

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

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

Plaintiff,

v.

ALDEN GARDENS OF BLOOMINGDALE,  
INC.; ALDEN GARDENS OF  
BLOOMINGDALE LIMITED  
PARTNERSHIP; SANDY HORVATH;  
BRUCE RAUNER, in his official capacity as  
Governor of the State of Illinois; FELICIA F.  
NORWOOD, in her official capacity as  
Director of the Illinois Department of  
Healthcare and Family Services; TERESA  
HURSEY, in her official capacity as Acting  
Medicaid Director for HFS; KELLY  
CUNNINGHAM, in her official capacity as  
HFS Deputy Administrator for Long Term  
Care; JENNIFER REIF, in her official capacity  
as Acting Director of the Illinois Department  
on Aging; and JAMES DIMAS, in his official  
capacity as the Secretary-designate of the  
Illinois Department of Human Services;

Defendants.

Case No. \_\_\_\_\_

Jury Trial Demanded

**COMPLAINT**

Plaintiff, H.O.P.E., INC., d/b/a/ HOPE FAIR HOUSING CENTER (“HOPE”), by its attorneys, Soule, Bradtke & Lambert and AARP Foundation Litigation, file this Complaint against Defendants ALDEN GARDENS OF BLOOMINGDALE, INC.; ALDEN GARDENS OF BLOOMINGDALE LIMITED PARTNERSHIP; and SANDY HORVATH (collectively “the Alden Gardens Defendants”); GOVERNOR BRUCE RAUNER; FELICIA F. NORWOOD; TERESA HURSEY; KELLY CUNNINGHAM; JENNIFER REIF; and JAMES DIMAS (collectively “the State of Illinois Defendants,” all named in their official capacities); as follows:

**Nature of the Action**

1. This is an action brought by Hope Fair Housing Center (“HOPE”) to challenge Defendants’ denial of housing and services through Illinois’s Medicaid Waiver Supportive Living Program (“SLP”) to individuals, who are otherwise qualified to live in available facilities, solely because of their mental health diagnosis or disability.

2. Medicaid is a joint federal–state program that covers health care for eligible low income adults, children, the elderly and people with disabilities. This case challenges the discriminatory practices in one of Illinois’s Medicaid programs formed under the Home and Community Based Services (HCBS) Waiver. The Federal HCBS Waiver Program provides states an opportunity to innovate in the provision of health care and services in a manner that reduces the need for institutional care in settings like nursing homes. The Illinois SLP combines Medicaid HCBS funds with State housing tax credits so that supported housing units can be developed and provided.

3. Part of the flexibility given to states has been the ability to tailor different waiver programs to different portions of the Medicaid population so that the right services are delivered to keep people in the community. Illinois’s SLP’s target populations are those with physical

disabilities and individuals 65 years of age and over. Illinois's right to choose these target populations in the SLP Waiver is not at issue in this litigation.

4. The Fair Housing Act (FHA) prohibits discrimination based on disability in housing. 42 U.S.C. § 3601 *et. seq.*

5. Title II of the Americans with Disabilities Act ("ADA") prohibits exclusion on the basis of disability from participation in or denial of the benefits of the services, programs, or activities of a public entity. 42 U.S.C.A. § 12132. It also prohibits discrimination by any such entity. *Id.*

6. Title II of the ADA and Section 504(a) of the Rehabilitation Act require that public entities administering covered programs such as the Illinois Supportive Living Program 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).

7. Title III of the ADA prohibits discrimination "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C.A. § 12182.

8. Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794, states that no person with a disability shall "solely by reason of his or her disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

9. Plaintiff HOPE is an organization dedicated to civil rights, fair housing, and the elimination of housing discrimination and segregation. HOPE found, as a result of an investigation, that the Defendants violated the civil rights of persons with mental health diagnosis and mental disability.

10. In this lawsuit, Plaintiff challenges the patterns and practices of discrimination in which both the facility Defendants (“Alden Gardens Defendants”) and the State engaged.

11. Alden Gardens’ challenged policies and practices include denying individuals with physical disabilities the opportunity to apply if they also have mental diagnoses or disability and publishing statements that people with mental diagnoses or disability are not eligible.

12. The State’s challenged policies and procedures include: its policy denying participation in the SLP to those otherwise eligible based solely on mental diagnoses or disability; the State’s denial of due process to SLF applicants rejected based on mental illness; the State’s knowledge and complicity with regard to facilities in the SLP system denying applicants based on mental health diagnosis or disability; and the State’s failure to take reasonable corrective action although the State had the ability and responsibility to do so.

13. In addition to challenging Defendants’ blanket discrimination against otherwise qualified individuals on the basis of their mental health diagnosis or disability in the rental of a dwelling and in the provision of services in connection to the dwelling, Plaintiff HOPE also alleges that Defendants unlawfully discriminated by, *inter alia*, making and publishing discriminatory statements and by intentionally segregating people with mental health diagnosis and disability in contravention of the principles set out in the *Olmstead* case.

14. Plaintiff HOPE seeks declaratory and injunctive relief, as well as damages. In addition to being party Defendants on the basis of their unlawful conduct in violation of the

FHA, ADA, and Section 504 of the Rehabilitation Act, the State of Illinois Defendants are also joined under Fed. R. Civ. P. 19 because, in their absence, the Court cannot accord the complete injunctive relief sought by the Plaintiff. Appropriate relief must include a requirement that the State revise and issue appropriate guidance, rules, and procedures applicable to SLFs that will ensure non-discrimination. Most importantly, relief must provide a non-discriminatory, statewide screening system for determining the eligibility of SLP applicants and one that provides clear guidance for SLFs on how to fulfill their obligations under the SLP without discriminating on the basis of mental health diagnosis or disability.

15. In order to prevent SLFs, (including, but not limited to, the Alden Gardens Defendants) from implementing blanket “no mental illness” policies affecting Medicaid recipients, injunctive relief requires modifying at a minimum the following, thus requiring the Fed. R. Civ. P. 19 joinder of the State of Illinois Defendants: the Illinois §1915(c) Home and Community-Based Services Waiver application and Illinois 89 Administrative Code Section 146.220. These provisions must be modified to require licensed facilities to adopt a detailed non-discrimination policy concerning persons with disabilities including mental diagnoses or disability, and to specify that proper screening of prospective residents must only be based on appropriate objective criteria related to suitability and not merely diagnoses, status, or stereotypes, and should fully comply with the Fair Housing Act, ADA and Section 504 of the Rehabilitation Act.

#### **Jurisdiction and Venue**

16. 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.

17. This Court has jurisdiction over Plaintiff's action for declaratory relief pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57. Injunctive relief is authorized by 42 U.S.C. § 3613 (29 U.S. Code § 794(a), 42 U.S. Code § 12133, 42 U.S. Code § 12188(a)(b)), and Fed. R. Civ. P. 65. The State of Illinois Defendants are also joined as required parties for full relief under Fed. R. Civ. P. 19.

18. Venue is proper in the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. § 1391 because the Plaintiff and the Defendants reside within the district and the unlawful events or omissions giving rise to the claims occurred in the district.

### **Parties**

#### **Plaintiff**

19. Plaintiff 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 civil rights and 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.

20. HOPE's purpose is to eliminate housing discrimination and segregation based on 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.

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

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 Alden Gardens Defendants**

22. Defendants Alden Gardens of Bloomingdale, Inc. is an Illinois Corporation licensed and doing business within Illinois, and Alden Gardens of Bloomingdale Limited Partnership is a limited liability limited partnership, licensed and doing business within Illinois. These Defendants operate a state licensed SLF located at 285 East Army Trail Rd, Bloomingdale, Illinois 60108.

23. Defendant Sandy Horvath was the Marketing and Sales Director for Alden Gardens of Bloomingdale at the time of the events alleged in this Complaint.

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

24. Defendant Bruce Rauner 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 Rauner, 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 Ill. Comp. Stat. 2407/20(c). His office and the Illinois Department of Healthcare and Family Services (“HFS”), issue Informational Notices to SLFs regarding and governing operation of the State’s Supportive Living Program.

25. Defendant Felicia Norwood, sued in her official capacity, is the Director of HFS, 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. HFS oversees Illinois's Supportive Living Program. Defendant Norwood is responsible for the oversight, supervision and control of HFS and its divisions, and is ultimately responsible for ensuring that HFS's services for people with disabilities are provided in conformance with the law.

26. Defendant Teresa Hursey, sued in her official capacity, is the Acting Director of HFS's Division of Medical Programs. Defendant Hursey's predecessor, Theresa Eagleson, is HFS's listed signatory on the HCBS Waiver application at issue in this case.

27. Defendant Kelly Cunningham, sued in her official capacity, is HFS's Deputy Administrator for Long Term Care. Defendant Cunningham is HFS's listed contact person on the HCBS Waiver application at issue in this case.

28. Defendant James Dimas, sued in his official capacity, is the Secretary-designate of the Illinois Department of Human Services ("DHS"), the state agency responsible for administering the long-term care system in Illinois for people with disabilities. Secretary Dimas is responsible for the oversight, supervision and control of DHS and its divisions, and is ultimately responsible for ensuring that DHS disability services are provided in conformance with the law.

29. Two divisions within DHS are directly involved in the preadmission screening of SLF applicants – the Division of Rehabilitation Services ("DRS") and the Division of Mental Health ("DMH").

30. DRS, both directly and indirectly through third party agencies under contract with the State, oversees an early stage of the preadmission screening process for all SLF applicants

called the Determination Of Need screening (“DON”). DRS oversees the DON screening process for SLF applicants between the ages of 22 and 59.

31. DMH, both directly and indirectly through third party agencies under contract with DMH, oversees and conducts mental health-related screenings of SLF applicants. Under the SLP, DMH mental health-related screenings are limited to “ruling out” a suspected diagnosis, not actually evaluating the mental health condition of applicants or assessing their suitability for the Supportive Living Program.

32. Defendant Jennifer Reif, sued in her official capacity, is the Director of the Illinois Department on Aging (“DoA”), the state agency that, along with HFS and DHS, is responsible for assessing the performance of contractors and staff performing initial level of care determinations at Supportive Living Facilities.

33. DoA, both directly and indirectly through third party agencies under contract with DoA, oversees the DON screening process for SLF applicants ages 60 and older.

### **Factual Allegations**

#### **A. The Medicaid Waiver Program**

34. Medicaid is a medical assistance program jointly financed by state and federal governments for low income individuals. 42 U.S.C. §1396 et seq. It was first enacted in 1965 as an amendment to the Social Security Act of 1935. Medicaid is administered by the Centers for Medicare and Medicaid Services (“CMS”).

35. Historically, Medicaid covered Long Term Care services, including services related to activities of daily living, in Medicaid-defined “institutional settings,” such as Nursing Homes, Intermediate Care Facilities for Persons with Mental Retardation, and two types of facilities for mental health care, depending on the age of the patient.

36. In response to pressure from persons with disabilities and those who support them, and to comply with successful litigation they initiated, CMS partnered “with states, consumers and advocates, providers and other stakeholders to create a sustainable, person-driven long-term support system in which people with disabilities and chronic conditions have choice, control and access to a full array of quality services that assure optimal outcomes, such as independence, health and quality of life.” Long Term Services & Supports | Medicaid.gov. <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Long-Term-Services-and-Supports.html> (last visited Oct. 27, 2015).

37. Section 1915(c) of the Social Security Act permits States to offer, under a waiver of statutory requirements, an array of home and community-based services that an individual needs to avoid institutionalization. 24 C.F.R. § 441.300. 1915(c) Waiver services can include homemaker services, assistive technology, personal care, meals, and case management.

38. The HCBS Waiver authority permits a state to offer home and community-based services to individuals who: (a) but for the provision of such services, would require a level of institutional care (hospital, nursing facility, or Intermediate Care Facility for the Mentally Retarded (ICF/MR)) under the state plan; (b) are members of a target group that is included in the waiver; (c) meet applicable Medicaid financial eligibility criteria; (d) require one or more waiver services in order to function in the community; and, (e) exercise freedom of choice by choosing to enter the waiver program in lieu of receiving institutional care. 42 U.S.C. § 1396. It is a state option to offer waiver services through its Medicaid program.

#### **B. The State of Illinois’s Medicaid Waiver Supportive Living Program**

39. According to the Illinois Supportive Living Program website:

Illinois developed the Supportive Living Program as an alternative to nursing home care for low-income older persons and persons with disabilities under Medicaid.

By combining apartment-style housing with personal care and other services, residents can live independently and take part in decision-making. Personal choice, dignity, privacy and individuality are emphasized.

The Department of Healthcare and Family Services has obtained a "waiver" to allow payment for services that are not routinely covered by Medicaid. These include personal care, homemaking, laundry, medication supervision, social activities, recreation and 24-hour staff to meet residents' scheduled and unscheduled needs. The resident is responsible for paying the cost of room and board at the facility.

Illinois Supportive Living, <http://www.sfillinois.com> (last visited Oct. 27, 2015).

40. The Illinois Medicaid Waiver Supportive Living Program, as approved by CMS, is designed for individuals who, but for the waiver, would require a nursing facility level of care.

41. At the time Illinois designed its waiver, it was required to choose among the federally designated target groups set forth in 42 C.F.R. § 441.301(b)(6); Illinois chose age (65 and older, requiring nursing facility level of care based on physical needs) as one target group and physically disabled as a second target group. 42 C.F.R. § 441.301(b)(6)(i).

42. In Illinois, there are currently 143 operational SLFs with a total of 11,575 units according to the Illinois Supportive Living Program website, with at least 19 more sites approved. SLFs are required to operate under the State's rules regarding the SLF program, and the State Defendants monitor, review and enforce compliance with these rules.

43. Potential residents enter the SLP system through two routes. The first route is direct application to an SLF, just as they might apply to any apartment building or community

housing in response to a website or advertisement. In that case their point of contact is someone from the SLF, such as a marketing director, executive director or front desk staff.

44. The second route to entry into the SLP is for those who are not applying directly to a SLF. These potential residents may be ready to be discharged from a hospital but are no longer able to live in their old home without help, or they may live in an institutional care setting and seek to live in or are ready for more integrated community living. Or, they may receive a referral from a professional such as geriatric care manager or rehabilitation specialist.

45. To actually become a resident of an SLF, applicants must be approved by two distinct entities: the individual site-based SLF and the Illinois Medicaid Waiver Program. The SLF has the responsibility and authority to decide if applicants meet the requirements for residency at the site in a manner comparable to other landlords or housing providers: it should determine whether applicants can demonstrate, based on past objective history, their ability to refrain from damaging property or interfering with the rights of other residents (taking into account the services and supports offered at the SLF). The SLF will also determine if the applicant can pay all relevant costs, including the non-Medicaid waiver costs such as room and board.

46. To determine whether an applicant is eligible for the Medicaid Waiver Program, Illinois requires that SLF applicants be “[s]creened by [HFS] or other state agency screening entity and found to be in need of nursing facility level of care and that SLF placement is appropriate to meet the needs of the individual,” called a Determination of Need screening (“DON”), and must meet the “Resident Participation Requirements,” set by Defendant HFS at 89 Ill. Admin. Code § 146.220.

47. The DON screening focuses on the applicant's ability to complete daily activities, such as eating, bathing, grooming, dressing, preparing meals, managing money, laundry and housework, and thus determines if the applicant's "level of care" concerning physical disability is both sufficient and appropriate for the SLF Waiver Program.

48. Applying DON eligibility criteria is the province of the State Defendants, not the individual SLFs.

49. The State requires that if during any Determination of Need (DON) screening the state-authorized screener becomes aware of any indication of a mental health diagnosis the state-authorized screener must refer the participant for further screening conducted by the State's DHS Division of Mental Health (DMH).

50. In general, this requirement arises out of federal guidelines and is consistent with the *Olmstead* decision and is designed to ensure that individuals with mental illness are identified and provided appropriate and effective services and supports in the least restrictive environment possible and to ensure that people with mental illness are not segregated or improperly confined to mental institutions or nursing homes. Illinois's discriminatory application of its mental health screening process to the SLP is at issue in this case, as set forth below.

51. At or before the time an applicant is admitted, an SLF is required to conduct a standardized interview geared towards the resident's (or prospective resident's) particular service needs. Within 24 hours after admission, the SLF completes an initial assessment and service plan for each resident that identifies needs and potential problems. Within fourteen (14) days after admission, annually, and upon a significant change in the resident's mental or physical status, an SLF must complete a Comprehensive Resident Assessment Instrument ("RAI") and develop a service plan for each resident. 89 Ill. Admin. Code § 146.245.

52. The Illinois Supportive Living Program Waiver and its implementing regulations, notices, guidance, and public materials state that participants “must be without a primary or secondary diagnosis of developmental disability and serious and persistent mental illness.”

**C. HOPE’s Investigation and Efforts to Counter Disability Discrimination**

53. Plaintiff HOPE is an organization dedicated to civil rights, fair housing, and whose mission is the elimination of discrimination and segregation in the housing market, both private and governmentally subsidized.

54. Plaintiff HOPE has diverted its resources in furtherance of its mission to eliminate discrimination and segregation in the portion of the housing market that provides long-term care, assisted living, supported housing and housing with services, on behalf of people with disabilities to address the Defendants’ failure to provide services to such individuals.

55. For example, HOPE has engaged in and conducted a number of education and outreach initiatives related to the rights of individuals with disabilities in at least three counties in Illinois during the relevant time period. Defendants’ actions at issue impede HOPE’s education, outreach and training efforts concerning disability issues.

56. Defendants receive federal financial assistance within the meaning of the Rehabilitation Act. 29 U.S.C. § 794(a) and (b).

57. In investigating Defendants’ policies and practices, Plaintiff HOPE relied on qualified and trained housing testers who made inquiries to the SLF Defendant on behalf of plausible potential residents who were denied admission solely on the basis of a mental health diagnosis or disability and not on the basis of any legitimate qualifying factor.

58. To further investigate the State Defendants’ policies and practices, similar housing tests were conducted at other SLFs throughout the state with similar results.

59. HOPE's investigation of the Illinois Supportive Living Program and particular facilities began as a result of complaints received from rejected applicants, including but not limited to Kimberly O'Connor, the first named Plaintiff in the Eden Supportive Living litigation, Case No. 13 C 7391, filed on October 15, 2013.

60. Over time, additional complaints were received by HOPE concerning the Illinois Supportive Living Program and Eden, in particular between October 2013 and April 2014, resulting in adding an additional named Plaintiff, Tammy Mormino, to the Eden litigation on September 3, 2014.

61. As a result of these complaints and identified systemic discrimination in the Illinois Supportive Living Program, HOPE began its investigation in November 2012 and expanded its investigation of the Illinois Supportive Living Program and various additional Supportive Living Facilities over a course of several months, up to and including February 2014.

62. Additionally, HOPE's activities have included participation in litigation involving the State of Illinois Defendants, and receipt, evaluation of and response to a District Court ruling in September 2015, in Case No. 13 cv 7391, that highlighted potential liability of individual SLFs, like those identified herein that reject applicants based on mental illness (a) prior to even meeting with the applicants or accepting a formal application from them, and (b) prior to referring the applicant to a state-authorized DON screener.

#### **Conduct of the Alden Gardens Defendants**

63. At all relevant times, the Alden Gardens Defendants engaged in a pattern and practice of discriminatory conduct as alleged herein toward persons with mental illnesses, mental health diagnoses and persons perceived as having a mental illness.

64. In December 2012, HOPE was contacted by a person who related facts indicating the possibility of discrimination against persons with mental health diagnosis in connection with the Illinois SLP. HOPE was then contacted by a second person who had applied for SLF housing, had been rejected, and voiced similar complaints.<sup>1</sup>

65. HOPE initiated a detailed investigation into the complaints of discrimination against persons with mental health diagnoses seeking housing through the Illinois SLP. The investigation included SLFs as to which HOPE had received complaints (the Eden SLFs), as well as many other SLFs in the area, including the Alden Gardens SLF.

66. As part of the investigation by HOPE into the possibility of discrimination against persons with mental health diagnosis or disability throughout the SLP, on November 15, 2013, a tester trained and supervised by HOPE (the “HOPE AGB Tester”) placed a call to Alden Gardens of Bloomingdale.

67. The woman who answered the phone identified herself as Melissa and the HOPE AGB Tester told her that she was calling on behalf of her aunt to get information on supportive living.

68. Melissa asked her if her aunt was 65 or older, and the HOPE AGB Tester informed her that her aunt was 81 years old.

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<sup>1</sup> The complaints of these individuals have resulted in litigation. *O'Connor et al., v. Eden Mgt, et al.*, Case No. 13 CV 7391 (N.D. Ill.). Additionally, HOPE and individuals not named in Case No. 13 cv 7391 filed complaints with the U.S. Dept. of Housing and Urban Development “HUD”. Plaintiffs’ Motion For Leave To File Second Amended Complaint in 13 C 7391 is pending at the time of filing the present case, subject to a briefing schedule that will not be concluded until after the applicable limitations periods for the present action have expired.

69. Melissa transferred the HOPE AGB Tester to the voice mailbox of Sandy Horvath. The tester left a voicemail message stating her name, her phone number and asking to get information about supportive living for her aunt.

70. Within 10 minutes, the HOPE AGB Tester was called back by a woman identifying herself as Sandy from Alden Gardens. She said that she was the marketing and sales director.

71. After the HOPE AGB Tester told Sandy that her aunt was 81 years old, Sandy asked about her aunt's medical issues. The tester responded that her aunt has degenerative joint disease of the knee, along with arthritis. The tester further stated her aunt is "also schizophrenic and that has been controlled with medication for at least 12 years." Sandy responded, "I doubt we could take her here because of her diagnosis, unfortunately." Sandy went on to tell the HOPE AGB Tester that she wasn't sure they had any availability and to recommend that, "you call our skilled nursing and rehabilitation Center. It's called Alden Valley Ridge. They offer a level of care that is higher than ours."

#### **HOPE Eden Chicago Tester**

72. As part of the investigation by HOPE that ensued into the possibility of discrimination against persons with mental health diagnosis in connection with the Illinois SLP, on January 28, 2013, a tester utilized by HOPE (the "HOPE Eden Chicago Tester") placed a telephone call to the Eden Chicago SLF location, and requested to speak to someone regarding the facility, its policies, and its available apartments.

73. The HOPE Eden Chicago Tester was transferred to the voicemail of the Marketing Director of the Eden Chicago location.

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

75. On January 30, 2013, the Marketing Director of the Eden Chicago location returned the HOPE Eden Chicago Tester'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 Eden Champaign Tester**

76. As part of the investigation by HOPE that ensued into the possibility of discrimination against persons with mental health diagnosis throughout the Illinois SLP, on August 12, 2013, a tester utilized by HOPE (the "HOPE Eden Champaign Tester") 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.

77. The HOPE Eden Champaign Tester was transferred to the phone line of the Executive Director of the Eden Champaign location.

78. The Executive Director of the Eden Champaign location requested that the HOPE Eden Champaign Tester call her back in ten minutes.

79. The HOPE Eden Champaign Tester called the Executive Director of Eden Champaign location back ten minutes later. During the phone call, the Executive Director asked the tester what disability her son had. The HOPE Eden Champaign Tester stated that her son had cerebral palsy. The Executive Director of the Eden Champaign location stated that, even though

construction was not yet complete, three floors were already rented and that the Eden Champaign location was the only downstate facility that cared for the 22-64 age range.

80. Later that day, the HOPE Eden Champaign Tester called the Executive Director of Eden Champaign again and stated that she looked at Eden's website, and it specified only physical disabilities. The HOPE Eden Champaign Tester stated to the Executive Director of Eden Champaign that her son's primary diagnosis was cerebral palsy, but that he had adjustment disorder and depression.

81. The Executive Director of Eden Champaign 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. The Executive Director of Eden Champaign instructed the HOPE Eden Champaign Tester not to list depression on the application.

#### **HOPE Eden Fox Valley Tester**

82. As part of the investigation by HOPE that ensued into the possibility of discrimination against persons with mental health diagnosis throughout the Illinois SLP, on August 20, 2013, a tester utilized by HOPE (the "HOPE Eden Fox Valley Tester") 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.

83. The HOPE Eden Fox Valley Tester was transferred to the voicemail of the Marketing Director for the Eden Fox Valley location.

84. The HOPE Eden Fox Valley Tester left a voicemail stating that she was calling for information about supportive living and to inquire if any units were available.

85. After an exchange of voicemails, the Marketing Director for the Eden Fox Valley location called the HOPE Eden Fox Valley Tester on August 22, 2013.

86. During the conversation, the HOPE Eden Fox Valley Tester stated that she had multiple sclerosis, that she was in a wheelchair, and that she also had bipolar disorder.

87. The Marketing Director for Eden Fox Valley stated that Eden only serves clients with physical disabilities, and that none of Eden's residents can have a primary or secondary mental illness diagnosis.

#### **HOPE Eastgate Manor Tester**

88. On November 15, 2013, a tester trained and supervised by HOPE placed a telephone call to the Eastgate Manor SLF, located at 101 Eastgate Court, Algonquin, Illinois, a Supportive Living Facility operated under the State of Illinois Supportive Living Program, stating that she was seeking housing for her aunt. Her call was referred to the voicemail for Carrie Svendson, and the tester left a message for Ms. Svendson to call her back.

89. On November 19, 2013, the tester called the Eastgate Manor SLF and asked for Ms. Svendson. The tester was again referred to voicemail and left a message for Ms. Svendson to call her back.

90. On November 20, 2013, the tester received a call back from Ms. Svendson. The tester was unavailable, and Ms. Svendson left a message for the tester to call her back.

91. On November 20, 2013, the tester returned the voicemail that she received earlier in the day from Ms. Svendson. She again was sent to Ms. Svendson's voicemail, and left a message with her name and telephone number.

92. On November 26, 2013, the tester again called Eastgate Manor, and, on this occasion, reached Ms. Svendson. The tester informed Ms. Svendson that she was looking for information on supportive living on behalf of her 74 year old aunt, who was partially paralyzed

from a stroke and had mobility issues. The tester said that they were looking for a place where her aunt could get a little more help if she needed it.

93. During this same call, the tester also informed Ms. Svendson that her aunt was bipolar with anxiety disorder, but that this condition had been controlled with medication for years. The tester told Ms. Svendson that “you wouldn’t even know that she has it thanks to the medication.” Ms. Svendson responded that she had to stop the tester there because Eastgate Manor was not able to accept anyone with a primary or secondary diagnosis of mental illness. Ms. Svendson further stated that there are very few places that will accept anyone with a mental health diagnosis. When the tester again told Ms. Svendson that her aunt’s mental health condition was controlled with medication, Ms. Svendson repeated that Eastgate Manor could not take anyone with mental health issues.

#### **HOPE Courtyard Estates Tester**

94. As part of the investigation by HOPE that ensued into the possibility of discrimination against persons with mental health diagnosis throughout the Illinois SLP, on November 8, 2013, a tester utilized by HOPE (the “HOPE Courtyard Estates Tester”) placed a telephone call to Courtyard Estates Peoria (“Courtyard Estates”), 117 N. Western Avenue, Peoria, Illinois, a Supportive Living Facility operated under the State of Illinois Supportive Living Program, stating that she was seeking residency there for her father, who has bipolar disorder.

95. The agent of Courtyard Estates stated to the HOPE Courtyard Estates Tester that a Supportive Living Facility cannot accept anyone with a primary or secondary diagnosis of mental illness. The HOPE Courtyard Estates Tester replied that the bipolar condition was well

managed with medication, to which the agent replied that Courtyard Estates “might” be able to make an exception this one time.

#### **HOPE Tabor Hills Tester**

96. As part of the investigation by HOPE that ensued into the possibility of discrimination against persons with mental health diagnosis throughout the Illinois SLP, on November 15, 2013 and November 18, 2013, a tester utilized by HOPE (the “HOPE Tabor Hills Tester”) placed calls to Tabor Hills Supportive Living, located at 1439 McDowell Rd., Naperville, Illinois, a Supportive Living Facility operated under the State of Illinois Supportive Living Program, stating she was seeking housing for her aunt.

97. The HOPE Tabor Hills Tester informed the agent of Tabor Hills that her aunt’s secondary diagnosis was schizophrenia, which had been controlled with medication for years.

98. The Tabor Hills agent told the HOPE Tabor Hills Tester that it is a written rule of the State of Illinois that supportive living facilities may not accept anyone with a psychiatric diagnosis and referred the tester to DuPage County Senior Services agency to find out where else her aunt might be accepted to live.

99. The results of the testing at Tabor Hills were consistent with testing performed by HOPE at various other SLFs (described below) and with the allegations of the complainants who came to HOPE.

#### **D. The State’s Unlawful Treatment of SLF Applicants with Mental Health Diagnosis or Disability**

100. The HOPE testing evidence, including its tests of Eastgate Manor, Eden, Tabor Hills, Courtyard Estates and Alden Gardens, together with the evidence related to the individual complainants in the Eden litigation and before HUD, indicates the presence of

system-wide unlawful conduct on the part of the State of Illinois Defendants, in addition to the unlawful conduct of the individual SLFs.

101. For all practical purposes, the policies, practices and procedures of the State Defendants deny, prevent and interfere with the applications of any and all participants with mental diagnoses or disabilities who may be eligible for the SLP.

102. The State screening processes when applied in the current SLP context for people with mental diagnoses and disabilities are structured to bar applicants from the SLP.

103. The Illinois SLP Waiver and its implementing regulations, notices, guidance, and public materials fail to define “serious and persistent mental illness” and related terms in a manner that is internally consistent, grounded in fact or law, or provides sufficient guidance; the result is decisions made on the basis of diagnosis and unrelated to objective criteria related to program qualifications.

104. In contradiction to the intended purpose of a state-authorized DON screener referring an individual for a mental health screen, when used as part of the SLP process, the DMH mental health screening serves to restrict the services, choices and opportunities of those with mental diagnoses and disabilities.

105. The DMH mental health screening allows only two possible outcomes in regard to the SLP: if mental illness is “ruled out” participants are referred back to the SLP process; if participants are found to have a mental health diagnosis or illness, they can only be found to be eligible for in-patient mental health facility or for receipt of community mental health services

(there is no option for SLF) -- neither being appropriate or helpful if participants have applied to the program expressly based on their physical disabilities or age<sup>2</sup>.

106. Thus, once a DON screen identifies a participant as potentially having a mental health diagnosis, and that diagnosis is confirmed, that person cannot be found eligible for the Illinois Medicaid Waiver SLF program, even if he or she meets the physical disability or age requirement, would otherwise benefit from the services the SLF offers, and could function capably with community or private health services, if necessary.

107. It is the overwhelming policy and practice of the Illinois Supportive Living Program to determine that individuals who have mental illness diagnoses are ineligible for SLF placement and should be denied admission even if they are otherwise qualified (with private or community-based mental health supports, if necessary) for the SLF by virtue of their being a member of the physically disabled or aged target groups and having a Medicaid nursing facility level of care need.

108. “No mental illness” policies in state-licensed SLFs receiving funds under the State’s administration of Medicaid result in exclusion or unjustified institutional segregation or isolation of individuals with mental health issues receiving services from the State of Illinois, an actionable form of discrimination.

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<sup>2</sup> The State of Illinois Defendants have identified a recent informal “guidance” purporting to assist mental health screeners to assess SLF applicants with mental illnesses in more detail after confirmation of diagnosis. This “guidance,” created as a result of the Eden litigation, is not a rule, policy or program revision, was not disseminated to SLFs themselves, and fails to address significant myriad program deficiencies in documentation and due process. Further, this informal “guidance” memo continues the unlawful programmatic stigmatization of SLF applicants based on mental health diagnoses.

109. The State Defendants knew or should have known that SLFs have adopted unlawful, preemptive “no mental illness” policies consistent with and based on the State’s unlawful policies and practices of denying SLP applicants based on mental illness or disability.

110. The State, in drafting its SLP Waiver (in Appendix F-1), afforded significant rights to those seeking participation in the SLP, including due process after denial and that a detailed Pre-Admission Screen (“PAS”) be conducted 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.” Yet, Appendix F-1 of the Illinois Waiver does not specify compliance with the FHA or other federal or civil rights statutes.

111. The State fails to provide adequate due process after denial as it requires in its SLP Waiver Appendix F-1.

112. Pursuant to the State’s practices and procedures, many of its pre-admission screenings are not conducted by qualified screeners, but by unqualified personnel such as clerks.

113. The Illinois Administrative Code concerning Healthcare and Family Services and, specifically, Supportive Living Facilities (referred to as “The Rule”) also fails to include civil rights and nondiscrimination requirements concerning persons with disabilities or to provide guidance concerning how to ascertain and evaluate facts in relation to suitability. 89 Ill. Admin. Code § 146.220. The Rule requires screening, but uses the undefined language that participants must “be without a primary or secondary diagnosis of developmental disability or serious and persistent mental illness.”

114. The State's SLP rules, policies and procedures improperly rely on the term "serious and persistent mental illness" as a substitute for non-discriminatory, objective criteria to assess the actual suitability of participants as prospective residents of SLFs, such as whether their needs as determined by the DON can be met by the SLF's services, whether they pose a threat to others (for any reason), and whether they are able to comply with program requirements (again, for any reason).

115. The State Defendants' policies under the State of Illinois Supportive Living Program are unlawful under the Fair Housing Act, 42 U.S.C. § 3604 and 3617, on their face, as applied, and in view of their effects. The State Defendants' policies further violate Title III of the ADA and Section 504 of the Rehabilitation Act. The Illinois SLP discriminates against individuals with mental health diagnoses who seek to live in Supportive Living Facilities, in the following ways, among others:

- a. The State of Illinois, at [www.slfillinois.com](http://www.slfillinois.com), states that Supportive Living Facility residents must be "without a primary or secondary diagnosis of developmental disability or serious and persistent mental illness." Illinois Supportive Living, <http://www.slfillinois.com> (last visited Oct. 27, 2015). This statement is unqualified and makes no reference to an actual suitability determination, to non-discrimination based on status, or to well-settled integrative/least restrictive setting principles;
- b. The State of Illinois Department of Healthcare and Family Services, at [www2.illinois.gov/hfs/medicalprograms](http://www2.illinois.gov/hfs/medicalprograms), includes in addition to the target group for Supportive Living Facilities an additional exclusionary eligibility criteria, "no primary or secondary diagnosis of developmental disability or serious and persistent mental illness." Medical Programs: HFS Medical Programs, <http://www2.illinois.gov/hfs/medicalprograms/Pages/default.aspx> (last visited Oct. 27, 2015). This diagnosis-only exclusionary criteria is contrary to the FHA and other federal statutes;
- c. HFS, along with the Governor's Office, issued an Informational Notice on June 22, 2011, to SLFs stating that if the preadmission 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;

- d. HFS failed to consult with DHS Division of Mental Health when it promulgated its Rule to exclude persons with mental health diagnoses from Supportive Living Facilities;
- e. Supportive Living Program assessment and screening processes do not address the proper “level of care” analysis and assessment that should apply to persons with or suspected of having mental illnesses who also have physical disabilities and may be suitable to reside in a Supportive Living Facility. Thus, persons who seek to participate in the Supportive Living Program may be denied a wide array of mental health services as well as housing;
- f. HFS failed to provide proper guidance or instructions to DHS Division of Mental Health and screening agents under contract with the State of Illinois who may undertake various levels of screenings of SLF applicants;
- g. The State of Illinois policies and procedures at issue in this case deny due process in disputing exclusion from a Supportive Living Facility based on actual or perceived mental health conditions;
- h. The Illinois Department of Human Services Division of Mental Health has issued a “Contractor’s Procedure Manual,” for PAS/MH. The PAS/MH manual discriminatorily states that persons even “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 health diagnosis is nonetheless suitable to live in a Supportive Living Facility with the services provided or with independently secured additional services. The PAS/MH manual fails to set forth a new process concerning Supportive Living Facility applicants, fails to provide instructions on how screens of Supportive Living Facility applicants are handled or documented, fails to provide any due process safeguards or guidelines regarding denials based on mental illness, and fails to specify the manner in which applicants denied residence and services in the Supportive Living Program based on mental health diagnosis will be notified of their exclusion or any rights, basis or procedures concerning appealing such denials. The definition of “mental illness” later found in the PAS/MH manual is not applied to or otherwise used to determine the individual suitability of SLF applicants: if a suspected diagnosis cannot be ruled out, the applicant is ruled out of the SLP up front;
- i. PAS screening under the State of Illinois Supportive Living Program for persons “suspected” of mental illness is undertaken only to “rule out” “serious” mental illness, which terms are not properly defined or set out in policies or procedures, but no screening is done concerning their suitability for admission into a Supportive Living Facility. Once a person is referred for

PAS Screening on the basis of suspicion of a mental health diagnosis, placement in an SLF is not an option;

- j. The State Defendants fail to properly document and track their purported “screening” of applicants to Supportive Living Facilities who were suspected of mental illness;
- k. The State of Illinois screening system will not allow PAS agents to undertake assessments for suitability for admission and instead limits them to excluding applicants where a diagnosis of mental illness cannot be “ruled out”;
- l. The forms and letters that can be generated by the State Defendants’ health screening system that results in exclusion of persons with mental health conditions from Supportive Living Facilities are not applicable or adapted to the Supportive Living Program in particular;
- m. The State Defendants’ mandatory screening database at issue has no level of care Determination option that applies to SLFs or the Supportive Living Program, and has no information about or choices for Supportive Living Facilities that could admit a person with physical disabilities who may also have a mental health diagnosis;
- n. Concerning its Supportive Living Program, the State of Illinois has failed to properly inform, train, monitor or guide SLFs, State agencies who conduct DON/PAS screens, and contractors with the State of Illinois concerning the Supportive Living Program in general, and specifically with regards to non-discrimination concerning mental health issues, proper assessment, proper documentation or due process considerations;
- o. The HFS Supportive Living Program Handbook Section C-230 *falsely* states that a person with a mental illness is not necessarily prevented from entering a supportive living facility and *falsely* states that such a person may appeal a determination concerning rejection based on mental illness: this is not included in the Administrative Code or other policies or procedures;
- p. The State of Illinois Defendants have communicated to SLFs who are licensed and regulated by the State, the State’s unlawful requirements related to the admission of SLF applicants with mental illness; and
- q. The HFS “Interagency Certification of Screening Results” form (HFS 2536) is designed to summarize and document the Determination of Need and “to determine his/her need for nursing facility, supportive living or ICF/DD services and to ascertain if other services might be an acceptable alternative to nursing facility, supportive living or ICF/DD placement.” However, no form 2536 or screening paperwork is provided to an SLF if an applicant who is referred for a PAS/MH screen by the DHS Division of Mental Health has a

mental illness. The person is simply denied housing, Medicaid services and due process via an inapplicable form letter.

116. The State of Illinois has failed to take any steps to modify, direct, tailor, track, or adapt its PAS/MH screening processes to determine level of care for persons with mental illnesses regarding State of Illinois SLF program requirements in instances where applicants are suspected of having mental illnesses.

### **Injury to the Plaintiff**

117. The Alden Gardens Defendants' discriminatory actions and the State 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.

118. The Alden Gardens Defendants' refusal to rent and provide services to persons on the basis of mental health status and the State Defendants' discriminatory policies and practices have 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, the conduct of the Defendants 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 Alden Gardens Defendants, unless enjoined, will continue to engage in the pattern or practice of discrimination and unlawful conduct described above. Plaintiff has no adequate remedy at law. Plaintiff is now suffering and will continue to suffer irreparable injury

from Defendants' acts and unlawful conduct unless relief is provided by this Court. Plaintiff, accordingly, is entitled to permanent injunctive relief.

120. The State of Illinois Defendants, unless enjoined in the manner specifically requested herein, will continue to engage in the pattern or practice of discrimination and unlawful conduct described above, Plaintiff has no adequate remedy at law. Plaintiff is now suffering and will continue to suffer irreparable injury from the State Defendants' unlawful acts and conduct unless relief is provided by the Court. Plaintiff, accordingly, is entitled to permanent injunctive relief.

### **COUNT I**

#### **Fair Housing Act—Damages and Injunctive Relief HOPE against the Alden Gardens Defendants**

121. Plaintiff HOPE realleges and incorporates by reference the allegations contained in paragraphs 1 through 120 as if fully set forth herein.

122. As set forth above, HOPE is engaged in advocacy and investigation of the conduct of the Alden Gardens Defendants, other SLFs and the State Defendants toward persons with mental health diagnoses and conditions.

123. By their actions detailed above, the Alden Gardens Defendants have acted unlawfully 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 because of disability in violation of 42 U.S.C. § 3604(f) and interfering in the exercise or enjoyment of the right to obtain housing and related services and facilities free of discrimination in violation of 42 U.S.C. § 3617, including but not limited to in the following ways:

- a. denying the opportunity to complete an application for a desired dwelling based on disability;

- b. denying the opportunity to rent a desired unit based on disability; and
- c. making oral and written statements 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).

124. As set forth above, the Alden Gardens Defendants' conduct resulted in diversion of resources and frustration of HOPE's mission, in violation of the Fair Housing Act.

125. Plaintiff seeks an injunction against the Alden Gardens Defendants specifying compliance with the Fair Housing Act, as set forth more fully below in the Prayer for Relief, and including: (a) elimination of the "No Mental Illness" policy; (b) adoption of an appropriate nondiscrimination policy; (c) training of all Alden Gardens staff concerning appropriate application and screening process; (d) maintenance of adequate documentation of all program and applicant inquiries; and (e) adoption of policies and practices that ensure complete, proper, and qualified screening of all applicants, regardless of actual or perceived mental health issues.

## **COUNT II**

### **Title III of the Americans with Disabilities Act Hope against the Alden Gardens Defendants**

126. The allegations of paragraphs 1 through 120 are hereby re-alleged and incorporated by reference as if fully stated herein.

127. The Alden Gardens Defendants discriminated against potential residents on the basis of disability in the full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations in violation of Title III of the ADA, 42 U.S.C. § 12182(a) and the Title III implementing regulation at 28 C.F.R. § 36, by:

- a. denying potential residents the ability to participate in or benefit from its goods, services, facilities, privileges, advantages, or accommodations by refusing them

admission to their Alden Gardens SLF, in violation of 42 U.S.C. § 12182(b)(1)(A)(i) and 28 C.F.R. § 36.202;

- b. using standards or criteria or methods of administration that have the effect of discriminating on the basis of disability, including through statements made to the HOPE testers and on their website, in violation of 42 U.S.C. § 12182(b)(1)(D) and 28 C.F.R. § 36.204; and
- c. imposing or applying eligibility criteria that screen out, or tend to screen out, potential residents with mental diagnoses and disability from fully and equally enjoying the SLF's goods, services, facilities, privileges, advantages, or accommodations in violation of 42 U.S.C. § 12182(b)(2)(A)(i) and 28 C.F.R. § 36.301(a).

### **COUNT III**

#### **Section 504 of Rehabilitation Act of 1973 Hope Against Alden Gardens Defendants**

128. Plaintiff realleges and incorporate by reference the allegations contained in paragraphs 1 through 120 as if fully set forth herein.

129. The Alden Gardens SLF program receives federal financial assistance.

130. Section 504 of the Rehabilitation Act, 29 U.S 794, prohibits the Alden Gardens Defendants from denying individuals with mental diagnoses and disabilities equal access to benefits and services and equal opportunity to participate in programs receiving federal financial assistance.

131. By their conduct set forth above, the Alden Gardens Defendants violated the Rehabilitation Act and its implementing regulations, including, but not limited to, in the following ways:

- a. Denying applicants with mental health diagnoses and disabilities the opportunity to participate and benefit from living at Alden Gardens;
- b. Excluding applicants with mental health diagnoses and disabilities from participation in a program or activity receiving federal financial assistance based on their disabilities;
- c. Denying applicants with mental health diagnoses and disabilities the enjoyment of dwelling units in which they were eligible to reside;
- d. Denying applicants with mental health diagnoses and disabilities the right to services, programs and activities in the most integrated setting appropriate to their needs;
- e. Applying discriminatory criteria to applicants with mental health diagnoses and disabilities, with the effect of defeating the principal goal of assisting people with disabilities in living full and independent lives.

132. Plaintiff seeks an injunction against the Alden Gardens Defendants specifying compliance with the Rehabilitation Act, as set forth more fully below in the Prayer for Relief, and including: (1) the elimination of Alden Gardens' "No Mental Illness" policy; (2) adoption of an appropriate nondiscrimination policy; (3) training of all Alden Gardens staff concerning appropriate application and screening process; (4) maintenance of adequate documentation of all program and applicant inquiries; and (5) adoption of policies and practices that ensure complete, proper and qualified screening of all applicants, regardless of actual or perceived mental health issues.

**COUNT IV**

**Fair Housing Act — Injunctive Relief  
HOPE Against State Defendants**

133. Plaintiff HOPE realleges and incorporates by reference the allegations contained in paragraphs 1 through 120 as if fully set forth herein.

134. As set forth above, HOPE engaged in advocacy about and investigation of the State Defendants' conduct toward the testers, and of the State's policies and procedures under the Fair Housing Act.

135. Plaintiff brings its claims against the State Defendants under discriminatory intent and disparate impact theories. By their actions detailed above, the State Defendants have violated the rights of persons with a mental health diagnosis or condition 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 denying or otherwise making unavailable a dwelling because of their disabilities in violation of 42 U.S.C. § 3604(f) and interfering in the exercise or enjoyment of their rights to obtain housing and related services and facilities free of discrimination in violation of 42 U.S.C. § 3617, including, but not limited to, in the following ways:

a. Enacting, disseminating and enforcing policies that have the discriminatory impact and intent of excluding all persons with a primary or secondary diagnosis of mental illness from Supportive Living Facilities;

b. Applying the undefined phrase "serious and persistent mental illness" discriminatorily in a manner that results in the discriminatory exclusion of individuals with mental health diagnoses from Supportive Living Facilities;

c. Interfering with the non-discriminatory provision of housing and services under the HCBS Waiver;

d. Acting jointly with SLF Providers, including the Alden Gardens Defendants, to deny housing and services based on disability or being “regarded as” disabled;

e. Failing to set ascertainable standards or procedures that would permit assessment of the suitability for a Supportive Living Facility of an applicant with a mental health diagnosis who might otherwise be qualified for the Supportive Living Program;

f. Enacting policies and procedures that deny due process and a fair opportunity to dispute exclusion from Supportive Living Facilities based on mental health diagnosis;

g. Failing to properly inform, train, monitor or guide Supportive Living Facilities, State agencies who conduct DON/PAS screens, and contractors with the State of Illinois who conduct mental health screens concerning the Supportive Living Program in general, and specifically with regards to non-discrimination concerning mental health diagnosis alone, definitions of “serious,” “serious and persistent,” or “severe” mental illnesses, proper standards of SLF residency suitability, professional standards required in health or mental health screening (not to be undertaken at the SLF level), documentation, or due process considerations; and

h. Informing and directing Supportive Living Facilities, State agencies who conduct DON/PAS screens, and contractors with the State of Illinois who conduct mental health screens relating to the SLP, to apply criteria for the consideration of persons for SLF housing and services that are discriminatory and unlawful, in particular as regards the failure to consider applicants’ actual suitability for SLF housing and services, notwithstanding any mental health diagnosis or condition.

136. Persons with a mental health diagnosis or condition who are interested in living in SLP housing have been injured by the unlawful conduct of the State Defendants inasmuch as: (1) the State Defendants established, disseminated and applied a general eligibility requirement that

applicants for SLF services and housing be free from a serious and persistent mental health diagnosis or condition, (as opposed to whether they might nonetheless be suitable for the SLP, notwithstanding such a mental health diagnosis or condition); (2) this discriminatory standard of the State Defendants constituted a basis for the discriminatory conduct of SLFs such as Alden Gardens in rejecting applications for SLF housing and services; (3) the State provided no recourse for notice, hearing, appeal or reversal of the summary determinations of SLFs such as Alden Gardens to unlawfully reject applications for SLF housing and services; (4) the State provided no means for persons with mental health diagnoses or illnesses to access PAS/MH screening subsequent to the summary determination of SLFs such as Alden Gardens to reject applications for SLF housing and services; (5) even if persons with mental health diagnoses or illnesses could have somehow accessed the PAS/MH screening provided in connection with the SLP, such persons would have been rejected under the State Defendants' truncated and unlawful standard of merely "ruling out" mental illness diagnosis (as opposed to meaningfully considering whether such person might nonetheless be suitable for the SLP, notwithstanding a mental health diagnosis or condition); State forms and databases as applied would have blocked them from the SLP, and they would have been (and were) denied due process.

137. As set forth above, the State Defendants' unlawful conduct resulted in diversion of resources and frustration of HOPE's mission, in violation of the Fair Housing Act.

138. HOPE seeks an injunction specifying compliance with the Fair Housing Act by the State of Illinois in administering the Medicaid program and, in particular, concerning Illinois HCBS Waiver and 89 Administrative Code Section 146.220.

139. The Illinois HCBS Waiver, the Administrative Code, and all other applicable State policies and procedures should be modified to eliminate discrimination based on disability,

including actual or perceived mental illness disability, in provision of housing and services under the Supportive Living Program. The Illinois HCBS Waiver and all other applicable State policies and procedures should also be modified to require that State agencies and providers of supportive housing funded under the HCBS Waiver conduct 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 by the SLF until the appropriate point in the process for properly determining eligibility and need for supportive services, (b) that informed consent will be elicited and provided, (c) that appropriate preadmission screening must be performed and completed in a nondiscriminatory manner by a trained professional; and (d) that Supportive Living Program housing will not be denied based on mental health conditions where the prospective resident is otherwise qualified. This injunctive relief is necessary to further the goals of federal anti-discrimination laws affecting housing and supportive living services, and to remedy the illegal conduct of Alden Gardens Defendants and the State Defendants in this case.

### **COUNT V**

#### **Title II of the Americans with Disabilities Act (ADA) – Injunctive Relief Hope Against the State Defendants**

140. Plaintiff HOPE realleges and incorporates by reference the allegations contained in paragraphs 1 through 120 as if fully set forth herein.

141. Title II of the ADA prohibits disability-based discrimination in all programs, services, and activities of a governmental entity and prescribes that a local government entity: (1) may not provide different or separate aids, benefits, or services to individuals with disabilities; (2) may not limit individuals with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others; (3) may not utilize criteria or methods of administration that

have the effect of discriminating against individuals with disabilities; and (4) is required to make reasonable modifications to its policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130. Persons whom the State Defendants deny from participation in the SLP by the State Defendants' actions, policies and practices challenged herein are persons with disabilities, or are regarded as persons with disabilities, within the meaning of the ADA, 42 U.S.C. § 12102 and 28 C.F.R. § 35.104. They are qualified to receive services and participate in programs or activities provided by the State. *See* 42 U.S.C. § 12131(2).

142. The State Defendants' actions constitute discrimination in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35, by:

- a. Denying equal services and programs to participants because of their actual or perceived mental impairments. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(g);
- b. Providing different benefits or services to participants and limiting participants in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others, because of the actual or perceived mental impairments of its participants. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1); and
- c. Utilizing methods of administering its programs and services that had the effect of subjecting participants to discrimination on the basis of disability. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(3).

143. Plaintiff HOPE and any other persons aggrieved by the State's discriminatory actions are entitled to relief under Title II of the ADA. *See* 42 U.S.C. § 12133; *see also* 29 U.S.C. § 794(a) (the remedies, procedures, and rights of which are incorporated into Title II by reference); 42 U.S.C. §§ 2000(d)(2), (e)(5) (incorporated into 29 U.S.C. § 794a by reference).

**COUNT VI**

**Section 504 – Injunctive Relief  
HOPE Against State Defendants**

144. Plaintiff HOPE realleges and incorporates by reference the allegations contained in paragraphs 1 through 120 as if fully set forth herein.

145. The State Defendants administer, implement and operate the Illinois SLP, which receives federal funding.

146. Section 504 of the Rehabilitation Act, 29 U.S.C. 794, prohibits the State Defendants from denying individuals with mental diagnoses and disabilities equal access to the State Defendants' benefits and services and equal opportunity to participate in the State Defendants' programs on the basis of disability. 24 CFR §8.4(b); 28 C.F.R. §42.503(b).

147. Through the acts described above, the State Defendants violated Section 504 and its implementing regulations. The State Defendants' conduct frustrated Plaintiff HOPE's mission and forced Plaintiff HOPE to divert scarce resources and staff hours to providing services, assistance, advocacy, and counseling in an effort to counteract the harm caused by Defendants' unlawful conduct.

**JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury on all Counts to which it is entitled to one.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that the Court grant it the following relief:

A. Enter a declaratory judgment that the Alden Gardens Defendants' conduct is in violation of the Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601 *et seq.*; the Americans with Disabilities Act, 42 U.S.C § 12101 *et seq.*; and the Rehabilitation Act, 29 U.S.C. Sect. 704;

B. Grant a permanent injunction ordering the Alden Gardens 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;

C. Grant a permanent injunction directing that the Alden Gardens Defendants take all affirmative steps necessary to remedy the effects of the illegally discriminatory conduct alleged in this Complaint and to prevent repeated occurrences in the future. Such affirmative steps should include but are not limited to the following:

1. Eliminate use and application of a “No Mental Illness” policy;
2. Develop appropriate criteria for pre-admission screening of SLF residents based solely on resident suitability factors (e.g. tenant history, criminal background check, etc.);
3. Adopt a non-discrimination policy prohibiting discrimination based on mental health and/or mental illness;
4. Refrain from inquiring about SLF resident medication lists and diagnoses in the application process;
5. Refrain from applying or inquiring about eligibility criteria that will be evaluated by licensed State officials during the Determination of Needs screening, and refer all SLF applicants who appear to need SLF services to proper licensed DON/PAS screening agents, regardless of mental health status;

D. Enter a declaratory judgment that the State Defendants’ conduct is in violation of the Fair Housing Act of 1968, as amended, 42 U.S.C. Sect. 3601, *et seq.*; The Americans with Disabilities Act, 42 U.S.C. Sect. 12101 *et seq.*; and the Rehabilitation Act, 29 U.S.C. Sect. 704;

E. Grant a permanent injunction directing that the State Defendants take all affirmative steps necessary to remedy the effects of the unlawful conduct alleged in this Complaint, including to ensure that nondiscriminatory screenings and suitability determinations occur, to prevent repeated occurrences in the future, and to require full compliance with the FHA. Such affirmative steps should include *but are not limited to* the following:

1. Eliminate all language in Supportive Living Program-related policies and procedures that states or suggests that persons should or may be excluded from an SLF based on diagnosis of mental illness alone, including:
  - i. Illinois HCBS SLF Waiver Appendix B-1;
  - ii. 89 Ill. Administrative Code §146.220;
  - iii. Supportive Living Program Handbook, § C-230;
  - iv. Supportive Living Program Website;
  - v. June 22, 2011 Informational Notice issued by HFS and Governor Quinn;
  - vi. SLF Resident Fact Sheet (HFS, Governor Quinn);
  - vii. Preadmission Screen/Mental Health (PAS/MH) Contractor's Procedure Manual (DHS Division of Mental Health); and
  - viii. Supportive Living Program Commonly Asked Questions and Answers (HFS);
2. Adopt an appropriate nondiscrimination statement applicable to the Supportive Living Program;
3. Replace 89 Ill. Adm. Code § 146.220 with: "Potential residents will be screened for (a) residency suitability by the SLF and (b) program suitability (physical disability/determination of needs) by licensed agents of the Department of Human Services Division of Rehabilitation Services (ages 22-59) or Department on Aging (60 or older);
4. Replace language in Illinois-inserted text of SLF Waiver Appendix B-1 with: "Individuals must be found to be in the target group, physical disability, and otherwise be found suitable for residency in an SLF based on their tenant or residential history and background;"
5. Replace Section C-230 of the Supportive Living Program Handbook with: "To be eligible for the HCBS Waiver, an individual must be a member of the HCBS Waiver Target Group because of a physical disability or disabilities (that will require waiver services). An individual who otherwise qualifies for the waiver may not be denied or disqualified from eligibility on the basis of developmental disability or mental health diagnosis, impairment or disability;"
6. Modify Supportive Living Program Website as follows: "To be eligible for the HCBS Waiver, an individual must be a member of the HCBS Waiver Target Group because of a physical disability or disabilities (that will require waiver services). An individual who otherwise qualifies for the waiver may not be

denied or disqualified from eligibility on the basis of developmental disability or mental health diagnosis, impairment or disability;”

7. Replace discriminatory language in the June 22, 2011 Informational Notice or issue new Informational Notice as follows: “All applications will be received and processed by SLFs and all applicants will be afforded appropriate screening processes concerning suitability. Potential residents will be screened for (a) residency suitability by the SLF (e.g. tenant history, criminal record, financial need/ability to pay costs, etc.) and (b) program suitability (physical disability determination of needs) by licensed agents of the Department of Human Services Division of Rehabilitation Services (ages 22-59) or Department on Aging (60 or older). SLF staff should not engage in health or mental health screening, only residency-appropriateness screening. SLFs should develop proper tenant and program applications and residential background screening documents and processes, for approval by HFS, in accord with the State’s SLF non-discrimination statement. Once an applicant passes the SLF-level initial residency suitability screening, they will be referred based on their age by the SLF to the proper State Department concerning a Determination of Needs/program suitability screening. The fact that an individual has been diagnosed with a mental illness does not automatically prevent that individual from applying to or living in an SLF. The DON/PAS screener should complete the DON for an SLF applicant as regards the applicant’s physical disability. If a DON/PAS screener suspects the SLF applicant has a mental illness, they will, once the DON screen is complete, refer the applicant to the DHS Division of Mental Health using the OBRA-1. The Division of Mental Health will undertake a full Level II screen and determine whether the individual may appropriately live in the SLF based on appropriate criteria on a case-by-case basis. DHS Division of Mental Health may determine whether an individual applying to the Supportive Living Program with a mental illness could be linked with other mental health services, in addition to or instead of the Supportive Living Program;”
8. Eliminate the following from the SLF Resident Fact Sheet: “is without a primary or secondary diagnosis of developmental disability or serious and persistent mental illness;”
9. Replace discriminatory language in the DHS Division of Mental Health Contractor’s Procedure Manual concerning the Supportive Living Program;
10. Modify the Response to Question 65 of the Supportive Living Program Frequently Asked Questions and Answers to eliminate language allowing diagnosis-based rejection of SLF applicants with mental health diagnoses and insert language consistent with the modified Informational Notice, Contractor’s Procedure Manual, and nondiscrimination statement;
11. Modify the HFS 2536 Interagency Certification of Screening Results form as needed to include certification of the Division of Mental Health concerning

suitability for Supportive Living Facility Placement after a Level II mental health screen of an SLF applicant (in addition to the DON screen);

12. Require Supportive Living Facilities to annually certify compliance with all applicable non-discrimination laws as both service and housing providers;
13. Provide policy-level instructional materials and training to DON/PAS screeners and DHS Division of Mental Health-contracted screening agencies concerning Supportive Living Program requirements, and non-discrimination based on mental illness;
14. Fully implement criteria for DHS Division of Mental Health screeners to determine whether a person with a mental illness who also has a physical disability is suitable for a Supportive Living Facility as a “level of care;”
15. Implement sufficient due process notice and hearing procedures and record keeping concerning Supportive Living Facility applicants determined unsuitable for the Supportive Living Program, including, but not limited to, on the basis of mental health condition;
16. Modify the UHS System to make applicable to the Supportive Living Program and/or provide instructions for Level II screeners as to how to utilize the existing Illinois UHS data base screens, determinations and form letters, in the context of an SLF applicant suspected of having a mental illness, and/or otherwise modify the UHS data base as necessary; and
17. Publicize and advertise implementation of the above affirmative relief to all applicable State employees, Illinois Supportive Living Facilities, PAS/MH screeners, referring facilities and institutions, and the public.

F. Award such damages against the Alden Gardens Defendants under the Fair Housing Act of 1968, as amended, the ADA and the Rehabilitation Act, as will fully compensate Plaintiff HOPE for its diversion of resources and the frustration of HOPE’s mission;

G. Award Plaintiff its costs and attorneys’ fees incurred herein against all Defendants, pursuant to 42 U.S.C. § 3613(c)(2), 42 U.S.C. Sect. 12205 and 29 U.S.C. Sect. 794a(b); and

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

Respectfully submitted,

/s/  
One of Plaintiff's Attorneys

Dated:

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\*Application for admission *pro hac vice* to be filed