

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: IAS PART 29

MARY BERGER, CANDACE BLANDFORD, LILLIAN GUIDE, BELLA HORNUNG, GEORGE MELAMED, ANNE MARIE MOGIL, ALICE SINGER, JENNIFER STOCK, as Temporary Administrator of the Estate of JACK STOCK, ROSALIND BLANK, HANNA ESKIN, LILLIAN S. MARKS, PAULA ATLAS, RUTH GURTON, HENRIETTA HALLENBORG, TRINA KRUGER, JOACHIM SCHROBSDORFF, RUTH SILVERMAN AND BESS NEWMAN,

Plaintiffs,

-against-

PROSPECT PARK RESIDENCE LLC, 1 PROSPECT PARK RESIDENCE, LLC, 1 PROSPECT PARK ALF, LLC, PROSPECT PARK RESIDENT 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 MD, MPH, as Commissioner of the New York State Department of Health, and HOWARD ZUCKER, MD, as Commissioner of the New York State Department of Health,

Defendants.

Index No.: 6639 /2014

(Saitta, J.)

**CONSOLIDATED
AMENDED
COMPLAINT**

Plaintiffs Mary Berger, Candace Blandford, Lillian Guide, Bella Hornung, George Melamed, Anne Marie Mogil, Alice Singer, Jennifer Stock, as Temporary Administrator of the Estate of Jack Stock, Rosalind Blank, Hanna Eskin, Lillian S. Marks, Paula Atlas, Ruth Gurton, Henrietta Hallenborg, Trina Kruger, Joachim Schrobsdorff, Ruth Silverman and Bess Newman, for their Consolidated Amended Complaint, allege as follows:

PRELIMINARY STATEMENT

1. This action is brought by present and former residents of the Prospect Park Residence (“PPR”), an assisted-living facility in Brooklyn, New York. As has been widely reported in the press, the lives of the elderly residents (some of whom are over 100 years old) were thrown into chaos when they were suddenly, and without warning, told that they would need to move out of PPR **within 90 days** because the owner had decided to shut down the residence in order to sell the property to real estate developers to be turned into luxury apartment buildings.

2. This shocking news, which, by design, was delivered on extremely short notice, caused both financial harm and extreme mental anguish to the residents, including the Plaintiffs, and their families. Having few alternative options that could accommodate their special needs, and having been left precious little time by Defendants to make alternative arrangements, many residents were driven by Defendants’ scare tactics to leave PPR (despite the fact that some of them had lease agreements that entitled them to remain in their apartments at least through December 2014 or January 2015). These residents incurred significant out of pocket costs in connection with their hasty departure, and upon information and belief, in some cases, were forced to relocate to inferior facilities that do not meet all their needs in the least restrictive setting possible. Those residents who have remained at PPR and are continuing to pay rent have experienced a serious deterioration of their social environment, owing to the fact that the vast majority of the residents of PPR have been scared into relocating. Moreover, Defendants have failed to provide services to the remaining residents in violation of their residency agreements and Defendants’ statutory and fiduciary duties.

3. The residents – whose average age is 88 years old and who require specialized care and attention – moved to PPR, and paid high-priced rent to live there, with the

explicit understanding that they would be able to spend their remaining years at the residence, in close proximity to family members and caretakers. Unbeknownst to Plaintiffs, the management of PPR, and its owner, Defendant Haysha Deitsch, had for years intended to close the facility by 2014, when a valuable property tax abatement was set to expire. Not only did Defendants fail to disclose their true intentions for PPR, they continued to admit new residents despite knowing that they could not provide the essential service they had promised – a residence where Plaintiffs could remain for the remainder of their lives. Indeed, the management of PPR had prepared and submitted an application to the New York State Department of Health (“NYSDOH”) for approval of the closure months before the closure was precipitously announced. Yet Defendants failed to disclose the imminent closure of PPR for six months after their submission of the closure plan, while they continued to collect rent from Plaintiffs, and even admitted new residents to the facility, who they knew would be forced to leave shortly after they moved in.

4. Plaintiffs have suffered, and are continuing to suffer, financial and physical and emotional harm, as a result of Defendants’ breaches of their contractual, fiduciary and statutory duties to Plaintiffs. In this action, Plaintiffs seek compensation for these injuries, including but not limited to, restitution of the rental fees they paid on the false pretense that PPR was a facility where they would be able to remain for the remainder of their lives, as well as damages for breach of contract, breach of fiduciary duty, and the serious emotional distress Defendants’ unconscionable conduct has visited on Plaintiffs and their families.

5. This action also challenges 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. The New York State Department of Health’s approval of the Closure Plan was arbitrary and capricious and affected by errors of law. 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 i; 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).

6. Those Plaintiffs that remain in the facility – Rosalind Blank, Hanna Eskin, Lillian Guide, Gorge Melamed, Annemarie Mogil, Alice Singer, Paula Atlas and Henrietta Hallenborg – seek 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. They 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.

7. 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

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

9. 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

10. Plaintiff MARY BERGER is a person with a disability who resided at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

11. Plaintiff CANDACE BLANDFORD is a person with a disability who resided at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

12. Plaintiff ROSALIND BLANK is a person with a disability who resides at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613. Plaintiff BLANK has a current lease for her apartment at Prospect Park Residence, and that lease ends on January 31, 2014.

13. Plaintiff HANNA ESKIN is a person with a disability who resides at the PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

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

15. Plaintiff BELLA HORNUNG is a person with a disability who resided at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

16. Plaintiff GEORGE MELAMED is a person with a disability who resides at PPR, 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.

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

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

19. Plaintiff JENNIFER STOCK is the Temporary Administrator of the estate of Jack Stock, a person with a disability who resided at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

20. Plaintiff LILLIAN S. MARKS resided at PPR until November, 2014.

21. Plaintiff PAULA ATLAS resides at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

22. Plaintiff RUTH GURTON resided at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

23. Plaintiff HENRIETTA HALLENBORG resides at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

24. Plaintiff TRINA KRUGER, resided at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

25. Plaintiff JOACHIM SCHROBSDORFF resided at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

26. Plaintiff RUTH SILVERMAN resided at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

27. Plaintiff BESS NEWMAN resided at PPR, located at 1 Prospect Park West, Brooklyn, NY 11215-1613.

28. 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").

29. 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.

30. 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.

31. 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.

32. 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.

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

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

THE FACTS

40. Plaintiffs are present and former residents of PPR.

41. The PPR residents are elderly – their average age is 88, and some are over 100. Plaintiff Lillian S. Marks is 107. Given their advanced age, and the host of physical and mental impairments they suffer – ranging from dementia, depression, anxiety and cognitive impairments to cardiac disease, diabetes, osteoporosis and immobility – they require special living arrangements and services to accommodate their needs. As a result, Plaintiffs' options for viable living arrangements are limited.

42. Plaintiffs chose to move to PPR because they expected – and, indeed, upon information and belief, it was expressly represented to them – that the facility would meet their needs, and they would be able to spend the rest of their lives at the residence.

43. Plaintiffs entered into residency and/or lease agreements with PPR, as recently as November of 2013, some of which, upon information and belief, by their terms run through December 31, 2014, or January 31, 2015. At the time Plaintiffs entered into the residency and/or lease agreements, Defendants PPR, Deitsch, Pomerantz, and Zalmanov (the "PPR Defendants") provided assurances that they would be able to age in place with the expectation that as Plaintiffs' health deteriorated, PPR would be able to provide Plaintiffs with the additional services they needed until their deaths.

44. In reliance on the PPR Defendants' representations, and the terms of their agreements with Defendants, Plaintiffs made substantial investments to move to PPR, including paying required move-in fees, and to furnish, decorate and modify their apartments at PPR to suit their specific needs. They have also agreed to pay – and did pay – large monthly lease payments to PPR.

45. PPR has provided a beneficial social environment for Plaintiffs and a level of care and attention that they believed would allow them to age in place. Equally importantly, the location of the residence has allowed Plaintiffs to maintain regular contact with family members, improving their morale and overall health and well-being. As a result, as Defendants well know, relocating from PPR is not simply an inconvenience, but an utterly devastating turn of events for the residents. Those Plaintiffs who have not moved out have experienced a deterioration in their social environment, since at present, only approximately 20 residents remain in place.

46. The PPR Defendants do not merely have an arms-length business relationship with Plaintiffs, as exists between a landlord and tenant. Quite to the contrary, as residents of PPR, Plaintiffs have a special relationship of trust with the PPR Defendants on whom they rely to arrange for all their daily needs, including coordinating meals and medical care, managing their income and public entitlement benefits, and monitoring their activities in, and their coming and going from, the residence. Indeed, by law, an adult home like PPR is required to provide a "24-hour-a-day program of supervision, care and services" to its residents. As a result of that special relationship, the PPR Defendants owe a fiduciary duty to Plaintiffs.

47. Contrary to Plaintiffs settled expectations, based on the PPR Defendants' representations to them, the management of PPR, including its principal Defendant Haysha Deitsch, had long anticipated closing the facility, among other reasons, because of the expiration of a tax abatement in 2014 that would cause PPR's tax burden to rise significantly. Upon information and belief, the PPR Defendants were aware of loss of the tax abatement as early as 2006 and had been planning for years to close the facility with the goal of turning the property into a luxury apartment building.

48. In breach of their fiduciary duties, however, the PPR Defendants failed to disclose their intentions to the Plaintiffs. Instead, the PPR Defendants continued to accept new residents at PPR for years after they had made the decision to shut it down, all the while collecting lucrative rent payments from the class members based on the false understanding that PPR would be able to meet their need for a safe and supportive environment that would allow them to age in place.

49. On or about September 27, 2013, the PPR Defendants submitted a closure plan for PPR to the NYSDOH – again, without breathing a word of the plan to the residents. In fact, even after the submission of the closure plan, the PPR Defendants still continued to solicit and accept new residents to PPR, despite knowing that they would be asking those residents to relocate within months of their moving in.

50. The closure plan reveals the PPR Defendants' real agenda: to capitalize on the lucrative real estate market in the area of Park Slope, Brooklyn, by converting the residence to a luxury apartment building.

51. Defendants represented to the NYSDOH that, in connection with the closure:

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.

However, upon information and belief, the "plan" was a largely *pro forma* document, offering no serious strategy for assessing and accommodating the residents' needs during or after the closure.

52. On or about February 24, 2014, the NYSDOH approved the closure plan. That decision has been challenged as “arbitrary and capricious” in an Article 78 proceeding that is still pending in this Court.

53. On or about March 5, 2014 – nearly six months after the PPR Defendants submitted their closure plan to the NYSDOH – Defendants finally revealed to the residents their long-held plan to close PPR. On that date, the PPR Defendants sent the residents a letter regarding the closure and providing 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.

54. With no alternative arrangements in place, the sudden announcement that they were about to lose their home and their friends (the other residents of PPR) caused serious emotional distress to PPR’s elderly residents.

55. On or about March 10, 2014, the Plaintiffs’ fears were compounded when Defendants delivered to the residents, including each of the Plaintiffs, a written notice that their residency agreements would be terminated on Sunday, June 8, 2014 – meaning that they would have just 90 days to make alternative living arrangements and coordinate a move. Such an announcement would be traumatizing to anyone, but to the elderly and frail residents of PPR, it was utterly devastating, posing a serious threat to their physical and emotional well-being. The notice also amounted to an anticipatory breach of the lease agreements that, upon information and belief, did not terminate until December.

56. The timing of the announcement – after the closure plan was apparently a fait accompli, and only 90-days prior to the supposed termination of the residency agreements – was no accident; it was a deliberate tactic, designed to put maximum pressure on the residents to leave PPR. In large part, this tactic worked, to the Plaintiffs' serious detriment. Knowing that there are limited alternative options that can accommodate their special needs, and fearing being left without a place to live in a matter of weeks, approximately 100 residents have already left PPR. Having received no meaningful assistance from Defendants – contrary to Defendants' fiduciary duties and their assurances to the NYSDOH – these Plaintiffs were compelled to incur significant out-of-pocket costs locating and arranging placement in a new facility. Upon information and belief, under the severe time pressure Defendants imposed on them, some of the Plaintiffs were forced to move to facilities that are unable to provide all the services they require in the least restrictive environment.

57. Plaintiffs Rosalind Blank, Hanna Eskin, Lillian Guide, Gorge Melamed, Annemarie Mogil, Alice Singer, Paula Atlas and Henrietta Hallenborg have remained at PPR. Upon information and belief, notwithstanding assurances provided to both Plaintiffs and Defendants NYSDOH, Shah and Zucker, the quality of services at PPR has seen a steep decline, including but not limited to (a) staff attrition without replacement; (b) failure to bathe residents on a routine basis; (c) diminished housekeeping services; (d) worsening food quality; (e) removal of services, such as the "beauty salon" that are essential to maintaining the residents' quality of life; and (f) the failure to pay home health aides.

58. The foregoing compromised services have had a detrimental impact upon Plaintiffs, because Plaintiffs are unable to groom themselves and/or clean their own apartments.

59. Notwithstanding the foregoing compromised services, Plaintiffs continue to pay rent and fees pursuant to Plaintiffs' residency agreements.

60. The PPR Defendants have failed to assist Plaintiffs in securing alternate accommodations. The only communication between Plaintiffs and the PPR Defendants 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 inconveniently located.

61. Defendants NYSDOH, Shah and Zucker have never contacted Plaintiffs concerning any of the aforementioned problems.

62. 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.

63. 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

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

65. Defendants NYSDOH, Shah, and Zucker's approval of the PPR Defendants' Closure Plan was arbitrary and capricious and affected by errors of law.

66. PPR is an adult care facility.

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

68. 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).

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

70. As set forth 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.

71. As set forth 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.

72. As set forth 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.

73. As set forth 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

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

75. 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.

76. 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.

77. 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.

78. 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

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

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

81. 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.

82. 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

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

84. 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."

85. 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.

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

87. 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

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

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

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

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

92. 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.

93. 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).

94. 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.

95. 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).

96. 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.

97. 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.

98. 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

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

100. 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”

101. “[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).

102. 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).

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

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

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

106. 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.

107. 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.

108. 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

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

110. 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.

111. 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.

112. 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.

113. Upon information and belief, PPR Defendants 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.

114. 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

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

116. PPR Defendants operate an assisted living residence that is authorized by the NYSDOH to operate a special needs assisted living program.

117. PPR Defendants advertise their operation of a special needs assisted living program.

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

119. Upon information and belief, PPR Defendants 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.

120. 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

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

122. 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.

123. The PPR Defendants knew when admitting Plaintiffs to PPR that Plaintiffs had long-term care needs. Because of the PPR Defendants' plan to close the facility, they were unable to meet these needs.

124. PPR Defendants admitted Plaintiffs to the facility when they intended to close the facility shortly and even after the Closure Plan had been submitted.

125. PPR Defendants 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

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

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

128. 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.

129. Upon information and belief, PPR Defendants 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.

130. 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."

131. Upon information and belief, PPR Defendants 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.

132. 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

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

134. 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.

135. Upon information and belief, PPR Defendants 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.

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

137. 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

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

139. Pursuant to 10 NYCRR §§ 1001.4(j)(2)(ii), 1001.4(j)(2)(iii) and 1001.4(j)(4), PPR Defendants 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.

140. Upon information and belief, PPR Defendants 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.

141. Accordingly, PPR Defendants 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

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

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

144. Upon information and belief, the terms “admission agreement” and “residency agreement” are used interchangeably.

145. 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”.

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

147. 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.

148. 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.”

149. 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.

150. 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.

151. Upon information and belief, PPR Defendants 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.

152. Upon information and belief, PPR Defendants 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.

153. Upon information and belief, PPR Defendants 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.

154. Upon information and belief, PPR Defendants 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.

155. Plaintiffs have been and continue to be injured by the PPR Defendants' breach and have suffered and continue to suffer damages.

156. As a direct and proximate cause of the PPR Defendants' 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.

157. Accordingly, Plaintiffs are entitled to actual and consequential damages resulting from the PPR Defendants' breaches.

FOURTEENTH CLAIM FOR RELIEF:

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

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

159. 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.

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

161. Plaintiff BLANK has a Lease Agreement that terminates on January 31, 2015.

162. PPR Defendants 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.

163. PPR Defendants have violated Plaintiff BLANK's rights under the Lease Agreement by informing her that her Lease Agreement will be terminated on June 8, 2014 when the Lease Agreement does not terminate until January 31, 2015.

164. As a direct and proximate cause of the PPR Defendants' breaches of the Lease Agreements, Plaintiffs MELAMED and BLANK have suffered and continue 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

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

166. Defendants owed Plaintiffs a fiduciary duty based upon the special relationship of the parties. Defendants arrange many, if not most, of Plaintiffs' basic needs for food, shelter, and medical care. Defendants monitor Plaintiffs' incoming mail, select their companions at PPR, offer their food at scheduled times each day, assign them a seat for each meal, and require them to sign in and out of the facility every time they enter or leave the home. Plaintiffs must even advise PPR if Plaintiffs intend to miss a single meal.

167. 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."

168. Defendants have an affirmative obligation to provide case management services to coordinate Plaintiffs' physical and mental health needs as well as their income and public benefit entitlements.

169. Defendants possess superior knowledge of the services available to incoming adult home residents.

170. Plaintiffs justifiably reposed confidence in Defendants. Based on Defendants' statutory and contractual obligations to coordinate Plaintiffs' care and public benefits, Plaintiffs reasonably relied on Defendants' superior expertise and knowledge.

171. Defendants breached their fiduciary duties to Plaintiffs by:

- a. Failing to disclose their intention to close PPR;
- b. Falsely representing to Plaintiffs that they would be able to age in place at PPR, when Defendants knew that they intended to close the facility and convert it into a luxury apartment building;
- c. Announcing the closure of the facility in a manner calculated to impose the maximum pressure on Plaintiffs, causing Plaintiffs to suffer unnecessary costs and mental anguish;
- d. Failing to provide essential services to Plaintiffs; and
- e. Failing to prepare and implement a closure plan that protects the rights and services Plaintiffs relied upon Defendants to provide, including failing to provide adequate services while Plaintiffs are still living at PPR, and failing to assist Plaintiffs in making arrangements for continued care that meet each Plaintiff's social, emotional, and health needs.

172. As a result of Defendants' breaches of their fiduciary duties, Plaintiffs are entitled to damages in an amount to be proven at trial, including without limitation restitution of move-in costs and rental payments; and compensation for relocation costs and mental suffering.

SIXTEENTH CLAIM FOR RELIEF:RECKLESS/NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
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. The PPR Defendants knew that the closure of Prospect Park would be a devastating development for the Plaintiffs.

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

176. The PPR Defendants' actions constitute a reckless and/or negligent infliction of emotional distress.

177. 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

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

179. The PPR Defendants 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.

180. The PPR Defendants' conduct was consumer-oriented.

181. Plaintiffs were injured by the PPR Defendants' conduct in an amount to be proven at trial.

182. 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 the PPR Defendants:
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;

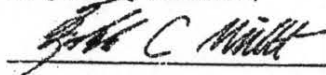
2. Pursuant to CPLR §§ 3001 and 7801 *et seq.*, from involuntarily transferring or constructively evicting any of the Plaintiffs unless and until a court rules in favor of PPR after PPR institutes a special proceeding in court pursuant to §§ 461-g and 461-h; and
3. And all those acting in concert with Defendants, from continuing to violate the Americans with Disabilities Act and Rehabilitation Act through the policies and practices alleged here.

(E) Awarding Plaintiffs:

1. Compensatory and punitive damages in an amount to be determined at trial;
2. Treble damages and attorneys' fees, pursuant to GBL § 349;
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
December 11, 2014

Respectfully submitted,



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