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APPENDIX A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 6, 2024
Lyle W. Cayce
Clerk

No. 24-30211

Legacy Recovery Services, L.L.C., *doing business as* Legacy House; Colburn Sullivan; Joe Montgomery; James Gaiennie, III,

Plaintiffs—Appellants,

versus

City of Monroe; Friday Ellis, *individually and in his official capacity as Mayor of Monroe*; City Council of Monroe; Douglas Harvey, *individually and in his official capacity as Monroe City Council Member*; Juanita Woods, *individually and in her official capacity as Monroe City Council Member*; Carday Marshall, Sr., *individually and in his official capacity as Monroe City Council Member*; Kema Dawson, *individually and in her official capacity as Monroe City Council Member*; Carolus Riley, *individually and in her official capacity as Monroe City Clerk*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:23-CV-697

Before Wiener, Willett, and Duncan, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED for lack of jurisdiction.

IT IS FURTHER ORDERED that each party to bear its own cost on appeal.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

APPENDIX B

United States Court of Appeals for the Fifth Circuit

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Legacy Recovery Services, L.L.C., *doing business as* Legacy House; Colburn Sullivan; Joe Montgomery; James Gaiennie, III,

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Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:23-CV-697

Before Wiener, Willett, and Duncan, *Circuit Judges*.

Per Curiam:[*]

Plaintiffs-appellants Legacy Recovery Services, LLC (d/b/a Legacy House), Colburn (Cole) Sullivan, Joe Montgomery, and James Gaiennie (collectively, appellants) appeal an order from the district court granting in part and denying in part defendants-appellees' motions to dismiss. Because that order was neither a final decision nor an appealable collateral order, we DISMISS this appeal for lack of jurisdiction.

I.

This appeal arises out of a soured negotiation between appellants and the City of Monroe regarding appellants' proposed purchase of public land for use as a residential substance abuse treatment facility.[1] In January 2022, Sullivan, Montgomery, and Gaiennie formed Legacy House to operate a low-level residential

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[*] This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

[1] The facts are primarily drawn from the plaintiffs-appellants' complaint because the district court is required to accept well-pleaded facts as correct when deciding a motion to dismiss. *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007).

treatment center for Medicaid recipients recovering from substance abuse. After researching sites, they settled on the city-owned property at issue in this litigation, a two-story building with fifty-six bedrooms and ample parking, located on two lots at 1400 and 1401 Stubbs Avenue in the City of Monroe. According to appellants, the site is ideal for their intended use because it is located near various other medical facilities, and the only "outlier" in the area is a church adjacent to the property owned and operated by Pastors Daniel and Carolyn Hunt.

Sullivan, acting on behalf of Legacy House, worked with the city and, on March 3, 2022, he and the Director of Administration of the City of Monroe signed a written agreement (the purchase agreement) for Monroe to sell the property for $1,050,000.00. The purchase agreement contained a "Contingency" section, which stated that "the offer to purchase is contingent upon" the city council's approval of the sale. State law also requires that before public property can be sold, the city council must pass an ordinance. Before passing it, the proposed ordinance must be introduced and then publicly noticed, and anyone opposed must file a written opposition with the city clerk within 15 days of the notice. *See* La. R.S. § 33:4712.

On September 13, 2022, the city council held a meeting and moved to introduce the ordinance approving the sale. This motion was seconded, but the chairperson, Kema Dawson, did not put it to vote and instead took public comment on the motion to introduce the ordinance. The council did not actually vote on introducing the ordinance and instead delayed

the vote until a community meeting could be held.

That community meeting took place on September 26, 2022, at the Hunts' church. Appellants characterize that meeting as having "served as a platform for several individuals to vocalize their own brand of unsupported, unsubstantiated stigma and innuendo respectively attributed to individuals in active addiction." When the city council reconvened on October 25, 2022, it again put the ordinance for a vote, but no one seconded it, so the chairperson "quietly declared" it dead.

Appellants sued defendants-appellees, bringing nine claims against them relating to the failed sale of the property. Five claims were based on federal laws: (1) the Fair Housing Act (FHA); (2) the Americans with Disabilities Act (ADA); (3) the Rehabilitation Act (RA); (4) the Affordable Care Act (ACA); and (5) 42 U.S.C. § 1983. The remaining four Louisiana state law claims were: (1) violations of the Open Meetings Law; (2) violations of the malfeasance statute; (3) tortious interference with a real estate transaction; and (4) bad faith breach of contract. Appellants assert that the city and city officials discriminated against the future residents of Legacy House on the basis of their disabilities (alcoholism; substance abuse disorders), and this position forms the foundation for many of their claims.

Defendants-appellees filed several motions to dismiss, and the magistrate judge issued a report and recommendation (the Report) addressing them together, as several defendants-appellees joined one

another's motions. In the Report, the magistrate judge recommended granting in part and denying in part the motions to dismiss. Specifically, the magistrate judge recommended dismissing: (1) all claims against the city council because the city itself is the correct entity to sue in this instance; (2) claims against the individual councilmembers in their official capacity because they would be duplicative of the claims against the City of Monroe; (3) the FHA claims; (4) the ADA and RA claims to the extent that they argue failure-to-accommodate and to the extent they are against Ellis, Riley, and the councilmembers in their individual capacities; (5) the ACA claims; (6) some but not all of the § 1983 claims; (7) the Open Meetings Law violations in part; (8) the tortious malfeasance claim; (9) the breach of contract claim; and (10) the claims of interference with a real estate transaction.

Importantly, the magistrate judge recommended *against* dismissing the following claims: (1) the constitutional equal protection claims; (2) some parts of the Open Meetings Law violation claims; (3) the ADA and RA claims based on theories other than failure-to-accommodate; and (4) the § 1983 claims predicated on the ADA and RA violations based on theories other than failure-to-accommodate.

The district judge adopted the magistrate judge's Report, over appellants' objections. This judgment is the one on which this appeal is taken. The claims that were not dismissed are still pending before the district court.

II.

This court has jurisdiction over "appeals from all final decisions" from district courts. 28 U.S.C. § 1291.A final decision is "typically one 'by which a district court disassociates itself from a case.'" *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (quoting *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 42 (1995)). If the decision is "tentative, informal or incomplete," it is not final and thus not appealable. *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). The Supreme Court urges a "practical rather than a technical construction" of 28 U.S.C. § 1291's finality requirement, and the collateral-order doctrine operates as a narrow exception which permits appeal of non-final decisions. *Id.*

A non-final decision appealable as a collateral order must (1) "conclusively determine the disputed question," (2) "resolve an important issue completely separate from the merits of the action," and (3) be "effectively unreviewable on appeal from a final judgment." *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 375 (1981) (cleaned up); *see also id.* at 376 ("To be appealable as a final collateral order, the challenged order must constitute a complete, formal, and, in the trial court, final rejection of a claimed right where denial of immediate review would render impossible any review whatsoever.") (cleaned up). This exception is reserved for only "orders affecting rights that will be irretrievably lost in the absence of an immediate appeal." *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 430–31 (1985).

Absent satisfying the collateral-order doctrine's requirements, "[s]o long as the matter remains open, unfinished or inconclusive, there may be no intrusion by appeal." *Cohen*, 337 U.S. at 546.

III.

The judgment of the district court that appellants appeal is not a final order giving rise to appellate jurisdiction, nor is it a collateral order under that doctrine. The district judge adopted the Report authored by the magistrate judge, over appellants' objections, and that judgment dismissed some claims but retained others. That is thus not a final decision in which the district court "disassociate[d] itself from [the] case." *Mohawk Indus., Inc.*, 558 U.S. at 106; *Harris v. Nix*, 52 F.3d 1067 (5th Cir. 1995) (per curiam) (holding that "the partial dismissal of a multi-claim action is not a final decision and is unappealable as an interlocutory order absent certification" by the district court.). Therefore, for this court to have jurisdiction over the appeal, the order must satisfy the collateral-order doctrine. It does not.

The district court's judgment does not "conclusively determine the disputed question" because it dismissed some claims but retained others. *See Firestone Tire & Rubber Co.*, 449 U.S. at 375. Furthermore, some of the claims dismissed and others retained were based on the same statutes, such that, if appeal were allowed at this juncture, this court would potentially have to wade through the same intertwined claims a second time after final judgment. For example, the district court dismissed ADA and RA

claims only "to the extent that it pertains to Plaintiffs' purported ADA and RA failure-to-accommodate claims." However, it did not dismiss the ADA and RA claims which are based on "imposing procedural barriers against [their] purchase of the Property and denying potential residents of the Facility access to treatment." Similarly, the district court dismissed some claims rooted in the Open Meetings Law that seek punitive or compensatory damages, but it retained the others. This is precisely the "piecemeal" approach to appeals that the Supreme Court discourages. *See id.* at 374 ("Permitting piecemeal appeals would undermine the independence of the district judge, as well as the special role that individual plays in our judicial system."); *Richardson-Merrell, Inc.*, 472 U.S. at 430 ("In § 1291, Congress has expressed a preference that some erroneous trial court rulings go uncorrected until the appeal of a final judgment, rather than having litigation punctuated by 'piecemeal appellate review of trial court decisions which do not terminate the litigation.'") (quoting *United States v. Hollywood Motor Car Co.*, 458 U.S. 263, 265 (1982)); *Abney v. United States*, 431 U.S. 651, 656 (1977) (observing that "there has been a firm congressional policy against interlocutory or 'piecemeal' appeals and courts have consistently given effect to that policy").

For the same reasons just discussed, the judgment does not "resolve an important issue completely separate from the merits of the action," because the issues resolved are interwoven with the issues left for disposition before the district court. *See Firestone Tire & Rubber Co.*, 449 U.S. at 375. Neither

is this a case in which the decision would be "effectively unreviewable on appeal from a final judgment." *See id.* For example, in *Firestone Tire & Rubber Co. v. Risjord*, the Supreme Court held that a district court's denial of a motion to disqualify counsel did not satisfy those requirements. *Id.* at 378. The Court explained that if, after trial and final judgment, a court of appeals finds disqualification was necessary, "it would retain its usual authority to vacate the judgment appealed from and order a new trial," a "remedy [which] seems plainly adequate should petitioner's concerns of possible injury ultimately prove well founded." *Id.*

Here, this is not a scenario in which a court is denying a criminal defendant the constitutional right to pretrial bail, something that would be nearly impossible to remedy if forced to wait for a final judgment in the case. *See Stack v. Boyle*, 342 U.S. 1, 4–5 (1951). Nor is this a case in which, pretrial, a criminal defendant seeks to dismiss an indictment on double jeopardy grounds, the "very nature" of which is "collateral to, and separable from, the principal issue" of whether the defendant committed the crime at issue. *Abney*, 431 U.S. at 659. In such a case, "the Double Jeopardy Clause would be significantly undermined if appellate review of double jeopardy claims were postponed until after conviction and sentence" because the Double Jeopardy Clause "guarantee[s] against being twice put to trial for the same offense." *Id.* at 660–61. Unlike in those types of cases, the order here will be easily reviewable on appeal from a later final judgment without jeopardizing any important right of the appellants.

Appellants also fail to show that we should review their case under *Gillespie v. U.S. Steel Corp.*, which held that review of a non-final judgment "contrary to [the court's] usual practice" is appropriate when ruling is "fundamental to the further conduct of the case." 379 U.S. 148, 153 (1964). Appellants contend that the issues dismissed in the district court order here are "fundamental" to their case.[2] But that isn't so. The remaining claims—equal protection, Open Meetings violations, and ADA and RA claims other than failure-to-accommodate—can easily proceed on their own. The *Gillespie* Court held that, in deciding the question of finality, courts must balance "the inconvenience and costs of piecemeal review" with "the danger of denying justice by delay." *Id.* at 153. Here, that balance weighs in favor of denying immediate appellate review. It will be quite costly and inconvenient for our court to review multiple appeals in this case. And, on the other hand, appellants haven't demonstrated any urgent need for an opinion on the dismissed claims.

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[2] Appellants argue that the Supreme Court has held that an error in a Fifth Amendment takings analysis is sufficiently "fundamental" to the further conduct of the case so as to warrant immediate appeal, citing *U.S. v. General Motors Corp.* for support. *See* 323 U.S. 373, 377 (1945)). The Supreme Court didn't discuss finality in *General Motors Corp.* To the extent that it did find that the takings issue was "fundamental," the issue there differed significantly from the takings issue in this case. Here, the takings issue is one among many; whereas, in *General Motors*, the takings issue was the only merits issue. *Id.* The stakes were also much higher in *General Motors*, which involved compensation for the taking of a warehouse by the Secretary of War for military purposes. *Id.* at 375.

The district court's order granting in part and denying in part these motions to dismiss does not satisfy the narrow collateral-order exception to the finality rule, and this case does not present any reason to depart from this settled area of the law. We therefore DISMISS this appeal for lack of jurisdiction.

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

LEGACY RECOVERY SERVICES, LLC ET AL

VERSUS

CITY OF MONROE, ET AL

CIVIL DOCKET NO. 3:23-00697
JUDGE DAVID C. JOSEPH
MAGISTRATE JUDGE KAYLA D. MCCLUSKY

JUDGMENT

For the reasons contained in the REPORT AND RECOMMENDATION of the Magistrate Judge [Doc. 33], and after consideration of the OBJECTIONS TO REPORT AND RECOMMENDATION filed [Docs. 34, 35], and concurring with the Magistrate Judge's findings under the applicable law;

IT IS ORDERED, ADJUDGED, AND DECREED that Defendants' MOTIONS TO DISMISS [Docs. 16-18], are GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED that all claims against Defendant City Council of Monroe are DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Plaintiffs' claims against Defendants Ellis and Riley under the FHA, ADA, RA, ACA, and § 1983 pursuant to the FHA, ADA, RA, ACA, Fifth Amendment's Takings Clause, Fourteenth Amendment's Due Process Clause, and the Louisiana State Constitution, as well as their claims for breach of contract and tortious malfeasance, discrimination in real estate transactions, and violation of the Louisiana Open Meetings Law be DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Plaintiffs' claims against Defendants Dawson, Harvey, Marshall, and Woods under the FHA, ADA, RA, ACA, and § 1983, pursuant to the FHA, ADA, RA, ACA, Fifth Amendment's Takings Clause, Fourteenth Amendment's Due Process Clause, and the Louisiana State Constitution, as well as their claims for breach of contract and tortious malfeasance, discrimination in real estate transactions, and violation of the Louisiana Open Meetings Law to the extent that claim seeks compensatory and punitive damages be DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Plaintiffs' claims against Defendant City of Monroe under the FHA, ADA and RA failure-to-accommodate provisions, ACA, § 1983 pursuant to the FHA, ADA and RA failure-to-accommodate provisions, ACA, Fifth Amendment's Takings Clause, and Fourteenth Amendment's Due Process Clause, as well as their claims for breach of contract and discrimination in real estate transactions be DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that in all other respects, the Motions are DENIED.

THUS DONE AND SIGNED in Chambers on this 18TH day of March, 2024.

/s/
DAVID C. JOSEPH
UNITED STATES DISTRICT COURT

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

LEGACY RECOVERY SERVICES LLC ET AL

VERSUS

CITY OF MONROE ET AL

CIV. ACTION NO. 3:23-00697
JUDGE DAVID C. JOSEPH
MAG. JUDGE KAYLA D. MCCLUSKY

REPORT AND RECOMMENDATION

Before the undersigned Magistrate Judge, on reference from the District Court, are motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6) filed by Defendants City of Monroe, City Council of Monroe, Kema Dawson, Douglas Harvey, Carday Marshall, Juanita Woods, Friday Ellis, and Carolus Riley. [docs. #16-18]. The motions are opposed. [docs. #24- 26].

For reasons assigned below, it is recommended that the motions be GRANTED IN PART and DENIED IN PART.

Background

Plaintiffs Legacy Recovery Service LLC ("Legacy House"), Colburn Sullivan ("Sullivan"), Joe Montgomery ("Montgomery"), and James Gaiennie ("Gaiennie) filed the instant complaint for damages ("the Complaint") on May 25, 2023. Complaint [doc. #1]. The Complaint names the City of Monroe ("the City"), the City Council of Monroe ("the Council"), Councilmembers Kema Dawson ("Dawson"), Douglas Harvey ("Harvey"), Carday Marshall ("Marshall"), Juanita Woods ("Woods") (collectively "the Councilmembers"),[1] Mayor Friday Ellis ("Ellis"), and City of Monroe Clerk Carolus Riley ("Riley") as defendants. *Id.* Ellis, Riley, and the Councilmembers are sued in both their official and individual capacities. *Id.* Plaintiffs seek damages and declaratory relief arising from alleged violations of the federal Fair Housing Act ("FHA"), Americans with Disabilities Act ("ADA"), Rehabilitation Act ("RA"), Affordable Care Act ("ACA"), U.S. Constitution, Louisiana Constitution, and Louisiana's Open Meetings Law. *Id.* at pp. 28-39. Plaintiffs also assert state law claims for malfeasance, breach of contract, and discrimination in real estate transactions. *Id.* at pp. 39-44. On August 21, 2023, Ellis and Riley, the Council and Councilmembers, and the City filed the instant motions. Ellis and Riley's M/Dismiss [doc. #16]; Council's M/Dismiss [doc. #17]; City's M/Dismiss [doc. #18].

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[1] Dawson, Harvey, Marshall, and Woods are four of the five members of the Council.

On January 19, 2022, Sullivan, Montgomery, and Gaiennie organized and registered Legacy House to own and operate a low-level, clinically-managed residential treatment facility ("the Facility"). Complaint [doc. #1, pp. 8-9]. The Facility was to house recovering alcoholics who would pay for treatment with Medicaid funds and pledge to remain sober, attend substance abuse counseling, and take other steps towards recovery.[2] *Id.* at p. 9. Sometime after creating the Legacy House entity, Sullivan, Montgomery, and Gaiennie identified a property owned by the City that they deemed a suitable location for the Facility. *Id.* at p. 10. Located at 1400 and 1401 Stubbs Avenue, the two-story, fifty-six-bedroom building ("the Property") is zoned as B-4 Heavy Commercial District, a designation encompassing Plaintiffs' intended use. *Id.* Adjacent to the Property is a church owned and operated by Pastors Daniel and Carolyn Hunt (collectively "the Pastors Hunt"). *Id.* at p. 11.

On an unspecified date, Sullivan offered to purchase the Property from the City. *Id.* On March 3, 2022, the City's Director of Administration accepted Sullivan's offer. *Id.* at p. 12. A written agreement to sell the Property to Sullivan for $1,050,000.00 ("the Contract") was executed. *Id.*; *see also* Contract [doc. #16-3]. The Contract states that "the offer to purchase

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[2] Funding of the Facility with Medicaid funds is made possible by the State of Louisiana's exemption from rules that would otherwise prohibit such a payment structure for short-term residential treatment facilities ("the Section 1115 Waiver"). *See id.* at pp. 6-7.

is contingent upon" the Council's approval of the Property's sale. Complaint [doc. #1, p. 12]; Contract [doc. #16-3, p. 8].

Six months of meetings and document exchanges pursuant to the Contract followed. Complaint [doc. #1, p. 13]. Plaintiffs allege that "[b]y early September," all parties agreed that the sale contemplated in the Contract could go forward. *Id.* On September 8, 2022, the Council posted notice that a proposed ordinance ("the Ordinance") to sell the Property was scheduled for a vote for introduction at their September 13, 2022, meeting ("the September 13 Meeting"). *Id.* at p. 14.

Five days later, at the September 13 Meeting, the Council moved to introduce the Ordinance, and the motion was seconded. *Id.* Instead of putting the Ordinance to a vote, Dawson – Chairperson of the Council – allowed for oral public comment on the subject. *Id.* The Pastors Hunt took this opportunity to speak, saying that they "did not know" Sullivan and asking whether residents of the Facility would be "screened for mental illness" and "'free' to leave the facility." *Id.* They also asked whether residents would be "felons," "killers," or "rapists" that Legacy House would "send . . . back on the streets" after completing their stay at the Facility. *Id.* at pp. 14-15. After public comments concluded, Woods noted that she "know[s] the church" owned by the Pastors Hunt and suggested the Council "pass over" the vote to introduce the Ordinance until after a community meeting could be held. *Id.* at p.16. Harvey observed that "short of anything egregious" he "always" introduces a proposed

ordinance prior to receiving community feedback. *Id.* Nonetheless, the Council voted to defer voting on introduction of the Ordinance until October 25, 2022 ("the October 25 Meeting"). *Id.*

As discussed at the September 13 Meeting, a community meeting was held on September 26, 2022. *Id.* at p. 17. There, the Pastors Hunt distributed literature opposing sale of the Property, and Daniel Hunt argued that Legacy House's proposed use of the Property was akin to "a 'toilet' in his 'kitchen.'" *Id.*

That same day, Plaintiffs submitted a public records request to the City for all written opposition to the Ordinance. *Id.* at p. 18.

On October 21, 2022, Plaintiffs delivered a letter to the City arguing that Louisiana law requires opposition to a proposed ordinance be filed with the municipal clerk, noting that no such opposition had been filed as to the Ordinance, and observing that oral opposition to the Ordinance had thus far "amounted to illegal discrimination against the intended residents of the [Facility]." *Id.* Plaintiffs demanded the City "honor its obligations" under the Contract and notify them immediately if the City became aware of "any fact . . . that would threaten the sale, use, ownership, or occupancy of the property." *Id.* at pp. 18-19. The letter also "requested reasonable accommodation under the Fair Housing Act and [for] the City to advise [Plaintiffs] whether addition[al] information was necessary" prior to acting on the request. *Id.* at p. 19.

Plaintiffs allege that around this time on an

unspecified date, Ellis and unnamed Councilmembers held an unreported, private meeting "to determine a binding course of action regarding the [Contract], the reasonable accommodation request, and the [Ordinance]." *Id.* Plaintiffs also allege that unnamed Councilmembers "conducted telephone polling" around this time. *Id.* On October 25, 2022, prior to the scheduled Council meeting, Dawson texted Carolyn Hunt that her calls to Hunt were being directed to voicemail. *Id.* at p. 20.[3]

At the October 25 Meeting, the Council moved to vote on introduction of the Ordinance, but the motion was not seconded, and the Ordinance "died" without being introduced. *Id.* at pp. 20-21. In an off-the-record conversation immediately after the meeting, Dawson directed questions posed by Plaintiffs to "legal" and told the Pastors Hunt that she would "call [them] later." *Id.* at p. 21.

On October 28, 2022, the City denied Plaintiffs' request for reasonable accommodation. *Id.* at p. 24. Plaintiffs allege that, in the denial, the City indicated that Plaintiffs "did not 'specifically' know on October 21 that the vote the City deferred to October 25 would not take place." *Id.* Plaintiffs further allege that the City argued they should "have known on October 21 of the City's October 25 'practice' of pretending the motion to introduce [the Ordinance] had not already been seconded." *Id.*

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[3] Plaintiffs note that Carolyn Hunt's contact name on Dawson's phone is "First Lady Hunt." *Id.*

Three days later, on October 31, 2022, Plaintiffs submitted another public records request to the City for "information pertinent to their venture," including communications between Councilmembers and records of relevant Council meetings. *Id.* On January 3, 2023, Riley and the City's record custodian produced partially redacted email correspondences and official Council meeting minutes. *Id.* at pp. 24-25. Plaintiffs allege that the minutes of the September 13 Meeting omit both "the fact that the motion to introduce[e the Ordinance] was seconded [and] the names of the council member seconding that motion." *Id.* at p. 25.

Plaintiffs filed the Complaint on May 25, 2023. Therein, they allege that all of the Defendants are liable for violations of the FHA, ADA, RA, ACA, the Fifth and Fourteenth Amendments of the U.S. Constitution, and unnamed provisions of the Louisiana Constitution, as well as breach of contract and discrimination in a real estate transaction. *Id.* at pp. 28-39, 42-44. Plaintiffs also allege that Ellis, Riley, and the Councilmembers are liable for tortious violation of Louisiana's Open Meetings and malfeasance laws. *Id.* at pp. 39-42.

On August 21, 2023, the City filed a motion to dismiss, challenging Plaintiffs' claims on various grounds, including lack of constitutional and prudential standing and failure to state a claim. City's M/Dismiss [doc. #18]. The same day, Ellis and Riley filed a joint motion to dismiss, as did the Council and Councilmembers, both of which adopted the City's motion. Ellis and Riley's M/Dismiss [doc. #16]; Council's M/ Dismiss [doc. #17]. Ellis, Riley, and the

Councilmembers seek dismissal of official capacity claims brought against them and assert qualified immunity against several of Plaintiffs' claims against them individually. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 13-20]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 15-22]. The Council argues it lacks the capacity to be sued. Memorandum in Support of the Council's M/Dismiss [doc. #17-1, p. 14].

Plaintiffs filed their opposition to the motions on September 27, 2023. Opposition to City's M/Dismiss [doc. #24]; Opposition to Council's M/Dismiss [doc. #25]; Opposition to Ellis and Riley's M/Dismiss [doc. #26].[4] [5] The City, Council, and the Councilmembers replied to Plaintiffs' opposition memoranda on October 27, 2023. Reply to Opposition to the City's M/Dismiss [doc. #31]; Reply to Opposition to the Council's M/Dismiss [doc. #32].

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[4] While Plaintiffs oppose all three motions, their opposition memorandums do not address all the arguments raised in said motions. The undersigned explains the scope of Plaintiffs' various arguments *infra*.

[5] Plaintiffs request a conversion of the instant motions to dismiss into motions for summary judgment. *See* Defendant City of Monroe's Opposition to M/Dismiss [doc. #24, p. 12]. The undersigned does not rely on materials that are unincorporated into the pleadings or the Complaint. Therefore, conversion of the instant motions is not required. *See* FED. R. CIV. P. 12(d) (requiring conversion of a Rule 12(b)(6) motion to one for summary judgment if the court does not exclude "matters outside the pleadings" in analyzing said motion).

Briefing is complete. Accordingly, this matter is ripe.

Analysis

The undersigned will first set forth the relevant legal standards of review. *Infra* section I. The analysis then turns to the Council's capacity to be sued. *Infra* section II. Next, the status of official capacity claims against Ellis, Riley, and the Councilmembers is reviewed. *Infra* section III. The undersigned then analyzes Plaintiffs' claims under the FHA, *infra* section IV, ADA and RA, *infra* section V, and ACA. *Infra* section VI. A review of the § 1983 claims follows. *Infra* section VII. The undersigned then analyzes the Open Meetings Law, *infra* section VIII, malfeasance, *infra* section IX, breach of contract, *infra* section X, and nondiscrimination in real estate transactions claims. *Infra* section XI.

I. Legal Standard

a. Federal Rule of Civil Procedure 12(b)(1)

The Federal Rules of Civil Procedure sanction dismissal where the presiding court lacks subject-matter jurisdiction.[6] FED. R. CIV. P. 12(b)(1). Such jurisdiction may be found lacking based upon (1) the

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[6] The federal courts have limited jurisdiction and cannot adjudicate claims absent a statutory conferral of jurisdiction. *In re FEMA Trailer Formaldehyde Prod. Liab. Litig.*, 668 F.3d 281, 286 (5th Cir. 2012).

complaint alone; (2) the complaint supplemented by undisputed facts in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *Kling v. Hebert*, 60 F.4th 281, 284 (5th Cir. 2023) (quoting *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001)). As a Rule 12(b)(1) motion concerns the trial court's jurisdiction, the court is free to weigh relevant evidence and satisfy itself that it has power to hear the case. *Kling*, 60 F.4th at 284 (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3rd Cir. 1977)). If the motion is supported by a factual attack, then the plaintiff bears the burden to prove by a preponderance of the evidence that the court does indeed have subject-matter jurisdiction. *Kling*, 60 F.4th at 284. A Rule 12(b)(1) motion should only be granted if it appears certain that the plaintiff cannot prove any set of facts in support of her claim entitling her to relief. *In re FEMA*, 668 F.3d at 287. When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the jurisdictional attack should be resolved first. *Ramming*, 281 F.3d at 161.

Rule 12(b)(1) is also an appropriate vehicle for challenges based upon constitutional standing.[7] *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795 n.2 (5th Cir. 2011). Constitutional standing –

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[7] Federal court jurisdiction is limited to certain "cases" and "controversies." *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 408 (2013). The doctrine of standing is a child of the "essential and unchanging" case-or-controversy requirement of Article III. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

also known as Article III standing – is predicated on three requirements: (a) The plaintiff must have suffered an "injury in fact" that is (i) concrete and particularized and (ii) actual or imminent, not conjectural or hypothetical; (b) there must be a fairly traceable causal connection between the injury and conduct complained of; and (c) it must be likely, as opposed to speculative, that a favorable decision will redress the injury. *N.A.A.C.P. v. City of Kyle*, 626 F.3d 233, 237 (5th Cir. 2010) (quoting *Lujan*, 504 U.S. at 560-61).

b. Federal Rule of Civil Procedure 12(b)(6)

The Federal Rules of Civil Procedure also sanction dismissal where the plaintiff fails "to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). To withstand a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plausibility simply calls for enough factual allegations to raise a reasonable expectation that discovery will reveal evidence to support the elements of the claim. *Twombly*, 550 U.S. at 556. "[P]laintiffs must allege facts that support the elements of the cause of action in order to make out a valid claim," *City of Clinton, Ark. v. Pilgrim's Pride Corp.*, 632 F.3d 148, 152-53 (5th Cir. 2010), but "[t]hreadbare recitals" of those elements "supported by mere conclusory statements" are insufficient to survive a motion to dismiss. *Iqbal*, 556 U.S. at 678. Factual pleadings that are "merely consistent with" a

defendant's liability "stops short of the line between possibility and plausibility." *Id.* (quoting *Twombly*, 550 U.S. at 557). All well-pleaded facts are accepted as true and viewed in the light most favorable to the plaintiff. *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007). In conducting this analysis, courts must consider the complaint in its entirety, as well as documents incorporated into the complaint by reference and matters of which the court may take judicial notice. *Jackson v. City of Hearne*, 959 F.3d 194, 204-05 (5th Cir. 2023) (quoting *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007)).

The standards governing motions to dismiss for failure to state a claim also control analysis of challenges to prudential – also known as statutory – standing.[8] *Harold H. Huggins Realty*, 634 F.3d at 795 n.2. Prudential standing prohibits plaintiffs from litigating (1) the legal rights of third parties; (2) "generalized grievances more appropriately addressed in the representative branches" of government; and (3) claims outside the zone of interest protected by the relevant statute. *Cibolo Waste, Inc. v. City of San Antonio*, 718 F.3d 469, 474 (5th Cir. 2013).

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[8] Prudential standing is a form of "judicial self-governance" to prevent adjudication of "questions of wide public significance" in the place of more competent governmental institutions or situations where judicial intervention is unnecessary to protect individual rights. *Warth v. Seldin*, 422 U.S. 490, 500 (1975).

II. The Council's Capacity to be Sued

As an initial matter, the Council argues that it should be dismissed from this case as it lacks the capacity to be sued.[9] Memorandum in Support of the Council's M/Dismiss [doc. #17- 1, p. 14].

The capacity to sue or be sued is determined by the law of the state in which a federal trial court sits. FED. R. CIV. P. 17(b)(3). Under Louisiana law, there are two types of persons capable of being sued: (a) natural persons and (b) juridical persons. *See* LA. CIV. CODE ANN. art. 24. Natural persons are "human being[s]," while juridical persons are entities "to which the law attributes personality, such as a corporation or partnership." *Id.* If an entity is neither a natural person nor a juridical person, then the entity lacks the capacity to sue or be sued. *See, e.g.*, *Roy v. Alexandria City Council*, 984 So.2d 191, 194 (La.App. 3d Cir. 2008)

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[9] Although the Federal Rules of Civil Procedure do not specifically authorize a motion to dismiss for lack of capacity to be sued, federal courts traditionally entertain pre-answer motions not expressly provided for by rule or statute, including motions concerning capacity to sue or be sued. *Clerk v. Lafayette Police Dep't*, No. 18-cv-00058, 2018 WL 3357899, at *1 (W.D.La. Jun. 22, 2018), *report and recommendation adopted*, 2018 WL 3357257 (W.D.La. Jul. 9, 2018). The Fifth Circuit has implicitly endorsed using Rule 12 as a vehicle for such motions. *See, e.g.*, *Darby v. Pasadena Police Dep't*, 939 F.2d 311 (5th Cir. 1991) (affirming grant of motion to dismiss for defendant's lack of capacity to be sued); *see also Angers ex rel. Angers v. Lafayette Consol. Gov't*, No. 07-0949, 2007 WL 2908805, at *1-2 (W.D.La. Oct. 3, 2007) (analyzing motion to dismiss based on lack of capacity to be sued under Rule 12(b)(6)).

(finding entity lacks capacity to be sued if neither natural nor juridical person). This prohibition is absolute absent a law providing that the entity may otherwise be sued. *Dantzler v. Pope*, No. 08-3777, 2009 WL 959508, at *1 (E.D.La. Apr. 3, 2009). In applying these principles, both state and federal courts in Louisiana have consistently held that city councils lack the capacity to be sued. *See, e.g.*, *Green v. City of Monroe*, No. 3:22-00884, 2023 WL 2773543, at *8 (W.D.La. Mar. 17, 2023) ("[T]he Monroe City Council lacks the capacity to be sued . . . ."); *Roy v. Alexandria City Council*, 984 So.2d 191, 194 (La.App. 3d Cir. 2008) ("[W]e find that the Alexandria City Council cannot sue or be sued.").

The Monroe City Charter states that the Council constitutes "the legislative branch of the [city] government." MONROE CODE ORDINANCES § 1-03. Indeed, Plaintiffs do not argue that the Council is a distinct juridical person apart from the City with the legal capacity to sue and be sued. Rather, Plaintiffs argue that the Council has capacity to be sued as an administrative entity committing administrative violations. *See* Opposition to the City M/Dismiss [doc. #25, pp. 13- 15]. Plaintiffs predicate this argument on Federal Rule of Civil Procedure 17(a)(1)(B), which indicates "administrator[s]" may "sue in their own name without joining the [real party in interest] for whose benefit the action is brought." *See id.* at pp. 13-14. This is a fundamentally incorrect invocation of Rule 17(a)(1), which allows for representatives (e.g., administrators or agents) of property, instruments, or persons lacking capacity to bring actions in the name of those they represent. *See, e.g.*, *Royal v. Boykin*, No.

1:16-cv-00176, 2017 WL 3897168, at. *4 (N.D.Miss. Sep. 6, 2017) ("A wrongful death action brought by an administrator on behalf of an estate is proper in federal court pursuant to Rule 17(a)(1)(B) . . . ."). It would be inapposite to cast the relationship between the Council and the City in the representative-represented light contemplated by Rule 17(a)(1).

Plaintiff's invocation of *Blacks United for Lasting Leadership, Inc. v. City of Shreveport*, is also misguided. 71 F.R.D. 623, (W.D.La. 1976); *see* Opposition to the Council's M/Dismiss [doc. #25, p. 14]. Despite Plaintiff's assertions to the contrary, nowhere does the *Blacks United* court invoke Rule 17 to hold that "municipal administrators, including the equivalent of city councilmembers," are real parties of interest despite being agents of the city.[10] Plaintiff's citation to *Marshall v. Weyerhauser* in support of substantially the same proposition is equally

[10] The *Blacks United* court mentions Rule 17 when describing a motion to dismiss predicated on the argument that the plaintiffs – "an organization of black citizens of Shreveport" – were neither real parties nor proper class representatives. 71 F.R.D. at 626 n.4. That same court describes the councilmember-equivalent defendants (the Mayor of Shreveport and members of the city council) as "agents" or "arms" of the city only when quoting the defendants' argument regarding whether they should be sued in an official or individual capacity. *Id.* It is manifest that the substance of the motion in *Blacks United* is inapplicable to the instant case and the parties being discussed therein are not analogous to the Council.

misguided. 456 F.Supp. 474 (D.N.J. 1978).[11] The Council is the legislative branch of the City lacks the capacity to be sued on its own.

Accordingly, it is RECOMMENDED that the Council's motion be granted and all claims against the Council be dismissed with prejudice.

III. Official Capacity Claims

Ellis, Riley, and the Councilmembers argue that claims against them in their official capacities should be dismissed as duplicative of the claims brought against the City. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 13-14]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 15-16].

In actions where a defendant-official is sued in both her individual and official capacity, and a municipality is also sued, "there potentially exists an overlapping cause of action" whereby "[t]he official-capacity claims and the claims against the governmental entity essentially merge." *Turner v. Houma Mun. Fire & Police Civ. Serv. Bd.*, 229 F.3d 478, 485 (5th Cir. 2000). Claims against defendant-

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[11] In *Marshall*, the U.S. Secretary of Labor sought a search warrant, which the defendant challenged on the grounds that the Secretary was not the real party in interest. *Id.* at 476-77. The judge there held that precedential interpretation of controlling statutory law indicated the Secretary was in fact the real party in interest. *Id.* at 477. This holding is irrelevant here as no statute is cited as granting the Council the capacity to be sued.

officials in their official capacity "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. New York City Dept. of Soc. Serv.*, 436 U.S. 658, 690 n.55 (1978)). Such claims should be treated as a suit against the government entity "[a]s long as [the entity] receives notice and an opportunity to respond." *Graham*, 473 U.S. at 166 (1985).[12]

Plaintiffs have sued Ellis, Riley, and the Councilmembers in both their individual and official capacities. These defendants are all officials of the City, which is also a defendant in the instant action, thus putting it on notice of the official-capacity claims and giving it an opportunity to respond (which, as a matter of fact, it has). It is thus appropriate to dismiss the duplicative official-capacity claims against Ellis, Riley, and the Councilmembers, leaving the City in their place.[13]

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[12] This is relevant in part because "an award of damages against an official in his personal capacity can be executed only against the official's personal assets, [but] a plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself." *Id.*

[13] Plaintiffs' claims under the FHA, ADA, RA, ACA, § 1983, and for tortious breach of contract and discrimination in real estate transactions are brought against all Defendants. The claims under the Open Meeting Law and for tortious malfeasance and violation of the Louisiana Open Meeting Law are brought only against Ellis, Riley, and the Councilmembers. Plaintiffs describe Ellis as the "chief executive officer" of the City, and Riley and the Councilmembers as agents of the municipality. Complaint

Plaintiffs offer two arguments for leaving the official capacity claims untouched. The first is that official capacity claims may proceed alongside municipal liability claims despite substantially similar facts and legal standards underlying both. Opposition to the Council's M/Dismiss [doc. #25, p. 16]. *Barnes v. City of El Paso* from our sister district is cited in support of this contention. No. EP-22-CV-161-KC, 2023 WL 4097075 (W.D.Tex. June 12, 2023). That case, apart from serving only persuasive value in the Western District of Louisiana, is inapplicable to dismissal of official-capacity claims in the instant action. The *Barnes* court found that individual-capacity supervisory liability claims differed from municipal liability claims. *Id.* at *16 ("[The plaintiff's] supervisory liability claims do not simply duplicate her [municipal liability] claims. Though the two sets of claims involve similar facts and similar legal standards, [plaintiff's supervisory liability] claims turn on [an individual defendant's] personal actions, while her [municipal] claims turn on" policies, customs, and the conduct of policymakers.). The instant issue concerns official-capacity claims that are not predicated upon supervisory liability. Accordingly, *Barnes* is not instructive in the instant context.

Plaintiffs next argue that there exists a conflict of interest arising from Defendants' counsel representing both the City and the Councilmembers.

[doc. #1, pp. 3-4]. Accordingly, claims against Ellis, Riley, and the Councilmembers in their official capacities are inherently claims against the City even if that entity is not named by the Complaint in connection with said claims.

Opposition to the Council's M/Dismiss [doc. #25, pp. 15-16]. *Van Ooteghan v. Gray*, cited by Plaintiffs in support of this position, gestures towards the possibility of potentially problematic conflicts of interest in joint representation. 628 F.2d 488 (5th Cir. 1980), *aff'd in part en banc*, 654 F.2d 304 (1981). In dicta, the Fifth Circuit speculated that the then-recent holding in *Monell* could result in the type of conflict propounded by Plaintiffs. *Van Ooteghem*, 628 F.2d at 495 n.7. However, the *Van Ooteghem* court did not make any findings on this issue and posited that "no party could prevail on th[e] issue, given our conclusion that, as a matter of law . . . [the municipality-defendant] must be liable for the actions of [its agent and co-defendant] . . . ." *Id.*[14] There is thus no reason to find a potential conflict of interest on the part of Defendants' counsel, let alone to leave the official-capacity claims against Ellis, Riley, and the Councilmembers untouched on that basis.

Accordingly, it is RECOMMENDED that the claims against Ellis, Riley, and the Councilmembers in their official capacity be dismissed with prejudice.

IV. Plaintiffs' Federal Fair Housing Act Claims

The first claim in the Complaint asserts that Defendants violated Plaintiffs' rights under the FHA by discriminating in the sale of the Property and

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[14] The Fifth Circuit did not further expound on the potential for a conflict of interest upon rehearing the case en banc. 654 F.2d 304 (5th Cir. 1981) (en banc).

failing to make a reasonable accommodation in connection with the same. Complaint [doc. #1, p. 28]. In support of this claim, Plaintiffs allege various discriminatory conduct by Defendants, including refusing to sell the Property "because of the handicap of its intended residents" and "bow[ing] to the discriminatory animus of the community against protected individuals." *Id.* at p. 29.[15] Defendants argue that this claim should be dismissed for lack of Article III standing and failure to state a claim. Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 20-22]. Ellis, Riley, and the Councilmembers also assert qualified immunity. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 17-19]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 20-21].

a. Constitutional Standing to Bring an FHA Claim

Defendants argue that the FHA claim should be dismissed for lack of Article III standing. Memorandum in Support of the City's M/Dismiss [doc.

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[15] Plaintiffs further assert that Defendants' discriminatory misconduct includes disparate treatment of Plaintiffs, bad faith breach of contract, refusing sale of the Property under false pretenses, violation or circumvention of federal and state law, failure to comply with governing rules, arbitrary imposition of procedural rules, manipulation of official minutes, denial of Plaintiffs' due process rights, "allowing prejudice to dictate the outcome of city council actions and inactions," failure to recuse, illegal and erroneous refusal of reasonable accommodation, and establishment of discriminatory policies. *Id.*

#18-1, pp. 13-15].[16] Constitutional standing requires a plaintiff to establish injury, causation, and redressability. *Lincoln v. Case*, 340 F.3d 283, 289 (5th Cir. 2003).[17] The FHA prohibits discrimination "in the sale or rental" and "in the terms, conditions, or privileges of sale" of dwellings, as well as conduct that otherwise "make[s] unavailable or den[ies]" purchase of dwellings because of a handicap of the buyer, the person intending to reside in the dwelling after sale, or any person associated with the buyer. 42 U.S.C. § 3604(f).[18] "Aggrieved persons" are empowered to bring

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[16] Standing to bring an FHA claim also requires prudential standing, *see Bank of America Corp. v. City of Miami*, 581 U.S. 189, 196-97 (2017) (applying 'zone of interest' prudential standing analysis to FHA claim); *but see Joiner v. Rosemonts at Mission Trails*, No. 3:19-cv-142, 2019 WL 1410728 (N.D.Tex. Feb. 25, 2019) ("[T]he sole requirement for standing under [the FHA] is the Article III minima of injury in fact." (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982)), but Defendants did not move to dismiss on this basis. Therefore, the undersigned's analysis is limited to constitutional standing.

[17] This argument is properly analyzed under Federal Rule of Civil Procedure 12(b)(1). *See supra* section I.a.

[18] The Fifth Circuit has held this statutory language proscribes discrimination in two contexts: the sale or rental of a dwelling and otherwise making unavailable or denying a dwelling. *Meadowbriar Home for Child., Inc. v. Gunn*, 81 F.3d 521, 531 (5th Cir. 1996). The *Meadowbriar* court also held that for a defendant-official's actions to violate the FHA, she must have the authority to make a dwelling unavailable. *Id.* "Discrimination" under the statute includes, *inter alia*, "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person" use of a dwelling. 42 U.S.C. § 3604(f)(3)(B).

civil actions under the statute. *Id.* at § 3613(a).[19] Accordingly, to prove constitutional standing under the FHA, a putative plaintiff must establish that they were actually injured by the putative defendant's discriminatory conduct in a manner that can likely be redressed under that statute.

Here, it is sufficiently alleged that Plaintiffs sustained actual injuries including, *inter alia*, expenditure of time and resources, lost profits, and loss of business opportunities. *See* Complaint [doc. #1, pp. 13, 26]. These injuries are reasonably traceable to the alleged discriminatory conduct of Defendants (i.e., allegedly imposing roadblocks to purchase of the Property not mandated by law and denying Plaintiffs' purchase of the Property based upon the handicapped status of the Facility's intended residents). *See id.* at pp. 12-27. Finally, the injuries can be redressed by an award of actual and punitive damages after a favorable outcome. *See id.* at p. 30. These allegations leave the door open for Plaintiffs to prove facts in support of their claim entitling them to relief. Under these circumstances, it would be inappropriate to dismiss Plaintiffs' FHA claim for lack of constitutional standing.

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[19] Aggrieved persons include any person who (1) claims to have been injured by a discriminatory housing practice or (2) believes that such person will be injured by an imminent discriminatory housing practice. *Id.* at § 3602(i). If a court finds that a discriminatory practice occurred, the plaintiff may be awarded actual and punitive damages, injunctive relief, fees, and costs. *Id.* at § 3613(c).

Defendants cite *Berry v. Jefferson Parish* in support of the proposition that it is impossible to show damages under the FHA until an underlying breach of contract action is resolved. 326 F.App'x 748 (5th Cir. 2009); *see also* Memorandum in Support of the City's M/Dismiss [doc. #18-1, p. 14]. Critically, the *Berry* plaintiffs based their claim on 42 U.S.C. § 3604(a) – a section of the FHA not invoked by Plaintiffs here – that specifically requires putative defendants to either refuse to either make a *bona fide* offer or negotiate entirely. *Berry v. Parish of Jefferson*, No. 07-6551, 2008 WL 11439353, at *5 (E.D.La. May 23, 2008). In other words, the law at issue in *Berry* was concerned with contract law in a way that Plaintiff's FHA claim here is not. Furthermore, § 3604(a) is concerned with discrimination based on race, color, religion, sex, familial status, or national origin. This is not the case with § 3604(f), which prohibits discrimination based on handicap. *Berry* is further distinguishable from the instant action as the underlying contract dispute there was being litigated in state court, while here Plaintiffs' breach of contract claim is before this court in concert with the FHA claim. *See Berry*, 326 F.App'x at 750. Finally, Defendants' argument that injuries under the FHA are speculative because there was a long chain of contingent events that had to occur prior to closing on the Property, *see* Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 14-15], does not address the basic allegation underlying Plaintiffs' FHA claim: Defendants' alleged discrimination led to the injuries described above irrespective of the deal's proximity to closing.

Accordingly, it is RECOMMENDED that the

motions be denied to the extent they seek dismissal of the FHA claim for lack of constitutional standing.

b. Sufficiency of FHA Claim Pleadings

Even if Plaintiffs have standing, Defendants contend that they have failed to sufficiently plead that any relevant individuals are members of a protected class or that the Property is available to other prospective buyers. Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 19-20]. On that basis, Defendants move for dismissal of the FHA claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

To state a claim under § 3604(f),[20] a plaintiff-buyer must show that (1) the plaintiff-buyer, a current or intended resident, or an associate of the plaintiff-buyer is a member of a protected class (i.e., handicapped); (2) the plaintiff-buyer applied for or is qualified to purchase the relevant dwelling; (3) the plaintiff-buyer was rejected; and (4) the housing

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[20] Plaintiffs cite to 42 U.S.C. § 3604 generally when lodging their FHA claim. Complaint [doc. # 1, p. 28]. However, the undersigned interprets the claim to be under § 3504(f) specifically as the language Plaintiffs invoke in describing the alleged FHA violations are drawn from that section. *Compare, e.g.,* Complaint [doc. #1, p. 28] ("The Fair Housing Act provides that it is illegal to discriminate in the sale or otherwise make unavailable or deny a dwelling to any buyer because of a handicap of a person intending to reside in that dwelling after it is sold.") *with* 42 U.S.C. § 3504(f)(1)(B) (It is unlawful "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap because of a handicap of a person . . . intending to reside in that dwelling after it is so sold. . . .").

remains available to other similarly situated potential purchasers after the rejection. *See Petrello v. Prucka*, 484 F.App'x 939, 942 (5th Cir. 2012) (enunciating this standard as the prima facia case for a § 3604(f) claim); *see also* 42 U.S.C. § 3604(f)(1)-(2) (indicating cause of action may arise from discrimination based on handicap of a plaintiff-buyer, putative resident, or associate of the plaintiff-buyer).

Under the FHA, "handicap" means "a physical or mental impairment which substantially limits one or more" of a person's major life activities. 42 U.S.C. § 3602(h). The Fifth Circuit has held that "[p]articipation in a supervised drug rehabilitation program, coupled with non-use, meets the definition of handicapped" under the FHA. *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 804 (5th Cir. 1994), *aff'd sub nom. City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995). The admissions criteria for future residents of a group home may also evidence handicapped status. *See Harmony Haus Westlake, L.L.C. v. Parkstone Prop. Owners Ass'n*, 851 F.App'x 461, 465 (5th Cir. 2021) ("Because future residents must be admitted to, and complete, an in-patient treatment program, they will be considered handicapped under the FHA.").

Defendants argue that Plaintiffs have insufficiently pleaded the first and fourth prongs of the § 3604(f) standard. As to the first prong, Plaintiffs have sufficiently pleaded that intended residents of the Facility are handicapped. The Facility is described as a "clinically managed residential treatment facility" whose residents will be required "to always remain

sober." Complaint [doc. #1, pp. 8-9]. This is a near-perfect recitation of the *City of Edmonds* definition of handicapped under the FHA. Furthermore, individuals are required to "complet[e] intensive inpatient treatment for substance abuse" prior to residing at the Property. *Id.* at p. 9. This criterion neatly echoes the requirement cited by the Fifth Circuit in *Harmony Haus*. As a general matter, the Fifth Circuit has observed that the risk of relapse poses a substantial limitation on an individual's ability to care for themselves; an individual's "ability to care for themselves while living at [a group recovery home] does not eliminate their 'handicapped' status and protection under the FHA." *Harmony Haus*, 851 F.App'x at 464. Thus, Plaintiffs have sufficiently pleaded that intended residents of the Facility are members of a protected class subject to FHA protection.

At the 'Remains Available' prong, Plaintiffs' pleadings fall short. The Complaint fails to make a plausible showing that the Property remains available to other similarly situated potential purchasers. Plaintiffs never explicitly plead that the Property remains available to other purchasers (although there is no need to invoke 'totemic' words to satisfy the pleading standard). Nor do Plaintiffs allege that the City, its agents, or its officers have made the Property available to such purchasers. As Plaintiffs admit, under state law, the decision to sell surplus property must be made by the "governing authority." Opposition to Defendant City's M/Dismiss [doc. # 18, p. 28]; *see also* LA. REV. STAT. § 33:4712(A) ("A municipality may sell . . . any property . . . which is, in the opinion

of the governing authority, not needed for public purposes."). Plaintiffs have not pleaded that the governing authority – the Council – has approved sale of the Property. In fact, Plaintiffs have pleaded that the governing authority has *not* approved sale of the Property. *See* Complaint [doc. #1, p. 22] (alleging Defendants "den[ied] the sale of the [P]roperty to" Plaintiffs). Indeed, Plaintiffs admit that the Council never introduced an ordinance allowing the property to be offered for sale. *See* Complaint [doc. #1, p. 21] (alleging the motion to introduce the motion to introduce the Ordinance failed for lack of being seconded). Thus, Plaintiffs have thus failed to plead sufficient factual matter to state a claim for relief under § 3604(f).

The undersigned has also considered whether Plaintiffs can proceed under § 3604(f)'s prohibition against "refusal to make reasonable accommodations in rules, policies, practices, or services." 42 U.S.C. § 3604(f)(3)(B).[21] Plaintiffs specifically cite this form of discrimination as one instance among many of misconduct supporting their FHA claim. *See* Complaint [doc. #1, p. 29] ("Plaintiffs specifically reiterate that such discriminatory misconduct includes . . . illegally and erroneously refusing a request for reasonable accommodation."). The invocation of a failure to accommodate is relevant as this cause of

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[21] Defendants mainly argue that Plaintiffs have insufficiently alleged facts to support their ADA and RA failure-to-accommodate claims. However, Defendants briefly invoke the Plaintiffs' failure-to-accommodate claim under the *FHA*. In an abundance of caution, the undersigned has analyzed that claim.

action has a test distinct from the generalized § 3604(f) test analyzed *supra*.[22]

A plaintiff bringing a failure-to-accommodate claim must demonstrate that (1) the residents of the affected dwelling suffer from a disability, (2) they requested an accommodation from the defendant, (3) the requested accommodation was reasonable, and (4) the requested accommodation was necessary to afford the residents equal opportunity to use and enjoy the dwelling. *Women's Elevate Sober Living L.L.C. v. City of Plano*, No. 22-40637, 2023 WL 8014228, at *2 (5th Cir. Nov. 20, 2023).

Plaintiffs also fail to sufficiently plead both the third and fourth elements of this test. The pleadings are devoid of any detail as to what accommodation Plaintiffs requested. The Complaint contains only the general allegation that Plaintiffs submitted a letter to the City which "requested reasonable accommodation under the [FHA] and concluded by requesting the City to advise whether addition[al] information was necessary prior to the City acting on applicants' request for reasonable accommodation." Complaint

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[22] While Defendants do not specifically challenge the sufficiency of the reasonable accommodation claim, Ellis, Riley, and the Councilmembers argue that Plaintiffs have failed to establish any violation under that statute. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 15-17]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 18-19]. Accordingly, it is appropriate to analyze whether a failure-to-accommodate violation of the FHA has been sufficiently pleaded.

[doc. #1, p. 19]; *see also* October 31 Letter [doc. #24-13]. There are no allegations concerning which "rules, policies, practices, or services" Plaintiffs requested accommodation for, nor what form the proposed accommodation would have taken. Absent such allegations, it is impossible to establish that the requested accommodation was plausibly reasonable or necessary. Plaintiffs have thus failed to plead sufficient factual matter to state a failure-to-accommodate claim that is plausible on the face of the Complaint.[23]

Accordingly, it is RECOMMENDED that Defendants' motion be granted to the extent that it seeks to dismiss Plaintiffs' FHA claim.[24]

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[23] The undersigned further observes that in the case of Ellis, Riley, or the Councilmembers, there are no allegations that these defendants have the authority to grant a reasonable accommodation. To be liable for a failure-to-accommodate claim, a defendant-official must have authority to grant that requested accommodation. *Cf. Meadowbriar*, 81 F.3d at 531 (holding that for a defendant-official's actions to violate the FHA, she must have the authority to make a dwelling unavailable).

[24] As Legacy Recovery has failed to state an FHA claim, the undersigned need not reach whether Ellis, Riley, or the Councilmembers are entitled to qualified immunity as to that cause of action. *See* Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 15-17]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 18-19].

V. Plaintiff's Americans with Disabilities Act and Rehabilitation Act Claims

Plaintiffs next assert claim are under the ADA, 42 U.S.C. § 12132, and the RA, 29 U.S.C. § 794(a). Complaint [doc. #1, pp. 30-34]. Plaintiffs allege that Defendants violated those laws by, *inter alia*, imposing procedural barriers against Plaintiffs' purchase of the Property and denying potential residents of the Facility access to treatment. *Id.* Defendants argue that these claims should be dismissed for lack of prudential standing and failure to state a reasonable accommodation claim. Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 16- 18, 20-22]. Ellis, Riley, and the Councilmembers further argue that they are not subject to individual liability under either of these statutes. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 17-18]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 19-20].

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 such entity." 42 U.S.C. § 12132.[25] Section 504 of the RA prohibits exclusion of qualified

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[25] Under the ADA, "qualified individual" refers to an individual with a disability who, with or without reasonable modifications to policies or facilities, meets the requirements for the receipt of services or the participation in programs provided by a public entity. *Id.* at § 12131(2).

individuals from participation in, denial of, or subjection to discrimination under any program receiving federal financial assistance. 29 U.S.C. § 794(a).[26] The Fifth Circuit utilizes the same liability standard for both the ADA and the RA. *See, e.g.*, *D.A. ex rel. Latasha A. v. Houston Indep. Sch. Dist.*, 629 F.3d 450, 453 (5th Cir. 2010) ("Because this court has equated liability standards under [the RA] and the ADA, we evaluate [claims] under the statutes together."); *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 287-88 (5th Cir. 2005) (en banc) ("This circuit, as well as others, has noted that, because the rights and remedies under both [the ADA and RA] are the same, case law interpreting one statute can be applied to the other."). To state a generalized claim under the two acts, a plaintiff must sufficiently plead that (1) the plaintiff is a qualified individual; (2) he is being excluded from participation in, or denied the benefits of, services, programs, or activities for which the defendant-public entity is responsible or is otherwise being discriminated against by the defendant-public entity; and (3) the discriminatory conduct of the defendant-public entity is by reason of the plaintiff's disability. *See J.W. v. Paley*, 81 F.4th 440, 449 (5th Cir. 2023) (enunciating the above standard as the prima facie ADA and RA case at summary judgment).

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[26] Under the RA, a qualified individual (referred to as an "individual with a disability" by the statute) is an individual who (a) has a physical or mental impairment resulting in a substantial impediment to employment and (b) can benefit in terms of employment from vocational rehabilitation. *Id.* at § 705(20)(A).

a. Prudential Standing

Defendants argue that Plaintiffs lack prudential standing to bring their ADA and RA claims. Memorandum in Support of the City's M/Dismiss [doc. # 18-1, pp. 9-11]. Plaintiffs counter that Congress has abrogated prudential standing requirements for both acts, allowing standing under the ADA and the RA to the full extent permitted by Article III. Opposition to the City's M/Dismiss [doc. #24, pp. 15-16].

The Fifth Circuit has not explicitly stated whether the ADA and RA are subject to prudential standing requirements. Accordingly, the undersigned looks to statutory language and persuasive authority to determine whether to impose prudential requirements on Plaintiffs' ADA and RA claims. The ADA explicitly makes the remedies, procedures, and rights promulgated by the statute available to "*any person* alleging discrimination . . . in violation of § 12132." 42 U.S.C. § 12133 (emphasis added). The RA similarly provides "*any person* aggrieved by any act or failure to act by any recipient of assistance . . . under section 794" access to the remedies, procedures, and rights created by the act. 29 U.S.C. § 794a(2) (emphasis added). Neither law imposes a requirement that the person alleging discrimination must himself be a qualified individual (i.e., be handicapped). The use of "any person" without qualification indicates Congressional intent to allow a class of litigants beyond just qualified individuals to bring claims under both acts.

While the Fifth Circuit has not spoken on this

issue, other circuits have explicitly held that the ADA and RA are not subject to prudential standing requirements. *See, e.g.*, *Fulton v. Good*, 591 F.3d 37, 42 (2d Cir. 2009) ("Because of the breadth of [§§ 12133 and 794a(2)], we have held that ADA and [RA] actions are not subject to any of the prudential limitations on standing that apply in other contexts."); *MX Group, Inc. v. City of Covington*, 293 F.3d 326, 332-36 (6th Cir. 2002) (holding that the broad language of ADA and RA enforcement provisions evinces congressional intent to define standing under those statutes to the full extent permitted by Article III). Courts in sister districts within the Fifth Circuit have also adopted this view. *See, e.g.*, *McCoy v. Texas Dept. of Crim. Just.*, No. C-05-370, 2006 WL 2331055, at *6 (S.D.Tex. Aug. 9, 2006) (adopting *MX Group* holding regarding ADA and RA standing); *Brister v. Fed. Bureau of Prisons*, No. 5:19-CV-00088, 2020 WL 6494200, at *5 n.5 (E.D.Tex. May 11, 2020) (adopting *Fulton* holding regarding ADA and RA standing), *report and recommendation adopted* 2020 WL 44996-8 (E.D.Tex. Aug. 5, 2020). Relying on the statutory language and agreeing with the persuasive authority, the undersigned finds that Plaintiffs' ADA and RA claims should be dismissed on this basis.

Accordingly, it is RECOMMENDED that the motions be denied to the extent they challenge Plaintiffs' prudential standing to bring their ADA and RA claims.

b. Sufficiency of ADA and RA Failure-to-Accommodate Pleadings

Defendants also assert that Plaintiffs' failure-to-accommodate claims under the ADA and RA should be dismissed for failure to state a claim. Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 13-15].

Under the ADA, a plaintiff may assert a claim for failure to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual." 42 U.S.C. § 12112(b)(5)(A).[27] [28] To survive a motion to dismiss, a plaintiff bringing a failure-to-accommodate claim must sufficiently plead that (a) he is a qualified individual with a disability; (b) the disability and its consequential limitations were known by the covered entity; and (c) the entity failed to make reasonable accommodations. *Sligh*, 2023 WL 8074256, at *7 (citing *Ball*, 792 F.3d at 596 n.9).

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[27] While this particular provision is under Title I of the ADA – which concerns employment – the Fifth Circuit has applied it outside of the employment context. *See, e.g.*, *Ball v. LeBlanc*, 792 F.3d 584, 596 n.9 (5th Cir. 2015) (citing employment failure-to-accommodate statute in case with prisoner plaintiff).

[28] As noted *supra*, the Fifth Circuit has endorsed adjudicating ADA and RA claims together. *See, e.g., Sligh v. City of Conroe*, No. 22-40518, 2023 WL 8074256, at *7-8 (5th Cir. Nov. 21, 2023) (applying standards promulgated for ADA claims to both the ADA and RA). The undersigned thus utilizes caselaw discussing failure-to-accommodate claims under the ADA to analyze the sufficiency of Plaintiffs' claim under both that act and the RA.

Here, there are no pleadings that Plaintiffs are qualified individuals with disabilities. While there are numerous allegations concerning the disabilities of prospective residents of the Facility, those speculative individuals are not a party to the instant matter, nor do Plaintiffs claim to represent them. It is self-evident that, if Plaintiffs do not have a disability, there is no way for Defendants to be aware of such a disability; Plaintiffs certainly have not pleaded any such awareness. Absent allegations that Plaintiffs have a disability that Defendants are aware of, Plaintiffs' failure-to-accommodate claims under the ADA or RA cannot proceed.[29]

Accordingly, it is RECOMMENDED that Defendants' motion to dismiss be granted to the extent that it pertains to Plaintiffs' purported ADA and RA failure-to-accommodate claims.[30]

c. Individual Liability under the ADA and RA

Defendants also move to dismiss claims against

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[29] The undersigned also notes that the Complaint alleges that the reasonable accommodation was specifically sought pursuant to the FHA alone. *See* Complaint [doc. #1, p. 19] ("Plaintiffs' letter further requested reasonable accommodation under the Fair Housing Act . . . .").

[30] Plaintiffs have predicated their ADA and RA claims on numerous other theories as well. *See* Complaint [doc. #1, pp. 31-34]. Defendants have not challenged the sufficiency of the pleadings supporting Plaintiffs' ADA and RA claims generally. Therefore, it would be inappropriate to adjudicate the sufficiency of these pleadings at this procedural juncture.

Ellis, Riley, and the Councilmembers in their individual capacity.[31] Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16- 1, p. 17-18]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 19-20].

The Fifth Circuit has held that plaintiffs cannot sue defendants in their individual capacity under the ADA or RA. *Lollar v. Baker*, 196 F.3d 603, 608-09 (5th Cir. 1999) (holding employee of entity receiving federal assistance could not be held individually liable under RA); *Alsbrook v. City of Maumelle*, 184 F.3d 999, 1005 n.8 (5th Cir. 1999) (en banc) (endorsing appellate panel's conclusion that defendants "may not be sued in their individual capacities directly under the provisions of Title II [of the ADA]."). Plaintiffs concede this. Opposition to Defendant Councilmembers' M/Dismiss [doc. #25, p. 20] ("The councilmembers are correct in that the ADA and RA does [sic] not impose direct individual liability on the councilmembers."). That, then, should be the end of things: Ellis, Riley, and Councilmembers cannot be held liable in their individual capacities under either the ADA or RA.

Nonetheless, Plaintiffs contend that the City is vicariously liable for the alleged discrimination

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[31] This argument is ostensibly couched as a predicate for qualified immunity. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, p. 17-18]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 19-20]. Because Ellis, Riley, and Councilmembers cannot be held individually liable under the ADA or RA, *see infra*, there is no need to conduct qualified immunity analysis.

exhibited by individual councilmembers, so the ADA and RA claims should be allowed to proceed on that basis. *Id.* While it is true that public entities may be "liable for the vicarious acts of any of its employees as specifically provided by the ADA," *Delano-Pyle v. Victoria Cty.*, 302 F.3d 567, 574-75 (5th Cir. 2002), that such liability is against the municipality, not its employees or agents. Therefore, the individual defendants are entitled to dismissal of the ADA and RA claims against them.

It is RECOMMENDED that the ADA and RA claims against Ellis, Riley, and Councilmembers in their individual capacities be dismissed with prejudice.

VI. Affordable Care Act Claims

Plaintiffs' next assert claims under the ACA that Defendants allegedly discriminated against "the intended residents" of the Facility by denying them "the benefits of federal funding secured by" the Section 1115 Waiver. Complaint [doc. #1, pp. 34-35]. Liability under the *ACA* is further predicated on Defendants' liability under the *ADA*. *Id.* Plaintiffs bring this claim against all Defendants, who seek dismissal on the basis that they are not subject to liability under the ACA. Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 22-23]; Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 18-19]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 20-21].

The ACA prohibits exclusion of, denial of benefits to, or subjection to discrimination under "any

health program or activity" funded by federal dollars. 42 U.S.C. § 18116(a). Individuals protected by the RA are also covered by this prohibition. *Id.*; *see also* 29 U.S.C. § 794; *Francois v. Our Lady of the Lake Hosp., Inc.*, 8 F.4th 370, 378 (5th Cir. 2021) ("For disability-discrimination claims, the ACA incorporates the substantive analytical framework of the RA."). To sufficiently plead a claim under § 18116(a), a plaintiff must show that (1) he has a qualified disability; (2) he is being excluded from participation in, denied the benefits of, or otherwise discriminated against by a covered entity; and (3) such discrimination is by reason of his disability. *See Francois*, 8 F.4th at 378 (enunciating this standard as the prima facie case for an ACA claim at summary judgment).

As "health program or activity" is not defined by the ACA, the statute itself does not state what entities are covered by § 18116; this is to say that the statute itself does not clarify what a "covered entity" is under the pleading standard. However, related regulations and relevant caselaw provide guidance. Department of Health and Human Services ("HHS") regulations[32] specify that "'health program or activity' encompasses all of the operations of entities principally engaged in the business of providing healthcare." 45 C.F.R. § 92.3(b) (2022). The regulation goes on to say that "for an entity not principally engaged in the business of providing healthcare," the ACA's non-discrimination

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[32] The Secretary of HHS has authority to issue regulations to implement 42 U.S.C. § 18116 under subsection (c) of that statute.

requirements apply to the entity's operations "only to the extent any such operation received Federal assistance" provided by HHS. *Id.*; *see also id.* at § 92.3(a)(1) (declaring scope of regulation applies to "[a]ny health program or activity, any part of which is receiving Federal financial assistance . . . provided by [HHS]."). In line with these regulations, courts in the Fifth Circuit have interpreted receipt of federal healthcare funding as a prerequisite to liability under the ACA. *See Joganik v. E. Tex. Med. Ctr.*, No. 6:19-CV-517, 2021 WL 6694455, at *11 (E.D.Tex. Dec. 14, 2021) (finding judicially-noticed evidence that defendant accepted Medicaid and Medicare sufficient to show defendant was a healthcare program receiving federal funding), *report and recommendation adopted*, 2022 WL 243886 (E.D.Tex. Jan. 25, 2022); *see also Esparza v. Univ. Med. Ctr. Mgmt. Corp.*, No. 17-4803, 2017 WL 4791185, at *8 n.39 (E.D.La. Oct. 24, 2017) (observing that HHS regulations promulgated to implement § 18116 "follow the provision's clear text and note that an entity covered by [that section] includes '[a]n entity that operates a health program or activity, any part of which receives Federal financial assistance.'" (quoting 45 C.F.R. § 92.4 (2016))).[33]

Plaintiffs argue that "[the Center for Medicare and Medicaid Services' ("CMS") decision granting, and

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[33] At the time of the *Esparza* decision, the definition of "covered entities" § 18116 was under 45 C.F.R. § 92.4. The provision containing this definition was changed to 45 C.F.R. § 92.3 in 2020. *See* Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authoritiy 85 Fed, Reg, 37,160(b)(1)(b) (June 19, 2020).

extending, Louisiana's Section 1115 request to waive restrictions on Medicaid funding [to residential substance abuse treatment facilities], such as [the Facility], qualified as [a] 'health program and activity.'" Opposition to the City's M/Dismiss [doc. #24, p. 33]. This assertion can be read one of two ways. To the extent that Louisiana sought a Section 1115 Waiver by CMS, neither the City nor any other Defendants are liable.[34] However, Plaintiffs assert that the Facility is the "covered entity" for purposes of its ACA claim. Even if this is accurate, the Facility's designation as a 'health program and activity' covered by the ACA does not create liability for Defendants. There are no allegations that the Facility or any associated entity has received the federal funding required to subject the program to the ACA's non-discrimination provision. Furthermore, at the risk of stating the obvious, Plaintiffs do not allege that the discrimination for which Defendants are putatively liable was committed by the Facility or its agents, nor have Plaintiffs alleged that the Facility is an instrumentality of Defendants that was used to commit the purported discrimination. Consequently, it would be improper to predicate ACA liability on the Facility's potential status as a covered entity.

Further, Plaintiffs do not explicitly argue that

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[34] Indeed, Defendants take the position that none of them are "covered entities" and are thus not subject to liability under the ACA. *See* Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 18-19]; Memorandum in Support of Council's M/Dismiss [doc. #17-1, pp. 20- 21]; Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 22-23].

Defendants are covered entities for purposes of the ACA or that Defendants are "principally engaged in the business of providing healthcare." While there are allegations that the City "receives federal assistance such as the Community Development Block Grant and Home Partnership Grant," these funds are – by the admission of Plaintiffs – provided by the Department of Housing and Urban Development, not HHS. Complaint [doc. #1, p. 35]; *see also Community Development Block Grant*, DEP'T OF HOUS. AND URBAN DEV., https://www.hudexchange.info/programs/cdbg/ (last visited Jan. 9, 2024); *Home Investment Partnership Program*, DEP'T OF HOUS. AND URBAN DEV., https://www.hud.gov/program offices/comm_planning/home (last visited Jan 9, 2024). This admission puts Defendants outside the scope of the relevant regulation. Plaintiffs have thus failed to sufficiently plead a plausible claim under the ACA.[35]

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[35] According to Plaintiffs, some courts require plaintiffs to plead a corresponding civil rights claim as a predicate to a claim under § 18116. Opposition to the City's M/Dismiss [doc. #24, p. 34]. They argue that the Councilmembers are liable under the ACA on the basis of FHA liability, while the City is vicariously liable for the Councilmembers' violations of the ADA and RA. Opposition to the Council's M/Dismiss [doc. #25, p. 21]. As discussed supra, the FHA claim, as well as the ADA and RA claims against Ellis, Riley, and the Councilmembers, have failed. Thus, Plaintiff's ACA cannot be predicated upon those causes of action. While some ADA and RA claims remain against the City, the mere existence of a predicate civil rights claim does not shield an ACA claim from dismissal. As the ACA claim is insufficiently pleaded, a defect that cannot be cured by the survival of other civil rights claims.

Accordingly, it is RECOMMENDED that Defendants' motion to dismiss be granted to the extent it challenges Plaintiffs' ACA claim.[36]

VII. Section 1983 Claims

Plaintiffs also assert claims under 42 U.S.C. § 1983 alleging Defendants violated Plaintiffs' rights arising under the FHA, ADA, RA, ACA, the Louisiana Constitution, and the Equal Protection and Due Process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution. Complaint [doc. #1, pp. 35-36]. Defendants challenge the claim on several bases, arguing Plaintiffs lack prudential standing to bring the claims, Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 16-18]; the due process claims fail as a matter of law, *id.* at pp. 23-29; Ellis, Riley, and the Councilmembers are not liable for unnamed violations of the Louisiana Constitution, Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, p. 19]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, p. 21]; Ellis, Riley, and the Councilmembers did not engage in the alleged illegal conduct and thus are not liable for it, Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 19-20]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, p. 22]; and the conduct of Ellis, Riley, and the

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[36] Ellis, Riley, and Councilmembers seek qualified immunity against the ACA claim. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 18-19]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 20-21]. The undersigned need not reach that argument.

Councilmembers was not unreasonable. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, p. 20]; Memorandum in Support of the Council's M/Dismiss [doc. #17- 1, p. 22].

Section 1983 provides that any person who, under color of state law, deprives another of "any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ." 42 U.S.C. § 1983. The statute does not create any substantive rights; it simply provides a remedy for the rights designated therein. *Harrington v. Harris*, 118 F.3d 359, 365 (5th Cir. 1997). "Thus, an underlying constitutional or statutory violation is a predicate to liability under § 1983." *Id.* (quoting *Johnston v. Harris Cnty. Flood Control Dist.*, 869 F.2d 1565, 1573 (5th Cir. 1989)).

A § 1983 suit may be brought against a party in that party's official or individual capacity, as well as against a government entity. *Goodman v. Harris Cnty.*, 571 F.3d 388, 395 (5th Cir. 2009) (citing *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 403 (1997)). An individual-capacity suit seeks to impose liability on a "government officer for actions taken under color of state law." *Hafer v. Melo*, 502 U.S. 21, 25, 112 S.Ct. 358 (1991). A plaintiff bringing an individual-capacity claim need only show that "the official, acting under color of state law, caused the [alleged] deprivation of a federal right." *Goodman*, 571 F.3d at 395 (5th Cir. 2009) (quoting *Graham*, 473 U.S. at 166). An official-capacity suit is generally "another way of pleading an action against an entity of which an officer is an

agent." *Goodman*, 571 F.3d at 395 (quoting *Monell*, 436 U.S. at 691 n.55). Therefore, an official-capacity suit is treated as a suit against the real party in interest—the government entity—and not against the official personally, *Graham*, 473 U.S. at 166, and is referred to as municipal liability or a *Monell* claim. *Edwards v. City of Balch Springs*, 70 F.4th 302, 307 (5th Cir. 2023). To succeed on a *Monell* claim, a plaintiff must prove that he was deprived of a federally protected right pursuant to an official municipal policy promulgated by the municipal policymaker that was the moving force behind the constitutional violation. *Id.*

a. Section 1983 Prudential Standing

Defendants' preliminary attack against Plaintiffs' § 1983 claims is based on a lack of prudential standing. Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 16-17]. As discussed *supra* in section I.b, prudential standing prohibits plaintiffs from litigating the legal rights of third parties; generalized grievances better addressed by the representative branches of government; and claims outside the zone of interest protected by the relevant statute. Insofar as § 1983 itself imposes prudential standing limitations, recourse under the statute is limited to those who have themselves been injured by violation of a federal right. *See* 42 U.S.C. § 1983 ("Every person who, under color of [law], subjects, or causes to be subjected [anyone in the jurisdiction of the United States] to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be *liable to the party injured* . . . ."

(emphasis added)). It should be reiterated that the rights at issue in a § 1983 claim arise not under that statute itself, but under a predicate Constitutional or statutory provision. *Harrington*, 118 F.3d at 365. For that reason, putative § 1983 plaintiffs must satisfy any prudential standing requirements imposed by the underlying provision that was allegedly violated. *See, e.g.*, *Nat'l Solid Waste Mgmt. Ass'n v. Pine Belt Solid Waste Mgmt. Auth.*, 389 F.3d 491 (5th Cir. 2004) (dismissing § 1983 claim alleging violation of the Dormant Commerce Clause in part for lack of standing under that constitutional provision).

Defendants specifically argue that Plaintiffs lack prudential standing because they seek to enforce the rights of third parties. Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 16-17]. This argument necessarily fails because Plaintiffs explicitly seek to enforce their own rights, not those of third parties. The controlling pleadings of the Complaint indicate that Defendants "illegally denied *plaintiffs* clearly established rights arising under" the FHA, ADA, RA, ACA, Louisiana Constitution, and U.S. Constitution. Complaint [doc. #1, p. 36] (emphasis added). In the case of the FHA, ADA, RA, and ACA claims, while Plaintiffs do indeed argue that third parties were subjected to discrimination, they further argue that this discrimination led to the deprivation of *Plaintiffs'* rights, not the rights of those third parties. *Id.* at p. 29 ("Defendants [violated] plaintiffs' rights under the [FHA] by refusing to sell the property and imposing additional procedures . . . on the sale because of the handicap of its intended residents . . . ."); *id.* at p. 31 ("The defendants have violated and continue to

violate the ADA by and through disparate treatment of plaintiffs . . . ."); *id.* at p. 33 ("Defendants have violated and are continuing to violate the RA by discriminating against plaintiff[s] and the intended residents of Legacy House . . . ."); *id.* at p. 34-35 (incorporating allegations concerning ADA and RA claims into ACA claim pleadings). Plaintiffs' claims under the Louisiana and federal constitutions are also supported by allegations that their relevant rights – not a third party's – were violated. *Id.* at p. 36 ("Plaintiffs have a distinctive and definite investment-backed expectation in their ability to use and enjoy the property and facility in accordance with their rights arising under the U.S. Constitution [and] constitution of Louisiana . . . .").

Accordingly, it is RECOMMENDED that the motions to dismiss be denied to the extent that they challenge the prudential standing of the § 1983 claims.

b. Section 1983 Based on the FHA and ACA

For the reasons previously stated, Plaintiffs have failed to state claims under the FHA and ACA. It is axiomatic that if a plaintiff has failed to make a showing that a statute was violated, then is impossible to sustain a § 1983 claim predicated on violation of that same law. Thus, Plaintiffs cannot support § 1983 claims against Ellis, Riley, the Councilmembers, or the City based on violations of the FHA or ACA.

Accordingly, it is RECOMMENDED that Defendants' motions be granted to the extent that they seek dismissal of the § 1983 claims predicated on

violations of the FHA and ACA.

c. Section 1983 Based on the ADA and RA

For the reasons previously stated, Plaintiffs cannot assert claims against Ellis, Riley, and the Councilmembers individually. Likewise, the City has successfully challenged Plaintiffs' reasonable accommodation theory of liability under the ADA and RA. Therefore , Plaintiffs cannot assert § 1983 claims based upon that theory under those statutes. However, the § 1983 ADA and RA claims against the City remain as Plaintiffs have pleaded other forms of discrimination giving rise to liability under those statutes. *See* Complaint [doc. #1, pp. 31-34]. As the City has challenged neither the remaining underlying theories of liability nor the § 1983 claims predicated upon them, these claims remain.

It is RECOMMENDED that Ellis, Riley, and the Councilmembers' motions be granted to the extent that they seek to dismiss § 1983 claims predicated on violations of the ADA and RA, and the City's motion be granted to the extent it seeks dismissal of the § 1983 claim based on ADA and RA failure-to-accommodate claims. It is FURTHER RECOMMENDED that the City's motion otherwise be denied as to the § 1983 claims predicated on the ADA and RA.

d. Section 1983 Fifth Amendment Claim

Plaintiffs allege that "[t]he discriminatory decisions of defendants also violated plaintiffs' right to procedural and substantive due process guaranteed

by" the Fifth Amendment. Complaint [doc. #1, p. 36]. In their opposition to the City's instant motion, Plaintiffs appear to clarify that this claim is predicated on the Takings Clause of the Fifth Amendment. *See* Opposition to the City's M/Dismiss [doc. #24, p. 37] ("Contracts are property and create vested rights which are subject to the Fifth Amendment takings clause as applied to the states by the Fourteenth Amendment.").[37] [38] The City challenges this claim on

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[37] Curiously, Plaintiffs include a table of contents in this filing that includes the label "Plaintiffs concede they have no valid Fifth Amendment claim." *Id.* at p. 2. As the text of the brief contradicts this, the undersigned conducts a full analysis under the assumption that this concession has not been made.

[38] The Takings Clause of the Fifth Amendment is distinct from the Due Process Clause of that same amendment. As noted, the undersigned interprets Plaintiffs' claims to arise under the Takings Clause. While the Complaint ostensibly presents the Fifth Amendment claim as arising under the Due Process Clause, the facts alleged do not preclude the claim from arising under the Takings Clause. *See* Complaint [doc. #1, p. 36] (describing Defendants as violating the Fifth Amendment "by arbitrarily and irrationally interfering with the legally permitted, economically beneficial use of the property by plaintiffs."). Plaintiffs' embrace of a Takings Clause argument in its opposition to the instant motions tends to indicate that the claim in fact arises under that provision. *See* Opposition to the City's M/Dismiss [doc. #24, p. 37]. Furthermore, the Supreme Court has endorsed analyzing putative right violations under constitutional provisions that are more narrowly tailored to address the implicated right than the broad sweep of a due process claim. *Cf. Graham v. Connor*, 490 U.S. 386, 395 (1989) ("Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process,' must be

the basis that Plaintiffs have failed to establish that they ever had a property interest in the Property. Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 24-26]. Ellis, Riley, and the Councilmembers contest the claim on the basis that Plaintiffs did not specifically plead that the alleged violation occurred through each individual defendant's own actions. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 19-20]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 21-22].

The Fifth Amendment dictates that "private property [shall not] be taken for public use, without just compensation." U.S. CONST. amend. V. This clause is made applicable to the States through the Fourteenth Amendment. *Murr v. Wisconsin*, 582 U.S. 383, 392 (2017). "Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to 'existing rules or understandings that stem from an independent source such as state law.'" *Phillips v. Washington Legal Found.*, 524 U.S. 156, 164 (1998) (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)).

Under Louisiana law, "private things are owned by individuals, other private persons and by the state

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the guide for analyzing these claims.") Finally, the dispositive inquiry under either the Takings Clause or the Due Process Clause is whether a cognizable property interest exists. As established *infra*, there is no such property interest, so Plaintiffs' claim fails in any event.

or its political subdivisions in their capacity as private persons," LA. CIV. CODE art. 453, while "public things are owned by the state or its political subdivisions in their capacity as public persons." *Id.* at art. 450. Thus, private property for the purposes of the Fifth Amendment in the instant case is property defined as a "private thing" under Louisiana law.

The parties appear to argue past each other as to what property the relevant interest accrues in. The City contends it is the Property, Memorandum in Support of the City's M/Dismiss [doc. #18-1, p. 26]; Reply to Opposition to the City's M/Dismiss [doc. #31, p. 8], while Plaintiffs argue that it is the Contract. Opposition to the City's M/Dismiss [doc. #24, p. 37].

Plaintiffs have failed to establish a taking of the Property. It is uncontested that the Property is owned by the City. *See* Complaint [doc. #1, p. 11] ("Sullivan offered to purchase the property from the City of Monroe . . . ."). The City is a political subdivision of the State of Louisiana. *Id.* at p. 3 ("City of Monroe, Louisiana . . . a municipal corporation and political subdivision organized and operated under the laws of the State of Louisiana."). Sale of the Property must be approved by the Council. *Supra* section IV.b. The Council never approved such a sale, so the City retains ownership of the Property.[39] Accordingly, the Property

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[39] The purchase agreement signed by Sullivan and the Director of Administrative of the City is subject to approval by the Council. Contract [doc. #16-3, p. 8] ("If the Monroe City Council does not approve the sale of the [Property] or the Purchase Price, then this agreement shall be null and void and the deposit

is a "public thing" under Louisiana law, incapable of being taken under the Fifth Amendment. It would thus be improper to find that Legacy Recovery plausibly pleaded that any of the Defendants violated the Fifth Amendment by taking the Property.

Plaintiffs similarly fail to sufficiently plead a taking of the Contract. Plaintiffs assert that "[t]he Louisiana Supreme Court has recognized even an unrecorded purchase agreement is a compensable property interest." Opposition to the City's M/Dismiss [doc. #24, p. 37]. This is both a misstatement of the law and an improper application of it. The authority cited in support of this proposition resolved the question of whether a lessor with an unexecuted lease had a right to intervene in the sale of a private property being purchased by the State. *See State Dep't of Transp. and Dev. v. Jacob*, 483 So.2d 592, 595 (La. 1986) ("The issue is simply whether the intervenor had property and whether the State has taken it from the intervenor without compensating him."). The *Jacob* court ultimately endorsed the rule that "a leasehold interest in land is a property right" entitled to compensation. 483 So.2d at 595-96. This situation does not stand for the proposition that "an unrecorded purchase agreement is a compensable property interest." Nor are the facts in *Jacob* substantively representative of those in the instant matter. As established *supra*, the Property is publicly owned, not

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returned to [Legacy Recovery]."). The Council did not approve the sale. Indeed, Legacy Recovery explicitly pleads that the City has "refus[ed] to sell the [P]roperty." Complaint [doc. #1, p. 43].

privately held; the Property is being purchased from a State entity, not by a State entity; and Plaintiffs do not allege that they are lessors of the Property. Plaintiffs have failed to establish either that they have a compensable property interest in the Contract or that the Contract creates a compensable property interest in the Property itself.

Plaintiffs have thus failed to plausibly plead a violation of the Fifth Amendment. On that basis, it would be improper to grant them relief under § 1983 for a violation of that same constitutional provision.

Accordingly, it is RECOMMENDED that the motions be granted to the extent that they challenge the § 1983 claims predicated on violations of the Fifth Amendment.[40]

e. Section 1983 Fourteenth Amendment Claims

Plaintiffs allege that "[t]he discriminatory decisions of defendants also violated [their] right to procedural and substantive due process guaranteed by" the Fourteenth Amendment. Complaint [doc. #1, p. 36]. Ellis, Riley, and the Councilmembers contest the claims on the basis that Plaintiffs did not specifically plead that the alleged violations occurred through each individual defendant's own actions. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp.

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[40] Defendants do not challenge Plaintiffs' putative equal protection claim under the Fifth Amendment. Thus, that claim remains untouched by the instant motions.

19-20]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, pp. 21-22]. The City argues that the substantive due process claim fails as Plaintiffs have not established a property interest in the Property, while the procedural due process claim fails as the proper procedure was followed concerning the various motions surrounding disposition of the Property. Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 26-29]. The undersigned analyzes the substantive due process claim before turning to its procedural counterpart.

i. Substantive Due Process

The Fourteenth Amendment dictates that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. Violations of due process protected by this amendment may either be substantive or procedural in nature. For a plaintiff to prevail on a substantive due process claim concerning property, a plaintiff must first establish that he held a property right protected by the Fourteenth Amendment. *Da Vinci Inv., Ltd. P'ship v. Parker*, 622 F.App'x 367, 374 (5th Cir. 2015). In addition to traditional property interests (e.g., ownership), a property interest may accrue in a benefit to which the plaintiff has a legitimate entitlement. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005). Relevant entitlements are created and defined by existing rules or understandings that "stem from an independent source such as state law." *Id.* If a benefit may be granted or denied at the discretion of government officials, it is not an entitlement. *Id.* To determine

whether conferral of a benefit is discretionary, courts look for "explicitly mandatory language," such as specific directives that require a particular outcome to follow the presence of specific predicates. *Ridgely v. FEMA*, 512 F.3d 727, 735-36 (5th Cir. 2008). The Fifth Circuit has warned that, because the Supreme Court "has always been reluctant to expand the concept of substantive due process, [courts must] apply the doctrine with the utmost care." *Conroe Creosoting Co. v. Montgomery Cnty.*, 249 F.3d 337, 341 (5th Cir. 2001) (quotations and citations omitted).

As described *supra* section VII.d, Plaintiffs do not have a property interest in the Property via either ownership or status as a lessor. Nor does it have a property interest by way of benefit. Disposition of the Property is a purely discretionary matter; Plaintiffs cite no provision of law explicitly requiring the Property to be sold.[41] As if to underline this point, Plaintiffs explicitly acknowledged the discretionary nature of the Property's sale in signing the Contract, which makes purchase contingent upon the Council's

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[41] Plaintiffs point to the directive in LA. REV. STAT. §33:4712 requiring public opposition to sale of public property to be in writing as "explicitly mandatory language." Opposition to the City's M/Dismiss [doc. #24, p. 39]. While this language is indeed explicitly mandatory, this fact is irrelevant to the instant analysis as it concerns the **process** by which a public property sale is conducted. What is relevant is whether the **underlying decision** to sell that public property (i.e., the Property) is governed by mandatory language. It is not. *See* LA. REV. STAT. § 33:4712(A) ("A municipality *may* sell . . . any property . . . which in the opinion of the governing authority [is] not needed for public purposes.") (emphasis added).

approval of the transaction. Contract [doc. #16-3, p. 8] ("If the [Council] does not approve the sale of the [Property] or the Purchase Price, then this agreement shall be null and void and the deposit returned to [Plaintiffs]."). Plaintiffs thus have no property interest on which to sustain a § 1983 claim to remedy violation of their substantive due process rights under the Fourteenth Amendment.

Accordingly, it is RECOMMENDED that the motions be granted to the extent that they challenge the § 1983 claims predicated on an alleged violation of Fourteenth Amendment substantive due process rights.

ii. Procedural Due Process

The Fourteenth Amendment guarantees procedural due process, which "imposes constraints on governmental decisions which deprive individuals of 'liberty'[42] or 'property' interests." *Mathews v. Eldridge*,

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[42] In its opposition briefing, Plaintiffs, for the first time, argue that Defendants violated liberty rights protected by the Fourteenth Amendment. Opposition to the City's M/Dismiss [doc. #24, pp. 37-38]. As a threshold matter, there are no pleadings contained in the Complaint that gesture towards such a claim. It would thus be improper to entertain this purported theory of harm. Furthermore, the case law Plaintiffs cite in support of the improperly raised claim is inapplicable to the current fact pattern. While *Board of Regents of State Colleges v. Roth* does indeed counsel that "where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential," this directive was specifically given in the context of discharge from

424 U.S. 319, 332 (1976). Procedural due process "is not a technical conception with a fixed content," but rather a flexible requirement that "calls for such procedural protections as the particular situation demands." *Jones v. Louisiana Bd. of Supervisors of Univ. of Louisiana Sys.*, 809 F.3d 231, 236 (5th Cir. 2015) (quotations and citations omitted). When evaluating whether a plaintiff was denied procedural due process, courts balance three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used and the probable value of alternative safeguards; and (3) the Government's interest, including the financial and administrative burdens of alternative procedures. *Walsh*, 975 F.3d at 482.

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state employment. 408 U.S. 564, 573 (1972) (quotation omitted). The Fifth Circuit has explicitly and repeatedly limited the *Roth* court's directive to the employment discharge context. *See, e.g., Rosenstein v. City of Dallas*, 876 F.2d 392, 395 (5th Cir. 1989) ("It is now beyond any doubt that discharge from public employment under circumstances that put the employee's reputation, honor or integrity at stake gives rise to a liberty interest under the Fourteenth Amendment to a procedural opportunity to clear one's name."); *Walsh v. Hodge*, 975 F.3d 475 (5th Cir. 2020) (applying due process liberty interest analysis to discharge of a university professor). Plaintiffs goes so far as to claim that the Ordinance and Contract "were publicly (and illegally) 'discharged,'" a clear misinterpretation of the controlling precedent. *See* Opposition to the City's M/Dismiss [doc. #24, p. 27]. The undersigned further observes that Plaintiffs couch this argument as supporting a substantive due process claim, but the argument clearly addresses procedural due process concerns. *See* Opposition to the City's M/Dismiss [doc. #24, p. 28] (describing alleged violation as "[r]efusing to allow plaintiffs a chance to publicly respond").

It is self-evident that the lack of a private interest will obliterate any basis on which to claim procedural due process was lacking: If a party does not hold a right, then that right cannot be violated. As established *supra*, Legacy Recovery holds no cognizable property interest in the Property or Contract, thus precluding a violation of its procedural due process rights.

Nonetheless, Legacy Recovery puts forth two arguments to assert that it holds a viable claim. First, Plaintiffs argue that the process by which the Ordinance was introduced implicated their due process rights. Opposition to the City's M/Dismiss [doc. #24, pp. 42-45]. This argument appears to be predicated on the notion that improper legislative procedures were followed in the introduction of the Ordinance. *Id.* However, there are no allegations that Plaintiffs held a property interest – be that a traditional property interest or an interest-by-benefit – in the Ordinance. Plaintiffs note that they and the public "have an important interest in the purchase agreement, in fair and orderly administration of municipal government, and in advancing the mission of Legacy House." *Id.* at p.44. Just because an interest is labeled "important" in pleadings does not make it a property interest capable of vindication under the Fourteenth Amendment. While plaintiffs can point to "mandatory" language concerning legislative procedure, *see id.* at pp. 43-44 (describing rules allegedly binding procedure of the Council), the cited language is irrelevant as the Ordinance cannot be characterized as a benefit. The Council may very well have failed to follow binding procedures during the September 13 and October 25

Meetings, but none of the procedures mandate conduct that implicates any property right conferred to or held by Plaintiffs. Accordingly, Plaintiffs have failed to establish a cognizable claim under the Fourteenth Amendment in relation to procedures associated with the Ordinance.

Plaintiffs' second argument is that they were denied procedural due process in relation to their request for reasonable accommodation under the FHA. Opposition to the City's M/Dismiss [doc. #24, pp. 45-46]. As established *supra* section V.b, the Complaint contains only barebones allegations concerning the request for reasonable accommodation and does not specify with any particularity what "rules, policies, practices, or services" were associated with the request. In the absence of these basic details, it is impossible to establish the existence of Plaintiffs' relevant interest, let alone the nature of that putative interest and thus the due process that was owed. The undersigned also notes that there are no allegations that Ellis, Riley, or the Councilmembers have any authority over the reasonable accommodation process, so in the event a violation associated with those processes is identified, it would be inappropriate to hold them liable on that basis. Plaintiffs have failed to establish a violation of the Fourteenth Amendment in relation to their request for reasonable accommodation.

Accordingly, it is RECOMMENDED that the motions be granted to the extent that they challenge Legacy Recovery's Fourteenth Amendment procedural

due process claim.[43]

f. Section 1983 Louisiana Constitution Claim

Plaintiffs' final § 1983 claim is predicated on alleged violation of "rights guaranteed by the Louisiana . . . Constitution." Complaint [doc. #1, p. 36]. Ellis, Riley, and the Councilmembers argue that this claim cannot be sustained as Plaintiffs "do not specify a single constitutional right" which was allegedly violated, nor how or when such violation occurred. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, p. 19]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, p. 21]. The City only challenges this § 1983 claim with its failed prudential standing argument. *See supra* section VII.a.

A review of the Complaint confirms that the pleadings are devoid of mentions of the specific provisions of the Louisiana Constitution allegedly violated by Defendants. Despite this, Plaintiffs insist that Defendants were "fairly notif[ied]" that they faced claims for alleged violations of Louisiana Constitution, Article I, Sections 2, 3, and 12, as well as Article 12, Section 3. Opposition to the Council's M/Dismiss [doc. #25, p. 22]. It would be improper to endorse this argument as none of the allegations in the Complaint specifically cite these provisions, nor is any of the

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[43] Defendants do not challenge Plaintiffs' putative equal protection claim under the Fourteenth Amendment. Thus, that claim remains untouched by the instant motions.

alleged misconduct described as a violation of any of the rights arising therefrom. *See* LA. CONST. art. I § 2 (guaranteeing due process of law); LA. CONST. art. I § 3 (guaranteeing individual dignity); LA. CONST. art. I § 12 (guaranteeing non-discrimination in public accommodations); LA. CONST. art. III § 3 (guaranteeing right to direct participation). While Plaintiffs do allege that their due process rights were violated, this is explicitly described as a violation of federally guaranteed rights. *See* Complaint [doc. #1, p. 36] ("The discriminatory decisions of defendants also violated plaintiffs' right to procedural and substantive due process guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution . . . ."). Furthermore, because the specific provisions of the Louisiana Constitution and thus the rights arising from the same are invoked in subsequent briefing, not the Complaint, it would be improper to consider such invocation part of Plaintiffs' pleadings. *See Jackson*, 959 F.3d at 204-05 (quoting *Tellabs, Inc.*, 551 U.S. at 322) (limiting pleadings to be analyzed at motion to dismiss stage to the contents of the complaint, documents incorporated into the complaint by reference, and matters of which the court may take judicial notice); *Estes v. JP Morgan Chase Bank, Nat. Ass'n*, 613 F.App'x 277, 280 (5th Cir. 2015) (holding district court did not err in declining to consider allegations first raised in opposition to motion to dismiss). As Legacy Recovery's pleadings are insufficiently particular to give rise to a claim under the Louisiana Constitution, they are also unable to support a § 1983 claim arising from that failed claim.

Accordingly, it is RECOMMENDED that the

motions be granted to the extent that they challenge Plaintiffs' claims arising from the Louisiana Constitution.

VIII. Louisiana's Open Meetings Law Claims

Plaintiffs allege that Ellis, Riley, and the Councilmembers are liable in tort for violations of Louisiana's Open Meeting Law. Complaint [doc. #1, pp. 39-40]. These Defendants counter that the claim is time-barred and otherwise inapplicable to Ellis and Riley. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 20-22]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, p. 23].

Louisiana law generally requires meetings of public bodies to be open to the public. LA. REV. STAT. § 42:14(A). "Public body" is defined under the statute as follows:

> [Any] village, town, and city governing authorities; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this paragraph.

Id. at § 42:13(A)(3). While provisions of the Open Meeting Law are construed liberally, *id.* at § 42:12, they do not cover gatherings of members of the public body "at which there is not vote or other action taken, including formal or informal polling of the members." *Id.* at § 42:13(B). Suits to void an action taken in violation of the statute or to impose civil penalties for the same must be instituted within sixty days of the violation. *Id.* at § 42:24, 28.

Defendants generally attack the Open Meeting Law claim as being instituted after the statutorily imposed sixty-day filing window. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, p. 20]; Memorandum in Support of the Council's M/Dismiss [doc. #17- 1, p. 23]. Plaintiffs counter that, because they do not seek to enforce the Open Meetings Law, but rather to recover damages in tort under article 2315 of the Louisiana Civil Code[44] for a violation of the statute, they were not bound to file within the statutory period. Opposition to the Council's M/Dismiss [doc. #25, pp. 26-27]; *see also* Complaint [doc. #1, p. 39].[45] Under Louisiana law, if two statutes conflict, then the "statute specifically directed to the matter at issue must prevail as an exception to" the more general statute. *Roberson-King v. La. Workforce*

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[44] Article 2315 declares that "[e]very act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."

[45] In further support of this argument, Plaintiffs point to the Open Meetings Law's directive to construe the statute liberally. Opposition to the Council's M/Dismiss [doc. #25, p. 26].

Comm'n, 904 F.3d 377, 380 (5th Cir. 2018) (quoting *Kennedy v. Kennedy*, 699 So.2d 351, 358 (La. 1996)); *see also Black v. St. Tammany Parish Hosp.*, 25 So.3d 711, 717-18 (La. 2009) (endorsing same judicial canon).

The state's legislature has developed a specific statutory scheme – the Open Meetings Law – concerning public access to government meetings. This includes a private right of action for those denied rights conferred under the law allowing for, *inter alia*, voidance of violative actions, injunctive relief, declaratory judgment, and civil penalties. LA. REV. STAT. § 42:24-26, 28. The statute also requires claims seeking to void violative actions or impose civil penalties to be filed within sixty days of the alleged violation. *Id.* at § 42:24, 28. Actions seeking other relief under the law are not statutorily subjected to this filing window. *See id.* at § 42:26. Conversely, Article 2315 does not specifically target public access to the workings of government, nor does it limit penalties or impose a tight filing deadline on claimants. The statutory limitation of remedies available under the Open Meetings Law would be all hat and no cattle if plaintiffs could simply invoke article 2315 as an end-run around them. *Cf. Gluck v. Casino Am., Inc.*, 20 F.Supp.2d 991, 994 (W.D.La. 1998) ("It would serve little purpose for the Louisiana legislature to specifically provide [limited remedies under the state's Age Discrimination in Employment Act] if the plaintiff can merely invoke Article 2315 [to access] the full range of general and compensatory damages available under tort law.").

Furthermore, the remedies in the Open Meeting

Law, along with the limits on their invocation, are the relief that the Louisiana legislature has specifically assigned to those injured under the statute. Following traditional canons of statutory interpretation, the legislature deemed the remedies included in the statute necessary and appropriate, and excluded remedies that were otherwise: *Expressio unius est exclusio alterius*. For claims solely predicated on alleged violations of the Open Meetings Law, the limited remedies offered by that statute foreclose other remedies offered by article 2315. Because Plaintiffs have couched their claim as predicated on the Open Meetings Law, they are entitled only to the remedies under that law. Accordingly, the request for compensatory and punitive damages is improper, and the claim should be dismissed to the extent it seeks to recover such damages. Because Plaintiffs did not seek to void Defendants' actions or impose civil penalties, the sixty-day filing window does not apply to this claim, and dismissal on that basis would be inappropriate. Plaintiffs' claim for declaratory relief under the Open Meetings Law remains untouched.

Ellis and Riley further attack the Open Meetings Law claim on the basis that they are not "public bodies" subject to liability under the statute. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, p. 21]. As discussed *supra*, section 42:14(A) is applicable only to meetings of public bodies as defined under section 42:13(A)(3). Neither Ellis nor Riley meet the definition of a public body, so they are not subject to liability under the statute. It is therefore appropriate to dismiss the Open Meetings Law claim insofar as it is brought against Ellis and

Riley.[46]

Accordingly, it is RECOMMENDED that the motions be granted in part and denied in part and that Legacy Recovery's Open Meetings Law claim be dismissed to the extent that it seeks compensatory and punitive damages and is otherwise brought against Ellis and Riley.

IX. Tortious Malfeasance Claims

Plaintiffs allege that Ellis, Riley, and the Councilmembers are liable in tort for violation of Louisiana's criminal malfeasance in office statute. Complaint [doc. #1, pp. 40-42]. Defendants argue that, because the claim is predicated on a criminal statute, Plaintiffs lack standing to bring it, "tortious" malfeasance is not a claim recognized by Louisiana courts, and the criminal statute itself takes precedence over any putative tort cause-of-action based upon that statute. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, pp. 22-23]; Memorandum in Support of the Council's M/Dismiss [doc. #17-1, p. 24].

Under Louisiana law, public officers and employees may be criminally liable for, *inter alia*, intentionally refusing or failing to perform a required duty, intentionally performing such a duty in an unlawful manner, or knowingly permitting a

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[46] The Councilmembers make no argument about whether they are subject to liability under the Open Meetings Law in their individual capacities. The undersigned thus does not analyze the potential of dismissal on those grounds.

subordinate to do the same. LA. REV. STAT. § 14:134(a)(1)-(3). Commission of malfeasance may be punished by up to five years imprisonment, a fine of up to five thousand dollars, or both. *Id.* at § 14:134(c).

As a threshold matter, the undersigned could not identify a single case in a Louisiana state court or federal district court recognizing a claim for "tortious malfeasance." *See also* Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, p.22] ("Defendants can identify no Louisiana court recognizing a claim for tortious malfeasance."). This is unsurprising as the Louisiana statute prohibiting malfeasance by public officials is a criminal statute and contains no provision for civil remedy. *See* LA. REV. STAT. § 14:134. In cases where it is necessary to determine whether a private remedy is implicit in a statute that does not expressly provide one, courts should consider four factors: (1) Whether the plaintiff is "one of the class for whose especial benefit the statute was enacted"; (2) "whether there is an indication of legislative intent to create or deny such remedy"; (3) "whether such a remedy would be inconsistent with the underlying legislative purpose; and (4) "whether the cause of action is one traditionally relegated to state law." *Wright v. Allstate*, 250 F,App'x 1, 5 (5th Cir. 2007) (quoting *Cort v. Ash*, 422 U.S. 66, 78 (1975)).[47] While the Fifth Circuit has

[47] The undersigned notes that, as the fourth factor suggests, the *Cort* test is most often used to identify implied rights of action under federal law. However, courts in our sister districts have utilized the factors to conduct this analysis in the state law context. *See, e.g.*, *Morales v. City of New Orleans*, No. 21-1992,

utilized all four factors in determining the presence of an implied private right of action, *see, e.g.*, *Casas v. Am. Airlines, Inc.*, 304 F.3d 517 (5th Cir. 2002), the Supreme Court has intimated that the second factor is essentially dispositive. *See Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001) ("Statutory intent . . . is determinative. Without it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible the statute."). The undersigned finds the nearly dispositive nature of the second factor particularly persuasive in the context of a putative implied right to sue under state law, but will conduct analysis of all four factors for completeness.

Turning to the analysis, first, there is no indication that Plaintiffs are members of a class for which Louisiana's malfeasance statute was particularly designed to protect. In fact, it is not apparent that the law protects *any* particular class, and courts should be "reluctant to imply causes of action under statutes . . . for the benefit of the public at large." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 690 n.13 (1979). Second, the undersigned finds no indication that the Louisiana legislature intended to create an implied civil remedy for malfeasance, nor have Plaintiffs provided any evidence of such intent. Third, it is not "consistent with the underlying

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2022 WL 2264178, at *6 (E.D.La. June 23, 2022) (analyzing existence of implied right of action under LA. REV. STAT. § 14:73.10 using *Cort* factors). Absent directives from a higher court, it is prudent to include the fourth factor in analyzing the existence of an implied cause of action under state law.

purposes of the legislative scheme" to infer a civil remedy as the statute is clearly intended to establish a criminal offense. Finally, the proposed cause of action – a tort claim – is traditionally relegated to state law. This final factor further emphasizes the propriety of deffering to the Louisiana state legislature's manifest statutory intent.

All four factors weigh against a finding that there is an implied civil cause of action found in Louisiana's malfeasance statute. Furthermore, while it is true that the Supreme Court of Louisiana has indicated that criminal statutes "may be guidelines for the court in fixing civil liability," *Laird v. Travelers Inc. Co.*, 267 So.2d 714, 717 (La. 1972); *see also* Opposition to the Council's M/Dismiss [doc. #25, p. 27], the guidance offered therein does not concern the creation of a cause of action in tort. Rather, the *Laird* court was directing courts to use criminal statutes as guides for identifying "the applicable standard of care or duty owed for purposes of another claim," such as a tort claim. *Daggs v. Ochsner L.S.U. Health Sys. Of N. La.*, 3:20-CV- 00440, 2021 WL 865412, at *8 (W.D.La. Feb. 19, 2021), *report and recommendation adopted*, 2021 WL 1893569 (W.D.La. May 11, 2021); *see also Laird*, 267 So.2d at 717 (La. 1972) ("To decide whether the violation of the criminal statute by [defendant] imposes civil liability upon him [we must determine] what was the nature of the duty imposed on him [by the statute]."). As discussed *supra*, the statutory language does not contemplate a specific protected class, nor does it contemplate recourse for individuals putatively harmed by violations of the law. It would thus be inappropriate to find that the statute creates

a specific duty owed by Ellis, Riley, or the Councilmembers to Plaintiffs. In summation, there is neither an implied civil right of action arising from Louisiana's malfeasance statute, nor is there reason to find that the statute supports an indirect tort claim in the circumstances.

Accordingly, it is RECOMMENDED that Ellis, Riley, and the Councilmembers' motions to dismiss be granted to the extent that they challenge the claim for tortious malfeasance and that the claim be dismissed with prejudice.

X. Bad Faith Breach of Contract Claims

Underlying this dispute is the Contract. Plaintiffs have brought a claim against all Defendants for bad faith breach of contract in relation to that agreement. Complaint [doc. #1, pp. 42-44]. Defendants argue that Legacy House, Montgomery, and Gaiennie lack standing to bring the claim as they are not parties to the Contract. Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 15-16]. Additionally, Ellis, Riley, and the Councilmembers contest their liability for putative breach on the grounds that they are not bound by the Contract, Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, p. 23]; Memorandum in Support of Councilmember's M/Dismiss [doc. #17-1, pp. 24-25], while the City argues the Contract is subject to a suspensive clause whose non-occurrence released the City from any obligation to sell the Property. Memorandum in Support of the City's M/Dismiss [doc. #18-1, pp. 29-31].

Under Louisiana law, a contract is "an agreement by two or more parties whereby obligations are created, modified, or extinguished." LA. CIV. CODE art. 1906. Parties to a contract are bound to conduct their contractual obligations in good faith and may be liable for breach if they do not conduct themselves in such a manner. *See id.* at art. 1759; *see also id.* at art. 1983. "[N]o action for breach of contract may lie in the absence of privity of contract between the parties." *Waste Commanders, LLC v. BFI Waste Servs., LLC*, No. 14-938, 2015 WL 1089320, at *2 (W.D.La. Mar. 2, 2015) (quoting *Pearl River Basin Land & Dev. Co., L.L.C. v. State ex rel. Governor's Off. of Homeland Sec. & Emergency Preparedness*, 29 So.3d 589, 592 (La.App. 1st Cir. 2009)). While contracting parties may stipulate a benefit for a third-party beneficiary with a "stipulation *pour autrui*," such a stipulation is never presumed and "the intent of the contracting parties [to make benefit a third-party] must be made manifestly clear." *J.D. Fields & Co., Inc. v. Nottingham Const. Co., LLC*, 184 So. 3d 713, 716 (La.App. 1st Cir. 2015) (emphasis removed).[48]

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[48] The Louisiana Supreme Court has identified three criteria for determining whether a contract benefits a third party: (1) the stipulation for a third party if manifestly clear; (2) there is certainty as to the benefit provided; and (3) the benefit is not merely incidental to the contract. *Joseph v. Hosp. Serv. Dist. No. 2 of Parish of St. Mary*, 939 So.2d 1206, 1212 (La. 2006). The first factor appears to be dispositive. *Id.* ("The most basic requirement of a stipulation *pour autrui* is that the contract manifest a clear intention to benefit the third party; absent such a clear manifestation, a party claiming to be a third party beneficiary cannot meet his burden of proof.").

a. Standing

As the question is jurisdictional, the analysis first turns to whether Legacy House, Montgomery, and Gaiennie have constitutional standing to bring a breach of contract claim. Article III standing requires a plaintiff to establish injury, causation, and redressability. *Lincoln*, 340 F.3d at 289.[49]

Here, standing turns on whether Legacy House, Montgomery, and Gaiennie were parties to the Contract and thus subject to injury should breach of the agreement occur. There are no allegations that these plaintiffs are third party beneficiaries of the Contract, nor does the Contract refer to them as such. It would thus be improper to find that Legacy House, Montgomery, or Gaiennie have standing as third party beneficiaries of the Contract.

The Complaint also lacks any allegations sufficient to show that Sullivan acted as an agent of Legacy House when he signed the Contract. Rather, it is alleged that "the Director of Administration of the City of Monroe accepted *Mr. Sullivan's* offer to purchase [the Property]." Complaint [doc. #1, p. 12] (emphasis added). On the pleadings alone, it would be improper to find that Sullivan's signature was on behalf of Legacy House, so it would further be improper to find that the organization, along with Montgomery and Gaiennie, obtained standing through

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[49] This argument is properly analyzed under Federal Rule of Civil Procedure 12(b)(1). *See supra* section I.a.

that signature.

However, as Article III standing is analyzed under Rule 12(b)(1), the court may analyze undisputed facts in addition to the complaint and may also resolve disputed facts. *Kling*, 60 F.4th at 284. Drawing on this allowance, Plaintiffs offer several arguments in support of standing. First, they argue that because Sullivan is a manager-member of Legacy House, he authority to transact on that organization's behalf. Opposition to the City's M/Dismiss [doc. #24, p. 22]. The Complaint contains no allegations that Sullivan is a manager-member of Legacy House.[50] The Plaintiffs offer a draft operating agreement for Legacy House that shows, *inter alia*, Sullivan, Gaiennie, and Montgomery were to be "Managing Members," and such members may bind the entity by entering contracts. Operating Agreement [doc. #24-7, pp. 9, 21]. However, this agreement is unexecuted. Under Louisiana law, the operating agreement governing an LLC is not effective until it is signed, *see Bourbon Invs., LLC v. New Orleans Equity LLC*, 207 So.3d 1088, 1093 (La.App. 4th Cir. 2016) ("[T]he operating agreement was never signed and thus never became effective."), so the draft document tends to show that Sullivan is *not* a manager-member of Legacy House.

Plaintiffs attempt to counteract this

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[50] While it is alleged that Sullivan, along with Montgomery and Gaiennie, "organized" Legacy Recovery LLC, Complaint [doc. #1, p. 3], this barebones allegation does not provide any insight into the legal powers Sullivan has vis-à-vis the entity.

inconvenient truth by pointing to caselaw they argue shows "there is no requirement for [an operating agreement] to even be signed to assert rights arising thereunder." Opposition to the City's M/Dismiss [doc. #24, p. 23]. The operating agreement in the authority cited bound the plaintiff and defendant in that case, *Norris v. Causey*, No. 14-1598, 2016 WL 311746, at *5 (E.D.La. Jan. 26, 2016), whereas the instrument at issue here was to be binding only as to Sullivan, Montgomery, and Gaiennie.[51] As Defendants were not prospective parties to the putative operating agreement, they were not on notice as to the potential authority of Sullivan to bind Legacy House under that document. Thus, the pleadings and the evidence – both proffered by Plaintiffs – indicate that Sullivan is not a manager-member of Legacy Recovery LLC, meaning he is not empowered to transact on its behalf.[52] While it is undisputed that individuals other than Sullivan participated in negotiations with the City concerning purchase of the Property, this does not address or

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[51] The agreement was also to be signed by Paul Petty, but this individual is not a party to the instant suit, nor does he appear in any relevant allegations. *See* Operating Agreement [doc. #24- 7, pp. 21-22].

[52] The fact that Sullivan was not a manager-member of Legacy House dispatches with Plaintiffs' argument that the former was authorized to purchase the property and hold it in trust for the latter. *See* Opposition to the City's M/Dismiss [doc. #24, p. 24]. Legacy Recovery also argues that the City "lacks 'standing' to deny [Legacy House, Montgomery, and Gaiennie's] rights arising under the purchase agreement." *Id.* Ultimately, this argument turns on which parties are bound by the Contract and so fails on that basis as well.

overcome the conclusion drawn from the pleadings and evidence described above: The preponderance of the evidence does not support Plaintiffs' argument.

The Plaintiffs next argue that Legacy House, Montgomery, and Gaiennie have standing as investment-developers because the money expended toward purchasing the Property was lost due to Defendants' misconduct. Opposition to the City's M/Dismiss [doc. #24, p. 25]. While Defendants may ultimately be found liable to these plaintiffs, it will not be for breach of a contract that they are neither parties to nor beneficiaries of. Put another way, because Legacy House, Montgomery, and Gaiennie have no rights under the Contract, they cannot recover based on breach of that instrument.

Finally, plaintiffs argue that Legacy House has organizational standing and may recover for conduct that impaired its ability "to function or provide its core services." *Id.* Plaintiffs rightly point out that the Supreme Court has held that organizations may seek relief for injury and "the consequent drain of resources" resulting therefrom, *see id.* at pp. 25-26. However, the full text of that finding makes clear that a drain on resources alone is not sufficient to establish standing: "Such concrete and demonstrable injury to the organization's activities – with the consequent drain on the organization's resources – constitutes far more than simply a setback to the organization's abstract social interests . . . ." *Coleman*, 455 U.S. at 379. As Legacy House is not in privity of the Contract, it is incapable of suffering a "concrete and demonstrable injury" arising from violations of rights

arising therefrom.

In short, the evidence indicates that Plaintiffs cannot prove any set of facts in support of Legacy House, Montgomery, and Gaiennie's standing to bring a breach of contract claim.

Accordingly, it is RECOMMENDED that the motions be granted to the extent they seek dismissal of Legacy House, Montgomery, and Gaienne's breach of contract claims for lack of standing.

b. Privity

The undersigned now turns to Ellis, Riley, and the Councilmembers' argument that they are not in privity of contract with Plaintiffs. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, p. 23]; Memorandum in Support of the Council's M/Dismiss [doc. #17- 1, pp. 24-25]. The Complaint styles the breach claim as being "against all defendants." Complaint [doc. #1, p. 42]. However, the allegations concerning the breach solely concern the City. *See id.* at pp. 42-44 (note that all allegations in paragraphs 182 through 188 only concern the conduct of "the City of Monroe."). There are no allegations that Ellis, Riley, or the Councilmembers are parties to, or beneficiaries of, the Contract, nor are they signatories to the instrument. *See generally* Contract [doc. #16-3].[53] As there are no pleadings that plausibly state

[53] The Contract has been incorporated by reference into the Complaint and is thus subject to review under this court's

Ellis, Riley, or the Councilmembers are either bound by the Contract or participated in its negotiation, it would be improper to maintain a breach of contract claim against them.

Accordingly, it is RECOMMENDED that Defendants' motions be granted to the extent that they seek dismissal of the breach of contract claim against Ellis, Riley, and the Councilmembers.

c. Breach

It is uncontested that the City is bound by the Contract, but it *is* contested what exactly it was bound to do under that instrument. Plaintiffs' theory of breach is unclear. In the Complaint, there are allegations that the breach was predicated, in short, on "discriminat[ion] against the handicapped residents of [the Property]" and "refus[al] to adhere to rules regulating the respective offices of each official." Complaint [doc. #1, pp. 42-43]. This alleged misconduct is not tied to any obligations created by the Contract. On the face of the Complaint alone, all that can be gleaned is the supposed breach arose from the general failure of the City to consummate the sale of the Property.

The Purchase Agreement indicates that "[i]f the Monroe City Council does not approve the sale of the [Property] or the Purchase Price, then this agreement shall be null and void and the deposit returned to

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Rule 12(b)(6) analysis.

[Sullivan]." Contract [doc. #16-3, p. 7]. Plaintiffs admit that the Contract "literally reads that states [sic] '*the* ***offer*** *to purchase*' is subject to city council approval." Opposition to the City's M/Dismiss [doc. #24, p. 46] (emphasis in original). Under Louisiana law, this clause subjects the City's obligation to sell the Property to a suspensive condition. *See* LA. CIV. CODE art. 1767 ("If the obligation may not be enforced until [an] uncertain event occurs, the condition is suspensive."). "[W]hen an obligation is subject to a suspensive condition, the very existence of the obligation depends upon the occurrence of the event [triggering enforcement]." *S. States Masonry, Inc. v. J.A. Jones Const. Co.*, 507 So.2d 198, 203 (La. 1987) (quoting *Cahn Elec. Co., Inc. v. Robert E. McKee, Inc.*, 490 So.2d 647, 652 (La.App. 2d Cir. 1986)). It is uncontested that the Council never approved sale of the Property. Absent this approval, the City was never obligated to sell the Property, and it is self-evident that a nonexistent obligation can neither be performed nor give rise to a breach of contract. It would thus be inappropriate to find that Legacy Recovery has sufficiently pleaded a breach of contract claim based on the City's failure to consummate sale of the Property.

While not apparent from the face of the Complaint, Legacy Recovery proffers another theory of breach in its opposition memorandum, arguing that various warranties in the Contract were violated by the City. *See* Opposition to the City's M/Dismiss [doc. #24, pp. 46-49]. The Contract includes warranties by the City that, *inter alia*, "there is no pending or threatened condemnation or similar proceeding

affecting the Property"; consummation of the transaction "does not violate any agreement, contract, or other instrument to which [the City] is bound"; and the City is not aware of "any legal actions, suits zoning or rezoning actions, or other legal or administrative proceedings pending or threatened" against the Property. *Id.* at pp. 46-47; *see also* Contract [doc. #16-3, p. 4]. The Contract also obliges the City to inform Sullivan "immediately if any of the [warranties] become untrue or misleading." Opposition to the City's M/Dismiss [doc. #24, p. 47]; *see also* Contract [doc. #16-3, p. 5].

Plaintiffs argue that these warranties were breached when the City "became aware of certain claims of concerned citizens related to the ownership, operation, use and occupancy of the [Property]" and did not notify the putative buyer. Opposition to the City's M/Dismiss [doc. #24, p. 49]. It strains credulity to find it plausible that complaints from private citizens constitute a legally binding encumbrance or threat to alienation of the Property as contemplated by the Contract's warranties. Plaintiffs further argue that the opposition by citizens represented "claims" that "resulted in the [City] acquiring knowledge of facts related to administrative proceedings which threated the sale of the [Property]." *Id.* Again, there is no indication from the allegations that this opposition can plausibly be described as a claim in the legal sense. Additionally, Plaintiffs' reference to "administrative proceedings" appears to refer to the legislative meetings of the Council. There is no allegation that these legislative proceedings were of the adjudicative nature that the "administrative proceedings"

referenced in the Contract are implied to have.[54] In short, Plaintiffs have failed to sufficiently plead facts that plausibly show the City breached any of the warranties in the Contract.

Accordingly, it is RECOMMENDED that the motions be granted to the extent that they seek dismissal of the breach of contract claim under Rule 12(b)(6).

XI. Nondiscrimination in Real Estate Transactions Claims

Plaintiffs' final claim is against all Defendants for discrimination in a real estate transaction in violation of Louisiana's Civil Rights Act for Persons with Disabilities ("CRAPD"). Complaint [doc. #1, p. 44]; *see also* LA. REV. STAT. § 46:2254. Defendants argue that Plaintiffs have not pleaded a claim as they themselves are not individual victims of discrimination. Memorandum in Support of the City's M/Dismiss [doc. #18-1, p. 31]. It is further argued that Ellis, Riley, and the Councilmembers are not subject to liability under section 2254 because they do not

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[54] The warranty disclaiming the existence of administrative proceedings also disclaims the existence of lawsuits and other legal adjudications. *See* Contract [doc. #16-3, p. 4]. It is also worth noting that any ambiguities in the Contract need not be resolved against the drafting party (i.e., the City). *Id.* at p. 8 ("[T]he normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be applicable in the constructions and interpretation of this Agreement.").

administer any program covered by the statute. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, p. 23]; Memorandum in Support of Councilmembers' M/Dismiss [doc. #17-1, p. 25].

Under CRAPD, discrimination on the basis of disability is prohibited "in any real estate transaction." LA. REV. STAT. § 46:2254(A). CRAPD defines "[p]erson with a disability" as "any person who has an impairment which substantially limits one or more life activities." *Id.* at § 46:2253(12). The disability must be "unrelated to an otherwise qualified individual's ability to acquire, rent, or maintain property." *Id.* at § 46:2254(C).

The plain language of CRAPD indicates that for conduct to trigger liability under the law, the alleged discrimination must target an individual who has a disability. Plaintiffs do not point to – nor has the undersigned identified – any authority to find otherwise. As there are no allegations that Sullivan, Montgomery, or Gaiennie are disabled as defined by CRAPD, they cannot successfully state a claim under that law. It should be noted that plaintiffs have styled this claim as a tortious violation of CRAPD, although it is pleaded as an out-and-out violation of the statute. Despite the Complaint clearly attempting to plead a claim under CRAPD, Plaintiffs' subsequent briefing argues that it is proper to use the statute as a predicate for a tort claim. *See* Opposition to the City's M/Dismiss [doc. #24, pp. 49-50]. This argument fails on three grounds. First, it does not comport with the controlling pleadings. Second, Legacy Recovery does

not cite a statute to give rise to a tort cause-of-action.[55] Third, as discussed *supra*, if two statutes conflict, then the "statute specifically directed to the matter at issue must prevail as an exception to" the more general statute, *Roberson-King*, 904 F.3d at 380 (quoting *Kennedy*, 699 So.2d at 358), and here CRAPD is a more specific statute than whatever uncited law Plaintiffs purport to rest their tort claim on.

Accordingly, it is RECOMMENDED that the motions be granted to the extent that they seek to dismiss the CRAPD claim.[56]

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[55] It is true that Plaintiffs request declaratory relief stating Defendants violated section 2254 "for the purposes of [article 2315 of the Louisiana Civil Code]." Complaint [doc. #1, p. 44]. However, the pleadings explicitly predicate liability on section 2254. *See id.* ("Defendants, through their actions, inactions, and silence are liable to plaintiffs for violating [section 2254] . . . .").

[56] In the event the court disagrees with the above analysis, Ellis, Riley, and the Councilmembers offer another challenge to the CRAPD claim. They argue that they are not subject to liability under section 2254 as they do not "personally administer any program or activity which received financial assistance" and is covered by the statute. Memorandum in Support of Ellis and Riley's M/Dismiss [doc. #16-1, p. 23]; Memorandum in Support of Councilmembers' M/Dismiss [doc. #17-1, p. 25]. This contention misses the mark as Plaintiffs have alleged discrimination under CRAPD's real estate transaction provision, not the provision covering state-funded programs. Complaint [doc. #1, p. 44] ("Defendants . . . are liable to plaintiffs for violating La. R.S. 46:2254 which prohibits discrimination in the terms, conditions, or privileges of a real estate transaction . . . ."). Should the court find that Legacy Recovery has successfully stated a claim under CRAPD, then it should not be dismissed against Ellis, Riley, or the Councilmembers on the basis that they

Conclusion

For the foregoing reasons,

IT IS RECOMMENDED that Defendant's motion to dismiss [doc. #17] be **GRANTED IN PART** and **DENIED IN PART** and that all claims against Defendant City Council of Monroe be **DISMISSED WITH PREJUDICE**.

IT IS FURTHER RECOMMENDED that claims against Defendants Ellis and Riley under the FHA, ADA, RA, ACA, § 1983 pursuant to the FHA, ADA, RA, ACA, Fifth Amendment's Takings Clause, Fourteenth Amendment's Due Process Clause, and the Louisiana State Constitution, as well as claims for breach of contract and tortious malfeasance, discrimination in real estate transactions, and violation of the Louisiana Open Meetings Law be **DISMISSED WITH PREJUDICE**.

IT IS FURTHER RECOMMENDED that claims against Defendants Dawson, Harvey, Marshall, and Woods under the FHA, ADA, RA, ACA, § 1983 pursuant to the FHA, ADA, RA, ACA, Fifth Amendment's Takings Clause, Fourteenth Amendment's Due Process Clause, and the Louisiana State Constitution, as well as claims for breach of contract and tortious malfeasance, discrimination in real estate transactions, and violation of the Louisiana Open Meetings Law to the extent that claim seeks

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cannot be liable as program administrators.

compensatory and punitive damages be **DISMISSED WITH PREJUDICE**.

IT IS FURTHER RECOMMENDED that claims against Defendant City of Monroe under the FHA, ADA and RA failure-to-accommodate provisions, ACA, § 1983 pursuant to the FHA, ADA and RA failure-to-accommodate provisions, ACA, Fifth Amendment's Takings Clause, and Fourteenth Amendment's Due Process Clause, as well as claims for breach of contract and discrimination in real estate transactions be **DISMISSED WITH PREJUDICE**.

IT IS FURTHER RECOMMENDED that the motions be **DENIED** to the extent they putatively seek dismissal of Fifth and Fourteenth Amendment equal protection claims.

IT IS FURTHER RECOMMENDED that the Councilmembers' motion be **DENIED** to the extent it seeks dismissal of remedies other than compensatory and punitive damages under the Open Meetings Law and individual capacity claims under the Open Meetings Law.

IT IS FURTHER RECOMMENDED that the City's motion be **DENIED** to the extent it seeks dismissal of ADA and RA claims predicated on theories of harm other than a failure-to-accommodate, as well as § 1983 claims based on ADA and RA claims not based on a failure to accommodate.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and FED. R. CIV. P. 72(b), the parties have **fourteen**

(14) days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within **fourteen (14) days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before he makes a final ruling.

A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN FOURTEEN (14) DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

In Chambers, at Monroe, Louisiana, on this 1st day of March, 2024.

/s/
KAYLA DYE MCCLUSKY
UNITED STATES MAGISTRATE JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

LEGACY RECOVERY SERVICES, LLC;
COLBURN "COLE" SULLIVAN,
JOE MONTGOMERY, and JAMES "JIMMY"
GAIENNIE, III
Plaintiffs,

VERSUS

CITY OF MONROE, LOUISIANA;
FRIDAY ELLIS, individually and in
his official capacity as Mayor of Monroe;
MONROE CITY COUNCIL;
DOUGLAS HARVEY; JUANITA WOODS;
CARDAY MARSHALL, SR.; KEMA DAWSON;
individually, and in official capacities as
Monroe City Council members; CAROLUS RILEY,
individually, and in her official capacity as Monroe
City Clerk; and not yet known employee(s),
policy maker(s), enforcement officer(s), agents(s)
and supervisor(s).
Defendants.

CIVIL ACTION NO.
JUDGE
MAGISTRATE
JURY TRIAL DEMANDED

COMPLAINT

In this Complaint for Damages plaintiffs Legacy Recovery Services, LLC; Colburn "Cole" Sullivan, Joe Montgomery, and James "Jimmy" Gaiennie, III; respectfully represent:

I. PRELIMINARY STATEMENT

1. Plaintiffs Cole Sullivan, Joe Montgomery and Jimmy Gaiennie organized Legacy Recovery Services, LLC d/b/a/ "Legacy House" for the sole purpose of establishing a commercially viable, low-level, residential treatment facility satisfying the criteria of Section 3.1 of the American Society of Addiction Medicine ("ASAM") and qualifying as an Institution for Mental Disease ("IMD") under federal law, allowing Medicaid-reliant men recovering from substance abuse to combine their collective buying power to obtain otherwise unavailable therapeutic benefits necessary to their recovery. Part and parcel of said benefits includes an opportunity for the intended residents of Legacy House to reside with other similarly situated recovering individuals in a safe, supportive, and clinically managed environment. This dynamic has the effect of ameliorating the debilitating qualities of the handicap shared by the intended residents of Legacy House.

2. Plaintiffs allege the City of Monroe, Mayor Friday Ellis, City Clerk Carolus Riley, the Monroe City Council, and individual councilmembers Douglas Harvey, Juanita Woods, Carday Marshall, Sr.; and Kema Dawson engaged in a pattern of discrimination

against plaintiffs and intended residents of Legacy House based on the latter's handicap as persons recovering from alcoholism, addiction, and substance abuse disorders.

3. Plaintiffs particularly allege multiple, but separate and distinct, acts of discrimination practiced by defendants which have harmed, continue to harm, and will harm plaintiffs. Such discriminatory misconduct includes, but is not necessarily limited to: disparate treatment of plaintiffs, breaching a written purchase agreement in bad faith, pretending the refusal to sell real property to plaintiffs is due to some reason other than the handicap of the property's intended residents, violating or circumventing multiple federal and state laws, failing to comply with governing rules, arbitrarily imposing additional procedural requirements on plaintiffs, manipulating official minutes, denying plaintiffs due process and right to be heard, allowing prejudice to dictate the decisions of defendants, failing to recuse, illegally and erroneously refusing a request for reasonable accommodation, establishing policies which discriminate against recovering individuals, failing to fully comply with public record law, and malfeasance, all set forth below in detail.

4. Plaintiffs seek punitive and compensatory damages, including lost business opportunity and lost profits, costs, interest, and reasonable attorney fees from defendants who are liable to plaintiffs individually, jointly, severally and *in solido*.

II. PARTIES

5. Cole Sullivan, Joe Montgomery, and Jimmy Gaiennie are each major domiciliaries of the State of Louisiana, aggrieved persons under federal law, and appear herein as plaintiffs along with Legacy Recovery Services, LLC d/b/a/ "Legacy House", a domestic entity with its principle place of business in Monroe, Louisiana organized by the individual plaintiffs to develop and manage a commercially viable, low-level, residential treatment facility satisfying the criteria of Section 3.1 of the American Society of Addiction Medicine ("ASAM") and qualifying an Institution for Mental Disease ("IMD") for the purposes of Medicaid reimbursement considerations.

6. Made Defendants herein are:

(a) **City of Monroe,** Louisiana (hereafter "Monroe" or "the City"), a municipal corporation and political subdivision organized and operating under the laws of the State of Louisiana. The City receives federal assistance such as the Community Development Block Grant and Home Partnership Grant which are each funded by the United States Department of Housing and Urban Development.

(b) **Honorable Friday Ellis,** Mayor of Monroe, is the City's chief executive officer responsible for ensuring comprehensive compliance with all laws and rules; supervising the administration of all

municipal departments; and enforcing the city charter, rules governing the city council, fair administration of city policy, and obligations owed by the city to citizens appearing as parties to a contract with the City, subjects of a proposed ordinance, and/or applicants for reasonable accommodation under federal law.

(c) **Monroe City Council,** a governmental body elected by the citizens of Monroe who are each employees and/or agents of the City of Monroe charged with lawfully abiding by federal and state constitutions, federal and state laws, the city charter, and the rules, regulations, and city policies governing the city council, the administration of its business, and the contractual obligations established thereunder in good faith.

(d) **Douglas Harvey; Juanita Woods; Carday Marshall, Sr.; and Kema Dawson** are members of the Monroe City Council, who are each likewise charged with lawfully abiding by federal and state constitutions, federal and state laws, the city charter, and the rules, regulations, and city policies governing the city council, the administration of its business, and the contractual obligations established thereunder in good faith.

(e) **Carolus Riley,** Clerk for the City of

Monroe, is employee and agent for the City of Monroe responsible for discharging administrative duties in good faith and who is also charged with lawfully abiding by federal and state constitutions, federal and state laws, the city charter, and the rules, regulations, and city policies governing the city council, the administration of its business, and the contractual obligations established thereunder in good faith. Ms. Riley is also the public records custodian for the City and responsible for lawfully complying with her corresponding obligations arising thereunder.

(f) **Not yet identified persons,** are officers or agents of the City of Monroe and/or the City Council who were policy makers, enforcement officers, and supervisors at or about the time complained of, and who are liable to plaintiffs for any harm caused to plaintiffs by virtue of their individual, respective, mutual, and collective fault as discovery reveals.

III. JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, as well as 42 U.S.C. § 3600 *et. seq.;* 42 U.S.C. §12101 *et. seq.;* 29 U.S.C. §791 *et. seq.;* 42 U.S.C. § 18116; and 42 U.S.C. § 1983. Plaintiff also invokes this Court's pendent jurisdiction to hear and adjudicate claims arising under the laws of the State of Louisiana. Venue is

proper in this District and Division pursuant to 28 U.S.C. § 1391 because the claims arose in this District and in Ouachita Parish, the parties are incorporated and reside in this District and Division, and a substantial part of the events giving rise to this action occurred in this District and Division.

8. No pre-litigation requirements or administrative filings apply to Complainants' claims under the federal law applicable to this lawsuit, including 42 U.S.C. §§ 3600 *et. seq.* See *Bryant Woods Inn Inc., v. Howard* Co., *Md,* (4th Cir. 08/25/97) 124 F.3d. 597. No pre-litigation requirements or administrative filings apply to Complainants' claims relating to deprivations of rights guarantee by the United States Constitution.

IV. FACTUAL BACKGROUND

9. Untreated substance abuse is wreaking havoc on public health and safety m communities across the United States.

10. From 1999 to 2015, the number of overdose deaths in the United States involving opioids has quadrupled.

11. In Louisiana, the Office of Vital Records (OVR) has shown that deaths due to opioids in 2016 tripled since 2011. An OVR internal review estimates at least 54% of opioid deaths in Louisiana are not being reported as specific, opioid-related deaths.

12. The 2019 National Survey of Drug Use and

Health reported more than 2,000,000 Americans struggling with opioid-dependency alone. On December 17, 2020, the Center for Disease Control and Prevention ("CDC") issued a health alert advisory reporting on the nationwide increase in fatal drug overdoses secondary to the COVID-19 pandemic.

13. On May 11, 2022, the CDC's National Center for Health Statistics released a report estimating 107,622 drug overdose deaths in the United States during 2021, an increase of nearly 15% from the 93,655 deaths estimated in 2020.

14. Individuals suffering from alcoholism, addiction, and/or substance abuse are "handicapped", "qualified persons", and a protected class under applicable federal and state law.

15. The residential environment of an individual recovering from substance abuse is essential to their recovery. Medical experts have repeatedly documented the tremendous therapeutic benefits of allowing individuals in recovery to reside with other recovering individuals. Generally, the longer an individual resides in a setting supporting their recovery, the better their chances of remaining abstinent. Community-based residential treatment is found to further enhance this dynamic.

16. Analyses show consistent associations between low-income residents and reduced availability of recovery housing, clinical treatment, and recovery services.

17. Accordingly, an increasing number of states have applied for, and received, Medicaid Section 1115 Demonstration Waivers for substance use disorders. The Centers for Medicare and Medicaid Services (CMS) created this opportunity under Section l 115(a) of the Social Security Act for states to draw dawn federal Medicaid payments for facilities with greater than sixteen (16) beds that provide residential treatment; payments which are otherwise prohibited by the Institution for Mental Disease Exclusion. Waiving the IMD Exclusion allows states to offer short-term residential treatment, and the entire continuum of addiction treatment to their Medicaid members based on widely accepted standards for evidence-based care.

18. A central goal of the Medicaid Section 115 Waiver is to allow states to receive matching federal Medicaid payments for services provided at short term residential treatment facilities. Otherwise, states are generally prohibited from using federal funds to pay for residential care in facilities with more than sixteen (16) beds.

19. On November 7, 2017, Louisiana applied for a Section 1115 Waiver claiming it sufficiently demonstrated clinical and economic necessity for assistance with "the opioid epidemic public health emergency proclamation by the Acting Secretary of the United States Department of Health and Human Services."

20. Louisiana's application references statistics intended to convey the facts that (a) Louisiana men are

more at risk of an opioid related death than women and (b) Ouachita Parish is in the top 10 of confirmed parishes leading Louisiana in opioid death rates.

21. Citing the "need" of its Medicaid enrollees for "vital" mental health and substance abuse treatment to "confront Louisiana's opioid epidemic", Louisiana's Application requests CMS authorize federal funding for Institutions for Mental Disease satisfying the criteria of ASAM that provide substance abuse treatment in the context of a residential setting.

22. According to the Louisiana Department of Health, its decision to request a waiver was a "clinical strategy" because community-based, treatment of substance abuse in a residential setting is "most conducive" to treating the "needs" of Louisiana's Medicaid enrollees battling substance abuse disorders.

23. CMS granted Louisiana's Section 1115 waiver request February 1, 2018.

24. On December 2, 2022, CMS approved Louisiana's request to extend its Section 1115 Demonstration Waiver which now expires December 31, 2027.

25. In "Section 8", CMS's geographical region in which this Court is situated, there are nine (9) clinically managed, high-intensity residential treatment facilities, totaling approximately 300 beds available to men recovering from substance abuse in this area. Medicaid typically provides for a thirty-eight (28) day stay at these types of facilities.

26. To combat relapse and recidivism, CMS found it necessary to authorize federal reimbursement to low-level residential treatment facilities situated in Louisiana satisfying the criteria of Section 3.1 published by the American Society of Addiction Medicine. According to CMS, funding these facilities provides Medicaid-reliant individuals in recovery a way to procure necessary medical and therapeutic benefits, including the opportunity for those residents to reside together in extended recovery. Medicaid reimburses up to ninety (90) day stays at these types of facilities.

27. At all times pertinent to this lawsuit, there was only one (1) operational 3.1 facility in the "Section 8" region available to Medicaid-reliant men suffering from substance abuse. The ratio between high-intensity treatment facilities and low-level residential treatment facilities accepting Medicaid in this region is 9: 1. In other words, there is reduced availability of recovery housing, clinical treatment, and recovery services available to Medicaid-reliant men in this geographical region and a corresponding need for additional 3.1 facilities.

LEGACY HOUSE

28. On January 19, 2022, Cole Sullivan, Joe Montgomery, and Jimmy Gaiennie organized and registered Legacy Recovery Services, LLC d/b/a ("Legacy House") in a venture to own and operate a commercially viable, low-level, clinically managed residential treatment facility, an Institution for Mental Disease that satisfies the criteria of ASAM

Section 3.1. Plaintiffs' business model intends to provide services consistent with the objectives of CMS in combating Louisiana's substance abuse epidemic.

29. Legacy House proposes to provide Medicaid-reliant individuals who have completed intensive inpatient treatment for substance abuse a way to reside together in extended recovery and procure medical and therapeutic benefits necessary to their recovery by combining their individual Medicaid buying power. Such resources are simply unavailable to the intended residents of Legacy House on an individual basis due to cost.

30. The therapeutic value of allowing recovering alcoholics to live together is extraordinarily critical to their recovery. By living with other persons in recovery, the residents should never have to face an alcoholic or addict's deadliest enemy: loneliness and isolation.

31. There is sufficient evidence to show that this type of living arrangement has an ameliorative effect on a resident's disability and enables those residents to turn their life around.

32. In addition to facilitating the ideal living arrangement sanctioned by CMS, plaintiffs' venture further proposes to provide individualized treatment to its residents by a licensed therapist, peer support from certified recovery coaches, life skills training, and social skill development to help clients reintegrate into society and plan for their future.

33. Legacy House requires its residents to always remain sober, attend meetings of Alcoholics Anonymous or Narcotics Anonymous, seek gainful employment, obey all state and federal laws, and respect the specific rules and regulations of the facility which are meant to foster a supportive, family-like environment among its residents.

34. Economically, Legacy House would function by combining each resident's individual Medicaid benefits into a collective buying power sufficient to operate a cost-sharing facility that allows recovering individuals to live with one another in clinically managed, extended recovery. Acting alone, this opportunity would simply be unavailable to those residents. Indeed, without such arrangement, these individuals would be denied their right to dwell together in a proven therapeutic environment as unrelated individuals are often not able to live safely and independently without organized, and sometimes commercial arrangements.

35. The Section 1115 Waiver mentioned above is intended to fund the precise type of living arrangement supported by the facility plaintiffs intended to develop and operate for men in Section 8, Ouachita Parish included.

36. After organizing their business entity, plaintiffs began researching available properties and analyzing the economic viability of operating a Legacy House on those properties in accordance with its model, mission, and goals, which compliment those of CMS. Importantly, new construction was cost

prohibitive for Legacy's model.

37. Eventually, plaintiffs' realtor advised plaintiffs the City of Monroe had asked her to find a buyer for an available, vacant property she believed was "perfect" for plaintiffs' needs.

38. Prior to offering the property for sale, the City had determined such property was no longer needed for public use.

THE PROPERTY

39. The property in question is a two (2) story, 23,090 square-foot building containing fifty-six (56) bedrooms or equivalent thereof with ample parking situated on two (2) lots located at 1400 and 1401 Stubbs Avenue in Monroe (hereinafter simply "the property"). The property, and properties adjacent thereto, are zoned as B-4 Heavy Commercial District. In other words, the property is correctly zoned for the intended use of Legacy House. In a one block radius of the property, there are at least seven (7) psychiatrists, psychologists, counselors, therapists, and clinics providing treatment for mental illness, alcoholism, drug addiction, and substance abuse.

40. The only outlier in the context of the city 's zoning scheme is a church adjacent to the subject property owned and operated by Pastors Daniel and Carolyn Hunt, close friends with the Chairman of the Monroe City Council, Kema Dawson, and councilmember Juanita Woods.

VIABILITY OF LEGACY HOUSE AT THE PROPERTY

41. Legacy's business model is based on cash flow derived from a Medicaid reimbursement rate on per day, per capita, basis. To service capital debt, operating costs, and prospective return on investment, it became clear Legacy House would need to maintain a minimum of forty-eight (48) residents at that property to successfully and safely establish and maintain a commercially viable business capable of effectively and safely delivering medical and therapeutic benefits to Medicaid-reliant men in recovery.

42. The property in question has ample capacity for fifty-six (56) bedrooms, sufficient parking, and enough additional space to simultaneously facilitate the proposed services and inhouse administrative offices. Moreover, the property is situated in a geographical region in which there is a network gap in Medicaid coverage and reduced availability of services plaintiffs intended to provide.

43. Accordingly, to seize the opportunity to establish a profitable business while fulfilling a dire need in Ouachita Parish, Cole Sullivan offered to purchase the property from the City of Monroe for $50,000.00 more than the highest appraised value of the property and $150,000.00 more than the lowest appraised value of the property.

44. At all times pertinent, plaintiffs were fully financially capable of establishing and operating their

proposed business venture in accordance with the offer to purchase.

THE PURCHASE AGREEMENT

45. On March 3, 2022, the Director of Administration of the City of Monroe accepted Mr. Sullivan's offer to purchase. A written agreement *to* sell the vacant property at 1400 and 1401 Stubbs to Cole Sullivan (o/b/o plaintiffs) for $1,050,000.00 was executed.

46. The written purchase agreement was drafted solely by the City of Monroe is the best evidence of the agreement at issue.

47. The original "Contingency" Section of the purchase agreement, Section 21 , states "***the offer to purchase*** is contingent upon" ... the Monroe City Council's approval of the sale. (Emphasis supplied)

48. Plaintiffs specifically allege certain provisions of the purchase agreement are vague and ambiguous, including the original "Contingency" Section, which must be construed against the City of Monroe as a matter of law.

49. On April 8, 2022, the city amended Section 21 of the purchase agreement to state, "If any of the following conditions are in conflict with the original purchase agreement, the following conditions of the sale provisions will control." Although the City added contingencies *in favor of plaintiff/buyers,* the City did not amend the provision stating the contingency of city

council approval applied to "the offer to purchase".

50. In the purchase agreement, the City expressly represented and warranted to the buyer that the City had the authority to enter the purchase agreement and was not aware of any proceeding, legal action, lawsuit, claim, administrative proceeding, or any facts relating to any claim or administrative proceeding, that would affect the sale, use, operation, or occupancy of the property. Upon signing the agreement, the City disclaimed knowledge of any proceeding, legal action, lawsuit, claim, administrative proceeding, or any facts relating to any claim or administrative proceeding, that would affect the sale or use of the property. The agreement specifically states those representations and warranties will remain true and correct through the Closing date, shall survive the Closing, and the City will immediately inform the buyer if any of the foregoing representations and warranties become untrue or misleading.

51. Over the course of six (6) months and at considerable out-of-pocket expense, the buyers exchanged communications with city officials, submitted multiple documents to various city departments on behalf of Legacy House, and met with city officials on multiple occasions in attempting to perform the purchase agreement in good faith and consummate the sale.

52. At all times pertinent, all parties to this lawsuit understood the buyers proposed to own and operate a residential substance abuse treatment

facility on the property subject of the purchase agreement. Each defendant knew plaintiffs had entered into a contract to establish and operate a residential treatment facility on the property for commercial gain.

53. By early September, all parties agreed the city intended to sell, and the buyers intended to buy, the property at 1400 and 1401 Stubbs for $1,050,000.00, which was $150,000.00 more than the lowest appraised value of the property and $50,000.00 more than the highest appraised value of the property. Indeed, appropriate city officials confirmed infrastructure concerns would not prevent the sale of the property to plaintiffs.

54. La. R.S. 33:4712 provides that an ordinance must be introduced before the property can be sold and requires notice of the proposed ordinance to be circulated by newspaper or by posting the notice in three conspicuous places in the municipality. Importantly, Louisiana law requires any opposition to a proposed ordinance to be made in writing and filed with the city clerk within fifteen (15) days of the first publication of the proposed ordinance.

55. On September 8, 2022, the City Council of Monroe posted "NOTICE" of its proposed ordinance to sell the property at 1400 and 1401 Stubbs to Cole Sullivan. Said ordinance was scheduled to be introduced at the city council meeting September 13, 2022.

FIRST CITY COUNCIL MEETING – SEPTEMBER 13, 2022

56. During its meeting September 13, 2022, the city council moved to introduce the ordinance to sell the property to Cole Sullivan. The motion was seconded.

57. Although the motion had been seconded, the Chairperson for the City Council of Monroe, Kema Dawson, did not put the question to vote.

58. Instead, the opportunity for public comment relative to the motion to introduce the proposed ordinance saw oral opposition to the contracted sale of surplus City property based solely on discrimination against the intended handicapped residents of Legacy House.

59. Allowing debate of the merits of a proposed ordinance, which had not been introduced, runs contrary to the rules governing the city council, its meetings, the administration of its business, and La. R.S. 33:4712, which requires any opposition to a proposed ordinance to be in writing.

60. More particularly, Pastors Daniel and Carolyn Hunt, who own and operate a church adjacent to the property, voiced oral opposition to the ordinance to sell the property to Mr. Sullivan based on unfounded, unsubstantiated stigma the Hunts associate with the intended residents of Legacy House as individuals recovering from substance abuse.

61. First, the Hunts complained they "did not know" Cole Sullivan. This statement sparked a series of questions from city council members, including whether the recovery residents would be "free" to leave the facility, whether the recovery residents were "screened for mental illness" before allowing quarter, whether the intended handicapped residents were "felons", "killers", or "rapists", and whether plaintiffs would "send them back on the streets" at the conclusion of their stay.

62. Questions from the council provoked public comment unfairly equating plaintiffs' proposed facility with other facilities managed by entirely different individuals and entities. According to one speaker the City needs to "control" handicapped residents, because establishing a clinically managed residential treatment facility available to Medicaid recipients is "the worst thing that could happen to our community." Pastor Carolyn Hunt explained she "knows the community" to include, "daycares ... salons ... pediatric dentists", and plaintiffs' venture simply "does not fit in this area".

63. Councilmember Gretchen Ezerneck responded that the property is correctly zoned for its intended use, and in truth, there are at least seven (7) offices of psychiatrists, therapists, counselors, and groups treating substance abuse disorders within a one-block radius of the Hunts' church and subject property.

64. The only meaningful difference between the businesses currently operating within a one-block

radius of the property and the facility proposed by plaintiffs is that individuals in recovery would temporarily reside at plaintiffs' facility during their treatment.

65. Monroe Mayor Friday Ellis, individual members of the city council, and attending city officials each and all breached their respective and mutual official duties to enforce rights and privileges guaranteed by Constitution of the United States, Louisiana State Constitution, multiple state and federal laws, the Monroe City Charter, the purchase agreement, and the rules regulating, the city council, city council meetings, the administration of its business.

66. Such duties breached by defendants include, but are not limited to, individual and collective failures to (a) enforce procedural and administrative rules and requirements relative to introducing proposed ordinances to sell real property; (b) abide by state and federal laws; (c) observe the representations and warranties set forth in the purchase agreement; (d) properly supervise, administer, and instruct the council members their actions cannot be influenced by bias against persons with disabilities; (e) resist public pressure to discriminate against the intended residents of Legacy House based on their disability; and (f) refrain from treating plaintiffs and the intended residents of their facility differently than any other party to a purchase agreement or subject of a proposed ordinance.

67. After admitting she "know[s] the church",

councilmember Juanita Woods suggested to "pass over" the vote on introducing the ordinance until October 25, after a "community meeting" could be held.

68. Councilmember Douglas Harvey pointed out introduction of the ordinance should take place *before* requesting community feedback and that "short of anything egregious" he [defendant Harvey] "always" introduces a proposed ordinance so the community can learn more about the ordinance proposed by the city council.

69. The council voted to defer voting on introduction of the proposed ordinance to sell the property until October 25, 2022.

70. In doing so, the mayor, members of the city council, and city officials ignored substantive laws as well as procedural and administrative rules. Neither the mayor, any member of the city council nor any city official objected to any violation of same or cautioned against allowing the actions of the city to be influenced by out of order comments, insinuation, and innuendo expressing bias against persons with disabilities.

71. Neither the mayor, any member of the city council nor any city official cautioned against bowing to discriminatory public opinion.

72. The mayor, councilmembers, and all city officials present at the meeting acted alone, in concert, and under color of state law to wrongfully place additional procedural requirements on plaintiffs in connection with the sale of surplus municipal property.

73. In short, plaintiffs allege such wrongful conduct was part and parcel of a scheme to intentionally deny the handicapped residents of Legacy House the benefits authorized by CMS and deny plaintiffs' corresponding business opportunity and lost profits.

THE COMMUNITY MEETING

74. On September 26, 2022, the "community meeting" suggested by councilmember Woods took place at the Hunts' church. The Hunts distributed pre-printed literature opposing the sale of the property on the basis that individuals in recovery intended to dwell there. The ensuing meeting served as a platform for several individuals to vocalize their own brand of unsupported, unsubstantiated stigma and innuendo respectively attributed to individuals in active addiction. The substance of the opposition amounted to: Because "alcoholics/addicts" would dwell at plaintiffs' facility, nondescript "problems" would erupt, it would "only be a matter of time" before "something" would happen to unidentified "women" and therefore the value of each opponent's property would surely decrease.

75. Without exception, each opponent admitted the "problems" with which they were concerned were already present in their community.

76. Pastor Daniel Hunt equated the proposed dwelling for handicapped residents to a "toilet" in his "kitchen".

CITY CONFIRMS DEFERRING VOTE WITHOUT WRITTEN OPPOSITION

77. Also on September 26, plaintiffs issued a public records request to the City for all written oppositions to the proposed ordinance to sell the property which had been filed with the municipal clerk in accordance with state law.

78. On September 28, the City confirmed the vote on introducing the ordinance had been "deferred" to October 25 and no written opposition had been filed with the City.

79. Under applicable law, the city charter, and rules governing ordinances, city officials, the city council, city council meetings, and the administration of its business, including Robert's Rules of Order, the city council's vote on introducing the ordinance October 25, 2022, and public debate relating thereto, were required, mandatory, and non-discretionary where the motion to introduce the ordinance was made, seconded, the second was never withdrawn, and the vote on the proposed ordinance was "deferred" to a definite date.

PLAINTIFFS' LETTER TO THE CITY

80. On October 21, 2022, plaintiffs hand delivered a letter to the City of Monroe which reminded the City that La. R.S. 33:4712 requires any opposition to a proposed ordinance to be filed with the municipal clerk, no opposition had been filed, and the only oral opposition to the proposed ordinance

amounted to illegal discrimination against the intended residents of the treatment facility based on their handicap.

81. Plaintiffs' letter made clear any pretext for refusing to sell the property under the present circumstances amounted to a violation of the federal Fair Housing Act, the Americans with Disabilities Act, the Rehabilitation Act, and official city policy. The letter demanded the City honor its obligations under the purchase agreement and "immediately" inform the buyer if the City became aware of any fact, including any fact related to any administrative proceeding, that would threaten the sale, use, ownership, or occupancy of the property. Plaintiffs' demand was met with silence and inaction on the part of defendants.

82. Plaintiffs' letter further requested reasonable accommodation under the Fair Housing Act and concluded by requesting the City to advise whether addition information was necessary prior to the City acting on applicants' request for reasonable accommodation.[1] Applicants attached several records

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[1] The City of Monroe has delineated its own Application and Procedure for requesting reasonable accommodation under federal law. According to the City of Monroe, a request for reasonable accommodation applies only to zoning districts that allow single family homes and then only for "group homes" defined by the City as "a single-family residential structure ***... not including alcohol and drug abuse clientele ...***" The City does not provide a procedure for appealing the denial of a request for reasonable accommodation outside of this context. Accordingly, plaintiffs submitted their request for reasonable accommodation directly to the office of the City Attorney.

to their letter, including without limitation, the literature distributed by the Hunts at the "community meeting", an audio recording of the "community meeting", an affidavit from a licensed addictionologist, articles from various medical journals, an affidavit from Cole Sullivan, city zoning records, the purchase agreement, and a copy of the City's anti-discrimination policy.

THE CITY'S RESPONSE TO PLAINTIFFS' LETTER

83. After plaintiffs' letter was submitted to the City, Mayor Ellis and several members of the city council met behind closed doors, in secret, to determine a binding course of action regarding the purchase agreement, the reasonable accommodation request, and the proposed ordinance, which was "not going away." One councilmember conducted telephone polling, prior to any public debate.

84. The agenda for the city council meeting for October 25, 2022, does not identify any executive session that took place concerning the proposed ordinance to sell the property to plaintiffs, the purchase agreement, the intended residents of Legacy House, plaintiffs' letter, or request for reasonable accommodation.

85. Obviously, named defendants secretly meeting behind closed doors to determine the City's course of action directed at a single developer based on illegal discrimination and in violation of Louisiana's Sunshine Laws fails to qualify as a legitimate

legislative activity.

86. On October 25, approximately two (2) hours before the city council would resume its "deferred" vote to introduce the ordinance to sell the property, Kema Dawson, Chairperson of the Monroe City Council, sent a text message to Pastor Carolyn Hunt alerting her that Dawson's calls to Hunt were "going to [her] voicemail." Carolyn Hunt's name is stored in Dawson's cell phone as "First Lady Hunt."

THE SECOND CITY COUNCIL MEETING – OCTOBER 25, 2022

87. At the second council meeting on October 25, 2022, approximately twenty (20) individuals waited in the audience to speak in favor of both introducing the ordinance to sell the property and plaintiffs' application for reasonable accommodation under the Fair Housing Act. Among those waiting to be heard were two (2) licensed physician addictionologists; members of Legacy Recovery Services, LLC; and approximately fifteen (15) witnesses who sought to provide testimony to the city council. Pastors Daniel and Carolyn Hunt were also present.

88. The proposed ordinance to sell the property was the last item on the agenda. The mayor, city council, and city officials circumvented the rights and privileges guaranteed by the United States Constitution, the Louisiana Constitution, federal laws, state laws, the city charter, the purchase agreement, and the rules governing the city council and administration of its business, including Robert's

Rules of Order, by pretending the motion to introduce the ordinance had not already been seconded September 13, and the vote on introducing the ordinance had been deferred to October 25 pending public debate.

89. No debate or comment was allowed prior to action on the ordinance.

90. Chairperson Dawson refused to put the vote to a question. Defendants remained silent and inactive in refusing to enforce the applicable constitutional provisions, laws, statutes, rules, the city charter, the purchase agreement, and resolutions, notwithstanding their mutual and respective official duties to the contrary and requirements of due process and equal protection.

91. Councilmember Gretchen Ezernack reminded all city officials La. R.S. 33:4712 requires opposition to an ordinance to be in writing and attempted to open discussion by reurging introduction of the ordinance.

92. The mayor, all other council members, and the city clerk sat in silence until Chairperson Dawson quietly declared the (already seconded) motion, "died" for lack of a second.

93. This marked the consummation of the City's decision-making process from which legal consequences flow.

94. Although present at the meeting, neither

plaintiffs, nor the Hunts, had heard Chairperson Dawson's declaration or understood what action the City had taken until after the city council meeting had concluded when Dawson explained to concerned citizens wanting to be heard that there would be no debate because the ordinance was already "dead".

95. Dawson told the Hunts on the record she would talk to them later off the record.

96. In fielding off the record inquires made immediately after Dawson's comments, Dawson told the Hunts she would "call [them] later" and referred plaintiffs to "legal" who immediately referred plaintiffs back to Dawson.

97. The "deferred" vote to sell real property ***no longer needed for public use*** for $150,000.00 more than the lowest appraised value of that property and $50,000.00 ***more than the highest appraised value of the property, which had been fixed by the city council to take place October 25, did not take place. No opportunity for public comment was allowed. No written opposition to the ordinance was ever filed and the only oral opposition amounted to illegal discrimination against the intended residents of Legacy House based on their handicap.***

98. Not a single councilmember, the mayor, any city official, or any representative of the city asked any question relating to plaintiffs' reasonable accommodation request, allowed plaintiffs to present evidence concerning same, or indicated plaintiffs'

request for accommodation was insufficient for any reason.

99. Knowing its actions were illegal, defendants simply bowed to community pressure voiced orally from affluent constituents behind closed doors to deny the sale of the property to plaintiffs based on the handicap of the intended residents of that property.

100. The defendants illegally refused to introduce the ordinance, refused to allow debate thereon, refused to allow plaintiffs to be heard, and refused to honor the "deferred" vote on the ordinance because such would reveal discriminatory animus against the protected intended residents of Legacy House was a significant factor in the decision making of the city council and those to whom the council were knowingly responsive: including "First Lady Hunt" and her husband who believes allowing a residential facility intended to treat individuals recovering from substance abuse is the equivalent of a "toilet in [his] kitchen."

101. Plaintiffs allege defendants' misconduct is undeniably administrative in nature.

102. Such actions, inactions, silence, and omissions were undertaken in knowing violation of the text and spirit of the United States Constitution, the Louisiana Constitution, multiple federal and state laws, the city charter, and the rules and regulations governing the city council, the administration of its business, the mayor, the city clerk, the city council members and their individual respective, mutual, and

collective official duties as public officials.

103. Defendants acting alone and in concert effectively denied plaintiffs the right to review and respond to a written opposition to the proposed ordinance, to be heard and submit evidence in favor of reasonable accommodation, to submit evidence and argument in favor of introducing the ordinance, to learn of the telephone polling prior to debate, to learn the City had knowledge of administrative facts that threatening the sale of the property which the City refused to disclose per the terms of the purchase agreement, and that council members and the mayor had met in secret behind closed doors to determine a course of action which defendants knew would harm plaintiffs and the residents of Legacy House.

104. Plaintiffs further allege they were treated differently than any other signatory of a written purchase agreement with the City of Monroe, and/or subject of a proposed ordinance to sell surplus municipal property no longer needed for public use.

105. Upon information and belief, other than in the instant matter, neither the City of Monroe nor its Director of Administration has ever executed a purchase agreement to sell real property correctly zoned for the buyer's intended use for a price substantially more than its appraised value then the Monroe City Council failed to introduce the proposed ordinance to sell the property per the terms of the purchase agreement.

106. Plaintiffs further allege such disparate or

selective enforcement also includes forcing plaintiffs to comply with additional procedural requirements, terms, and conditions of the sale, such as the "community meeting" fabricated by the city council to avoid voting on the already seconded motion to introduce the ordinance.

107. Plaintiffs aver the City cannot cite a single instance, other than in the instant matter, where an ordinance was proposed by the City, the motion to introduce the ordinance was seconded, the second was never withdrawn, and the City declined to vote on the ordinance.

108. Plaintiffs allege such disparate treatment and/or or selective enforcement was motivated by prejudice against the handicap of the intended residents of the property. Indeed, no rational basis exists for defendants' actions described above.

DENIAL OF REASONABLE ACCOMMODATION WITHOUT HEARING

109. On October 28, 2022, three (3) days after the second council meeting, the City denied plaintiffs' reasonable accommodation request by letter.

110. The City complained plaintiffs did not "specifically" know on October 21 that the vote the City deferred to October 25 would not take place. Defendants somehow contend plaintiffs should have known on October 21 of the City's October 25 "practice" of pretending the motion to introduce had not already been seconded.

111. Prior to denying plaintiffs' request for reasonable accommodation, plaintiffs were not afforded an opportunity to be heard, let alone have notice or opportunity to respond to any questions, concerns, or objections to plaintiffs' request for reasonable accommodation.

PUBLIC RECORDS REQUEST

112. On October 31, 2022, plaintiffs propounded a public records request on the City for information pertinent to their venture, including communications between its council members, the video recordings of both city council meetings, the official minutes of the city council meetings, and the rules and regulations governing the city council and its meetings.

113. On January 3, 2023, the Clerk and record custodian for the City produced partially redacted email communications between council members. The clerk declined to cite any public record exception for the redaction or explain why some of the communication was a responsive public record and other parts of the same communication were not public record.

114. The clerk further produced a resolution which requires her to identify the full name of council members who second any motion.

115. The clerk also produced official meeting minutes in which she omits the fact that the motion to introduce the ordinance to sell the property to Cole Sullivan was seconded during the September 13, 2022,

city council meeting, and much less the names of the council member seconding that motion.

116. Plaintiffs reserve the right to amend their Complaint as more information becomes available in discovery.

V. LIABILITY FOR DAMAGES

117. Through the actions, inactions, silence, and omissions described herein, defendants individually, respectively, collectively, and mutually acted negligently, intentionally, maliciously, irrationally, arbitrarily, capriciously, outrageously, recklessly, without regard to plaintiffs' rights, and in knowing violation of clearly established rights guaranteed by the Constitution of the United States, the Louisiana Constitution, federal and state laws, the city charter and the rules, regulations and resolutions governing city officials, the city council, the administration of its business, and the purchase agreement.

118. Plaintiffs specifically allege defendants' mutual and respective wrongful actions, inactions, silence, and omissions complained of herein are undeniably administrative in nature. Under the circumstances, defendants had no discretion whether to vote on the motion to introduce the ordinance and/or allow debate of that motion where (a) the motion had been seconded, (b) the second was never withdrawn, and (c) the vote was deferred to a specific date.

119. Further, defendants' decisions to meet in secret and behind closed doors to determine a course of

action based on illegal discrimination in specific regard to plaintiffs and in violation of Louisiana's Sunshine Laws, fails to qualify as a legitimate, quintessentially legislative activity. Defendants' misconduct specifically targeted plaintiffs rather than the community generally. The facts considered by defendants in its decision making related to plaintiffs specifically, instead of general policy implications. The actions and inactions at issue intentionally single out plaintiffs to worsen their legal plight by treating plaintiffs differently from other similarly situated individuals purchasing property from the City.

120. As a proximate and direct result of the misconduct on the part of defendants, individually and collectively, plaintiffs have suffered, continue to suffer, and will suffer general and special compensatory damages, economic loss, loss of business opportunity, lost profits, injury, inconvenience, damage to reputation, embarrassment, humiliation, and professional expenses as proven in respective amounts to the satisfaction of the trier of fact.

121. The misconduct complained of herein has ruined, if not frustrated, the mission of Legacy House and caused it to divert significant resources to counteract defendants' misconduct.

122. The misconduct complained of herein has further deprived plaintiffs of their right to purchase property and operate commercially-viable residential treatment facility in accordance with the rights, privileges, benefits and principles afforded by clearly established law including the Constitution of the

United States, the Louisiana Constitution, multiple federal and state laws, the Monroe City Charter, rules governing city officials, the city council, administration of its business, the signed purchase agreement, and in accordance with the objectives of CMS.

123. Accordingly, the intended residents of Legacy House were denied the benefits available under Medicaid and/or those made available under Louisiana's Section 1115 waiver.

124. Moreover, the irrational actions of defendants, who are recipients of federal assistance, have also frustrated plaintiffs' rights to be treated by the City of Monroe as any other similarly situated citizen or entity including signatories to a purchase agreement, subjects of a proposed ordinance, and/or applicants for reasonable accommodation.

125. For example, other than in this matter, neither the City of Monroe, nor its Director of Administration, has ever executed a purchase agreement to sell real property correctly zoned for the buyer's intended use for substantially more than the property 's appraised value, then the Monroe City Council fail to introduce the proposed ordinance to sell the property.

126. The City also imposed additional procedural requirements, terms, and conditions of the sale on plaintiffs such as the "community meeting" fabricated by the city council to avoid voting on the already seconded motion to introduce the ordinance.

127. Further, other than in this case the City has never proposed an ordinance, seconded the motion to introduce the ordinance, then declined to vote on the ordinance it had proposed to introduce.

128. Each individual named defendant qualifies as a city official with the authority to address discrimination and institute appropriate corrective measures, and who instead, intentionally discriminated against plaintiffs and the intended residents of Legacy House and further practiced deliberate indifference to actual knowledge of such discrimination.

129. Plaintiffs each and all are justly entitled to all damages proven to the satisfaction of the trier of fact, and as such appropriately correspond with the Counts below which collectively include, general and economic compensatory damages including lost profits, lost business opportunity, punitive damages, costs, legal interest, and reasonable attorney fees.

VI. CLAIMS FOR RELIEF

COUNT ONE
Violation of 42 U.S.C § 3604
Federal Fair Housing Act
AGAINST ALL DEFENDANTS

130. Plaintiffs reallege the above facts and allegations as if they were fully set forth herein *in extensio.*

131. The Fair Housing Act provides that it is

illegal to discriminate in the sale or otherwise make unavailable or deny a dwelling to any buyer because of a handicap of a person intending to reside in that dwelling after it is sold. The Fair Housing Act also provides it is illegal to discriminate against any person in the terms, conditions, or privileges of a sale of dwelling or in the provision of services or facilities in connection with such dwelling because of a handicap of a person intending to reside there after it is sold. Lastly, the Fair Housing Act makes it unlawful for a municipality to refuse to make reasonable accommodations in rules, policies, practices, or services when accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

132. The proposed Legacy House venture property and improvements at 1400 and 1401 Stubbs qualifies as a "dwelling" under the Fair Housing Act.

133. The intended residents of Legacy House are "handicapped" for the purposes of the Fair Housing Act as being diagnosed with alcoholism, addiction and/or substance abuse coupled with treatment and nonuse.

134. Defendants, through their actions and inactions, are liable for the violation of plaintiffs' rights under the federal Fair Housing Act, 42 U.S.C. § 3601 *et. seq*.

135. Plaintiffs specifically reiterate that such discriminatory misconduct includes, but is not necessarily limited to: disparate treatment of

plaintiffs, breaching the purchase agreement with plaintiffs in bad faith, pretending the refusal to sell the property to plaintiffs is due to some reason other than the handicap of the intended residents, violating or circumventing multiple federal and state laws, failing to comply with governing rules, arbitrarily imposing additional procedural requirements on plaintiffs, manipulating official minutes, denying plaintiffs due process and right to be heard, allowing prejudice to dictate the outcome of city council actions and inactions, failing to recuse, illegally and erroneously refusing a request for reasonable accommodation, establishing policies which discriminate against recovering individuals, failing to fully comply with public record law, and malfeasance.

136. Defendants are further violating plaintiffs' rights under the Fair Housing Act by refusing to sell the property and imposing additional procedures, terms, and conditions on the sale because of the handicap of its intended residents, and by interfering with the intended residents' right to live in a dwelling of their choice.

137. Defendants are also each individually liable to plaintiffs under the federal Fair Housing Act because they knowingly bowed to the discriminatory animus of the community against protected individuals. Indeed, discriminatory animus against the protected group was a significant factor in the actions taken by the municipal decision-makers themselves and by those to whom the decision-makers were knowingly responsive.

138. Plaintiffs further specifically allege the City, the mayor, the municipal clerk, the city council, and its individual defendant-constituents acted willfully and with gross disregard for plaintiffs' rights. Defendants' actions and inactions complained of herein are undeniably administrative in nature. Defendants' decisions, actions, silence, omissions, and calculated inaction specifically impacted plaintiffs rather than the community. The facts considered by the individual defendants in its decision making related to plaintiffs specifically instead of general policy implications. The actions at issue intentionally single out plaintiffs and affect plaintiffs differently from others who are similarly situated.

WHEREFORE Plaintiffs demand and solemnly pray for judgment in their favor and against defendants, individually, jointly, severally and *in solido* and request the Court grant the following relief:

i. Declaratory relief stating defendants' mutual and respective actions and inactions constitute violations of the federal Fair Housing Act;

ii. Compensatory damages, including lost profits and/or lost business opportunity;

iii. Punitive damages;

iv. Reasonable attorney fees; and

v. Such other and further relief as the Court deems necessary and appropriate.

COUNT TWO
Violation of 42 U.S.C. §12101 *et. seq.*
American with Disability Act of 1990
AGAINST ALL DEFENDANTS

139. Plaintiffs reallege the above facts and allegations as if they were fully set forth herein *in extensio.*

140. The Americans with Disabilities Act (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 service, program, or activity of a public entity, or be subjected to discrimination by any such entity.

141. Section 12132 of the ADA constitutes a general prohibition against discrimination on the basis of disability by public entities.

142. Additionally, the ADA makes it unlawful for a public entity in determining the site or location of a facility, to make selections that have the purpose or effect of excluding individuals with disabilities from, denying such disabled persons the benefits of such facility, or otherwise subjecting them to discrimination. 28 C.F.R. 35.130(b)(4).

143. To be admitted to plaintiffs' facility, the resident-patients must be diagnosed as suffering from substance abuse and agree to remain sober and participate in substance abuse treatment. Consequently, the intended residents of Legacy House,

as individuals with disabilities that substantially impair one or more major life activities, are "qualified persons" with disabilities within the meaning of the ADA. 42 U.S.C. 1202(2) and 28 C.F.R. 35.104.

144. As entities, agents, and instrumentalities of municipal government named defendants qualify as public entities within the meaning of the ADA, 42 U.S.C. 12131.

145. The defendants have violated and continue to violate the ADA by and through disparate treatment of plaintiffs, breaching the purchase agreement with plaintiffs in bad faith, violating or circumventing multiple federal and state laws, pretending the refusal to sell the subject property to plaintiffs is due to some reason other than the handicap of the intended residents, failing to comply with governing rules, arbitrarily imposing additional procedural requirements on plaintiffs, manipulating official minutes, denying plaintiffs due process and right to be heard, allowing prejudice to dictate the outcome of city council actions and inactions, failing to recuse, illegally and erroneously refusing a request for reasonable accommodation, establishing policies which discriminate against recovering individuals, failing to fully comply with public record law, and malfeasance.

146. Defendants have further violated the ADA by (a) denying the intended residents of Legacy House, individuals recovering from alcohol and substance abuse, the opportunity to participate in or benefit from the supportive residential treatment program offered by Legacy House and paid for by Medicaid through the

Section 1115 Waiver; (b) by subjecting the intended residents of plaintiffs' facility to discrimination on the basis of their handicap in the illegal administration of municipal government; (c) by denying the intended residents of Legacy House an opportunity to participate in the most integrated and cost efficient setting appropriate to their needs; (d) denying the intended residents of Legacy House an equal opportunity to benefit from services and programs equal to those of people without disabilities; and (e) by utilizing municipal government to provide disparate treatment to groups of unrelated disabled persons who are recovering alcoholics and drug addicts.

WEHEREFORE Plaintiffs pray for judgment in their favor and against defendants, individually, jointly, severally and *in solido* and request the Court grant the following relief:

i. Declaratory relief stating defendants' mutual and respective actions and inactions constitute violations of the Americans with Disabilities Act;

ii. Compensatory damages, including lost profits and/or lost business opportunity;

iii. Reasonable attorney fees; and

iv. Such other and further relief as the Court deems necessary and appropriate.

COUNT THREE
Violation of 29 U.S.C. § 791 *et. seq.*
Rehabilitation Act of 1973
AGAINST ALL DEFENDANTS

147. Plaintiffs reallege the above facts and allegations as if they were fully set forth herein *in extensio.*

148. The Rehabilitation Act, 29 U.S.C. 791 , *et. seq*. provides that no qualified individual with a disability shall, solely by reason of her or his disability, be excluded from participation in or 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).

149. The City of Monroe receives federal assistance such as the Community Development Block Grant and Home Partnership Grant which are each funded by the United States Department of Housing and Urban Development. The Rehabilitation Act defines "programs or activity" as "all of the operations" of specific entities, including "a department, agency, special purpose district, or other instrumentality of a state or of a local government." 29 U.S.C. § 794(b)(1)(A).

150. The City of Monroe, the mayor of Monroe, its City Council, its individual defendant constituents, the municipal clerk, and city officials are agents and instrumentalities of municipal government and thus covered under the Rehabilitation Act. Defendants are qualifying public entities within the meaning of the

Rehabilitation Act.

151. To be admitted to plaintiffs' facility, the patient must be diagnosed as suffering from alcoholism, addiction, or substance abuse and agree to remain sober and participate in treatment. Consequently, the intended residents of Legacy House are qualified persons with disabilities within the meaning of the Americans with Disability Act and Rehabilitation Act, which prohibits disability-based discrimination by public entities receiving federal assistance.

152. Defendants have violated and are continuing to violate the RA by discriminating against plaintiff and the intended residents of Legacy House, *inter alia* by and through disparate treatment, breaching the purchase agreement with plaintiffs in bad faith, violating or circumventing multiple federal and state laws, pretending the refusal to sell the property to plaintiffs is due to some reason other than the handicap of the intended residents, failing to comply with governing rules, arbitrarily imposing additional procedural requirements, manipulating official minutes, denying plaintiffs due process and right to be heard, allowing prejudice to dictate the outcome of city council actions and inactions, failing to recuse, illegally and erroneously refusing reasonable accommodation, establishing policies which discriminate against recovering individuals, failing to fully comply with public record law, and malfeasance.

WHEREFORE Plaintiffs demand and pray for judgment in their favor and against defendants,

individually, jointly, severally and *in solido* granting the following relief:

i. Declaratory relief stating defendants' mutual and respective actions and inactions constitute violations of the Rehabilitation Act;

ii. Compensatory damages, including lost profits and/or lost business opportunity;

iii. Reasonable attorney fees; and

iv. Such other and further relief as the Court deems necessary and appropriate.

COUNT FOUR
Violations of 42 U.S.C. § 18116
Affordable Care Act
AGAINST ALL DEFENDANTS

153. Plaintiffs reallege the above facts and allegations as if they were fully set forth herein *in extensio.*

154. The Affordable Care Act provides that "an individual shall not, on the ground prohibited under ... [the Rehabilitation Act], be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance." The Fifth Circuit has explained that "[f]or disability discrimination claims, the ACA incorporates the substantive analytical framework of

the [Rehabilitation Act].

155. The City of Monroe receives federal assistance such as the Community Development Block Grant and Home Partnership Grant which are each funded by the United States Department of Housing and Urban Development.

156. Plaintiffs are "aggrieved" and "qualified persons" under the ACA. Claims under the ACA are analyzed under the same analytical frameworks as claims arising under the ADA. Accordingly, that section is set forth herein as if recopied *in extensio.*

157. Moreover, defendants have denied the intended residents of Legacy House the benefits of federal funding secured by CMS' Section 1115 waiver granted in favor of Louisiana's Medicaid enrollees by virtue of their disability. This is prohibited by the ACA.

WHEREFORE Plaintiffs pray for judgment in their favor and against defendants, individually, jointly, severally and *in solido* and request the Court grant the following relief:

i. Declaratory relief stating defendants' mutual and respective actions and inactions constitute violations of the Affordable Care Act;

ii. Compensatory damages, including lost profits and/or lost business opportunity;

iii. Reasonable attorney fees; and

iv. Such other and further relief as the Court deems necessary and appropriate.

COUNT FIVE
Violations of 42 U.S.C. § 1983
Deprivation of Rights and Privileges
Under Color of State Law
AGAINST ALL DEFENDANTS

158. Plaintiffs reallege the above facts and allegations as if they were fully set forth herein *in extensio.*

159. Under color of State law, named defendants including the city council, its individually named defendant-constituents, the mayor, the municipal clerk, the City of Monroe, and its employees and agents, illegally denied plaintiffs clearly established rights arising under Fair Housing Act, Americans with Disabilities Act, Rehabilitation Act, Affordable Care Act, and rights guaranteed by the Louisiana State Constitution and Equal Protection and Due Process guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

160. Indeed, the defendant mayor, city council members, and city clerk are officials whose actions and inactions constitute official policy of the City of Monroe which deprived plaintiffs of constitutional rights.

161. Also, the City's policy and prescribed procedure for applying for and appealing a denial of a

request for reasonable accommodation does not apply to individuals recovering from alcohol and substance abuse, *per the City's definitions*. The City was repeatedly warned this was the case and this City policy served as a moving force behind violations of the constitutional rights of plaintiffs and the intended residents of Legacy House.

162. The discriminatory decisions of defendants also violated plaintiffs' right to procedural and substantive due process guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution by arbitrarily and irrationally interfering with the legally permitted, economically beneficial use of the property by plaintiffs. Plaintiffs have a distinctive and definite investment-backed expectation in their ability to use and enjoy the property and facility in accordance with their rights arising under the U.S. Constitution, federal law, constitution of Louisiana, Louisiana state law, city policy, the city charter, the purchase agreement, and the rules governing the city, city council, city council meetings and the administration of its business.

163. Discriminatory actions and inactions of defendants also violated plaintiffs' right to equal protection guaranteed by the Fourteenth Amendment to the United States Constitution by refusing to introduce a proposed ordinance subject of a lawfully executed purchase agreement. Defendants treated plaintiffs substantively and procedurally differently than other similarly situated applicants for reasonable accommodation, prospective buyers of City property, and beneficiaries of a proposed ordinance that has

been seconded for introduction and where a vote on said ordinance is required pending public debate.

164. For example, other than in this matter, neither the City of Monroe, nor its Director of Administration, has ever executed a purchase agreement to sell real property correctly zoned for the buyer's intended use and for substantially more than its appraised value, then the Monroe City Council failed to introduce the proposed ordinance to sell the property per the terms of the purchase agreement.

165. Further, the City imposed additional procedural requirements, terms, and conditions of the contracted sale on plaintiffs such as the "community meeting" fabricated by the city council to avoid voting on the already seconded motion to introduce the ordinance.

166. Other than here, the City has never proposed an ordinance, seconded the motion to introduce the ordinance, then declined to vote on the ordinance it had proposed to introduce.

167. Such disparate treatment also includes the selective enforcement of constitutional principles, federal law, state law, city policy, rules governing city officials, city council, and city council meetings intended to irrationally, unreasonably, illegally, and arbitrarily discriminate against plaintiffs and the intended residents of plaintiffs' facility.

168. The illegal and improper actions of defendants are not roughly proportional to the public

good sought to be achieved and are grossly disproportionate to any asserted public interest because they unduly deprive plaintiffs of their federal and constitutional rights far beyond what is reasonable, legal, or necessary. The actions of defendants unreasonably prevent, frustrate, and impede plaintiffs' rights to purchase, develop, use, operate and enjoy the property for their facility in accordance with federal law and the United States Constitution.

169. Plaintiffs allege defendants' misconduct qualifies as arbitrary, capricious, and so outrageous so as to shock the contemporary conscious and includes, but is not limited to: disparate treatment, breaching the purchase agreement in bad faith, violating or circumventing multiple federal and state laws, pretending the refusal to sell the property to plaintiffs is due to some reason other than the handicap of the intended residents, failing to comply with governing rules, arbitrarily imposing additional procedural requirements on plaintiffs, manipulating official minutes, denying plaintiffs due process and right to be heard, allowing prejudice to dictate the outcome of city council actions and inactions, failing to recuse, illegally and erroneously refusing reasonable accommodation, establishing policies which discriminate against recovering individuals, failing to fully comply with public record law, and malfeasance.

170. Plaintiffs particularly allege defendants' conduct intended to injure plaintiffs and worsen their legal plight which is in no way justifiable by any legitimate government interest and defendants'

misconduct described herein resulted from deliberate indifference of the rights of plaintiff and/or the intended residents of Legacy House.

WHEREFORE Plaintiffs pray for judgment in their favor and against defendants, individually, jointly, severally and *in solido* and request the Court grant the following relief:

i. Declaratory relief stating defendants' mutual and respective actions and inactions constitute violations of 42 U.S.C. § 1983;

ii. Compensatory damages, including lost profits and/or lost business opportunity;

iii. Punitive damages;

iv. Reasonable attorney fees available under 42 U.S.C. § 1988; and

v. Such other and further relief as the Court deems necessary and appropriate.

COUNT SIX
Tortious Violation of La. R.S. 42:12
Louisiana's Open Meetings Law
AGAINST THE MAYOR, MUNICIPAL CLERK, AND INDIVIDUAL DEFENDANT-MEMBERS OF THE CITY COUNCIL

171. Plaintiffs reallege the above facts and allegations as if they were fully set forth herein *in*

extensio.

172. Louisiana's Open Meeting Law, La. R.S. 42:12, *et. seq.,* recognizes, "It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy."

173. Defendants, through their actions and inactions, are liable to plaintiffs under La. C.C. art. 2315 for violating La. R.S. 42:12, *et. seq.,* including without limitation La. R.S. 42:14. For instance, defendants' mutual and respective decisions to gather information; conduct telephone polling; discuss matters, and determine a binding course of action in secret are violations of Louisiana's Sunshine Laws. Such misconduct is compounded by defendants' failure to call an executive session, adhere to the rules relating thereto, or otherwise inform the public of any of the above which also constitute violations of Louisiana's Open Meeting Law.

174. Notably, plaintiffs' claims are not for enforcement of said statute or for voidance of defendant's action, but instead, for compensatory damages in tort for violations of La. R.S. 42:12 *et. seq.* To the extent plaintiffs' claims are construed as an enforcement or voidance action under La. R.S. 42:12 *et. seq.,* plaintiffs point out they learned of the operative facts giving rise to these claims by the City's belated response to a public records request furnished to plaintiffs over sixty (60) days after plaintiffs' request

for records was made October 31, 2022.

WHEREFORE Plaintiffs pray for judgment in their favor and against defendants, individually, jointly, severally and *in solido* and request the Court grant the following relief:

i. Declaratory relief stating defendants' mutual and respective actions and inactions constitute violations of La. R.S. 42:12 *et. seq.;*

ii. Compensatory damages, including lost profits and/or lost business opportunity;

iii. Punitive damages;

iv. Reasonable attorney fees; and

v. Such other and further relief as the Court deems necessary and appropriate.

COUNT SEVEN
Violations of La. R.S. 14:134
Tortious Malfeasance
AGAINST THE MAYOR, MUNICIPAL CLERK, AND INDIVIDUAL DEFENDANT-MEMBERS OF THE CITY COUNCIL

175. Plaintiffs reallege the above facts and allegations as if they were fully set forth herein *in extensio.*

176. Defendants, through their mutual and

respective actions, inactions, silence, and omissions, are liable to plaintiffs in tort under La. C.C. art. 2315 for violations of La. R.S. 14:134, Louisiana's malfeasance statute. Under said statute it is malfeasance for public officers, officials, or employees to refuse to perform their official duties, perform their duties in an unlawful manner; and/or knowingly allow other officers, officials, or employees under their authority to refuse to perform their duties or perform their duties in an unlawful manner.

177. The mayor of Monroe, individual members of the city council, city clerk, and attending city officials each and all breached their respective and mutual affirmative official duties to enforce plaintiffs' rights arising under the Constitution of the United States, Louisiana State Constitution, multiple federal laws, multiple state laws, the city charter, and the rules regulating the respective offices of each official, the city council, city council meetings, the administration of its business and the purchase agreement signed by the Director of Administration.

178. Such duties also include adhering to the letter and spirit of procedural and administrative requirements relative to introducing proposed ordinances to sell real property; the rules regulating the respective offices of each official, the city council, city council meetings; instructing other council members their actions cannot be influenced by bias against persons with disabilities, resisting public pressure to discriminate against the intended, handicapped residents of Legacy House, and refraining from treating plaintiffs and the intended residents of

their facility any differently than any other signatory of a purchase agreement with the City of Monroe, beneficiary of a proposed ordinance, or applicant for reasonable accommodation.

179. More particularly, the city clerk violated numerous duties owed to plaintiffs, including without limitation, her duty to record the motion to introduce the ordinance to sell the property had been seconded during the first city council meeting, the names of the councilmembers who moved and seconded that motion, her duties to the council relating to procedure, and her duty to timely and legally respond to public records requests. Additionally, the city council and city clerk breached their duty not to approve altered city council meeting minutes as official minutes.

180. Lastly, the mayor, as the chief executive officer of the city responsible for ensuring all laws, provisions of the city charter and acts of the city council are faithfully observed and executed; for supervising the administration of all departments; and for the good faith enforcement of rules governing the city council, administration of city policy, and obligations owed by the city to its citizens including those who are parties to a contract with the City and/or those applying for reasonable accommodation; breached those duties he owed to plaintiffs as the Mayor of Monroe.

WHEREFORE Plaintiffs pray for judgment in their favor and against defendants, individually, jointly, severally and *in solido* and request the Court grant the following relief:

i. Declaratory relief stating defendants' mutual and respective actions and inactions constitute violations of La. R.S. 14:134 for the purposes of La. C.C. art. 2315;

ii. Compensatory damages, including lost profits and/or business opportunity; and

iii. Such other and further relief as the Court deems necessary and appropriate.

COUNT EIGHT
Bad Faith Breach of Contract
AGAINST ALL DEFENDANTS

181. Plaintiffs reallege the above facts and allegations as if they were fully set forth herein *in extensio.*

182. The City of Monroe, acting through the actions, inactions, and silence of the individually named defendants, breached the purchase agreement in bad faith and are liable to plaintiffs *in solido* under La. C.C. art. 1759 and La. C.C. art. 1983 which requires good faith govern all obligations, including the performance of contracts, the law between the parties.

183. Additionally, as noted above, ambiguity and vagueness in the purchase agreement is construed against the drafter, namely the City of Monroe. See. La. C.C. art. 2056.

184. The City of Monroe breached the purchase

agreement in bad faith by discriminating against the intended handicapped residents of Legacy House based on their disability, refusing to require a written opposition to a proposed ordinance, refusing to introduce an ordinance, refusing to allow debate and vote on a motion to introduce the ordinance under existing rules because such would reveal discriminatory animus against a protected group was a significant factor in the position taken by defendants and those to whom the decision-makers were knowingly responsive.

185. The City of Monroe breached the purchase agreement in bad faith by refusing to adhere to rules regulating the respective offices of each official, the city council, and city council meetings, and administration of its business, including those regarding contracts to sell municipal property and proposed ordinances to sell that property.

186. The City further breached the purchase agreement in bad faith by treating plaintiffs differently than other similarly situated parties to a purchase agreement with the City and proposed ordinances to sell that property as alleged above.

187. The City further breached the purchase agreement m bad faith by secretly colluding to determine a binding administrative course of action that would prevent sale of the property to plaintiffs, while refusing to disclose such position, and the facts related thereto, to plaintiffs in violation of provisions of the purchase agreement.

188. The City of Monroe further breached the purchase agreement in bad faith by pretending its refusal to sell the property and/or honor its obligations under the purchase agreement is for some reason other than the handicap of the intended residents of that property.

WHEREFORE Plaintiffs pray for judgment in their favor and against defendants, individually, jointly, severally and *in solido* and request the Court grant the following relief:

i. Declaratory relief stating defendants' mutual and respective actions and inactions constitute bad faith breach of contract;

ii. Compensatory damages, including lost profits and/or business opportunity; and

iii. Such other and further relief as the Court deems necessary and appropriate.

COUNT NINE
Tortious Violation of La. R.S. 46:2254
Nondiscrimination in Real Estate Transactions
AGAINST ALL DEFENDANTS

189. Plaintiffs reallege the above facts and allegations as if they were fully set forth herein *in extensio.*

190. Defendants, through their actions, inactions, and silence are liable to plaintiffs for

violating La. R.S. 46:2254 which prohibits discrimination in the terms, conditions, or privileges of a real estate transaction or in the furnishing of services in connection therewith on the basis of a disability and which also prohibits the owner of a property from representing to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available.

WHEREFORE Plaintiffs pray for judgment in their favor and against defendants, individually, jointly, severally and *in solido* and request the Court grant the following relief:

i. Declaratory relief stating defendants' mutual and respective actions and inactions constitute violations of La. R.S. 46:2254 for the purposes of La. C.C. art. 2315;

ii. Compensatory damages, including lost profits and/or business opportunity; and

iii. Such other and further relief as the Court deems necessary and appropriate.

VII. JURY DEMAND

191. Complainants request trial by jury.

VII. PRAYER FOR RELIEF

WHEREFORE, Complainants, Cole Sullivan, Joe Montgomery and Jimmie Gaiennie, individually and as owner-members of Legacy Recovery Services,

LLC d/b/a/ "Legacy House" PRAY that Defendants be duly cited to appear and Answer the Complaint, and after due proceedings had, there by a judgment against Defendants the City of Monroe; the Mayor of Monroe Friday Ellis; municipal clerk Carolus Riley, the City Council of Monroe; Juanita Woods; Carday Marshall, Sr.; Douglas Harvey; individually, jointly, severally and jointly, and *in solido* for a true sum of compensatory damages, including lost business opportunity and profits, to be determined by the trier of fact; together with costs, including expert witness fees; appropriate punitive damages; and reasonable attorney fees, together with legal interest thereon as provided by law on both stated and federal claims.

Lastly, Complainants pray for all orders and decrees necessary and proper under the premises and for full, general, and equitable relief.

Respectfully Submitted:

/s/
S. HUTTON BANKS LBN 37377
1040 North Ninth St.
Monroe, Louisiana 71201
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Attorney for Colburn "Cole " Sullivan;
Joe Montgomery;
James "Jimmy" Gaiennie, III;
and Legacy Recovery Services, LLC

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

LEGACY RECOVERY SERVICES, LLC;
COLBURN "COLE" SULLIVAN,
JOE MONTGOMERY, and JAMES "JIMMY"
GAIENNIE, III
Plaintiffs,

VERSUS

CITY OF MONROE, LOUISIANA;
FRIDAY ELLIS, individually and in
his official capacity as Mayor of Monroe;
MONROE CITY COUNCIL;
DOUGLAS HARVEY; JUANITA WOODS;
CARDAY MARSHALL, SR.; KEMA DAWSON;
individually, and in official capacities as
Monroe City Council members; CAROLUS RILEY,
individually, and in her official capacity as Monroe
City Clerk; and not yet known employee(s),
policy maker(s), enforcement officer(s), agents(s)
and supervisor(s).
Defendants.

CIVIL ACTION NO.
JUDGE
MAGISTRATE
JURY TRIAL DEMANDED

VERIFICATION

BEFORE ME, the undersigned Notary Public,

duly commissioned and qualified in and for the State of Louisiana, personally came and appeared:

COLBURN SULLIVAN
JOE MONTGOMERY
JAMES GAIENNIE, III

who each after being duly sworn did depose and state on this 25rd day of May, 2023, that the allegations set forth in the foregoing Complaint are true and correct to the best of their respective knowledge, information, and belief and that each Petitioner requests the relief sought therein.

/s/
COLBURN SULLIVAN

/s/
JOE MONTGOMERY

/s/
JAMES GAIENNIE, III

APPENDIX F

United States Court of Appeals
for the Fifth Circuit

No. 24-30211

Legacy Recovery Services, L.L.C.,
doing business as Legacy House;
Colburn Sullivan; Joe Montgomery;
James Gaiennie, III,
Plaintiffs—Appellants,

versus

City of Monroe; Friday Ellis, *individually and in his official capacity as Mayor of Monroe*; City Council of Monroe; Douglas Harvey, *individually and in his official capacity as Monroe City Council Member*; Juanita Woods, *individually and in her official capacity as Monroe City Council Member*; Carday Marshall, Sr., *individually and in his official capacity as Monroe City Council Member*; Kema Dawson, *individually and in her official capacity as Monroe City Council Member*; Carolus Riley, *individually and in her official capacity as Monroe City Clerk*,
Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:23-CV-697

ON PETITION FOR REHEARING EN BANC

Before Wiener, Willett, and Duncan, *Circuit Judges*.

Per Curiam:

Treating the petition for rehearing en banc as a petition for panel rehearing (5th Cir. R.35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P.35 and 5th Cir. R.35), the petition for rehearing en banc is DENIED.