UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RAYMOND O'TOOLE, ILONA SPIEGEL, and STEVEN FARRELL, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, NIRAV R. SHAH, in his official capacity as Commissioner of the New York State Department of Health, KRISTIN M. WOODLOCK, in her official capacity as Acting Commissioner of the New York State Office of Mental Health, THE NEW YORK STATE DEPARTMENT OF HEALTH, and THE NEW YORK STATE OFFICE OF MENTAL HEALTH,

Defendants.

Index No. CV 13-4166

CLASS ACTION COMPLAINT

Plaintiffs Raymond O'Toole, Ilona Spiegel, and Steven Farrell bring this action for injunctive and declaratory relief on behalf of themselves and a class of all individuals with serious mental illness who currently, or who may in the future, reside in twenty-three adult homes in New York City, and allege as follows:

PRELIMINARY STATEMENT

1. By this action, plaintiffs seek relief for discrimination in violation of Title II of the Americans with Disabilities Act (the "Americans with Disabilities Act") and Section 504 of the Rehabilitation Act (the "Rehabilitation Act").

2. Plaintiffs bring this action on behalf of themselves and a class of individuals with serious mental illness who currently, or who may in the future reside in, "impacted" adult homes. Adult homes are large, for-profit, institutions in which residents

live in close quarters almost entirely with other individuals with serious mental illness. At issue in this case are twenty-three impacted adult homes in New York City with more than 120 residents.[1] Technically, an "impacted" home is one in which at least 25% of the residents or twenty-five residents (whichever is fewer) have a serious mental illness. *See* N.Y. Mental Hyg. Law §§ 45.09(a), 45.10(a). However, in the twenty-three adult homes, the proportion of residents with serious mental illness is more than 80%. (All references hereinafter to "adult homes" refer to these twenty-three homes, unless otherwise indicated.)

3. Adult homes are highly regimented facilities, where plaintiffs have little to no privacy or autonomy. Among other things:

- Plaintiffs must abide by regimented schedules for eating, taking medication, and other aspects of daily life, which inhibits their ability to spend time outside the adult homes.
- Plaintiffs are assigned roommates and a specific seat in the cafeteria.
- Plaintiffs have few or no private spaces, making it difficult to receive visitors or talk in private. Plaintiffs lack privacy, even in their bedrooms.
- Plaintiffs are subject to curfews and adult homes place restrictions on when and where residents may receive visitors as well as when residents may be absent.
- Plaintiffs are generally prohibited from cooking, cleaning, doing their own laundry, and administering their own medication.

[1] These twenty-three homes are: Belle Harbor Manor; Brooklyn Adult Care Center; Central Assisted Living (formerly New Central Manor); Elm York LLC; Garden of Eden Home for Adults; Harbor Terrace Adult Home (formerly Anna Erika); Kings Adult Care Center (formerly Bayview Manor); Lakeside Manor Home for Adults; Mermaid Manor; New Gloria's Manor Home for Adults; New Haven Manor; Oceanview Manor Home for Adults; Park Inn Home for Adults; Parkview Home for Adults; Queens Adult Care Center; Riverdale Manor Home for Adults; Rockaway Manor Home for Adults; Sanford Home; Seaview Manor LLC; S.S. Cosmas and Damian Adult Home; Surf Manor Home for Adults; Surfside Manor Home for Adults; and Wavecrest Home for Adults.

- Meals, medication, phone calls, and mail deliveries are announced over a public address system.

4. In these adult homes, plaintiffs reside almost exclusively with other individuals with serious mental illness. And plaintiffs spend the great majority of their daily lives in the adult homes, including seeing on-site doctors and participating in on-site activities. Many of the residents fear retaliation, and some have been arbitrarily penalized for failure to comply with the adult homes' stringent rules. As one former high-ranking New York State official described them, adult homes "are institutional living, potentially at its worst."

5. Abuse, neglect, negligent supervision, inadequate medical care and chaos also pervade many of these adult homes, as chronicled in a Pulitzer Prize-winning series of articles in the *New York Times*. *See* Clifford J. Levy, *For Mentally Ill, Death and Misery*, N. Y. TIMES, Apr. 28, 2002, § 1, at 1; Levy, *Here, Life Is Squalor and Chaos*, N. Y. TIMES, Apr. 29, 2002, at A1; Levy, *Voiceless, Defenseless And a Source of Cash*, N. Y. TIMES, Apr. 30, 2002, at A1. Defendant Department of Health has chronicled many of these abuses.

6. Over thirty years ago, New York State and New York City officials referred to adult homes as "de facto mental institutions" and "satellite mental institutions." Charles J. Hynes, Deputy Attorney General, *Private Proprietary Homes for Adults*, 37-38 (March 31, 1979); New York City Council Subcommittee on Adult Homes, *The Adult Home Industry: A Preliminary Report, Summary of Preliminary Findings*, at 2 (1979). As recently as 2007, New York State described adult homes as "institutional settings" in which "people with a mental illness are stuck." OMH, *Guiding Principles for*

the Redesign of the Office of Mental Health Housing & Community Support Policies (June 4, 2007).

7. Plaintiffs do not need to be consigned to adult homes. More integrated residential settings that are appropriate to plaintiffs' needs already exist within defendants' system of provision of mental health services, or can be made available. Indeed, many individuals just like plaintiffs live in supported housing – a more integrated setting in which residents live in their own apartments and receive services to support their success as tenants and their integration into the community. Unlike residents of adult homes, residents of supported housing live much like their non-disabled peers and are integrated into their communities.

8. Nearly ten years ago, Disability Advocates, Inc. filed suit on behalf of individuals with mental illness residing in, or at risk of entry into, impacted adult homes. *Disability Advocates, Inc.* v. *Paterson*, No. 03-civ-329 (E.D.N.Y.) (NGG). Following an 18-day trial in which 52 witnesses testified and over 300 exhibits were admitted into evidence, the *DAI* Court found that defendants violated the Americans with Disabilities Act and the Rehabilitation Act. *DAI*, 653 F. Supp. 2d at 314. Although the Second Circuit subsequently held that plaintiff Disability Advocates, Inc. lacked standing, and that the intervention by the United States of America as a plaintiff after the liability phase of the action did not cure Disability Advocates, Inc.'s lack of standing, the Second Circuit did not disturb, nor even question, any of the factual findings made by the district court.

9. Earlier this year, defendant New York State Office of Mental Health made a clinical determination, recognized by defendant New York State Department of Health,

that adult homes "are not conducive to the recovery or rehabilitation of the residents," and "do not foster independent living due to institutional practices." 35 N.Y. Reg. 6 (Jan. 16, 2013). The Department of Health also stated that "significant [cost] savings will result" from serving adult home residents instead in appropriate community housing. *Id.*

10. But plaintiffs to continue to languish in institutionalized adult homes, their only alternative to homelessness. This unlawful discrimination violates the integration mandate of the Americans with Disabilities Act and the Rehabilitation Act.

PARTIES

11. Plaintiff RAYMOND O'TOOLE is 56 years old. Since 2009, he has resided in Elm York, an adult home in Queens, New York. Mr. O'Toole has a serious mental illness that substantially limits one or more of his major life activities, including working, concentrating, and sleeping. Elm York is a segregated, regimented and institutional setting where, upon information and belief, more than 90% of the residents have a serious mental illness. At Elm York, Mr. O'Toole has been, and continues to be, subject to a variety of limitations to his personal freedom, including assigned roommates, forced meal times, and staff intrusions into personal quarters. Mr. O'Toole is qualified for and desires to live in supported housing. However, he has not been offered the opportunity to receive services in a more integrated setting appropriate to his needs and has been actively discouraged from pursuing such alternatives.

12. Plaintiff ILONA SPIEGEL is 59 years old. Since 2003, she has resided in Garden of Eden, an adult home in Brooklyn, New York. Ms. Spiegel has a serious mental illness that substantially limits one or more of her major life activities, including working, concentrating, and sleeping. Garden of Eden is a segregated, regimented and institutional setting where, upon information and belief, *all* of the 200 residents have

serious mental illness. At Garden of Eden, Ms. Spiegel has been, and continues to be, subject to a variety of limitations to her personal freedom, including assigned roommates, forced meal times, and staff intrusions into personal quarters. Ms. Spiegel is qualified for and desires to live in supported housing. However, she has not been offered the opportunity to receive services in a more integrated setting appropriate to her needs.

13. Plaintiff STEVEN FARRELL is 39 years old. Since 2010, he has resided in Oceanview Manor, an adult home in Brooklyn, New York. Mr. Farrell has a serious mental illness that substantially limits one or more of his major life activities, including working, concentrating, and sleeping. Oceanview Manor is a segregated, regimented and institutional setting where, upon information and belief, more than 95% of the 176 residents have serious mental illness. At Oceanview Manor, Mr. Farrell has been, and continues to be, subject to a variety of limitations to his personal freedom, including assigned roommates, forced meal times, and staff intrusions into personal quarters. Mr. Farrell is qualified for and desires to live in supported housing. However, he has not been offered the opportunity to receive services in a more integrated setting appropriate to his needs.

14. Defendant ANDREW M. CUOMO is the Governor of the State of New York, a public entity covered by the Americans with Disabilities Act. *See* 42 U.S.C. § 12131(1). He is ultimately responsible for ensuring that New York operates its service systems in conformity with the Americans with Disabilities Act and the Rehabilitation Act. He is sued in his official capacity.

15. Defendant NEW YORK STATE DEPARTMENT OF HEALTH ("DOH") is an agency of the State of New York that licenses, supervises and enforces the laws and

regulations applicable to adult homes, and is responsible for protecting the rights of adult home residents. DOH is a public entity covered by the Americans with Disabilities Act. *See* 42 U.S.C. § 12131(1).

16. Defendant NIRAV R. SHAH is the Commissioner of DOH. He is responsible for the operation and administration of DOH, including its activities regarding adult homes. He is sued in his official capacity.

17. Defendant OFFICE OF MENTAL HEALTH ("OMH") is an agency of the State of New York that is charged by statute with "the responsibility for seeing that mentally ill persons are provided with care and treatment, that such care, treatment and rehabilitation is of high quality and effectiveness, and that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected." Mental Hyg. Law § 7.07(c). OMH is a public entity covered by Title II of the Americans with Disabilities Act. *See* 42 U.S.C. § 12131(1).

18. OMH shares with DOH the responsibility for protecting the rights of the residents of impacted adult homes. OMH also shares responsibility with DOH for inspecting impacted adult homes.

19. OMH also operates state inpatient psychiatric facilities and is responsible for discharge planning, placement and follow up for individuals residing in such facilities.

20. Defendant KRISTIN M. WOODLOCK is the Acting Commissioner of OMH. She is responsible for the operation and administration of OMH, including planning and providing programs and services for individuals with mental illness in New York. She is sued in her official capacity.

21. DOH and OMH are recipients of federal funds.

22. DOH and OMH are programs of state government.

JURISDICTION

23. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 for civil actions arising under the laws of the United States; and 28 U.S.C. § 1343 for actions under laws providing for the protection of civil rights.

24. Declaratory and injunctive relief are sought under 28 U.S.C. § 2201 *et seq*.

VENUE

25. Venue in the Eastern District of New York is proper under 28 U.S.C. § 1391, as it is the judicial district in which a substantial portion of the events or omissions giving rise to the claims herein occurred.

STATUTORY AND REGULATORY FRAMEWORK

26. Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131, 12132, prohibits discrimination against individuals with disabilities, including those with mental illness. Specifically, the Americans with Disabilities Act provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

27. The United States Attorney General has promulgated regulations under Title II of the Americans with Disabilities Act that require that "a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." *See* 28 C.F.R. § 35.130(d). The regulations define the "most integrated setting" as "a setting that enables individuals with

disabilities to interact with non-disabled persons to the fullest extent possible." 28 C.F.R. § 35.130(d), App. A.

28. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides that no person with a disability, including those with mental illness, "shall, solely by reason of his or her disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

29. The Rehabilitation Act's implementing regulations provide that recipients of federal funds "shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons." 28 C.F.R. § 41.51(d); *see also* 45 C.F.R. § 84.4.

30. In the landmark decision *Olmstead* v. *L.C.*, 527 U.S. 581 (1999), the United States Supreme Court held that these provisions of law are violated when a state places people with mental illness in "unjustified isolation," and that a person with mental illness may sue the state for failing to place him or her "in the most integrated setting appropriate to [his or her] needs." *Id.* at 597, 600.

CLASS ALLEGATIONS

31. The named plaintiffs, Raymond O'Toole, Ilona Spiegel, and Steven Farrell bring this action pursuant to Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of themselves and as representatives of a class consisting of: all individuals with serious mental illness who currently, or who may in the future, reside in impacted adult homes in New York City that serve primarily individuals with mental illness and have more than 120 beds.

32. Each named plaintiff and member of the class has a serious mental illness that substantially limits one or more major life activities. They are therefore individuals with disabilities protected by the Americans with Disabilities Act and the Rehabilitation Act.

33. The class is so numerous that joinder of all members is impracticable. Upon information and belief, the class consists of approximately 4,000 members.

34. There are questions of law and fact common to the class. These questions include, but are not limited to, whether defendants are violating plaintiffs' rights under the Americans with Disabilities Act and the Rehabilitation Act by providing treatment and residential services in a setting that is not the most integrated setting appropriate to plaintiffs' needs.

35. The named plaintiffs' claims are typical of the claims of the members of the class. The named plaintiffs are individuals with serious mental illness who reside in adult homes; they are qualified to live in a more integrated setting; and they desire to live in a more integrated setting.

36. The named plaintiffs will fairly and adequately protect the interests of all members of the class because they each have the requisite personal interest in the outcome of this case, their interests are not antagonistic to those in the class, and they are represented by counsel experienced in complex class action litigation generally, and in litigation involving the rights of people with disabilities specifically.

37. Defendants have acted and will act on grounds generally applicable to each member of the plaintiff class, thereby making appropriate final declaratory and

injunctive relief with respect to the class as a whole. A class action is superior to other methods for the fair and efficient adjudication of this controversy.

FACTS REGARDING THE NAMED PLAINTIFFS

I. Plaintiff Raymond O'Toole

38. Plaintiff Raymond O'Toole, 56, has resided in Elm York since 2009. Mr. O'Toole has a serious mental illness that substantially limits one or more of his major life activities, including working, concentrating, and sleeping.

39. Mr. O'Toole receives Supplemental Security Income ("SSI") and Social Security Disability ("SSD") based on mental illness. Elm York serves as the representative payee for Mr. O'Toole's Social Security benefits.

40. Prior to moving to an adult home, Mr. O'Toole resided in a setting in which he lived a more independent life. Specifically, prior to 2007, Mr. O'Toole lived on his own in a condominium, where he conducted his personal affairs independently and according to his own schedule and preferences. He cooked for himself, did his own laundry, worked, and managed his own health care and finances.

41. In 2007, Mr. O'Toole became sick with a combination of mental health and medical ailments, for which he was hospitalized and underwent rehabilitation at a nursing home. When he was ready for discharge, his only options were adult homes. In September 2009, Mr. O'Toole was discharged to Elm York, where he continues to reside today.

42. Elm York is operated by Elm York, LLC, a private, for-profit entity. Upon information and belief, Elm York houses approximately 286 residents.

43. At Elm York, Mr. O'Toole lives almost entirely with other individuals with serious mental illness. Upon information and belief, more than 90% of Elm York residents have a serious mental illness.

44. Mr. O'Toole has been, and continues to be, subject to a variety of limitations to his personal freedom, privacy and autonomy. He has had roommates assigned to him by the adult home. Elm York staff members have entered Mr. O'Toole's room and accessed his locked storage without his permission. The adult home's administrator goes through Mr. O'Toole's mail before he can pick it up.

45. The living conditions at Elm York are extremely regimented. Mr. O'Toole and other residents are allowed little autonomy or personal choice regarding even the most basic daily activities. For example, Elm York provides meals only at set times; Mr. O'Toole is not permitted to cook for himself or eat at times other than those scheduled. Elm York staff also does residents' laundry on a pre-set schedule and does not provide facilities for residents to do their own laundry. Elm York distributes medication at set times, and residents have to wait in long lines, sometimes for hours, for their medication. Mr. O'Toole has been prohibited by the home from self-administering his medication. As a result, Mr. O'Toole is limited in his ability to be away from the adult home.

46. Life for Mr. O'Toole at Elm York is also extremely isolating. Little opportunity for integration in the community is provided or facilitated. Moreover, Elm York controls Mr. O'Toole's, and others', finances, meting out only small monthly allowances for personal use. Because of the institutional nature of the setting, Mr. O'Toole does not receive visitors at Elm York.

47. Mr. O'Toole wants to live independently in an apartment in the community. He wants to be able to do his own cooking, cleaning, and shopping, have personal privacy in his room, and be free from intrusion into his personal belongings. He is qualified to receive services in supported housing and would prefer to, and could, be served in a more integrated setting appropriate to his needs.

48. Mr. O'Toole has not been given the option of receiving services in a more integrated setting and has been actively discouraged from pursuing such alternatives.

II. **Plaintiff Ilona Spiegel**

49. Plaintiff Ilona Spiegel, 59, resides in Garden of Eden. She has lived in an adult home in New York City for approximately 15 years. She has a serious mental illness that substantially limits one or more of her major life activities, including working, concentrating, and sleeping.

50. Ms. Spiegel receives SSI based on her mental illness. Garden of Eden serves as the representative payee for Ms. Spiegel's SSI benefits.

51. In the past, Ms. Spiegel has successfully resided in settings in which she lived a more independent life. She lived on her own in an apartment, where she conducted her personal affairs independently and according to her own schedule and preferences. She took care of herself, by doing cooking, doing her own laundry, working, and managing her health care and finances.

52. However, after Ms. Spiegel was hospitalized in 1998, her only option after discharge was to move into an adult home. She was discharged to King Solomon Manor, an adult home in Queens, New York, where she lived until approximately 2003, when the facility closed. At that time, Ms. Spiegel was told that her only option was to move into

another adult home, and she was transferred to Garden of Eden, where she still lives today.

53. Garden of Eden is operated by Garden of Eden Home, LLC, a private, for-profit entity, that houses approximately 200 residents.

54. At King Solomon Manor and Garden of Eden, Ms. Spiegel has been, and continues to be, subject to a variety of limitations to her personal freedom, privacy and autonomy. She is forced to share a small room with a roommate who was assigned to her by the adult home. Over the years, Ms. Spiegel has been assigned various roommates without her input. Garden of Eden staff have entered her room without knocking and without permission to enter. They have gone through her mail before she can pick it up.

55. Upon information and belief, all of the other individuals at Garden of Eden, with whom Ms. Spiegel resides have serious mental illness.

56. The living conditions at Garden of Eden are extremely regimented. Ms. Spiegel and other residents are allowed little autonomy or personal choice regarding even the most basic daily activities. For example, Garden of Eden provides meals only at set times; Ms. Spiegel is not permitted to cook for herself or to eat at times other than those scheduled. Garden of Eden staff also does residents' laundry on a pre-set schedule and does not provide facilities for residents to do their own laundry. Garden of Eden also distributes medication at set times, and residents have to wait in long lines. Ms. Spiegel has been discouraged by the home from self-administering her medication.

57. For Ms. Spiegel, living at Garden of Eden is extremely isolating. No opportunity for integration in the community is provided or facilitated. The adult home controls Ms. Spiegel's finances, meting out only small monthly allowances at set times

for personal use. Because of the institutional nature of the setting, Ms. Spiegel rarely receives visitors and socializes mostly with other residents of the home.

58. Ms. Spiegel has been pressured by the Garden of Eden administrator to attend a day program and to fill her eyeglass prescription at a business owned by the administrator's daughter.

59. In July 2011, defendant DOH commenced an enforcement proceeding against Garden of Eden, alleging that the administrator of Garden of Eden has "threatened and otherwise coerced residents to attend [day] programs and utilize other services of [his] choosing," including with respect to medical care. *In re Garden of Eden Home, LLC & Martin J. Amsel*, Statement of Charges (June 14, 2011).

60. Ms. Spiegel wants to live independently in an apartment and again be able to do her own cooking, cleaning, and shopping, have personal privacy in her room, and be free from intrusion into her personal belongings. Ms. Spiegel is qualified to receive services in supported housing and would prefer to, and could, be served in a more integrated setting appropriate to her needs. Ms. Spiegel has been given no such option and has been actively discouraged from pursuing such alternatives.

III. **Plaintiff Steven Farrell**

61. Plaintiff Steven Farrell, 39, resides in Oceanview Manor. He has lived at Oceanview Manor since 2010. He has a serious mental illness that substantially limits one or more of his major life activities, including working, concentrating, and sleeping.

62. Mr. Farrell receives SSI and SSD based on his mental illness. Oceanview Manor serves as the representative payee for Mr. Farrell's Social Security benefits.

63. In the past, Mr. Farrell has successfully resided in settings in which he has lived a more independent life. He lived on his own in an apartment, where he conducted his personal affairs independently and according to his own schedule and preferences. He took care of himself, by cooking, cleaning, doing his own laundry, shopping, and managing his health care.

64. However, after Mr. Farrell was hospitalized in 2010, his only option after discharge was to move into an adult home. He was discharged to Oceanview Manor, where he continues to reside today.

65. Oceanview Manor is operated by Oceanview Home for Adults, Inc., a private, for-profit entity, that houses approximately 176 residents.

66. At Oceanview Manor, Mr. Farrell has been, and continues to be, subject to a variety of limitations to his personal freedom, privacy and autonomy. He is forced to share a small room with a roommate who was assigned to him by the adult home. Oceanview Manor staff have entered his room without knocking and without permission to enter. Occasionally, he receives mail that has been opened.

67. Upon information and belief, more than 95% of the 176 residents at Oceanview Manor have serious mental illness.

68. The living conditions at Oceanview Manor are extremely regimented. Mr. Farrell and other residents are allowed little autonomy or personal choice regarding even the most basic daily activities. For example, Oceanview Manor provides meals only at set times; Mr. Farrell is not permitted to cook for himself or to eat at times other than those scheduled. Oceanview Manor staff also does residents' laundry on a pre-set schedule and does not provide facilities for residents to do their own laundry.

Oceanview Manor also distributes medication at set times, and residents have to wait in long lines. Mr. Farrell has been discouraged by the home from self-administering his medication. As a result, Mr. Farrell is limited in his ability to be away from the adult home.

69. For Mr. Farrell, living at Oceanview Manor is extremely isolating. No opportunity for integration in the community is provided or facilitated. The adult home controls Mr. Farrell's finances, meting out $6 or $7 on a daily basis for personal use. Because of the institutional nature of the setting, Mr. Farrell rarely receives visitors and socializes mostly with other residents of the home.

70. Mr. Farrell wants to live independently in an apartment and again be able to do his own cooking, cleaning, and shopping, and have personal privacy in his room. Mr. Farrell is qualified to receive services in supported housing and would prefer to, and could, be served in a more integrated setting appropriate to his needs. Mr. Farrell has been given no such option and has been actively discouraged from pursuing such alternatives.

FACTS PERTAINING TO THE CLASS

IV. Defendants' Mental Health Service System

71. Under New York law, DOH and OMH are required to "develop a comprehensive, integrated system of treatment and rehabilitative services for the mentally ill. Such a system . . . should assure the adequacy and appropriateness of residential arrangements . . . and . . . should rely upon . . . institutional care only when necessary and appropriate." N.Y. MENTAL HYG. LAW § 7.01.

72. New York State is responsible for determining what services to provide, in what setting to provide them, and how to allocated funds for each program. The State

plans how and where services for individuals with serious mental illness, like plaintiffs, will be provided and allocates resources accordingly.

73. Pursuant to these requirements, OMH and DOH plan, administer, and fund all aspects of New York's mental health services system, including adult homes.

74. Adult homes are an integral part of defendants' mental health services system. The State subsidizes adult homes, licenses, monitors, inspects and regulates adult homes, and has the power to determine their availability.

75. Individuals with serious mental illness, including plaintiffs, come to live in adult homes from State hospitals and psychiatric centers, as well as nursing homes, families' homes, private hospitals, the New York City shelter system, and other adult homes in the State, when (and because) no other alternatives were (or are) available. Plaintiffs largely had no choice but to enter adult homes, because of insufficient capacity in more integrated residential programs.

76. The State also uses supported housing as a service setting for people with serious mental illness. It funds and monitors supported housing, as it does adult homes.

77. In contrast to adult home residents, residents of supported housing live much like their non-disabled peers and are more integrated into the community. Residents live in their own apartments with privacy and choice of activities. They generally live in buildings with individuals who do not have mental illnesses. They are able to receive and entertain visitors and communicate by phone in privacy. Residents go to stores to shop for food and other necessities. They go to doctors of their choice and engage in social activities of their choice. They tend to these and other daily needs to the degree they are able, with supportive services offered to them by case managers and

others as needed. These programs are designed to foster independence and recovery and to enable individuals to become as self-sufficient as possible.

78. According to data available through the first quarter of 2011, over 18,000 individuals with mental illness are served in supported housing statewide, and over 10,000 in New York City. OMH, Residential Program Indicators Report, *available at* http://bi.omh.ny.gov/adult_housing/reports?p=rpi&g=Statewide&y=2011&q=Mar+31.

79. Adult home residents have similar diagnoses and disabilities as supported housing residents. There are no material differences in the severity of disabilities between adult home residents and supported housing residents. Whether an individual has been served in an adult home or in supported housing was not based on diagnosis or any relevant treatment criteria, but on availability.

80. Defendants have no effectively working plan for serving the vast majority of adult home residents in more integrated settings. As a result, adult homes are considered permanent placements. On information and belief, over the past eleven years—from January 2002 through the present—only a small fraction of adult home residents in New York City have moved to supported housing. In addition, upon information and belief, defendants continue to offer adult homes as the only option for many individuals with serious mental illness to receive services, because of the lack of more integrated alternatives.

V. **Adult Homes Are Not Appropriate Settings for Individuals with Serious Mental Illness**

81. Adult homes are not appropriate settings for individuals with serious mental illness.

82. More than thirty years ago, New York State's Deputy Attorney General Charles Hynes began an investigation into adult homes in New York. The first interim report of that investigation, the "1977 Hynes Report," detailed the unhealthy, unsafe and unsanitary conditions in adult homes. It noted that a large number of individuals were discharged from state psychiatric centers into adult homes without adequate services. Charles J. Hynes, Deputy Attorney General, *Private Proprietary Homes for Adults: An Interim Report* (March 13, 1977). The report recommended accelerating the development of community-based facilities.

83. As a result of the 1977 Hynes Report, legislation was enacted requiring the Department of Social Services (now DOH) and the Department of Mental Hygiene (now OMH) to establish a system of joint inspections of adult homes. New York State Commission on Quality of Care for Persons with Disabilities, *Adult Homes Services Residents with Mental Illness: A Study of Conditions, Services, and Regulations* 1 (Oct. 1990).

84. In 1979, Deputy Attorney General Hynes issued a follow-up report ("1979 Hynes Report"). Hynes found that in some impacted homes,

> Residents still appear totally uncared for: they are dirty, disheveled, unshaven, unbathed and dressed in soiled clothing. Inadequate food, in amount and nutritional value, is a continuing problem and the subject of frequent complaints. Special diets are not always provided. Recreational programs are minimal or non-existent in many homes. Kitchen sanitation and food handling practices are frequently health hazards. Building, fire and safety violations, often serious and dangerous, are common.

> Inadequate staffing is widespread and causes deficiencies in personal care services, housekeeping, and maintenance.

Charles J. Hynes, Deputy Attorney General, *Private Proprietary Homes for Adults* 17 (March 31, 1979).

85. The report noted that since 1968, deinstitutionalization of state psychiatric facilities occurred when adult homes—but not other settings—had room to house individuals who were discharged from such facilities, and that "[t]here is a fundamental disparity between the kind of care, supervision, and support needed by many dischargees and the kind of care and services that adult homes provide." *Id*. at 30-31.

86. The 1979 Hynes Report also noted, "Large numbers of patients have been placed in facilities that cannot or do not meet their needs. Institutional life continues and there is little or no integration into the life of the community." *Id.* at 37-38. The report described adult homes as "de facto mental institutions." *Id*. It also concluded that the development of alternative placements for adult home residents has been "woefully slow and inadequate given the need for such facilities." *Id*. at 53.

87. Also in 1979, a report on the adult home industry by the New York City Council Subcommittee on Adult Homes stated that "former mental patients often constitute the majority or a very large minority of the residents of private, proprietary homes – creating, in fact, satellite mental institutions." *The Adult Home Industry: A Preliminary Report* (1979), Summary of Preliminary Findings.

88. A decade later, in 1990, the New York State Commission on Quality of Care for Persons with Disabilities ("CQC"), a state agency, found that little had changed. It reported to the New York State Legislature that large adult homes serving people with mental illness were unable to meet residents' needs. After surveying a sample of

impacted adult homes, the CQC found a significant number of homes with seriously deficient conditions that jeopardized residents' health and safety. New York State CQC, *Adult Homes Serving Residents with Mental Illness: A Study of Conditions, Services and Regulation* 12-21, 30, 32-36 (Oct. 1990). For example, at the Park Inn Home, the CQC found:

> The grounds of the home were littered with garbage, the hedges needed trimming, and the walls on the side of the home were marred with graffiti. The interior of the home was dimly lit and poorly ventilated, with unattractive, damaged institutional furniture set on dark, buckled, and worn carpeting. One bathroom . . . had a large hole in the floor by the bathtub which permitted the viewer to see the basement. Some residents . . . were poorly dressed in stained, ill fitting, layered attire, sometimes without socks or stockings . . . many were dirty and appeared to require additional staff assistance with personal hygiene.

Id. at 14. The CQC found that hospital "patients continue to be discharged to adult homes which regularly fail to meet standards on DSS inspections." Memo from Clarence J. Sundram, December 5, 1990, accompanying report, *Adult Homes Serving Residents with Mental Illness.*

89. The CQC found a *de facto* state policy of segregating residents with mental illness into particular homes. The CQC found that "there appears to be a pattern developing that as residents with mental illness become a majority, the change in the overall composition of the home accelerates until it predominantly serves only those residents." New York State Commission on Quality of Care for Persons with Disabilities, *Adult Homes Serving Residents with Mental Illness: A Study of Conditions, Services, and Regulation* 39 (Oct. 1990).

90. The CQC found that adult homes in New York City would not be able to appropriately serve the increasing number of individuals discharged from inpatient psychiatric facilities.

91. The CQC made a number of recommendations, including the systematic assessment of residents' mental health needs and development of alternatives to meet residents' needs for personal care and supervision, medical, mental health and psychiatric rehabilitation services.

92. In December of 2001, the CQC issued a report on the Ocean House adult home (now closed), entitled *Exploiting Not-For-Profit Care in an Adult Home: The Story Behind Ocean House Center, Inc.* The report documents widespread misuse of residents' and state money. The report found that the quantity and type of services provided to residents appeared to be driven more by greed than by residents' needs. The report also found that residents' treatment plans were inadequate.

93. In April 2002, Clifford Levy wrote a Pulitzer Prize-winning series of articles in the *New York Times* depicting squalor and chaos in large New York City adult homes and reporting that an extraordinary number of deaths had occurred in these facilities. Clifford J. Levy, *For Mentally Ill, Death and Misery*, N. Y. TIMES, Apr. 28, 2002, § 1, at 1; Levy, *Here, Life Is Squalor and Chaos,* N. Y. TIMES, Apr. 29, 2002, at A1; Levy, *Voiceless, Defenseless And a Source of Cash,* N. Y. TIMES, Apr. 30, 2002, at A1.

94. Levy wrote, "State investigators . . . [for] three decades described many of the homes as little more than psychiatric flophouses, with negligent supervision and incompetent distribution of crucial medication. At one, Brooklyn Manor, the staffing

was so sparse that a resident was put in charge of the entire place on one evening, a routine 2001 state inspection report shows." Clifford J. Levy, *For Mentally Ill, Death and Misery*, N. Y. TIMES, Apr. 28, 2002, § 1, at 1.

95. Mr. Levy's independent analysis of death rates in 26 of the largest and most troubled homes in the city documented 946 deaths between 1995 and 2001. Of those, 326 were people under 60, including 126 in their 20s, 30s and 40s. When asked for records of investigations of these deaths, the Department of Health provided only 3. Clifford J. Levy, *For Mentally Ill, Death and Misery*, N. Y. TIMES, Apr. 28, 2002, § 1, at 1.

96. In August 2002, the CQC released a report entitled, *Adult Homes Serving Residents with Mental Illness: A Study on Layering of Services*, describing the cost and quality of Medicaid-funded services provided to adult home residents. The CQC examined information from the 11 largest impacted homes in the greater New York City area. Each home had a census over 200, one had a census over 300, and 90% of the residents had mental illness. New York State CQC, *Adult Homes Serving Residents with Mental Illness: A Study on Layering of Services* (Aug. 2002).

97. In response to the series of articles in the *New York Times* exposing the horrible conditions prevalent in adult homes, Governor George Pataki convened the Adult Care Facilities Workgroup consisting of experts, adult home operators, and state officials.

98. In October 2002, the State Adult Care Facilities Workgroup found that at least one half of adult home residents could be appropriately served in integrated community settings and urged the development of community alternatives. The

Workgroup made detailed proposals for reform, including a proposal to create 6,000 supported housing beds for adult home residents. New York failed to enact most of its proposals.

99. In December 2002, Defendants commissioned a study from New York Presbyterian Hospital (the "Assessment Project"), which surveyed approximately 2,000 adult home residents with mental illness. The Assessment Project data demonstrates that the vast majority of adult home residents are not seriously impaired and could be served in supported housing.

100. In 2007, the New York Times reported that individuals with mental illness who could, and desired to, live independently were still being "warehoused" in the "dead end" institutional settings of adult homes for lack of alternatives. Jennifer Bleyer, *They Have Beds, But Not the Ones They Want*, N. Y. TIMES, Dec. 30, 2007, § 14CY.

101. In its June 4, 2007 "Guiding Principles for the Redesign of the Office of Mental Health Housing & Community Support Policies," OMH characterizes adult homes as institutions:

> As a consequence of poor access to community housing, inadequate levels of mental health housing, and clinical programs that do not support people in getting/keeping housing successfully, many people with mental illness are poorly housed or institutionalized. Thus, many people with mental illness are "stuck" in . . . institutional settings (nursing homes, adult homes, state psychiatric centers).

102. The CQC also continued to find examples of squalid living conditions in adult homes and a failure to provide needed mental and physical health services. New York State Commission on Quality of Care and Advocacy for Persons with Disabilities, *2008 Annual Report* at 18 (2009).

103. In 2009, the *DAI* Court found that adult homes are institutional settings that have "the look and feel of 'back wards'" of psychiatric hospitals and "share many salient features" of such facilities, including (i) large numbers of people with psychiatric disabilities housed in a congregate, segregated setting; (ii) regimented living conditions "designed to manage and control large numbers of people . . . by eliminating choice and personal autonomy, establishing inflexible routines for the convenience of staff, restricting access, implementing measures which maximize efficiency, and penalizing residents who break the rules;" and (iii) "extremely limited" privacy. 653 F. Supp. 2d at 199-200.

104. The *DAI* Court found that adult homes were not the most integrated settings appropriate for individuals with mental illness. Indeed, residents remain in institutions that "bear little resemblance to the homes in which people without disabilities normally live," *id.* at 200, even though "those who reside in adult homes could reside in apartments with varying degrees of support," *id.* at 229.

105. Since the *DAI* decision, it has been reported that adult homes (and especially impacted adult homes) continue to be cited with serious non-compliance with DOH rules and regulations governing care, which represented harm or risk of harm to residents and to resident quality of life—indeed, the same types of violations that have been occurring for decades. Long Term Care Community Coalition, *Care and Oversight of Assisted Living in New York State* 6-8 (May 2011).

106. Most recently, in January 2013, OMH made a "clinical determination," that was recognized by DOH, that congregate settings such as the adult homes at issue in

this case are not conducive to the recovery or rehabilitation of the residents. 35 N.Y. Reg. 6 (Jan. 16, 2013).

107. However, defendants have no effectively working plan to develop sufficient and more integrated residential services for current or future adult home residents.

Adult Homes are Institutions

108. The institutional nature of adult homes persists today. As the *DAI* Court found, adult homes are "institutions," with characteristics similar to those of psychiatric hospitals, which "impede the ability of . . . residents to participate in their communities outside the [h]omes."

109. In adult homes, residents live almost exclusively with other individuals with mental illness. Upon information and belief, in sixteen of the twenty-three adult homes, more than 95% of the residents have mental illness. In seven homes, 100% of the residents have mental illness. In only three homes do less than 50% of the residents have mental illness. *See* DOH 2011 Census Report.

110. Like hospitals, adult homes place many limitations on residents' autonomy and privacy. Residents live a highly regimented lifestyle where most daily activities are conducted in one place, in the company of other individuals with serious mental illness, and subject to restrictive rules and policies. For example, there are inflexible schedules for meals, taking medication, receiving public benefits, and other daily activities. Meals, medication, phone calls, and mail deliveries are announced over a public address system. There are few or no private spaces for residents to receive visitors or talk on the phone. Residents are also assigned roommates, and many must sit at a specific seat at a specific

table in the cafeteria; residents are required to seek permission to change these assignments.

Adult Homes Residents are Segregated from the Community

111. Residents of adult homes are also segregated from the community outside the home.

112. Some adult homes bar residents from congregating outside, limiting their contact with the community.

113. Some homes require residents to notify staff each time they leave the facility.

114. Many adult homes have evening curfews. Residents are not provided keys to access the homes themselves.

115. In addition, residents' ability to leave is severely curtailed by rigid schedules for meals, medications and distribution of personal needs allowances. Adult homes restrict when and where residents may receive visitors, and require visitors to sign in and, in some instances, to identify who they are seeing and state the purpose of their visit. The opportunities for receiving visitors in privacy are limited.

Adult Home Residents Have No Privacy

116. Adult home residents have virtually no privacy.

117. Residents of adult homes have almost no control over their personal space. They live in two- or three-person rooms, with assigned roommates, and usually share a bathroom with at least two other residents. Residents have no control over when or by whom their rooms are cleaned or who can access their room. Residents are often prohibited from decorating their rooms.

118. Individuals who reside in adult homes share common areas with scores of other people with serious mental illness. Residents eat together in a single common area. Residents line up for medication—often in long lines of up to 200 or even 400 people—which is dispensed only at specific times. Residents are paged if they do not line up for medication at the designated time.

119. Pay phones are located in common areas where anyone can overhear a conversation. In homes where residents can receive calls through the home's switchboard, residents are paged over a loudspeaker to come to a phone. Some adult homes have policies restricting incoming telephone calls to very limited hours.

120. With so little privacy, residents are fearful of calling attorneys or other advocates to determine and exercise their rights. Residents are also fearful that if an advocate calls them at the adult home, the adult home will find out about it and retaliate. Some adult homes limit residents' access to advocates by simply barring the advocates from the home. Some intimidate residents with threats of eviction or hospitalization. Residents who do exercise their rights can—and do—face retaliation. This further discourages residents from exercising any kind of independence.

Adult Homes Foster Learned Helplessness

121. Adult homes foster learned helplessness.

122. Residents are prohibited from cooking, cleaning, doing their own laundry, and managing their finances, and many are prohibited from administering their own medicine. The result is that some residents lose skills that they had in the community prior to living in adult homes. As Michael Hogan, the former Commissioner of OMH, testified to the New York State Legislature about living in institutions generally, "the

skills of community living are eroded by the routines of institutional life." OMH 2009-2010 Mental Health Update & Exec. Budget Testimony.

123. Adult homes provide few recreational or other activities. Residents spend hours watching television in a common room, or smoking. Only a minority of residents engage in activities outside the home. The activities that are provided are typically limited to games, such as playing cards, dominoes, and bingo.

124. Adult home operators often take control of individuals' Medicaid cards, forcing residents to use doctors and pharmacies that are chosen by the operator. These and other practices have led to repeated and well-documented financial abuses by the homes, including kickback schemes and unwanted and unnecessary medical procedures. *See* New York State CQC, *Adult Homes Serving Residents with Mental Illness: A Study on Layering of Services* (Aug. 2002).

125. The homes usually control the residents' finances. Residents must give the homes their SSI and SSD checks, from which the homes distribute to residents a small "personal needs allowance" in the range of $187 to $207 a month – about $5.60 per day. New York State Office of Children & Family Services, SSI Benefit Levels Chart, *available at* http://www.ocfs.state.ny.us/main/publications/eligibility/23%202005%20SSI%20Benefits%20Chart.pdf (effective Jan. 1, 2013).

126. Residents' money is sometimes withheld as punishment for failure to follow the home's rules or attend scheduled appointments or activities.

127. Residents fear that they will be subject to retaliation if they do not follow the adult homes' rules or if they complain about the homes.

VI. Plaintiffs Are Qualified to Receive Services in a More Integrated Setting

128. As the *DAI* Court found, virtually all individuals with mental illness in adult homes, like plaintiffs, are qualified for supported housing.

129. This is so because "there are no material differences between residents of adult homes and residents of supported housing," and "the support needs of adult home residents could, in virtually every case, be easily addressed in supported housing." *DAI*, 653 F. Supp. 2d at 256, 290.

VII. Plaintiffs Want to Receive Services in a More Integrated Setting

130. Most adult home residents desire to live somewhere other than in adult homes. The great majority would prefer to live with family members or in their own apartments or homes.

131. Adult home residents are not educated about alternatives and are often told by the homes that if they leave they will become homeless.

132. Many adult homes have policies or practices that restrict residents from moving out of the home, including withholding money from residents and limiting assistance in seeking other types of residential services.

133. The Assessment Project data show that, despite residents' lack of information about housing alternatives, the majority of those surveyed expressed an interest in leaving their adult home.[2]

[2] Even the Assessment Project seriously underestimated the number of adult home residents who would leave if given a meaningful choice. The surveyors conducting the assessments did not educate adult home residents about supported housing or other housing options prior to asking whether the residents would like to move, nor did they ask whether the residents were aware of any alternatives.

VIII. **Providing Plaintiffs Services in Supported Housing Would Not Be A Fundamental Alteration of Defendants' Mental Health System**

134. Defendants have no comprehensive or effective plan (either written or unwritten) to enable plaintiffs to receive services in supported housing or any other more integrated setting.

135. Serving adult home residents in supported housing would save the defendants money, compared with serving them in adult homes. *DAI*, 653 F. Supp. 2d at 285, 308; 35 N.Y. Reg. 6 (Jan. 16, 2013).

FIRST CLAIM FOR RELIEF
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT MANDATE TO ADMINISTER SERVICES AND PROGRAMS IN THE MOST INTEGRATED SETTING

136. Plaintiffs repeat and reallege each of the foregoing paragraphs.

137. This claim for relief is brought against defendants Andrew M. Cuomo, Nirav R. Shah, and Kristin M. Woodlock in their official capacities.

138. Plaintiffs are individuals with serious mental illness. They have mental impairments that substantially limit one or more major life activity.

139. Plaintiffs are qualified individuals with disabilities within the meaning of 42 U.S.C. § 12131(2).

140. Plaintiffs who currently, or who may in the future, reside in impacted adult homes are qualified to receive services in community settings more integrated than adult homes.

141. Serving Plaintiffs in more integrated settings would not fundamentally alter defendants' programs.

142. Defendants Cuomo, Shah and Woodlock are responsible for the operation of public entities covered by Title II of the Americans with Disabilities Act. 42 U.S.C.§§ 12131(1)(A) and (B).

143. Title II of the Americans with Disabilities Act prohibits defendants from discriminating against individuals with disabilities in programs and activities. 42 U.S.C. §§ 12131, 12132.

144. Title II also requires that "a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." *See* 28 C.F.R. § 35.130(d).

145. The defendants are obligated under the Americans with Disabilities Act to administer New York State programs in a manner that enables Plaintiffs to receive services in the most integrated setting appropriate to their needs.

146. Defendants have failed to meet this obligation. Defendants instead have provided Plaintiffs no other choice but to live and receive services in adult homes, although the homes are not the most integrated setting appropriate to their needs.

SECOND CLAIM FOR RELIEF
FAILURE TO ADMINISTER SERVICES IN THE MOST INTEGRATED SETTING APPROPRIATE IN VIOLATION OF THE REHABILITATION ACT

147. Plaintiffs repeat and reallege each of the foregoing paragraphs.

148. This claim for relief is brought against each and every named defendant.

149. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides:

> No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

150. Defendants are recipients of Federal financial assistance.

151. OMH and DOH are programs receiving Federal financial assistance.

152. Defendants violate Section 504 of the Rehabilitation Act by failing to administer services to Plaintiffs in the most integrated setting appropriate to their needs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

(a) Certification, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, of a Plaintiff Class defined as: all individuals with serious mental illness who currently, or who may in the future, reside in impacted adult homes in New York City with more than 120 beds;

(b) Declaratory and injunctive relief;

(c) An order requiring that defendants promptly take such steps as are necessary to enable Plaintiffs to receive services in the most integrated setting appropriate to their needs;

(d) An award of prevailing party costs, and attorney fees;

(e) Such other relief as the Court deems just and appropriate.

Dated: New York, New York
July 23, 2013

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