

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ANTHONY TILLMAN,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF ST. LOUIS, MISSOURI,)
 ADRIAN BARNES, *in his official*)
 capacity, and)
 COMMISSIONER DALE GLASS, *in*)
 his official capacity,)
)
 Defendants.)

Cause No. 4:21-cv-00299

*****EXPEDITED HEARING
REQUESTED*****

**PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Plaintiff Anthony Tillman hereby moves the Court, pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a temporary restraining order and preliminary injunction requiring Defendant City of St Louis, Defendant Adrian Barnes, and Defendant Dale Glass to (1) file with the Court, within 5 days of the Court’s order, a detailed plan to establish a wheelchair-accessible shower at the City Justice Center (“CJC”); (2) build out a wheelchair-accessible shower within 21 days of the filing of the detailed plan; and (3) in the interim assign nursing staff to assist Mr. Tillman in the shower.

Mr. Tillman uses a wheelchair due to paraplegia. He has been detained at CJC since October 5, 2020. Since then, Defendants have provided him with neither a wheelchair-accessible shower nor staff assistance in showering; instead, they gave him a basin filled with lukewarm water and a rag.

As detailed in Plaintiff’s accompanying Memorandum, if the Court does not issue a temporary restraining order and preliminary injunction, Plaintiff will be placed at grave risk of

infection. Mr. Tillman suffers from persistent, open wounds on his body; extremely dry skin; and toenails that frequently fall off. The basin-and-rag-system leaves Mr. Tillman unable to reach and clean many of these affected areas, due to his paraplegia.¹

Plaintiff will likely prevail on the merits of his claim that Defendants' refusal to provide a wheelchair-accessible shower and/or staff assistance in showering violates the Americans with Disabilities Act ("ADA"). Defendants' actions have, and will continue to, injure Plaintiff disproportionately to any harm Defendants would incur if Plaintiff was provided adequate shower facilities, and staff assistance while such facilities were being constructed. The requested injunction would also serve the public interest of ensuring that a national legislative mandate, the ADA, is enforced.

Pursuant to Rule 65(b)(1)(A) of the Federal Rules of Civil Procedure, Plaintiff submits a declaration with this motion attesting to the irreparable injuries he will suffer unless this Court issues a temporary restraining order and preliminary injunction.

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure, Plaintiff's counsel certifies that it provided notice of the motion via email to Defendants' attorneys, and will also provide notice of this motion's filing by calling and emailing copies of all documents filed in this case to Defendants' attorneys as well.

For the foregoing reasons, and as set forth in the accompanying Memorandum of Law, this Motion for a Temporary Restraining Order and Preliminary Injunction should be granted.

Dated: March 9, 2021

Respectfully submitted,

ARCHCITY DEFENDERS, INC.

¹ Mr. Tillman has attempted to file grievances on multiple occasions, but prison officials have not formally accepted such grievances.

/s/Emanuel Powell

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of March, 2021, I electronically filed the foregoing with the clerk of the court for the U.S. District Court, Eastern District of Missouri, using the electronic case filing system of the Court. This Motion for Temporary Restraining Order will be served in accordance with the Federal Rules of Civil Procedure.

/s/ Emanuel Powell

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CITY OF ST. LOUIS, MISSOURI,)	
ADRIAN BARNES, <i>in his official</i>)	
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Defendants.)	

Cause No. 4:21-CV-00299

*****EXPEDITED HEARING
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**MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Anthony Tillman has been denied the ability to shower for each of the 155 days he has been held in custody at the City Justice Center (“CJC”). Mr. Tillman uses a wheelchair due to paraplegia. He has been detained at CJC since October 5, 2020, and since that time he has made countless pleas to gain access to a shower. In turn, CJC staff have refused his requests, ignored his grievances, and wholly failed to accommodate his disability. Mr. Tillman’s request is simple, which makes Defendants’ unlawful conduct all the more egregious: He wants to take a shower. But the shower facilities are inaccessible to people with physical disabilities like Mr. Tillman, and the Defendants have refused to make reasonable accommodations that would allow him to shower. Every day Mr. Tillman is denied access to a shower, he runs a risk of infection and serious harm.

The City’s refusal to accommodate Mr. Tillman’s known disability is a clear and ongoing violation of Title II of the Americans with Disabilities Act of 1990 (“ADA”). Mr. Tillman

therefore seeks a temporary restraining order and preliminary injunction enjoining the City's continued discrimination and enforcing compliance with the ADA.

FACTS

Anthony Tillman must use a wheelchair for mobility following a 2017 shooting that resulted in paraplegia. *See* Declaration of Anthony Tillman ("Tillman Dec."), attached as Exhibit 1, at ¶ 3. During a prior, unrelated incarceration at the CJC beginning in February 2020, Mr. Tillman fell while trying to take a shower in an inaccessible bathroom after jail staff denied his request for assistance. *Id.* at ¶¶ 4-6. As a result of the fall, he sustained a laceration and developed a severe blood infection that left him delirious and required hospitalization. *Id.* at ¶¶ 6-7. Due to the blood infection sustained, Mr. Tillman suffered from a number of persistent, open wounds on his body and ongoing complications that cause extremely dry skin and toenails that frequently fall off. *Id.* at ¶¶ 6-8. While most of his wounds have recently healed, he has one wound remaining and continuing issues with dry skin and toenails that fall off. *Id.* at ¶ 29. Given his prior experiences, Mr. Tillman remains frightened that he may suffer another blood infection absent adequate hygiene protocols. *Id.*

Since October 5, 2020, Mr. Tillman has been incarcerated at St. Louis's CJC. *Id.* at ¶ 9. When he arrived at CJC, Mr. Tillman spoke with a nurse whose name he cannot recall and informed her that, due to his disability, he would require either (1) a shower equipped for individuals who use wheelchairs or, alternatively, (2) staff assistance in showering. *Id.* at ¶ 17. Mr. Tillman never received a shower or assistance with bathing. *Id.* at ¶¶ 18, 41. He remained in his street clothes for approximately 10 days after this initial request. *Id.* at ¶ 18. The medical staff, who were supposed to help clean his open wounds twice a day, regularly only cleaned them once per day. *Id.* at ¶ 19.

On or around October 15, 2020, prison officials provided Mr. Tillman with a wash basin and a rag with which to wash himself. *Id.* at ¶ 20. Because he has paraplegia, he cannot access the lower parts of his body with the rag. *Id.* at ¶ 21. This meant that he could not clean some of his open wounds or feet, including his toes without toenails. *Id.*

As a result of these conditions, Mr. Tillman filed an electronic Inmate Resolution Request (“IRR”) on a tablet in late December 2020, complaining of being unable to access a wheelchair-friendly shower and, in the alternative, the lack of staff assistance with his bathing. *Id.* at ¶ 30. Mr. Tillman never received a response. *Id.* at ¶ 31. When he asked a caseworker, Mr. Weber (first name unknown), about following-up or appealing, Mr. Weber replied, “They’ll be getting back to you.”¹ *Id.* at ¶ 32. Mr. Tillman relied upon Mr. Weber’s assurance, but never received a response to the December IRR. *Id.* at ¶ 32, 42.

Mr. Tillman’s open wound, persistent dry and cracking skin, and toenails constantly falling off leave his body with many opportune spots for infection. Because Mr. Tillman is paraplegic and has been given only a wash basin and rag with which to bathe himself, he is unable to reach many areas of his body. *Id.* at ¶ 21. Thus, he cannot ensure his cracking skin and nails remain clean, placing him at grave risk of developing wounds and infection.²

Mr. Tillman has continued to seek help from CJC staff to no avail. On or around January 1, 2021, Mr. Tillman saw Dr. Brenda Mallard because he was urinating blood, for which she prescribed antibiotics. *Id.* at ¶ 23. During that conversation, Mr. Tillman complained to Dr.

¹ In mid-January, Mr. Tillman also filed a paper grievance because Nurse Morris was leaving his medication outside his chuckhole, where he could not access it, and because she was not changing his catheter. He filed this grievance on paper because the tablets were not working. Tillman Dec. at ¶ 33.

² See generally WHO, *Prevention and management of wound infection*, (Mar. 2, 2013), <https://www.who.int/publications/i/item/prevention-and-management-of-wound-infection> (“Open injuries have a potential for serious bacterial wound infections, including gas gangrene and tetanus, and these in turn may lead to long term disabilities, chronic wound or bone infection, and death.”).

Mallard that he had not had a shower since arriving at CJC. *Id.* at ¶ 24. Mallard told Mr. Tillman that CJC was “working on” getting a Hoyer Lift, an assistive device that allows individuals to be transferred between a bed and a chair or other similar resting places by use of electrical or hydraulic power. *Id.* However, Dr. Mallard provided no immediate solutions, and to this day no such lift has been provided. *Id.* at ¶ 41-42.

On or around January 2, 2021, Mr. Tillman asked Nurse Morris (first name unknown) if CJC could provide an individual to assist him with bathing, due to the fact that he was urinating blood at the time. *Id.* at ¶ 25. Nurse Morris denied his request, telling him: “This is not a long-term care facility! Talk to your attorney.” *Id.* at ¶ 26.

On February 12, 2021, Mr. Tillman spoke with his public defender, Chelsea Harris, and social worker, Ms. Lee (first name unknown). *Id.* at 27. He told them that he had been unable to shower since arriving at CJC on October 5, 2020, due to the lack of shower facilities equipped for individuals who must use a wheelchair and refusal of prison officials to provide staff to assist him. *Id.* Ms. Lee informed Mr. Tillman that he would need to get an order form a judge in order to receive accommodations in the form of sufficient facilities or staff assistance. *Id.* at ¶ 28.

On March 3, 2021, Mr. Tillman asked Ms. Lee for a grievance form, and she promised to give him one that day, yet Mr. Tillman never received the form. *Id.* at ¶¶ 34-35. The same day, Mr. Tillman made a handwritten Emergency Grievance and attempted to give it to a CO. *Id.* at ¶ 36; *see also* Exhibit 1-A, Emergency Grievance dated March 3, 2021, attached hereto. The CO refused to accept the grievance form, and would not assist Mr. Tillman in placing the grievance form in the grievance box. Tillman Dec. at ¶ 36.

On March 4, 2021, Ms. Lee told Mr. Tillman to write a note to her requesting a grievance form and give the note to CO Robinson to pass along to Ms. Lee. *Id.* at ¶ 37. Mr. Tillman wrote

the note as instructed and gave it to CO Robinson, but never received the grievance form. *Id.* The next day, Mr. Tillman was able to give his Emergency Grievance form to CO Robinson who told Mr. Tillman he would pass it along to Ms. Lee. *Id.* at ¶ 37. Mr. Tillman has no indication of whether the CO followed through. *Id.* Mr. Tillman also authorized his criminal defense attorney to send the emergency grievance to Commissioner Glass given the lack of response to prior complaints and the initial refusal by a CO to accept the emergency grievance. *Id.* at ¶ 39. Commissioner Glass has yet to respond to Mr. Tillman. *Id.*

On March 8, 2021, a corrections officer with the last name Price visited Mr. Tillman's cell and told him that they were trying to move me to a "wheelchair accessible shower." *Id.* at ¶ 40. When Mr. Tillman asked her what made this shower wheelchair accessible, she explained that it was the same inaccessible shower in which he fell and hurt himself back in early 2020, leading to a blood infection and hospitalization. *Id.* Mr. Tillman informed her of his need for a shower that could accommodate his disability, but she responded with, "We don't have that." *Id.* Given his fear of falling again, Mr. Tillman informed the CO that he would not use the inaccessible shower. *Id.*

As of March 8, 2021, Mr. Tillman still lacks access to shower facilities sufficient for a paraplegic detainee to fully wash and clean his own body or staff assistance in doing the same. *Id.* at ¶ 41. And his grievances have gone unanswered. *Id.* at ¶ 42.

LEGAL STANDARD

District courts have "broad discretion when ruling on requests for preliminary injunctions" which are reviewed by appellate courts "only for clearly erroneous factual determinations, an error of law, or abuse of discretion." *Manion v. Nagin*, 255 F.3d 535, 538 (8th Cir. 2001) (citation omitted). In determining whether to grant preliminary injunctive relief, courts

consider the following factors: “(1) the probability of success on the merits; (2) the threat of irreparable harm to the movant; (3) the balance between this harm and the injury that granting the injunction will inflict on the other interested parties; and (4) whether the issuance of an injunction is in the public interest.” *Entergy, Arkansas, Inc. v. Nebraska*, 210 F.3d 887, 898 (8th Cir. 2000) (citation omitted). Requests for temporary restraining orders and preliminary injunctions are evaluated using the same standard. *See, e.g., Calvert v. Paniagua*, No. 2:17CV2 HEA, 2018 U.S. Dist. LEXIS 77279, at *27 (E.D. Mo. May 8, 2018); *A Place for Mom, Inc. v. Hochhalter*, No. 4:12cv0529 JAJ, 2012 U.S. Dist. LEXIS 199689, at *6 (S.D. Iowa Dec. 11, 2012).

Although no single factor is dispositive, “the two most critical factors for a district court to consider in determining whether to grant a preliminary injunction are (1) the probability that plaintiff will succeed on the merits, and (2) whether the plaintiff will suffer irreparable harm if an injunction is not granted.” *Chicago Stadium Corp. v. Scallen*, 530 F.2d 204, 206 (8th Cir. 1976). As Mr. Tillman does not seek to enjoin the operation of a state statute, he need only show a “fair chance of prevailing” on the merits of the case in order to demonstrate a likelihood of success. *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008).

Plaintiff easily meets this standard.

ARGUMENT

I. Mr. Tillmans is Entitled to a Temporary Restraining Order Enjoining Defendants’ Discriminatory Conduct.

Because each preliminary injunction factor weighs in Mr. Tillman’s favor, his request for a Temporary Restraining Order should be granted.

A. Mr. Tillman is Likely to Succeed on the Merits of his ADA Claim

When determining the likelihood of a movant’s success on the merits, this Court need not decide whether the movant will ultimately win. *Jet Midwest Int’l Co., Ltd v. Jet Midwest Grp., LLC*, 953 F.3d 1041, 1044–45 (8th Cir. 2020). Though an injunction cannot issue if there is no chance of success on the merits, Mr. Tillman does not need to “prove a greater than fifty percent likelihood that [he] will prevail on the merits.” *Id.* He must simply show a “fair chance of prevailing.” *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008) (en banc). Here, Mr. Tillman has shown more than a “fair chance of prevailing” on his ADA claims.

Title II of the ADA states: “no qualified individual shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Programs, services, or activities, within the meaning of Title II, includes all operations of a public entity, *Gorman v. Bartch*, 152 F.3d 907, 911–12 (8th Cir. 1998), and “qualified individual[s] with a disability” are entitled to “meaningful access” to such benefits. *Randolph v. Rodgers*, 170 F.3d 850, 857–58 (8th Cir.1999). The statute applies in full to state prisons and to jails. *Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 209 (1998); *see also Randolph v. Rodgers*, 170 F.3d 850, 857–58 (8th Cir. 1999) (recognizing Supreme Court holding that ADA Title II applies to state prison); *Kutrip v. City of St. Louis*, 329 F. App’x 683, 684-85 (8th Cir. 2009) (applying ADA to St. Louis City jail).

Here, Defendants continue to unlawfully deny Mr. Tillman “meaningful access” to shower facilities. In *United States v. Georgia*, Justice Scalia wrote for a unanimous Court that refusing to accommodate “disability-related needs in such fundamentals as . . . hygiene” could “constitute[] exclu[sion] from participation in or . . . deni[al of] the benefits of the prison’s

services, programs, or activities.” 546 U.S. 151, 157 (2006). Several appellate courts have since concluded that the failure to provide accessible showers deprives individuals of their statutory rights under the ADA. *See Kutrip*, 329 F. App’x at 685 (allowing a detainee’s claim under the ADA to survive summary judgment when he was denied a chair to sit in while showering in a city jail); *Furgess v. Pennsylvania Dep’t of Corr.*, 933 F.3d 285, 291–92 (3d Cir. 2019) (holding a request for reasonable accommodations so that a prisoner with disabilities can take a shower “just like able-bodied inmates” to be a plausible claim for disability discrimination under Title II); *Pierce v. County of Orange*, 526 F.3d 1190, 1196 (9th Cir. 2008) (holding that “because of physical barriers that deny disabled inmates access to certain prison facilities (bathrooms, showers, exercise and other common areas) . . . the County is in violation of the ADA.”); *St. Pierre v. McDaniel*, 172 F.3d 58 (9th Cir. 1999) (holding that an inmate had alleged viable “ADA claims concerning access to the showers”); *Kiman v. N.H. Dept. of Corrs.*, 451 F.3d 274, 268 (1st Cir. 2006) (holding that denial of access to a shower chair to a prisoner with disabilities raised an issue of material fact regarding whether the plaintiff had received reasonable accommodations required by the ADA); *Grant v. Schuman*, 151 F.3d 1032 (7th Cir. 1998) (allowing a prisoner with paralysis and nerve pain to bring the claim that he was denied access to a shower).

As a person required to use a wheelchair, Tillman qualifies as an individual with a disability under the ADA. *See Duty v. Norton-Alcoa Proppants*, 293 F.3d 481, 499 (8th Cir. 2002); *see also Gorman v. Easley*, 257 F.3d 738, 750 (8th Cir. 2001), *rev’d sub nom on other grounds, Barnes v. Gorman*, 536 U.S. 181 (2002) (holding that a prisoner required to use a wheelchair with a catheter qualified as disabled under the ADA). The CJC showers are a “service, program or activity” as defined by the ADA, and Mr. Tillman is being denied that

service because the showers are inaccessible. *See* Tillman Dec. at ¶¶ 5-6, 24, 41. CJC has not provided Mr. Tillman with staff to assist him with showering, and he has not been able to use the shower facility since the beginning of his incarceration. *Id.* at ¶ 41. There is no way, absent accommodation, that Tillman can use the showers. **As a result, Mr. Tillman has not had a shower during over five full months of detention.** As an obvious detainee with paraplegia, Mr. Tillman need not have requested an accommodation to be granted one. *See Robertson v. Las Animas Cty Sheriff's Dep't*, 500 F.3d 1185, 1197 (10th Cir. 2007) (collecting cases for the proposition that an entity will know of a disabled individual's need for accommodation under ADA when need is obvious). Nonetheless, Mr. Tillman repeatedly requested an accommodation that would allow him to use the shower. Tillman Dec. at ¶¶ 24-40. No reasonable accommodation was provided. *See generally Furgess*, 933 F.3d at 292. Mr. Tillman was offered a basin and a rag, which does not allow him to reach many areas of his body. Tillman Dec. at ¶¶ 20-21. Separately, he was offered a shower on March 8, 2021, that was not accessible for someone with his disability, one from which he previously fell and injured himself. *Id.* at ¶ 40. And, his grievances continue to go unanswered. *Id.* at ¶¶ 34, 39, 42.

Because Tillman has been denied use of the showers by reason of his disability, he is likely to succeed on the merits of his ADA claim.

B. Mr. Tillman Will Suffer Irreparable Harm Without a Temporary Restraining Order

Absent the requested equitable relief Mr. Tillman will suffer irreparable harm. To show irreparable harm a plaintiff must show that he “has no adequate remedy at law, typically because [his] injuries cannot be fully compensated through an award of damages.” *Rogers Grp., Inc. v. City of Fayetteville, Ark.*, 629 F.3d 784, 789 (8th Cir. 2010) (*quoting Gen. Motors Corp. v. Harry*

Brown's, LLC, 563 F.3d 312, 319 (8th Cir. 2009)). The likelihood of harm must be more than a mere “possibility.” *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

Here, the harm that will befall Mr. Tillman is more than possible, it is certain. Absent equitable relief, Mr. Tillman will be unable to access shower facilities and adequately bathe himself. Tillman Dec. at ¶ 41. Defendants’ failure to accommodate Mr. Tillman has already led to severe medical complications; without injunctive relief, those consequences will only worsen. *Id.* at ¶ 29. This harm falls well within the definition of irreparable harm. *See e.g. Sak v. City of Aurelia, Iowa*, 832 F. Supp. 2d 1026, 1046 (N.D. Iowa 2011) (holding that breed-specific ordinances which excluded pitbulls from the city limits would cause irreparable harm to a man who had a pitbull as a service dog).

Because Mr. Tillman is experiencing and will continue to experience irreparable harm absent relief, and because damages cannot sufficiently address the harm at issue, the “likelihood of irreparable harm” factor weighs heavily for Mr. Tillman.

C. Plaintiffs’ Injuries Outweigh Any Potential Harm to Defendants Caused by a Temporary Restraining Order

The threat of harm to Mr. Tillman is clear: Absent relief he will continue to be unable to shower and suffer further damage to his health and dignity as a result. *See supra*.

On the other hand, were this Court to enter a TRO in favor of Mr. Tillman, no harm would befall Defendants. The City is required to make all facilities constructed since January 26, 1992 accessible to those with disabilities, and construction of the CJC began long after that date. *See* 28 C.F.R. § 35.151 (“Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.”); *see also*

<https://www.bizjournals.com/stlouis/stories/1999/08/23/focus16.html> (noting construction of the CJC began July 6, 1999). As such, the question is not whether the City is obligated to make the changes requested in this motion (it is), but whether it will be forced to do so by court order.

Compliance with existing statutory requirements is not a harm that can weigh against Mr. Tillman in evaluating his TRO. *White v. Martin*, No. 02-4154-CV-C-NKL, 2002 WL 32596017, at *8 (W.D. Mo. Oct. 3, 2002) (“Compliance with the law does not pose a burden on a defendant.”) (collecting cases). To the extent the City would have to expend money in order to provide Mr. Tillman a reasonable accommodation, that expenditure would be *de minimis* in comparison to the harm that Tillman is suffering and continues to suffer. *Id.* at ¶ 29. And, as explained above, providing an accommodation is something the City is already legally required to do.

Because the continuous harm to Mr. Tillman vastly outweighs any potential harm to the City, this factor weighs in favor of Mr. Tillman.

D. A Temporary Restraining Order Serves the Public Interest

Granting the narrow and necessary accommodation requested by Mr. Tillman serves the public interest. The ADA was enacted by Congress in 1990 “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). Congress found that “individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, [and] failure to make modifications to existing facilities and practices....” 42 U.S.C. § 12101(a)(5). It is always in the public interest to ensure that this national legislative mandate is enforced. *See White*, 2002 WL 32596017, at *9 (citing *Glenwood Bridge, Inc. v. City of Minneapolis*, 940 F.2d 367, 372 (8th Cir. 1991) (“Enforcement of laws

passed by Congress is in the public interest, even when that means enjoining allegedly illegal actions by another government body.”); *see also Crowder v. Kitagawa*, 81 F.3d 1480, 1485 (9th Cir. 1996) (holding that “...Congress has passed antidiscrimination laws such as the ADA which require reasonable modifications to public health and safety policies, it is incumbent upon the courts to insure that the mandate of federal law is achieved...”); *see also Sak* at 1047 (holding that “the national public interest in enforcement of the ADA ‘trumps’” the local ordinance at issue).

Courts in the Eighth Circuit have recognized a public interest in enforcing the ADA which meets the fourth prong of *Dataphase*. *See, e.g., Smith v. Hartmann's Moonshine Shoppe, LLC*, No. 17-4211 (MJD/LIB), 2019 WL 4888996, at *4 (D. Minn. Oct. 3, 2019) (holding “public interest favors enforcing the ADA . . . which furthers the public policy of a ‘clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.’ 42 U.S.C. § 12101(b)(1).”); *Glass v. Trowbridge*, No. 14-CV-3059-S-DGK, 2014 WL 1878820, at *5 (W.D. Mo. May 12, 2014) (ordering a temporary injunction requiring state action in enforcement of the ADA because “[a]llowing persons with disabilities equal access to public services serves the public interest.”); *Sak* at 1047 (N.D. Iowa 2011) (holding there is a “national public interest in enforcement of the ADA” and issuing a preliminary injunction barring enforcement of an ordinance on ADA grounds); *Heather K. by Anita K. v. City of Mallard*, 887 F.Supp. 1249, 1260 (N.D. Iowa 1995) (reasoning the ADA’s legislative history supported finding a public interest in eliminating discrimination on the basis of disability through enforcement of the ADA under the public interest prong of *Dataphase* and granting a temporary restraining order for the pendency of plaintiff’s ADA claim). The public interest in enforcing the

ADA would be served by issuance of a temporary restraining order requiring the City to provide a reasonable accommodation to Mr. Tillman.

II. The Court Should Use its Discretion to Waive Posting of Security.

Federal Rule of Civil Procedure 65(c) provides that courts normally require the moving party to post security to protect the other party from any financial harm that is likely to be caused by a temporary injunction, if that party is later found to have been wrongfully enjoined. The rule, however, provides district courts broad discretion to determine the amount of bond required or to waive the bond requirement altogether. *See Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (waiver of bond requirement warranted “where the the damages resulting from a wrongful issuance of an injunction have not been shown.”) (citations omitted); *Steward v. West*, 449 F.2d 324, 325 (5th Cir. 1971) (finding that no injunction bond need be posted when “it is very unlikely that the defendant will suffer any harm”); *First Lutheran Church v. City of St. Paul*, 326 F.Supp.3d 745, 769 (D. Minn. 2018) (waiving bond requirement). Waiver is particularly warranted where a plaintiff seeks to enforce federal statutory rights. *Cf. Richland/Wilkin Joint Powers Auth.*, 826 F.3d at 1043 (collecting cases) (finding it permissible for the district court to waive the bond requirement based on its evaluation of public interest in the enforcement of National Environmental Policy Act).

Waiver is appropriate in this case because Defendants are unlikely to suffer any harm from an injunction that requires them to follow federal law and provide Mr. Tillman with relief that vindicates his rights under the ADA. This alone is reason to waive the security requirement. *See, e.g., Council on American-Islamic Rels. v. Graubatz*, 667 F.Supp. 2d 67, 81 (D.D.C. 2009) (requiring no bond where the defendant would not be substantially injured by the issuance of an injunction). In addition, Mr. Tillman is “engaged in public-interest litigation,” an area in which the courts have recognized an exception to the Rule 65 security requirement because requiring

security would deter others from exercising their constitutional rights. *City of Atlanta v. Metro. Atlanta Rapid Transit Auto*, 636 F.2d 1084, 1094 (5th Cir. 1981).

Moreover, Mr. Tillman is indigent, and his lack of financial resources is a central issue in this case.³ Many courts have waived bond requirements for indigent litigants in civil rights suits. *See, e.g. Johnson v. Bd. Of Police Comm'rs*, 351 F.Supp. 929, 952 (E.D. Mo. 2004) (waiving bond requirement for homeless plaintiffs).

Finally, as explained above, Plaintiffs are likely to succeed on the merits of their claims. The outcome of any trial, if necessary, is likely to reaffirm the well-established principle that it is in the public interest to “protect ... members of the public” through enforcement of the federal law. *See Moltan Co. v. Eagle-Pitcher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (“no security was needed because of the strength of [Plaintiff’s] case and the strong public interest involved”).

CONCLUSION

For the reasons stated above, the Court should issue a temporary restraining order enjoining the Defendants from their discriminatory refusal to provide a wheelchair-accessible shower to Mr. Tillman. Specifically, Mr. Tillman requests the Court order the City to: (1) file with the Court, within 5 days of the Court’s entry of this order, a detailed plan to establish a wheelchair-accessible shower at CJC; (2) build out a wheelchair-accessible shower within 21 days of the filing of the detailed plan; and (3) in the interim, assign nursing staff to assist Mr. Tillman in the shower.

³ Indeed, the State already determined that Mr. Tillman is indigent when the Missouri State Public Defender determined he qualified for their services. *See, e.g.*, Tillman Dec. at ¶¶ 10, 27 (referring to his public defender).

Dated: March 9, 2021

Respectfully submitted,

ARCHCITY DEFENDERS, INC.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ANTHONY TILLMAN,)	
)	
Plaintiff,)	
)	
v.)	
)	
CITY OF ST. LOUIS, MISSOURI,)	
ADRIAN BARNES, <i>in his official</i>)	
<i>capacity</i> , and)	
COMMISSIONER DALE GLASS, <i>in</i>)	
<i>his official capacity</i> ,)	
)	
Defendants.)	

Cause No. 4:21-CV-00299

*****EXPEDITED HEARING
REQUESTED*****

[PROPOSED] ORDER

Upon consideration of Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction, it is **ORDERED** that the motion is **GRANTED**. Defendants are hereby enjoined from their discriminatory refusal to provide a wheelchair-accessible shower to Plaintiff Anthony Tillman and **ORDERED** to:

- (1) file with the Court, within 5 days of the entry of this Order, a detailed plan to establish a wheelchair-accessible shower at the City Justice Center (“CJC”);
- (2) build out a wheelchair-accessible shower within 21 days of the filing of the detailed plan; and
- (3) in the interim, assign nursing staff to assist Mr. Tillman in the shower.

Ordered this _____ day of _____, 2021

United States District Judge