



2. This action is brought pursuant to Texas Property Code Sections 21.043 and 21.046.

### **PARTIES**

3. Plaintiff Selina Jones (hereinafter “Ms. Jones”) is an individual, and resides at 6815 Broadway, San Antonio TX 78209. The last three numbers of Ms. Jones’ driver's license number are 418. The last three numbers of Ms. Jones’ social security number are 069.

4. Plaintiff Roy Hummel (hereinafter “Mr. Hummel”) is an individual, who leased at 6815 Broadway, San Antonio TX 78209. Mr. Hummel now resides at 150 Rustleaf Drive, Apartment 49F, San Antonio, Texas 78242. The last three numbers of Mr. Hummel’s state identification card are 794. The last three numbers of Mr. Hummel’s social security number are 533.

5. Defendant David Hornberger is the trustee for Alamo Heights Independent School District. He is sued in his official capacity. He may be served at his personal address 402 Encino Ave, San Antonio, Bexar County, TX 78209.

6. Defendant Ryan Anderson is the trustee for Alamo Heights Independent School District. He is sued in his official capacity. He may be served at his personal address 108 Antelope Drive, San Antonio, Texas 78232.

7. Defendant Perry Shankle is the trustee for Alamo Heights Independent School District. He is sued in his official capacity. He may be served at his personal address 338 Corona Ave, San Antonio, Texas 78209.

8. Defendant Brian Hamilton is the trustee for Alamo Heights Independent School District. He is sued in her official capacity. He may be served at his personal address 121 Stanford Dr, San Antonio, TX.

9. Defendant Bonnie Giddens is the trustee for Alamo Heights Independent School District. She is sued in her official capacity. She may be served at her personal address 636 East Olmos Dr, Olmos Park, Texas 78212.

10. Defendant Lisa Krenger is the trustee for Alamo Heights Independent School District. She is sued in her official capacity. She may be served at her personal address 107 Ridgemont Ave, San Antonio, Texas 78209.

11. Defendant Stacy Sharp is the trustee for Alamo Heights Independent School District. She is sued in her official capacity. She may be served at her personal address 214 Charles Road, San Antonio, Texas 78209.

12. Defendant Dr. Dana Bashara is the trustee for Alamo Heights Independent School District. She is sued in her official capacity. She may be served at her personal address 624 Terrel Rd, Terrel Hills, Texas 78209.

13. Defendant Alamo Heights Independent School District is a political subdivision of the state of Texas. Defendant may be served through their superintendent, Dr. Dana Bashara, at 7101 Broadway, San Antonio, Texas 78209.

### **JURISDICTION AND VENUE**

14. This Court has jurisdiction over this lawsuit because it is a court of general jurisdiction and no other court has been conferred jurisdiction to preside over this case. Tex. Const. Art. 5, § 8; Tex. Gov. Code § 24.007; Tex. Gov. Code § 24.008. The

damages sought are within the jurisdictional limits of the court. Plaintiffs seek monetary relief of \$100,000 or less and non-monetary relief.

15. Venue in Bexar County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

### **FACTUAL BACKGROUND**

16. Plaintiffs were residential tenants of the Desert Sands Apartments (“Desert Sands”), located at 6815 Broadway, San Antonio, Texas 78209, at the time it was acquired by Defendant Alamo Heights Independent School District (“AHISD”) on March 30, 2020.

17. Plaintiff Selina Jones (“Ms. Jones”) is still a residential tenant at Desert Sands and has leased Unit 1 since August 15, 2017. Ms. Jones works from home, and the loss of her home would result in her being unemployed.

18. Plaintiff Roy Hummel (“Mr. Hummel”) leased Unit 2 at Desert Sands from April 1, 2015 to September 30, 2020, when he left after being threatened with eviction.

19. Ms. Jones and Mr. Hummel lived at Desert Sands because it was the most affordable housing available in the area. At the time Desert Sands was purchased by Defendants, Plaintiffs each paid \$500 a month for rent.

20. In May of 2017, AHISD voters approved a \$135 million Bond to improve current facilities, add new facilities to Alamo Heights Independent School District schools, and enhance the way they operate. Desert Sands is located directly across

from the AHISD High School and will be demolished and likely converted into a parking lot.

21. On March 30, 2020, AHISD sent notices to the tenants of Dessert Sands notifying them that they had acquired the apartment complex, and the tenants would have to move out by June 30, 2020, despite the global pandemic and rise in infections taking place at the time. The notices instructed the tenants to continue paying monthly rent of \$500 to AHISD. AHISD did not offer to provide any relocation advisory services compatible with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq. (“URA”) to Ms. Jones or Mr. Hummel when this notice went out. The URA requires advisory services, which must include a determination of the needs and preference of the individual displaced, an explanation of payments and other benefits they are entitled to, and an explanation of the process for obtaining that assistance.

22. On June 25, 2020, upon a request by community advocates for more time and for relocation assistance at the AHISD board meeting, AHISD extended the lease of the remaining residents until September 30, 2020. However, AHISD refused to provide relocation assistance or advisory services.

23. AHISD, despite displacing individuals in connection with the acquisition of real property, has not adopted a relocation program or rules for administering the relocation program under Section 21.046 of the Texas Property Code.

24. Ms. Jones and Mr. Hummel were unable to locate a unit in the area as affordable as their units. The apartment complex is located in Alamo Heights, which

is east of Downtown San Antonio and near the Austin Highway Corridor, an area undergoing gentrification. This area is experiencing rising housing costs, physical transformation through new higher-end construction and building upgrades, and changes to the neighborhood's cultural character which have resulted in the displacement of vulnerable residents.

25. On August 24, 2020, Ms. Jones and Mr. Hummel requested relocation assistance under Section 21.046 of the Property Code from AHISD in writing.

26. On August 31, 2020 Ms. Jones received written notice that her lease would be terminated on September 30, 2020 and legal action would be taken if she did not vacate by that date. Again, AHISD did not provide any relocation advisory services and assistance. The assistance required under 21.046(b) of the Property Code includes moving expenses, rental supplements, relocation payments, and financial assistance to acquire replacement housing. The advisory services required under the URA and therefore the Texas Property Code must include a determination of the needs and preference of the individual displaced, an explanation of payments and other benefits they are entitled to, and an explanation of the process for obtaining that assistance.

27. On September 4, 2020, Mr. Hummel also received written notice that his lease would be terminated on September 30, 2020 and legal action would be taken if he did not vacate by that date. He was also refused relocation advisory services and assistance.

28. Mr. Hummel moved out on September 30, 2020 because he felt threatened and harassed by AHISD, because he felt uncomfortable and unsafe in his home, and to avoid an eviction on his record.

29. Ms. Jones received a written notice to vacate from AHISD on October 1, 2020.

30. On November 5, 2020, Ms. Jones received a second Notice to Vacate from Brown Law Firm informing her that an eviction suit would be filed against her if she did not vacate by November 9, 2020.

31. Ms. Jones reached out to several nonprofit organizations to assist her with finding another unit to relocate to and for assistance with the relocation expenses. Ms. Jones has been unable to find a replacement dwelling and unable to save the money necessary for relocation, such as a security deposit, rent, and moving expenses.

32. Ms. Jones has not vacated her unit because the loss of her home would also entail the loss of her job, and the loss of a home and income places her health and safety at risk.

33. Without relocation assistance and advisory services, Plaintiffs will become homeless and/or experience housing and economic instability.

## **CAUSES OF ACTION**

### **Plaintiffs' First Cause of Action**

34. Ultra Vires. Defendants David Hornberger, Ryan Anderson, Brian Hamilton, Bonnie Giddens, Lisa Krenger, Perry Shankle, Stacy Sharp, Dr. Dana Bashara ("Trustees"), have failed to perform a purely ministerial act, and therefore have acted *ultra vires*. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). Section 21.046(a) of the Texas Property Code requires that relocation services be provided

when the state or a political subdivision of the state acquires real property and an individual is displaced in connection with the acquisition. *See* Tex. Prop. Code §21.046. Section 21.046(b) of the Property Code states, “a political subdivision of this state *shall*, as a cost of acquiring real property, pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition”. This is not discretionary, as evidenced by the Legislature’s use of the word “shall”. *See* Tex. Prop. Code §21.046(b). Additionally, Section 21.046(c) states that a, “political subdivision of this state that initiates a program under Subsection (b) shall adopt rules relating to the administration of the program”.

35. The Defendant Trustees voted to authorize AHISD’s acquisition of Desert Sands Apartments, and the displacement of the apartment complex’s residents in March 2020, without providing any relocation advisory services or relocation program. *See Exhibit A, Notice of Lease Termination*. Plaintiff Jones and Plaintiff Hummel requested relocation assistance and advisory services in writing under Section 21.046 of the Texas Property Code through their attorney on August 24, 2020. *See Exhibit B, Demand Letters*. AHISD refused to provide such services and instead issued notices of lease termination and threatened with filing an eviction if Plaintiffs did not vacate by September 30, 2020. AHISD’s action in issuing Plaintiffs a “Notice of Lease Termination,” is considered a displacement in connection with an acquisition



under Section 21.046(b). Defendants have therefore failed to perform the purely ministerial act of providing relocation advisory services and a relocation program to tenants who will be displaced by a property acquisition.

36. Additionally, the Defendant Trustees proceeded to displace the residents of Desert Sands in connection with AHISD's acquisition of the property without adopting rules relating to the administration of the relocation program. Plaintiffs notified AHISD of this requirement and provided them with copies of the rules adopted by the Dallas Independent School District but they still refused to adopt any relocation program and rules relating to the administration of the program. Therefore, Defendants have failed to perform a purely ministerial act.

37. Ultra Vires. Defendant Trustees have also acted outside their legal authority. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). Chapter 21 of the Texas Property Code requires that relocation advisory services be provided when the state or a political subdivision of the state acquires real property, and an individual is displaced in connection with the acquisition. Rather than provide such services, Defendants terminated each Plaintiffs' lease and threatened Plaintiffs with an eviction. *See Exhibit C, November 5 Notice to Vacate*. By terminating Plaintiffs lease and issuing notices to vacate, Defendants attempted to force Plaintiffs out and avoid providing the relocation assistance and advisory services required under the Property Code, which is outside their legal authority to do.

38. Furthermore, such notices were not consistent with the URA, which requires a General Information Notice to be given to a Displaced Person with a general

description of their relocation program, a Notice of Eligibility for Relocation Assistance notifying all occupants of their eligibility under the program, and a 90-Day Notice containing the earliest date by which the individual may be required to move or state that the person will receive further notice of at least 30 days in advance of the move date. Neither Plaintiff was provided with any relocation advisory services or assistance, or with proper notice, which are meant to be provided prior to the displacement of individuals in connection with an acquisition of real property. Therefore, the Defendants acted beyond their legal authority by failing to provide appropriate notice of relocation assistance and advisory services to tenants displaced by the acquisition of a property.

### **Plaintiffs' Second Cause of Action**

39. In the alternative, Plaintiffs seek recovery pursuant to Texas Property Code § 21.043 from Defendants.

40. Section 21.043(a) of the Texas Property Code authorizes property owners permanently displaced from their dwelling to bring “suits for relocation expenses.” *State v. Langley*, 232 S.W.3d 363, 368 (Tex. App. 2007).

41. The term “‘property owner,’ as used in section 21.043, includes lessees for years.” *G.P. Show Prods., Inc. v. Arlington Sports Facilities Dev. Auth., Inc.*, 873 S.W.2d 120, 123 (Tex. App. 1994). “If a leasehold is taken without adequate compensation, a real controversy exists between the governmental entity that took the property and the lessee that will be actually determined by judicial declaration.” *City of Laredo v. R. Vela Exxon, Inc.*, 966 S.W.2d 673, 679 (Tex. App. 1998).

42. Defendants failed to establish a relocation assistance program entitling Plaintiffs to reimbursement. Therefore, Plaintiffs “may recover, in addition to [their] other damages, the reasonable expenses of moving [their] personal property from the dwelling.” Tex. Prop. Code Ann. § 21.043; *see State v. Langley*, 232 S.W.3d 363, 368 (Tex. App. 2007).

43. Defendants have sought to permanently physically displace Plaintiffs from their dwellings. Defendants have displaced Plaintiff Hummel from his dwelling without providing assistance or advice, have threatened homelessness against Plaintiffs, and have forced Plaintiffs to incur moving expenses.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY  
INJUNCTION, AND PERMANENT INJUNCTION**

44. Plaintiffs bring this lawsuit against Defendants for violations of the Texas Property Code. The claims of Plaintiffs Jones and Hummel stem from Defendant’s failure to initiate a Relocation Assistance Program and rules governing the program, their failure to provide them with relocation advisory services, their failure to provide them with relocation assistance, and Defendant’s attempts to unlawfully displace them without complying with provisions mandated by Texas Property Code Section 21.046. The claims of Plaintiffs stem from Defendants’ past and ongoing activities detailed in the Facts section above. Plaintiff Jones asks the court to restrain Defendants from prosecuting an eviction against her on the ground that she is holding over after termination of her right of possession and against prematurely displacing her without providing the required assistance.

45. Plaintiff Jones seeks this temporary restraining order because Defendants are performing actions that are the subject of the pending litigation: endangering Ms. Jones health and safety; threatening to damage Ms. Jones credit report with an eviction; and terminating Ms. Jones' Lease and issuing a notice to vacate in order to displace her without providing the relocation assistance and advisory services afforded to her per Texas Property Code Section 21.046.

46. Furthermore, Plaintiffs Jones and Hummel are likely to succeed on the merits of their claim for violation of Section 21.046 of the Texas Property Code because that provision is clear and not subject to different interpretations. Defendants have failed to comply with Section 21.046 and all claims made by Plaintiffs are directly caused by the Defendant's failure to provide them with relocation assistance and advisory services.

47. Unless this Honorable Court immediately restrains Defendants, Plaintiff Jones will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give her complete, final and equal relief. More specifically, Plaintiff Jones will show the court the following:

48. The harm to residential Plaintiff Jones in Defendants' issuing a lease termination and notice to vacate, and filing an eviction, is imminent because it threatens to displace Ms. Jones without the compensation required by law. Because an eviction suit is limited to the issue of possession, it does not provide a venue for Ms. Jones to vindicate her rights under Sections 21.043 and 21.046 of the Texas

Property Code. Therefore, defending against the eviction suit would not provide Ms. Jones an adequate remedy at law.

49. Further, the threat of an eviction judgment on her record has disturbed and continues to disturb Plaintiff Jones. An eviction would negatively impact Ms. Jones's credit and harm her ability to procure replacement housing. The injury that will result from an eviction on Ms. Jones record cannot be compensated with money, and cannot be measured with any pecuniary certainty. Ms. Jones has no adequate remedy at law for the health hazards, physical danger, and fear she will suffer if Defendants are permitted to prosecute an eviction suit against her.

50. The harm to Ms. Jones from Defendant's termination of her lease and issuance of a notice to vacate absent relocation assistance or advisory services is imminent, because Defendants continue displacement activities based on lease terminations, and will continue those activities unless Defendants are enjoined from displacing her without having first provided her with the required assistance. Injury from the premature displacement is an injury that cannot be compensated with money or measured with any pecuniary certainty, because forced homelessness during this pandemic endangers the health of Ms. Jones who does not have family who can assist her through this process and will result in her unemployment. Furthermore, premature displacement subjects her to loss of personal property in amounts that are unknown until the actual displacement occurs. Plaintiff Jones has no adequate remedy at law for being prematurely displaced.

51. Plaintiff Jones is indigent and represented by counsel without fee. Plaintiff Jones is willing to post a reasonable temporary restraining order bond and requests the court to set such bond in a nominal amount, given the nature of the injunctive relief sought and Plaintiffs limited financial resources.

52. Plaintiff Jones has established each element which must be present before injunctive relief can be granted by this court; therefore, Plaintiff Jones is entitled to the requested temporary restraining order.

53. Plaintiff Jones asks the court to restrain Defendants from prosecuting an eviction against her on the ground that she is holding over after termination of her right of possession and against prematurely displacing her without providing the required assistance.

54. It is essential that the court immediately and temporarily restrain Defendants from prosecuting an eviction against Plaintiff Jones. It is essential that the Court act immediately, because Defendants continue to endanger and harass Ms. Jones, and pursue displacement of her.

55. In order to preserve the status quo during the pendency of this action, Plaintiffs request that Defendants be temporarily enjoined from prosecuting an eviction against Ms. Jones until relocation assistance is provided.

56. On final trial on the merits, Plaintiffs seek a permanent injunction, permanently enjoining Defendants from prosecuting an eviction against Ms. Jones until the required assistance under Section 21.046 of the Texas Property Code is provided.

## REQUEST FOR RELIEF

Plaintiffs ask that Defendants be cited to appear and answer this lawsuit and that, on final trial, Plaintiffs shall have:

- a. A declaration that Defendants have violated their ministerial duties as alleged herein,
  - i. An injunction prohibiting Defendants from prosecuting an eviction suit against Plaintiff Jones without complying with Texas Property Code Section 21.046, and
  - ii. An injunction requiring Defendants to initiate a program under Subsection (b) of 21.046, to adopt rules relating to the administration of the program, and requiring them to provide relocation assistance and advisory services to Plaintiffs; or
- b. *In the alternative*, a declaration that Defendants have acted without legal authority as alleged herein,
  - i. An injunction prohibiting Defendants from prosecuting an eviction suit against Plaintiff Jones without complying with Texas Property Code Section 21.046, and
  - ii. An injunction requiring Defendants to initiate a program under Subsection (b) of 21.046, to adopt rules relating to the administration of the program, and requiring them to provide relocation assistance and advisory services to Plaintiffs; or

- c. *In the alternative*, judgment pursuant to Tex. Prop. Code Section 21.043, including moving expenses and other damages;
- d. And all other and further relief to which the Plaintiffs may be justly entitled, including court costs and attorney's fees, for trial in the district court and all steps of appeal.

Respectfully submitted,

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