

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

KIMBERLY O’CONNOR and H.O.P.E., INC.,  
d/b/a/ HOPE FAIR HOUSING CENTER,  
an Illinois Not-for-Profit Corporation;

Plaintiffs;

v.

EDEN MANAGEMENT LLC, d/b/a EDEN  
SUPPORTIVE LIVING; 311 LINCOLNWAY  
PROPERTIES LLC d/b/a EDEN FOX VALLEY;  
222 STATE STREET PROPERTIES LLC, d/b/a  
EDEN CHAMPAIGN LLC; MICHAEL  
HAMBLET SR.; MICHAEL HAMBLET JR.;  
MARIA DROSOS; CARLEEN CURALLI;  
KIMBERLY CROSS; GOVERNOR PATRICK  
QUINN, in his official capacity; JULIE HAMOS,  
in her official capacity as Director of the Illinois  
Department of Healthcare and Family Services;  
THERESA EAGELSON WYATT, in her official  
capacity as Acting Medicaid Director for DHFS;  
KELLY CUNNINGHAM, in her official capacity  
as Chief of DHFS Bureau of Long Term Care;  
JOHN K. HOLTON, in his official capacity as  
Director of the Illinois Department on Aging; and  
MICHELLE R.B. SADDLER, in her official  
capacity as the Secretary of the  
Illinois Department of Human Services.

Defendants.

Case No. 13 cv 7391

Judge Joan B. Gottschall  
Magistrate Judge Jeffrey T. Gilbert

Jury Trial Demanded

**COMPLAINT**

Plaintiffs, KIMBERLY O’CONNOR and H.O.P.E., INC., d/b/a/ HOPE FAIR HOUSING CENTER, on behalf of themselves, and seeking injunctive relief affecting others similarly situated, by and through their attorneys, Soule, Bradtke & Lambert and AARP Foundation Litigation, file their complaint against Defendants EDEN MANAGEMENT LLC, d/b/a EDEN SUPPORTIVE LIVING; 311 LINCOLNWAY PROPERTIES LLC d/b/a EDEN FOX

VALLEY; 222 STATE STREET PROPERTIES LLC, d/b/a EDEN CHAMPAIGN LLC; MICHAEL HAMBLET SR.; MICHAEL HAMBLET JR.; MARIA DROSOS, CARLEEN CURALLI (collectively “the Eden Defendants”); GOVERNOR PATRCK QUINN; JULIE HAMOS; THERESA EAGELSON WYATT; KELLY CUNNINGHAM; JOHN K. HOLTON; MICHELLE R.B. SADDLER (collectively “the State of Illinois Defendants,” all named in their official capacities); as follows:

### **Nature of the Action**

1. This action arises out of the policy and practices of the owners and operators of a Supportive Living Facility and its management (“Eden Defendants”), regulated and funded by the State of Illinois, through the Departments of Healthcare and Family Services, Department on Aging and Department of Human Services (“State of Illinois Defendants”) to categorically exclude, deny and reject any and all applicants for its facilities who have, have had, or whom they believe to have, any mental health issues, impairments, disabilities, diagnosis or problems, without any consideration, inquiry, or evaluation as to whether the applicants are eligible for or qualified for its Supportive Living Facility.

2. The Eden Defendants have a “no mental illness” policy, which is readily communicated to applicants for housing. Plaintiff O’Connor was denied housing by the Eden Defendants on the mere threshold basis of having a “mental health history” or “mental health diagnosis.” HOPE Fair Housing Center received complaints about Eden’s “no mental illness” policy and conducted testing that confirmed it. O’Connor and HOPE Fair Housing Center (“HOPE”) challenge the Eden Defendants’ discriminatory policy of categorically denying housing and services to any and all people with mental health diagnoses in violation of the Fair Housing Act of 1968, as amended (“FHA”), the Americans with Disabilities Act (“ADA”), and

Section 504 of the Rehabilitation Act of 1973 (“§ 504” or “the Rehabilitation Act”).

3. The Eden Defendants intentionally refused supportive living housing to Plaintiff O’Connor because of her disability status and membership in a protected class in violation of the Fair Housing Act of 1968, as amended, 42 U.S.C. 3601 *et seq.*

4. The Eden “no mental illness” policy is uniformly carried out by Eden representatives, who flatly reject any tenants from consideration who reveal informally or formally that they have a mental health history, regardless of their circumstances and without proper screening or assessment.

5. The Eden Defendants receive federal and state funds through the state-administered Medicaid program, and are thus covered by Title II of the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.* and the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*, and their discriminatory denials of services and housing to O’Connor violate the anti-discrimination mandates in those laws.

6. This is an action for declaratory judgment, permanent injunctive relief, and damages for discrimination on the basis of disability in the provision of housing and supportive services in violation of the Fair Housing Act, Americans with Disabilities Act, and Rehabilitation Act.

7. The State of Illinois has created the Supportive Living Facility program to increase opportunities to ensure that people with disabilities are able to live in the most integrated settings possible by using Medicaid funding, who would otherwise go to nursing home care, in order to provide care in a community housing setting in accordance with the ADA’s *Olmstead* mandate. It is crucial to the purposes of the FHA, ADA, and other civil rights laws that the Eden Defendants’ discriminatory practices be declared illegal and enjoined.

8. The State of Illinois Defendants are joined under F.R.C.P. 19 because, in their absence, the Court cannot accord the complete injunctive relief sought by the Plaintiffs under Title II of the ADA and under the Rehabilitation Act. Appropriate relief must include a requirement that the State revise and issue appropriate guidance, rules, and procedures applicable to Supportive Living Facilities that will ensure non-discrimination. Specifically, to prevent bad actors in the field of Supportive Living Facilities such as Eden from implementing “no mental illness” policies affecting Medicaid recipients, the Illinois §1915(c) Home and Community-Based Services Waiver application (“HCBS Waiver,” Exhibit 1) and Illinois Administrative Code Chapter I, Section 146.220 must be specified to require licensed facilities to adopt a detailed non-discrimination policy concerning persons with disabilities including mental disability, and to specify that proper screening of prospective residents (including persons with mental health diagnoses) should be done by a proper State official, based on appropriate objective criteria related to suitability and not merely diagnoses, status, or stereotypes, and should fully comply with the Fair Housing Act.

### **Jurisdiction and Venue**

9. This Court has jurisdiction over the subject matter of this case pursuant to 42 U.S.C. § 3613 and 28 U.S.C. §§ 1331 and 1343.

10. This Court has jurisdiction over Plaintiffs’ action for declaratory relief pursuant to 28 U.S.C. § 2201 and F.R.C.P. 57. Injunctive relief is authorized by 42 U.S.C. § 3613 and F.R.C.P. 65. The State of Illinois Defendants are joined as required parties for full relief under F.R.C.P. 19.

11. Venue is proper in the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. § 1391 because the Plaintiffs and the Defendants reside within the district and the

unlawful events or omissions giving rise to the claims occurred in the district.

## **Parties**

### **Plaintiffs**

12. Plaintiff Kimberly O'Connor is a 59-year-old citizen of the United States who resides in Elgin, Illinois.

13. Ms. O'Connor is a person with a "disability" or "handicap"<sup>1</sup> under the Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act of 1973. She is impaired in her abilities to walk outside, climb stairs, keep house, and prepare meals.

14. Plaintiff H.O.P.E., Inc., doing business as HOPE Fair Housing Center ("HOPE") is a private, nonprofit corporation incorporated under the laws of Illinois with its principal place of business located at 245 W. Roosevelt Road, Building 15, Suite 107, in West Chicago, Illinois. HOPE's mission includes promoting equal opportunity in housing and eliminating unlawful discriminatory housing practices. HOPE works to accomplish these goals through education and outreach, public policy initiatives, training, advocacy, investigation of fair housing violations, and enforcement.

15. HOPE's purpose is to eliminate housing discrimination and segregation due to race, color, religion, national origin, sex, disability, familial status, or any other characteristics protected under state or local laws, for all economic levels of society. HOPE serves many counties in Northern and North Central Illinois, including but not limited to: Cook, Kendall, Kane, Grundy, DuPage, McHenry, and Will counties.

16. HOPE counsels both home seekers and housing providers on their rights and responsibilities under fair housing laws. HOPE also provides complaint investigation services

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<sup>1</sup> The term "disability" is legally synonymous with "handicap," and "disability will be used in this Complaint.

including the use of testers to help identify housing discrimination. All of these services are provided free of charge to the community. HOPE also provides professional and confidential consulting, training, and compliance services to rental housing providers, real estate companies, mortgage lenders, homeowners' insurance companies, municipalities, and governmental agencies.

### **The Eden Defendants**

17. Defendant Eden Management LLC, doing business as Eden Supportive Living (“Eden Management”), is a limited liability company, licensed and doing business within Illinois. Defendant Eden Management manages and operates a state-licensed Supportive Living Facility located at 940 W. Gordon Terrace in Chicago, Illinois 60613 (hereinafter referred to as “Eden Chicago”). Defendant Eden Management’s principal office is also located at 940 W. Gordon Terrace in Chicago, Illinois 60613. Defendant Eden Management is licensed by the Illinois Department of Healthcare and Family Services to operate Supportive Living Facilities that provide housing and services for residents between ages 22 and 64 with disabilities.

18. Defendant 311 Lincolnway Properties LLC (“Lincolnway Properties”) is a limited liability company, organized and operating under the laws of Illinois with the assumed name “Eden Fox Valley.” Lincolnway Properties manages and operates a state-licensed Supportive Living Facility located at 311 S. Lincolnway Hwy, North Aurora, Illinois 60652 (hereinafter referred to as “Eden Fox Valley”). Defendant Lincolnway Properties is licensed by the Illinois Department of Healthcare and Family Services to operate Supportive Living Facilities that provide housing and services for residents between ages 22 and 64 with disabilities.

19. Defendant 222 State Street Properties LLC (“State Street Properties”) is a limited liability company, organized and operating under the laws of Illinois with the assumed name

“Eden Champaign LLC.” State Street Properties manages and operates a state-licensed Supportive Living Facility located at 222 N. State Street, Champaign, Illinois 61820, and doing business as Eden Supportive Living of Champaign (hereinafter referred to as “Eden Champaign”). Defendant State Street Properties is licensed by the Illinois Department of Healthcare and Family Services to operate Supportive Living Facilities that provide housing and services for residents between ages 22 and 64 with disabilities.

20. Eden Champaign is supervised by Eden Management in Chicago and operates under the unified policies of all Eden Defendants.

21. Defendant Michael J. Hamblet Sr. is the owner and co-manager of both Eden Management and Lincolnway Properties. On information and belief, Mr. Hamblet Sr. also holds an ownership interest in and management control over State Street Properties. Mr. Hamblet Sr. is the registered agent for Eden Management, Lincolnway Properties, and State Street Properties. Mr. Hamblet Sr. resides at 1226 Grant Road, Northbrook, Illinois 60062.

22. Defendant Michael J. Hamblet Jr. is the co-manager of Eden Management, Lincolnway Properties, and the manager of State Street Properties. On information and belief, Mr. Hamblet Jr. also holds an ownership interest in Eden Management, Lincolnway Properties, and State Street Properties. Mr. Hamblet Jr.’s address is listed as 940 West Gordon Terrace, Chicago, Illinois 60613.

23. Defendant Maria Drosos is a Director of Marketing for the Eden Defendants. Ms. Drosos’ office is located at the Eden Chicago location. Ms. Drosos provides Eden’s policy of “no mental illness” to persons making inquiries about availability of and application for supportive living housing and services provided by Eden.

24. Defendant Carleen Curalli (formerly Carleen Lamaster) is a Director of Marketing for the Eden Defendants. Ms. Curalli's office is located at the Eden Fox Valley location. Ms. Curalli provides Eden's policy of "no mental illness" to persons making inquiries about availability and application for supportive living housing and services provided by Eden.

25. Defendant Kimberly Cross is the Executive Director of the Eden Champaign location. Ms. Cross provides Eden's policy of "no mental illness" to persons making inquiries about availability and application for supportive living housing and services provided by Eden.

26. The Eden Defendants are collectively referred to as "Eden" throughout the Complaint.

#### **The State of Illinois Defendants**

27. Defendant Patrick J. Quinn is the Governor of the State of Illinois, a public entity covered by Title II of the ADA. 42 U.S.C. §12131(1). Governor Quinn, sued in his official capacity, is ultimately responsible for ensuring that Illinois operates its service programs in conformity with the ADA and the Rehabilitation Act. 20 ILCS 2407/20(c).

28. Defendant Julie Hamos, sued in her official capacity, is the Director of the Illinois Department of Healthcare and Family Services ("DHFS"), the state agency responsible for providing health care coverage for the citizens of Illinois and for administering medical assistance programs and other fiscal programs, including the Medicaid Home and Community-Based Services (HCBS) waiver program at issue in this case. Defendant Hamos is responsible for the oversight, supervision and control of DHFS and its divisions, and is ultimately responsible for ensuring that DHFS' services for people with disabilities are provided in conformance with the law.

29. Defendant Theresa Eagelson Wyatt, sued in her official capacity, is the Director

of DHFS' Division of Medical Programs. Defendant Eagelson Wyatt is DHFS' listed signatory on the HCBS waiver application at issue in this case.

30. Defendant Kelly Cunningham, sued in her official capacity, is the Chief of DHFS' Bureau of Long Term Care. Defendant Cunningham is DHFS' listed contact person on the HCBS Waiver application at issue in this case.

31. Defendant Michelle R.B. Saddler, sued in her official capacity, is the Secretary of the Illinois Department of Human Services ("DHS"), the state agency responsible for administering Illinois' long-term care system for people with disabilities. Secretary Saddler is responsible for the oversight, supervision and control of DHS and its divisions, and is ultimately responsible for ensuring that DHS' services for people with disabilities are provided in conformance with the law.

32. Defendant John K. Holton, sued in his official capacity, is the Director of the Illinois Department on Aging ("DoA"), the state agency that, along with DHFS and DHS, is responsible for assessing the performance of contractors and staff performing initial level of care determinations at Supportive Living Facilities.

### **Factual Allegations**

#### **Kimberly O'Connor**

33. Ms. O'Connor' receives Social Security payments for which she qualifies based on disability.

34. Ms. O'Connor is or would be eligible for Medicaid benefits as administered by the State of Illinois in order to reside in a Supportive Living Facility.

35. Ms. O'Connor is a person with a handicap as defined by 42 U.S.C. §§ 3602(h)(1)-(3) and a person with a disability as defined by 42 U.S.C. § 12102 in that she has physical and

mental impairments which substantially limit one or more of her major life activities, she has a record of such impairments, and Defendants regarded her as having such impairments.

36. Ms. O'Connor's physical disabilities include a severe heart condition, ruptured discs, diabetes, neuropathy, and recurring ulcers that result in reduction in mobility, equilibrium problems, and physical endurance issues.

37. In particular, her ability to perform the activities of daily living such as food shopping, meal preparation, cooking, and cleaning are impaired.

38. As a result of her impairments and following a hospitalization for her physical medical conditions, Ms. O'Connor qualified for and sought out the supportive living services as provided by the Eden Defendants, specifically assistance with nutrition, the provision of meals, housekeeping, and laundry. She was also interested in other services such as medication reminders concerning a complex array of medications Ms. O'Connor takes relating to her physical disabilities.

39. Eden Defendants categorically rejected Ms. O'Connor solely on the basis of her mental health diagnosis.

40. In late October 2012, Ms. O'Connor had been hospitalized and, upon preparation for discharge, was searching for supportive housing. Ms. O'Connor called Defendant Eden's Fox Valley location to inquire about becoming a resident.

41. During this phone call, Defendant Eden's representative asked Ms. O'Connor several health-related questions. Ms. O'Connor informed Defendant Eden's representative that she had heart problems and diabetes.

42. Ms. O'Connor informed Defendant Eden's representative that she also had a mental health diagnosis.

43. Defendant Eden's representative told Ms. O'Connor that Defendant Eden did not accept residents with her diagnosis and hung up the phone.

44. In approximately November 2012, Ms. O'Connor again called Defendant Eden's Fox Valley location to ask about becoming a resident, and spoke to a different representative of Defendant Eden.

45. This time, when Defendant Eden's representative inquired into the nature of Ms. O'Connor's disability, Ms. O'Connor told her that she had heart disease and diabetes, which resulted in her need for supportive living services. She did not tell Defendant Eden's representative that she had a mental health diagnosis.

46. This time, Defendant Eden's representative told Ms. O'Connor that she could view the property after she was prescreened. The prescreening was scheduled for December 6, 2012.

47. Ms. O'Connor contacted a representative from Defendant Eden's Fox Valley location again on approximately December 4, 2012. Ms. O'Connor asked the representative if it would be a problem if she had her particular mental health diagnosis.

48. Defendant Eden's representative said that Defendant Eden could not accept her if she had *any* mental health diagnosis, including, for example, a diagnosis of depression.

49. Ms. O'Connor requires no additional supportive services from Eden as a result of her mental health diagnosis.

50. Ms. O'Connor is able to meet and fulfill all program and residency requirements at Eden, and her mental health diagnosis does not change nor affect her ability to meet or perform any such program or residency requirements.

51. As a direct result of and after rejection by Eden, Ms. O'Connor became homeless

and lived in shelters. While searching the classified advertisements for somewhere to live, she learned about HOPE and contacted HOPE for investigation into Defendants' discriminatory conduct.

52. Ms. O'Connor would benefit from being integrated within a Supportive Living Facility, rather than being excluded from a community setting with services altogether or being required to live in a more restrictive setting.

53. As a direct and proximate result of Defendants' discriminatory policies, practices and actions, Ms. O'Connor suffered and in the future will continue to suffer economic loss, humiliation, embarrassment, and emotional distress.

#### **HOPE Tester #1**

54. As a result of complaints concerning Plaintiff O'Connor and as part of a detailed investigation on the part of HOPE that ensued on her behalf, on January 28, 2013, a tester utilized by HOPE ("Tester #1") placed a telephone call to the Eden Chicago location, and requested to speak to someone regarding the facility, its policies, and its available apartments.

55. Tester #1 was transferred to the voicemail of Maria Drosos, Marketing Director of the Eden Chicago location.

56. On January 29, 2013, Tester #1 placed a telephone call to the Eden Chicago location, and requested to speak to Ms. Drosos. Tester #1 was informed that Ms. Drosos was not in, so Tester #1 left a voicemail, stating that she was calling to find out more about the facility and asking if any two-bedroom apartments were available.

57. On January 30, 2013, Ms. Drosos returned Tester #1's phone call and left a voicemail, stating in part, "Here at Eden, it's for people 22 through 64, plus physical disability—no mental illness. 24-hour care, housekeeping, laundry service. All their meals are provided for

them.”

### **HOPE Tester #2**

58. On August 12, 2013, a tester utilized by HOPE (“Tester #2”) placed a telephone call to the Eden Champaign location, and stated that she was looking for a Supportive Living Facility in Champaign for her son.

59. Tester #2 was transferred to the phone line of Defendant Kimberly Cross, the Executive Director of the Eden Champaign location.

60. Ms. Cross requested that Tester #2 call her back in ten minutes.

61. Tester #2 called Ms. Cross back ten minutes later. During the phone call, Ms. Cross asked Tester #2 what disability her son had. Tester #2 stated that her son had cerebral palsy.

62. Ms. Cross stated that, even though construction was not yet complete, three floors were already rented. Ms. Cross informed Tester #2 that the Eden Champaign location was the only downstate facility that cared for the 22-64 age range.

63. Later that day, Tester #2 called Ms. Cross again. Tester #2 stated that she looked at Eden’s website, and it specified only physical disabilities. Tester #2 stated to Ms. Cross that her son’s primary diagnosis was cerebral palsy, but that he had adjustment disorder and depression.

64. Ms. Cross stated that Eden did not rent to people with a mental disability as a primary diagnosis, and that Eden could not accept people with schizophrenia or bipolar disorder.

65. Ms. Cross instructed Tester #2 not to list depression on the application.

### **HOPE Tester #3**

66. On August 20, 2013, a tester utilized by HOPE (“Tester #3”) placed a telephone

call to the Eden Fox Valley location, and stated that she was looking for information about the property and whether any units were available.

67. Tester #3 was transferred to the voicemail of Defendant Carleen Curalli, Marketing Director for the Eden Fox Valley location.

68. Tester #3 left a voicemail stating that she was calling for information about supportive living and to inquire if any units were available.

69. After an exchange of voicemails, Ms. Curalli called Tester #3 on August 22, 2013.

70. During the conversation, Tester #3 stated that she had multiple sclerosis, that she was in a wheelchair, and that she also had bipolar disorder.

71. Ms. Curalli stated that Eden only serves clients with physical disabilities, and that none of Eden's residents can have a primary or secondary mental illness.

### **Eden**

72. At all times relevant, Eden engaged in common unified management policies and practices throughout and among all Eden Supportive Living locations, including Eden Chicago, Eden Fox Valley, and Eden Champaign, and among all the principals and employees of all Eden Supportive Living locations.

73. The Eden Defendants jointly engaged in a pattern of discriminatory conduct and programmatic violations as alleged herein towards Plaintiff O'Connor and other similarly situated individuals.

74. At all times relevant, the Eden Defendants maintained a joint website and jointly received applications through its web site and on paper.

75. Eden operates all Eden Supportive Living locations, including Eden Chicago,

Eden Fox Valley, and Eden Champaign, under a common policy and application process.

76. All faxed applications for any Eden location must be sent to Eden's Chicago, Illinois location.

77. Eden publishes a "Preliminary Application" (Exhibit 2) on its website and on information and belief distributes the same Preliminary Application to those who apply in person.

78. Eden requires applicants to either complete the Preliminary Application question that asks, "Any mental diagnosis? If so, explain," in writing, or, in the alternative to answer the question verbally so a representative can record the answer.

79. If the answer is "yes," – if the applicant indicates any "mental diagnosis" -- Eden categorically rejects them.

80. If the answer is "yes" – if the applicant indicates any "mental diagnosis" – Eden considers no further explanation, conducts no screening, never confirms whether the applicant actually has a true or accurate diagnosis, and never determines how or in what manner such a diagnosis may affect the applicant's housing or service needs.

81. Eden's "Preliminary Application" fails to include a list of the services Eden supplies as a Supportive Living Facility and thus fails to inquire whether the prospective resident needs those services. Instead, Eden's "Preliminary Application" inquires into the nature and severity of a prospective tenant's disability (both physical and mental).

82. For example, the Preliminary Application inquires about insulin, transferring, showering, memory, medication, and medication reminders. The application asks whether the applicant needs assistance and seeks identification by the applicant of a level of assistance needed.

83. According to its Director of Marketing, Defendant Drosos, Eden's discriminatory policy is: "Eden is for people 22 through 64, plus physical disability. No mental illness."

84. Eden's "no mental illness" policy is routinely orally communicated to prospective residents.

85. Eden's web site states it serves a population with physical disabilities, affirming its "no mental illness" policy. (Exhibit 3).

86. It is the policy and practice of Eden to routinely communicate to prospective residents that no one with a "mental diagnosis" is allowed, as indicated by the information provided in phone calls to Plaintiff O'Connor and the testers, and as demonstrated in Eden's Preliminary Application process.

87. Eden is compensated either by private paying residents, or from capturing funds from a participant's Social Security payment and Illinois Medicaid.

88. Eden's Preliminary Application, improper inquiries, and oral procedures rejecting any mental illness deprive prospective residents of any appropriate level of suitability screening by a qualified or licensed professional and bypass any due process considerations afforded under state and federal law.

### **State Of Illinois**

89. The Eden Defendants' Supportive Living Facilities were developed and built with the assistance of public funds through Illinois Housing Development Authority's ("IHDA") administration of Affordable Housing programs, which require compliance with federal fair housing laws and practices. *See, e.g., IHDA Low Income Housing Tax Credit Compliance Reference Guide, p. 10, "owners are required under the general use requirement to comply with the Fair Housing Act."* (Exhibit 4).

90. On a continuing and ongoing basis, the Eden Defendants receive public funds for participants through Illinois' administration of the Medicaid program.

91. Title II of the ADA and § 794(a) of the Rehabilitation Act require that public entities administering covered programs such as those here must do so in the most integrated setting appropriate to the needs of qualified individuals with disabilities. Both acts seek to avoid unduly segregating people with disabilities. 28 C.F.R. § 35.130(d); 28 C.F.R. pt. 35, App. A, p. 450; 29 U.S.C. § 794(a); 28 C.F.R. §41.51(d); *Olmstead v. L.C. ex re. Zimring*, 527 U.S. 581 (1999).

92. Supportive Living Facilities are generally contemplated by § 1915 of the Social Security Act, which permits states to administer Medicaid funds to facilities offering less than full spectrum nursing facility care.

93. The Illinois regulatory and administrative scheme under which Medicaid funds are provided to Supportive Living Facilities operates through a "Waiver" known as a § 1915(c) Home and Community-Based Services Waiver that allows some housing and service providers to receive Medicaid payments even though they offer less than full spectrum nursing home or medical care usually required for Medicaid funding eligibility. 42 U.S.C. § 1397n(b)-(h); 42 C.F.R. § 430.25(d). This Waiver is granted based upon the State's application to the federal Government and is drafted by the State.

94. Historically, federal non-discrimination principles have been applied to prevent persons with disabilities including mental disabilities from being segregated in institutions, including nursing homes, when they could live in less restrictive settings with or without the provision of appropriate services.

95. The FHA prohibits denial of housing to persons with disabilities.

96. Under 42 CFR Subpart C, 42 CFR 483.102(b), for facilities receiving Medicaid, a Preadmission Screening and Resident Review (PASRR) must be conducted. PASRR is a federally mandated screening and evaluation tool that is used to determine if nursing facility placement is appropriate or if these individuals can be better served in a more integrative setting *before* people with mental illness or developmental disabilities are being considered for nursing facility placements, that is, to prevent the dumping of vulnerable populations into an institutional rather than integrated setting. The evaluation also determines if the person needs specialized services to address his or her disability within the nursing facility.

97. PASRR contains particular screening criteria for persons with Mental Illnesses, with a view towards attaining the least restrictive setting and provision of needed services, and includes criteria based on daily living and case-by-case circumstances for determining “severe mental illness.” PASRR is not, however, intended to, based solely on a mere diagnosis, exclude a prospective resident from a facility in which they desire to live.

98. The Illinois Department of Healthcare and Family Services issued an Informational Notice on June 22, 2011 to Supportive Living Facilities stating that if the pre admission screen conducted by a qualified PAS agent determines a person has a serious and persistent mental illness, the person will simply be determined not to be appropriate for Supportive Living Facility admission.

99. The Illinois Department of Human Services Division of Mental Health has issued a “Contractor’s Procedure Manual,” for “Preadmission Screen/Mental Health” (“PAS/MH”).

100. Illinois’ PAS/MH manual states that persons believed to have severe mental illness are “ineligible” to live in Supportive Living Facilities. The PAS/MH manual fails to set forth appropriate standards for nondiscriminatory assessment of whether an individual with a

mental illness is nonetheless suitable to live in a Supportive Living Facility with the services provided or with independently secured additional services.

101. In its administration of the Medicaid program, the State of Illinois must comply with the anti-discrimination and anti-segregation provisions of the ADA and Rehabilitation Act. Moreover, administration of federally funded State programs affecting housing must comport with the FHA.

102. The Illinois Waiver language concerning Supportive Living Facilities does not presently refer to the FHA and does not set forth FHA-compliant criteria concerning determining “direct threat” in connection with its processes for screening persons with disabilities including mental illness.

103. The Illinois Waiver states that potential participants “must be without a primary or secondary diagnosis of developmental disability *and* serious and persistent mental illness” (emphasis supplied), but is silent as to the definition or proper determination of these terms and circumstances in compliance with the FHA.

104. The Illinois Waiver does require, in Appendix F-1 affording due process after denial, a detailed Pre-Admission Screen (“PAS”) by a qualified Department of Human Services screening agent for “potential participants known or suspected of having a primary or secondary diagnosis of a developmental disability *or* serious and persistent mental illness.” (emphasis supplied). But Appendix F-1 of the Illinois Waiver does not specify compliance with the FHA.

105. The Illinois Administrative Code concerning Healthcare and Family Services and, specifically, Supportive Living Facilities also omits the FHA nondiscrimination requirements concerning persons with disabilities, with a focus on actual facts relating to suitability. 89 Ill.Admin. Code § 146.220. The Illinois Administrative Code requires full screening (which

Eden does not do), but also repeats the language that participants must “be without a primary or secondary diagnosis of developmental disability or serious and persistent mental illness.”

106. The State of Illinois’ regulations and § 1915(c) Waiver concerning potential exclusion of persons from Supportive Living Facilities based on a “serious and persistent mental illness,” as currently written permits exclusion based on disability status and diagnosis alone, as well as on stereotypes of persons with mental health diagnoses, and the Illinois Supportive Living Facility process does not most effectively prohibit bad actors like Eden from having blanket “no mental illness” policies or treating persons under the Medicaid program with mental health diagnoses from being treated differently than non-disabled or non-mentally disabled persons, based on their status alone.

107. The State of Illinois, at [www.sfillinois.com](http://www.sfillinois.com), states that Supportive Living Facility residents must be “without a primary or secondary diagnosis of developmental disability or serious and persistent mental illness,” without qualification, reference to an actual suitability determination, or reference to non-discrimination based on status or well settled integrative/least restrictive setting principles.

108. The State of Illinois Department of Healthcare and Family Services, at [www2.illinois.gov/hfs/medicalprograms](http://www2.illinois.gov/hfs/medicalprograms), defines eligibility criteria for Supportive Living Facilities to be “no primary or secondary diagnosis of developmental disability or serious and persistent mental illness.” This diagnosis-only statement is contrary to the Fair Housing Act and Americans with Disabilities Act.

109. The State of Illinois’ procedures do not define or apply an appropriate assessment of “serious and persistent” mental illness as regards the actual suitability of the prospective resident to live in a Supportive Living Facility.

110. Illinois has failed to safeguard screening processes for Supportive Living Facilities against discrimination based on disability status.

111. “No mental illness” policies in state-licensed Supportive Living Facilities receiving funds under the State’s administration of Medicaid will result in outright exclusion or unjustified institutional segregation or isolation of individuals receiving medical care from the State of Illinois, an actionable form of discrimination under Title II of the ADA.

112. The present Illinois scheme of administration of its Medicaid program concerning Supportive Living Facilities increases the likelihood of unduly segregating people with disabilities such as the plaintiffs as well as undermining their placement in the “most integrated setting appropriate” as required under Title II and the Rehabilitation Act.

113. In any event, the Eden Defendants’ facility level application of its “no mental illness” policy based on initial disclosure of a mental health diagnosis alone, does not even comply with the current screening, hearing and due process requirements under Illinois’ administration of the Medicaid program as it relates to Supportive Living Facilities, and violates the FHA.

114. The State of Illinois’ Waiver and procedures concerning resident selection and exclusion for Supportive Living Facilities fail to refer to or comply with the non-discrimination provisions of the Fair Housing Act, and fail to specify with clarity the proper occasion and manner of inquiries related to suitability of residents in Supportive Living Facilities.

### **Damages**

115. Plaintiff Kimberly O’Connor has suffered loss of her civil rights, emotional injury, humiliation, and embarrassment as a result of the discriminatory conduct of Defendants.

116. Plaintiff O’Connor suffered loss of appropriate housing and was required to live

in substandard housing, inadequate and inappropriate in general and for her specific needs, as a result of the discriminatory conduct of the Eden Defendants.

117. As a direct and proximate result of the discriminatory actions and statements of the employees and/or agents of the Eden Defendants, Plaintiff Kimberly O'Connor suffered and continues to suffer deprivation of her rights to equal housing opportunities regardless of her impairment or the perceived extent of her impairment.

118. The Eden Defendants' discriminatory actions have caused and are continuing to cause harm to Plaintiff HOPE by frustrating HOPE's mission of identifying and eliminating discriminatory housing practices in the State of Illinois. HOPE has made substantial efforts and expended considerable resources to ensure equal housing opportunities for all people, including people who have disabilities. The Eden Defendants' refusal to rent to Plaintiff Kimberly O'Connor on the basis of disability status has stifled HOPE's goal of achieving fair housing for all Illinois residents, by impeding HOPE's efforts to educate the public about discriminatory housing practices and impeding HOPE's efforts to provide counseling and referral services to the public about equal housing opportunities. In addition, Defendants' refusal to rent to Plaintiff Kimberly O'Connor has caused HOPE to divert scarce resources away from its usual education, outreach, counseling, investigation and referral services, in order to investigate and counteract the Defendants' unlawful practices.

119. The Eden Defendants, unless enjoined, will continue to engage in the pattern or practice of discrimination and unlawful conduct described above. Plaintiffs have no adequate remedy at law. Plaintiffs are now suffering and will continue to suffer irreparable injury from Defendant's acts and unlawful conduct unless relief is provided by this Court. Plaintiffs, accordingly, are entitled to permanent injunctive relief.

120. The discriminatory actions of the Eden Defendants were willful, malicious, and taken with reckless disregard for Plaintiffs' rights.

121. The State of Illinois Defendants, unless enjoined in the manner specifically requested herein to provide complete relief, will continue to administer programs affecting housing and provision of services to people with disabilities, as alleged herein, in a manner that may permit actors such as the Eden Defendants to discriminatorily implement "no mental illness" policies at state-licensed Supportive Living Facilities in violation of the FHA, ADA and Rehabilitation Act.

**COUNT I**  
**Fair Housing Act—Damages and Injunctive Relief**  
**O'Connor and HOPE vs. Eden Defendants**

122. Plaintiffs O'Connor and HOPE reallege and incorporate by reference the allegations contained in paragraphs 1-121 as if fully set forth herein.

123. As set forth above, Plaintiff Kimberly O'Connor is a person with a disability as defined in the Fair Housing Act at 42 U.S.C. §§ 3602(h)(1)-(3) which substantially limits at least one of her major life activities, has a history of such impairment, and was regarded by the Eden Defendants as having such an impairment.

124. As set forth above, HOPE engaged in advocacy and investigation of Eden's conduct towards Ms. O'Connor and of Eden's policies and procedures under the Fair Housing Act.

125. By its actions detailed above, the Eden Defendants have violated Ms. O'Connor's rights under the Fair Housing Act, 42 U.S.C. § 3601 *et. seq.*, and its implementing regulations, including 24 C.F.R. § 100.202(c), by discriminating in denial or otherwise making unavailable a dwelling to Ms. O'Connor because of her disability in violation of 42 U.S.C. § 3604(f) including

but not limited to in the following ways:

- a. Denying Ms. O'Connor the opportunity to complete her application for a desired dwelling based on disability;
- b. Denying Ms. O'Connor an opportunity to rent a desired unit based on disability;
- c. Making oral statements to Ms. O'Connor with respect to the rental of a dwelling, that indicate a preference, limitation or discrimination on the basis of disability in violation of 42 U.S.C. § 3604(c); and
- d. Making improper inquiries through its Preliminary Application and its oral affirmations of its "No Mental Illness" policy not related to a proper determination of suitability of residency in the facility. Eden's inquiries improperly exceed confirmation that the prospective resident has the type of need required to live in a Supportive Living Facility, and fail to properly and narrowly discern appropriateness of residency in accord with the Fair Housing Act.

126. As set forth above, the Eden Defendants' conduct resulted in frustration of HOPE's mission, in violation of the Fair Housing Act.

**COUNT II**  
**Americans with Disabilities Act**  
**O'Connor vs. Eden Defendants**

127. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-121 as if fully set forth herein.

128. By their conduct as set forth above, the Eden Defendants violated Ms. O'Connor's rights under the Americans with Disabilities Act, 42 U.S.C. § 12182 and its

implementation regulations including but not limited to in the following ways:

- a. Denying Ms. O'Connor opportunities to participate in or benefit from certain of its goods, services, facilities, privileges, advantages and accommodations, because of her disability;
- b. Refusing to serve and accommodate Ms. O'Connor;
- c. Imposing application and eligibility criteria that reject prospective participants and tenants like Ms. O'Connor, who have a mental health diagnosis but are nonetheless suitable tenants;
- d. Failing to comply with Appendix F: Participant Rights, of the Illinois § 1915(c) Home and Community-Based Services Waiver; and
- e. Failing to make reasonable modifications to its policies, practices, and procedures particularly as to admitting residents like Ms. O'Connor when such modification is necessary to afford Ms. O'Connor the opportunity to benefit from the goods, services, privileges, advantages and accommodations at Eden.

### **COUNT III**

#### **Section 504 of the Rehabilitation Act of 1973 – Damages and Injunctive Relief O'Connor v. Eden Defendants**

129. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-121 as if fully set forth herein.

130. Ms. O'Connor is a "handicapped individual" under the Rehabilitation Act.

131. Ms. O'Connor is otherwise qualified for the benefit sought from the Eden defendants.

132. Ms. O'Connor was discriminated against solely by reason of her disability.

133. The Eden program in question receives federal financial assistance.

134. By its conduct as set forth above, the Eden Defendants violated Ms. O'Connor's rights under the Rehabilitation Act, 29 U.S.C. § 794(a), and its implementing regulations including but not limited to in the following ways:

- a. Denying Ms. O'Connor the opportunity to participate and benefit from living at Eden;
- b. Excluding Ms. O'Connor from participation in a program or activity receiving federal financial assistance based on her disability;
- c. Denying Ms. O'Connor enjoyment of a dwelling unit in which she is eligible to reside; and
- d. Applying discriminatory criteria to Ms. O'Connor, with the effect of defeating the principal goal of assisting people with disabilities in living full and independent lives.

#### **COUNT IV**

#### **Americans with Disabilities Act and Rehabilitation Act – Injunctive Relief O'Connor and HOPE v. State of Illinois Defendants**

135. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-121 as if fully set forth herein.

136. As detailed above, the State of Illinois Defendants administer Illinois' programs affecting licensee Supportive Living Facilities and their participants, which receive federal funding.

137. Administration of the State of Illinois programs affecting Supportive Living Facilities, applicants and participants must comply with the ADA and Rehabilitation Act, and their implementing Regulations. Further, the State of Illinois must act in accord with and in

furtherance of the Fair Housing Act concerning provision of federal funds to housing and service providers, including under the Medicaid program and the State's § 1915(c) Home and Community-Based Services Waiver.

138. Plaintiffs seek an injunction specifying compliance with the Fair Housing Act in Illinois' administration of the Medicaid program and, in particular concerning Illinois' HCBS Waiver and Administrative Code Chapter I, Section 146.220. The Illinois Waiver and Administrative Code should be modified to include guidance adequately ensuring that supported housing funded under the Waiver conducts outreach, advertising, application processes and residency screening in full accordance and compliance with fair housing, including (a) that no inquiries into the nature and severity of a person's disability are made until the appropriate point in the process for determining eligibility and need for supportive services, (b) that informed consent will be elicited and provided, and (c) that appropriate preadmission screening must be performed by a trained professional. This injunctive relief is necessary to further the goals of federal anti-discrimination laws affecting housing and supportive living services, including as were applied to the Plaintiffs in this case illegally and improperly by the Eden Defendants.

#### **JURY TRIAL DEMAND**

Plaintiffs hereby demand a trial by jury on Counts I and III.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that the Court grant them the following relief:

A. Enter a declaratory judgment that the Eden Defendants' unlawful discriminatory conduct has injured Plaintiffs O'Connor and HOPE in violation of the Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601 *et seq.*;

B. Enter a declaratory judgment that the Eden Defendants' unlawful discriminatory conduct has injured Plaintiff O'Connor in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et. seq.*;

C. Enter a declaratory judgment that the Eden Defendants' unlawful discriminatory conduct has injured Plaintiff O'Connor in violation of the Rehabilitation Act, 29 U.S.C. § 794;

D. Grant a permanent injunction ordering the Eden Defendants, their officers, successors, assigns and all persons in active concert or participating with them, to cease and desist from any of the conduct found by this Court to be discriminatory;

E. Grant a permanent injunction directing that the Eden Defendants take all affirmative steps necessary to remedy the effects of the illegally discriminatory and retaliatory conduct alleged in this Complaint and to prevent repeated occurrences in the future;

F. Grant a permanent injunction directing that the State of Illinois Defendants modify the Illinois' § 1915(c) Waiver and Administrative Code as it applies to Supportive Living Facilities to prohibit "no mental illness" policies and practices and to require full compliance with the Fair Housing Act, ADA and Rehabilitation Act.

G. Award such damages under the Fair Housing Act of 1968, as amended and Section 504 of the Rehabilitation Act as will fully compensate Plaintiffs for their injuries incurred as a result of Defendants' discriminatory housing practices and conduct alleged herein;

H. Award such punitive damages against the Eden Defendants as are proper under law to punish them for their malicious and recklessly indifferent conduct alleged herein and to effectively deter similar conduct in the future, pursuant to 42 U.S.C. § 3613(c)(1);

I. Award Plaintiffs their costs and attorneys' fees incurred herein, pursuant to 42 U.S.C. § 3613(c)(2), 42 U.S.C. § 12205, and 29 U.S.C. § 794a(b);

J. Award Plaintiffs all other applicable relief available to them under the Fair Housing Act, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

K. Grant such other relief as the Court deems appropriate.

Respectfully submitted,

/Jennifer K. Soule  
One of Plaintiffs' Attorneys

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