

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

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NORMAN BLOOMFIELD, EDWIN DIJOLS, JAMES
RIDDLES, and GARY YORMARK,

Plaintiffs,

- against -

SURF MANOR HOME FOR ADULTS, SURF MANOR
HFA, INC., and ROBERT LICHTSCHEIN,

Defendants.
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Index No. 9038-12

COMPLAINT

Preliminary Statement

1. Plaintiffs are individuals with disabilities who live in Surf Manor Home for Adults (“Surf Manor”), which is an adult home in Brooklyn, New York. An adult home is a congregate care facility established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care, and supervision to its residents. Plaintiffs are filing this lawsuit as a class action on behalf of the approximately 200 current residents of Surf Manor, as well as future residents of Surf Manor.

2. Defendants are Surf Manor and its owners and operators. For the past three years, Defendants have subjected Plaintiffs to deplorable living conditions that are dangerous, hazardous, and detrimental to their health, safety, and welfare. Defendants’ utter failure to maintain the facility in accordance with statutorily-mandated standards of human habitation has led to pervasive bed bug and scabies infestations, filth and neglect, and a constellation of repeated and ongoing health and building code violations. Defendants have failed to meet their

obligations to keep the facility clean and free of vermin, to provide heat during the winter, or to ensure the security of the residents and their belongings.

3. Defendants also have failed to provide Plaintiffs with the services that they are obligated to provide pursuant to their contracts with each plaintiff and pursuant to the New York Social Services Law and implementing regulations. Defendants have failed to provide Plaintiffs with important case management services, which include assisting Plaintiffs to apply for and maintain income entitlements and arrange for health services. Defendants' failure to provide these services has left members of the plaintiff class penniless for months at a time and unnecessarily waiting months for medical appointments and surgeries. Moreover, Defendants' agents and employees routinely threaten and intimidate residents who request remedies for these conditions, thereby failing to respect the rights of residents to be treated with courtesy and respect and to present grievances without fear of reprisal.

4. The New York State Department of Health ("DOH"), the agency that licenses and regulates adult homes, has documented Defendants' persistent regulatory violations in a series of scathing inspection reports dating back to 2009. Plaintiffs and other residents – individually, through their attorney, and through the Surf Manor Residents' Council ("Residents' Council") – repeatedly have requested that Defendants remedy dangerous and unsanitary conditions and provide mandated case management services to residents.

5. In response to the threat of litigation and pressure from DOH, Defendants have recently taken steps to address some of the most serious conditions in the facility, including the bed bug infestation. These steps have provided some temporary relief for Plaintiffs. However, these actions are consistent with Defendants' historical pattern of applying makeshift solutions to deep-rooted problems at Surf Manor. This "yo-yo compliance" is inadequate, discriminatory, and

in violation of Plaintiffs' contracts with Defendants, the Social Services Law, and DOH regulations. Absent court intervention, these remedies will be short-lived.

6. In order to make their home safe and to make sure that they receive the services to which they are entitled, Plaintiffs seek permanent injunctive relief, damages, and attorneys' fees for breach of contract, breach of the implied warranty of habitability, violations of the New York Social Services law, and violations of the New York State Human Rights Law.

The Parties

Plaintiffs

7. Norman Bloomfield is a resident of Surf Manor Home for Adults, located at 2316 Surf Avenue, Brooklyn, New York. Plaintiff Bloomfield is a person with a disability, because he has an impairment that is demonstrable by medically-accepted clinical techniques. The Social Security Administration has determined that Plaintiff Bloomfield is a person with a disability, and he receives Supplemental Security Income ("SSI") as a result of that determination.

8. Edwin DiJols is a resident of Surf Manor Home for Adults, located at 2316 Surf Avenue, Brooklyn, New York. Plaintiff DiJols is a person with a disability, because he has an impairment that is demonstrable by medically-accepted clinical techniques. The Social Security Administration has determined that Plaintiff DiJols is a person with a disability, and he receives SSI as a result of that determination.

9. James Riddles is a resident of Surf Manor Home for Adults, located at 2316 Surf Avenue, Brooklyn, New York. Plaintiff Riddles is a person with a disability, because he has an impairment that is demonstrable by medically-accepted clinical techniques. The Social

Security Administration has determined that Plaintiff Riddles is a person with a disability, and he receives SSI as a result of that determination.

10. Gary Yormark is a resident of Surf Manor Home for Adults, located at 2316 Surf Avenue, Brooklyn, New York. Plaintiff Yormark is a person with a disability, because he has an impairment that is demonstrable by medically-accepted clinical techniques. The Social Security Administration has determined that Plaintiff Yormark is a person with a disability, and he receives SSI as a result of that determination.

Defendants

11. Upon information and belief, Surf Manor Home for Adults, a corporation organized and existing under the laws of New York, is an adult home that provides room, board, and case management services to individuals with disabilities. Surf Manor Home for Adults's principal place of business is located in Kings County, at 2316 Surf Avenue, Brooklyn, New York.

12. Upon information and belief, Surf Manor HFA, Inc., a corporation organized and existing under the laws of New York, operates an adult home that provides room, board, and case management services to individuals with disabilities. Surf Manor HFA's principal place of business is located in Kings County, at 2316 Surf Avenue, Brooklyn, New York.

13. Upon information and belief, Robert Lichtschein is the operator of Surf Manor. Lichtschein's business office is located at Surf Manor, at 2316 Surf Avenue, Brooklyn, New York.

14. Upon information and belief, Defendant Lichtschein holds a certificate of incorporation for the purpose of operating an adult care facility pursuant to § 460-a of the Social Services Law.

15. Upon information and belief, Defendant Lichtschein is individually responsible for providing a program of services, care, and supervision that assures the protection of the rights of the residents, promotes the physical and mental well-being of the residents, and complies with New York Social Services Law §§ 485 through 487.

16. Upon information and belief, pursuant to 18 NYCRR § 485.2(i), Defendants operate a private proprietary adult home for compensation and profit.

17. Upon information and belief, Defendants operate an adult home licensed by DOH and subject to New York State law and applicable regulations.

18. Upon information and belief, pursuant to 18 NYCRR § 485.2(a), Defendants provide temporary or long-term residential care and services to approximately 200 adults who have physical or other limitations associated with age, disability, or other factors.

19. Upon information and belief, at all times relevant to the facts herein, Defendants were operating as an adult home and were authorized to do business as such within the State of New York.

Class Action Allegations

20. Plaintiffs Bloomfield, DiJols, Riddles, and Yormark bring this action on their own behalf and, pursuant to CPLR § 901, on behalf of a class defined as follows:

All current and future residents of Surf Manor Home for Adults, an adult home as defined by § 2(25) of the New York Social Services Law, which is located at 2316 Surf Avenue, Brooklyn, New York.

21. The class, which includes all of the approximately 200 current residents of Surf Manor, as well as future residents of Surf Manor, is so numerous that joinder of all members is impracticable.

22. The allegations present numerous common questions of law and fact, including whether Defendants violated the putative class members' contractual, statutory, and regulatory rights and whether, as a result, the putative class members are entitled to permanent injunctive relief and damages.

23. Certification under CPLR § 901 is appropriate since Plaintiffs seek injunctive relief against Defendants, as well as money damages, litigation costs and attorney's fees compensable under CPLR § 8601 and N.Y. Exec. Law § 297. Plaintiffs do not seek to recover a penalty or a minimum measure of recovery created or imposed by statute with their claims.

24. The requested injunctive relief is appropriate with respect to the class as a whole because Plaintiff class members are all current and future residents at Surf Manor and are uniformly affected by the quality of the living conditions and services provided. For this same reason, the legal questions regarding Defendants' duties are common to the class and predominate over any factual questions or interests pertaining to an individual member of the Plaintiff class.

25. Plaintiffs Bloomfield, DiJols, Riddles, and Yormark can fairly and adequately protect the interests of the class.

26. The Plaintiff class is represented jointly by the law firm DLA Piper LLP (US) ("DLA Piper") and MFY Legal Services, Inc. ("MFY"), a public interest law firm that provides civil legal services to poor and low-income New Yorkers. DLA Piper and MFY have the legal resources and experience to protect the interests of all members of the class in this action. Counsel also has expertise litigating class actions and civil rights matters.

27. Plaintiffs know of no actual or potential conflicts of interest among members of the class.

28. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Members of the Plaintiff class have no interest in individually controlling the prosecution of separate actions because all class members are indigent, have disabilities, and individually lack sufficient resources for the prosecution of separate actions. Moreover, the prosecution of separate actions would be inefficient and waste the Court's and the parties' resources; the issues raised can be more fairly and efficiently resolved in a single class action rather than in separate actions. The resolution of the controversy in a single forum will also avoid the danger and resultant confusion of potentially inconsistent determinations.

Factual Allegations Common to the Class

I. Background

29. Defendants operate an adult home.

30. An adult care facility provides “temporary or long-term residential care and services to adults who, though not requiring continual medical or nursing care . . . are by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.” N.Y. Soc. Serv. Law § 2(21).

31. An adult home is a type of adult care facility “established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care and supervision to five or more adults unrelated to the operator.” N.Y. Soc. Serv. Law § 2(25).

32. Certain adult homes are classified as “impacted.” DOH defines “impacted homes” as facilities in which at least 25 residents or 25% of the residents have a mental illness-based disability. Mental Hygiene Law §§ 45.09(a) and 45.10(a).

33. Upon information and belief, Surf Manor is an “impacted” adult home.

34. According to DOH's own census data, "[a]ll of the adult homes in New York State are populated entirely by people with disabilities and/or mental illness." Disability Advocates, Inc. v. Paterson, 598 F. Supp. 2d 289, 295 (E.D.N.Y. 2009) (vacated on other grounds).

35. Licensed adult homes must comply with a number of laws and regulations, including the Social Services Law and its implementing regulations, which are administered by DOH. DOH regulations outline the standard of care and level of services that adult homes must provide to residents.

36. All applicable laws and regulations are incorporated by reference into every resident's admission agreement with Surf Manor.

II. Surf Manor's Dangerous and Uninhabitable Living Conditions

37. Defendants have subjected Plaintiff class members to living conditions that are dangerous, hazardous, and detrimental to their health, safety, or welfare, including pervasive bed bug and scabies infestations, mold growth, structural hazards, and other unsanitary conditions in the kitchen, common areas, and resident rooms.

a. Defendants' Failure To Adequately Address Pervasive Bed Bug And Scabies Infestations Endangers Residents' Health And Safety

38. For the past three years, Defendants have permitted a severe and chronic bed bug infestation to persist at Surf Manor. Bed bugs have been found in residents' bedding and clothing and in the couches and other furnishings in Surf Manor's common areas. Plaintiffs Bloomfield, DiJols, and Yormark all have suffered from bed bugs in their rooms.

39. Defendants have repeatedly permitted the infestation to escalate out of control before taking action. The result is a cycle whereby an infestation develops, Defendants fail to take action until resident rooms are swarming with bed bugs, Defendants then treat the rooms

using the bare minimum of extermination methods, and, consequently, the bed bugs soon thrive again.

40. DOH has issued a number of inspection reports documenting bed bug infestations dating back to 2009. This includes a November 2011 report describing “hundreds of bed bugs” in a resident’s room.

41. The Residents’ Council, an organization of Surf Manor residents, and many residents individually have reported the presence of bed bugs and complications from bed bug bites to Defendants on numerous occasions.

42. Residents have suffered from skin rashes and blisters, as well as the inability to sleep at night due to the itching caused by bed bugs and the psychological strain of living in quarters infested with bed bugs.

43. Defendants have permitted linens infested with bed bugs to be carried through the kitchen during food preparation.

44. Defendants have left mounds of old mattresses - potentially infested with bed bugs - to sit in the parking lot for months.

45. Defendants have destroyed and seized residents’ possessions, such as stereo equipment, purportedly in an effort to “exterminate.”

46. Upon information and belief, in response to the threat of litigation, Defendants have taken steps to remedy the bed bug infestation at Surf Manor. These steps have provided some temporary relief for Plaintiffs. However, in light of Defendants’ longstanding failure to ensure that the facility is free of bed bugs, Plaintiffs do not believe that Defendants have adequately addressed the infestation. In addition, Defendants have provided no compensation for residents’ monetary, emotional, and physical damages, and they have provided no assurances

that this cycle will not continue. Plaintiffs believe that, absent court intervention, Defendants will fail to take the steps necessary to ensure that bed bugs are permanently eradicated from the facility.

47. In addition to the bed bug infestation, residents of Surf Manor, including Plaintiff DiJols, have suffered from scabies.

48. Scabies are mites that burrow under the skin, causing severe and uncomfortable rashes and itching.

49. Approximately a dozen residents at Surf Manor have suffered from scabies infections in the past several years.

50. After several residents were diagnosed with and treated for scabies infections at off-site emergency rooms, Defendants did not take any meaningful steps to diagnose other residents suffering from this skin condition.

51. The Residents' Council has documented complaints about scabies. This documentation has been provided to Defendants.

52. The cyclical bed bug and scabies infestations at Surf Manor have created uninhabitable living conditions that indicate a severe failure by Surf Manor to "protect and assure the life, health, safety and comfort" of its residents, pursuant to the purpose and policy of the residential home program enacted by the New York state legislature and in violation of residents' admission agreements. See N.Y. Soc. Serv. Law § 460.

b. Defendants' Failure To Remedy Dangerous Conditions In The Facility Endangers Residents' Health And Safety

53. Defendants have allowed Surf Manor to fall into a state of dangerous disrepair, in violation of the New York Social Services Law, its implementing regulations, the New York City Housing Code, the terms of plaintiffs' admissions agreements, and the implied warranty of

habitability. These dangerous conditions include inconsistent and inadequate heat in the winter, lack of maintenance of the facility's elevators, holes and leaks in resident rooms and common areas, and failure to post required notices.

54. Defendants have not provided adequate heat to all residents during the winters, including the "heat season" from October 1, 2010 to May 31, 2011, in violation of DOH regulations and the New York City Administrative Code § 27-2029.

55. Defendants have failed to keep the two elevators in the facility in a safe and working condition. The elevators regularly stall. At times, one or both elevators have been broken.

56. At Surf Manor, residents' rooms are located on the second, third, fourth, fifth, and sixth floors of the building.

57. When one elevator is broken, Surf Manor residents, including those with significant mobility impairments, must wait considerable amounts of time or use the stairs to leave or return to their rooms.

58. When both elevators are broken, Surf Manor residents, including those with significant mobility impairments, must use the stairs to leave or return to their rooms.

59. Defendants have failed to adequately repair leaking sinks and toilets in residents' bathrooms and instead have made "repairs" with makeshift wooden planks.

60. Defendants have failed to repair leaking pipes that cause damage to ceiling tiles. Defendants have, instead, covered damaged tiles with new tiles which subsequently become waterlogged and fall down in resident rooms, bathrooms, and common areas.

61. In violation of DOH regulations and the residents' admission agreements, Defendants have failed to repair missing, bulging, and cracked ceiling tiles in residents' rooms and bathrooms, the recreation room, at least one stairwell, and the first floor men's bathroom.

62. Defendants have failed to post fire notices and inspection reports as required by law and regulation.

63. The pay phones inside Surf Manor have charged residents to dial 311, a toll-free call, to report problems in the facility to relevant government agencies.

64. These dangerous conditions pose significant threats to the health, safety, and welfare of residents of Surf Manor and create an uninhabitable environment for class members.

65. DOH inspection reports document Surf Manor's pattern of neglect of the facility, resulting in dangers to residents' health and safety.

66. Plaintiffs repeatedly have complained about these conditions to Defendants, but Defendants have failed to take sufficient and timely action to address these conditions.

c. Defendants' Failure To Maintain The Facility In A Clean And Sanitary Condition Endangers Residents' Health And Safety

67. Defendants have failed to ensure that Surf Manor is maintained in a clean and sanitary condition, in violation of the New York Social Services Law, its implementing regulations, the terms of plaintiffs' admissions agreements, and the implied warranty of habitability. In addition to bed bugs and scabies described in Section II.a, supra, Defendants have permitted unsanitary conditions, including mold and piles of garbage and dirty linens, to exist in the bathrooms, kitchen, stairwells, and other areas of Surf Manor.

68. Defendants have failed to address excessive mold growth in vents, shower mats, and shower curtains.

69. Defendants have stored piles of garbage and soiled linens in the hallways, stairwells and near the elevators.

70. Defendants have failed to adequately clean and inspect the facility, resulting in unsanitary conditions, such as human feces lingering in a stairwell for over 12 hours.

71. Defendants have failed to ensure that resident rooms are cleaned on a regular basis.

72. Defendants have failed to maintain the kitchen in sanitary condition.

73. These unsanitary conditions pose significant threats to the health, safety, and welfare of residents of Surf Manor and create an uninhabitable environment for class members.

74. DOH inspection reports document a pattern of unsanitary conditions within Surf Manor that result in dangers to residents' health and safety.

75. Although Plaintiffs repeatedly have complained about these conditions to Defendants, these conditions have not been addressed in a timely manner, and are sometimes not addressed at all.

76. Upon information and belief, in response to the threat of litigation, Defendants recently hired a new company to supervise housekeeping staff and porters. However, many of the unsanitary conditions described herein persist. Absent court intervention, Defendants will fail to take the steps necessary to ensure that the residents are provided with a clean, comfortable, and sanitary environment, as required by DOH regulations and Plaintiffs' admission agreements.

III. Defendants Harass and Threaten Residents

77. In violation of DOH regulations and the residents' admission agreements, Defendants have failed to treat residents in a courteous and respectful manner and have failed to ensure that residents have the right to present grievances without fear of reprisal.

78. Defendants and their agents and employees have verbally threatened residents when they have made complaints to advocates and government entities about conditions at Surf Manor.

79. Defendants and their employees and agents have threatened Surf Manor residents who have considered taking legal action to protect their rights. For example, upon information and belief, Defendant Lichtschein's son threatened to evict an aggrieved resident known to be involved in the planning and preparation of this lawsuit.

80. On November 14, 2011, for example, Joshua Teller, the administrator of Surf Manor, interrupted a confidential session between a resident and his social worker to yell at the resident for reporting problems at Surf Manor to his lawyer and to DOH. This occurred shortly after the lawyer sent a letter to Mr. Teller concerning the dangerous conditions and lack of case management at Surf Manor and specifically named this resident as a complainant.

81. During the months of January and February 2010, independent contractors working for Defendants made threatening remarks to Plaintiff Bloomfield concerning complaints to DOH. On one occasion, a contractor told Plaintiff Bloomfield that if he ever brought up the contractor's name to DOH, it would "be bad luck" for him. On another occasion, a contractor approached Plaintiff Bloomfield and said that if he called DOH complaint hotline, "it would be deadly for you." DOH cited the home for these two incidents in an inspection report.

82. Defendants and their agents and employees consistently verbally abuse, yell at, and harass residents of Surf Manor.

83. Defendants and their agents and employees regularly threaten residents with calling the police, eviction, and involuntary psychiatric hospitalization.

84. Defendants' cruel, negligent, and improper behavior illustrates their discriminatory animus against the residents on the basis of their disabilities.

85. Defendants' cruel, negligent, and improper behavior is often in retaliation for requests to address the multitude of problems in the facility that are detrimental to the residents' health, safety, and welfare.

86. DOH has cited Surf Manor for disrespectful and discourteous treatment towards residents and has documented residents' fear of retaliation in a number of inspection reports.

IV. Defendants Fail to Ensure the Safety of Residents and Their Property

87. Defendants have failed to ensure residents' safety and have failed to maintain proper documentation related to resident safety as required by the Social Services Law and implementing regulations. These failures have endangered residents' safety and well-being.

88. On March 18, 2011, for example, a resident exited Surf Manor and died later that day on the nearby Coney Island boardwalk. Although Defendants are required to notify next of kin, the police, and DOH if a resident is missing for 24 hours, Defendants did not report that the resident was missing until March 20, 2011. Defendants' log books, which are required to document each resident's meals and medications, falsely indicated that the resident was present at Surf Manor on March 19, 2011, received her medication, and ate breakfast, lunch, and dinner at Surf Manor.

89. Plaintiffs do not feel safe at Surf Manor. The very real fear of staff retaliation and threats, as discussed in Section III, supra, prevents some residents from making complaints to Defendants, advocates, and regulatory agencies.

90. Defendants have failed to ensure that the building's back door is locked and secure at night.

91. Defendants have failed to provide residents with lockable storage to safeguard their personal items, as required by DOH regulation. Although residents' closets are meant to be a means of storing valuables, the locks and latches on residents' closet doors are often broken or missing.

92. Defendants have failed to ensure that Surf Manor staff members lock residents' doors upon exiting their rooms.

93. Defendants have failed to safeguard residents' property. For example, a DOH inspector's review of just 22 of the 200 residents' records on June 23, 2011 concluded that the "operator failed to maintain inventory records for residents' items of value being held in the operator's custody; failed to obtain written authorizations to hold such items of value; and failed to provide receipts to (4) residents when facility staff agreed to place such items of value in the operator's custody. . . ."

94. Defendants failed to safeguard at least one residents' property after he was hospitalized for a medical condition. This failure resulted in theft of electronics and cash worth approximately \$500.00.

95. Defendants failed to return at least one residents' property after Defendants' employees or agents removed electronic equipment from her room during cleaning.

96. Defendants have failed to deliver residents' mail and have lost or interfered with residents' mail. Surf Manor staff has improperly opened at least one residents' mail containing communications concerning government entitlement programs.

V. Defendants Have Failed to Safeguard Residents' Finances

97. Under N.Y. Soc. Serv. Law § 131-o, residents who receive SSI are entitled to a monthly personal needs allowance (“PNA”). PNA allows residents of adult homes to obtain clothing, personal hygiene items, and other supplies and services not otherwise provided by the facility. Defendants must make a resident’s PNA directly available to the individual for his or her own use. N.Y. Soc. Serv. Law § 131-o.

98. Upon information and belief, most residents of Surf Manor receive SSI and, for many residents, it is their only source of income.

99. Under 18 NYCRR § 487.5(d)(6)(xi), Surf Manor must offer to each resident who is a recipient of SSI an opportunity to place personal funds for incidental use in a facility-maintained resident account.

100. Upon information and belief, Defendants provide a resident account for the majority of the residents of Surf Manor, including Plaintiffs.

101. Under N.Y. Soc. Serv. Law § 131-o, Defendants are prohibited from demanding, requiring, or contracting with residents for all or any part of a residents’ PNA for supplies or services.

102. Defendants flout the mandate of N.Y. Soc. Serv. Law § 131-o by co-mingling and deducting money from class members’ accounts to pay for services or supplies without consent.

103. Residents either do not receive PNA funds or do not receive PNA funds in a timely fashion. In some instances, weeks or months pass before residents are given access to their PNA funds.

VI. Defendants Have Failed to Provide Residents with Case Management Services

104. In violation of DOH regulations and the residents' admission agreements, Defendants have failed to provide residents with case management services. Specifically, Defendants have failed to assist residents in "establishing linkages with and arranging for services from public and private sources for income, health, mental health and social services."

18 NYCRR § 487.7(g)(vi).

a. Failure to Provide Case Management Evaluations

105. Defendants' case management obligations include conducting an initial evaluation of the needs of the resident and of the capability of the facility to meet those needs.

106. Defendants' case management obligations also include conducting periodic evaluations for each resident, at least once every 12 months.

107. In violation of DOH regulations and the residents' admission agreements, Defendants have failed to conduct such evaluations for residents.

b. Failure to Assist Residents to Arrange Health Services

108. Defendants' case management obligations include: assisting residents to arrange health services; assisting residents in making arrangements to obtain services, examinations and reports needed to maintain or document the maintenance of the residents' health or mental health; coordinating the work of other case management and service providers within the facility; identifying persons in need of services and assist external service providers in establishing a relationship with these residents; and assisting in arranging for transportation as necessary to ensure that residents are able to attend required services provided in an external location.

109. In violation of DOH regulations and the residents' admission agreements, Defendants have failed to adequately assist residents to arrange health services, have failed to identify persons in need of services, and have failed to assist external service providers in establishing a relationship with these residents. These failures have left some residents, including Plaintiff DiJols, waiting up to a year for medical appointments and surgeries. Additionally, Defendants have failed to provide residents' hospital discharge instructions and prescriptions to their medical providers in a timely manner.

110. In violation of DOH regulations and the residents' admission agreements, Defendants have failed to assist residents in making arrangements to obtain services, examinations and reports needed to maintain or document the maintenance of the residents' health or mental health.

111. In violation of DOH regulations and the residents' admission agreements, Defendants have failed to assist in arranging transportation for residents as necessary to ensure that residents are able to attend required services provided in an external location. This failure has delayed and prevented residents from attending medical appointments and accessing medical care.

c. Failure to Assist Residents to Obtain and Maintain Income Entitlements

112. Defendants' case management obligations include "assist[ing] residents in making applications for, and maintaining, income entitlements and public benefits."

113. Defendants have failed to assist residents in applying for and maintaining public benefits and other income entitlements.

114. Defendants' failure to provide case management services related to income entitlements and benefits has resulted in the suspension of SSI benefits for at least one resident for almost one year.

115. In several cases, Defendants' failure to assist residents with financial benefits has left a number of residents, including Plaintiff Riddles, without any money for necessities for months.

116. DOH has cited Defendants for failing to assist residents obtain and maintain income entitlements and public benefits.

VII. Defendants Have Failed to Provide a Meaningful Grievance Procedure for Residents or Address Residents' Complaints

117. Under 18 NYCRR § 487.5(c), an adult home operator is required to "establish and maintain a system to receive and respond to grievances and recommendations for change or improvement in facility operations and programs which are presented by residents." This system must include "procedures for evaluation and the initiation of action or resolution which are timely and protect the rights of those involved."

118. Although there is a posted grievance procedure, Defendants do not comply with it. Defendants have failed to address many resident complaints for months and have failed to address some complaints entirely.

119. Defendants have failed to meaningfully address resident reports of hazardous, dangerous, and unsanitary conditions in the facility.

120. Defendants have failed to meaningfully address resident reports of verbal abuse, harassment, and threats by Defendants and their agents and employees.

121. Defendants have failed to meaningfully address resident reports regarding a lack of safety and security, missing property, and a lack of lockable storage.

122. Defendants have failed to meaningfully address resident reports regarding a lack of financial services and case management.

123. Defendants' failure to enforce a meaningful grievance procedure facilitates a culture of fear, intimidation, and hopelessness within Surf Manor.

VIII. Defendants Discriminate Against Plaintiffs on the Basis of Their Disabilities

124. Defendants' failure to comply with the New York Social Services Law, its implementing regulations, the terms of plaintiff class members' admissions agreements, and with the implied warranty of habitability is motivated by Defendants' animus toward plaintiff class members based on their disabilities.

125. Defendants have made public statements demonstrating their animus toward Plaintiffs based on disability. They have stated to a news publication that they are limited in the case management services that they provide because many of Plaintiffs' "expressions [of their case management needs] are unrealistic" and that such unrealistic expressions were "not surprising when coming from the disabled population [Defendants] serve."

126. Defendant Joshua Teller told a DOH inspector that Defendants' refusal to comply with a reporting requirement was due to Plaintiffs' disabilities. Specifically, he stated that because Surf Manor was "full of so many mental people" he could not fill out incident reports for each psychiatric hospitalization or he would be completing paperwork all day.

AS AND FOR A FIRST CAUSE OF ACTION BASED ON BREACH OF CONTRACT

127. Plaintiffs reallege and incorporate by reference herein each allegation set forth in paragraphs 1 through 126 of this complaint as though fully set forth herein.

128. As adult home operators, Defendants are subject to N.Y. Soc. Serv. Law §§ 460 through 461-p and the implementing regulations promulgated thereunder. These laws

and regulations mandate the provision of services and establish a standard of care for the operation of an adult home. These laws and regulations are incorporated by reference into each resident's admission agreement.

129. N.Y. Soc. Serv. Law § 461-c compels Defendants to “execute with each applicant for admission a written admission agreement . . .” and, upon information and belief, Defendants have executed a written admission agreement by and between each and every resident, including each class member.

130. Upon information and belief, the respective agreements between class members and Defendants provide that in consideration of monthly payments to Defendants, Defendants will provide room, board, meals, personal care service, 24-hour supervision, housekeeping services, linen services, laundry services, a program of individual and group activities, and case management services.

131. Upon information and belief, Plaintiff class members continue to perform their obligations under the admission agreements, unless, by reason of Defendants' failure to provide case management services, class members do not receive benefits and are, therefore, unable to pay their rent.

132. Defendant Surf Manor has failed, and continues to fail, to perform its obligations under the admission agreements. Specifically, Surf Manor has failed, and continues to fail, to:

- a. maintain a facility free of vermin and rodents, in violation of 18 NYCRR § 487.11(j)(2); (k)(10).
- b. provide a clean, comfortable, and sanitary environment, in violation of 18 NYCRR § 487.11(a); (j)(1).

- c. provide heat in the facility pursuant to applicable laws and regulations and to provide a heating system capable of maintaining required temperatures, in violation of 18 NYCRR § 487.11(m)(1). (2); (k)(9).
- d. maintain a facility free of cracked or torn walls and ceilings, peeling wallpaper or paint, and missing or cracked tiles, in violation of 18 NYCRR § 487.11(k)(4).
- e. provide a clean and odor-free facility, including, but not limited to, floors, walls, windows, doors, ceilings, fixtures, equipment, and furnishings, in violation of 18 NYCRR § 487.11(j)(3).
- f. treat plaintiff class members in a courteous, fair, and respectful manner at all times, in violation of 18 NYCRR § 487.5(a)(3)(ix).
- g. recognize the right of plaintiffs to present grievances on their own behalf, or on behalf of other residents, without fear of reprisal, in violation of 18 NYCRR § 487.11(a); (j)(1).
- h. provide a program of 24-hour-a-day supervision to ensure the safety and security of plaintiff class members at Surf Manor, in violation of 18 NYCRR §§ 487.3(a); 487.7(d)(1)(v) through (x); 487.9(f).
- i. respect residents' right to privacy in their own rooms and in caring for their personal needs, in violation of 18 NYCRR § 487.5(a)(3)(vii).
- j. furnish residents with lockable storage facilities, in violation of 18 NYCRR § 487.11(i)(4)(v).
- k. afford Plaintiff class members their civil rights, including the right to receive and send mail unopened and without interception or interference, in violation of 18 NYCRR § 487.5(a)(3)(xi).

- l. provide case management services, including establishing linkages with and arranging for services from public and private sources for income, health, mental health and social services, in violation of 18 NYCRR § 487.7(g)(1)(vi).
- m. assist plaintiff class members in making applications for and maintaining income entitlements and public benefits, in violation of 18 NYCRR § 487.7(g)(vii).
- n. provide requisite health services, such as obtaining and maintaining medical, psychiatric, and dental care, in violation of 18 NYCRR § 487.7(g)(1)(viii), (ix).
- o. establish and enforce a system to receive and respond to grievances and recommendations for change or improvement in the facility operations and programs which are presented by residents, in violation of 18 NYCRR § 487.5(c).
- p. provide resident services, including activities, in violation of 18 NYCRR § 487.7(a).

133. Plaintiff class members reserve the right to amend this list of violations to address any current or future violation of which the class members are not currently aware.

134. Defendants have personal knowledge of these breaches through daily and ongoing contact with class members, DOH inspection reports, Residents' Council minutes, and written and verbal complaints by residents.

135. Defendants continue to accept Plaintiffs' monthly payments in satisfaction of the facility rate in disregard of their obligations under the admission agreements.

136. Plaintiffs have sought to obtain Defendants' compliance with the terms of their admission agreements on multiple occasions.

137. Defendants have not attempted to correct the ongoing breaches of their agreements with plaintiff class members.

138. Plaintiffs have sustained damages due to Surf Manor's non-performance under the admission agreements.

**AS AND FOR A SECOND CAUSE OF ACTION BASED ON VIOLATION OF
NEW YORK SOCIAL SERVICES LAW § 461-c,
IMPLIED WARRANTY OF HABITABILITY**

139. Plaintiffs reallege and incorporate by reference herein each allegation set forth in paragraphs 1 through 138 of this complaint as though fully set forth herein.

140. N.Y. Soc. Serv. Law § 461-c (2-a.) creates an "implied warranty of habitability in each written admission agreement executed . . . that shall ensure the premises be fit for human habitation and for the uses reasonably intended by the operator and the resident and that the occupants of the facility shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health, safety or welfare."

141. N.Y. Soc. Serv. Law § 461-c compels Defendants to "execute with each applicant for admission a written admission agreement."

142. Upon information and belief, Defendants have executed a written admission agreement by and between each and every Plaintiff class member.

143. As a licensed adult home, Defendants have a statutory duty to comply with Article 7 of the New York Social Services Law, N.Y. Soc. Serv. Law § 460 et seq.

144. Defendants have breached their duty by failing to ensure that the Surf Manor is fit for human habitation.

145. Defendants have further breached their duty by failing to ensure that the Surf Manor is fit for its use as an adult care facility, as that term is defined pursuant to Article 7 of the New York Social Services Law, N.Y. Soc. Serv. Law § 460 et seq.

146. Defendants' negligence is the proximate cause of its breach of duty.

147. As a result of Defendants' conduct, the Plaintiffs have suffered monetary, emotional, and physical damages, and, upon information and belief, will continue to suffer such damages as a result of Defendants' conduct.

AS AND FOR A THIRD CAUSE OF ACTION BASED ON VIOLATION OF NEW YORK SOCIAL SERVICES LAW § 131-o

148. Plaintiffs reallege and incorporate by reference herein each allegation set forth in paragraphs 1 through 147 of this complaint as though fully set forth herein.

149. Plaintiff class members receive SSI, and therefore are entitled to a statutorily-mandated PNA.

150. Defendants have a statutory duty to comply with the Social Services Law in connection with residents' PNA.

151. Defendants have misappropriated plaintiff class members' PNA by demanding, requiring or contracting with Plaintiff class members for payment of all or part of the PNA funds in satisfaction of the facility rate for supplies and services.

152. Defendants have not provided Plaintiff class members with access to their PNA by failing to make funds available to class members at mandated times.

153. Defendants failed to establish a separate resident account for each Plaintiff class member's PNA.

154. Defendants have co-mingled class members' PNA funds or have allowed class members' funds to become an asset of Defendants.

155. Plaintiff class members have been damaged as a result of Defendants' misappropriation of their PNA, failure to provide access to their PNA, failure to establish separate accounts for each resident, and co-mingling of resident accounts.

156. Plaintiff class members seek an accounting of all class members' accounts and the return of all funds misappropriated by Defendants with additional punitive damages in an amount equal to twice the amount misappropriated or withheld, as provided for in New York Social Services Law § 131-o.

**AS AND FOR A FOURTH CAUSE OF ACTION BASED ON VIOLATION OF
NEW YORK SOCIAL SERVICES LAW § 460-d**

157. Plaintiff class members reallege and incorporate by reference herein each allegation set forth in paragraphs 1 through 156 of this complaint as though fully set forth herein.

158. Defendants own or operate an adult care facility subject to the inspection and supervision of DOH.

159. Social Services Law § 460-d grants New York courts the power to order equitable relief against violations or threatened violations of Article 7 of the Social Services Law or the regulations promulgated thereunder.

160. Defendants have violated, and will continue to violate, Article 7 of the Social Services law and the regulations promulgated thereunder. Specifically, Defendants have failed, and continue to fail, to:

- a. maintain a facility free of vermin and rodents, in violation of 18 NYCRR § 487.11(j)(2); (k)(10).
- b. provide a clean, comfortable, and sanitary environment, in violation of 18 NYCRR § 487.11(a); (j)(1).
- c. provide heat in the facility pursuant to applicable laws and regulations and to provide a heating system capable of maintaining required temperatures, in violation of 18 NYCRR § 487.11(m)(1). (2); (k)(9).

- d. maintain a facility free of cracked or torn walls and ceilings, peeling wallpaper or paint, and missing or cracked tiles, in violation of 18 NYCRR § 487.11(k)(4).
- e. provide a clean and odor-free facility, including, but not limited to, floors, walls, windows, doors, ceilings, fixtures, equipment, and furnishings, in violation of 18 NYCRR § 487.11(j)(3).
- f. treat plaintiff class members in a courteous, fair, and respectful manner at all times, in violation of 18 NYCRR § 487.5(a)(3)(ix).
- g. recognize the right of plaintiffs to present grievances on their own behalf, or on behalf of other residents, without fear of reprisal, in violation of 18 NYCRR § 487.11(a); (j)(1).
- h. provide a program of 24-hour-a-day supervision to ensure the safety and security of plaintiff class members at Surf Manor, in violation of 18 NYCRR §§ 487.3(a); 487.7(d)(1)(v) through (x); 487.9(f).
- i. respect residents' right to privacy in their own rooms and in caring for their personal needs, in violation of 18 NYCRR § 487.5(a)(3)(vii).
- j. furnish residents with lockable storage facilities, in violation of 18 NYCRR § 487.11(i)(4)(v).
- k. afford Plaintiff class members their civil rights, including the right to receive and send mail unopened and without interception or interference, in violation of 18 NYCRR § 487.5(a)(3)(xi).
- l. provide case management services, including establishing linkages with and arranging for services from public and private sources for income, health, mental health and social services, in violation of 18 NYCRR § 487.7(g)(1)(vi).

- m. assist plaintiff class members in making applications for and maintaining income entitlements and public benefits, in violation of 18 NYCRR § 487.7(g)(vii).
- n. provide requisite health services, such as obtaining and maintaining medical, psychiatric, and dental care, in violation of 18 NYCRR § 487.7(g)(1)(viii), (ix).
- o. establish and enforce a system to receive and respond to grievances and recommendations for change or improvement in the facility operations and programs which are presented by residents, in violation of 18 NYCRR § 487.5(c).
- p. provide resident services, including activities, in violation of 18 NYCRR § 487.7(a).

**AS AND FOR A FIFTH CAUSE OF ACTION BASED ON VIOLATION OF
EXECUTIVE LAW § 296, NEW YORK STATE HUMAN RIGHTS LAW**

161. Plaintiff class members reallege and incorporate by reference herein each allegation set forth in paragraphs 1 through 160 of this complaint as though fully set forth herein.

162. Plaintiff class members are all persons with a “disability” pursuant to N.Y. Exec. L. § 292(21).

163. Surf Manor is a “housing accommodation” within the meaning of N.Y. Exec. L. § 292(10).

164. Defendants’ conduct, as described above, constitutes discrimination against Plaintiffs because of disability in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith pursuant to N.Y. Exec. L. § 296(5)(a)(2).

165. Plaintiff class members have been injured by Defendants’ discriminatory, coercive and retaliatory conduct, and have suffered damages as a result.

166. Accordingly, under N.Y. Exec. L. § 297, Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorney’s fees and costs.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue an Order and Judgment:

A) Declaring that Defendants have:

- (1) breached their obligations under the admissions agreements with plaintiff class members in violation of New York Social Services Law § 460-d and the implementing regulations for the Social Services Law;
- (2) breached the warranty of habitability by failing to ensure that Surf Manor is fit for human habitation and for the uses reasonable intended by the operator and the resident and by subjecting plaintiff class members to conditions that are dangerous, hazardous, and detrimental to their health, safety and welfare, in violation of New York Social Services Law § 461-c;
- (3) violated plaintiff class members rights under New York Social Services Law §§ 131-o and 460-d.
- (4) discriminated against plaintiff class members because of disability in the terms, conditions or privileges of the sale, rental or lease of a housing accommodation or in the furnishing of facilities or services in connection therewith in violation of the New York State Human Rights Law, N.Y. Exec. L. § 296(5)(a)(2).

B) Enjoining Defendants and their successors and/or assignees to:

- (1) fulfill their obligations under the admissions agreements with Plaintiffs;
- (2) immediately correct the substandard conditions at Surf Manor by making repairs to ensure the safety and welfare of Plaintiffs and cure any violations of the Social Services Law and implementing regulations; and

(3) fulfill statutory and regulatory obligations pursuant to New York Social Services Law §§ 131-o and 460-d.

(4) immediately comply with the New York State Human Rights Law, including the prohibition against discrimination because of disability in the terms, conditions or privileges of the sale, rental or lease of a housing accommodation or in the furnishing of facilities or services in connection therewith pursuant to New York State Human Rights Law, N.Y. Exec. L. § 296(5)(a)(2).

C) Awarding Plaintiffs:

(1) compensatory damages in an amount to be determined at trial;

(2) punitive damages in an amount to be determined at trial;


(3) costs, disbursements, and attorneys' fees; and

(4) such further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff class members hereby demand a trial by jury pursuant to C.P.L.R. § 4102.

Dated: New York, New York
May __, 2012



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