize community life-lines for the disability community as they plan for those without disabilities in shelter care, sheltering-in-place during power outages, alternative options for energy in sustained power outages, evacuation and transportation. Emergency content information regarding accessible shelters, accessible commodities distribution that include necessities such as water and food, and

outreach and preparedness education to people with disabilities to develop an individual disaster and emergency plan is strikingly absent.

1. *The City fails to provide meaningful access to its shelter and mass care planning.*

31. Shelters are the main hub for mass care and ensuring safety and shelter during disasters. Reaching a shelter can mean the difference between life and death.

32. The City's principal emergency planning for shelter care is set out in Annex C, entitled "Shelter and Mass Care." This Annex purports to outline the organization, operation, responsibilities, and procedures to protect individuals in shelters.

33. The City, through Annex C, references the "functional needs individuals/groups," which are defined to include "the elderly, medically fragile, mentally and/or physically challenged or [disabilities], individuals with mental illness, and people with developmental delays." Further, the City, through Annex C, also acknowledges that these groups may require special healthcare providers, special equipment, and special vehicles and transport, as well as special assistance during emergency situations.

34. Alarmingly, the City fully admits in Annex C that its shelters are not staffed or equipped to support or care for "functional needs groups." Instead, the City, in Annex C states, that its shelters can generally accommodate persons with functional needs only if they require "minimal care," and are attended by their families or caregivers. The City's shelters are otherwise unequipped for anyone with functional and access needs. Further, the City requires that persons with disabilities have an attendant with them in order to access City shelters. If someone has significant medical needs and care, it is likely that they will be unable to access a City shelter and be forced to remain in an unsafe environment or unnecessarily institutionalized.

35. The City, through its Annex C, continues to fail to provide a continuum of health care needs, in conjunction with the above mentioned lack of staff by failing to identify a needed inventory to accommodate individuals with disabilities needs such as but not limited to: cots usable by persons with disabilities (i.e., ones that allow a wheelchair user to safely transfer to the cot), refrigeration for consumer medications or means to access emergency refills, consumable medical supplies, and necessary durable medical equipment.

36. The City plans have no requirement that its shelters be accessible.

37. The City's plans do not reflect, through any survey assessment or identification, which of its shelters are accessible.

38. The City's plans do not reflect steps to ensure shelter accessibility for persons with disabilities as compared to persons without disabilities, even though people displaced by a disaster may need to stay at a shelter for several days or longer.

39. The City's plans do not reflect steps to ensure effective communication at sheltering operations, such as, but not limited to translation services for those that are limited English proficient or those that require American sign-language.

40. Further, City shelters lack a public facing procedure to ensure personal attendants services (PAS) at sheltering operations or MOU/MOA with appropriate vendor to provide at sheltering operations.

41. There is nothing in the City's sheltering plan about accessible transportation to or between shelters. And it is unclear how the City would transport someone to an accessible shelter given that it does not know which of its shelters are accessible.

42. For some people with disabilities, equal and effective access to the City's sheltering services depends on access to electricity. Without sufficient and alternative power sources, those

who depend on ventilators or power wheelchairs, for example, will be less healthy, safe, and independent at an emergency sheltering operation. Yet the City has no plan for ensuring adequate electricity at shelters for those that are power dependent.

43. The City plans also reflect no planning for an adequate stockpile of accessible supplies for persons with disabilities, such as meals for special dietary restrictions, chargers for most power wheelchairs, or a procedure for accessing emergency refills for prescription medications.

2. *The City's alternative plan for shelters, called sheltering-in-place, does not provide meaningful or equal and effective access for individuals with disabilities as it fails to prepare for persons with disabilities during sustained power outages.*

44. San Antonio's Basic Plan anticipates that some incidents, emergencies, or disasters may require residents to "shelter-in-place." Unfortunately, the City knows that sheltering-in-place could last for a lengthy (or even indefinite) period of time, and this possibility unduly and disproportionately impacts persons with disabilities integrated into the community when there is sustained power outages compared to persons without disabilities that are not reliant on power dependent medical equipment.

45. The City's plan obligates it to oversee and coordinate responsibility with the City's municipal electric utility, an agent of the City.

46. As noted above, some persons with disabilities rely on life-sustaining or disability-related power dependent equipment, refrigerating medication, and heat or air conditioning to maintain body regulation as is the case for Plaintiffs in this case.

47. When the power goes out in an emergency, the City has no alternative plan regarding sheltering-in-place, such as to prioritize evacuation, canvassing efforts or the provision of alternative power, for persons relying on critical power dependent equipment.

48. The City's disaster plan pertaining to energy services, Annex L (Utilities), deals with electrical power during an emergency or disaster, but the City fails in this Annex to integrate the needs of individuals with disabilities and outline necessary operations to meet the needs of this population and afford an equitable opportunity to participate in and benefit from the City's response and recovery measures.

49. The City's Emergency Operation Plan must address alternative operations in sustained power outages, to ensure stabilization of power for individuals who rely on life-sustaining power dependent durable medical equipment and other assistive technology for independent living. The City's Emergency Operations Plan fails to require the City to provide for emergency power to individuals with disabilities who rely on power dependent equipment, to consider the needs of those with disabilities in stabilizing power to such individuals, or to otherwise consider the needs of persons with disabilities during these power outages.

50. The City's communication plan to alert, advise and inform individuals with disabilities who rely on electricity is void of procedures in sustained power outages and where to go or how to request assistance/supports.

51. Individuals with disabilities who are power dependent have two volunteer registries that offer information to emergency planners to prepare for among other community life-lines, their utility needs. The State of Texas Emergency Registry Assistance (STEAR) program and the Critical Care registry under utility providers are platforms that could provide relevant information for emergency planning needs. The City has failed to integrate this information into plans and provide awareness and outreach to the disability community on these options.

3. The City's plans for evacuation and transportation during an emergency fail to provide meaningful access for individuals with disabilities.

52. The City does not inclusively plan for evacuation of persons with disabilities. Persons with disabilities who require accessible transportation or other assistance do not have the same choice to access evacuation services and programs and are left to fend for themselves or rely on private parties to help them evacuate if they can.

53. Annex E to the City's Basic Plan covers Evacuations, and the City admits in this Annex the need for a plan to identify and maintain contact with individuals with functional needs who would require assistance in evacuating. But in its plans, the City identifies nothing to meet this need.

54. Further, the City's plans assume that people will be able to exit their buildings unassisted and that they will evacuate using public transit. For many people with disabilities, however, these assumptions are flawed and do not reflect the impact a disaster may have on them. People with disabilities may require assistance exiting their residences and may also need accessible public transportation to have meaningful access to evacuation plans and reach a shelter.

55. There are no plans for evacuating individuals from multi-story buildings where elevators may not work due to power outages.

56. Transportation is a key component of any evacuation plan.

57. The City's Annex S addresses transportation, and includes a plan for transporting the general population to shelters or other locations. But individuals with disabilities, such as Plaintiffs, are excluded from the City's provision of transportation services during an emergency.

58. The purpose of Annex S is to outline the operations and organizational arrangements for the transportation of people, supplies, and materials before and during

emergencies like natural disasters, technological emergencies, and potential terrorist attacks when extra measures must be taken to protect lives and property.

59. The City's plan obligates VIA Metropolitan Transit, the major public transit provider for the City, with a secondary responsibility during evacuations.

60. The City fails to ensure the availability of sufficient, accessible transportation if an emergency occurs and evacuation. The plans rely on public transportation, which, while ordinarily accessible to people with disabilities, is unlikely to be available during an emergency. For example, City buses may be too crowded for people in wheelchairs to board. The City's paratransit system typically requires 24-hour advance reservations, which renders it almost useless in a disaster arising without significant warning. And the City has no plans to ensure that paratransit—which is run by the VIA Transit, a separate public agency—remains open for enough time after an evacuation order, will operate without the need for reservations in an emergency, or will be available for evacuations at all. Nor does the City have any other plan to ensure the availability of accessible transportation from other third parties in the event of an emergency.

61. The City does not publicize the existence of any emergency evacuation transportation plan.

62. The City does not know if it can evacuate all the people with disabilities who might require assistance, and it has not assessed how it could provide transportation assistance, or how to implement these services.

4. *The City's plan fails to provide for meaningful access for persons with disabilities to prepare their own personal emergency plan, as compared to persons without disabilities.*

63. An effective emergency preparedness program must provide education and outreach to help individuals design their own personal emergency plan as the first obligation in preparedness is to prepare ourselves.

64. People without disabilities need to plan in advance to determine where they will go and how they will get there and what supports are necessary in an emergency. Without public information or outreach on sheltering operations or transportation, evacuation, commodities distribution people with disabilities cannot make such a plan.

65. The City fails to provide a robust outreach program geared to help individuals prepare a personal emergency plan. There is no outreach to persons with disabilities to help them plan how to evacuate, where they would go, or how they would get there. Further, the City's outreach fails to provide crucial information that people with disabilities would require to develop such a personal preparedness plan. For example, the City does not publicize how shelters or evacuation centers are accessible to people with disabilities. Nor does it provide information about accessible transportation or how to access, evacuation plans or when services will be available or the threshold for terminating services during an emergency.

66. The City has identified the need for disabled persons themselves to plan for emergencies, disasters, and catastrophes, but the information provided by the City is not inclusive, nor does it take a whole community, all-hazards approach. Which makes clear that persons with disabilities must rely on their own resources, including family and friends. The City also suggests that persons with disabilities find out about available assistance, without providing any source for such information.

67. The City, through its Annex H (Health and Medicine), also acknowledges the need for certain health and medication issues in case of an emergency:

Uninjured persons who require frequent medications such as insulin and antihypertensive drugs, or regular medical treatment, such as dialysis, may have difficulty in obtaining these medications and treatments in the aftermath of an emergency situation due to damage to pharmacies and treatment facilities and disruptions caused by loss of utilities and damage to transportation systems.

Annex H, page 7 of 32.

68. Yet the City includes no plan to meet these emergency needs. Instead, persons with disabilities are completely left on their own, without City guidance to develop advanced disaster planning about medication availability.

5. *The City lacks sufficient plans to provide people with disabilities content information about the existence and location of accessible services in an emergency.*

69. The City's plans fail to provide sufficient content information about accessible services.

70. The City plans do not require that information be provided about the location of accessible shelters or how shelters are accessible, either physically or programmatically.

71. The City's plans also do not provide any information on accessible transportation to evacuate, where to go for evacuation, and where there are stops or gathering areas that are architecturally accessible to provide transport to accessible shelters.

6. *The City fails to provide access for persons with disabilities to commodities distribution, specifically the delivery of clean and sterile water during and after a disaster.*

72. During disasters, water supplies can become contaminated, such as during a power outage at the City's water and wastewater systems. This is especially problematic for individuals with disabilities who rely on clean and sterile water due to health-related impairments.

73. Annex K (Public Works) and Annex L (Utilities) provide for utilities and public works and engineering resources during and after an emergency. The City's Public Works Department and its San Antonio Water System are critical to water maintenance and sterilization.

74. Annexes K and L, however, do not mention persons with disabilities or persons with functional needs. When the water system is compromised due to a disaster, the City has no plan for the delivery of clean and sterile water to individuals who depend on it because of their disabilities.

75. The City has no plans for individuals with disabilities who lack access to disability-accessible transportation to reach commodities or point of distribution during or in the wake of a disaster.

7. The City in its disaster and emergency planning fails to include the potential impact of disasters and emergencies on persons with disabilities in its jurisdictional Threat and Hazard Identification and Risk Assessment (THIRA) and jurisdictional self-evaluation or gap analysis.

76. The City conducts a jurisdictional threat/risk assessment and jurisdictional self-evaluation within the disaster and emergency planning process for its jurisdiction. On and information and belief, these assessments and evaluations do not include persons with disabilities.

77. The threat/risk assessment is used to identify the impact of potential threats and hazards to accurately identify risks that can most challenge a jurisdiction's capabilities and expose areas in which the community is not as capable as it aims to be. These areas, or capability gaps, create barriers in a community's ability to prevent, protect against, mitigate, respond to, and recover from a threat or hazard. An EOP outlines how the city will coordinate and operationalize for the event. An EOP that is void of integrated operations which support the needs of the disability community is a result of the failure to include the impact and potential risks of events on the disability community.

78. Further, the City cannot ensure equitable outcomes for individuals with disabilities in disaster and emergency response and recovery measures without modifying its current planning process. The City must acknowledge the impact and potential risks specific to the disability community, evaluate its current capacity to provide such programs, services and activities and appropriately address by including the needs in the City's EOP.

B. The City's plan fails to comply with federal and state guidelines for emergency planning for persons with disabilities.

79. The federal government has published an ADA toolkit for emergency planning, for use by state and local governments. Although that federal guidance is over ten years old, the Defendant fails to satisfy it.

80. Further, Defendant's emergency plan and annexes do not meet the Federal Emergency Management Administration requirements for emergency planning for people with access and functional needs, which includes persons with disabilities.

81. Additionally, Defendant's emergency plan and annexes do not meet the State of Texas emergency planning requirements related to persons with disabilities. The Texas Division of Emergency Management is charged with assisting local governments with emergency planning, and it provides guidance for the local governments' emergency plans. The TDEM basic plan template states:

It is a fundamental responsibility of all individuals with a statutory obligation for disaster planning and coordination to consider the needs of the whole community, including children, individuals with disabilities, and others with functional needs.

82. The Defendant's emergency planning fails to meet its state-law obligations.

II. Most Recent Disaster to the City of San Antonio's Area: Winter Storm of February 2021.

83. Between approximately February 13th to February 17th, 2021, a winter storm (“hereafter Winter Storm of 2021”) caused widespread impacts across the United States, including the City of San Antonio.

84. The City had time to evacuate individuals to shelters and warming centers but failed to do so. The Winter Storm of 2021 was not a surprise event. Unfortunately, because of the City’s lack of meaningful advance planning, the warnings did little to help.

85. As early as February 5, 2021, 10 days before the Arctic air moved into the South, the National Oceanic and Atmospheric Administration (“NOAA”) highlighted the risk of unusually cold weather and winter storms across the central and southern United States, including Texas.

86. Beginning February 13, 2021, the residents of the City of San Antonio experienced several inches of snow and extreme cold, leading to widespread, prolonged power and water outages, closures of roads and businesses, and burst pipes.

87. Residents found themselves without power, heat, water or a safe place to go. These weather conditions led to a citywide disaster.

88. While the City of San Antonio had a basic emergency plan in place, the City did not have any preparations or plans in place for individuals with disabilities; instead, many of the disaster responses were simply ad hoc efforts, or the work of private citizens. This improvised response had a disproportionate impact on persons with disabilities.

89. Roughly two-thirds of the City’s grids were subject to rotating outages for the next 24 to 48 hours. These power outages were mandated as a result of an overwhelmed power grid.

90. At the height of the Winter Storm of 2021, more than 300,000 people were without power in the City.

91. The City announced, with no advanced planning or warning, that the Henry B. Gonzalez Convention Center would serve as a warming center and shelter for residents. The City made no arrangements for persons with disabilities without accessible transportation.

92. The City's Public Works Department and San Antonio Water System ("SAWS") issued a boil-water notice purportedly because the filtration systems failed to clean and distill water. The City tried to provide bulk water, and bottled-water distribution sites were set up. The City, through SAWS, did not provide meaningful or accessible instructions on how to boil water for medically fragile individuals, nor meaningful access to bottled water for individuals with disabilities who were homebound because of the lack of accessible transportation.

93. The City was unable to adequately respond, provide timely information, and quickly mobilize resources, prompting calls for transparency and accountability by the City. The City implemented its basic emergency plan during the Winter Storm, but since the City had failed to provide for individuals with disabilities during an emergency, those individuals were disproportionately burdened by the City's violations of the law.

94. At the request of Mayor Ron Nirenberg, a Community Emergency Preparedness Committee was established to better understand what happened during the winter storm with respect to the emergency communications and service delivery efforts.

95. On June 24, 2021, the Committee issued its findings. But this report, too, excluded persons with disabilities. Other than a cursory reference near the end of the report to people who were "medically vulnerable" or "seniors," none of the recommendations discussed improving

access for persons with disabilities, nor did it reference the available ADA toolkit or outreach materials.

96. Extreme weather events such as winter storms and extreme heat are evident and happen almost every year. There is a need for inclusive emergency planning that identifies the impact an event can have for individuals with disabilities. Without using a whole-community, all hazards approach to identify community needs to stabilize community lifelines, equitable response and recovery programs, activities and services remain unattainable. The threat and hazard assessment, identifies potential types of events the area could encounter and risks are then assessed and planned for, to stabilize community lifelines required for the safety, health and welfare of the residents and businesses. However, without a modification to this process to explicitly identify the risks or impact of events on individuals with disabilities, they continue to lack meaningful access to disaster and emergency response and recovery programs, activities and services.

III. The City's Emergency Plan and Annexes Denied and Continue to Deny Plaintiffs Meaningful or Equal and Effective Access, as Evidenced by Plaintiffs' Experiences During the Winter Storm of 2021

A. Yasmin Voglewede

97. Yasmin Voglewede is a resident of San Antonio and was living in San Antonio during the Winter Storm of 2021.

98. Ms. Voglewede is diagnosed with Arthrogryposis Multiplex Congenita, a congenital condition affecting joints which can fuse and subsequently cause atrophy of the muscles. The condition affects all four limbs, making it impossible for her to walk, dress, independently use the toilet, feed herself, or get into or out of bed. She has poor circulation in her legs, and to keep her legs and feet warm in the winter, she uses leg warmers, blankets, and a heater. Without these, she would face great pain. She risks losing her legs if circulation is cut off. Ms.

Voglewede is also diagnosed with depression. All of these disabilities were exacerbated and impacted by the Winter Storm of 2021, and the City's lack of disaster planning.

99. Ms. Voglewede relies on an electrically powered wheelchair for mobility. She has a home health aide who assists with daily activities such as transferring, toileting, dressing, cleaning, cooking and feeding. Ms. Voglewede is determined to maintain her independence, and with accommodations in place, she can live in her own home.

100. During the Winter Storm of 2021, Ms. Voglewede's home lost power for four days. This not only impacted her disability-related electrically powered devices but her own personal health and underlying pre-existing disabilities. Before the storm, she was informed by her home health agency, which provides the attendant services, that she would be left on her own. Ms. Voglewede had no alternative power source to access in the sustained outages. With power she had two small heaters going, along with her oven. Even with these measures, Ms. Voglewede was unable to raise the temperature enough to offset negative implications for her disabilities. The temperature caused pain and discoloration in her legs. She used multiple blankets, but still was unable to keep warm.

101. Ms. Voglewede's home is designed to be accessible, including an accessible restroom, modifications to help her get in and out of bed and to access her scooter, and adequate charging for her mobility device. She cannot use stairs on her own. Ms. Voglewede's home also contains electrical power-operated doors. All of these electronics were compromised by the storm.

102. The sustained power outages left Ms. Voglewede without the use of her mobility scooter and exacerbated her mental health evidenced as she entertained thoughts that she felt as if she "was a chore for someone else to have to be concerned about" and "being trapped" in her own home. Without help from Ms. Voglewede's attendant to transfer her, she would be stuck in either

her bed or wheelchair and forced to soil herself as she could not access the bathroom. Additionally, Ms. Voglewede would suffer from migraines and vomiting without help from the attendant in cooking and feeding her.

103. During the winter storm, none of the City's shelters were accessible for Ms. Voglewede by the City's own admission that in its plan, it could only assist individuals with "minimal care." Further, by the City's own admissions, its shelters are unable to serve and house a person with Ms. Voglewede's multiple disabilities. Ms. Voglewede was therefore forced to shelter-in-place for an indefinite period of time until the electricity returned; something that puts her at substantial imminent risk for injury.

104. Further, even if the shelters were accessible for her, there was no City evacuation or transportation plan in place for persons with disabilities, such as Ms. Voglewede, to reach the shelters.

105. In the past, Ms. Voglewede contacted the City's customer service 2-1-1 number and the City Call number 3-1-1 multiple times, but those services have had a history for being either unavailable or unable to connect with an operator. Based on the past failure of these City services to assist persons with disabilities, Ms. Voglewede lacked confidence in these services for helping her during the Winter Storm. During the storm, based on information and belief, the assistance lines were overloaded and unable to handle capacity.

106. The Winter Storm of 2021 also exacerbated Ms. Voglewede's depression and anxiety. She worried that she would not have help in getting into or out of bed, eating, or staying warm. Sheltering-in-place without electricity was much worse for her compared to other individuals without her disabilities, and it placed her at a high risk of serious harm, including choosing between the risk of falling or the inability to use the restroom.

107. Compounding the situation, the City never communicated with her about how to prepare for a disaster. She was left to fend for herself. Nor did the City communicate how long Ms. Voglewede would need to shelter-in-place without power.

108. The City never communicated to Ms. Voglewede about the availability of any accessible shelters or warming centers, or where they were located. The city provides no information or awareness on accessing alternate power sources, location of predetermined Point of Distribution sites or a mechanism to access transportation for evacuations or services if sheltering in place becomes unsafe or uninhabitable.

109. The City never communicated to Ms. Voglewede on how to obtain alternate temporary energy for medically necessary equipment.

110. Ms. Voglewede still suffers psychological impacts from the City's past failures. She worries about the next disaster because she came so close to serious harm and unnecessary institutionalization. Like many others, Ms. Voglewede values her independence. Because of her significant impairments, she must work very hard to keep living in her own home in the community. Yet she knows that many people with significant disabilities, once placed in a nursing home or similar setting, never come out. Ms. Voglewede desperately wants to avoid that fate, which she can do if The City engages in appropriate disability-focused planning.

B. S.C.M., in her personal capacity

111. S.C.M. is a resident of San Antonio and was living in San Antonio during the Winter Storm of 2021.

112. S.C.M. is an adult with mental impairments that impact her ability to sleep, eat, and concentrate. She is under a physician's care for medication management and is the primary caregiver for four minor children with significant mental and physical disabilities.

113. S.C.M. experiences depression and anxiety as a primary caregiver for her children from worrying about their health and safety. This impacts her ability to sleep and eat. S.C.M. admits she must be organized to sustain the support her family needs. The uncertainty of the winter storm exacerbated her anxiety and depression.

114. During Winter Storm 2021, her family's home lost power for five days. As discussed below, S.C.M.'s family relies on electricity and heat to accommodate the children's disabilities. S.C.M. does not have the financial means for a whole-home generator to ensure continuity of power and could not seek an alternative power source through Medicare/Medicaid services, as the costs would have impacted the monetary cap which affords other medically necessary services for herself and children. City's lack of assistance aggravated her disability because she was greatly concerned for the health and safety of her children.

115. . S.C.M. had no access—nor awareness about—accessible and accommodating emergency shelter options, alternative power sources, accessible evacuation protocols, nor accessible points of distribution to plan for this event and her children's needs. And even if there were a shelter that could meet her family's physical needs, on information and belief, available shelter staff were not trained to handle mental health crises. Further, by the City's own admission in its plan, the shelters are only designed to provide "minimal care."

C. T.M., Z.M., S.M., and J.M., through their parent, S.C.M.

116. T.M., Z.M., S.M., and J.M. are all minors with disabilities.

117. These children are residents of the City and were living in San Antonio during the Winter Storm of 2021. They are the minor children of Plaintiff S.C.M. (above Section B).

118. T.M. is a nine-year-old boy, diagnosed with cerebral palsy, left-side brain bleed, reflux, sleep apnea and seizures. He requires communication supports as he is nonverbal; mobility

supports and devices for gross, fine motor skill impairments; a G-tube which is a surgical device for supplemental nutrition; diapers as he cannot control bowel movements and urination; an oxygen monitoring device; and an electronically powered bed which elevates him to a safe sleeping position to mitigate the impact of reflux.

119. Z.M. is a nine-year-old boy, diagnosed with visual impairments, ADHD, incontinence and reflux which require a G-tube for supplemental nutrition, refrigerated medications and diapers.

120. T.M. and Z.M. rely on a specific number of allocated nursing hours per week and power-operated medical equipment that is necessary and life sustaining for their disabilities.

121. S.C.M. at one time registered her family with the STEAR program, and she keeps the family's information current. It is dangerous for S.C.M.'s family to shelter in place without power for long periods of time. During the Winter Storm of 2021, S.C.M. received no communication regarding the storm from the City of San Antonio. She also did not receive any instructions or communications about what to do for her family even though the City was aware of their disabilities and medical life-sustaining equipment through the STEAR program.

122. Further, S.C.M.'s children Z.M. and T.M. have physical disabilities that require a nurse's assistance. Z.M.'s nurse was only able to come to the household for part of the storm; T.M.'s nurse was unable to reach the house at all. This left S.C.M. forced to perform the tasks of a trained nurse for her medically fragile children.

123. The family lost power, but sheltering-in-place indefinitely was not an option given the need for electricity. For example, T.M. could not be manually fed for lengthy periods. Additionally, the children's mental disabilities were aggravated by the lack of power and the cold. The temperature in the home reached 40 degrees Fahrenheit.

124. S.M. is a ten-year-old girl and is diagnosed with ADHD. Her condition was exacerbated by the winter storm as she feared for her siblings Z.M. and T.M. because of the storm's impact on them and their disabilities, as well as her own. This caused her difficulty in being able to sleep and eat.

125. J.M. is an eleven-year-old boy and is diagnosed with ADHD and mood disorder which requires consistent routines to avoid any escalation of behaviors and the ability to understand social settings. J.M.'s disabilities were exacerbated during the storm. J.M. relies on routine for his disabilities, but the storm drastically interfered with his disabilities due to worrying about his siblings and the power outage. His disabilities manifested with heightened impulsive and aggressive behavior. J.M. also barely slept.

126. The City's shelters were not an option for these Plaintiffs. Based on the City's own admission, its shelters are not equipped for anyone who requires assistance beyond "minimal care," as S.C.M.'s family did. Further, there were no plans that would have provided transportation to a shelter, even if a shelter existed that could meet the family's disability-related needs.

127. In the end, S.C.M. was forced to rely on private parties for shelter for adequate to care for her family's disabilities. Without these private parties assisting S.C.M. and her family, they would have been stuck in dire circumstances based on their disabilities.

128. Further, the City did not communicate content to S.C.M.'s family in advance of the winter storm on how to prepare for a disaster, how to prioritize restoration or replacement of utility services, or how to draft a disaster plan that could assist with her family's disability-related needs.

129. The City did not, and has not, communicated content to S.C.M.'s family about the location of accessible shelters or warming centers that would be capable of caring for her family in an emergency.

130. The City did not communicate about accessible distribution or transportation options during a disaster.

D. Nicholas DeFosset and Teresa Maguire

131. Nicholas DeFosset and Teresa Maguire are residents of San Antonio and were living in the City during the Winter Storm of 2021. They each have disabilities and share a home.

132. Mr. Defosset and Ms. Maguire both use wheelchairs for mobility. They cannot use steps.

133. Mr. DeFosset is quadriplegic and has spinal cord injuries that substantially limit his mobility, sleep, and ability to walk and provide self-care.

134. Ms. Maguire has spastic quadriplegic cerebral palsy, which substantially limits her ability to walk, provide self-care, and transfer from bed to wheelchair. Her disability also causes sores that can become infected and lead to dangerous outcomes. Ms. Maguire also has gastrointestinal issues requiring medications.

135. Because of their disabilities, Mr. DeFosset and Ms. Maguire rely on community attendant services for daily living skills and accessible transportation with a wheelchair lift.

136. During the Winter Storm of 2021, Mr. DeFosset and Ms. Maguire lost power for four days. They received no emergency alerts or notifications from the City or any other entity under the City's disaster planning coordination about how long the power would be out.

137. Mr. DeFosset and Ms. Maguire were forced to shelter-in-place, as the City never communicated any information about evacuation to shelters that had electricity for their disability-related needs or for how long they would need to shelter-in-place.

138. Sheltering in place without electricity is drastically different for Mr. DeFosset and Ms. Maguire than it is for others without disabilities, and it is more dangerous for them. During

this time, they had no lights, which caused difficulties transferring into their wheelchairs and getting around their home.

139. The home-health aide could not come to their home, and they rely on this medically necessary aide for their health and safety. Without this aide, they were forced to put themselves at risk to assist each other.

140. Mr. DeFosset and Ms. Maguire risked dangerous falls during the power outage. Mr. DeFosset had previously dislocated his shoulder twice assisting Ms. Maguire with transfers when it became necessary.

141. Without electricity, they had no access to an emergency button to alert providers or others of a fall.

142. Further, without electricity, Ms. Maguire's mechanical lift, which she uses to get into and out of bed, did not work, creating a greater risk of falling and injuring herself.

143. Even if they had been evacuated, there was no City shelter able to provide for their needs, based on the City's own admission that its shelters cannot support individuals such as Mr. DeFosset and Ms. Maguire.

144. As a result, the only place where Ms. Maguire could receive an adequate level of care would be an institutional setting or hospital. She was forced to call 911 for an ambulance to transport her, due to her deteriorating health. She was informed that no ambulance or other care was available.

145. Ms. Maguire depends on clean, sterile water to take her medication because it causes severe dry mouth. She also relies on sterile water because of her gastrointestinal disability. During the Winter Storm of 2021, the sterility of the water in her home was compromised, and Mr. DeFosset and Ms. Maguire lacked access to sterile bottled water. When they learned that the

City created a makeshift bottled water distribution center, they were unable to access it because they did not have accessible transportation. The City never offered transportation, nor did the City have emergency plans in place to offer such transportation to water distribution centers. The City also never communicated how individuals with disabilities relying on accessible public transportation could access the bottled water distribution areas.

146. Mr. DeFosset and Ms. Maguire never received any advance planning outreach, or information from the City about what to do in case of an emergency, or how to design their own emergency plans based on their own disabilities.

147. Mr. DeFosset and Ms. Maguire never heard from the City about locations of shelters that had accessible entrances, bathrooms, bedding, and storage and supplies for their disabilities.

148. The City never communicated what to do in a disaster to obtain alternate temporary energy.

E. Heather Albright

149. Ms. Albright is a resident of the City of San Antonio and was living in San Antonio during the Winter Storm of 2021.

150. At birth, Ms. Albright contracted encephalitis, causing her blindness in both eyes and hard of hearing. At age twenty-three, she was diagnosed with multiple sclerosis which impacts her mobility as she experiences muscle atrophy.

151. Because of her impairments, Ms. Albright relies on attendant services for daily living skills and a braille display reader for accessible communication. The braille display reader requires electricity. Ms. Albright also uses a white cane and is in the process of obtaining a power-operated mobility device. She cannot navigate steps safely on her own due to her disabilities.

152. With the appropriate supports and services, Ms. Albright is fully integrated into the community and relies on accessible public transportation through paratransit as she cannot drive due to her disability. She requires assistance to and from any vehicle.

153. During the Winter Storm of 2021, Ms. Albright's home lost power for four days. During this time, she was unable to shower, eat, and did not receive any information from the City, or any other entity under the City's disaster planning's coordination about the storm, possible resources to help her, how long her power would be out, or how long she would need to shelter-in-place.

154. The City of San Antonio was aware of Ms. Albright's disability and her need for accessible communication.

155. Ms. Albright also requires clean and sterile water for her multiple sclerosis, and she has an electrically powered water purifier. Without sterile and clean water, she risks serious infection and possible death. During the Winter Storm, Ms. Albright was without her main water supply via the water purifier. She relied on what little bottled water she had and rationed it in the hope that the water would return with the electricity.

156. Ms. Albright learned from the news, not the City, that there was clean water available, however, she would be responsible for traveling to pick this up without City assistance. Of course, the City did not have a mechanism or procedure in place to accommodate Ms. Albright's needs. Nor were there attempts made by the City or its agents to deliver clean water to her.

157. Ms. Albright does not drive. She relies on public transportation, which must be accessible. During the storm, the City's bus system was unavailable, and its legally required paratransit services have never been useful for emergencies, as they require 24-hours notice to

schedule a ride. Ms. Albright was unaware of any other accessible transportation service available, and she received no information from the City about that

158. Ms. Albright called 3-1-1 for assistance, as instructed for individuals with disabilities and was first told based on her address she was not eligible to receive home delivery for food and water. She was directed to an emergency sheltering operation. She inquired to 3-1-1 about accessibility to sheltering operations and meeting her needs, but her inquiries were left unanswered and was denied access to home delivery of food and water.

159. The City's shelters were inaccessible to Ms. Albright, based on the City's own admission that it can only take individuals who need "minimal care." Ms. Albright does not know how mass care sheltering operations would accommodate her sensory, physical and mobility needs. Even if there were shelters that could house her, there was no accessible transportation operating at the time. Nor does the City have an evacuation and transportation plan designed for individuals with disabilities like Ms. Albright's. Before the winter storm, the City never provided any information to Ms. Albright about how to evacuate to a shelter (even if such shelters were accessible).

160. The City never conducted any outreach to Ms. Albright about how to prepare her own emergency plan, and she was unprepared and unaware of how to access any response and recovery measures that could accommodate her needs.

161. The City has not communicated to Ms. Albright the location of any shelters that would be accessible for her if any.

IV. The City Rebuffed Plaintiffs' Attempts to Resolve This Matter Without Resorting to Litigation and Requests for Modifications Under the ADA for The City to Update and Include in Its Disaster Planning Persons with Disabilities

162. On July 27, 2021, Disability Rights Texas and Daniel & Beshara, P.C., on behalf of Plaintiffs, sent a letter to the City of San Antonio's legal counsel of record to resolve this matter.

163. In those letters, Plaintiffs outlined how they and other individuals with disabilities are excluded from the City's disaster preparedness and planning, and how they received unequal services, and particular harms, during the Winter Storm of 2021.

164. Plaintiffs requested both general and specific plan modifications to ensure the inclusion of, and equal and effective access by, City residents with disabilities.

165. Specifically, regarding requests for modifications under the ADA, Plaintiffs requested that:

- (a) Modification to COSA'S Emergency Sheltering Operations to ensure programmatic and architectural accessibility of shelters to proportionally serve the disability community of San Antonio;
- (b) Modification to COSA's Evacuation planning and Transportation related to Evacuation Planning;
- (c) Modification request to the City's disaster and emergency planning for sheltering-in-place and sustained energy disruption during sheltering-in-place situations;
- (d) Modification to City's canvassing operations and distribution plans of resources after a disaster;
- (e) Modification to the content of the COSA's before, during, and after disasters; and
- (f) modification to COSA's outreach and education program to provide people with disabilities the same opportunity as others to develop a personal emergency plan.

166. On January 3, 2022, Plaintiffs sent a draft copy of a complaint seeking to resolve this matter amicably. After several months of attempting pre-suit negotiations, which included modifications requests together with The City affirmatively providing inclusive and meaningful access to its disaster planning as outlined in this complaint, the parties were unable to resolve the matter without having to resort to this complaint. In April/May 2022, Plaintiffs sought to resolve the matter through a Structured Negotiations mediation to which The City declined. This lawsuit followed.

CAUSES OF ACTION

I. Defendant Violated Plaintiffs' Rights Under Title II of the Americans with Disabilities Act Amendments Act of 2008 By Failing to Provide Them Equal and Effective Access to Defendant's Disaster Planning.

167. The allegations listed above are incorporated by reference.

168. Title II of the ADA seeks to eliminate disability discrimination in the services, programs, and activities of public entities. 42 U.S.C. §§ 12131–12165. Congress enacted the ADA because “such forms of discrimination against individuals with disabilities continue to be serious and pervasive social problems.” 42 U.S.C. § 12101(a)(2). Congress found that “discrimination against individuals with disabilities persists in such critical areas as . . . access to public services,” 42 U.S.C. § 12101(a)(3), and such discrimination included “failure to make modifications to existing . . . practices, . . . segregation, and relegation to lesser services, programs, activities, . . . or other opportunities.” 42 U.S.C. § 12101(a)(5).

169. Under the ADA, no person with a disability may be “excluded from participation in or be denied the activities of the services, programs, or activities of a public entity” because of their disability. 42 U.S.C. § 12132.

170. Public entities include local governments and “any department, agency, special purpose district, or other instrumentality of a . . . local government”. 42 U.S.C. § 12131(1)(a) and (b).

171. Under the ADA, a qualified individual with a disability is one “who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).

172. Public entities also violate the ADA if they fail to make reasonable modifications in their policies, practices, or procedures necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7).

173. The purpose of inclusive emergency and disaster planning is to anticipate the needs of the public entities’ residents in the event of an emergency to stabilize community lifelines and minimize the need for improvisation, particularly when the public entity’s infrastructure may be substantially compromised or strained by an imminent or ongoing emergency or disaster. To ensure that people with disabilities have equitable access to the services during or after an emergency, the impact and needs of individuals with disabilities for an event must be incorporated into the public entities’ plans.

174. In the emergency context, inclusive planning is the key. Relying solely on ad hoc responses is neither reasonable nor adequate, and such reliance violates Title II of the ADA.

175. Title II of the ADA seeks to prevent not only intentional discrimination against people with disabilities, but also discrimination that results from thoughtlessness, indifference, or benign neglect. It is not enough for an emergency plan to be offered on facially equal terms to

everyone in the public. Instead, the ADA requires advanced affirmative accommodations or modifications to ensure that facially neutral emergency plans do not in practice discriminate against individuals with disabilities.

176. Plaintiffs are qualified persons with disabilities under Title II of the ADA. 42 U.S.C. § 12131(2).

177. Defendant is a public entity under Title II of the ADA. 42 U.S.C. § 12131(1)(A) & (B).

178. Defendant's emergency planning are services, programs, or activities under Title II of the ADA. 42 U.S.C. § 12132.

179. Plaintiffs were denied meaningful, equal and effective access to Defendant's emergency planning on the basis of their disabilities. 42 U.S.C. § 12132.

180. Defendant's actions or inactions described above also violate Title II of the ADA because those actions or inactions:

- a. constitute discrimination in violation 42 U.S.C. § 12132 and 28 C.F.R. Part 35;
- b. exclude individuals with disabilities from participation in, and deny them the benefits of, Defendant's services, programs, or activities of a public entity on the basis of disability, in violation of 28 C.F.R. § 35.130(a);
- c. afford qualified individuals with disabilities an opportunity to participate in or benefit from the services of a public entity that are not equal to those afforded others, in violation of 28 C.F.R. § 35.130(b)(1)(ii);
- d. limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service, in violation of 28 C.F.R. § 35.130(b)(1)(vii);

e. fail to make reasonable modifications in policies, practices, or procedures necessary to avoid discrimination on the basis of disability, in violation of 28 C.F.R. § 35.130(b)(7); and

f. use methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability, in violation of 28 C.F.R. § 35.130(b)(3) that disproportionately burden individuals with disabilities, in particular, with regard to shelter-in-place without electricity who rely on electrical equipment versus individuals without such disability-related needs.

181. City of San Antonio's violations of Title II of the ADA are built into its planning, and they have harmed and will continue to harm Plaintiffs due to the lack of inclusive planning for persons with disabilities.

DECLARATORY AND INJUNCTIVE RELIEF IS WARRANTED

182. Under Title II of the ADA, Plaintiffs are entitled to injunctive relief to correct past harms still ongoing.

183. Since the Winter Storm of 2021, the City failed to correct or modify their inclusive emergency planning to provide for meaningful, equal access for persons with disabilities, and in particular in the following areas: (1) Mass Care and Emergency Sheltering Operations; (2) Sheltering-in-place during a sustained power outage; (3) Evacuation and transportation; (4) Plans to provide sufficient content on disability-accessible disaster and emergency services, such as accessible shelters and other accessible services; (5) Outreach and education to provide people with disabilities with the same opportunity to develop a personal emergency plan based on their own disabilities; (6) Commodities distribution during or in the aftermath of a disaster; and (7) jurisdictional threat/risk assessment and jurisdictional self-evaluation for advanced, inclusive disaster and emergency planning process that includes persons with disabilities.

184. The Winter Storm of 2021 exposed Defendant's deficient planning for persons with disabilities, as shown by the events that happened to Plaintiffs during that storm.

185. Defendant does not provide equal access to disaster and emergency response and recovery programs because they have failed to include the needs of individuals with disabilities in disaster and emergency planning areas outlined in this complaint. And as disasters and emergencies are imminent, plaintiffs have faced, and continue to face, ongoing harm that requires judicial intervention.

REQUEST FOR RELIEF

For these reasons, Plaintiffs respectfully requests that this Court grant the following relief:

- A. An order declaring that the Defendant City of San Antonio's conduct violates Title II of the Americans with Disabilities Act;
- B. A permanent injunction order enjoining Defendant City of San Antonio from violating Plaintiffs' rights under Americans with Disabilities Act by:
 - i. enjoining the City from maintaining its inadequate disaster planning and emergency preparedness for persons with disabilities, and requiring meaningful equal access to these programs and activities, as outlined above;
 - ii. requiring the City to provide reasonable modifications to their jurisdictional threat and risk assessments within its disaster and emergency planning process to include the impact an event will have on persons with disabilities;
 - iii. requiring the City to provide reasonable modifications to their jurisdictional self-evaluations for advanced, inclusive disaster and emergency planning process to include persons with disabilities, placing a particular emphasis on the following categories: emergency sheltering operations, evacuations, energy for sheltering-in-place, sustenance

and commodity distribution, and adequate content in emergency communication procedures; and include the impact and risks of persons with disabilities in its jurisdictional threat/risk assessment and jurisdictional self-evaluation for advanced, inclusive disaster and emergency planning process;

iv. requiring the City to provide reasonable modifications to its current disaster and emergency planning to ensure meaningful and equal access for persons with disabilities by implementing an inclusive planning process contingent on a jurisdictional threat/risk assessment and jurisdictional self-evaluation which identifies needs of the disability community and results in programmatic accessibility of shelters, in evacuation planning and transportation, in sheltering-in-place situations, in distribution plans of resources after a disaster, and in disaster communication and education through awareness and outreach to the community;

v. requiring the City to fully implement and maintain the revised disaster and emergency plan that includes persons with disabilities;

vi. requiring the City to hire, assign, or otherwise designate a full-time employee within the Emergency Management department with authority and oversight to ensuring inclusive planning for the needs of individuals with disabilities across all emergency support functions and response and recovery measures; and

v. appointing of a monitor or special master designated by the Court to oversee and monitor the modified planning process and a new disaster and emergency operation plan that is inclusive and accessible for persons with disabilities in the areas identified in

this complaint and to ensure its sustainability, with such monitoring lasting no shorter than three years with status updates and reports to the Court and counsel.

C. An award of nominal damages to each Plaintiff for the violation(s) of their rights under Title II of the Americans with Disabilities Act.

D. An award to Plaintiffs of their reasonable attorney's fees, litigation expenses, and costs pursuant to 42 U.S.C. § 1988.

E. Any other appropriate injunctive relief.

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Respectfully submitted,

/s/ Christopher McGreal

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