

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

13 CV 5131

UNITED SPINAL ASSOCIATION, INC.,
MILAGROS FRANCO, JEAN RYAN,
LUDA DEMIKHOVSKAYA, CHRISTINA
CURRY, and ELLEN RUBIN, and on behalf
of themselves and all others similarly
situated,

x

Case No.:

Plaintiffs,

v.

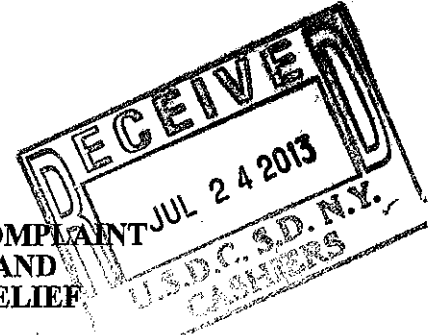
BETH ISRAEL MEDICAL CENTER; ST.
LUKE'S - ROOSEVELT HOSPITAL
CENTER; THE NEW YORK EYE AND
EAR INFIRMARY, and CONTINUUM
HEALTH PARTNERS, INC., a New York
corporation;

Defendants.

x

CLASS ACTION COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF

DISCRIMINATION AGAINST
PEOPLE WITH DISABILITIES;
VIOLATIONS OF THE
AMERICANS WITH
DISABILITIES ACT,
REHABILITATION ACT, AND
NEW YORK STATE AND NEW
YORK CITY HUMAN RIGHTS
LAWS



INTRODUCTION

1. This class action seeks to remedy pervasive physical access barriers and entrenched discriminatory practices that have a harmful effect on the healthcare provided to people with disabilities at Beth Israel Medical Center ("Beth Israel"), St. Luke's-Roosevelt Hospital Center ("St. Luke's-Roosevelt"), and the New York Eye and Ear Infirmary ("NYEEI"). Continuum Health Partners, Inc. ("Continuum") has, since 1999, operated these three New York medical institutions as an integrated healthcare network.

2. Defendants' failure to meet their legal obligations and remove barriers at their facilities and perpetuated a two-tiered system of health care that relegates people with disabilities to substandard and inferior treatment. This unnecessarily jeopardizes the health and well-being

of patients with disabilities and significantly hampers their ability to monitor and maintain their health.

3. Plaintiffs and class members, who live with medical conditions that affect their mobility (users of wheelchairs, canes and walkers) and sensory perceptions (blindness and deafness), face health care access barriers throughout Defendants' facilities. These include widespread physically inaccessible patient and public areas; ineffective policies and procedures for responding to the accommodation needs of patients with disabilities; the recurring failure to provide effective communication for patients and their families in the form of American Sign Language ("ASL") interpreters for deaf patients, captioning for those hard of hearing, or alternative formats to printed materials (e.g., electronic, large print, or braille) for blind and low vision patients; and inadequate inventories of accessible medical diagnostic equipment such as weight scales, height adjustable exam tables, and other diagnostic tools.

4. Cost is not a significant factor because Defendants' healthcare operations are lucrative. The Continuum network of hospitals currently maintains a combined annual operating budget of over \$2.8 billion. The combined assets and integrated management of Beth Israel, St. Luke's-Roosevelt, and NYEHI, however, has failed to result in any systemic approach or proactive efforts to accommodate the needs of patients with disabilities.

5. Affirmative efforts to address physical barriers at Defendants' hospitals, ambulatory care centers, and outpatient care facilities, appear non-existent.

6. Requests for ASL interpreters are regularly ignored and alternative and inadequate forms of communicating – such as passing notes – are commonly thrust upon deaf patients in settings such as the emergency room.

7. No systems are in place to ensure that the wide range of healthcare information provided by Defendants to their patients, such as intake forms, health history documents, treatment instructions, discharge orders, or prescription information, is made available in formats that blind patients can use or read.

8. These failures lead to miscommunications between patients and medical care staff, which can have significant and harmful effects on the overall quality of care.

9. Inadequate supplies of accessible medical equipment, such as accessible weight scales or height adjustable exam tables, also lead to compromised care for patients with mobility disabilities. Without accessible scales patients who use wheelchairs cannot be weighed accurately, which can result in incorrect calculations of medicine dosages and imprecise assessments of disease risks. Without height adjustable exam tables, wheelchair users, who cannot otherwise transfer to a standard exam table, receive incomplete physical examinations while seated in their wheelchairs, subjecting them to greater risk of missed diagnoses.

10. Patients also report that medical and patient care support staff exhibit an alarming lack of familiarity with how to correctly and respectfully interact with people with disabilities, which reflects a lack of staff training on disability etiquette and communication.

11. This ongoing pattern of systemic discrimination denies Plaintiffs and members of the Class of their rights under federal, state, and city statutes, including the “full and equal enjoyment” guarantee of Title III of the Americans with Disabilities Act (“ADA”); the “program access” requirement under Section 504 of the Rehabilitation Act (“Rehabilitation Act”), and Defendants’ obligations under the New York State Human Rights Law (“NYSHRL”) and New York City Human Rights Law (“NYCHRL”). Defendants’ conduct violates well-established obligations under these laws.

JURISDICTION

12. This is an action for declaratory and injunctive relief brought pursuant to Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12181, *et seq.*; Section 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), 29 U.S.C. § 794, *et seq.*; the New York State Human Rights Law (“NYSHRL”), N.Y. Exec. Law § 290, *et seq.*; and the New York City Human Rights Law (“NYCHRL”), N.Y.C. Admin. Code § 8-101, *et seq.* This Court has subject matter jurisdiction over the Rehabilitation Act and ADA claims pursuant to 28 U.S.C. §§ 1331

and 1343 and supplemental jurisdiction over the NYSHRL and NYCHRL claims pursuant to 28 U.S.C. § 1367.

13. This Court has jurisdiction to issue declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE

14. Pursuant to 28 U.S.C. § 1391(b), venue is proper in this District. Defendants are located within this District and a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this District.

PARTIES

15. Plaintiff United Spinal Association, Inc. ("United Spinal") is a nonprofit disability rights and veterans service organization, founded in 1946.

16. The mission of United Spinal is to provide expertise and resources to people with spinal cord injuries so that they may enjoy active, productive, healthy, and independent lives and participate fully as members of their communities.

17. United Spinal has been involved in constructive disability legislation for decades and members of United Spinal helped to draft significant portions of the ADA. United Spinal continues to advocate for the rights of people with disabilities through state and federal legislation, the courts, grass-roots advocacy, and education so that barriers in the areas of housing, employment, transportation, health care, and other programs and services are eliminated.

18. Approximately 1,000 members of United Spinal reside in New York City. Members include people with disabilities who have encountered barriers, or are at risk of encountering barriers, at Defendants' facilities because members are not receiving full and equal access to the programs and services provided by Defendants.

19. United Spinal expends substantial time and resources on advocacy work concerning the healthcare needs of people with disabilities in New York City. United Spinal's

“Policy Priorities” for 2013 include working to ensure that people with disabilities receive quality affordable healthcare and to prohibit discrimination based on the health status or diagnosis of its members. Additional services provided by United Spinal include: providing assistance to veterans navigating benefit programs; funding spinal cord research and education; organizing the largest annual spinal cord disabilities conference in the country; advocating for the civil rights of its members; keeping members informed of legislative and advocacy developments regarding disability issues; providing technical assistance and repair programs to wheelchair users; and advocating for accessible travel.

20. United Spinal has been injured as a direct result of Defendants’ failure to ensure that their facilities and programs are accessible to people with disabilities. United Spinal’s interests are adversely affected because it must expend resources advocating for constituents who are harmed by policies and practices resulting in unequal access to health care at Defendants’ facilities in New York City. This injury would be directly redressed by injunctive and declaratory relief.

21. One or more members of United Spinal have been injured as a direct result of Defendants’ discriminatory policies and practices and would have standing to sue in their own right.

22. United Spinal can bring this action on behalf of its members because the interests at stake are germane to United Spinal’s purpose. Plaintiffs’ claims are limited to injunctive and declaratory relief which do not require the participation of individual members in the lawsuit.

23. Plaintiff Milagros Franco resides in New York City. Ms. Franco has cerebral palsy and uses a motorized wheelchair for mobility. She is a qualified individual with a disability within the meaning of all applicable statutes. Ms. Franco is a member, and employee, of the Brooklyn Center for Independence of the Disabled.

24. Plaintiff Jean Ryan resides in New York City. Ms. Ryan has a mobility disability and uses a power wheelchair. She is a qualified individual with a disability within the meaning of all applicable statutes. Ms. Ryan is an active member of Disabled in Action.

25. Plaintiff Luda Demikhovskaya resides in New York City. Ms. Demikhovskaya has a mobility disability and uses a power wheelchair. She also has low vision. She is a qualified individual with a disability within the meaning of all applicable statutes. Ms. Demikhovskaya is a member of United Spinal.

26. Plaintiff Ellen Rubin resides in New York City. Ms. Rubin is blind and has some hearing loss. She is a qualified individual with a disability within the meaning of all applicable statutes.

27. Plaintiff Christina Curry resides in New York City. Ms. Curry is deaf and is legally blind. She uses a forearm crutch for mobility. She is a qualified individual with a disability within the meaning of all applicable statutes. Ms. Curry is the Executive Director of the Harlem Independent Living Center.

28. Defendant Beth Israel Medical Center ("Beth Israel") is a private, not-for-profit corporation incorporated in New York. Beth Israel serves hundreds of thousands of patients each year through multiple locations and a network of ambulatory care sites. Beth Israel has three major divisions located throughout Manhattan and Brooklyn: The Petrie Campus (1st Avenue at 16th Street), the Phillips Ambulatory Care Center (10 Union Square East); and Beth Israel Brooklyn (3201 Kings Highway, Brooklyn). These three facilities combined have over 1,000 certified beds and receive 350,000 ambulatory visits per year.

29. Defendant St. Luke's-Roosevelt Hospital Center ("St. Luke's-Roosevelt") is a private, not-for-profit corporation incorporated in New York. St. Luke's-Roosevelt was formed in 1979 by a merger of St. Luke's Hospital and Roosevelt Hospital. St. Luke's-Roosevelt is a 1,076-bed, full-service community and tertiary care hospital.

30. Defendant New York Eye and Ear Infirmary ("NYEEI") is a private, not-for-profit corporation incorporated in New York. In 2012, NYEEI reported 126,202 out-patient clinic visits and performed surgeries for 31,132 cases.

31. Defendant Continuum Health Partners, Inc. ("Continuum") is a private, not-for-profit corporation incorporated in New York. Continuum formed in 1997 as a partnership

between Beth Israel Medical Center, St. Luke's Hospital, and Roosevelt Hospital. In 1999, Continuum added The New York Eye & Ear Infirmary to its network of healthcare facilities. Continuum is one of New York City's largest hospital systems, with a total combined annual operating budget of \$2.8 billion. Continuum delivers inpatient care through nearly 3,100 certified beds located in seven major facilities in Manhattan and Brooklyn, as well as outpatient care in private practice settings and ambulatory centers. Continuum accommodates over 1,200,000 visits annually, including over 300,000 emergency department visits. Continuum employs over 16,000 employees and approximately 5,000 affiliated physicians and 4,000 nurses.

32. On July 16, 2013, the Boards of Trustees of Continuum and Mount Sinai Medical Center voted unanimously to approve joining their institutions into a combined entity to be called the Mount Sinai Health System. The proposed merger would create the largest health care system in New York.

PLAINTIFFS' ALLEGATIONS

A. MILAGROS FRANCO

33. Plaintiff Milagros Franco has cerebral palsy and uses a powered wheelchair for mobility. Beth Israel Medical Center's Petrie Campus is the closest general hospital to Ms. Franco's home and is Ms. Franco's primary source of emergency medical care. Ms. Franco was hospitalized at this facility twice in 2012. During both hospital stays Ms. Franco encountered numerous health care access barriers.

34. On January 8, 2012, Ms. Franco was at home when she injured her head. She experienced pain, dizziness, and disorientation.

35. Because New York City ambulances are not equipped to carry wheelchairs and Ms. Franco's wheelchair is her only means of independent mobility, she traveled by herself to the Beth Israel's Petrie Campus emergency room rather than call 911.

36. When she arrived at Beth Israel Ms. Franco encountered multiple physical barriers. The ramp to the entrance was steep, making it difficult for her to enter the facility. Rows of plastic bench seating blocked Ms. Franco's path of travel to the emergency room intake counter. Because the aisles were narrow, Ms. Franco, while dizzy and in pain, had to push the chairs out of the way herself to reach the service counter.

37. In the hospital waiting room, there was no area large enough for Ms. Franco to park her wheelchair while waiting. Ms. Franco tried to find a spot where she was not in the way of other patients, but the lack of a designated area for wheelchairs forced her to block the aisle and the path of travel for other patients.

38. In the examination room, staff struggled to transfer Ms. Franco from her powered wheelchair to the examination table. The nurse assisting Ms. Franco complained that Ms. Franco did not have a companion to help her with the transfer. Once Ms. Franco was out of her wheelchair, she discovered that the hospital staff did not know how to operate the motorized wheelchair, and did not have a place to safely store it. This caused Ms. Franco tremendous anxiety because she needs her wheelchair for mobility. Ms. Franco cannot afford to replace her wheelchair if it is broken or stolen. Although staff ultimately separated Ms. Franco from her wheelchair, they left it unsecured in the examination room while Ms. Franco received a CT scan in another part of the hospital.

39. While waiting alone in the examination room for the CT scan, Ms. Franco needed to use the restroom. She could not go on her own, because she had been separated from her wheelchair. Ms. Franco could not reach the hospital call button because it was too high for her to reach. To obtain assistance, Ms. Franco had to yell for several minutes to get a nurse's attention. When the nurse arrived and Ms. Franco asked for help, the nurse replied, "Why can't you just get up and go?" Reluctantly, the nurse helped Ms. Franco. Later, when an aide transferred Ms. Franco from the stretcher to the CT scan table, she dragged Ms. Franco across the divide, bumping her painfully in the process. The experience left Ms. Franco feeling humiliated and stripped of her independence.

40. Ms. Franco had a similar experience on her next visit to Beth Israel's Petrie Campus. On January 10, 2012, Ms. Franco had a spasm in her home, which caused her foot to strike a radiator, nearly dislodging the nail on her big toe. Ms. Franco again went to the emergency room by herself because she did not want to call 911 and be separated from her wheelchair.

41. When Ms. Franco arrived at the emergency waiting room, she again confronted chairs that obstructed the path of travel between the front door and the service counter. Ms. Franco again had to manually push the chairs out of her way to make the aisle wider so that she could maneuver her wheelchair to the intake desk. She was in great pain, and pushing the chairs was difficult.

42. After an initial assessment, a radiology technician attempted to x-ray Ms. Franco's foot. The technician asked Ms. Franco to stand and seat herself on the x-ray table. When Ms. Franco responded that she could not, the technician did not seek assistance from any other hospital staff to transfer Ms. Franco to the examination table. Instead, the technician conducted the x-ray with Ms. Franco sitting in her wheelchair. In order to capture an x-ray of Ms. Franco's toe from one particular angle, the technician asked Ms. Franco to turn on her side. Ms. Franco managed to contort herself so that they technician could get the image, although maintaining the position was extremely painful for her. The technician could not initially capture the desired image and succeeded with great difficulty only after several attempts.

B. JEAN RYAN

43. Plaintiff Jean Ryan resides in New York City. Ms. Ryan has a mobility disability and she relies on a power wheelchair. Ms. Ryan also has vision disorders which require ongoing treatment.

44. Ms. Ryan is a patient at the New York Eye and Ear Infirmary ("NYEEI") and has seen medical professionals there since 2004. She has had cataract surgery, eyelid surgery, and sinus surgery at NYEEI. She also saw a neuro-opthamologist there.

45. At NYEEI, there is no independent access for wheelchair users to certain floors in the South Building. Instead, Ms. Ryan must use a lift operated by a guard. On several occasions, Ms. Ryan has had to search for the guard to assist with the lift. If she is at the top of the lift, she has had to shout for the guard or get a stranger to find the guard for her. Ms. Ryan worries that because these floors are not independently accessible, in an emergency she will not be able to get out of the building quickly.

46. In the NYEEI complex, Ms. Ryan has discovered that many of the bathrooms are inaccessible. The bathroom in the lobby of the North Building is inaccessible because there are two sets of heavy doors. Ms. Ryan has gotten trapped between the outer and inner doors leading to this bathroom. Bathrooms in patient care areas are also inaccessible. In the eye department on the fourth floor, Ms. Ryan found that the hallway bathroom was not accessible to her because the hallway was too narrow for Ms. Ryan to turn her chair to get to the door. Accessible bathrooms are difficult to locate in the facility due to the lack of signage and information directing patients to appropriate locations.

47. Ms. Ryan confronts problems in the waiting room at NYEEI of the Ear, Nose and Throat ("ENT") Department because the way the chairs are arranged around the concrete pillar obstructs the path of travel. There is also no designated place in the waiting room for a person using a wheelchair. Ms. Ryan must park her wheelchair in the middle of the room. Sitting in the center of the room like this makes her feel conspicuous and uncomfortable.

48. The door to the bathroom near the ENT Department on the Sixth Floor is also difficult for Ms. Ryan because the door requires too much force to open. At times, strangers who happen to be walking by have seen her struggling and helped her open the door. On one occasion, a man walking by had to help her open the door, which required the man to enter the bathroom with Ms. Ryan. Ms. Ryan found this very humiliating. The bathroom is not located by the waiting room, however, so most of the time there are not people nearby to help her.

49. When Ms. Ryan has received treatment in examination rooms at NYEEI, she has encountered exam rooms that were too small to allow her to turn her power chair.

50. Because the examination equipment is not accessible to Ms. Ryan in her power chair, she must transfer from her wheelchair. Transferring is difficult for Ms. Ryan and can be painful.

51. On a recent visit to NYEEI hospital staff instructed Ms. Ryan that she must leave her wheelchair in the hall during her examination. Ms. Ryan was uncomfortable leaving her power chair in a place where it could be damaged or stolen. In order to make room in the exam room for her wheelchair, Ms. Ryan stacked the plastic chairs in the examination room by herself to make more space.

C. LUDA DEMIKHOVSKAYA

52. Plaintiff Luda Demikhovskaya resides in New York City. Ms. Demikhovskaya has a mobility disability as a result of childhood polio and an accident in adulthood. She relies on a power wheelchair for mobility. She is also losing her vision. Ms. Demikhovskaya is a member of United Spinal.

53. Ms. Demikhovskaya is a patient of New York Eye and Ear Infirmary ("NYEEI"). Between August 2012 and March 2013, Ms. Demikhovskaya had several appointments at NYEEI to prepare for cataract surgery.

54. When Ms. Demikhovskaya arrived at NYEEI for her first cataract appointment she discovered that the front of the building was blocked by construction. Because of the construction, the Access-A-Ride transportation Ms. Demikhovskaya uses could not drop her off in front of the building. There was not enough room to deploy the wheelchair ramp. Instead the driver had to search for another location down the block. Once Ms. Demikhovskaya made it to the street, metal poles supporting construction scaffolding obstructed her path to the entrance of NYEEI. The path of travel was extremely narrow and difficult for her to navigate.

55. The first floor waiting room for the Glaucoma Clinic is small and crowded and Ms. Demikhovskaya has great difficulty maneuvering her wheelchair inside this room. There is no designated area for her to park her wheelchair without obstructing other patients. Ms.

Demikhovskaya has had multiple experiences when she must repeatedly move her wheelchair out of the way to make room for other patients. The continuous repositioning of her wheelchair is tiring and embarrassing for Ms. Demikhovskaya. The reception counter there is also too high and she cannot see and communicate directly with staff behind the counter.

56. Because this waiting room for the Glaucoma Clinic is so small, and it is common for several patients who use wheelchairs to be there at the same time, medical staff often request and encourage patients to wait in other locations at the facility. Ms. Demikhovskaya is reluctant to leave the reception area however, because she is worried that she will not hear her name called for her appointment.

57. The restroom closest to the waiting area is not accessible for wheelchair users. NYEEI staff have advised Ms. Demikhovskaya to take the guard-operated lift back down to the lobby if she needs to use the restroom. However, even the lobby bathroom is inadequate for wheelchair users. In order to close the door to her stall to secure her privacy, Ms. Demikhovskaya must twist her body in an unnatural way.

58. Because of her disability, Ms. Demikhovskaya is unable to transfer out of her wheelchair without assistance. Because the optometry examination equipment is not wheelchair accessible, and because Ms. Demikhovskaya cannot transfer independently to an examination chair and no procedures are in place at NYEEI to have staff assist her with the transfer, several of Ms. Demikhovskaya's doctors and technicians have been unable to use standard optometry equipment to examine her. Consequently, many of the tests and evaluations conducted on Ms. Demikhovskaya must be performed manually. This is upsetting to Ms. Demikhovskaya because she is concerned she is not receiving the same quality of care as other patients and that her examinations and tests might be inaccurate.

D. CHRISTINA CURRY

59. Plaintiff Christina Curry resides in New York City. Ms. Curry has multiple disabilities. She is legally blind due to complications from cataract surgery and deaf as a result of

an infection as an adult. Ms. Curry also has a mobility disability and uses a forearm crutch to help her walk. She has cardiac problems and sleep apnea. She also has chronic asthma and high blood pressure.

60. Ms. Curry is the Executive Director of the Harlem Independent Living Center. In that capacity she is the leader of a team of persons who provide aid and services to persons with disabilities. Much of Ms. Curry's programming focuses on improving the lives of people who are deaf by creating support networks, leveraging community resources, and teaching life skills. Ms. Curry regularly testifies before the New York City Council and is regarded as a leader in the deaf and disability communities.

61. Ms. Curry has enough sight to read sometimes, but it is painful for her to read for extended periods. Ms. Curry needs large high contrast print to read effectively. When she is forced to look at small and low contrast print, Ms. Curry must stop, and close her eyes for several minutes afterwards to reduce or eliminate the pain this causes. Communicating through an ASL interpreter on the other hand, is not painful for Ms. Curry.

62. On December 15, 2012, Ms. Curry had an asthma attack and sought treatment at the Beth Israel Medical Center. As soon as she arrived in the emergency room she informed the staff she could not hear and asked for an ASL interpreter. The hospital did not honor this request.

63. Because she had no other choice, Ms. Curry resorted to exchanging notes with staff. This was ineffective because in addition to being painful, she cannot see well enough to read the small print notes that were passed. Ms. Curry tried to lip read but could not follow the rapid and technical medical conversations happening all around her.

64. Despite Ms. Curry's request for an ASL interpreter, Beth Israel staff failed to provide any information about obtaining this accommodation. She tried explaining several times in vain to different staff at the hospital that she had requested an ASL interpreter and needed one to communicate, and had not yet received one. Nothing was done to help her with this accommodation request.

65. Because Ms. Curry has chronic asthma, she has visited Beth Israel's emergency room on several occasions to seek treatment. In her many visits, Ms. Curry has only once had the benefit of an interpreter in the emergency room.

66. During a recent visit to make an appointment at Beth Israel's audiology department, no ASL interpreter or other assistive listening devices were provided. Instead, Ms. Curry and patient care staff futilely attempted to pass notes back and forth.

67. For several weeks in January and February 2013 and on several occasions prior to that, the automatic door at the main entrance of Beth Israel's Phillips Ambulatory Care Center was inoperable. The door was extremely difficult for Ms. Curry to operate manually on her own. The bathroom door in the cardiology department is also inaccessible because it has both a doorknob and a keypad lock which requires a code for entry. These features make it impossible for people with visual disabilities or manual dexterity limitations to operate. Ms. Curry is unable to see the keypad, so to use the bathroom she must wait for someone who is either coming or going from the bathroom who can help her by holding the door.

68. The video information board at the entrance to the Phillips Ambulatory Care Center is not closed captioned. This makes it inaccessible to Ms. Curry and others with hearing impairments. Ms. Curry has seen her cardiologist speaking in a video on the screen, but she has no idea what he is saying. Ms. Curry worries that she is missing important information.

69. Ms. Curry finds it challenging to make appointments with doctors at Phillips Ambulatory Care Center. Several times, Ms. Curry has shown up at this facility in person to make an appointment. Staff, however, have turned her away and directed her to call the center on the telephone. Ms. Curry however cannot call in to make an appointment because of the limitations associated with her deafness and blindness. As a work around, Ms. Curry must ask friends to call on her behalf to make appointments. Asking friends to schedule her appointments makes her uncomfortable because she would like to keep information about her own medical treatment private.

E. ELLEN RUBIN

70. Plaintiff Ellen Rubin resides in New York City. Ms. Rubin is blind and has some hearing loss. She uses a hearing aid and a cane to help her navigate.

71. Ms. Rubin is also a cancer survivor. During the past decade, she has had multiple surgeries at Roosevelt Hospital. During that time, she has attended numerous surgery and cancer treatment related appointments. Ms. Rubin has found that staff at Roosevelt Hospital consistently demonstrate a lack of comfort, knowledge, and training about how to accommodate her blindness. Overall, she feels this lack of accommodation results in lower-quality care.

72. During a November 2010 stay at Roosevelt, Ms. Rubin received treatment for cancerous nodules that needed to be removed by an urologist. During that stay, she was bed-ridden. A doctor entered her room without announcing herself, sat on Ms. Rubin's bed, and said "Hi, guess who?" Ms. Rubin could not identify the person by voice and so had no idea who was sitting on her hospital bed. She felt very vulnerable and found this to be very invasive. She also felt belittled by the doctor's question which seemed to be making light of her inability to see.

73. In 2011, Ms. Rubin experienced more attitudinal and training problems. It is standard practice for doctors to verbally describe what is about to happen in a medical procedure for patients who are blind or low vision, yet, Ms. Rubin did not experience this level of care at Roosevelt. Prior to Ms. Rubin's November 2011 surgery, a staff person wheeled Ms. Rubin into the operating room, said good-bye, and left. Ms. Rubin could hear movement and activity going on around her, but no one said anything or spoke to her. Ms. Rubin felt very vulnerable lying there not knowing what was happening. She called out "Hello?" and finally someone came over to her to tell her the doctor would be there soon.

74. Roosevelt has also failed to provide Ms. Rubin with accessible healthcare information – such as discharge instructions – in accessible formats. Ms. Rubin consistently asks for healthcare information in accessible formats after receiving treatment – particularly surgical treatment. At a recent endoscopy at Roosevelt Hospital on May 14, 2013, Ms. Rubin was not given information about the procedure, or information about the results, in accessible formats. If

instructions were provided to her in electronic formats or in Braille she would be able to read and understand the information. When Ms. Rubin does request alternative formats, she is consistently told that Roosevelt does not have the capability to provide information in those formats. When Ms. Rubin has been discharged post-surgery in the past, hospital staff tell her where to sign the discharge papers, but they do not read the discharge papers to her or make sure she has the information in a format she can read and understand.

75. Ms. Rubin is particularly concerned about prescription information. Getting the wrong medication, or not taking the right medication, can cause her serious health problems. In the past, she has had a prescription incorrectly filled. Roosevelt Hospital has never offered Ms. Rubin accessible prescription information or drug labels.

76. No one has ever offered Ms. Rubin information about what accommodations Roosevelt Hospital could provide to accommodate her disability.

77. Ms. Rubin has found that staff members are reluctant to help her fill out paperwork. When staff do agree to help, they are annoyed and do not speak with her in private locations. Ms. Rubin is deeply concerned about the lack of privacy she is afforded during these interactions.

CLASS ACTION ALLEGATIONS

78. Plaintiffs bring this action for injunctive and declaratory relief on their own behalf and on behalf of all persons similarly situated pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. Plaintiffs seek to represent a class that consists of persons with mobility and sensory disabilities who have been and/or are being denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations and programs or activities of Defendants.

79. Plaintiffs are informed and believe and on that basis allege that the proposed class consists of thousands of disabled persons living in New York City. The proposed class is so

numerous that joinder of all such persons is impracticable. The disposition of their claims in a class action is a benefit to the parties and to the Court.

80. There is a well-defined community of interest in the questions of law and fact involved and affecting Plaintiffs in that they are being denied equal access to Defendants' facilities, services, and/or programs.

81. There are questions of law and fact common to all class members that include, but are not limited to:

- (i) Whether Defendants have failed to assess all existing architectural and physical access barriers at its healthcare facilities and to develop and implement a plan to remove those barriers, where barrier removal is readily achievable.
- (ii) Whether Defendants have failed to make reasonable modifications to policies, practices, and procedures in a manner that deprives individuals with disabilities of full and equal enjoyment of such goods, services, facilities, privileges, advantages, or accommodations.
- (iii) Whether Defendants have failed to take the steps necessary to ensure that individuals with disabilities are not provided inferior healthcare services due to the absence of auxiliary aids and services such as sign language interpreters for deaf patients or alternative formats for blind patients;
- (iv) Whether Defendants' failure to provide medical equipment that is accessible to individuals with disabilities excludes, denies or otherwise causes such individuals to be treated differently, and as a result deprives individuals with disabilities of full and equal enjoyment of Defendants' health care services;
- (v) Whether Defendants have denied Plaintiffs and the proposed Class "meaningful access" to its programs or activities in violation of the Rehabilitation Act.

82. The common questions raised by Plaintiffs are capable of class-wide resolution. Claims substantially similar to the claims raised here have been resolved in court-approved class action settlements against other health care providers and hospitals, including through enforcement actions brought by the Department of Justice.

83. Plaintiffs' claims are typical of the claims of all members of the class because they arise from the same course of conduct by Defendants. Defendants have acted and continue to act on grounds generally applicable to all class members, thereby making final declaratory and injunctive relief appropriate to the class as a whole. The form and scope of the injunctive and declaratory relief sought is common to all members of the class.

84. Plaintiffs are adequate class representatives because they are directly impacted by Defendants' failure to provide full and equal access to Continuum facilities, services, and programs. The interests of the named Plaintiffs are not antagonistic to, or in conflict with, the interests of the class as a whole. The attorneys representing the class are experienced in representing clients in class action litigation involving civil rights claims.

85. A class action is superior to other available methods for the fair and efficient adjudication of the controversy between the parties. Upon information and belief, the interest of members of the class in individually controlling the prosecution of a separate action is low. Separate suits would be impractical and uneconomical, and most class members would be unable to individually prosecute any action. Individualized litigation also presents a potential for inconsistent or contradictory judgments. A class action will promote judicial efficiency by resolving common questions of law and fact in one forum, rather than in multiple courts.

86. The class action device presents far fewer management difficulties, allows the hearing of claims that might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. This conduct deprives individuals with disabilities from full and equal access to Continuum facilities, services, and programs.

FIRST CAUSE OF ACTION

Violation of the Americans with Disabilities Act

87. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of this Complaint.

88. The Americans with Disabilities Act (“ADA”) prohibits discrimination by public accommodations. The ADA’s general prohibition against discrimination guarantees that:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a).

89. Title III of the ADA, 42 U.S.C. §§ 12181-12189, prohibits discrimination against people with disabilities “in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

90. Defendants’ facilities are places of public accommodation. 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104 (“Public accommodation” includes a “professional office of a health care provider, hospital, or other service establishment.”).

91. Defendants have discriminated against Plaintiffs and members of the Class by denying them the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of the facilities owned, operated, or contracted for usage by Defendants. 42 U.S.C. § 12182(b)(1)(A)(i).

92. Defendants have discriminated against Plaintiffs and members of the Class by affording them the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of the facilities owned, operated, or contracted for

usage by Defendants in a manner that is not equal to that afforded to other individuals. 42 U.S.C. § 12182(b)(1)(A)(ii).

93. Defendants have discriminated against Plaintiffs and members of the Class by providing goods, services, facilities, privileges, advantages, or accommodations that are different or separate from that provided to other individuals. 42 U.S.C. § 12182(b)(1)(A)(iii).

94. Defendants have discriminated against Plaintiffs and members of the Class by failing to provide goods, services, facilities, privileges, advantages, or accommodations in the most integrated setting appropriate. 42 U.S.C. § 12182(b)(1)(B).

95. Defendants have discriminated against Plaintiffs and members of the Class by imposing or applying eligibility criteria that screens out or tends to screen out individuals with disabilities from enjoying Defendants' goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182 (b)(1)(2)(A)(i).

96. Defendants have discriminated and continue to discriminate against Plaintiffs and members of the Class by failing to modify their policies, procedures, and practices in a reasonable manner, when such modifications are necessary to ensure equal access for individuals with physical disabilities. 42 U.S.C. § 12182 (b)(1)(2)(A)(ii)

97. Defendants have discriminated and continue to discriminate against Plaintiffs and members of the Class by failing to provide necessary auxiliary aids and services at facilities where provision of such auxiliary services does not create an undue burden and would not fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation offered by Defendants. 42 U.S.C. § 12182 (b)(1)(2)(A)(iii).

98. Defendants have discriminated and continue to discriminate against Plaintiffs and members of the Class by failing to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182 (b)(1)(2)(A)(iv).

99. Defendants have discriminated and continue to discriminate against Plaintiffs and members of the Class by failing to design and construct facilities that are readily accessible to and usable by individuals with disabilities and by failing to make alterations in such a manner

that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183 (a)(1)-(2).

100. Each Plaintiff is an individual with a disability within the meaning of the ADA and the regulations promulgated thereunder, 28 C.F.R. Part 36. Each has an impairment that substantially limits the major life activity of walking, seeing, and/or hearing. 42 U.S.C. § 12102; 28 C.F.R. § 36.104.

101. Defendants' conduct constitutes ongoing and continuous violations of the ADA. Unless restrained from doing so, Defendants will continue to violate the law. Through their conduct, Defendants have caused and will continue to cause Plaintiffs immediate and irreparable injury.

102. Plaintiffs are entitled to injunctive relief and reasonable attorneys' fees and costs. 42 U.S.C. § 12188.

WHEREFORE, Plaintiffs request relief as set forth below.

SECOND CAUSE OF ACTION

Violation of Section 504 of the Rehabilitation Act

103. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

104. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations promulgated thereunder, prohibit discrimination against people with disabilities by recipients of federal funding. Section 504 provides, in pertinent part, that:

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

105. Section 504 defines “[p]rogram or activity” in part as “an entire corporation, partnership, or other private organization, or an entire sole proprietorship . . . which is principally engaged in the business of providing . . . health care.” 29 U.S.C. § 794(b)(3)(A)(ii).

106. Defendants have received federal financial assistance at all relevant times.

107. Through the acts and omissions alleged herein, Defendants have, solely because of Plaintiffs’ disabilities, excluded Plaintiffs from participation in Defendants’ programs and activities and denied Plaintiffs the benefits of Defendants’ programs and activities, and subjected Plaintiffs to discrimination in violation of 29 U.S.C. § 794, *et. seq.* and the regulations promulgated thereunder.

108. Defendants’ acts and omissions described herein violate the equal access and nondiscrimination provisions of Section 504 and the regulations promulgated thereunder, and have resulted in injury to Plaintiffs.

109. As a proximate result of Defendants’ violations of Section 504, Plaintiffs and members of the Class have been injured, and continue to be injured, as set forth herein. This conduct, unless enjoined, will continue to inflict injuries for which Plaintiffs and the Class have no adequate remedy at law.

110. Plaintiffs and the Class are entitled to injunctive relief and reasonable attorneys’ fees, expenses, and costs, pursuant to 29 U.S.C § 7949a.

WHEREFORE, Plaintiffs pray for relief as set forth below.

THIRD CAUSE OF ACTION

Violation of the New York State Human Rights Law

111. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

112. The New York State Human Rights Law (“NYSHRL”) provides that, “it shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation . . . because of the . . .

disability . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof." N.Y. Exec. Law § 296(2)(a).

113. The term "place of public accommodation" in the NYSHRL includes "dispensaries, clinics, [and] hospitals." N.Y. Exec. Law § 296.9.

114. "Discriminatory practice" is defined in the NYSHRL to include:

- (i) a refusal to make reasonable modification in policies, practices, or procedures, when such modifications are necessary to afford facilities, privileges, advantages or accommodations to individuals with disabilities, unless such person can demonstrate that making such modifications would fundamentally alter the nature of such facilities, privileges, advantages or accommodations;
- (ii) a refusal to take such steps as may be necessary to ensure that no individual with a disability is excluded or denied services because of the absence of auxiliary aids and services, unless such person can demonstrate that taking such steps would fundamentally alter the nature of the facility, privilege, advantage or accommodation being offered or would result in undue burden;
- (iii) a refusal to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . ., where such removal is readily achievable; and
- (iv) where such person can demonstrate that the removal of a barrier under subparagraph (iii) of this paragraph is not readily achievable, a failure to make such facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

N.Y. Exec. Law § 296.2(c)(i)-(iv).

115. By the conduct described above, Defendants have committed unlawful discriminatory practices against Plaintiffs and have violated the New York State Human Rights Law.

116. Defendants' conduct constitutes an ongoing and continuous violation of the NYCHRL and unless restrained from doing so, Defendants will continue to violate said law. This conduct, unless enjoined, will continue to inflict injuries and Plaintiffs will suffer irreparable harm in that they will continue to be discriminated against and denied the accommodations, advantages, facilities or privileges of the Continuum's programs and services as well as reasonable accommodations which would provide the opportunity to benefit from these programs and services.

117. Defendant's discriminatory conduct is ongoing, and consequently, Plaintiffs are entitled to injunctive relief and reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION

Violation of the New York City Human Right Law

118. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

119. The New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8-107(4)(a) provides, "It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation because of the actual or perceived ... disability ... of any person directly or indirectly, to refuse, withhold from or deny to such person the accommodations, advantages, facilities, or privileges thereof..."

120. The NYCHRL defines the term "place or provider of public accommodation" to include "providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or

unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kinds are extended, offered, sold or otherwise made available." NYCHRL § 8-102(9).

121. By the acts and conduct described above, Defendants have committed unlawful discriminatory practices against Plaintiffs and violated the New York City Human Rights Law.

122. Defendants' conduct constitutes an ongoing and continuous violation of the NYCHRL and unless restrained from doing so, Defendants will continue to violate said law. This conduct, unless enjoined, will continue to inflict injuries for which Plaintiffs have no adequate remedy at law. Plaintiffs will suffer irreparable harm in that they will continue to be discriminated against and denied the accommodations, advantages, facilities or privileges of the Continuum's programs and services as well as reasonable accommodations which would provide the opportunity to benefit from these programs and services.

123. Defendant's discriminatory conduct is ongoing, and consequently, Plaintiffs are entitled to injunctive relief and reasonable attorneys' fees and costs.

FIFTH CAUSE OF ACTION

Declaratory Relief

124. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

125. Plaintiffs contend, and are informed and believe that Defendants deny failing to comply with applicable laws prohibiting discrimination against persons with disabilities in violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Human Rights Law of New York State and New York City.

126. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf, and on behalf of the Class, pray for the following relief against Defendants:

127. That this matter be certified as a class action with the Class defined as set forth above, that Plaintiffs be appointed Class Representatives, and their attorneys be appointed Class Counsel;

128. That Defendants be enjoined from violating the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Human Rights Law of New York State and New York City;

129. For an Order finding and declaring that Defendants' acts, omissions, policies, and practices as challenged herein are unlawful;

130. For an award of Plaintiffs' reasonable attorneys' fees and costs; and

131. For such other relief that the Court may deem just and proper.

Dated: July 24, 2013

By:



Julia Pinover

Disability Rights Advocates
40 Worth Street, 10th Floor
New York, NY 10013
Telephone: (212) 644-8644
Facsimile: (212) 644-8636
Email: general@dralegal.org

Disability Rights Advocates
2001 Center Street, Fourth Floor
Berkeley, CA 94704
Telephone: (510) 665-8644
Facsimile: (510) 665-8511
TTY: (510) 665-8716
Email: general@dralegal.org

Attorneys for Plaintiffs.