

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

PAULA BIDLACK; JOSEPH BIXBY; PATRICIA  
BREESE; GERALDINE F. BUTTON; DANIEL FERRIS;  
HOWARD W. JOHNSON; LARRY MILLER; LAURA  
OGDEN; NEIL R. SIMPSON; MARY ANN WEAVER;  
ARLENE V. YOCHUM; ALBERTO AGRONT; MARK  
ALLEN; KEVIN BROWN; MICHAEL COSTELLANO;  
RUSSELL CARTER; JOHN DAVIS; ALEX DIXON;  
ADAM DEAN; DONALD DECKER; RONALD  
FREDRICK; MARK FIORITI; EDWARD GRANT, JR.;  
JERRY HUNT; ROBIN HEBERT; GLEN HERMANNY;  
JOSEPH JOHNSON; WILLIE KING; GIANNI LARA;  
TYRELL MCCLINTON; HARRY MARTINEZ; JOSEPH  
MONTI; EDWARD MURGOTROYD; LARRY  
NEWMAN; LUIS ORTA; JONATHAN SOUTHERLAND;  
JEREMY THOMAS; JASON WYATT; DONALD  
MAHONEY; JAMES ROGERS; GRACE THOMAS;  
LAURA PLEYDLE; MARTIN FINK; FRANCES TATUM;  
THERESA THOMAS; JUDY MCFARLAND; CARL  
SMITH; JAMES NOONAN; VINCENT LORUSSO;  
STEPHEN KIRTLAND; HAI OU ZHU; FLORENCE  
UMINSKY; CATHERINE BARRETT; JEAN JACKSON;  
JEFFREY SUSKIN; RENEE STONE; JOSEPHINE  
JIMERSON; GARY GLADING; MIQUEL ORTIZ;  
MARISOL GONZALEZ; DANIEL SCHECHTER;  
BELINDA STUCKEY; FADRA JONES; ALFRED  
DEMERITT; RADIANCE YOUNG; LORRAINE BROWN;  
DANIEL DAVILA; JOHN KEOUGH; FRED TAVON;  
GEORGE DUROCHER; ANNON HARARI; PHILIP  
ZAMFT; ANNE CARNEY; GLADYS ECHEVARRIA;  
KATHERINE BAYLOCK; ANTHONY MAZZEI;  
ROBERT SARKIN; CARL NIEDERMAN; GLORIA  
GOODSON; DENNIS BACON; GARON BIOT; RONALD  
BHANDIL; DARRYL BROWN; OLIVIA BRYANT;  
THEODORE CARRINGTON; GEORGIA CHAPMAN;  
ROY E. DAUGHERTY; JOHN FRANCIS; JOE FRIESON;  
RUDOLPH HOLNESS; DERRICK JOYMONGAL; JOHN  
KELLY; SIDNEY KNOWLES; MARLIN LORENZO;  
STEVEN MAYE; JACQUELINE MYLES; JERMONE  
McGEE; WILLIE P. MOBLEY; MARION NESBY;  
WAYDE NEWTON; WESLEY PERRY; EFRAIN  
RIVERA; HECTOR RIVERA; ALPHONSO ROBINSON;  
JASON SHANNON; BOBBY SHIPMAN; HARVEY

COMPLAINT

Index No. 05669/18

Date Purchased: 9/6/18

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SIMMONS; DAVID SMITH; JAMES STEPHENSON;  
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TROTMAN; CLARISSA WRIGHT; RONALD ALAN  
WILLIAMS; WEST SIDE FEDERATION FOR SENIOR  
AND SUPPORTIVE HOUSING, INC.; LORETTO ADULT  
COMMUNITY, INC.; FAIRPORT BAPTIST HOMES  
ADULT CARE FACILITY, INC.; UNITED HELPERS  
MANAGEMENT CORPORATION; LOTT ASSISTED  
LIVING OPERATING CORP.; CRYSTAL HOUSE  
MANOR, INC.; NORWEGIAN CHRISTIAN HOME AND  
HEALTH CENTER; PINECREST VOLUNTARY HOME  
FOR THE AGED, INC.; LUTHERAN HOUSING  
REALTY, INC.; THE BRISTOL HOME, INC.; BRISTOL  
VILLAGE, INC.; MEDFORD HAMLET LLC; THE  
HAMLET AT WALLKILL, LLC; PRESBYTERIAN  
RESIDENTIAL COMMUNITY, INC.; LUTHERAN  
HOME OF CENTRAL NEW YORK, INC.; FAMILY  
SERVICE OF ROCHESTER, INC.; ST. NICHOLAS  
HOME, INC.; BRIARWOOD MANOR, INC.; UMH NY  
CORP.; HARRY KATZ; AZZY RECKLESS; PAULA  
RECKLESS; JAMES E. KANE, JR.; EMPIRE STATE  
ASSOCIATION OF ASSISTED LIVING, INC.;  
LEADINGAGE NEW YORK, INC.; and NEW YORK  
STATE CENTER FOR ASSISTED LIVING,

Plaintiffs,

-against-

ANDREW M. CUOMO, as Governor of THE STATE OF  
NEW YORK; SAMUEL D. ROBERTS, as Commissioner of  
the NEW YORK STATE OFFICE OF TEMPORARY AND  
DISABILITY ASSISTANCE; ANN MARIE T.  
SULLIVAN, M.D., as Commissioner of MENTAL  
HEALTH for NEW YORK STATE; HOWARD A.  
ZUCKER, M.D., J.D., as Commissioner of HEALTH for  
NEW YORK STATE; NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE; NEW  
YORK STATE OFFICE OF MENTAL HEALTH; and NEW  
YORK STATE DEPARTMENT OF HEALTH,

Defendants.

Plaintiffs, by their attorneys, Hinman Straub P.C., as and for their Complaint, respectfully allege as follows:

**PRELIMINARY STATEMENT**

1. One of New York State's core values, as expressed in Article XVII, Section 1 of the State's Constitution, is that "[t]he aid, care and support of the needy are public concerns and shall be provided by the [S]tate and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine."

2. The New York State Legislature has "recognized and declared" that persons have a "civil right" to "use and occupancy of housing accommodations . . . without discrimination because of age . . . or disability" (Executive Law § 291 [2]).

3. New York State's highest court, the Court of Appeals, has emphasized that "[i]n this State, assisting the needy is a matter of constitutional command, not legislative grace" (Lovelace v Gross, 80 NY2d 419, 424 [1992]).

4. The Governor, defendant Andrew Cuomo, has publicly proclaimed that "[p]eople with disabilities have the right to receive services and supports in settings that do not segregate them from the community; it is a matter of civil rights."

5. In recognition of this federal civil right to services and supports in the most integrated setting, which was established by the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Governor appointed an "Olmstead Cabinet" to develop a comprehensive plan for New York State to serve people with disabilities in the most integrated setting, known as the Olmstead Implementation Plan (see [https://www.ny.gov/sites/ny.gov/files/atoms/files/Olmstead\\_Final\\_Report\\_2013.pdf](https://www.ny.gov/sites/ny.gov/files/atoms/files/Olmstead_Final_Report_2013.pdf)).

6. One of the ways that the State must support the needy, including persons with disabilities, is by supplementing the amount of Supplemental Security Income (“SSI”) paid by the Federal government. The State supplements the federal SSI program through the State Supplement Program (“SSP”). SSI and SSP provide cash to people who are blind, disabled, or low income senior citizens to meet their basic needs for food, clothing, and shelter. Over 550,000 adult residents of New York State received SSI and SSP last year.

7. SSI and SSP help individuals who are not able to live independently to pay for housing and related services in state-regulated adult care facilities (“ACFs”), instead of being forced to live in more restrictive facilities like nursing homes. In 2017, 12,600 New Yorkers in ACFs depended exclusively on SSI/SSP for room, board, meals, and assistance with activities of daily living.

8. It costs more to board a dog for a day in New York City—\$45-\$60 on average, according to the Wall Street Journal—than the State government will pay to house, feed, and provide enrichment for a senior citizen or person with disabilities in an ACF.

9. Although the federal SSI contribution is indexed so that it increases with inflation, the New York State’s SSP payment is not. Because it is not indexed, SSP increases only if the State government specifically raises the amount. The state SSP payment has remained fixed since 2007.

10. Inflation is a permanent reality in our economy—the Federal Reserve projects 2% inflation annually for the next several years—meaning that it takes \$1.24 today to have the same buying power as \$1 did in 2007, based on the U.S. Department of Labor’s Consumer Price Index (“CPI”). Despite the eroding effects of inflation on personal income, and despite the enactment of numerous state mandates, such as the increase to the state’s minimum wage, the State government has not increased its SSP rate since 2007. With regard to the minimum wage, the Governor has provided financial assistance to every other health care provider to assist in the cost borne by increasing the minimum wage, except ACFs.

11. In 2017, the New York State Legislature determined that, after a decade of stagnation, it was past time to increase SSP for ACF residents. Both the Senate and the Assembly passed legislation to increase SSP. The Governor vetoed the legislation and, despite proclamations otherwise in the veto message, failed to support funding for an SSP increase in the 2018 State Budget.

12. The State’s refusal to increase SSP is an abdication of its constitutional obligation to the needy, a violation of statutes enacted to ensure the adequate provision for people who are elderly and/or disabled, and a cessation of the State’s responsibilities to private businesses that operate the ACFs where these individuals reside, without compensation to ACFs that is adequate to maintain the standard of services required by the State for these poor and disabled residents.

13. As a result of the State's wanton inaction, the ACF model of housing and services has reached a breaking point. Facilities across the state have been forced to close at an alarming rate because the reimbursement structure does not adequately fund their residents' needs. When an ACF closes, its residents are generally forced into more institutionalized settings, contrary to their wishes and in violation of federal law.

14. The State pays similar county-run ACFs 50% more per day to provide the same services, allowing those facilities to be paid based upon their actual costs. Two New York State counties—Chenango and Warren—operate these facilities. Thus, the State impermissibly discriminates against most New Yorkers, including residents of this county, based upon their county of residence.

15. The plaintiffs in this case are current and former ACF residents, ACF operators, and three state-wide associations representing ACF operators. Plaintiffs seek to hold the Defendants accountable to meet their constitutional, statutory, and other obligations by requiring them to increase SSP to an adequate level to meet the facilities' actual and reasonable costs, while at the same time administering this public assistance program in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

### **PARTIES, JURISDICTION, AND VENUE**

#### **The Plaintiffs**

16. Paula Bidlack ("Bidlack") is a resident of Pinecrest Home for Adults, 7 Charlesworth Avenue, P.O. Box K, Avoca, Steuben County, New York 14809. Bidlack is an

SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

17. Joseph Bixby ("Bixby") is a resident of Pinecrest Home for Adults, 7 Charlesworth Avenue, P.O. Box K, Avoca, Steuben County, New York 14809. Bixby is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

18. Patricia Breese ("Breese") is a resident of Pinecrest Home for Adults, 7 Charlesworth Avenue, P.O. Box K, Avoca, Steuben County, New York 14809. Breese is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

19. Geraldine F. Button ("Button") is a resident of Pinecrest Home for Adults, 7 Charlesworth Avenue, P.O. Box K, Avoca, Steuben County, New York 14809. Button is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

20. Daniel Ferris ("Ferris") is a resident of Pinecrest Home for Adults, 7 Charlesworth Avenue, P.O. Box K, Avoca, Steuben County, New York 14809. Ferris is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

21. Howard W. Johnson ("H. Johnson") is a resident of Pinecrest Home for Adults, 7 Charlesworth Avenue, P.O. Box K, Avoca, Steuben County, New York 14809. H. Johnson

is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

22. Larry Miller ("Miller") is a resident of Pinecrest Home for Adults, 7 Charlesworth Avenue, P.O. Box K, Avoca, Steuben County, New York 14809. Miller is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

23. Laura Ogden ("Ogden") is a resident of Pinecrest Home for Adults, 7 Charlesworth Avenue, P.O. Box K, Avoca, Steuben County, New York 14809. Ogden is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

24. Neil R. Simpson ("Simpson") is a resident of Pinecrest Home for Adults, 7 Charlesworth Avenue, P.O. Box K, Avoca, Steuben County, New York 14809. Simpson is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

25. Mary Ann Weaver ("Weaver") is a resident of Pinecrest Home for Adults, 7 Charlesworth Avenue, P.O. Box K, Avoca, Steuben County, New York 14809. Weaver is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

26. Arlene V. Yochum ("Yochum") is a resident of Pinecrest Home for Adults, 7 Charlesworth Avenue, P.O. Box K, Avoca, Steuben County, New York 14809. Yochum is an



SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

27. Alberto Agront ("Agront") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Agront is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

28. Mark Allen ("Allen") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Allen is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

29. Kevin Brown ("Brown") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Brown is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

30. Michael Costellano ("Costellano") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Costellano is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

31. Russell Carter ("Carter") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Carter is an SSI beneficiary

and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

32. John Davis ("Davis") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Davis is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

33. Alex Dixon ("Dixon") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Dixon is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

34. Adam Dean ("Dean") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Dean is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

35. Donald Decker ("Decker") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Decker is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

36. Ronald Fredrick ("Fredrick") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Fredrick is an SSI

beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

37. Mark Fioriti ("Fioriti") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Fioriti is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

38. Edward Grant, Jr. ("Grant") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Grant is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

39. Jerry Hunt ("Hunt") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Hunt is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

40. Robin Hebert ("Hebert") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Hebert is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

41. Glen Hermann ("Hermann") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Hermann is an SSI

beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

42. Joseph Johnson ("J. Johnson") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. J. Johnson is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

43. Willie King ("King") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. King is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

44. Gianni Lara ("Lara") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Lara is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

45. Tyrell McClinton ("McClinton") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. McClinton is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

46. Harry Martinez ("Martinez") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Martinez is an SSI

beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

47. Joseph Monti ("Monti") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Monti is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

48. Edward Murgotroyd ("Murgotroyd") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Murgotroyd is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

49. Larry Newman ("Newman") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Newman is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

50. Luis Orta ("Orta") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Orta is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

51. Jonathan Southerland ("Southerland") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Southerland is

an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

52. Jeremy Thomas ("J. Thomas") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Thomas is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

53. Jason Wyatt ("Wyatt") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Wyatt is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

54. Donald Mahoney ("Mahoney") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Mahoney is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

55. James Rogers ("Rogers") is a resident of Crystal House Manor, 97 Mill Street, P.O. Box 576, Dover Plains, Dutchess County, New York 12522. Rogers is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

56. Grace Thomas ("G. Thomas") was a resident of RiverLedge Residence, 8103 Route 68, Ogdensburg, St. Lawrence County, New York 13669. G. Thomas is an SSI beneficiary and former resident of an ACF who received SSI/SSP benefits at the Congregate

Care Level III rate for payment to the ACF in exchange for resident services. G. Thomas currently resides at RiverLedge Health Care and Rehabilitation Center, a nursing home located at 8101 State Highway 68, Ogdensburg, NY 13669.

57. Laura Pleydle ("Pleydle") is a resident of Braemar Living at Medford, 1529 North Ocean Avenue, Medford, Suffolk County, New York 11763. Pleydle is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

58. Martin Fink ("Fink") is a resident of Braemar Living at Medford, 1529 North Ocean Avenue, Medford, Suffolk County, New York 11763. Fink is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

59. Frances Tatum ("Tatum") is a resident of one of the Family Service Communities in Monroe County, New York. Tatum is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

60. Theresa Thomas ("T. Thomas") is a resident of one of the Family Service Communities in Monroe County, New York. Thomas is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

61. Judy McFarland ("McFarland") is a resident of one of the Family Service Communities in Monroe County, New York. McFarland is an SSI beneficiary and current

resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

62. Carl Smith ("Smith") is a resident of one of the Family Service Communities in Monroe County, New York. Smith is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

63. James Noonan ("Noonan") is a resident of one of the Family Service Communities in Monroe County, New York. Noonan is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

64. Vincent Lorusso ("Lorusso") is a resident of one of the Family Service Communities in Monroe County, New York. Lorusso is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

65. Stephen Kirtland ("Kirtland") is a resident of one of the Family Service Communities in Monroe County, New York. Kirtland is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

66. Hai Ou Zhu ("Zhu") is a resident of Braemar Living at Wallkill, 21 Riverside Drive, Middletown, Orange County, New York 10941. Zhu is an SSI beneficiary and current



resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

67. Florence Uminsky ("Uminsky") is a resident of Braemar Living at Wallkill, 21 Riverside Drive, Middletown, Orange County, New York 10941. Uminsky is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

68. Catherine Barrett ("Barrett") is a resident of Braemar Living at Wallkill, 21 Riverside Drive, Middletown, Orange County, New York 10941. Barrett is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

69. Jean Jackson ("Jackson") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Jackson is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

70. Jeffrey Suskin ("Suskin") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Suskin is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

71. Renee Stone ("Stone") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Stone is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

72. Josephine Jimerson ("Jimerson") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Jimerson is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

73. Gary Glading ("Glading") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Glading is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

74. Miguel Ortiz ("Ortiz") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Ortiz is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

75. Marisol Gonzalez ("Gonzalez") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Gonzalez is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

76. Daniel Schechter ("Schechter") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Schechter is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

77. Belinda Stuckey ("Stuckey") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Stuckey is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

78. Fadra Jones ("Jones") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Jones is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

79. Alfred Demeritt ("Demeritt") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Demeritt is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

80. Radiance Young ("Young") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Young is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

81. Lorraine Brown ("Brown") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Brown is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

82. Daniel Davila ("Davila") is a resident of Frederic Fleming House, West Side Federation for Senior Housing, 443 West 22<sup>nd</sup> Street, New York, New York County, New York 10011. Davila is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

83. John Keough ("Keough") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Keough is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

84. Fred Tavon ("Tavon") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Tavon is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

85. George Durocher ("Durocher") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Durocher is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

86. Annon Harari ("Harari") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Harari is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

87. Philip Zamft ("Zamft") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Zamft is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

88. Anne Carney ("Carney") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Carney is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

89. Gladys Echevarria ("Echevarria") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Echevarria is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

90. Katherine Baylock ("Baylock") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Baylock is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

91. Anthony Mazzei ("Mazzei") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Mazzei is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

92. Robert Sarkin ("Sarkin") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Sarkin is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

93. Carl Niederman ("Niederman") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Niederman is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

94. Gloria Goodson ("Goodson") is a resident of West 74<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 201 West 74<sup>th</sup> Street, New York, New York County, New York 10023. Goodson is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

95. Dennis Bacon ("Bacon") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Bacon is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

96. Garon Biot ("Biot") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Biot is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

97. Ronald Bhandil ("Bhandil") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Bhandil is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

98. Darryl Brown ("Brown") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Brown is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.



99. Olivia Bryant ("Bryant") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Bryant is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

100. Theodore Carrington ("Carrington") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Carrington is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

101. Georgia Chapman ("Chapman") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Chapman is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

102. Roy E. Daugherty ("Daugherty") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Daugherty is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

103. John Francis ("Francis") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Bacon is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

104. Joe Frieson ("Frieson") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Frieson is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

105. Rudolph Holness ("Holness") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Holness is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

106. Derrick Joymongal ("Joymongal") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Joymongal is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

107. John Kelly ("Kelly") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Kelly is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

108. Sidney Knowles ("Knowles") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Knowles is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

109. Marlin Lorenzo ("Lorenzo") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Lorenzo is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

110. Steven Maye ("Maye") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Maye is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

111. Jacqueline Myles ("Myles") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Myles is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

112. Jerome McGee is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. McGee is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

113. Willie P. Mobley ("Mobley") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Mobley is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

114. Marion Nesby ("Nesby") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Nesby is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

115. Wayde Newton ("Newton") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New

York 10027. Newton is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

116. Wesley Perry ("Perry") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Perry is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

117. Efrain Rivera ("E. Rivera") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. E. Rivera is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

118. Hector Rivera ("H. Rivera") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. H. Rivera is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

119. Alphonso Robinson ("Robinson") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Robinson is an SSI beneficiary and current resident of an ACF who received

SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

120. Jason Shannon ("Shannon") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Shannon is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

121. Bobby Shipman ("Shipman") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Shipman is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

122. Harvey Simmons ("Simmons") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Simmons is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

123. David Smith ("Smith") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Smith is an SSI beneficiary and current resident of an ACF who received

SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

124. James Stephenson ("Stephenson") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Stephenson is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

125. George Straker ("Straker") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Straker is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

126. Paul Tillman ("Tillman") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Tillman is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

127. Elizabeth Trotman ("Trotman") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Trotman is an SSI beneficiary and current resident of an ACF who received

SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

128. Clarissa Wright ("Wright") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Wright is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

129. Ronald Alan Williams ("Williams") is a resident of 129<sup>th</sup> Street Residence, West Side Federation for Senior Housing, 109 West 129<sup>th</sup> Street, New York, New York County, New York 10027. Williams is an SSI beneficiary and current resident of an ACF who received SSI/SSP benefits at the Congregate Care Level III rate for payment to the ACF in exchange for resident services.

130. Collectively, Paula Bidlack, Joseph Bixby, Patricia Breese, Geraldine F. Button, Daniel Ferris, Howard W. Johnson, Larry Miller, Laura Ogden, Neil R. Simpson, Mary Ann Weaver, Arlene V. Yochum, Alberto Agront, Mark Allen, Kevin Brown, Michael Costellano, Russell Carter, John Davis, Alex Dixon, Adam Dean, Donald Decker, Ronald Fredrick, Mark Fioriti, Edward Grant, Jr., Jerry Hunt, Robin Hebert, Glen Hermann, Joseph Johnson, Willie King, Gianni Lara, Tyrell McClinton, Harry Martinez, Joseph Monti, Edward Murgotroyd, Larry Newman, Luis Orta, Jonathan Southerland, Jerry Thomas, Jason Wyatt, Donald Mahoney, James Rogers, Grace Thomas, Laura Pleydle, Martin Fink, Frances Tatum, Theresa Thomas, Judy McFarland, Carl Smith, James Noonan, Vincent Lorusso, Stephen Kirtland, Hai



Ou Zhu, Florence Uminsky, Catherine Barrett, Jean Jackson, Jeffrey Suskin, Renee Stone, Josephine Jimerson, Gary Glading, Miguel Ortiz, Marisol Gonzalez, Daniel Schechter, Belinda Stuckey, Fadra Jones, Alfred Demeritt, Radiance Young, Lorraine Brown, Daniel Davila, John Keough, Fred Tavon, George Durocher, Annon Harari, Philip Zamft, Anne Carney, Gladys Echevarria, Katherine Baylock, Anthony Mazzei, Robert Sarkin, Carl Niederman, Gloria Goodson, Dennis Bacon, Garon Biot, Ronald Bhandil, Darryl Brown, Olivia Bryant, Theodore Carrington, Georgia Chapman, Roy E. Daugherty, John Francis, Joe Frieson, Rudolph Holness, Derrick Joymongal, John Kelly, Sidney Knowles, Marlin Lorenzo, Steven Maye, Jacqueline Myles, Jerome McGee, Willie P. Mobley, Marion Nesby, Wayde Newton, Wesley Perry, Efrain Rivera, Hector Rivera, Alphonso Robinson, Jason Shannon, Bobby Shipman, Harvey Simmons, David Smith, James Stephenson, George Straker, Paul Tillman, Elizabeth Trotman, Clarissa Wright, and Ronald Alan Williams, are the "Individual Plaintiffs".

131. Plaintiff West Side Federation for Senior and Supportive Housing, Inc. ("WSFSSH") is a domestic not-for-profit corporation with its principal place of business located at 2345 Broadway, New York, New York County, New York 10024. As relevant to this action, WSFSSH owns and operates three ACFs. First, WSFSSH operates Frederic Fleming House, an ACF in Chelsea that provides services to up to 47 formerly homeless adults with special needs who benefit from congregatè, supportive housing. Approximately 39 Frederic Fleming House residents are SSP beneficiaries and WSFSSH is paid through the Congregate Care Level III benefits received by these residents. Second, WSFSSH operates the 129<sup>th</sup> Street Residence, an ACF in Harlem that provides services to up to 95 formerly homeless

adults (age 40 or older) with special needs who benefit from congregate, supportive housing. Approximately 73 residents of the 129<sup>th</sup> Street Residence are SSP beneficiaries and WSFSSH is paid through the Congregate Care Level III benefits received by these residents. Finally, WSFSSH operates the West Seventy Fourth Street Residence in the Upper West Side. The West Seventy Fourth Street Residence provides services to up to 91 frail elderly persons who benefit from congregate housing. Approximately 43 current residents of the West Seventy Fourth Street Residence are SSP beneficiaries and WSFSSH is paid through the Congregate Care Level III benefits received by these residents.

132. Plaintiff Loretto Adult Community, Inc. ("Loretto") is a domestic, not-for-profit corporation with its principal place of business located at 750 East Brighton Avenue, Syracuse, Onondaga County, New York 13205. As relevant to this action, Loretto operates four ACFs that offer Assisted Living Program ("ALP") beds. First, Loretto operates The Heritage at Loretto, an ACF in Syracuse that has 38 ALP beds and 41 ACF beds for adults with special needs who benefit from congregate, supportive housing. Approximately 13 residents are SSP beneficiaries and Loretto is paid through the Congregate Care Level III benefits received by these residents. Second, Loretto operates Sedgwick Heights, an ACF in the historic Sedgwick district of Syracuse that has 140 ALP and 14 additional ACF beds for adults with special needs who benefit from congregate, supportive housing. Approximately 90 residents are SSP beneficiaries and Loretto is paid through the Congregate Care Level III benefits received by these residents. Third, Loretto operates Buckley Landing, an ACF in North Syracuse that has 66 ALP and 21 additional ACF beds for seniors with special needs who benefit from

congregate, supportive housing. Approximately 17 residents are senior citizens who are SSP beneficiaries and Loretto is paid through the Congregate Care Level III benefits received by these residents. Fourth, Loretto operates the Bernardine Apartments, an ACF in Syracuse that has 108 ALP beds and 40 additional ACF beds for seniors with special needs who benefit from congregate, supportive housing. Approximately 85 residents are senior citizens who are SSP beneficiaries and Loretto is paid through the Congregate Care Level III benefits received by these residents.

133. Plaintiff Fairport Baptist Homes Adult Care Facility, Inc. ("Fairport Baptist") is a domestic, not-for-profit corporation with its principal place of business at 4646 Nine Mile Point Road, Fairport, Monroe County, New York 14450. Fairport Baptist owns and operates an ACF in Fairport with 22 beds for seniors who benefit from congregate, supportive housing, and an additional 11 ALP beds for seniors with special needs who benefit from congregate, supportive housing. Approximately 30 residents are SSP beneficiaries and Fairport Baptist is paid through the Congregate Care Level III benefits received by these residents.

134. Plaintiff United Helpers Management Corporation ("United Helpers") is a domestic, not-for-profit corporation with its principal place of business at 732 Ford Street, Ogdensburg, St. Lawrence County, New York 13669. United Helpers operates the RiverLedge Campus in Ogdensburg, which included an ACF that closed on or about August 23, 2018. The residents of the RiverLedge ACF were all SSP beneficiaries and United Helpers was paid through the Congregate Care Level III benefits received by those residents. United Helpers also operates an the Maplewood Campus in Canton, St. Lawrence County, which

provides 44 ALP beds for adults with special needs who benefit from congregate, supportive housing. Approximately 40 residents of the Maplewoods ALP are SSP beneficiaries and United Helpers is paid through the Congregate Care Level III benefits received by those residents.

135. Plaintiff Lott Assisted Living Operating Corp. ("Lott") is a domestic, not-for-profit corporation with its principal place of business at 1261 Fifth Avenue, New York, New York County, New York 10029. Lott operates the Lott Assisted Living Residence in the Upper East Side, which provides 127 ALP beds for seniors with special needs who benefit from congregate, supportive housing. Approximately 127 residents of the Lott Residence are SSP beneficiaries and Lott is paid through Congregate Care Level III benefits received by those residents.

136. Plaintiff Crystal House Manor, Inc. ("Crystal House") is a domestic business corporation with its principal place of business at 97 Mill Street, Dover Plains, Dutchess County, New York 12522. Crystal House operates the Crystal House Manor Adult Home in Dover Plains, an ACF with 39 beds for adults with special needs who benefit from congregate, supportive housing. Of the approximately 39 residents of the ACF, 29 are SSP beneficiaries and Crystal House is paid through Congregate Care Level III benefits received by those residents.

137. Plaintiff Norwegian Christian Home and Health Center ("NCHHC") is a domestic not-for-profit corporation with its principal place of business at 1270 67<sup>th</sup> Street, Brooklyn, Kings County, New York 11219. NCHHC operates an ALP with 88 beds for adults

with special needs who benefit from congregate, supportive housing. Approximately 32 residents are SSP beneficiaries and NCHHC is paid through Congregate Care Level III benefits received by those residents.

138. Plaintiff Pinecrest Voluntary Home for the Aged, Inc. ("Pinecrest") is a domestic not-for-profit corporation with a principal place of business at 7 Charlesworth Avenue, Avoca, Steuben County, New York 14809. Pinecrest operates an ACF, Pinecrest Home for Adults, with 17 beds for adults with special needs who benefit from congregate, supportive housing. Sixteen residents are SSP beneficiaries and Pinecrest is paid through Congregate Care Level III benefits received by those residents.

139. Plaintiff Lutheran Housing Realty, Inc. ("Lutheran-Jamestown") is a domestic not-for-profit corporation with its principal place of business at 715 Falconer Street, Jamestown, Chautauqua County, New York 14701. Lutheran-Jamestown operates an ALP, Hultquist Place, with beds for 96 adults with special needs who benefit from congregate, supportive housing. Approximately 60 residents are SSP beneficiaries and Lutheran-Jamestown is paid through Congregate Care Level III benefits received by those residents.

140. Plaintiffs The Bristol Home, Inc. and Bristol Village, Inc. (collectively, "Bristol Homes") are domestic not-for-profit corporations with their principal place of business at 1500 Main Street, Buffalo, Erie County, New York 14209. Bristol Homes operates two ACFs for adults with special needs who benefit from congregate, supportive housing. The first, Bristol Home, has 55 ALP beds for female senior citizens. The second, Bristol Village, has 110 ALP beds for adults with special needs. Approximately 30 residents of these ACFs are SSP

beneficiaries, and Bristol Homes are paid through Congregate Care Level III benefits received by those residents.

141. Plaintiff Medford Hamlet LLC ("Braemar Medford") is a domestic limited liability company with its principal place of business at 1529 North Ocean Avenue, Medford, Suffolk County, New York 11763. Braemar Medford operates Braemar Living at Medford, an ACF with 200 ALP beds for adults special needs who benefit from congregate, supportive housing. Approximately 185 residents are SSP beneficiaries and Braemar Medford is paid through Congregate Care Level III benefits received by those residents.

142. Plaintiff The Hamlet at Wallkill, LLC ("Braemar Wallkill") is a domestic limited liability company with its principal place of business at 21 Riverside Drive, Middletown, Orange County, New York 10941. Braemar Wallkill operates Braemar Living at Wallkill, an ACF with 80 ALP beds for adults with special needs who benefit from congregate, supportive housing. Approximately 80 of its residents are SSP beneficiaries and Braemar Wallkill is paid through Congregate Care Level III benefits received by those residents.

143. Plaintiff Presbyterian Residential Community, Inc. ("Presbyterian") is a domestic not-for-profit corporation with its principal place of business at 4300 Middle Settlement Road, New Hartford, Oneida County, New York 13413. Presbyterian operates the Presbyterian Residential Community in New Hartford, an ACF with 96 beds (inclusive of 80 ALP beds) for adults with special needs who benefit from congregate, supportive housing. Approximately 19 residents are SSP beneficiaries and Presbyterian is paid through Congregate Care Level III benefits received by those residents.

144. Plaintiff The Lutheran Home of Central New York, Inc. ("Lutheran Home") is a domestic not-for-profit corporation with its principal place of business at 108 Clinton Road, Clinton, Oneida County, New York 13323. Lutheran Home operates the The Lutheran Home of Central New York, an ACF with 68 beds for adults with special needs who benefit from congregate, supportive housing. Approximately 2 residents are SSI beneficiaries and Lutheran Home is paid through Congregate Care Level III benefits received by those residents.

145. Plaintiff Family Service of Rochester, Inc. ("Family Service") is a domestic, not-for-profit corporation with its principal place of business at 4646 Nine Mile Point Road, Fairport, Monroe County, New York 14450. Family Service operates the Hudson Ridge Towers, an ACF in Monroe County with 47 beds for adults with special needs who benefit from congregate, supportive housing. Family Service also operates Danforth Towers, an ACF in Monroe County with 28 beds for adults with special needs who benefit from congregate, supportive housing. In addition, Family Service operates Jonathan Childs Apartments, an ACF in Monroe County with 30 beds (inclusive of 24 ALP beds) for adults with special needs who benefit from congregate, supportive housing. Finally, as relevant here, Family Service operates Long Pond Senior Apartments, an ACF in Monroe County with 30 beds for adults with special needs who benefit from congregate, supportive housing. Approximately 133 residents of these four facilities are SSP beneficiaries and Family Service is paid through Congregate Care Level III benefits received by those residents.

146. Plaintiff St. Nicholas Home, Inc. ("St. Nicholas") is a domestic, not-for-profit corporation with its principal place of business at 425 Ovington Avenue, Brooklyn, Kings

County, New York 11209. St. Nicholas operates the St. Nicholas Home, an ACF with 75 beds for adults with special needs who benefit from congregate, supportive housing.

Approximately 28 residents of this facility are SSP beneficiaries and St. Nicholas is paid through Congregate Care Level III benefits received by those residents.

147. Plaintiff Briarwood Manor, Inc. ("Briarwood") is a domestic business corporation with its principal place of business at 1001 Lincoln Avenue, Lockport, Niagara County, New York 14094. Briarwood operates the Briarwood Manor Assisted Living Program, an ACF with 160 ALP beds for adults with special needs who benefit from congregate, supportive housing. Approximately 31 residents of this facility are SSP beneficiaries and Briarwood is paid through Congregate Care Level III benefits received by those residents.

148. Plaintiff UMH NY Corp. ("United Methodist Homes") is a domestic, not-for-profit corporation with its principal place of business at 863 Front Street, Binghamton, Broome County, New York 13905. United Methodist Homes operates two ACFs. First, St. Louise Manor, an ACF in Binghamton with a total of 52 beds (inclusive of 24 ALP beds) for adults with special needs who benefit from congregate, supportive housing. Second, Hilltop Manor West, an ACF in Johnson City with a total of 98 beds (inclusive of 26 ALP beds) for adults with special needs who benefit from congregate, supportive housing. Approximately 38 residents of United Methodist Homes' ACFs are SSP beneficiaries and United Methodist Homes is paid through Congregate Care Level III benefits received by those residents.



149. Plaintiff Harry Katz ("Katz") is a resident of the State of New York with a principal place of business at 204 Patchogue Road, Port Jefferson Station, Suffolk County, New York 11776. Katz owns and operates Echo Arms Adult Home in Port Jefferson Station, an ACF with 49 beds for adults with special needs who benefit from congregate, supportive housing. Approximately 44 residents are SSP beneficiaries and Katz is paid through Congregate Care Level III benefits received by those residents.

150. Plaintiffs Azzy Reckless and Paula Reckless (collectively, "Avalon") are residents of the State of New York with a principal place of business at 1627 Route 376, Wappingers Falls, Dutchess County, New York 12590. Avalon operates The Avalon Assisted Living and Wellness Center in Wappingers Falls, an ACF with 76 total beds (inclusive of 66 ALP beds) for adults with special needs who benefit from congregate, supportive housing. Approximately 37 residents are SSP beneficiaries and Avalon is paid through Congregate Care Level III benefits received by those residents.

151. Plaintiff James E. Kane, Jr. ("Kane") is a resident of the State of New York with a principal place of business at c/o Empire State Association of Assisted Living, Inc., 646 Plank Road, Suite 207, Clifton Park, Saratoga County, New York 12065. From approximately 1996-2018, Kane was a partner in a partnership that operated a group of ACFs in Clinton, Essex, Franklin, Oneida, Oswego, Schenectady, and Warren Counties. At its peak, Kane and his partnership operated 14 ACFs. Upon information and belief, all of these ACFs predominantly served SSI beneficiaries. From approximately 2007-2018, 8 of the 14 ACFs were forced to close due to the inadequacy of the Congregate Care Level III rate to meet the rising cost to

operate ACFs Upstate. In order to receive approval from DOH to close the ACFs, Kane and his partnership had to develop and receive approval for plans to transfer residents to other facilities.

152. Collectively, WFSSH, Loretto, Fairport Baptist, United Helpers, Lott, Crystal House, NCHHC, Pinecrest, Lutheran-Jamestown, Bristol Homes, Braemar Medford, Braemar Wallkill, Presbyterian, Lutheran Home, Family Service, St. Nicholas, Briarwood, United Methodist Homes, Katz, Avalon and Kane are the "Operator Plaintiffs".

153. Plaintiff Empire State Association of Assisted Living, Inc. ("ESAAL"), 646 Plank Road, Suite 207, Clifton Park, Saratoga County, New York 12065, is a state-wide, not-for-profit trade association which has operated for 38 years and currently represents the interests of approximately 328 provider members (including owners and operators of ACFs) with approximately 26,393 residents (including residents of ACFs), throughout New York State.

154. ESAAL has a history of litigating on behalf of its members regarding issues of significance to its membership, and it has the capacity to assume an adversary position on the issues involved herein. ESAAL fairly represents ACFs and their residents in this State, and the Defendants' unlawful conduct at issue directly affects ESAAL's members and their residents. Accordingly, ESAAL has standing to maintain this action on its own behalf and on behalf of its members, which would have standing in their own names to pursue this action.

155. LeadingAge New York, Inc. ("LeadingAge"), 13 British American Blvd., Latham, Albany County, New York 12110, is a state-wide not-for-profit trade association

which has operated in New York for 57 years and currently represents the interests of approximately 81 ACFs with approximately 5,301 beds throughout New York State.

156. LeadingAge has a history of litigating on behalf of its members regarding issues of significance to its membership, and it has the capacity to assume an adversary position on the issues involved herein. LeadingAge fairly represents ACFs and their residents in this State, and the Defendants' unlawful conduct at issue directly affects LeadingAge's members and their residents. Accordingly, LeadingAge has standing to maintain this action on its own behalf and on behalf of its members, which would have standing in their own names to pursue this action.

157. New York State Center for Assisted Living ("NYSCAL"), 33 Elk Street, Suite 300, Albany, Albany County, New York 12207, is a state-wide, not-for-profit trade association which has operated for approximately 9 years and currently represents the interests of approximately 102 ACFs with approximately 11,544 beds throughout New York State.

158. NYSCAL has a history of litigating on behalf of its members regarding issues of significance to its membership, and it has the capacity to assume an adversary position on the issues involved herein. NYSCAL fairly represents ACFs and their residents in this State, and the Defendants' unlawful conduct at issue directly affects NYSCAL's members and their residents. Accordingly, NYSCAL has standing to maintain this action on its own behalf and on behalf of its members, which would have standing in their own names to pursue this action.

159. This Court has jurisdiction over ESAAL, LeadingAge, and NYSCAL (collectively, the "Associations"; collectively with the Individual Plaintiffs and Operator

Plaintiffs, "Plaintiffs") because they are domestic not-for-profit corporations that maintain offices and regularly conduct business within the State of New York.

The Defendants

160. Defendant Andrew M. Cuomo is the Governor of the State of New York, with offices at The Capitol, Albany, New York 12242. The Governor has the authority to appoint and supervise the other individual defendants named in this action. He is sued here in his official capacity.

161. Defendant New York State Office of Temporary and Disability Assistance ("OTDA") is an autonomous office within the New York State Department of Family Assistance (formerly known as the Department of Social Services), with its principal office at 40 North Pearl Street, Albany, New York 12243. OTDA is the New York State governmental agency charged with administering certain of New York's financial support services, including SSP.

162. Defendant Samuel Roberts is the Commissioner of Temporary and Disability Assistance, with his principal office at 40 North Pearl Street, Albany, New York 12243. Commissioner Roberts is responsible for supervising all functions of OTDA. He is sued here in his official capacity.

163. Defendant New York State Office of Mental Health ("OMH") is an autonomous office within the New York State Department of Mental Hygiene, with its principal office at 44 Holland Avenue, Albany, New York 12229. OMH is the New York State governmental

agency charged with funding and administration of services provided by certain ACFs, and with certain aspects of New York's Olmstead Implementation Plan.

164. Defendant Ann Marie T. Sullivan, M.D. is the Commissioner of Mental Health, with her principal office at 44 Holland Avenue, Albany, New York 12229. Commissioner Sullivan is responsible for supervising all functions of OMH. She is sued here in her official capacity.

165. Defendant New York State Department of Health ("DOH") is the New York State governmental agency that is charged to act as the single state agency for medical assistance ("Medicaid") and that licenses and regulates ACFs. DOH has its principal office at Corning Tower, Empire State Plaza, Albany, New York 12237.

166. Defendant Howard Zucker, M.D., J.D. is the Commissioner of Health of the State of New York, with his principal office at Corning Tower, Empire State Plaza, Albany, New York 12237. Commissioner Zucker is responsible, among other things, for carrying out the "functions, powers and duties of the Department prescribed by law," including implementing the programs and distributing the funding for the care of the needy adults in a manner consistent with state and federal law (Public Health Law § 206). He is sued here in his official capacity.

167. The Court has subject matter jurisdiction to decide this Verified Complaint and to render a declaratory judgment pursuant to CPLR 3001.

168. The Court has personal jurisdiction over all of the Defendants pursuant to CPLR 302 (a) (1).

169. Venue lies in this County pursuant to CPLR 503 (a) because it is where the defendants reside and where material events giving rise to the subject matter of this action occurred.

### **FACTUAL BACKGROUND**

#### **WHAT ARE ACFs?**

170. ACFs provide temporary or long-term residential care and services to adults who are, by reason of physical or other limitations associated with age, physical or mental disability, or other factors, unable or substantially unable to live on their own (see Social Services Law § 2 [22]; 18 NYCRR 485.2 [a]).

171. In New York, ACFs play a vital role in caring for seniors and persons with disabilities who do not require around-the-clock medical care as provided by residential health care facilities (i.e., nursing homes), but who are unable to or substantially unable to live on their own and, as a result, may need personal care services, direction, assistance, and supervision in their daily activities.

172. Without ACFs, their residents would be forced into more institutionalized settings, such as nursing homes, even though they maintain the independence and direction of action necessary to remain in the community.

173. Upon information and belief, there are approximately 550 ACFs in New York State.

174. Upon information and belief, there are approximately 12,600 ACF residents statewide, including the Individual Plaintiffs, who receive SSI/SSP.

175. ACFs are licensed and regulated by DOH.

176. The vast majority of ACFs in New York are privately operated. However, two are owned and operated by county governments. Chenango County Department of Social Services operates the Preston Manor Home for Adults for Chenango County residents. Warren County owns and operates the Countryside Adult Home for Warren County residents.

177. Upon information and belief, most ACF residents, including the individual ACF resident plaintiffs in this action, pay for necessary services through either private funds or government benefits. The two principal government benefits, SSI/SSP and Medicaid, are discussed below.

#### **NEW YORK'S CONSTITUTIONALLY-MANDATED SUPPORT FOR THE NEEDY**

178. Article XVII of the New York State Constitution requires the State of New York to provide aid, care and support to the needy residents of this State. New York has adopted and implemented a complex network of public assistance programs to fund this obligation.

179. The two principal programs relevant to this litigation—SSI/SSP and Medicaid—are nationwide, federal programs that are administered and partially funded by State and local government.

#### *SSI/SSP*

180. SSI was established by the Federal government in 1973 to replace a patchwork of state programs (see 42 U.S.C. § 1381, et seq.). New York's pre-1973 program, Aid to Aged, Blind, or Disabled ("AABD"), was more generous than SSI, and pre-1973 beneficiaries

were “grandfathered” into SSI with benefits at levels equivalent to AABD (see Social Services Law § 210).

181. Federal and state law allow the SSI program to be administered by the federal government (see Social Services Law § 211). However, New York presently administers SSI and SSP itself, through OTDA (see Social Services Law § 212 [1]; L 2012, ch 57, §§ 5-7).

182. Adult SSI beneficiaries are persons who are “needy” under Article XVII of the State Constitution.

183. Recognizing that federal SSI alone was not sufficient in light of the high cost of living in New York, the State Legislature declared its “commitment to meeting the income needs of aged, blind and disabled persons” and that the federal SSI payment “is not sufficient to meet those needs” (Social Services Law § 207). “In order to maintain assistance for such persons at a level consistent with their needs, and in order to fully employ available federal aid for the benefit of such persons residing” in New York, the Legislature established SSP as “a state-wide program of additional state payments for aged, blind and disabled persons” (*id.*).

184. The amount of SSP is not expressly set in the applicable statute. Rather, SSP is calculated by subtracting the federal SSI payment from the amount that the Legislature declared in Social Services Law § 209 (2) to be “the standard of monthly need” for the beneficiary, which depends upon “the type of living arrangement and the geographic area in which the eligible individual or eligible couple resides.”

185. SSI/SSP beneficiaries living in ACFs are considered to be living in “enhanced residential care” arrangements (Social Services Law § 209 [2] [e]).



186. For eligible SSI/SSP beneficiaries residing in an ACF, the State pays or causes to be paid to the beneficiary their SSI and SSP benefits at the “enhanced residential care” rate. The “enhanced residential care” rate is also known as the “Congregate Care Level III” rate (see 18 NYCRR 352.8 [b] [4] [iii]).

187. The State’s contribution to the Congregate Care Level III rate (i.e., its SSP payment) has remained stagnant and unchanged for the past decade. The only increases to the rate have come from the federal contribution (i.e., SSI), based upon its inflationary indexing.

188. Upon information and belief, SSP has been increased only two times in the past 30 years. The State raised the SSP benefit in 1988 and 2007. The State has not increased the SSP benefit since 2007.

189. For SSI/SSP recipients, the Congregate Care Level III rate covers all of the services that an ACF must provide pursuant to 18 NYCRR 487.7, or that Operator Plaintiffs that are enriched housing programs must provide pursuant to 18 NYCRR part 488. These services, which encompass the resident’s housing, food, personal care, medication management, case management, and enrichment services, are discussed in more detail below.

190. Pursuant to 18 NYCRR 487.7 (a), the ACF operator is “responsible for the provision of resident services, which shall include, at a minimum, room, board, housekeeping, supervision, personal care, case management and activities.” SSP covers the entire cost of these mandated services.

191. Three of the mandated services, i.e., room, board, and housekeeping, are not defined in the regulations. In practice, these terms require the ACF operator to provide

housing, including the cost of utilities and relevant insurance, three meals per day, laundry, and room cleaning services.

192. Section 487.7 provides further detail regarding the remaining resident services, specifically, supervision, personal care, case management, and activities.

193. Section 487.7 (d) enumerates ten specific services that are minimum components of supervision, including monitoring residents' daily activities, surveillance of facilities, and implementing a disaster and emergency plan.

194. Section 487.7 (e) enumerates ten specific services that are minimum components of personal care services, including providing residents with some direction and assistance with grooming, bathing, and toileting; assistance with self-administration of medications; and assistance to consume meals.

195. Section 487.7 (g) identifies 13 specific services that are minimum components of case management services, including assisting residents in applying for and maintaining public benefits, assisting residents to maintain family and community ties and to develop new ones, and assisting residents in making arrangements to obtain health, mental health, and dental services.

196. Section 487.7 (h) (1) requires the operator to "maintain an organized and diversified program of individual and group activities which will enable each resident to engage in cultural, spiritual, diversional, physical, political, social and intellectual activities within the facility and the community, in order to sustain and promote an individual's potential

and a sense of usefulness to self and others.” The regulation requires that these activities “be scheduled during evenings and weekends as well as during the weekday.”

197. State law requires that SSI/SSP beneficiaries residing in an ACF receive what is known as a “personal needs allowance.” This amount is paid to the individual residents of an ACF for their own “personal needs” which are in addition to those provided by the ACF. This amount is not used for any of the services required to be provided by the ACF. The present amount of the personal needs allowance is \$198 per month (see Social Services Law § 131-o [1] [b]).

198. ACFs cannot charge SSI/SSP beneficiaries any amount for any of the resident services required by 18 NYCRR 487.7 beyond the Congregate Care Level III rate (see Social Services Law § 131-o [2]; 18 NYCRR 485.12 [a] [4]). Instead, ACFs must accept, as payment in full, the Congregate Care Level III rate less the personal needs allowance, regardless of the actual cost of providing the services relating to housing, meals, 24 hour supervision, care management, personal care (such as grooming, dressing, bathing, using the toilet, walking, and eating), or assistance with activities of daily living.

199. As of January 1, 2018, the monthly rate for individuals receiving enhanced residential care is \$1,444 (see Social Services Law § 209 [2] [e] [i]). After subtracting the personal needs allowance, the Congregate Care Level III SSI rate payable to the ACF equates to \$40.96 per day.

200. The scheme discussed above applies to the plaintiffs. Individuals residing in county-owned ACFs, by contrast, are not eligible for federal SSI payments. This is because,

under federal law, a person residing in a “public institution,” that is, a facility run by the state or local government, is not eligible to participate in the SSI program (20 CFR 416.211).

201. Although they are not eligible for SSI benefits at the Congregate Care Level III rate, individuals who need the services of a county-run ACF “shall not be refused care” based upon inability to pay (Social Services Law § 193 [1]).

202. The State, through OTDA and/or DOH, has agreed to pay counties for the “[c]ost of care of adults receiving care” in a county-owned ACF (18 NYCRR 620.3 [c] [1]).

203. Upon information and belief, the State reimburses counties for their actual costs that cannot “be claimed from” Medicaid or “the income or resources” of their ACF residents (*id.*).

204. Upon information and belief, the State reimburses the county-owned ACFs for the services covered by the Congregate Care Level III rate at an amount of \$68 per day, dramatically more than the SSI/SSP daily benefit for individuals living in all other ACFs in New York State.

205. In other words, to gain access to the federal SSI payment – which currently makes up more than half of the total Congregate Care Level III rate – the State of New York needs private facilities to participate in the system.

206. However, residents of county-owned ACFs are eligible for federal SSI benefits only at a reduced rate. As a consequence, the State contributes a much higher percentage towards the reimbursement paid to county-owned ACFs than it does to the Operator Plaintiffs.

## *MEDICAID*

207. Separate from SSI, DOH administers Medicaid, which pays for medically necessary medical care for needy individuals who meet certain income and eligibility qualifications (see Social Services Law §§ 365-a et seq.).

208. Medicaid is a joint federal-state program providing medical and rehabilitative assistance to individuals whose income and resources are insufficient to meet the costs of medical care, and are either aged 65 or over, blind, disabled, or members of families with dependent children (see 42 USC § 1396 a; 42 CFR 430 et seq.). This assistance is intended to help eligible individuals to attain or retain capability for independence or self-care (see 42 USC § 1396). In New York, benefits are generally paid directly by the local “social services district” (New York City and the 57 counties outside of the City) (see Social Services Law §365).

209. DOH is the single New York state agency that “supervise[s] the administration” of New York State’s Medicaid plan (42 USC § 1396a [a] [5]; see Public Health Law § 201 [1] [v]). DOH collects the Federal contribution to Medicaid (generally half of the cost), pays it to the local social services district, and reimburses the local social services district for a portion of the non-Federal costs (generally half, or 25% of the total).

210. SSP beneficiaries are, by law, eligible for Medicaid in New York State (see Social Services Law § 366 [1] [c] [1]).

211. Medicaid thus covers medical services required by ACF residents who are SSP recipients. However, unlike other providers, Medicaid does not pay the ACF, for two reasons.

First, Medicaid does not cover housing, food, and other living services provided in an ACF (see 18 NYCRR 505.1). Second, ACFs are not permitted to bill Medicaid for covered services unless the ACF is separately licensed by DOH as an ALP (see Social Services Law § 461-L).

212. ALP beds are awarded to ACFs under a competitive bidding process and the total number of statewide ALP beds is capped by statute (id.). An ALP resident has a higher level of health care needs than the standard SSI ACF resident. Specifically, ALP residents must be eligible for a nursing home level of care, such that, but for the ALP, the resident would be placed in a nursing home in the same region (see Social Services Law § 461-L).

213. ALP providers receive a capitated (i.e., per person) daily Medicaid rate for certain medical or personal care services (see 18 NYCRR 505.35 [h]). These are services in excess of the ACF services provided to SSI residents. The ALP rate does not cover room, board and nearly all other non-medical services required of the ACF.

Upon information and belief, the ALP program is currently authorized for approximately 13,000 beds. The limited scope of the ALP program means that it does not include those ACF SSI residents who are not eligible for ALP, and cannot feasibly accommodate the population at issue who may be otherwise eligible for ALP, while also housing the present ALP residents, whose current medical needs require placement in ALP beds.

### **ACF RESIDENTS HAVE A RIGHT TO SERVICES IN AN INTEGRATED SETTING**

214. Federal law requires that recipients of federal funds, such as the Defendants, “administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons” (28 CFR 41.51 [d]).

215. In Olmstead v. L.C., the U.S. Supreme Court discussed the obligation of State governments under the ADA with respect to the provision of services to persons with disabilities, and noted that a State could meet some of its obligations “[i]f, for example, the State were to demonstrate that it had a comprehensive, effectively working plan for placing qualified persons with . . . disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State’s endeavors to keep its institutions fully populated” (527 U.S. 581, 605-606 [1999]).

216. Under New York law, DOH and OMH are required to “develop a comprehensive, integrated system of treatment and rehabilitative services for the mentally ill. Such a system . . . should ensure the adequacy and appropriateness of residential arrangements” (Mental Hygiene Law § 7.01). ACFs, including certain of the Operator Plaintiffs, are an integral part of DOH’s and OMH’s mental health services system.

217. In addition, the State has adopted the Olmstead Integration Plan, which sets forth the Defendants’ plan to enhance the integration of persons with disabilities into their communities.

**THE STATE HAS IGNORED ITS RESPONSIBILITY  
TO NEEDY CITIZENS FOR DECADES**

218. Each year, the federal government increases SSI payment by a cost of living adjustment ("COLA"), based on the CPI (see 42 USC § 1382f). The COLA increase is intended to ensure that inflation does not erode the value of the federal SSI.

219. Between 2007 and 2017, the CPI in Northeast urban areas increased by approximately 20%, or an average of about 2% per year, and the CPI for all urban consumers: food and beverages actually increased at a slightly higher rate than the CPI for Northeast urban areas, by approximately 25% (see <https://fred.stlouisfed.org/series/CPIFABSL>). Moreover, the medical CPI increased by more than 34%, or an average of about 3.5% per year. The federal SSI payment has increased based upon CPI.

220. The State's SSP, by contrast, has been raised just once this century, in 2007 (see L 2006, ch 515). Upon information and belief, it has only been raised a total of two times since the program was introduced in 1973. As a consequence, measured by common inflationary measures, the Congregate Care Level III rate has lagged far behind the rising cost of providing care in ACFs.

221. The escalating cost of providing the required ACF services has substantially eroded the value of the SSP payment. As a result, the rate no longer comes close to covering the actual and reasonable cost of providing room, board and services to SSI/SSP recipients. More and more of the burden of caring for some of New York's neediest residents shifts from the State to privately operated ACFs who must subsidize the inadequate SSI/SSP rate.



222. Effective January 1, 2018, the federal contribution to the individual Congregate Care Level III rate is \$750 per month, a greater than 20% increase from the 2007 share of \$623. The State portion, however, has not changed since 2007 and remains at only \$694 per month.

223. Because SSP is not indexed to inflation, and has not increased, its real value has dropped over time. According to the U.S. Department of Labor Bureau of Labor Statistics, \$694 in 2007 equates to \$864.02 in July 2018 ([see](http://www.bls.gov/data/inflation_calculator.htm) [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm)).

224. Thirty years ago, in 1988, the federal SSI payment represented approximately 46% of the standard of need fixed by the Legislature, while the State SSP payment was approximately 54% of the total rate. Indeed, as recently as 2007, the State paid a majority of the Congregate Care Level III rate. Today, however, the balance has shifted, and the federal payment constitutes about 52% of the rate, while the frozen SSP benefit is just 48% of the total rate.

225. The effect of this shift is not that the actual value of the funding benefitting ACF residents is increasing, or even remaining stable. Instead, it is decreasing.

226. At the same time, as the stagnation of the SSP has reduced the value of the Congregate Care Level III rate, increased costs mean that the amount paid does not come close to covering the actual expenses of caring for individuals in an adult care facility.

227. According to information contained in annual financial reports submitted by private proprietary and not-for-profit ACF operators to DOH for 2015 (the most recent financial information currently available to the public), the mean total expense to care for an

ACF resident (less expenses for ALP facilities that were reimbursed by Medicaid) was \$126.11 per day in 2015.

228. Using the CPI to trend the 2015 cost data contained in the publicly available cost reports described above, the mean total expense to care for an ACF resident would be approximately \$133.17 in July 2018 (see [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm)). When compared to the actual Congregate Care Level III rate today, this translates into a shortfall of \$92.21 per day (i.e., \$33,656.65 per resident per year). This shortfall is substantial and is growing each year the State fails to increase the SSP.

229. Upon information and belief, inasmuch as certain ACF-related costs have increased faster than the CPI, actual costs for at least some ACFs are higher than \$133.17 per resident per day.

230. The State unfairly benefits from this cost-shifting, because the participation of private facilities enables it to gain access to federal financial participation. The full amount of the Federal SSI payment is not available to the State or local governments as a direct provider of services, and subsidizes the cost to the State of complying with its constitutional mandate to aid the needy. Thus, without the participation of privately-owned ACFs, the State would not be eligible to receive the federal SSI payment, and the State's cost of complying with its constitutional obligation to this population (through SSP) would be substantially higher.

231. What's more, New York has maintained the SSP rate at such unconscionably low levels – the State pays only \$21 per day for its share – for such a long period of time – 10 years – that the payments available to ACFs no longer come close to meeting the actual costs of

providing room, board, and mandated non-medical services, and the State otherwise refuses to provide funds to meet these costs.

#### **THE STATE UTILIZES ACF OPERATORS TO REDUCE ITS OWN COSTS**

232. As noted above, ACF residents are not able to live entirely independently. Instead, they are entitled to support services that are part of the Congregate Care Level III rate.

233. As set forth herein, the State has failed to fulfill its constitutional obligations to needy residents and the ACFs that care for them. Without adequate reimbursement of costs, ACFs cannot provide residents with necessary services such as food, housing, enriching activities, medication management, case management and supervision. In many cases, ACFs have been forced to close. In fact, over the last 18 months alone, there have been at least 15 ACF closures. Without the necessary services, many residents cannot stay in the adult care setting and must be relegated to a higher level of care in a more restrictive institutional setting, such as a nursing home.

234. For the population of residents that utilize ACFs, the State-mandated non-medical services are not insignificant. The cost of housing includes necessary maintenance, utilities, and insurance. As noted above, the cost of providing meals has increased faster than the normal rate of inflation. In addition, ACFs must provide housekeeping, 24-hour supervision, direction and assistance with personal care activities (such as grooming, dressing, bathing, using the toilet, walking, and eating), assistance with medication management, activities programming, and case management.

235. Over the years, the State has amended its regulations (and its construction of those regulations) to enhance the services ACF providers must furnish. While beneficial to residents such as the Individual Plaintiffs, these enhanced services are not without cost to the ACF operators such as the Operator Plaintiffs.

236. The State's imposition of additional costs is particularly evident in the areas of case management obligations and medication oversight. DOH's regulations state that medical providers, not the ACF, will be "responsible for the overall management of the individual's health and mental health needs" (18 NYCRR 487.7 [g]). Thus, the plain text of the regulations requires the ACF operator to simply evaluate residents' overall needs, monitor their general health, safety and social progress, and coordinate the work of other case management and service providers within the facility.

237. Through a series of interpretative releases, however, together with direct enforcement activity at specific facilities, Defendants have expanded these requirements to the point that facility operators must now maintain extensive case management notes detailing each resident's specific health and mental health needs, the specific steps ACFs take to meet those needs, and ACFs face onerous enforcement proceedings, fines of up to \$1,000 per day, and other consequences if they do not.

238. Similarly, DOH requirements for medication management have greatly expanded over the last few years. At the same time, the number of medications that SSI/SSP beneficiaries take has increased. As a result of these and other regulatory and interpretative

changes, ACFs are being asked to do more for less in return, and the shortfall between the cost of caring for an adult care resident and the reimbursement rate has increased.

239. In addition to expanding the responsibility of ACF staff, which has attendant costs, the State has, through amendments to the Labor Law, increased the hourly minimum wage 51% over the past decade. Increases to the minimum wage also cause the ACFs' operating costs to rise. These mandates from the State have come without any increase in the amount payable to operators (see Labor Law § 652).

240. Furthermore, over the past decade the population of ACF residents who are SSI/SSP beneficiaries has changed in two significant ways. First, an increasing portion of this population is elderly. The average SSI/SSP beneficiary age for many Operator Plaintiffs is now in the mid-80s. Second, an increasing portion of this population is frail, which contributes to increased need (and attendant cost) for services such as medication management.

241. ACFs are prohibited from terminating the residency of an SSI recipient on the basis that it costs more to deliver the mandated services than the State is willing to pay (18 NYCRR 487.5 [f] [14]). The regulations also require the operator to assist any resident proposed to be transferred or discharged in obtaining adequate and appropriate alternative placement (see 18 NYCRR 487.5 [f] [19]).

242. In practice, these and other restrictions effectively preclude the facility from terminating residents who are SSI recipients unless it is in the context of a facility closure, where all residents are supposed to be transferred to other appropriate housing. However,

because ACFs may only close after DOH approves of a plan to transfer their residents, the State can require ACFs to remain open and continue to provide services without fair compensation.

243. The State thus demands that ACFs provide additional services that were not previously the responsibility of the ACF operator or staff, with no increase in the amount it will pay for residents to be able to receive those services. This “double bind” of increased mandates and costs, has resulted in a fiscal and operational crisis for many ACFs, including ACF Operator Plaintiffs.

244. The only option available to ACFs besides closure, which requires DOH approval, is a reduction in non-mandated services provided to residents.

245. The State’s refusal to maintain the SSI rate at minimally adequate levels has effectively transferred the State's constitutional obligation for the needy to private ACF operators, without providing those ACF operators with adequate funding to shoulder the burden of resident care.

246. This arrangement is beneficial to the government, because it enables the State to obtain federal SSI funds – which are largely unavailable to it if it administers ACFs directly – to satisfy a large portion of the costs of satisfying its constitutional obligation to aid the needy. Without the participation of privately operated ACFs, including the plaintiff ACFs and other Association members, the cost to the State of complying with its constitutional mandate to aid the needy would be much greater. This is because the only other placement alternatives would be a county-run adult home, where federal cost-sharing is not available, or a nursing home, which is more restrictive to the resident and more costly to the State.

247. The arrangement harms both ACFs and their residents. Residents are effectively watching the value of their benefits being cut by the State. Operators are forced to (a) reduce services or (b) arrange for their residents to be placed in more restrictive environments like nursing homes and then close.

248. The decline in the real value of the Congregate Care Level III rate caused by the frozen SSP payment makes it increasingly difficult for ACF operators, including the Operator Plaintiffs, to provide quality facilities, services and amenities that their residents, including the Individual Plaintiffs, expect and deserve.

249. For example, as staffing costs rise due to the mandates to increase wages and to provide enhancements to case management and medication oversight, the proportional share of the Congregate Care Level III that is left to pay for costs related to housing (such as furniture, flooring, infrastructure repair and maintenance, and other improvements to housing amenities), food, and activities (such as trips, group lessons, and crafts and games at the facility) is reduced. The effective decrease in the Congregate Care Level III rate resulting from the frozen SSP payment exacerbates this issue.

250. With respect to facility closure, State records show that 32 ACFs (including RiverLedge Residence) have “voluntarily” closed between August 1, 2013 and August 27, 2018 (see [https://www.health.ny.gov/facilities/adult\\_care/docs/acf\\_do\\_not\\_refer\\_list.pdf](https://www.health.ny.gov/facilities/adult_care/docs/acf_do_not_refer_list.pdf)). Upon information and belief, these statistics do not include other facilities that have submitted closure plans and are awaiting DOH approval.

251. In addition, upon information and belief, certain ACF operators that previously accepted either the SSI/SSP payment or private payment (e.g., insurance) have reduced their acceptance of SSI/SSP in favor of private pay clients.

252. These factors result in reduced statewide capacity, and therefore reduced access, for SSI/SSP recipients who require the adult-home level of care and services. Case study evidence suggests that about 50% of the displaced residents are relocated to the more restrictive – and much more costly – institutional setting of a nursing home.

253. Defendants' refusal to increase the SSP payment has damaged the Individual Plaintiffs by limiting their choice of providers and impinging upon the quality of the services provided to them. Defendants' refusal to increase the SSP payment has damaged the Operator Plaintiffs, and other ACF operators represented by the Associations, by taking services from them without just compensation, and shifting to them the State's constitutionally mandated responsibility to provide for needy persons.

254. Further, Defendants' refusal to increase the SSP payment has damaged the Individual Plaintiffs by limiting the personal needs allowance available to them. Upon information and belief, the administratively determined personal needs allowance is increased whenever the federal SSI payment increases. Upon information and belief, if the SSP payment increased, thus increasing the Congregate Care Level III rate, a portion of that increase would flow to the residents in the form of an increased personal needs allowance.



**THE LEGISLATURE HAS DETERMINED THAT AN INCREASE THE  
CONGREGATE CARE LEVEL III RATE IS NECESSARY**

The Legislature Unanimously Passes S. 6372

255. On June 20, 2017, the State Senate and Assembly unanimously passed S. 6372, entitled "An act to amend the social services law, in relation to increasing the enhanced residential care benefits for aged, blind and disabled persons" (Proposed Legislation, Veto Jacket, Veto 241 of 217, at 1-4).

256. The sponsors of the legislation identified a clear, rational need for increased SSP funding: "[t]by providing incremental increases in the daily rate to these facilities over a two-year period, this legislation will help keep adult care facilities operational, low income seniors in the community, and avoid higher Medicaid costs [to the State and local government] which result when residents are displaced" (Senate Introducer's Mem in Supp, Veto Jacket, Veto 241 of 2017, at 8).

The Governor Vetoes the Needed Funding Increase

257. On or about December 18, 2017, the Governor vetoed S. 6372.

258. In his veto message (which involved a total of four unrelated bills), the Governor stated:

"While I fully support the objectives underlying these bills, the proposed increases are not supported by any identifiable funding source. Collectively, these bills would add hundreds of millions of dollars in increased and unbudgeted costs to the State's budget, which will ultimately be shouldered by the State's taxpayers. Decisions impacting the scope and efficacy of Medicaid funding, both in terms of revenue available and appropriations to be expended, have always been, and should continue to be, addressed in the context of annual budget negotiations. At a time when the Federal Government has enacted, and is threatening additional, devastating cuts to the State's health care system, it

would be irresponsible to incur such unbudgeted costs outside of that process. For these reasons, I am constrained to veto these bills. As part of the budget process, I am directing the Department of Health to work with stakeholders and the Legislature to address concerns related to the scope and adequacy of reimbursement to health care providers.”

(Veto Message, Veto Jacket, Veto 241 of 2017 at 5).

259. Despite the Governor’s direction in his veto message, the State did not take any action, in the 2018-2019 enacted budget or otherwise, to increase SSP, its contribution to the Congregate Care Level III rate.

260. Despite his claim of fiscal responsibility in his veto message, the supposed lack of funds has proven no obstacle to the Governor to increase funding for a variety of both health and non-health related functions:

- \$13 million in capital funding for hotels and tourist lodging in the North Country;
  - \$2.6 million for industrial hemp production;
  - Approximately \$10 million for medical marijuana;
  - Up to \$525 million in grants to health care facilities for capital improvements and other purposes;
  - \$450 million for Medicaid providers to account for increased minimum wages;
  - \$600 million for a new life sciences laboratory in the Capital District;
  - \$50 million in capital funding for the Hudson River Park; and
- \$22.9 million for the Enhanced Tuition Program, which provides up to \$6,000 in financial assistance for residents attending private colleges in New York State.

261. Moreover, the Governor's stated basis for vetoing S. 6732 does not comport with the State's constitutional directive that "[t]he aid, care and support of the needy are public concerns and shall be provided by the state and such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine." That the Legislature determined additional SSP payments were required outside of the budget process is not a valid reason for Defendants to shirk their constitutional responsibilities.

262. For the first fiscal year impacted by the legislation, the difference in SSP calculated by the Legislature in S. 6732 and the amount fixed in Social Services Law § 209 (1) (e) is \$118 per individual per month (about \$4.00 per day). The total cost for the approximately 12,600 SSI beneficiaries residing in ACFs would have been approximately \$20,000,000. The legislation included a comparable increase for each year for a total of five (5) years with a corresponding annual increase in cost.

263. Due to Defendants' inaction, in the face of a determination of clear need by the Legislature, the State has maintained the SSP rate at such unconscionably low levels that the payments available to ACFs do not meet the actual costs of providing these needy residents with room, board, meals, grooming, medication assistance, case management, and the full array of services necessary for daily living, and the State otherwise refuses to provide to them.

264. The difference in funding between the county-owned adult homes and the plaintiff ACFs, which provide the same services for their residents, is fundamentally unfair, and violates the State's constitutional mandate to aid and serve needy New York residents.

265. Upon information and belief, the two counties that operate county-owned ACFs are reimbursed at a much higher rate than the Congregate Care Level III SSI rate available to private facilities. By law, the State reimburses county-owned adult homes on the basis of their actual costs which, upon information and belief, averages approximately \$68 per day.

**DEFENDANTS FAILURE TO INCREASE SSI BENEFITS IS  
CAUSING RESIDENTS TO LOSE THE HOUSING THEY CHOSE**

266. Upon information and belief, Defendants' failure to increase the state contribution to the SSI Congregate Care Level III rate has caused over thirty (30) ACFs to close since August 2013.

267. Upon information and belief, when an ACF closes, residents commonly transfer to facilities with higher levels of medical care, such as ALPs and nursing homes.

268. Upon information and belief, SNFs provide a higher degree of medical care than ACFs. For SSI/SSP beneficiaries, these medical services are commonly paid by Medicaid, inasmuch as SSI beneficiaries are automatically eligible for Medicaid coverage.

269. On or about August 23, 2018, the ACF operated by United Helpers, known as RiverLedge Residence, closed. United Helpers was unable to continue to operate RiverLedge Residence because the SSI Congregate Care Level III rate was insufficient to cover increased costs of staffing along with the services mandated by state law.

270. RiverLedge Residence had 27 residents at the time of its closure. Twenty-two (22) residents, including one of the Individual Plaintiffs, were forced to transfer to higher levels of care, such as nursing home.

271. Nursing homes are more restrictive environments for residents than RiverLedge Residence.

272. Absent closure of RiverLedge Residence, all 22 of these persons could have continued to receive services in the least restrictive environment available to them, as is required by Olmstead v. L.C., 527 U.S. 581 (1999) and New York State's Olmsted Implementation Plan, discussed above.

### **THE IRREPARABLE HARM TO PLAINTIFFS**

273. As a practical matter, medically necessary personal care services are unavailable to residents of ACFs, or they obtain such services only after great delay and harm to the health of the Medicaid recipient. In the meantime, the ACFs, including the Operator Plaintiffs, are left with the burden of providing such care, even though SSI – the only payment the adult care facility receives for housing and feeding New York's poor and disabled – pays for only non-medical needs and is insufficient to cover even basic room and board. The State's policy effectively shifts the burden of providing necessary care and services to the ACFs, which receive no compensation, under either the SSI or the Medicaid Program, for doing so.

274. In addition, ACF residents, including the Individual Plaintiffs, do not receive the full personal needs allowance that they would receive if the SSP benefit increased. This unfairly and unconstitutionally further limits the support that these needy persons receive directly from the State.

275. The Defendants' policy has had the invidious effect of discriminating against ACF residents and systematically precluding them from receiving the services to which they

are entitled. This not only jeopardizes their health, safety and well-being, but also threatens them with removal from their residences to a more restrictive, institutional setting in violation of Federal, State, and local law. Thus, the Individual Plaintiffs and others similarly situated face irreparable harm from the arbitrary and unlawful distinction between SSI/SSP beneficiaries who reside in privately-owned ACFs and individuals of similar age and disability/sight-ability status who reside in a county-owned ACF.

276. As the foregoing facts reflect, the Defendants' deliberate inaction has brought the system to the breaking point. ACFs, including some Operator Plaintiffs, unable to meet the financial burdens of providing care and services to their residents, are closing at an alarming rate; other ACFs, including other Operator Plaintiffs, are constrained to compromise care and services; residents are forced to seek alternate care and housing contrary to their wishes; and other needy and disabled adults, if deprived of necessary care and services, may see their condition deteriorate to the point where nursing home placement becomes the only feasible option.

277. Plaintiffs have no adequate remedy other than the relief requested herein, and they have made no prior application for the relief requested herein.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Violation of the Americans with Disabilities Act)**

278. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

279. The Americans with Disabilities Act (42 USC §§ 12101 et seq.; the "ADA") was enacted to help serve "the Nation's proper goals regarding individuals with disabilities,

[which goals] are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for each individual” (42 USC § 12101 [a] [8]).

280. The ADA provides, in pertinent part, that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity” (42 USC § 12132).

281. As used in the ADA, “the term ‘public entity’ means . . . any State or local government” or “any department, agency, special purpose district, or other instrumentality of a State . . . or local government” (42 USC § 12131 [1] [A]-[B]).

282. Defendants are all “public entities” within the scope of the ADA.

283. The ADA defines “disability,” with respect to an individual, as “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment” (42 USC § 12102 [2]). These activities include “caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working” (28 CFR 35.104).

284. Under New York law, ACF residents are individuals “who are, by reason of physical or other limitations associated with age, physical or mental disability or other factors, unable or substantially unable to live on their own” (see Social Services Law § 2 [22]; see also 18 NYCRR 485.2 [a]). Accordingly, ACF residents are individuals with a “disability” within the scope of the ADA.

285. The ADA requires the Defendants to comply with implementing regulations promulgated by the United States Department of Justice (see 42 USC §§ 12132; 12134 [a]). The ADA's implementing regulations include the requirement that public entities subject to the ADA "administer services, program, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities" (28 CFR 35.130 [d]). These regulations prohibit methods of administration which, while neutral on their face, are discriminatory in their effect (see 28 CFR 35.130 [b] [3]).

286. Further, New York State has adopted the Olmstead Integration Plan to address the integrated housing requirements of the ADA (see [https://www.ny.gov/sites/ny.gov/files/atoms/files/Olmstead\\_Final\\_Report\\_2013.pdf](https://www.ny.gov/sites/ny.gov/files/atoms/files/Olmstead_Final_Report_2013.pdf)).

287. As such, the New York State government has taken the legal position that persons with disabilities residing or at risk of entry into ACFs are qualified to receive services in the most integrated setting appropriate to their needs.

288. ACFs are settings appropriate to the needs of the Individual Plaintiffs and other qualified individuals with disabilities under the ADA.

289. Defendants are responsible for determining what services to provide to persons with disabilities, and in what setting to provide them, and how to allocate funds for each program.

290. Pursuant to these statutory requirements, DOH, OTDA, and OMH administer and fund ACFs to provide services to persons with disabilities. ACFs are an integral part of Defendants' social services system.



291. The inadequate SSP payment creates a barrier for ACFs, including the Operator Plaintiffs, to ensure compliance with the requirement to provide appropriate services in the setting that is as integrated as possible.

292. For example, additional SSP funding would:

- a. enable ACFs to provide greater opportunity for residents to move freely in and out of the facility;
  - b. afford residents more opportunity to participate in events and activities that are more integrated into their local community;
  - c. enable ACFs to make modern improvements, including providing refrigerators and food in resident rooms, more modern technology such as computers, and make other improvements to buildings and furniture beneficial to residents;
  - d. enable ACFs to train residents to be more independent, self-reliant, and able to communicate with and use computers; and/or
  - e. enable ACFs to provide vocational training to teach residents skills such as money management, medication management, cooking, laundry, personal hygiene, using public transportation, or providing transportation to libraries, shopping, community centers, and other enriching community settings.
- Such training will enable residents to successfully transition, where appropriate, to housing that is even more integrated than an ACF.

293. As a result, the failure of Defendants to increase the SSP contribution deprives the Individual Plaintiffs and other qualifying individuals with disabilities of their rights under the ADA to receive services in a more integrated, less restrictive setting appropriate to their needs.

294. Inappropriate or unnecessary segregation in hospitals or nursing homes is a form of illegal discrimination in violation of the ADA. The State's Olmstead Integration Plan acknowledges that nursing home placement is more restrictive than ACF placement (see id. at 14-15).

295. The inevitable result of the State's failure to adequately fund ACFs and provide for low income and disabled seniors is that ACFs will continue to close at an accelerated pace. As noted above, 32 ACFs have closed since August 2013, exposing their residents to transfer to a nursing home if no other ACF is willing or able to accept the grossly inadequate SSI rate as payment for the mandated services.

296. By virtue of the foregoing, the Defendants have violated, and continue to violate, the rights of the Plaintiff residents under the ADA. As a result, Plaintiff residents have been and are being denied housing in the most integrated setting to which they are entitled; they have suffered and are continuing to suffer irreparable harm; and they have no adequate remedy at law.

297. Defendants' failure to increase the SSP benefit adversely impacts ACF residents solely on the basis of their disability, in violation of the ADA and its implementing regulations.

298. Accordingly, Plaintiffs are entitled to (a) a judgment declaring that Defendants' failure to increase the SSP benefit violates the ADA and (b) an order compelling Defendants to increase the SSP benefit so that the Congregate Care Level III rate equals the amount paid to county-owned ACFs or, alternatively, the amount determined by the Legislature in 2017 to meet the ACF residents' standard of need.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Violation of the Rehabilitation Act of 1973)**

299. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

300. Section 504 of the Rehabilitation Act provides that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (29 USC § 794 [a]).

301. For the purposes of Section 504 of the Rehabilitation Act, the phrase "individual with a disability" has the same meaning as under the ADA (see 29 USC § 705 [20] [B]).

302. New York State receives Federal financial assistance in connection with the SSI program and operation of ACFs.

303. Further, New York State has adopted the Olmstead Integration Plan to address the integrated housing requirements of Section 504 of the Rehabilitation Act and the associated regulations (see [https://www.ny.gov/sites/ny.gov/files/atoms/files/Olmstead\\_Final\\_Report\\_2013.pdf](https://www.ny.gov/sites/ny.gov/files/atoms/files/Olmstead_Final_Report_2013.pdf)).

304. As such, the New York State government has taken the legal position that persons with disabilities residing or at risk of entry into ACFs are qualified to receive services in the most integrated setting appropriate to their needs.

305. ACFs are settings appropriate to the needs of the Individual Plaintiffs and other qualified individuals with disabilities under Section 504.

306. Defendants are responsible for determining what services to provide to persons with disabilities, and in what setting to provide them, and how to allocate funds for each program.

307. Pursuant to these statutory requirements, DOH, OTDA, and OMH administer and fund ACFs to provide services to persons with disabilities. ACFs are an integral part of Defendants' social services system.

308. The inadequate SSP payment creates a barrier for ACFs, including the Operator Plaintiffs, to ensure compliance with the requirement to provide appropriate services in the setting that is as integrated as possible.

309. For example, additional SSP funding would:

- f. enable ACFs to provide greater opportunity for residents to move freely in and out of the facility;
- g. afford residents more opportunity to participate in events and activities that are more integrated into their local community;
- h. enable ACFs to make modern improvements, including providing refrigerators and food in resident rooms, more modern technology such as

computers, and make other improvements to buildings and furniture beneficial to residents;

- i. enable ACFs to train residents to be more independent, self-reliant, and able to communicate with and use computers; and/or
- j. enable ACFs to provide vocational training to reach residents skills such as money management, medication management, cooking, laundry, personal hygiene, using public transportation, or providing transportation to libraries, shopping, community centers, and other enriching community settings.

Such training will enable residents to successfully transition, where appropriate, to housing that is even more integrated than an ACF.

310. As a result, the failure of Defendants to increase the SSP contribution deprives the Individual Plaintiffs and other qualifying individuals with disabilities of their rights under Section 504 to receive services in a more integrated, less restrictive setting appropriate to their needs.

311. Inappropriate or unnecessary segregation in hospitals or nursing homes is a form of illegal discrimination against individuals with a disability in violation of the Rehabilitation Act.

312. The inevitable result of the State's failure to adequately fund ACFs and provide for low income and disabled seniors is that ACFs will close. As noted above, at least 32 ACFs have closed since August 2013, exposing their residents to transfer to a nursing home if no other ACF bed is available in their area.

313. Defendants' failure to increase the SSP benefit adversely impacts ACF residents solely on the basis of their disability, in violation of Section 504 of the Rehabilitation Act.

314. Accordingly, Plaintiffs are entitled to (a) a judgment declaring that Defendants' failure to increase the SSP benefit violates Section 504 of the Rehabilitation Act and (b) an order compelling Defendants to increase the SSP benefit so that the Congregate Care Level III rate equals the amount paid to county-owned ACFs or, alternatively, the amount determined by the Legislature in 2017 to meet the ACF residents' standard of need.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Violation of the Fair Housing Act)**

315. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

316. The Federal Fair Housing Act (42 USC §§ 3601, et seq.; the "FHA") makes it unlawful "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap" or "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of a handicap" (42 USC § 3604 [f] [1]-[2]).

317. The FHA provides that any state law "that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid" (42 USC § 3615).

318. A room or bed in an ACF constitutes a dwelling under the FHA.

319. "Person" is defined under the FHA to include "one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code, receivers, and fiduciaries" (42 USC § 3602 [d]).

320. "Aggrieved person" is defined in the FHA as any person who "(1) claims to have been injured by a discriminatory housing practice; or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur" (42 USC § 3602 [i]).

321. The FHA provides that 'Handicap' means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act)"

(42 USC § 3602 [h]).

322. Plaintiffs are "aggrieved persons" entitled to bring a private cause of action to enforce the FHA.

323. The Individual Plaintiffs are in the protected class of persons with a handicap inasmuch as, pursuant to 18 NYCRR 485.2 (a), they are unable or substantially unable to live independently "by reason of physical or other limitations associated with age, physical or mental disabilities or other factors" (see also Social Services Law § 2 [22]).

324. Defendants' failure to increase the SSP benefit for more than a decade has the effect of making a dwelling unavailable to residents whose ACF has been forced to close, and

denying a dwelling because of their handicap, and has the effect of discriminating against ACF residents who currently reside in ACFs in the provision of services in connection with such a dwelling, inasmuch as the inadequate payment prevents ACF operators from offering residents the quality of amenities they deserve.

325. The Individual Plaintiffs have been injured and/or will be injured by Defendants' failure to increase the SSP benefit because, if their ACF is forced to close, they have been denied the housing of their choice and, if the ACF is not able to offer the quality of housing amenities to which they are entitled.

326. Operator Plaintiffs and/or the members of the Associations have been injured and/or will be injured by Defendants' failure to increase the SSP benefit by, among other things, being forced to either seek alternative sources of funding to subsidize operations or undertake discriminatory housing practices against their residents, incurring financial hardship and/or loss of business, and in some cases, being unable to continue doing business.

327. Defendants' failure to increase the SSP benefit impacts ACF residents solely on the basis of their handicap, in violation of the Federal Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act, 42 USC §§ 3601 et seq.

328. Accordingly, Plaintiffs are entitled to (a) a judgment declaring that Defendants' failure to increase the SSP benefit violates the FHA and (b) an order compelling Defendants to increase the SSP benefit so that the Congregate Care Level III rate equals the amount paid to county-owned ACFs or, alternatively, the amount determined by the Legislature in 2017 to meet the ACF residents' standard of need.



**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Violation of the New York State Human Rights Law)**

329. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

330. Pursuant to the State Human Rights Law (Executive Law §§ 290 et seq.) all persons have a “civil right” to “use an occupancy of housing accommodations . . . without discrimination because of age . . . or disability” (Executive Law § 291 [2]).

331. Residence in an ACF in New York State is a housing accommodation under the State Human Rights Law.

332. Executive Law § 296 (5) (a) provides that “[i]t shall be an unlawful discriminatory practice for the owner . . . or other person having the right to sell, rent or lease a housing accommodation . . . [t]o refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the . . . age [or] disability . . . of such person or persons.”

333. Executive Law § 296 (5) (e) provides that “[i]t shall be an unlawful discriminatory practice for the owner, proprietor or managing agent of, or other person having the right to provide care and services in, a home for adults, or an intermediate care facility, as defined in section two of the social services law . . . to refuse to provide services or care in such home or facility to any individual or to discriminate against any individual in the terms, conditions, and privileges of such services and care solely because such individual is a blind person.”

334. Executive Law § 296 (6) provides that “[i]t shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.”

335. Other than when an ACF operator has attained alternative sources of funding, Defendants’ failure to increase the SSP benefit constitutes the compelling or coercion of, or an attempt to force, compel or coerce, ACF operators to refuse, withhold from or deny to ACF residents accommodations, advantages, facilities or privileges of the housing accommodation of the ACF on the basis of their age, sight ability, or disability.

336. Accordingly, Plaintiffs are entitled to (a) a judgment declaring that Defendants’ failure to increase the SSP benefit violates the State Human Rights Law and (b) an order compelling Defendants to increase the SSP benefit so that the Congregate Care Level III rate equals the amount paid to county-owned ACFs or, alternatively, the amount determined by the Legislature in 2017 to meet the ACF residents’ standard of need.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
**(Violation of the New York City Human Rights Law)**

337. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

338. The New York City Human Rights Law (Administrative Code of City of N.Y. §§ 8-101 et seq.), provides that “[i]t shall be an unlawful discriminatory practice for the owner . . . or other person having the right to sell, rent or lease or approve the . . . rental or lease of a housing accommodation . . . [b]ecause of the actual or perceived . . . age [or] disability . . . of any person or group of persons . . . [t]o refuse to . . . rent, lease . . . or otherwise deny to or

withhold from any such person or group of persons such a housing accommodation” or “[t]o discriminate against any such person or persons in the . . . privileges of the . . . rental or lease of any such housing accommodation or . . . in the furnishing of facilities or services in connection therewith” (Admin Code of City of NY § 8-107 [5] [1] [a]-[b]).

339. Further, the New York City Human Rights Law provides that “[i]t shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter, or to attempt to do so.”

340. Residence in an ACF in New York City is a housing accommodation under the New York City Human Rights Law.

341. Other than when an ACF operator has an alternative source of funding, Defendants’ failure to increase the SSP benefit constitutes the compelling or coercion of, or an attempt to force, compel or coerce, ACF operators to refuse, withhold from or deny to ACF residents accommodations, advantages, facilities or privileges of the housing accommodation of the ACF, on the basis of their age or disability.

342. Accordingly, Plaintiffs are entitled to (a) a judgment declaring that Defendants’ failure to increase the SSP benefit violates the New York City Human Rights Law and (b) an order compelling Defendants to increase the SSP benefit so that the Congregate Care Level III rate equals the amount paid to county-owned ACFs or, alternatively, the amount determined by the Legislature in 2017 to meet the ACF residents’ standard of need.

**AS AND FOR A SIXTH CAUSE OF ACTION**  
**(Violation of the Constitutional Right to Equal Protection)**

343. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

344. Article I, Section 11 of the New York Constitution provides that “[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof.”

345. Section 1 of the Fourteenth Amendment to the United States Constitution provides that no State may “deny to any person within its jurisdiction the equal protection of the laws.”

346. In New York, the provision of adequate care to the needy is not a matter of legislative grace, but is mandated by the law, including the State Constitution. Article XVII of the New York State Constitution provides that:

The aid, care and support of the needy are public concerns and shall be provided by the state and by such subdivisions, and in such manner and by such means, as the legislature may from time to time determine.

N.Y. Const. Art. XVII, § 1.

347. As described above, Defendants have maintained the SSP rate at such unconscionably low levels that payments to ACFs no longer come close to covering the actual costs of providing room, board, and mandated services to needy SSI/SSP recipients.

348. By contrast, counties that operate ACFs are reimbursed by the State for their actual costs of providing room, board, and mandated services to needy persons who would be

eligible for SSI/SSP benefits at the Congregate Care Level III rate, but for the fact that they reside in a government-owned facility.

349. The required care and services in county-owned adult homes are the same as those offered in the Operator Plaintiffs and the ACF members of the Associations.

350. Accordingly, the decision not to increase the SSP rate does not similarly impact all similarly-situated persons, and is fundamentally unfair.

351. By virtue of the foregoing, Defendants have violated the individual Plaintiffs' right to equal protection under the United States and New York State Constitutions.

352. Accordingly, Plaintiffs are entitled to (a) a judgment declaring that Defendants' failure to increase the SSP benefit violates the Individual Plaintiffs' right to equal protection under the Federal and State Constitutions because the Congregate Care Level III rate does not equal the amount paid to county-owned ACFs.

**AS AND FOR A SEVENTH CAUSE OF ACTION**  
**(Taking Without Just Compensation)**

353. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

354. The Takings Clause of the Fifth Amendment to the U.S. Constitution, as applicable to the states through the Fourteenth Amendment, prohibits Defendants from taking any "private property . . . for public use, without just compensation."

355. Article I, Section 7(a) of the New York State Constitution, provides that "[p]rivate property shall not be taken for public use without just compensation."

356. These constitutional safeguards are intended to prevent the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

357. ACFs cannot remedy the erosion of the Congregate Care Level III benefit described above by declining to provide continuing services to SSI/SSP residents. By virtue of the Defendant DOH's licensure and enforcement efforts, ACFs are under a legal compulsion, upon threat of substantial civil monetary penalties, and potential license revocation, to use their own resources to provide the additional direction and assistance with personal care functions that the State has refused to provide.

358. Additionally, the ACF cannot terminate a resident's admission agreement and discharge a resident, except for certain very limited grounds as set forth in the statute (see Social Services Law §§ 461-g, 461-h; 18 NYCRR parts 487-489). The limited permissible grounds for termination do not include the inadequacy of the Congregate Care Level III rate. Nor may an ACF simply close or cease operations in response, inasmuch as DOH must approve of any closure plan before it takes effect.

359. ACFs have a legitimate property interest in the proceeds from their operations. To the extent that the State rate fails to cover the operators' actual and reasonable costs, the State has transferred to the ACFs its own constitutional obligation to care for the needy. This constitutes a taking of private property for public use without just compensation.

360. By virtue of the foregoing, the Defendants have violated, and are continuing to violate, the Takings Clauses of the U.S. and New York State Constitutions.

361. Accordingly, Plaintiffs are entitled to (a) a judgment declaring that Defendants' failure to increase the SSP benefit constitutes a taking from the Operator Plaintiffs without just compensation contrary to the Operator Plaintiffs' rights under the Federal and State Constitutions and (b) an order compelling Defendants to increase the SSP benefit so that the Congregate Care Level III rate equals the amount paid to county-owned ACFs or, alternatively, the amount determined by the Legislature in 2017 to meet the ACF residents' standard of need.

**AS AND FOR AN EIGHTH CAUSE OF ACTION**  
**(Arbitrary and Capricious)**

362. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

363. Under Article XVII, Section 1 of the State Constitution, the proper amount of support for the needy is a matter for the Legislature to determine.

364. In 2017, by passing S. 6372, the Legislature determined that the proper amount of support for the needy entailed an increase to the State's contribution to the Congregate Care Level III rate, i.e., the SSP benefit.

365. Nevertheless, Defendants have not increased the amount that they pay to SSP beneficiaries who reside in ACFs.

366. Defendants reimburse county-owned ACFs their actual costs in respect of the services for which the Operator Plaintiffs receive only the Congregate Care Level III rate.

367. Defendants' determination to stagnate the SSP benefit at the same level since 2007, despite the Legislature's conclusion that said amount is inadequate to meet the needs of ACF residents, and in contrast to their payment to county-owned ACFs of their actual costs to provide the same services, is arbitrary and capricious, unauthorized and irrational, and invalid.

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Issue a judgment, pursuant to CPLR 3001, declaring that the Defendants' failure to maintain the SSP rate at a level sufficient to cover the actual and reasonable costs of caring for SSI/SSP recipients in an adult care facility violates the Plaintiffs' rights under the New York State and United States Constitutions, and Federal, State, and New York City law;
- B. Enter a preliminary and permanent injunction requiring the Defendants and their agents, successors and employees, to comply with the laws outlined above by, among other things, increasing the SSP benefit and, consequently, the Congregate Care Level III rate, to cover the facilities' actual and reasonable costs of caring for their residents;
- C. Retain jurisdiction over this action to ensure the Defendants' compliance with the mandates of the State and Federal Constitutions, statutes, and regulations referred to herein;
- D. Award Plaintiffs their costs and reasonable attorney fees; and



E. Order such further and additional relief as this Court deems just and proper.

Dated: Albany, New York  
September 6, 2018

Respectfully submitted,

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