



“accommodations” the defendants did provide actually served to exclude Mr. Hacker from several of the defendants’ services, programs, or activities.

2. Mr. Hacker began complaining to defendants of eyesight problems in October 2011. Beginning in June 2012, at least three doctors inside and outside Angola recommended cataract removal surgery for Jason Hacker. In May 2013, a doctor declared him legally blind. It was not until July 2014 that Jason Hacker received surgery on one of his eyes. Both his cataracts were removed by September 15, 2014.

3. Defendants classify cataract removal surgery as elective surgery and liken it to cosmetic surgery. In other words, according to the defendants, cataract removal surgery – a common, low-risk surgery to ameliorate a very serious medical problem – is a non-emergency and can be done at any time. Moreover, defendants failed to provide accommodations to plaintiff despite their knowledge of the need for accommodation and the reasonableness and necessity of those accommodations.

4. Numerous doctors determined that Mr. Hacker required cataracts surgery to remedy his disability. However, pursuant to a policy and custom, defendants delayed and prolonged his surgery for years thereby ignoring his need for an accommodation. Defendants’ actions, done pursuant to their own policy and custom, constitute intentional discrimination against persons with certain types of disabilities, *see* 42 U.S.C. § 12132; 28 C.F.R. 35.130(b)(1)(iv), and violate the Eighth Amendment. *See Baker v. Wilkinson*, 635 F. Supp. 2d 514, 520-521 (W.D. La. 2009).

## **II. JURISDICTION AND VENUE**

5. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 42 U.S.C. § 12133, and 29 U.S.C. § 794a.

6. Venue is proper in the Middle District of Louisiana, under 28 U.S.C. § 1391(b)(2), since the claim arose in this district, all defendants reside in this district, and a substantial part of the events or omissions giving rise to the claim occurred in this district.

### **III. PARTY PLAINTIFF**

7. Jason Hacker is a prisoner confined in the Louisiana State Penitentiary at Angola. His DOC number is 383727. He is 39 years old and of suitable age and capacity to file suit. At all material times relevant to this lawsuit, Mr. Hacker was a resident of West Feliciana Parish, Louisiana. He is a resident of the Middle District of Louisiana.

8. Mr. Hacker is a qualified person with a disability. At all relevant times of this lawsuit, his blindness prevented him from engaging in the major life activity of seeing. *See* 28 C.F.R. § 35.104(2). Eyeglasses did not ameliorate his condition.

### **IV. PARTY DEFENDANT**

9. Defendant State of Louisiana is a public entity as that term is used in the ADA and the Rehab Act. It is a recipient of federal financial assistance as that term is used in the Rehab Act.

10. Defendant Louisiana Department of Corrections is a state agency and a public entity as that term is used in the ADA and the Rehab Act. It is a recipient of federal financial assistance as that term is used in the Rehab Act.

11. Defendant Louisiana State Penitentiary at Angola (“Angola”) is a state agency and a public entity as that term is used in the ADA and the Rehab Act. It is a recipient of federal financial assistance as that term is used in the Rehab Act.

12. Defendant Bobby Jindal is the Governor of Louisiana and the chief executive of the state. He is a final policymaker and is sued in his official and individual capacity.

13. Defendant James LeBlanc is the secretary of the Louisiana Department of Public Safety and Corrections. He is a final policymaker and is sued in his official and individual capacity.

14. Defendant Burl Cain is the Warden of Angola. He is a final policymaker and is sued in his official and individual capacity.

## **V. STATEMENT OF FACTS**

15. Mr. Hacker began complaining of eyesight problems as far back as October 2011.

16. On October 17 of that year he complained to Angola personnel of sudden weight loss, vision changes and that he was unusually hungry. On October 20, 2011, Angola personnel referred Mr. Hacker to an eye clinic.

17. On January 9, 2012, Angola personnel saw Mr. Hacker at the Angola hospital. They noted Mr. Hacker was experiencing heart palpitations, weight loss, vision changes and insomnia.

18. On February 14, 2012, Mr. Hacker complained to Angola personnel of blurry vision, visual changes and weight loss. On that day, Angola personnel referred him to the eye clinic for a further evaluation. Thyroid problems were ruled out as the cause of his eye problems.

19. On June 24, 2012, Interim LSU Hospital Personnel recommended Mr. Hacker receive cataract removal surgery and that a special follow-up is needed for cataract surgery. Defendants were made aware of the need for the cataract surgery.

20. On October 24, 2012, Mr. Hacker was seen at the Earl K. Long Eye Clinic. Upon his return, defendants were notified that Mr. Hacker should be referred to Interim LSU Hospital for cataract removal surgery.

21. On October 30, 2012, LSU Interim Hospital Personnel in the Ophthalmology department diagnosed Mr. Hacker with cataracts. Defendants were made aware of the need for

the surgery.

22. In January 2013, Mr. Hacker was seen by a doctor at Angola. He complained to the doctor that he could not see and that his eyesight was failing at what seems like an even greater rate than when he was first seen by the doctor. This same doctor scheduled Mr. Hacker to see an eye specialist outside Angola.

23. On or about April 2, 2013, an eye specialist at LSU Interim Hospital diagnosed Mr. Hacker as suffering from cataracts and recommended cataract extraction surgery when approved by the “prison board.” Angola was notified of this fact and the recommendation for immediate cataracts surgery in both eyes.

24. On April 2, 2013, Mr. Hacker was seen in the Ophthalmology Department at LSU Interim Hospital. There, it was determined that he suffered from blurred vision which has slowly progressed over the last “1-2 years” and visually significant cataracts. The recommended treatment was “cataract extraction when approved” and that a “specialty follow-up” was required for cataract extraction when surgery is approved. Defendants were made aware of the need for this surgery.

25. On April 2, 2013, a request for surgery was made by Interim LSU Hospital for a cataract extraction in Mr. Hacker’s right eye. The request indicated that the surgery was “medically necessary” and should be conducted “ASAP.” Defendants were aware of this recommendation; on the same date Angola medical personnel noted that Mr. Hacker should receive cataract extraction surgery when it is approved.

26. On April 2, 2013, LSU Interim Hospital personnel noted that, relative to addressing Mr. Hacker’s eyesight problems, his return for surgery would be arranged “after approval is obtained from the prison board.” Defendants were made aware of the need for the surgery.

27. On or about May 6, 2013, Mr. Hacker made a medical emergency request while working on a field line at Angola. As a result, he saw an EMT to whom he explained that he could not see six to eight feet in his left eye and had practically no sight in his right eye. He also told the EMT that he suffered from cataracts and an eye specialist recently told him he needed surgery.

28. In response to plaintiffs request, defendants could have accommodated his disability. They could have promptly provided surgery on his cataracts. Or, they could have granted him a duty status that did not require him to work in Angola's fields or any other dangerous area of the prison. Instead, defendants gave Mr. Hacker a duty status for *three days* and sent him right back to work in Angola's fields.

29. Mr. Hacker made another emergency medical request on May 16, 2013 due to "pain and burning" in his eyes; his inability to see; and his inability to perform his work detail in the field given his disability. He also complained to Angola medical personnel that, because of his cataracts, he had blurred vision, was having trouble seeing far away, and was experiencing severe pain in his eyes when exposed to sunlight and that "his eyes were getting worse."

30. Again, instead of choosing to accommodate Mr. Hacker's disability, defendants gave him a temporary duty status of three days. No surgery was scheduled nor were arrangements made to remove him from field duty.

31. It was during this time that Mr. Hacker was injured while working in the field. As he explained to Angola personnel: despite his inability to see, he was assigned to work in a field line charged with stacking hay in a barn; a hay bail was thrown in his direction; his eyes could not ascertain the distance of the bail, its direction of travel, nor its location when he tried to catch it. Consequently, having failed to catch it correctly, he tore his right pectoralis muscle.

32. On May 22, 2013, Mr. Hacker was seen by Angola medical personnel in Optometry. The Angola doctor noted that Mr. Hacker was legally blind, that he suffered from cataracts and indicated he needed a duty status consisting off “sit to work, out of field, no sports, no hobbycraft, no rodeo and no kitchen.” Moreover, Angola personnel recommended that Mr. Hacker be seen by a person outside the prison for his condition.

33. On June 26, 2013, Mr. Hacker wrote the following note to defendants:

Dear Eye Clinic,

This is a note to advise you that as of 6-26-2013 I still have not received my “no duty status” that you said the head doctor would have to give me. *It’s been a month since you declared me legally blind.* Please find out “why” I have yet to get my status.

If I don’t see Doctor Collins or receive my status for “No Duty” I will be filing [sic] a “ARP” followed by a law suit [sic], under a [sic] Eighth Amendment claim, under “Deliberate Indifference.” *The simple fact that I am going blind because I have to wait on surgery, yet I have to make a fuss to get my status is truly unacceptable.* Thank you for your time in this matter.

/s/ Jason Hacker

(Emphasis added).

34. By July 2013, Mr. Hacker was still being forced to work in the fields. Since he had not yet had surgery for his cataracts, he was prevented from playing the guitar, playing sports, using hobbycraft or participating in numerous other prison activities and programs. On July 2, 2013, an Angola consultant referral form indicates that Mr. Hacker was inquiring of his duty status in reference to his eyesight problems. It was noted that he was legally blind and was referred out for a cataract evaluation.

35. On July 12, 2013, he was given a duty status that entailed the following: “Regular duty with restrictions: out of field, sit to work; no kitchen duty; no sports, no hobbycraft, no rodeo X permanent.” After three days, this duty status reverted back to a permanent duty status.

Rather than remove him from the field, where he was injured, or ameliorate his condition through surgery, the defendants chose to exclude him from various prison activities, i.e, playing sports, the rodeo, hobby craft, etc.

36. On August 21, 2013, Mr. Hacker was seen by a doctor in Ophthalmology. The doctor noted he suffered from cataracts. On the same date, Angola personnel noted that Mr. Hacker should be seen by a person outside Angola for cataracts surgery.

37. As of the fall of 2013, his duty status was listed as “sit to work, out of field, no sports, no hobbycraft, no rodeo and no kitchen.”

38. Mr. Hacker filed an ARP on August 21, 2013. The response to his ARP indicated the following:

The Physicians at [Angola] do not perform surgery on site nor do the [Angola] Physicians approve or deny appointments/surgery for specialty clinics and off-site clinics. If any type of surgery is approved, the specialty clinic will notify [Angola] of the surgery date and time and [Angola] Security will be notified to arrange transportation for you.

39. It ended with the following assurance:

“Your complaints and concerns are legitimate and appreciated. Your request for cataract surgery, without further delay, is denied at the time of this response.”

40. On February 19, 2014, Angola personnel again noted Mr. Hacker’s eye problems and recommended that he see an eye specialist.

41. On March 12, 2014, Mr. Hacker was tripped out to the eye clinic at Interim LSU Hospital because of his cataracts. However, he would not receive surgery. Instead, at that visit, the doctor noted that Mr. Hacker presented with visually significant cataracts and complained of continued blurry vision and glare problems. The doctor recommended cataract removal surgery. Angola personnel was notified of this recommendation.

42. On March 12, 2014, a doctor at Interim LSU Hospital made a notation in the medical

records indicating the following: “Will schedule surgery...Return visit to be arranged, depending on surgery date.” Also, a “specialty follow-up” was required for cataract surgery, first on the right eye and then the left eye. The form indicates that LSU should not schedule a follow-up. Instead, it noted, “[t]he offender’s health care provider at their facility must request ALL follow-up, if needed.” However, rather than arrange for surgery, Mr. Hacker was scheduled to return back to the eye doctor in six months – September 12, 2014 – for a simple check up.

43. Oddly enough, it was only after Mr. Hacker filed the instant suit and received counsel before defendants took any action to remove his cataracts. Mr. Hacker filed the instant suit *pro se* on January 30, 2014. The undersigned enrolled as counsel on June 3, 2014. At the time, Mr. Hacker’s medical records indicate that his next doctor’s visit was not to occur until September 12, 2014. Nevertheless, one month after counsel enrolled, Plaintiff was brought for surgery on his right eye on July 7, 2014 and, subsequent to the right eye’s recovery, Plaintiff was taken for surgery on his left eye on September 15, 2014, the day of the filing of his first amended complaint.

44. The delay between the medical doctor’s surgery recommendation and the surgery itself is not a “medical judgment” subject to differing opinion – it is an outright denial of medical services that caused severe pain to Mr. Hacker and excluded him from participating in prison services and programs. Mr. Hacker and several medical doctors informed defendants on many occasions about his need for surgery and they did not act despite his requests.

45. Given the defendant’s acknowledgement of his disability and his acknowledged need for surgery, defendants have violated the ADA and the Eight Amendment by delaying his access to surgery. Moreover, the delay in providing surgery resulted in a lengthy delay in the next step in Mr. hacker’s treatment, a step the physicians believed was necessary since Mr. Hacker’s

cataracts and his eyesight had only worsened as time progressed.

46. Angola has knowledge that many prisoners must wait for unreasonably long periods of time for cataract removal surgery. Defendants were on notice that the delay in providing cataract surgery routinely causes unreasonable pain and suffering and serves to exclude those prisoners from certain prison services, programs, or activities. See 42 U.S.C. § 12132. Defendants refused to provide surgery to plaintiff pursuant to a policy or custom or delaying cataract removal surgery. Their actions in furtherance of this policy caused undue pain and suffering.

47. On information and belief, Angola has a policy or custom of refusing to pay for certain types of surgeries. This determination is not based on sound medical science nor is made on an individualized basis according to the particular medical condition of a specific prisoner. It is the result of a policy or custom adhered to by defendants and their agents, employees and subordinates that subjected Mr. Hacker to discrimination based on disability.

48. The actions of defendants and their agents, employees and subordinates in implementing this policy or custom constitute discrimination under the ADA and the Rehab Act. Moreover, the defendants' agents, employees and subordinates implementation of the defendant-supervisor's affirmative wrongful policies of delaying surgery of this type deprived Mr. Hacker of his Eighth Amendment rights against cruel and unusual punishment. Moreover, the officials' actions in implementing a policy that is so deficient that the policy itself is a repudiation of constitutional rights and is the moving force of the constitutional violation effectuated on Mr. Hacker.

49. The failure of defendants to provide surgery to Mr. Hacker for over two years excluded him from prison services, programs and activities by reason of his disability in

violation of the ADA. For example, Mr. Hacker's duty status reads as follows: "sit to work, out of field, no sports, no hobbycraft, no rodeo and no kitchen." This may be reasonable to accommodate a chronic, life-long disability to someone confined to prison. However, when applied to someone with a correctable disability like cataracts, this status serves to exclude the prisoner from activities enjoyed by every other prisoner in Angola. Deliberate refusal of prison officials to accommodate a prisoner's disability-related needs in prison programs constitutes exclusion from participation in or denial of the benefits of the prison's "services, programs, or activities." 42 U.S.C. § 12132. See also *United States v. Georgia*, 546 U.S. 151, 157 (2006); *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 210 (1998).

## **VI. CAUSES OF ACTION**

### **A. AMERICANS WITH DISABILITIES ACT AND § 504 OF THE REHABILITATION ACT.**

50. Plaintiff re-alleges and incorporates each and every foregoing paragraph.
51. The Plaintiff is a qualified person with a disability as defined by the ADA.
52. The Defendants – the State of Louisiana, Angola, and the Department of Public Safety and Corrections – are public entities according to 42 U.S.C. § 12131(1).
53. The Defendants, through their actions described above, have:
  - a. discriminated against a qualified individual with a disability in violation of 42 U.S.C. §§ 12131(2) and 28 C.F.R. § 35.130; and
  - b. subjected Plaintiff to discrimination by reason of his disability when they refused to provide him surgery on his cataracts; and
  - c. subjected Plaintiff to discrimination by reason of his disability when they failed to make a reasonable accommodation in their policies, practices, or

procedures necessary to avoid discrimination against persons with disabilities. See 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(7); and

- d. subjected Plaintiff to discrimination based on his disability by excluding him from participation in or denial of the benefits of the prison's services, programs, or activities. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1)(i); 29 U.S.C. § 794, 28 C.F.R. § 45.503(1)(i).

## **B. THE EIGHTH AMENDMENT**

54. Plaintiff re-alleges and incorporates each and every foregoing paragraph.

55. Defendants were deliberately indifferent to plaintiff's serious medical needs by refusing to pay for eye surgery for a reasonable amount of time after doctors recommended eye surgery for his cataracts;

56. Defendants knew of Plaintiff's cataracts, and its devastating effect on his eyesight, yet by following policy or custom, delayed surgery for a significant period of time, constituting deliberate indifference to his serious medical needs.

57. Defendants knew or should have known of Plaintiff's serious medical need and were deliberately indifferent to it;

58. Defendants acted pursuant to a policy or custom of delaying surgery for certain types of disabilities like cataracts. The agents, employees and subordinates of defendants acted pursuant to this policy or custom. Hence, defendants are liable under the Eighth Amendment.

59. Defendants' deliberate indifference caused plaintiff to experience serious pain and suffering.

## **VII. PRAYER FOR RELIEF**

THEREFORE, plaintiff respectfully requests that this Court enter the following relief:

- A. Issue a permanent injunction, requirement Defendants and their agents, servants and employees, and all persons in active concert with them to institute all policies, procedures, training, and, and enjoining them from violating the ADA and the Rehabilitation Act by discriminating against Plaintiff in his utilization of Defendants' benefits, programs, services, and activities; and
- B. Enter a declaratory judgment, specifying Defendants' statutory violations and declaring the rights of the Plaintiff as to the Defendants' benefits, programs, services, and activities;
- C. Award special damages;
- D. Award compensatory damages;
- E. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action, pursuant to 42 U.S.C. § 12205, 28 C.F.R. § 35.175, and 29 U.S.C. § 794a(b);
- F. Order such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Date: March 3, 2015.

Respectfully submitted,

/s/ Nicholas Trenticosta  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2015, a copy of the Plaintiff's *Second Amended Complaint* was filed electronically with the Clerk of Court via the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

/s/John Adcock  
John Adcock