

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

KATHLEEN AUDIA,)	
)	
Plaintiff,)	
)	Case No.: 1:17-cv-06618
v.)	
)	Hon. Manish Shah
BRIAR PLACE, LTD., an Illinois corporation,)	
)	
Defendant.)	

**PLAINTIFF'S MOTION FOR LEAVE TO
FILE SECOND AMENDED COMPLAINT**

Plaintiff KATHLEEN AUDIA, by and through her attorneys, Robbins, Salomon & Patt, Ltd., respectfully moves this Honorable Court for leave to file her Second Amended Complaint to name additional defendants. In support of this motion, Plaintiff states as follows:

1. Plaintiff filed this cause of action against Defendant for damages under the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*, Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. 18116, and the Illinois Nursing Home Care Act & Skilled Nursing and Immediate Care Facilities Code, 210 ILCS 45/1-101, *et seq.*, IL Admin. Code 300.110 *et seq.* relative to injuries she suffered while a patient at the nursing and rehabilitation facility owned and operated by Defendant.

2. Plaintiff seeks to add the individual owners of the nursing and rehabilitation facility under the Illinois Nursing Home Care Act. A copy of Plaintiff's proposed Second Amended Complaint is attached hereto as Exhibit A.

3. There is no current deadline for completion of fact discovery.

4. This Motion is not brought to unduly delay this cause or for any other improper purpose.

WHEREFORE, Plaintiff requests leave to file her Second Amended Complaint.

Respectfully submitted,

By: /s/ Jennifer M. Sender
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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 31, 2018, all counsel of record who are deemed to have consented to electronic service are being served a true and correct copy of the foregoing document using the Court's CM/ECF system.

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Exhibit A

PLAINTIFF'S SECOND AMENDED COMPLAINT

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

KATHLEEN AUDIA,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 1:17-cv-06618
)	
BRIAR PLACE, LTD., an Illinois)	
Corporation, ERIC ROTHNER,)	
MARILYN WOLFF, as Acting Trustee of)	
the MARILYN WOLFF TRUST,)	
LORRAINE SUISSA, MARK SUISSA,)	
NOAH WOLFF, as Acting Trustee of the)	
NOAH WOLFF TRUST, MEYER)	
MAGENCE, CHERYL MAGENCE, ARI)	
WOLFF, RANAN WOLFF, LAURI)	
WOLFF POLEN, TZIONA ZEFFREN,)	
MARK STEINBERG, SHIRLEY)	
DRELICH, MICHAEL R. GIANNINI, as)	
Acting Trustee of the MICHAEL R.)	
GIANNINI TRUST, and CELESTE)	
GIANNINI, as Acting Trustee of the)	
CELESTE GIANNINI TRUST,)	
)	
Defendants.)	

SECOND AMENDED COMPLAINT

Plaintiff Kathleen Audia (“Plaintiff”), by her attorneys, Jennifer M. Sender and Andrés J. Gallegos, Esq. of Robbins, Salomon & Patt, Ltd., for her Second Amended Complaint against Defendants BRIAR PLACE, LTD., an Illinois Corporation, ERIC ROTHNER, MARILYN WOLFF, as the Acting Trustee of the MARILYN WOLFF Trust, LORRAINE SUISSA, MARK SUISSA, NOAH WOLFF, as Acting Trustee of the NOAH WOLFF Trust, MEYER MAGENCE, CHERYL MAGENCE, ARI WOLFF, RANAN WOLFF, LAURI WOLFF POLEN, TZIONA ZEFFREN, MARK STEINBERG, SHIRLEY DRELICH, MICHAEL R. GIANNINI, as Acting Trustee of the

MICHAEL R. GIANNINI Trust, and CELESTE GIANNINI, as Acting Trustee of the CELESTE GIANNINI Trust (“Defendants”), states as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over Counts I and II of this action pursuant to 28 U.S.C. § 1331 as the Plaintiff’s claims alleged herein arise under the Rehabilitation Act of 1973 (the “Rehabilitation Act”), 29 U.S.C. § 794, *et seq.*; and Section 1557 of the Patient Protection and Affordable Care Act (“Section 1557”), 42 U.S.C. 18116. This Court has supplemental jurisdiction over Counts III and IV of this action pursuant to 28 U.S.C. § 1367.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b). Defendant resides in this district and a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

THE PARTIES

3. Plaintiff is a 63-year old female who is profoundly deaf. Plaintiff has a very limited ability to verbalize speech and read lips. Plaintiff’s primary means of communication is through American Sign Language (“ASL”). Plaintiff is a person with a disability within the meaning of all applicable statutes. Plaintiff resides in a supportive living facility in Aurora, Illinois.

4. Defendant Briar Place, Ltd., is an Illinois corporation, and a skilled nursing and intermediate care facility, that owns and operates a nursing and rehabilitation facility, Briar Place Nursing and Rehabilitation (the “Facility”), in Indian Head Park, Cook County, Illinois. The Facility offers and advertises its comprehensive spectrum of rehabilitative, clinical and psychiatric services.

5. Defendant Eric Rothner is an individual who possesses an ownership interest in the Facility.

6. Upon information and belief, Marilyn Wolff is the Acting Trustee of the Marilyn Wolff Trust, which possesses an ownership interest in the Facility.

7. Defendant Lorraine Suissa is an individual who possesses an ownership interest in the Facility.

8. Defendant Marc Suissa is an individual who possesses an ownership interest in the Facility.

9. Upon information and belief, Noah Wolff is the Acting Trustee of the Noah Wolff Trust, which possesses an ownership interest in the Facility.

10. Meyer Magence is an individual who possesses an ownership interest in the Facility.

11. Cheryl Magence is an individual who possesses an ownership interest in the Facility.

12. Ari Wolff is an individual who possesses an ownership interest in the Facility.

13. Ranan Wolff is an individual who possesses an ownership interest in the Facility.

14. Lauri Wolff Polen is an individual who possesses an ownership interest in the Facility.

15. Tziona Zeffren is an individual who possesses an ownership interest in the Facility.

16. Mark Steinberg is an individual who possesses an ownership interest in the Facility.

17. Shirley Drelich is an individual who possesses an ownership interest in the Facility.

18. Upon information and belief, Michael R. Giannini is the Acting Trustee of the Michael R. Giannini Trust, which possesses an ownership interest in the Facility.

19. Upon information and belief, Celeste Giannini is the Acting Trustee of the Celeste Giannini Trust, which possesses an ownership interest in the Facility.

DEFENDANTS' CONDUCT

20. "Effective communication" is critical in virtually all medical contexts. Without it, a caregiver cannot obtain complete medical histories; assess symptoms; provide for patient rights, including informed consent; develop accurate diagnoses and prognoses; develop, explain and administer procedures, medication and treatment generally; provide counseling; or otherwise ensure that residents' needs are appropriately met. Failure to ensure that deaf and hard of hearing patients can effectively communicate threatens the quality of care and, even when treatment ultimately is successful, violates legally protected rights. In enacting the ADA, Congress found that individuals with disabilities continually encounter discrimination in critical areas such as health services, including, *inter alia*, outright intentional exclusion, communication barriers, and the failure to make modifications to existing practices. 42 U.S.C. § 12101(a)(3), (a)(5).

21. Defendants have failed to provide Plaintiff, a person with a disability, the same quality of care as other residents and deprived her of the opportunity to participate in her care and rehabilitation on the basis of her disability. This unequal treatment

occurred because, among other things, Defendants relied upon the exchange of written notes or required Plaintiff to lip read during numerous complex and sufficiently lengthy conversations, even though Plaintiff required and requested the availability of an ASL interpreter. In a nursing and rehabilitation facility, examples of circumstances when the communication may be sufficiently lengthy or complex so as to require an ASL interpreter include (collectively, "Vital Encounters"):

- A. When conducting a comprehensive assessment of a resident's needs, strengths, goals, life history and preferences;
- B. Developing and implementing the resident's patient-centered plan of care, including establishing expect goals and outcomes of care;
- C. Informing the resident of his or her rights to participate in his or her plan of care, rights and responsibilities;
- D. Discussing a resident's symptoms and medical condition, medications, and medical history;
- E. When conducting periodic assessments of a resident;
- F. Providing a diagnosis and recommendation for treatment;
- G. Communicating with a resident during treatment, including physical and occupational therapies, testing procedures, and during physician's rounds;
- H. Obtaining informed consent for treatment and therapies;
- I. Providing instructions for medications, post-treatment activities and follow-up, treatments;
- J. Providing mental health services, including group or individual counseling for residents and family members;
- K. Discussing powers of attorney, living wills and/or complex billing and insurance matters;
- L. During educational presentations;
- M. Discussing discharge planning and discharge instructions; and
- N. When providing religious services and spiritual counseling.

22. Defendants acted intentionally and with deliberate indifference when they failed to provide the benefit of its services, programs, and activities to Plaintiff and failed to provide appropriate auxiliary aids and services to Plaintiff to effectively communicate with her during nearly all Vital Encounters.

23. Defendants acted intentionally and with deliberate indifference when they failed to provide appropriate auxiliary aids and services to Plaintiff to allow for effective communication between her and its doctors, nurses, counselors, social workers, therapists, and others (collectively, the "Facility's Personnel").

24. Defendants have denied Plaintiff full and equal access to its services and denied Plaintiff the equal opportunity to participate in her own healthcare and rehabilitation in violation of the ADA, the Rehabilitation Act and Section 1557 by:

- A. Failing to provide adequate and effective means of communication with the Facility's Personnel;
- B. Failing to adequately train the Facility's staff on the differences in methods of communication for simple and short conversations versus for Vital Encounters;
- C. Failing to provide her equal access to its programs and services; and
- D. Failing to establish comprehensive policies and procedures to meet its legal mandates to achieve effective communications.

PLAINTIFF'S EXPERIENCE

25. Plaintiff is profoundly deaf. She used hearing aids since the age of 3 and lost total hearing at the age of 55. Plaintiff relies on ASL as her primary means to communicate. She has a very limited capacity to lip read. Plaintiff can verbalize some words with slight slur. Absent a sign language interpreter, she cannot communicate

fluently or engage in substantive conversation with someone who does not know sign language. When she uses lip reading or exchanging written notes to communicate, she is only able to comprehend a small percentage of the conversations. Plaintiff suffers from Type 2 diabetes and is insulin dependent.

26. Plaintiff became a resident of the Facility on March 17, 2015, and remained at the Facility for 866 days, until July 31, 2017. She was transferred to the Facility from Wheaton Care Center in Wheaton, Illinois, where she was recovering for four days after being discharged from Advocate Good Samaritan Hospital where she was treated for a laceration to her head from a fall. Upon being admitted to the Facility, she was diagnosed as having a major depressive disorder, single episode (primary admission); balance and gait issues (requiring the use of a walker), osteoarthritis, low back pain, and other conditions.

27. At the time of her admission Brandie Weininger, a friend of Plaintiff, acted as Plaintiff's attorney-in-fact under a general power of attorney.

28. Throughout Plaintiff's 866 day stay at Defendants' Facility, Plaintiff was required to lip read or exchange written notes with the Facility's Personnel during numerous Vital Encounters, including, *inter alia*, the following:

- A. During initial physical, nursing, social services, recreation, dietary assessments upon admission;
- B. During the development of its legally required patient-centered plan of care with its interdisciplinary team;
- C. During approximately 298 one-on-one periodic social services, nursing, dietary and recreation assessments;
- D. During approximately 28 one-on-one nursing and restorative nursing evaluations;

- E. During approximately 38 one-on-one nursing evaluations discussing Plaintiff's medical condition and symptoms; and explaining results of tests;
- F. When participating in approximately 11 nursing and social services counseling and educational presentations;
- G. During approximately 38 one-on-one physician and nurse practitioner evaluations providing diagnosis and/or recommendations for treatment;
- H. During approximately 21 one-on-one mental health evaluations and services with a physician and/or social worker; and
- I. During approximately 8 of 11 discharge planning conferences with social services personnel.

29. Throughout the 866 days that she stayed at the Facility, Plaintiff was consistently denied the ability to independently walk outside of the Facility because she repeatedly failed the Defendant's evaluation process as she could not understand questions asked of her. When conducting those evaluations, no ASL interpreter was provided, despite repeated requests by the Plaintiff, and Defendants required Plaintiff to lip read or exchange written notes. As a result, Plaintiff only left the Facility during those 866 days for medical appointments and occasionally with friends.

30. Because Defendants denied Plaintiff effective communication with the Facility's Personnel, Plaintiff's discharge from the Facility was unnecessarily, significantly delayed. Denial of effective communication resulted in Plaintiff's inability to understand her rights to request to be discharged, her rehabilitation goals, corrective actions required to meet those goals, and the demonstrated behaviors required to satisfy the Defendants' discharge criteria.

31. Defendants' failure to provide appropriate auxiliary aids or services to enable its Facility's Personnel to effectively communicate with Plaintiff created significant emotional problems for Plaintiff. Plaintiff experienced frustration, fear, and

emotional distress due to her extremely limited ability to communicate with the Facility's Personnel about her health and well-being, rehabilitation and lack of understanding of the reasons for her prolonged stay at the Facility.

COUNT I
(Against Defendant Briar Place, LTD.)
VIOLATION OF THE REHABILITATION ACT
29 U.S.C. § 704

32. Plaintiff incorporates by reference paragraphs 1 to 19 above.

33. Plaintiff bring this action under Section 504 of the Rehabilitation Act, 29 U.S.C. §794. Plaintiff was intentionally and deliberately denied full and equal enjoyment of Defendant's healthcare and rehabilitation services through Defendant's failure to comply with the Rehabilitation Act.

34. Defendant receives federal financial assistance in the form of reimbursement from federal Medicare and Medicaid programs and is therefore subject to the antidiscrimination provisions of the Rehabilitation Act, as described herein.

35. At all times relevant herein, there was in full force and effect a statute known as the Rehabilitation Act, 29 U.S.C. §701 *et seq.*, and its implementing regulations, 45 C.F.R. § 84.4(a), which provides in pertinent part as follows:

- A. "No otherwise qualified individual with a disability...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 U.S.C. §794(a);
- B. An individual with a disability is "otherwise qualified" to participate in covered programs and activities if that individual "meets the essential eligibility requirements for the receipt of such services." 45 C.F.R. § 84.3(l)(4);

- C. “Program or activity” means all of the operations of an entire corporation if assistance is extended to such corporation as a whole or the corporation is principally engaged in the business of providing health care services and any part of the corporation receives federal financial assistance. 29 U.S.C. §794(b)(3)(A)(i) and (ii); 45 C.F.R. §84.3(k)(3)(i)(A) and (ii);
- D. “Federal financial assistance” means “any grant, loan, contract...or any other arrangement by which the Department [of Health and Human Services] provides or otherwise makes available assistance in the form of... [f]unds.” 45 C.F.R. §84.3(h);
- E. “No qualified handicapped person shall, because a recipient’s facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.” 45 C.F.R. §84.21; and
- F. “In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap: (1) Deny a qualified handicapped person these benefits or services... (3) Provide a qualified handicapped person with benefits or services that are not as effective as the benefits or services provided to others... (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons.” 45 C.F.R. § 84.52(a).

36. The Defendant’s intentional and deliberate acts and omissions alleged herein violated the Rehabilitation Act and its implementing regulations in one or more of the following respects:

- A. Defendant discriminated against Plaintiff by denying her the opportunity for the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations at its Facility;
- B. Defendant discriminated against Plaintiff by denying her the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of its Facility;
- C. Defendant discriminated against Plaintiff by offering or affording her services that are not equal to those services afforded to other individuals without hearing impairments;

- D. Defendant discriminated against Plaintiff by failing to make reasonable modifications in policies, practices, or procedures, which are necessary to afford its goods, services and facilities to Plaintiff where such modifications would not fundamentally alter the nature of the goods, services or facilities; and
- E. Defendant discriminated against Plaintiff by deliberately and intentionally failing to provide appropriate auxiliary aids and services, such as sign language interpreters, or other means to effectively communicate with Plaintiff, where the taking of such steps would not fundamentally alter the nature of its offered services or would not result in an undue burden, despite knowing the failure to do so would likely result in harm to the Plaintiff's federally protected right and failed to act upon that likelihood.

37. Section 505(a)(2) of the Rehabilitation Act, 29 U.S.C. §794(a)(2), states that the “remedies, procedures and that the rights set forth in Title VI of the Civil Rights Act of 1964 [42 U.S.C. §2000(d) *et seq.*] shall be available” for violations of section 504 of the Rehabilitation Act. By law, such remedies include compensatory monetary damages. *Barnes v. Gorman*, 536 U.S. 181 (2002).

38. Plaintiff is entitled to reasonable attorneys' fees and costs, pursuant to section 505(b) of the Rehabilitation Act, 29 U.S.C. §794(a), as Defendant's conduct has inflicted injury and damages upon Plaintiff, including loss of a civil right, mental anguish, humiliation and mental pain and suffering.

WHEREFORE, Plaintiff prays for the following relief against Defendant:

- A. An award of compensatory monetary damages;
- B. An award of reasonable attorneys' fees and costs; and,
- C. Such other relief as the Court deems just.

COUNT II
(Against Defendant Briar Place, LTD.)
Violation of Section 1557 of the Patient Protection and Affordable Care Act,
42 U.S.C. § 18116

39. Plaintiff incorporates by reference paragraphs 1 to 19.

40. Since March 2010, there was in full force and effect a statute known as the Patient Protection and Affordable Care Act (the “Affordable Care Act”), 42 U.S.C. § 18001, *et seq.*, Pub.L. 111-148. Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. 42 U.S.C. § 18116. Section 1557’s implementing regulations, 45 C.F.R. §§ 92.1 – 92.203, effective as of July 18, 2016, apply to health programs or activities administered by recipients of Federal financial assistance from the Department of Health and Human Services.

41. As Defendant participates in Medicare and Medicaid, it is a covered entity subject to compliance with Section 1557.

42. The implementing regulations of Section 1557 prohibit discrimination of an individual on the basis of disability, *inter alia*, and prohibit an individual from being excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any health program or activity. *See* 45 C.F.R. § 92.101(a)(1). Those regulations, in pertinent part, require covered entities to:

- A. Take appropriate initial and continuing steps to notify beneficiaries, enrollees, applicants and members of the public:
 - (1) that the covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability in its healthcare programs or activities. 45 C.F.R. §92.8 (a)(1);

- (2) that the covered entity provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities. 45 C.F.R. §92.8 (a)(2);
- (3) how to obtain aids and services. 45 C.F.R. §92.8 (a)(4);
- (4) the identification of, and contact information for, the responsible employee designated to be responsible for adoption of grievance procedures. 45 C.F.R. §92.8 (a)(5);
- (5) the availability of grievance procedures and how to file a grievance pursuant to §92.7(b). 45 C.F.R. §92.8 (a)(6); and
- (6) how to file a discrimination complaint with the Department of Health and Human Services Office of Civil Rights. 45 C.F.R. §92.8 (a)(7).

- B. That a covered entity shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others in health programs and activities, in accordance with the standards found at 28 C.F.R. §§ 35.160 through 35.164. 45 C.F.R. § 92.202(a).

28 C.F.R. §§ 35.160 through 35.164 are the communication access standards required of public entities under Title II of the ADA. Where those regulatory provisions use the term “public entity,” the term “covered entity” shall apply in its place. *See* 45 C.F.R. § 92.202(a). As applied to Section 1557 covered entities, the Title II regulations require them to “take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a)(1). In addition, a covered entity “shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, ... companions, ... an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity of a [covered] entity,” 28 C.F.R.

§ 35.160(b)(1); and “[i]n determining what types of auxiliary aids and services are necessary, a [covered] entity shall give *primary consideration* to the requests of individuals with disabilities ...” 28 C.F.R. § 35.160(b)(2) (emphasis added).

43. As of July 18, 2016 -- 378 out of the 866 days that Plaintiff was confined at Defendant’s Facility -- Defendant had a duty under Section 1557 to give primary consideration to Plaintiff’s communication preference and provide her with an ASL interpreter, either on-site or via VRI.

44. Defendant’s acts and omissions violated Section 1557 and its implementing regulations as Defendant did not take appropriate steps to ensure that communications with Plaintiff were as effective as communications with others in its healthcare and rehabilitation programs and activities, and Defendant failed to give any consideration, primary or otherwise, to Plaintiff’s communication preferences, as Defendant was legally required to do under Section 1557 and the standards found at 28 C.F.R. §§ 35.160 through 35.164. 45 C.F.R. § 92.202(a).

45. Section 1557’s implementing regulations provide that the enforcement mechanisms available for and provided under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, *inter alia*, shall be available for purposes of Section 1557 as implemented by this part, and “compensatory damages for violations of Section 1557 are available in appropriate administrative and judicial actions brought under this rule.” *See* 45 C.F.R. § 92.301.

46. Defendant’s conduct constituted violations of Section 1557.

47. Section 505(a)(2) of the Rehabilitation Act, 29 U.S.C. § 794(a)(2), states that the “remedies, procedures and that the rights set forth in title VI of the Civil Rights

Act of 1964 [being 42 U.S.C. § 2000(d) *et sequitur*] shall be available” for violations of section 504 of the Rehabilitation Act. By law, such remedies include compensatory monetary damages. *Barnes v. Gorman*, 536 U.S. 181 (2002).

48. Plaintiff is entitled to reasonable attorneys’ fees and costs, pursuant to section 505(b) of the Rehabilitation Act, 29 U.S.C. § 794a.

WHEREFORE, Plaintiff prays for the following relief:

- A. An award of compensatory monetary damages;
- B. An award of attorneys’ fees and costs; and
- C. Such other relief as the Court deems just.

COUNT III

(Against all Defendants)

**VIOLATION OF THE ILLINOIS NURSING HOME CARE ACT & SKILLED
NURSING AND INTERMEDIATE CARE FACILITIES CODE
210 ILCS 45/1-101, ET SEQ; 77 IL. ADMIN CODE 300.110 ET SEQ.**

49. Plaintiff incorporates by reference paragraphs 1 to 19 above.

50. Plaintiff brings this action under the Illinois Nursing Home Care Act (the “Act”), 210 ILCS 45/1-101, *et seq.*, and its implementing regulations, Ill. Admin Code tit. 77, pt. 300, which existed at all relevant times herein.

51. Plaintiff’s private right of action against Defendants, owners and operators of a skilled nursing and intermediate care facility, licensed in the state of Illinois, arises under 77 Ill. Admin. Code, Section 300.3290(a).

52. Section 300.3290(e) of Title 77 allows recovery of damages against the nursing home facility, “in addition to and cumulative with any other legal remedies

available to a resident” without exhaustion of administrative remedies. Section 3-604 of the Act.

53. Section 300.3290(c) provides that the licensee shall pay three times the actual damages or \$500, whichever is greater, and costs and attorneys’ fees to a facility resident whose rights as specified in Part 1 of Article II of the Act are violated. Section 3-602 of the Act.

54. At all relevant times herein, the Act contained residents’ bill of rights, which, guarantees residents, *inter alia*, the right to refuse treatment, the right to not to be subjected to abuse or neglect by nursing home personnel and the right not to be subjected to unlawful discriminated as defined in Section 1-103 of the Illinois Human Rights Act. Sections 2-104(c), 2-107 & 2-114 of the Act. Section 1-103 of the Illinois Human Rights Act defines disability-based discrimination as unlawful discrimination. 775 ILCS 5/1-103.

55. Defendants violated the Act, and their duty to Plaintiff in several respects, among other actions, including but not limited to those duties specified under the Act as follows:

- A. Failed to develop or implement a Comprehensive Resident Care Plan to adequately communicate with the “active participation” of the Plaintiff concerning her needs, as required by Section 3-202a;
- B. Failed to provide a care plan that would attain or maintain the highest practicable level of independent functioning, as required by Section 3-202a-b;
- C. Failed to provide the necessary care to prevent diminution of the resident’s abilities in activities of daily living, including hygiene, nutrition, rooming, ambulation and functional communication systems, as required by Sections 3-202b(4)-(5) and 3-202d(3)-(4); and

- D. Failed to ensure effective communication with Plaintiff to permit her to understand treatment options and refuse treatment, to participate in her own rehabilitation, to remain free from neglect and not be subjected to disability-based discrimination, as required by Sections 2-104 (c), 2-107 and 2-114.

56. As a result of Defendants' acts and or omissions, Plaintiff suffered the following damages:

- A. Mental anguish and emotional distress due to the Plaintiff's inability to communicate with the Facility's Personnel and the unnecessary prolonged stay at the Facility;
- B. Lack of adequate medical care, lack of informed consent and lack of participation in her healthcare and rehabilitation causing additional stress, frustration and adding to her depression; and
- C. Plaintiff's loss of association, inability to participate in social services, activities and programs at the Facility;

57. Defendants' withholding of appropriate auxiliary aids and services to ensure effective communication, to permit her to participate in her own rehabilitation, to remain free from neglect and not be subjected to disability-based discrimination, as required by Sections 2-104 (c), 2-107 and 2-114 of the Act was willful and wanton.

58. The harm suffered by Plaintiff was a direct and proximate result of the Defendants' failure to meet their duties of care owed to Plaintiff under the standard of care required of skilled nursing and intermediate care facilities under the Act and the Illinois Administrative Code, in addition to other applicable standards of care.

WHEREFORE, Plaintiff prays for the following relief against Defendants:

- A. An award of compensatory monetary and punitive damages;
- B. An award of reasonable attorneys' fees and costs; and,
- C. Such other relief as the Court deems just.

PLAINTIFF DEMANDS TRIAL BY JURY

Dated: October __, 2018

KATHLEEN AUDIA, Plaintiff.

/s/ Jennifer M. Sender

One of Her Attorneys

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Andrés J. Gallegos (ARDC No. 6212168)
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#3036409

CERTIFICATE OF SERVICE

I hereby certify that on _____, I electronically filed the foregoing instrument with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Anthony A. Cavallo
Huston, May & Fayez, LLC
205 W. Randolph St., Suite 950
Chicago, IL 60606
acavallo@hustonmay.com

and to the following non-participants in the CM/ECF system, by U.S. Mail: None

/s/ Jennifer M. Sender
Jennifer M. Sender (ARDC No. 6207774)
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