

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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MARY BERGER;
CANDACE BLANDFORD;
LILLIAN GUIDE;
BELLA HORNUNG;
GEORGE MELAMED;
ANNMARIE MOGIL;
ALICE SINGER; and
JACK STOCK

First Amended
Complaint for
Declaratory and
Injunctive Relief

Plaintiffs,

-against-

Index No. 6639/14

PROSPECT PARK RESIDENCE, LLC;
1 PROSPECT PARK RESIDENCE, LLC;
1 PROSPECT PARK ALF, LLC;
PROSPECT PARK RESIDENCE HOME HEALTH CARE, INC.;
HAYSHA DEITSCH, as Owner, Prospect Park Residence for Adults;
DAVID POMERANTZ, as Administrator and/or Executive Director, Prospect Park
Residence for Adults;
SAM ZALMANOV, as Member, 1 Prospect Park Residence, LLC;
NEW YORK STATE DEPARTMENT OF HEALTH;
NIRAV R. SHAH, M.D., M.P.H., as Commissioner of the
New York State Department of Health; and
HOWARD ZUCKER, M.D., as Commissioner of the
New York State Department of Health

Defendants.

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PRELIMINARY STATEMENT

1. This action is brought on behalf of seven enhanced and special needs assisted living residents to challenge the actions of the New York State Department of Health, Prospect Park Residence, and the other named Defendants regarding the inadequate Closure Plan

for the Prospect Park Residence. These actions have violated the residents' rights to services, due process, and, if necessary, to be transferred to a care setting that is adequate, appropriate, consistent with the residents' wishes and the Residency Agreement, and the most integrated setting appropriate to their needs, pursuant to Social Services Law 461 §§ a, c, g, h, and l; New York State Public Health Laws Article 46-B §§ 4657, 4658, 4660 and 4662; 18 NYCRR § 490.5(f)(19); 10 NYCRR § 1001.4(j); 42 U.S.C. §§ 12131(1)(A) and (B); and 29 U.S.C. § 794(a).

2. Plaintiffs bring this lawsuit to enforce their rights to essential services at Prospect Park Residence, to appropriate placements if they must be discharged from Prospect Park Residence, and to not be evicted without due process.

3. This lawsuit also challenges the New York State Department of Health's approval of the Closure Plan because that approval was arbitrary and capricious and affected by errors of law.

4. Plaintiffs seek declaratory and injunctive relief against Defendants' attempts to discontinue and/or diminish essential services and to improperly discharge them to new care settings that are not adequate, appropriate, consistent with their wishes, or the most integrated setting appropriate to their needs.

5. Injunctive relief is appropriate and necessary because Plaintiffs are in danger of suffering irreparable injury resulting from the discontinuation and/or diminishment of essential services and their illegal eviction and improper discharge to more restrictive settings.

JURISDICTION AND VENUE

6. This court has jurisdiction over this action pursuant to NY CPLR §§ 301, 3001, 6301, 6311 and 7801.

7. Venue lies in this county pursuant to NY CPLR § 503 since this is the county in which the Plaintiffs all reside, and pursuant to NY CPLR § 506 in that the material events or omission giving rise to these claims occurred in this judicial district.

PARTIES

8. Plaintiff MARY BERGER is a person with a disability who resides at the Prospect Park Residence, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

9. Plaintiff CANDACE BLANDFORD is a person with a disability who resides at the Prospect Park Residence, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

10. Plaintiff LILLIAN GUIDE is a person with a disability who resides at the Prospect Park Residence, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

11. Plaintiff BELLA HORNUNG is a person with a disability who resides at the Prospect Park Residence, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

12. Plaintiff GEORGE MELAMED is a person with a disability who resides at the Prospect Park Residence, located at 1 Prospect Park West, Brooklyn, NY 11215-1613. Plaintiff MELAMED has a current lease for his apartment at Prospect Park Residence, and that lease ends on December 31, 2014.

13. Plaintiff ANNMARIE MOGIL is a person with a disability who resides at the Prospect Park Residence, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

14. Plaintiff ALICE SINGER is a person with a disability who resides at the Prospect Park Residence, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

15. Plaintiff JACK STOCK is a person with a disability who resides at the Prospect Park Residence, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

16. Upon information and belief, Defendant Haysha Deitsch is the owner and operator of Defendants 1 Prospect Park Residence, LLC, 1 Prospect Park ALF, LLC, Prospect Park Residence, LLC and Prospect Park Residence Home Health Care, Inc., (collectively "PPR").

17. Upon information and belief, Defendant PPR is a New York State Department of Health (hereinafter "NYSDOH") licensed adult care facility that has received an additional certification from the NYSDOH in order to call itself an assisted living residence.

18. Upon information and belief, Defendant PPR is also an Enhanced Assisted Living Residence that has received a certificate from the NYSDOH authorizing PPR to provide aging-in-place services to residents who desire to remain in the residence as they become more frail, including those who: (i) are chronically chairfast and unable to transfer, or chronically require the physical assistance of one or more persons to transfer; (ii) chronically require the physical assistance of one or more persons in order to walk; (iii) chronically require the physical assistance of one or more persons to climb or descend stairs; (iv) are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or (v) have chronic unmanaged urinary or bowel incontinence.

19. Upon information and belief, Defendant PPR is also a Special Needs Assisted Living Residence that has received a certificate from the NYSDOH authorizing PPR to

serve persons with special needs in accordance with a special needs plan approved by the NYSDOH for people with some form of dementia.

20. Upon information and belief, PPR has a capacity of 139 residents, of which 82 can be Enhanced Assisted Living residents and 25 can be Special Needs Assisted Living residents.

21. Upon information and belief, PPR is located at 1 Prospect Park West, New York, NY 11215.

22. Upon information and belief, Defendant David Pomerantz is the Administrator and/or Executive Director of PPR and manages the day-to-day operations and finances of the facility. Upon information and belief Defendant Pomerantz is responsible for implementing and overseeing the PPR Closure Plan submitted to the NYSDOH.

23. Upon information and belief, Defendant Sam Zalmanov is a Member of PPR. Upon information and belief Defendant Zalmanov wrote, submitted and/or was involved in the PPR Closure Plan submitted to the NYSDOH.

24. Defendant Nirav R. Shah, M.D., M.P.H., is the Commissioner of the NYSDOH, a New York state agency authorized to inspect adult care facilities and assisted living residences and ensure compliance with applicable social services laws. Defendant Shah is 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), including supervising and licensing assisted living residences in the State of New York.

25. Upon information and belief, Defendant Howard Zucker, M.D., will succeed Defendant Shah as Commissioner of the NYSDOH, which is a New York State agency authorized to inspect assisted living residences and ensure compliance with applicable social

services laws. Defendant Zucker will be 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), including supervising and licensing assisted living residences in the State of New York.

26. Defendant NYSDOH is a state agency 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), including supervising and licensing assisted living residences in the State of New York.

27. Pursuant to 29 U.S.C. § 794(b), Defendant NYSDOH receives federal financial assistance on the condition that NYSDOH not discriminate on the basis of disability in providing access to its benefits and programs.

FACTS

28. Upon information and belief, Plaintiffs have resided at PPR for between one and five years.

29. Upon information and belief, Plaintiffs, some of whom suffer from Alzheimer's disease, immobility, hypertension, coronary artery disease, dementia, depression, seizures, osteoarthritis, osteoporosis, scoliosis, diabetes, anxiety, hypothyroidism, congestive heart failure, cardiac arrhythmia, glaucoma, pancreatitis, tremors, abdominal hernia, and/or physical and cognitive impairments, chose PPR because they expected to be able to spend the rest of their lives at PPR.

30. Upon information and belief, Plaintiffs have thrived in PPR's social environment, participating in activities and receiving the attention and care necessary to age in

place. Plaintiffs have support networks at PPR, and PPR's location has enabled Plaintiffs' families to visit regularly, boosting morale and leading to improved well-being.

31. Upon information and belief, there are about 30 residents at PPR who require special or enhanced care, and the average age at PPR is approximately 88 years old.

32. Upon information and belief, during their stays at PPR, Plaintiffs have invested great sums of money in furnishings, decorations, and supplies to improve and make Plaintiffs' residences at PPR specifically designed for their needs.

33. Upon information and belief, Plaintiffs entered into residency and/or lease agreements as recently as November of 2013. Further, upon information and belief, such residency and/or lease agreements run through December 31, 2014.

34. Upon information and belief, at the time Plaintiffs entered into residency and/or lease agreements, Plaintiffs were required to pay move-in fees and incur other expenses.

35. Upon information and belief, at the time Plaintiffs entered into residency and/or lease agreements, PPR provided assurances that Plaintiffs would be able to age in place with the expectation that as Plaintiffs' health deteriorated, PPR would be able to provide Plaintiffs with additional services needed until their deaths.

36. Upon information and belief, Defendant Deitsch knew or should have known as early as 2006 that a tax abatement for PPR would end by early 2014, causing PPR's tax burden to rise significantly.

37. Upon information and belief, based at least in part upon the expiration of the aforementioned tax abatement, Defendant Deitsch intended to close PPR as early as 2006. Thus, upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov

continued to accept residents, including but not limited to Plaintiffs, for years after Defendants PPR, Deitsch, Pomerantz, and Zalmanov had decided to close PPR.

38. On or about September 27, 2013, Defendants PPR, Deitsch, Pomerantz, and Zalmanov submitted the Closure Plan for PPR to Defendants NYSDOH, Shah, and Zucker.

39. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov continued to accept residents, including but not limited to Plaintiffs, after Defendants PPR, Deitsch, Pomerantz, and Zalmanov had submitted the Closure Plan for PPR to Defendants NYSDOH, Shah, and Zucker.

40. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov's reason for the closure was to convert and/or renovate PPR to "standard apartments," *i.e.*, a "building without age restrictions which does not require licensure."

41. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov represented the following to Defendants NYSDOH, Shah, and Zucker:

"All residents will be relocated to appropriate facilities. Staff will find appropriate nearby facilities, and arrange for relocation of each resident. Every effort will be made to work with residents and families to find the best facility. All applicable records will be forwarded with the resident upon transfer. An assessment of each resident's needs will be completed by the case manager or her designee by reviewing and updating the resident's ISP."

"Any shortfall in staffing will be made up through the hiring of temporary employees through an employment agency."

42. On or about February 24, 2014, Defendants PPR, Deitsch, Pomerantz, and Zalmanov's Closure Plan for PPR was approved by Defendants NYSDOH, Shah, and Zucker.

43. On or about March 5, 2014, Plaintiffs learned that PPR was surrendering its license to operate the residence and would thus close permanently.

44. On or about March 5, 2014, Defendants PPR, Deitsch, Pomerantz, and Zalmanov wrote Plaintiffs a letter concerning the closure. In that letter, Defendants PPR, Deitsch, Pomerantz, and Zalmanov provided the following assurances:

“Facility staff will be meeting with each resident in the coming week to assist them with considering other settings and planning a move. Other than the relocation efforts, day to day activities will remain the same and the services provided to residents will remain the same, including the same dining and activities offerings.”

“Regardless of where you relocate, our staff will offer you the same services to help coordinate your move, as it is our goal to make this transition as seamless as possible for each resident. Our staff will also work with you to coordinate your moving date to minimize any disruption associated with multiple move outs.”

45. On or about March 10, 2014, Plaintiffs were informed that their residency agreements would be terminated on Sunday, June 8, 2014. At that time, Defendants PPR, Deitsch, Pomerantz, and Zalmanov provided the following assurances to Plaintiffs:

“Although the form does state a date certain for the termination of your residency agreement . . . all residents will be given adequate time to find suitable placements for their individual needs. . . . Please know that we are ready to assist you in evaluating your options on a one on one basis or providing you with information you need to [sic.]”

46. Upon information and belief, the lives of the Plaintiffs were thrown into chaos when they were suddenly, and without warning, told that they would need to move out of their home within 90 days.

47. Upon information and belief, this shocking news, which, by design, was delivered on extremely short notice, caused both financial harm and extreme mental anguish to the Plaintiffs and their families.

48. Upon information and belief, having few alternative options that could accommodate their special needs and having been left very little time by Defendants PPR, Deitsch, Pomerantz, and Zalmanov to make alternative arrangements, many residents were driven by Defendants PPR, Deitsch, Pomerantz, and Zalmanov's scare tactics to leave Prospect Park.

49. Upon information and belief, notwithstanding assurances provided to both Plaintiffs and Defendants NYSDOH, Shah, and Zucker, services at PPR have been compromised since the closure was announced, and operations at PPR have become disorganized.

50. Upon information and belief, notwithstanding assurances provided to both Plaintiffs and Defendants NYSDOH, Shah, and Zucker, the following has been observed, including but not limited to:

- a. Staff attrition without replenishment;
- b. Plaintiffs are not being bathed on a routine basis;
- c. Diminished housekeeping services, leaving rooms unsanitary;
- d. Food quality has worsened;
- e. Services, such as the "beauty salon," have been shut down; and
- f. Aides are not being paid.

51. Upon information and belief, the foregoing compromised services have had a detrimental impact upon Plaintiffs, because Plaintiffs are unable to groom themselves and/or clean their own apartments.

52. Upon information and belief, notwithstanding the foregoing compromised services, Plaintiffs continue to pay rent and fees pursuant to Plaintiffs' residency agreements.

53. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have not assisted Plaintiffs in securing alternate accommodations. The only communication between Plaintiffs and Defendants PPR, Deitsch, Pomerantz, and Zalmanov concerning alternate accommodations has been scant emails announcing tours of other facilities generally and without specific reference to the Plaintiffs' individual needs. As a result, Plaintiffs and their families have been forced to search for and secure alternate accommodations, many of which do not provide adequate services, are prohibitively expensive, have no availability, or are located in burdensome vicinities.

54. Upon information and belief, Defendants NYSDOH, Shah, and Zucker have not reached out to Plaintiffs concerning any of the aforementioned problems.

55. Upon information and belief, Plaintiffs were devastated at the news that PPR would close. Moreover, some Plaintiffs have not been informed of the closing yet, for fear that the news will accelerate preexisting conditions and lead to rapid deterioration in Plaintiffs' health and well-being.

56. Upon information and belief, the closure of PPR will adversely impact Plaintiffs' friendships, routines, and lives that Plaintiffs' have built during their time at PPR. The move will be ultimately traumatic for Plaintiffs, many of whom may not survive the transition out of PPR.

FIRST CLAIM FOR RELIEF:

DEFENDANTS NYSDOH, NIRAV R. SHAH, AND HOWARD ZUCKER'S APPROVAL OF THE CLOSURE PLAN WAS ARBITRARY AND CAPRICIOUS AND AFFECTED BY ERRORS OF LAW

57. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

58. Defendants NYSDOH, Shah, and Zucker's approval of Defendants PPR, Deitsch, Pomerantz, and Zalmanov's Closure Plan was arbitrary and capricious and affected by errors of law.

59. PPR is an adult care facility.

60. New York State regulations set forth the procedure by which an operator of an adult care facility can surrender its operating certificate.

61. If an adult care facility operator wants to surrender its operating certificate, the operator must submit "a proposed plan for closure" that "describe[s] the procedures and actions the operator will take to: (i) notify residents of the closure, including provisions for termination of admission agreements and involuntary discharge; (ii) assess the needs and preferences of individual residents; (iii) assist residents in locating and transferring to appropriate alternative settings; and (iv) maintain compliance with these regulations until all residents have relocated." 18 NYCRR § 485.5(j)(2).

62. Upon information and belief, although Defendants PPR, Deitsch, Pomerantz, and Zalmanov's Closure Plan fails to comply with these regulations, Defendants NYSDOH, Shah, and Zucker approved the Closure Plan on February 24, 2014.

63. As set forth in paragraphs 63 to 67 below, Defendants NYSDOH, Shah, and Zucker's approval of the Closure Plan was also affected by error of law because it violated the Social Services Law and its implementing regulations.

64. As set forth in paragraphs 68 to 75 below, Defendants NYSDOH, Shah, and Zucker's approval of the Closure Plan was also affected by error of law because it violated the Public Health Law and its implementing regulations.

65. As set forth in paragraphs 76 to 86 below, Defendants NYSDOH, Shah, and Zucker's approval of the Closure Plan was also affected by error of law because it violated the Americans with Disabilities Act.

66. As set forth in paragraphs 87 to 96 below, Defendants NYSDOH, Shah, and Zucker's approval of the Closure Plan was also affected by error of law because it violated the Rehabilitation Act.

SECOND CLAIM FOR RELIEF:

VIOLATION OF SOCIAL SERVICES LAW § 461-A AND IMPLEMENTING REGULATIONS
AGAINST DEFENDANTS NYSDOH, NIRAV R. SHAH, AND HOWARD ZUCKER

67. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

68. Pursuant to New York Social Services Law 461-a, Defendants NYSDOH, Shah, and Zucker are responsible for inspection and supervision of Defendant PPR and for ensuring its compliance with requirements of applicable provisions of law and regulations.

69. Under 10 NYCRR §§ 1001.4(j)(2)(ii), 1001.4(j)(2)(iii) and 1001.4 (j)(4), an operator wishing to close an assisted living residence is required to assess the needs and preferences of individual residents; assist residents in locating and transferring to appropriate alternative settings; and to implement the approved Closure Plan to ensure that arrangements for continued care which meet each resident's social, emotional, and health needs are effectuated prior to closure and/or decertification, respectively.

70. Upon information and belief, Defendants NYSDOH, Shah, and Zucker have not ensured that Plaintiffs' needs and preferences have been assessed; have not ensured that Plaintiffs are being assisted in locating and transferring to appropriate alternative settings; and have not ensured that the Prospect Park Closure Plan is being implemented to ensure that

arrangements for continued care which meet each Plaintiff's social, emotional, and health needs are effectuated prior to closure and/or decertification.

71. Accordingly, Defendants NYSDOH, Shah, and Zucker have violated and continue to violate Social Services Law § 461-a and the implementing regulations.

THIRD CLAIM FOR RELIEF:

VIOLATION OF NEW YORK STATE PUBLIC HEALTH LAWS ARTICLE 46-B § 4662
AGAINST DEFENDANTS NYSDOH, NIRAV R. SHAH AND HOWARD ZUCKER

72. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

73. Defendants NYSDOH, Shah, and Zucker are responsible for inspection and supervision of Defendants PPR, Deitsch, Pomerantz, and Zalmanov and for ensuring their compliance with applicable provisions of law and regulations.

74. Upon information and belief, Defendants NYSDOH, Shah, and Zucker have not ensured that Plaintiffs are being provided the guaranteed services, including being transferred to a care setting which is adequate, appropriate and consistent with their wishes.

75. Accordingly, Defendants NYSDOH, Shah, and Zucker have violated and continue to violate New York State Public Health Laws Article 46-B § 4662 and the implementing rules and regulations.

FOURTH CLAIM FOR RELIEF:

VIOLATION OF 18 NYCRR § 490.5(F)(19)
AGAINST DEFENDANTS NYSDOH, NIRAV R. SHAH, HOWARD ZUCKER, PPR, HAYSHA DEITSCH,
DAVID POMERANTZ, AND SAM ZALMANOV

76. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

77. Pursuant to 18 NYCRR § 490.5(f)(19), “[t]he Operator must assist any resident to be transferred or discharged pursuant to this subdivision, to the extent necessary, to assure, whenever practicable, the resident’s placement in a care setting which is adequate, appropriate and consistent with his/her wishes.”

78. Upon information and belief, Defendants NYSDOH, Shah, and Zucker are not requiring the operator of PPR to assist residents in transferring to a care setting which is adequate, appropriate and consistent with their wishes.

79. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov are not assisting residents in transferring to a care setting which is adequate, appropriate and consistent with their wishes.

80. Accordingly, Defendants NYSDOH, Shah, Zucker, PPR, Deitsch, Pomerantz, and Zalmanov have violated and continue to violate Plaintiffs’ rights under 18 NYCRR 490.5(f)(19).

FIFTH CLAIM FOR RELIEF:

VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT MANDATE TO ADMINISTER SERVICES AND PROGRAMS IN THE MOST INTEGRATED SETTING AGAINST DEFENDANTS NYSDOH, NIRAV R. SHAH, AND HOWARD ZUCKER

81. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

82. Plaintiffs are individuals with disabilities, including but not limited to mental and/or physical impairments that substantially limit one or more major life activity.

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

84. For between one and five years, Plaintiffs have lived in PPR.

85. Because PPR is closing, Plaintiffs now face the strong likelihood that they will be transferred to a more restrictive setting, such as a nursing home.

86. Defendants NYSDOH, Shah, and Zucker 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).

87. Title II of the Americans with Disabilities Act prohibits Defendants NYSDOH, Shah, and Zucker from discriminating against individuals with disabilities in programs and activities. *See* 42 U.S.C. §§ 12131, 12132.

88. 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.” 28 C.F.R. § 35.130(d).

89. Defendants NYSDOH, Shah, and Zucker 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.

90. Upon information and belief, Defendants NYSDOH, Shah, and Zucker have failed to meet this obligation. Defendants NYSDOH, Shah, and Zucker have failed to require that New York State’s laws and regulations governing the closure of adult care facilities ensure that residents are transferred to the most integrated settings appropriate to their needs. Defendants NYSDOH, Shah, and Zucker have also failed to require PPR to assist Plaintiffs to locate and transfer to the most integrated setting appropriate to their needs.

91. Defendants NYSDOH, Shah, and Zucker’s conduct is a violation of Title II of the ADA and on account thereof, Plaintiffs are entitled to recover the expenses of this

litigation, including, but not limited to, reasonable attorneys' fees and costs for which Defendants NYSDOH, Shah, and Zucker are liable to Plaintiffs. *See* 42 U.S.C. § 12133.

SIXTH CLAIM FOR RELIEF:

FAILURE TO ADMINISTER SERVICES IN THE MOST INTEGRATED SETTING APPROPRIATE IN VIOLATION OF THE REHABILITATION ACT AGAINST DEFENDANTS NYSDOH, NIRAV R. SHAH AND HOWARD ZUCKER

92. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

93. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), provides that “[n]o 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”

94. “[P]rogram or activity’ means all of the operations of . . . a department, agency . . . or other instrumentality of a State or of a local government or the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government.” 29 U.S.C. § 794(b)(1)(A)-(B).

95. Defendants NYSDOH, Shah, and Zucker are responsible for the operation of “program[s] or activit[ies]” covered by the Rehabilitation Act. 29 U.S.C. § 794(b)(1)(A)-(B).

96. Pursuant to 29 U.S.C. § 794(b), the NYSDOH is a program receiving federal financial assistance.

97. Plaintiffs are individuals with disabilities, including but not limited to mental and/or physical impairments that substantially limit one or more major life activity.

98. For between one and five years, Plaintiffs have lived in PPR.

99. Because PPR is closing, Plaintiffs now face the strong likelihood that they will be transferred to a more restrictive setting, such as a nursing home.

100. Upon information and belief, Defendants NYSDOH, Shah, and Zucker violated Section 504 of the Rehabilitation Act by failing to administer services to Plaintiffs in the most integrated setting appropriate to their needs including, but not limited to, failing to require that New York State laws and regulations governing the closure of adult care facilities ensure that residents are transferred to the most integrated settings appropriate to their needs.

101. As a direct and proximate result of the systemic policies, practices and omissions alleged herein, Plaintiffs have been excluded from participation in, denied the benefits of, and subject to discrimination under numerous programs and activities of Defendants NYSDOH, Shah, and Zucker that receive federal financial assistance.

SEVENTH CLAIM FOR RELIEF:

VIOLATION OF SOCIAL SERVICES LAW §§ 461-C, 461-G, 461-H
AND IMPLEMENTING REGULATIONS
AGAINST DEFENDANTS PPR, HAYSHA DEITSCH, DAVID POMERANTZ, AND SAM ZALMANOV

102. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

103. Plaintiffs, upon acceptance to PPR, entered or should have entered into an Admission Agreement pursuant to Social Services Law § 461-c, that prescribes all the terms material to their residence.

104. Social Services Law §§ 461-a through 461-s detail the rights that Plaintiffs, as adult home residents, have and the services to which they are entitled.

105. For example, Social Services Law § 461-g provides that a resident has the right to object to the termination of an Admission Agreement, and that under such circumstances, an operator of a residence is required to commence a special proceeding pursuant to § 461-h in order to terminate an Admission Agreement and discharge the resident.

106. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have breached and continue to violate the Social Services Law and its implementing regulations by failing to:

- a. Bring a special proceeding prior to removing Plaintiffs from the residence and by denying services to the Plaintiffs through the pendency of such proceedings; and
- b. Assist Plaintiffs in placement in a care setting which is adequate, appropriate and consistent with Plaintiffs' wishes.

107. As a result of said violations, Plaintiffs have suffered damages in an amount to be determined at trial.

EIGHTH CLAIM FOR RELIEF:

VIOLATION OF SOCIAL SERVICES LAW § 461-L AND IMPLEMENTING REGULATIONS
AGAINST DEFENDANTS PPR, HAYSHA DEITSCH, DAVID POMERANTZ, AND SAM ZALMANOV

108. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

109. Defendants PPR, Deitsch, Pomerantz, and Zalmanov operate an assisted living residence that is authorized by the NYSDOH to operate a special needs assisted living program.

110. Defendants PPR, Deitsch, Pomerantz, and Zalmanov advertise their operation of a special needs assisted living program.

111. Plaintiffs who participate in the special needs assisted living program were assessed and determined eligible by Defendants PPR, Deitsch, Pomerantz, and Zalmanov, and Defendants PPR, Deitsch, Pomerantz, and Zalmanov generated a Plan of Care for eligible Plaintiffs upon their acceptance into the special needs assisted living program.

112. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have breached and continue to breach the Plaintiffs' Plan of Care by failing to provide the appropriate services and care required by the Plan of Care.

113. As a result of said violation, Plaintiffs have suffered damages in an amount to be determined at trial.

NINTH CLAIM FOR RELIEF:

VIOLATION OF NEW YORK STATE PUBLIC HEALTH LAWS ARTICLE 46-B § 4657
AGAINST DEFENDANTS PPR, HAYSHA DEITSCH, DAVID POMERANTZ, AND SAM ZALMANOV

114. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

115. Pursuant to § 4657 of the Public Health Law, an operator of an assisted living residence shall not admit a resident if the operator is unable to meet the care needs of the resident.

116. Defendants PPR, Deitsch, Pomerantz, and Zalmanov knew when admitting Plaintiffs to PPR that Plaintiffs had long-term care needs. Because of Defendants PPR, Deitsch, Pomerantz, and Zalmanov's plan to close the facility, they were unable to meet these needs.

117. Defendants PPR, Deitsch, Pomerantz, and Zalmanov admitted Plaintiffs to the facility when they intended to close the facility shortly and even after the Closure Plan had been submitted.

118. Defendants PPR, Deitsch, Pomerantz, and Zalmanov violated § 4657 of the Public Health Law by admitting Plaintiffs to the facility when they did not intend to meet their care needs.

TENTH CLAIM FOR RELIEF:

VIOLATION OF NEW YORK STATE PUBLIC HEALTH LAWS ARTICLE 46-B § 4658
AGAINST DEFENDANTS PPR, HAYSHA DEITSCH, DAVID POMERANTZ, AND SAM ZALMANOV

119. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

120. Plaintiffs, upon acceptance into PPR, were provided with a Residency Agreement that prescribes all the terms material to their residence.

121. Plaintiffs were also provided upon acceptance an Individualized Service Plan that outlines the services to be provided and by whom services will be provided and accessed.

122. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have violated Plaintiffs' rights under the Residency Agreement and Individualized Service Plans by failing to provide the guaranteed services, including failing to transfer residents adequately to a care setting which is adequate, appropriate and consistent with their wishes.

123. Pursuant to § 4658 of the Public Health Law, prospective residents must be provided an admission agreement that describes "the process through which the agreement may be modified, amended, or terminated, and setting forth the terms and time frames under which the agreement may be terminated by either party."

124. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have violated Plaintiffs' rights by failing to provide sufficient information about the

foregoing to allow prospective residents to make informed choices in the event of termination of the admission agreement.

125. As a result of said violation, Plaintiffs have suffered damages in an amount to be determined at trial.

ELEVENTH CLAIM FOR RELIEF:

VIOLATION OF NEW YORK STATE PUBLIC HEALTH LAWS ARTICLE 46-B § 4660
AGAINST DEFENDANTS PPR, HAYSHA DEITSCH, DAVID POMERANTZ, AND SAM ZALMANOV

126. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

127. Pursuant to § 4660 of the Public Health Law, prospective residents must be provided with sufficient information regarding the residence to make an informed choice regarding participation and acceptance of services.

128. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov continued to admit new residents to the facility despite their intentions to close the facility, withholding information about their intentions to close the facility that would have allowed Plaintiffs to make an informed choice about whether to become residents of PPR.

129. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have violated Plaintiffs' rights by failing to provide sufficient information about PPR to allow prospective residents to make informed choices.

130. As a result of said violation, Plaintiffs have suffered damages in an amount to be determined at trial.

TWELFTH CLAIM FOR RELIEF:

VIOLATION OF 10 NYCRR § 1001.4(j)
AGAINST DEFENDANTS PPR, HAYSHA DEITSCH, DAVID POMERANTZ AND SAM ZALMANOV

131. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

132. Pursuant to 10 NYCRR §§ 1001.4(j)(2)(ii), 1001.4(j)(2)(iii) and 1001.4(j)(4), Defendants PPR, Deitsch, Pomerantz, and Zalmanov are required to assess the needs and preferences of individual residents; assist residents in locating and transferring to appropriate alternative settings; and implement the approved Closure Plan to ensure that arrangements for continued care which meets each resident's social, emotional, and health needs are effectuated prior to closure and/or decertification, respectively.

133. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have not assessed the needs and preferences of individual residents; have not assisted residents in locating and transferring to appropriate alternative settings; and have not implemented the approved Closure Plan to ensure that arrangements for continued care which meets each resident's social, emotional, and health needs are effectuated prior to closure and/or decertification.

134. Accordingly, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have violated and continue to violate 10 NYCRR §§ 1001.4(j).

THIRTEENTH CLAIM FOR RELIEF:

BREACH OF CONTRACT
AGAINST DEFENDANTS PPR, HAYSHA DEITSCH, DAVID POMERANTZ, AND SAM ZALMANOV

135. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

136. Pursuant to Section 461-c of the Social Services Law, Defendants are required to execute an admission agreement with every applicant for admission.

137. Upon information and belief, the terms "admission agreement" and "residency agreement" are used interchangeably.

138. Each Plaintiff signed or should have signed an admission agreement with Defendants at the time of his or her admission, stating, *inter alia*, that:

- a. "While legal action is in progress, the Operator must not ... fail to provide any of the care and services required by Department regulations and the [admission agreement], or engage in any action to intimidate or harass You",
- b. "Waiver by the parties of any provision in this Agreement which is required by statute or regulation shall be null and void",
- c. Certain "Basic Services" will be provided to the resident, such as:
 - i. Meals and snacks (three nutritional, well-balance meals a day and a nutritious evening snack),
 - ii. Activities (a program of planned activities, opportunities for community and participation and services designed to meet the resident's physical, social and spiritual needs),
 - iii. Housekeeping,
 - iv. Linen service (towels, washcloths, pillow, pillowcase, blanket, bed sheets, bedspread, all in clean condition),
 - v. Laundry of the resident's personal washable clothing,
 - vi. Supervision on a 24-hour basis,

- vii. Case Management (identification and assessment of the resident's needs and interests, information and referral, and coordination with available resources to best address the resident's identified needs and interests),
 - viii. Personal Care (some assistance with bathing, grooming, dressing, toileting (if applicable), ambulation (if applicable), transferring (if applicable), feeding, medication acquisition, storage and disposal, assistance with self-administration of medication),
 - ix. Development of Individualized Service Plan (to address the resident's needs and to be updated every six months or when there is a change in health),
- d. The resident will not be discharged against his/her will unless a court rules in favor of PPR after PPR institutes a special proceeding in court, during which time the resident will be provided with continued services pursuant to Social Services Law and Regulations and Public Health Law and Regulations,
- e. "The Operator must assist You if the Operator proposes to transfer or discharge You to the extent necessary to assure, whenever practicable, Your placement in a care setting which is adequate, appropriate and consistent with Your wishes".

139. Plaintiffs have fulfilled and continue to fulfill their obligations as defined by the admission agreement, including the responsibility of paying rent.

140. The Social Services Law accords residents of adult care facilities specific rights as residents of such facilities. Section 461 of the Social Services Law provides that resident rights and responsibilities shall include, but not be limited to:

- a. Pursuant to § 461-g, a resident has the right to object to the termination of an Admission Agreement, and that under such circumstances, an operator of a residence is required to commence a special proceeding pursuant to § 461-h in order to terminate an Admission Agreement and discharge the resident,
- b. Pursuant to § 461-l, residents who participate in a special needs assisted living program must be assessed and determined eligible for the program and a Plan of Care must be generated upon their acceptance.

141. In setting forth the standards for adult homes, the implementing regulations for the Social Services Law require that:

- a. Pursuant to 18 NYCRR § 490.5(f)(19), the operator must assist any resident to be transferred or discharged to assure, whenever practicable, the resident's placement in a care setting which is adequate, appropriate, and consistent with his/her wishes."

142. The Public Health Law requires:

- a. Pursuant to § 4657, an operator of an assisted living residence shall not admit a resident if the operator is unable to meet the care needs of the resident,

- b. Pursuant to § 4658, prospective residents must be provided an admission agreement that describes “the process through which the agreement may be modified, amended, or terminated, and setting forth the terms and time frames under which the agreement may be terminated by either party”,
- c. Pursuant to § 4660, prospective residents must be provided with sufficient information regarding the residence to make an informed choice regarding participation and acceptance of services.

143. The implementing regulations for the Public Health Law require that:

- a. Pursuant to 10 NYCRR §§ 1001.4(j)(2)(ii), 1001.4(j)(2)(iii) and 1001.4 (j)(4), the operators are required to assess the needs and preferences of individual residents; assist residents in locating and transferring to appropriate alternative settings; and implement the approved Closure Plan to ensure that arrangements for continued care which meets each resident’s social, emotional, and health needs are effectuated prior to closure and/or decertification, respectively.

144. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have breached and continue to breach the admissions agreements with Plaintiffs by violating the Social Services Law and the Public Health Law by, *inter alia*, failing to:

- a. Bring a special proceeding prior to removing Plaintiffs from the residence and by denying services to the Plaintiffs through the pendency of such proceedings,
- b. Assist Plaintiffs in placement in a care setting which is adequate, appropriate and consistent with Plaintiff's wishes,
- c. Provide the appropriate services and care as required by the Plan of Care,
- d. Cease admitting Plaintiffs to the facility when they did not intend to meet their care needs,
- e. Provide sufficient information about the process through which an admission agreement may be modified, amended, or terminated and the terms and time frames under which the admission agreement may be terminated by either party to allow prospective residents to make informed choices in the event of termination of the admission agreement,
- f. Provide sufficient information about PPR to allow prospective residents to make informed choices.

145. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have breached and continue to breach the admissions agreements with Plaintiffs by violating the implementing regulations of the Social Services Law by, *inter alia*, failing to:

- a. Assist residents in transferring to a care setting which is adequate, appropriate and consistent with their wishes.

146. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have breached and continue to breach the admissions agreements with Plaintiffs by violating the implementing regulations of the Public Health Law by, *inter alia*, failing to:

- a. Assess the needs and preferences of individual residents, assist residents in locating and transferring to appropriate alternative settings, and implement the approved Closure Plan to ensure that arrangements for continued care which meet each resident's social, emotional, and health needs are effectuated prior to closure and/or decertification.

147. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov have breached and continue to breach the Plaintiffs' admission agreements by, *inter alia*, failing to:

- a. Continuously provide the agreed-upon Basic Services such as meals and snacks (three nutritional, well-balance meals a day and a nutritious evening snack), activities (a program of planned activities, opportunities for community and participation and services designed to meet the resident's physical, social and spiritual needs), housekeeping, case management (identification and assessment of the resident's needs and interests, information and referral, and coordination with available resources to best address the resident's identified needs and interests), and personal care (some assistance with bathing, grooming, dressing, toileting (if applicable), ambulation (if applicable), transferring

- (if applicable), feeding, medication acquisition, storage and disposal, assistance with self-administration of medication),
- b. Bring a special proceeding prior to removing Plaintiffs from the residence and by denying services to the Plaintiffs through the pendency of such proceedings,
 - c. Assist Plaintiffs in placement in a care setting which is adequate, appropriate and consistent with Plaintiffs' wishes.

148. Plaintiffs have been and continue to be injured by Defendants PPR, Deitsch, Pomerantz, and Zalmanov's breach and have suffered and continue to suffer damages.

149. As a direct and proximate cause of Defendants PPR, Deitsch, Pomerantz, and Zalmanov's breaches of the Residency Agreement, Plaintiffs have suffered and continue to suffer damages, including but not limited to expenditures relating to relocation costs and diminished services.

150. Accordingly, Plaintiffs are entitled to actual and consequential damages resulting from Defendants PPR, Deitsch, Pomerantz, and Zalmanov's breaches.

FOURTEENTH CLAIM FOR RELIEF:

BREACH OF CONTRACT
AGAINST DEFENDANTS PPR, HAYSHA DEITSCH, DAVID POMERANTZ, AND SAM ZALMANOV

151. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

152. Plaintiffs, upon acceptance to PPR, entered or should have entered into a standard Lease Agreement that prescribed all the terms material to Plaintiffs' residence at PPR.

153. Plaintiff MELAMED has Lease Agreement that terminates on December 31, 2014.

154. Defendants PPR, Deitsch, Pomerantz, and Zalmanov have violated Plaintiff MELAMED's rights under the Lease Agreement by informing him that his Lease Agreement will be terminated on June 8, 2014 when the Lease Agreement does not terminate until December 31, 2014.

155. As a direct and proximate cause of Defendants PPR, Deitsch, Pomerantz, and Zalmanov's breaches of the Lease Agreements, Plaintiff MELAMED has suffered and continues to suffer damages in an amount to be determined at trial.

FIFTEENTH CLAIM FOR RELIEF:

BREACH OF FIDUCIARY DUTY
AGAINST DEFENDANTS PPR, HAYSHA DEITSCH, DAVID POMERANTZ AND SAM ZALMANOV

156. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

157. Defendants PPR, Deitsch, Pomerantz, and Zalmanov owed Plaintiffs a fiduciary duty based upon the special relationship of the parties and PPR acting as Plaintiffs' agent with regard to numerous financial transactions.

158. Upon information and belief, Plaintiffs and Defendants PPR, Deitsch, Pomerantz, and Zalmanov are not involved in an arms-length commercial relationship. Defendants PPR, Deitsch, Pomerantz, and Zalmanov arrange many, if not most, of Plaintiffs' basic needs for food, shelter, and medical care. Defendants PPR, Deitsch, Pomerantz, and Zalmanov monitor Plaintiffs' incoming mail, select his/her roommate, offer his/her food at scheduled times each day, assign his/her a seat for each meal, and require him/her to sign in and out of the facility every time he/she enters or leaves the home. Plaintiffs must even advise Defendants PPR, Deitsch, Pomerantz, and Zalmanov if Plaintiffs intend to miss a single meal.

159. Pursuant to 18 NYCRR § 487.3(a), an adult home is required to provide Plaintiffs with, inter alia, “24-hour-a-day program[s] of supervision, care, and services.”

160. Defendants PPR, Deitsch, Pomerantz, and Zalmanov have an affirmative obligation to provide case management services to coordinate Plaintiffs’ physical and mental health needs as well as his/her income and public benefit entitlements.

161. Defendants PPR, Deitsch, Pomerantz, and Zalmanov possess superior knowledge of the services available to incoming adult home residents.

162. Plaintiffs justifiably reposed confidence in Defendants PPR, Deitsch, Pomerantz, and Zalmanov. Based on Defendants PPR, Deitsch, Pomerantz, and Zalmanov’s statutory and contractual obligations to coordinate Plaintiff’s care and public benefits, Plaintiff reasonably relied on Defendants PPR, Deitsch, Pomerantz, and Zalmanov’s superior expertise and knowledge.

163. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov created a Closure Plan that did not protect the rights and services Plaintiffs relied upon Defendants PPR, Deitsch, Pomerantz, and Zalmanov to provide based on the fiduciary duty of Defendants PPR, Deitsch, Pomerantz, and Zalmanov, including failing to provide adequate services while Plaintiffs are still living at PPR and failing to implement a Closure Plan that arranges for continued care which meets each Plaintiff’s social, emotional, and health needs.

164. Upon information and belief, Defendants PPR, Deitsch, Pomerantz, and Zalmanov decided as early as 2006 to close PPR due to expiring tax abatements in early 2014.

165. Upon information and belief, notwithstanding Defendants PPR, Deitsch, Pomerantz, and Zalmanov’s decision to discontinue operation of PPR after early 2014,

Defendants PPR, Deitsch, Pomerantz, and Zalmanov continued to accept residents and execute leases that would extend past the date of said expiring tax abatements.

166. Upon information and belief, Plaintiffs paid moving expenses and lease payments without being informed by Defendants PPR, Deitsch, Pomerantz, and Zalmanov that PPR would close in early 2014 because of Defendants PPR, Deitsch, Pomerantz, and Zalmanov's unwillingness to extend said expiring tax abatements.

167. As a result of said breaches, Plaintiffs are entitled to actual and consequential damages resulting from Defendants PPR, Deitsch, Pomerantz, and Zalmanov's breaches of its fiduciary obligations including, but not limited to, \$4,000 each in move-in costs, rent payments, care-related expenses, relocation expenses and any other costs, expenses or payments related to Defendants PPR, Deitsch, Pomerantz, and Zalmanov's breaches as alleged herein.

SIXTEENTH CLAIM FOR RELIEF:

RECKLESS/NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
AGAINST DEFENDANTS PPR, HAYSHA DEITSCH, DAVID POMERANTZ AND SAM ZALMANOV

168. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

169. Defendants PPR, Deitsch, Pomerantz, and Zalmanov knew that the closure of Prospect Park would be a devastating development for the Plaintiffs.

170. The manner in which Defendants PPR, Deitsch, Pomerantz, and Zalmanov announced and implemented the closure of Prospect Park was calculated to cause severe emotional distress and anxiety to the Plaintiffs and their families.

171. Defendants Defendants PPR, Deitsch, Pomerantz, and Zalmanov's actions constitute a reckless and/or negligent infliction of emotional distress.

172. Plaintiffs are entitled to damages in an amount to be proven at trial.

SEVENTEENTH CLAIM FOR RELIEF:

DECEPTIVE BUSINESS PRACTICES UNDER GEN. BUS. LAW § 349
AGAINST DEFENDANTS PPR, HAYSHA DEITSCH, DAVID POMERANTZ AND SAM ZALMANOV

173. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

174. Defendants PPR, Deitsch, Pomerantz, and Zalmanov engaged in deceptive business practices by misrepresenting to the public the nature of the services provided by Prospect Park – i.e., by deliberately giving the false impression that elderly residents would be able to age in place at Prospect Park, and failing to disclose their actual plan to close the residence and convert the building into “standard apartments.” These misrepresentations and omissions were material; indeed, they go to the very heart of the service that Prospect Park was supposed to provide.

175. Defendants PPR, Deitsch, Pomerantz, and Zalmanov’s conduct was consumer-oriented.

176. Plaintiffs were injured by Defendants PPR, Deitsch, Pomerantz, and Zalmanov’s conduct in an amount to be proven at trial.

177. Plaintiffs are therefore entitled to recover treble damages and attorneys’ fees under Gen. Bus. Law § 349.

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

- (A) Declaring and/or ordering that, as to the Defendants NYDOH, Shah, and Zucker:

1. Pursuant to §§ 3001 and 7801 *et seq.*, approval of the Closure Plan for PPR was arbitrary and capricious and affected by errors of law;
2. Pursuant to §§ 3001 and 7801 *et seq.*, annulling, vacating, and setting aside the NYSDOH Defendants' approval of the Closure Plan for PPR;
3. Pursuant to CPLR §§ 3001 and 7801 *et seq.*, prior to PPR surrendering its operating certificate, Defendants are obligated to ensure that each Plaintiff is transferred to a care setting which is adequate, appropriate, consistent with his/her wishes, and the most integrated setting appropriate to his/her needs, in accordance with the Residency Agreements, which were or should have been executed between PPR and each plaintiff pursuant to Social Services Law section 461-c and in accordance with 18 NYCRR 490.5(f)(19), and applicable federal law;
4. Defendants' acts and practices alleged herein violate the Americans with Disabilities Act; and
5. Defendants' acts and practices alleged herein violate the Rehabilitation Act.

(B) Enjoining the Defendants NYDOH, Shah, and Zucker:

1. Pursuant to CPLR §§ 6301 and 6311, from involuntarily transferring or constructively evicting any of the Plaintiffs unless and until a court rules in favor of PPR after PPR institutes a special proceeding in court pursuant to §§ 461-g and 461-h; and

2. And all those acting in concert with Defendants, from continuing to violate the Americans with Disabilities Act and Rehabilitation Act through the policies and practices alleged here.

(C) Declaring that Defendants PPR, Deitsch, Pomerantz, and Zalmanov:

1. Pursuant to CPLR § 3001, cannot involuntarily transfer or constructively evict any of the Plaintiffs unless and until a court rules in favor of PPR after PPR institutes a special proceeding in court pursuant to Social Services Law §§ 461-g and 461-h;
2. Pursuant to CPLR §§ 3001 and 7801 et seq., are obligated to ensure that services will continue to be provided to Plaintiffs during the time in which Plaintiffs continue to live in PPR prior to being appropriately transferred, during the time before the surrender of the PPR operating certificate, and throughout the litigation of any special proceedings that may be commenced, pursuant to the Residency Agreements which were or should have been executed between Defendants PPR, Haysha Deitsch, David Pomerantz, and Sam Zalmanov and each Plaintiff pursuant to Social Services Law §§461-c and 461-h;
3. Are obligated to re-write and re-submit the Prospect Park Closure Plan, detailing its plan to assess the needs and preferences of individual residents; to assist residents in locating and transferring to appropriate alternative settings; and to ensure that arrangements for continued care which meet each resident's social, emotional,

and health needs are effectuated, prior to PPR surrendering its operating certificate;

4. Pursuant to CPLR §§ 3001 and 7801 *et seq.*, prior to PPR surrendering its operating certificate, Defendants are obligated to transfer each Plaintiff to a care setting which is adequate, appropriate and consistent with his/her wishes, in accordance with the Residency Agreements, which were or should have been executed between PPR and each plaintiff pursuant to Social Services Law section 461-c and in accordance with 18 NYCRR 490.5(f)(19);
 5. Are in breach of contract including, but not limited to, the residency and lease agreements; and
 6. Have breached a fiduciary duty to Plaintiffs.
- (D) Enjoining the PPR Defendants and their successors and/or assignees:
1. From terminating or attempting to terminate lease agreements before the end date of the lease agreements;
 2. Pursuant to CPLR §§ 3001 and 7801 *et seq.*, from involuntarily transferring or constructively evicting any of the Plaintiffs unless and until a court rules in favor of PPR after PPR institutes a special proceeding in court pursuant to §§ 461-g and 461-h; and
 3. And all those acting in concert with Defendants, from continuing to violate the Americans with Disabilities Act and Rehabilitation Act through the policies and practices alleged here.

(E) Awarding Plaintiffs:

1. Damages in an amount to be determined at trial;
2. Fees and expenses, including but not limited to attorneys' fees, resultant from breach of contract claims;
3. Pursuant to CPLR § 8601, fees and expenses, including but not limited to attorneys' fees;
3. Pursuant to 42 U.S.C. § 12133, 29 U.S.C. § 794a and /or any other applicable law, attorneys' fees; and
4. Such other and further relief that this Court may deem just and proper.

DATED: New York, New York
July 15, 2014

Respectfully submitted,



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VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

LAURA A. BAYNE, an attorney duly admitted to practice before the courts of the State of New York, declares under penalty of perjury as follows:

I am an attorney for the plaintiffs in the above-captioned action. I have read the complaint and know the contents to be true to my own knowledge, except to those matters alleged on information and belief and as to those matters I believe them to be true. I submit this verification because the plaintiffs do not reside in the same county as my office pursuant to CPLR 3020(d)(3).

Dated: New York, New York
July 15, 2014



LAURA A. BAYNE