



**UNITED STATES DISTRICT COURT  
Northern District of Illinois  
219 South Dearborn Street  
Chicago, Illinois 60604**

**Thomas G. Bruton  
Clerk**

**312-435-5670**

Date:

Mr. Gino J. Agnello, Clerk  
U.S. Court of Appeals-Seventh Circuit  
219 South Dearborn Street-Room 2722  
Chicago, Illinois 60604

Re:

USDC Case Number:

USCA Case Number:

Dear Mr. Agnello:

Please find attached the original record on appeal consisting of the following:

ELECTRONIC VOLUME(S) OF PLEADING(S):

ELECTRONIC VOLUME(S) OF TRANSCRIPT(S):

VOLUME(S) OF PLEADING(S):

VOLUME(S) OF TRANSCRIPT(S):

VOLUME(S) OF DEPOSITION(S):

EXHIBITS:

VAULT ITEMS:

OTHER (SPECIFY):

SPECIAL NOTE:

Please acknowledge date of receipt of the above mentioned materials on the attached copy of this letter.

Sincerely,  
Thomas G. Bruton, Clerk

By: /s/ \_\_\_\_\_  
Deputy Clerk

United States of America } Re: Wetzel v. Glen St. Andrew  
Northern District of Illinois } Living Community, LLC et al  
Eastern Division } Case Number: 1:16-cv-07598  
 } USCA Case Number: 17-01322

I, Thomas G. Bruton, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify to the United States Court of Appeals, for the Seventh Circuit, that the documents submitted herewith and annexed hereto are the original papers filed and entered of record in my office, on the dates in the List of Documents, and together with a true copy of docket entries as they appear in the official dockets in this office, consisting of:

1 volume of pleadings

Date	Item No.	Description
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IN TESTIMONY WHEREOF, I hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of November 2017.

Sincerely yours,  
Thomas G. Bruton, Clerk

By: /s/ Esperanza King  
Deputy Clerk

A TRUE COPY-ATTEST  
THOMAS G. BRUTON, CLERK  
By: s/ ESPERANZA KING  
DEPUTY CLERK  
U.S. DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS

November 15, 2017

APPEAL,GILBERT,TERMED

**United States District Court**  
**Northern District of Illinois - CM/ECF LIVE, Ver 6.1.1.2 (Chicago)**  
**CIVIL DOCKET FOR CASE #: 1:16-cv-07598**  
**Internal Use Only**

Wetzel v. Glen St. Andrew Living Community, LLC et al Date Filed: 07/27/2016  
Assigned to: Honorable Samuel Der-Yeghiayan Date Terminated: 01/18/2017  
Case in other court: 17-01322 Jury Demand: None  
Cause: 42:405 Fair Housing Act Nature of Suit: 443 Civil Rights:  
Accommodations  
Jurisdiction: Federal Question

**Plaintiff****Marsha Wetzel**

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V.

**Defendant**

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Community, LLC**

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**Defendant**

**Glen St. Andrew Living  
Community Real Estate, LLC**

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**Lindsay A. Watson**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Glen Health & Home Management,  
Inc.**

represented by **James H. Ryan**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Lindsay A. Watson**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Alyssa Flavin**

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*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Lindsay A. Watson**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Carolyn Driscoll**

represented by **James H. Ryan**  
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*LEAD ATTORNEY  
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**Lindsay A. Watson**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Sandra Cubas**

represented by **James H. Ryan**  
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*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Lindsay A. Watson**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
07/27/2016	<a href="#">1</a>	COMPLAINT filed by Marsha Wetzel; Filing fee \$ 400, receipt number 0752-12188111.(Loewy, Karen) (Entered: 07/27/2016)
07/27/2016	<a href="#">2</a>	CIVIL Cover Sheet (Loewy, Karen) (Entered: 07/27/2016)
07/27/2016	<a href="#">3</a>	ATTORNEY Appearance for Plaintiff Marsha Wetzel by Karen Lee Loewy (Loewy, Karen) (Entered: 07/27/2016)
07/27/2016	<a href="#">4</a>	ATTORNEY Appearance for Plaintiff Marsha Wetzel by Kyle A. Palazzolo (Palazzolo, Kyle) (Entered: 07/27/2016)
07/27/2016		CASE ASSIGNED to the Honorable Samuel Der Yeghiayan. Designated as Magistrate Judge the Honorable Jeffrey T. Gilbert. (daj, ) (Entered: 07/27/2016)
07/27/2016	<a href="#">5</a>	ATTORNEY Appearance for Plaintiff Marsha Wetzel by John Louis Litchfield (Litchfield, John) (Entered: 07/27/2016)
07/27/2016	<a href="#">6</a>	ATTORNEY Appearance for Plaintiff Marsha Wetzel by Ellen M. Wheeler (Wheeler, Ellen) (Entered: 07/27/2016)
07/29/2016		SUMMONS Issued as to Defendants Sandra Cubas, Carolyn Driscoll, Alyssa Flavin, Glen Health & Home Management, Inc., Glen St. Andrew Living Community Real Estate, LLC, Glen St. Andrew Living Community, LLC (jp, ) (Entered: 07/29/2016)
08/03/2016	<a href="#">7</a>	ATTORNEY Appearance for Plaintiff Marsha Wetzel by William Mariano Lopez (Lopez, William) (Entered: 08/03/2016)
08/16/2016	<a href="#">8</a>	AFFIDAVIT of Service filed by Plaintiff Marsha Wetzel regarding Summons and Complaint served on Glen St. Andrew Living Community Real Estate, LLC c/o Marilyn Dunn, Registered Agent on August 1, 2016 (Litchfield, John) (Entered: 08/16/2016)
08/16/2016	<a href="#">9</a>	AFFIDAVIT of Service filed by Plaintiff Marsha Wetzel regarding Summons and Complaint served on Glen St. Andrew Living Community, LLC c/o Marilyn Dunn, Registered Agent on August 1, 2016 (Litchfield, John) (Entered: 08/16/2016)
08/16/2016	<a href="#">10</a>	AFFIDAVIT of Service filed by Plaintiff Marsha Wetzel regarding Summons and Complaint served on Glen Health & Home Management, Inc. on August 1, 2016 (Litchfield, John) (Entered: 08/16/2016)
08/16/2016	<a href="#">11</a>	AFFIDAVIT of Service filed by Plaintiff Marsha Wetzel regarding Summons and Complaint served on Alyssa C. Flavin on August 8, 2016 (Litchfield, John) (Entered: 08/16/2016)

08/16/2016	<a href="#">12</a>	AFFIDAVIT of Service filed by Plaintiff Marsha Wetzel regarding Summons and Complaint served on Carolyn Driscoll on August 1, 2016 (Litchfield, John) (Entered: 08/16/2016)
08/16/2016	<a href="#">13</a>	AFFIDAVIT of Service filed by Plaintiff Marsha Wetzel regarding Summons and Complaint served on Sandra N. Cubas on August 1, 2016 (Litchfield, John) (Entered: 08/16/2016)
08/22/2016	<a href="#">14</a>	ATTORNEY Appearance for Defendants Sandra Cubas, Carolyn Driscoll, Alyssa Flavin, Glen Health & Home Management, Inc., Glen St. Andrew Living Community Real Estate, LLC, Glen St. Andrew Living Community, LLC by Lindsay A. Watson (Watson, Lindsay) (Entered: 08/22/2016)
08/22/2016	<a href="#">15</a>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM (Watson, Lindsay) (Entered: 08/22/2016)
08/22/2016	<a href="#">16</a>	NOTICE of Motion by Lindsay A. Watson for presentment of Motion to Dismiss for Failure to State a Claim <a href="#">15</a> before Honorable Samuel Der-Yeghiayan on 8/31/2016 at 09:00 AM. (Watson, Lindsay) (Entered: 08/22/2016)
08/22/2016	<a href="#">17</a>	ATTORNEY Appearance for Defendants Sandra Cubas, Carolyn Driscoll, Alyssa Flavin, Glen Health & Home Management, Inc., Glen St. Andrew Living Community Real Estate, LLC, Glen St. Andrew Living Community, LLC by James H. Ryan (Ryan, James) (Duplicate filing of entry no. <a href="#">14</a> ) Modified on 8/23/2016 (jjr, ). (Entered: 08/22/2016)
08/22/2016	<a href="#">18</a>	ATTORNEY Appearance for Defendants Sandra Cubas, Carolyn Driscoll, Alyssa Flavin, Glen Health & Home Management, Inc., Glen St. Andrew Living Community Real Estate, LLC, Glen St. Andrew Living Community, LLC by James H. Ryan (Ryan, James) (Entered: 08/22/2016)
08/31/2016	<a href="#">19</a>	MINUTE entry before the Honorable Samuel Der-Yeghiayan: Motion hearing held. Defendants' motion to dismiss <a href="#">15</a> is entered and continued. Plaintiff's response shall be filed by 10/04/16 and Defendants' reply shall be filed by 10/18/16. Initial status hearing set for 01/19/17 at 9:00 a.m. Mailed notice (mw, ) (Entered: 08/31/2016)
10/04/2016	<a href="#">20</a>	MEMORANDUM by Marsha Wetzel in Opposition to Motion to Dismiss for Failure to State a Claim <a href="#">15</a> (Loewy, Karen) (Entered: 10/04/2016)
10/18/2016	<a href="#">21</a>	REPLY by Defendants Sandra Cubas, Carolyn Driscoll, Alyssa Flavin, Glen Health & Home Management, Inc., Glen St. Andrew Living Community Real Estate, LLC, Glen St. Andrew Living Community, LLC to Motion to Dismiss for Failure to State a Claim <a href="#">15</a> (Attachments: # <a href="#">1</a> Exhibit A)(Watson, Lindsay) (Entered: 10/18/2016)
01/13/2017	<a href="#">22</a>	STATUS Report <i>Joint Initial</i> by Marsha Wetzel (Loewy, Karen) (Entered: 01/13/2017)

01/13/2017	<a href="#">23</a>	STATUS Report <i>Joint Jurisdictional</i> by Marsha Wetzel (Loewy, Karen) (Entered: 01/13/2017)
01/13/2017	<a href="#">24</a>	<del>CERTIFICATE of Service of Joint Status Reports (Loewy, Karen) (Entered: 01/13/2017)</del>
01/18/2017	<a href="#">25</a>	MINUTE entry before the Honorable Samuel Der-Yeghiayan: For the reasons stated in the Court's memorandum opinion date 01/18/17, Defendants' motion to dismiss <a href="#">15</a> is granted. All pending dates and motions, if any, are stricken as moot. Civil case terminated. Mailed notice (mw, ) (Entered: 01/18/2017)
01/18/2017	<a href="#">26</a>	MEMORANDUM OPINION Signed by the Honorable Samuel Der-Yeghiayan on 1/18/2017: Granting Defendants' motion to dismiss. Mailed notice (mw, ) (Entered: 01/18/2017)
01/18/2017	<a href="#">27</a>	ENTERED JUDGMENT Signed by the Courtroom Deputy Michael Wing on 01/18/2017: Mailed notice (mw, ) (Entered: 01/18/2017)
02/15/2017	<a href="#">28</a>	<del>NOTICE of appeal by Marsha Wetzel regarding orders <a href="#">26</a>, <a href="#">25</a>, <a href="#">27</a> Filing fee \$ 505, receipt number 0752-12860562. (Loewy, Karen) (Entered: 02/15/2017)</del>
02/15/2017	<a href="#">29</a>	<del>DOCKETING Statement by Marsha Wetzel regarding notice of appeal <a href="#">28</a> (Loewy, Karen) (Entered: 02/15/2017)</del>
02/15/2017	<a href="#">30</a>	<del>NOTICE of Appeal Due letter sent to counsel of record regarding notice of appeal <a href="#">28</a> (ek, ) (Entered: 02/15/2017)</del>
02/15/2017	<a href="#">31</a>	<del>TRANSMITTED to the 7th Circuit the short record on notice of appeal <a href="#">28</a>. Notified counsel (ek, ) (Entered: 02/15/2017)</del>
02/15/2017	<a href="#">32</a>	<del>ACKNOWLEDGMENT of receipt of short record on appeal regarding notice of appeal <a href="#">28</a>; USCA Case No. 17-1322. (jjr, ) (Entered: 02/15/2017)</del>
11/14/2017	<a href="#">33</a>	<del>NOTICE to Transmit Record on Appeal regarding notice of appeal <a href="#">28</a>; USCA Case No. 17-1322. (eaa, ) (Entered: 11/14/2017)</del>

**KEY**

**All items are included in this record.**

**All crossed out items are not included in the record.**

**S/C: These items are sent under a separate certificate.**

**N/A: These items are not available.**

APPEAL,GILBERT,TERMED

**United States District Court**  
**Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1.2 (Chicago)**  
**CIVIL DOCKET FOR CASE #: 1:16-cv-07598**  
***Internal Use Only***

Wetzel v. Glen St. Andrew Living Community, LLC et al  
Assigned to: Honorable Samuel Der–Yeghiayan  
Case in other court: 17–01322  
Cause: 42:405 Fair Housing Act

Date Filed: 07/27/2016  
Date Terminated: 01/18/2017  
Jury Demand: None  
Nature of Suit: 443 Civil Rights:  
Accommodations  
Jurisdiction: Federal Question

Date Filed	#	Page	Docket Text
07/27/2016	<u>1</u>	3	COMPLAINT filed by Marsha Wetzel; Filing fee \$ 400, receipt number 0752–12188111.(Loewy, Karen) (Entered: 07/27/2016)
07/27/2016	<u>2</u>	28	CIVIL Cover Sheet (Loewy, Karen) (Entered: 07/27/2016)
08/22/2016	<u>15</u>	30	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM (Watson, Lindsay) (Entered: 08/22/2016)
08/31/2016	<u>19</u>	41	MINUTE entry before the Honorable Samuel Der–Yeghiayan: Motion hearing held. Defendants' motion to dismiss <u>15</u> is entered and continued. Plaintiff's response shall be filed by 10/04/16 and Defendants' reply shall be filed by 10/18/16. Initial status hearing set for 01/19/17 at 9:00 a.m. Mailed notice (mw, ) (Entered: 08/31/2016)
10/04/2016	<u>20</u>	42	MEMORANDUM by Marsha Wetzel in Opposition to Motion to Dismiss for Failure to State a Claim <u>15</u> (Loewy, Karen) (Entered: 10/04/2016)
10/18/2016	<u>21</u>	58	REPLY by Defendants Sandra Cubas, Carolyn Driscoll, Alyssa Flavin, Glen Health & Home Management, Inc., Glen St. Andrew Living Community Real Estate, LLC, Glen St. Andrew Living Community, LLC to Motion to Dismiss for Failure to State a Claim <u>15</u> (Attachments: # <u>1</u> Exhibit A)(Watson, Lindsay) (Entered: 10/18/2016)
01/13/2017	<u>22</u>	81	STATUS Report <i>Joint Initial</i> by Marsha Wetzel (Loewy, Karen) (Entered: 01/13/2017)
01/13/2017	<u>23</u>	89	STATUS Report <i>Joint Jurisdictional</i> by Marsha Wetzel (Loewy, Karen) (Entered: 01/13/2017)
01/18/2017	<u>25</u>	92	MINUTE entry before the Honorable Samuel Der–Yeghiayan: For the reasons stated in the Court's memorandum opinion date 01/18/17, Defendants' motion to dismiss <u>15</u> is granted. All pending dates and motions, if any, are stricken as moot. Civil case terminated. Mailed notice (mw, ) (Entered: 01/18/2017)
01/18/2017	<u>26</u>	93	MEMORANDUM OPINION Signed by the Honorable Samuel Der–Yeghiayan on 1/18/2017: Granting Defendants' motion to dismiss. Mailed notice (mw, ) (Entered: 01/18/2017)

01/18/2017	<u>27</u>	101	ENTERED JUDGMENT Signed by the Courtroom Deputy Michael Wing on 01/18/2017: Mailed notice (mw, ) (Entered: 01/18/2017)
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MARSHA WETZEL, )  
)  
Plaintiff, )  
v. ) Civil Action No. \_\_\_\_\_  
)  
GLEN ST. ANDREW LIVING )  
COMMUNITY, LLC; GLEN ST. ANDREW )  
LIVING COMMUNITY REAL ESTATE, )  
LLC; GLEN HEALTH & HOME )  
MANAGEMENT, INC.; ALYSSA FLAVIN; )  
CAROLYN DRISCOLL; and SANDRA )  
CUBAS, )  
)  
)  
)  
Defendants. )  
)

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF**

1. Plaintiff Marsha Wetzel (“Plaintiff” or “Marsha”) brings this complaint for declaratory, injunctive, and other relief against Defendants Glen St. Andrew Living Community, LLC; Glen St. Andrew Living Community Real Estate, LLC; Glen Health & Home Management, Inc.; and their administrators Alyssa Flavin, Carolyn Driscoll, and Sandra Cubas (collectively, “Defendants”). Plaintiff seeks to end and obtain redress for Defendants’ discriminatory denial of equal housing opportunity. In support of her claims, Plaintiff alleges as follows:

**INTRODUCTION**

2. Marsha moved into an apartment at Glen St. Andrew Living Community (“GSALC”) in Niles, Illinois in November 2014.

3. Marsha is a lesbian. She moved into GSALC after the death of her partner of 30 years, Judith Kahn (“Judy”), with whom she raised a son.

4. Throughout most of her time at GSALC, Marsha has been subjected to a pattern of discrimination and harassment because of her sex and sexual orientation, including persistent verbal harassment, threats, intimidation, and three separate assaults, at the hands of other residents. She has been called countless homophobic slurs, taunted about her relationship with Judy and their child, threatened with bodily harm, bullied and intimidated in all of the communal spaces in the facility, and physically injured by other residents, all because she had a committed relationship and created a family with another woman and because she is a lesbian.

5. Marsha repeatedly complained about the sex- and sexual orientation-based harassment she has experienced to the administration of GSALC, including Executive Director Alyssa Flavin, Director of Supportive Services Carolyn Driscoll, and Regional Director of Operations Sandra Cubas (collectively, “the Administration”). Other GSALC staff and residents witnessed some of the incidents and reported them to the Administration. Defendants have taken no meaningful action to stop the harassment, but instead have marginalized and alienated Marsha and retaliated against her for complaining about the harassment.

6. The harassment and violence Marsha has experienced at GSALC because of her sex and sexual orientation is so severe and pervasive that it has created a hostile housing environment. Marsha lives with tremendous fear and anxiety, and has been deprived of the right to live in her home in peace. Defendants’ failure to correct and end the harassment and discrimination Marsha has faced because of her sex and sexual orientation denies Marsha equal housing opportunity.

7. Marsha now brings this action for violation of her civil rights, as secured by the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended (“the Fair Housing Act” or “FHA”), 42 U.S.C. §§ 3604, 3617, and by the Illinois Human Rights Act (“IHRA”), 775 Ill. Comp. Stat. Ann. 5/3-102, 5/3-105.1.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this matter pursuant to 42 U.S.C. § 3613 and 28 U.S.C. §§ 1331 and 1343, because Plaintiff is an aggrieved person alleging discrimination in violation of the Fair Housing Act and because the Fair Housing Act claims alleged herein arise under the laws of the United States, including those laws providing for the protection of civil rights.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) because the alleged discrimination occurred in this district and the housing property at issue is located in this district.

10. This Court has supplemental jurisdiction over Plaintiffs’ claims under the laws of the State of Illinois because they are so related to the Plaintiff’s federal claims that the state and federal claims form part of the same case or controversy pursuant to 28 U.S.C. § 1367(a).

### **AGGRIEVED PERSON, DEFENDANTS, AND THE SUBJECT PROPERTY**

11. Plaintiff Marsha Wetzal, age 68, lives at GSALC, 7000 North Newark Avenue, Niles, Illinois. Marsha is a lesbian. She is a woman who had a thirty-year intimate, committed relationship with another woman and who raised a son together with her female partner. Marsha has been harmed by Defendants’ discrimination against her in the terms, conditions, and privileges of housing rental; discrimination against her in the provision of housing related services and facilities; creation of a hostile housing environment; threats, intimidation, and

interference with her enjoyment of a dwelling; and retaliation against her for complaining about the discrimination she has experienced, all because of her sex and sexual orientation.

12. Upon information and belief, Defendant Glen St. Andrew Living Community Real Estate, LLC is an Illinois corporation that owns the land and building where GSALC (“the Subject Property”) is located, having purchased it subject to the rights of the property’s existing residents in 2014. The Subject Property includes a 55-bed intermediate care unit, 47 units of assisted living, and 107 independent living apartments, which are intended as residences for older adults.

13. Upon information and belief, Glen St. Andrew Living Community, LLC is an Illinois corporation that leases the Subject Property from Defendant Glen St. Andrew Living Community Real Estate, LLC. Defendant Glen St. Andrew Living Community, LLC is licensed by the State of Illinois to provide assisted living and long term care at the Subject Property.

14. Upon information and belief, Defendant Glen Health and Home Management, Inc., manages the Subject Property. (Collectively, Defendants Glen St. Andrew Living Community Real Estate, LLC, Glen St. Andrew Living Community, LLC, and Glen Health & Home Management are the “Corporate Defendants.”)

15. Upon information and belief, Defendant Alyssa Flavin (“Flavin”) is the Executive Director of the Subject Property and is employed and authorized by the Corporate Defendants to act on their behalf in the overall operation and maintenance of the Subject Property, including in taking adverse actions against residents.

16. Upon information and belief, Defendant Carolyn Driscoll (“Driscoll”) is employed and authorized by the Corporate Defendants to serve as an agent and as the Director of Supportive Services and Director of Resident Relations at the Subject Property.

17. Upon information and belief, Defendant Sandra Cubas (“Cubas”) is employed as the Regional Director of Operations for Defendant Glen Health & Home Management, and is authorized by the Corporate Defendants to serve as their agent with responsibility for the overall operation and management of the Subject Property.

18. The Subject Property constitutes a “dwelling” within the meaning of 42 U.S.C. § 3602(b) and is not exempt from the requirements of the FHA.

19. The Subject Property constitutes both “real property” and a “housing accommodation” within the meaning of 775 Ill. Comp. Stat. Ann. 5/3-101 and is not exempt from the requirements of the IHRA.

### **FACTS**

20. Marsha was born on September 12, 1947 in Hammond, Indiana. She grew up in Indiana, earned a high school degree, and worked a variety of jobs, including factory work and as a security guard. Marsha has faced a variety of health issues throughout her life, including severe arthritis and gastrointestinal issues, has had multiple leg surgeries, and has been disabled since in or about the early 1980s.

21. Marsha is a lesbian. She is a woman whose primary emotional and romantic attachments are to other women, and she shared an intimate committed relationship with Judith Kahn (“Judy”) for thirty years.

22. Marsha met Judy in 1982 and they quickly fell in love. Although they could not legally marry, Marsha and Judy had a commitment ceremony in their home on May 8, 1983, after which they went on a honeymoon road trip across the United States. They built a life together, sharing three different homes. Marsha supported Judy as she completed her studies to

become a psychologist. In 1993, they welcomed an adopted baby into their family, whom they named Joshua (“Josh”).

23. In 2011, Judy was diagnosed with stage IV colon cancer. Marsha cared for Judy throughout her illness, seeing to her every need until she entered hospice care. Judy died in November 2013.

24. After Judy’s death, Judy’s family evicted Marsha from the home she and Judy had shared. She also became estranged from Josh, who struggled emotionally after Judy’s death. Marsha had lost the love of her life, was isolated from her son, and had nowhere to live. A social worker helped Marsha find an apartment to rent at GSALC.

25. Marsha moved into GSALC in November 2014. During her intake interview with GSALC staff member Debbie DuFore (“Debbie”), Marsha talked openly about her sexual orientation and about her life with Judy and Josh.

26. Marsha signed a Tenant’s Agreement with GSALC on November 26, 2014 to rent Apartment 204 and has lived there from that time until the present. The Agreement set forth that, in exchange for her rental payment, GSALC would provide Marsha with a private room and bathroom, utilities, maintenance, laundry facilities, three meals a day, and access to community rooms, enrichment programs, and consultation about health care and other necessities. Upon information and belief, the Corporate Defendants are parties to the Agreement.

27. From the beginning of her time at GSALC, Marsha was open with other residents about her relationship with Judy, their raising Josh, and her sexual orientation.

28. In or about April of 2015, another GSALC resident named Robert Herr (“Bob”) began verbally harassing Marsha, regularly calling her names and using homophobic slurs like “fucking dyke,” “fucking faggot,” “homosexual bitch,” and other words to that effect when they

would encounter each other in the facility. He taunted her about her relationship with Judy, and told Marsha that if she had ever had a sexual relationship with a man, she would never want a woman again, or words to that effect. Bob is a former police officer, and Marsha felt intimidated and upset by Bob's behavior.

29. Marsha complained about Bob's harassment to Defendants Flavin, Driscoll, and Cubas, and for a time, Bob's harassment seemed to decrease. Marsha sent a thank you note to Defendant Cubas for her help with the situation.

30. Starting in or about late June 2015, Bob was out of GSALC for several weeks. Not long after he returned to GSALC in late July 2015, Marsha encountered Bob in the lobby. Marsha was going up a ramp in the lobby in the scooter she uses to move around GSALC due to her disability. Bob came down the ramp, uttered a homophobic slur, and rammed Marsha's scooter with his walker hard enough to tip her chair and knock her off the ramp, leaving a large bruise on her arm. This incident was witnessed by a GSALC staff member – Patty Hayes ("Patty"), the receptionist—who stated at the time that she saw the whole thing, or words to that effect.

31. On or about August 3, 2015, Marsha spoke to Defendant Cubas and reported Bob's behavior and the assault. Marsha believed that Patty had also reported the incident to Defendant Cubas. Defendant Cubas was aloof, told Marsha not to worry about Bob's behavior or words to that effect, and said that Patty never reported the incident. Marsha talked with Patty, who said she had reported it, but also started suggesting that maybe she did not really see anything. At some point, Marsha also showed Defendant Cubas her bruised arm and Defendant Cubas stated that she did not see a bruise at all, or words to that effect.

32. After Marsha reported Bob's behavior and the assault to Defendant Cubas, Bob started harassing Marsha with greater frequency again. In addition to using slurs when he encountered her, Bob told Marsha that Defendant Flavin does whatever he tells her to, or words to that effect. Marsha complained to Defendants Flavin and Driscoll about Bob's ongoing behavior, and they argued with Marsha about the assault and called Marsha a liar. Marsha met with Defendant Driscoll on or about August 28, 2015. Defendant Driscoll and GSALC's business manager, Alona Valencia ("Alona"), called Marsha into an office and locked the door to the room behind her. Defendant Driscoll showed Marsha a copy of her tenant's agreement with several post-it arrows pointing to various provisions, and told Marsha they could not believe her because she is a trouble maker who always lies and twists things, or words to that effect. Marsha responded that she believed she was being treated unfairly based on her sexual orientation, told them that she was having chest pains, and asked them to open the door three times before they let her leave.

33. Around this same time, another GSALC resident, Elizabeth Rivera ("Elizabeth"), also began harassing Marsha, saying things like, "you look like a man," and "homosexuals will burn in hell," or words to that effect. At or about the end of September, Elizabeth made similar comments again while she rammed her wheelchair into the table where Marsha was sitting in the dining hall. The table was knocked on top of Marsha and kitchen staff had to help remove it.

34. A few days thereafter, Marsha encountered Elizabeth in the elevator. Elizabeth once again made similar homophobic comments and spit at Marsha. Marsha went back to her room to change her shirt, which had become stained with Elizabeth's spit.

35. Soon after, Marsha was talking about Elizabeth having spit on her with other residents out on the patio. One resident, Audrey Chase ("Audrey") thought it was funny and

directed a homophobic slur at Marsha. Marsha became angry with Audrey, and Audrey falsely reported to Defendants Flavin and Driscoll that Marsha was saying negative things about her.

36. On another occasion in or about late summer 2015, Marsha was in the elevator with both Bob and Audrey. Bob hit the back of Marsha's scooter with his walker. Audrey told the Administration that it was Marsha who had hit Bob.

37. When Marsha complained to Defendants Flavin and Driscoll about both Elizabeth's and Audrey's conduct, rather than addressing it, the Administration placed the blame on Marsha and responded by changing Marsha's seating in the dining room to less desirable locations. Marsha began eating in her room more often because she was afraid of what would happen in the dining room despite that GSALC was supposed to provide all of her meals. Marsha was later told by Defendant Cubas that there was an incident report for Elizabeth's behavior in the dining room. Marsha asked the Administration for a copy, but never received one.

38. Through about the end of October 2015, Marsha had several negative interactions with Defendant Flavin, who repeatedly said Marsha was lying and told Marsha that ten people a day complain about her. Defendant Flavin also barred Marsha from spending time in the lobby for a period of time.

39. Marsha had a phone call with Defendant Cubas in or about late October 2015, and soon after, spoke to her in the day room. Marsha told Defendant Cubas that if they want her to leave, she would but that they had better put it in writing that the reason is because she is gay. Defendant Cubas responded that she was not telling Marsha to leave, and Marsha said, "Then do something to help me," or words to that effect.

40. At the beginning of November 2015, Marsha did not receive a rent notice taped to her door as had been the usual procedure, although other residents did. Marsha went to Alona to pay her rent. Alona accepted Marsha's check, but initially would not give her a receipt. Marsha stayed in Alona's office until she received a receipt, although it did not look like the same receipt she had received every other month when she had submitted her rent. It also was not signed, as the usual receipts were. Marsha insisted that Alona sign the unusual receipt, which Alona eventually did.

41. On or about November 2, 2015, Defendant Flavin told Marsha that, while she was allowed to go to the lobby to get coffee, Defendant Flavin still did not want Marsha being in the lobby. Marsha asked why everyone else, including Bob, was allowed to be in the lobby and she was not. Defendant Flavin did not respond.

42. On or about November 17, 2015, Marsha and her social worker, Kristi Kagan, had a meeting with Defendants Flavin, Driscoll, and Cubas, set up by Ms. Kagan in an attempt to improve the relationship between the Administration and Marsha. Marsha complained about the harassment and the two incidents of physical assault against her, and showed them the unusual receipt she received after not getting her rent notice. The Administration denied that the incident with Bob had occurred, said Patty had changed her story, claimed the incident with Elizabeth was an accident, said that Marsha was wrong about what was happening, and said that Marsha is the problem. Defendant Cubas stated, "I see no discrimination here," or words to that effect.

43. Through the remainder of November and December 2015, Marsha continued to experience verbal harassment from Bob. Bob also worked to alienate Marsha from other residents, including Ed Sloper ("Ed"), who began pulling his wife away whenever she spoke to Marsha because Bob had told Ed that Marsha was gay, and who began glaring at Marsha,

making her feel uncomfortable in the dining room. Marsha also continued to be subjected to discriminatory and retaliatory treatment by the Administration, with Defendants Flavin and Driscoll responding to Marsha's complaints about a particular maintenance employee by ending all room cleaning for Marsha and Defendant Driscoll taunting Marsha for not having visitors on Christmas.

44. On January 5, 2016, Marsha was attacked from behind while she was in the mailroom. She did not see the person who hit her on the head, but heard them say "homo" as she was knocked forward over the front of her scooter. She went back to her room and cried, but did not seek medical attention. She did not report it to the staff immediately because she did not think they would believe her and because she felt that they twist everything she says.

45. On January 6, 2016, Marsha reported the attack to Defendants Flavin and Driscoll, who offered for her to see the on-site doctor. Marsha refused because that doctor does not accept Medicaid and she would have had to pay him in full. Marsha had a bump on her head and a black eye but did not lose consciousness or have vision problems so she did not pursue it. Below is a true and correct copy of a photograph that accurately shows how Marsha looked on January 6, 2016.



46. On or about January 10, 2016, Marsha asked a staff person named Linda at the front desk for a copy of any incident reports from the mailroom assault and Linda could not find one. On or about January 12, 2016, Marsha asked Carolyn for a copy and was told residents cannot see or have copies of reports.

47. After the January 5 incident, in addition to the verbal harassment, Bob repeatedly laughed at Marsha while rubbing his head and saying “Ouch.” As a result and because of Bob’s previous harassment of and assault on Marsha, Marsha strongly suspects he is the person who attacked her on January 5, 2016. She is extremely scared of Bob and feels threatened and intimidated by him. Marsha also encountered Bob early in the morning on or about January 18 lurking in the mailroom while she was doing her laundry. She quickly went to the lobby where there were other people, and has since stopped doing laundry early in the day in order to avoid encountering Bob while she is alone. In addition, she has stopped going to the third floor of

GSALC because that is where Bob lives. She also has eaten in her room more often, rather than getting all of her meals in the dining room, the dining room in order to avoid Bob.

48. On or about January 24, 2016, Defendant Driscoll asked Marsha if Debbie from admissions knew she was gay. Marsha said yes.

49. In or about February 2016, Marsha's friend Kathy was receiving hospice care on the fifth floor. Marsha visited her regularly and overheard the nurses complaining about Marsha's visitation, asking something to the effect of "what are they, a gay couple?"

50. Bob's verbal harassment of Marsha continued through the early months of 2016. In addition to regularly calling her names and saying things like "Judy died to get away from you," or words to that effect, he began referring to Josh as Marsha's "homosexual-raised faggot son," or words to that effect.

51. Marsha felt intimidated by Bob's seemingly close relationship with the Administration. On or about February 5, 2016, she saw Bob coming out of Defendant Flavin's office. Defendant Flavin had her arm around Bob's shoulder and the two of them were laughing and petting Defendant Flavin's dog. On or about April 14, 2016, Marsha saw Defendant Cubas go over to Bob's table in the dining room, put her arm around him and pat him warmly, as the two of them talked and laughed together.

52. On or about March 30, 2016, Marsha and another resident, Rachael Carlin ("Rachael"), were in the dining room waiting for breakfast to be served. Bob called Marsha "fruit loop" as he passed by and walked away laughing. Rachael reported Bob's name calling to Alona. When Marsha asked Defendant Driscoll about the incident on or about April 4, Defendant Driscoll told Marsha that Rachael said she never witnessed anything.

53. On April 19, 2016, Marsha received a letter from Defendants Cubas and Driscoll about needing to schedule a mandatory meeting within 24-48 hours to discuss an important matter. At the meeting, Defendants Cubas and Driscoll alleged that Marsha had been smoking in her room and asked Marsha to sign a letter reiterating her knowledge of the facility's smoking policy and pledging to stop violating the policy. Marsha refused to sign the letter because she had not been smoking in her room and would not sign something that suggested that she had been. Marsha told Defendants Cubas and Driscoll something to the effect of that she felt they were looking for a way to get rid of her because she is a lesbian. She asked why they do not do anything when she is called "faggot," even though they were so quick to respond to allegations about her smoking, or words to that effect. Marsha told them that she smokes outdoors only, asked Defendants Cubas and Driscoll why the smoke detector in her small room did not go off if she was allegedly smoking in it, and asked them for the names of those who reported her. Defendants Cubas and Driscoll did not respond to Marsha's questions, but told Marsha that if they received one more report about her smoking in her room, Marsha would be dismissed from GSALC.

54. On or about April 20, Marsha received a letter from Defendants Cubas and Driscoll, with a copy to Defendant Flavin, GSALC stating that she had been warned about smoking in her room and that she refused to sign an updated no smoking policy. The letter stated that if they smell smoke, or hear any reports of smoke, they will knock one time and then enter her room with or without her permission, and that any further violations of the no smoking policy would be grounds for termination of her lease.

55. On April 24, 2016, Marsha was awoken at around 5:00 in the morning by a pounding on her door. She opened the door to find two staff members who said that they were

from the fifth floor, that they smelled cigarette smoke coming from her room, and that they wanted to know if she was smoking. Marsha had been sleeping and had not been smoking. She offered to let the staff members into her room to check for smoke or any remnants of a cigarette. They refused to enter. Marsha said something about how the staff members themselves smelled like smoke, and one of the staff members slapped Marsha across the face. After the staff members left, Marsha cried and went to Rachael's room. Rachael sat with Marsha while she called the police, who came to the facility and took a report. Although Marsha could describe the staff members generally, and could see that they were wearing staff name badges, she could not identify them specifically because she had not put on her glasses before she answered the door.

56. On April 25, 2016, Marsha and Rachael met with Defendant Flavin about the April 24 incident. Marsha told Defendant Flavin that she did not like being hit by anyone, resident or staff. Defendant Flavin questioned whether it had really been staff members involved. Marsha repeated the information she had given the police. Defendant Flavin seemed angry that Marsha took legal steps to address this incident.

57. Bob was out of the facility during May, and Marsha returned to eating regularly in the dining room while he was gone. After he returned on or about June 5, he resumed his harassment. In addition to using anti-gay slurs, Bob taunted and intimidated Marsha, seemingly taking photographs of her with his phone, and standing near her in the dining hall and laughing at her. Marsha was anxious and had trouble swallowing food whenever Bob was in the dining hall with her.

58. On or about June 7, Marsha encountered Bob as she was coming out of the lobby and was waiting for the elevator. Bob came down hallway, calling Marsha a "faggot" and a

“fucking faggot,” or words to that effect and saying something about “the homosexual piece of garbage you raised.”

59. On or about June 8, 2016, Marsha was on the patio smoking. When she attempted to go back inside, Bob was blocking the entrance with his legs and cane. When Marsha said “excuse me,” Bob started yelling at her. He picked up his cane in the middle and Marsha thought he was going to hit her. Bob threatened “to rip [her] tits off,” or words to that effect. He went inside and grabbed the door and held it behind him so that Marsha could not get in for a short time before letting go and walking away. Marsha felt bullied, intimidated, and scared.

60. Marsha wrote a complaint about Bob’s behavior on the patio. In response, Defendant Flavin approached Marsha, and told her she had been smoking in the wrong place. When Marsha said that Bob was preventing her from going to the right place, Defendant Flavin said, “Bob will be Bob,” or words to that effect, and told Marsha to make sure to smoke in the right place. Defendant Flavin did not address Bob’s threatening behavior toward Marsha.

61. On or about June 28, Marsha was standing with an activities staff member named Lisa waiting for the elevator. Bob came out of the lobby, and walked by saying words to the effect of, “Too bad you can’t walk, or you’d be the fucking grand marshal of the gay pride parade.” Lisa said to Bob, “Don’t talk to her like that.” Bob continued, saying something to the effect of how great it is that all the gays were killed at the Pulse nightclub in Orlando. Lisa filed a report of Bob’s behavior, but Marsha is unaware of any action being taken against Bob.

62. As a result of the harassment and discrimination Marsha has experienced, she spends increased amounts of time in her room. She keeps the door locked whenever she is in her room and she sleeps with the door barricaded so that no one can enter her room. She is scared that people will come into her room and hurt her or take or damage things that belonged to Judy.

Marsha has not regularly sat at her table in the dining room for meals since Bob's threats on June 8, and she goes to the dining room when it is closing down or closed in order to get out to the patio. She relies on the groceries her caregiver brings her for food, as well some meager food items the kitchen staff provides her, despite that her rent to GSALC is supposed to provide her with three meals a day.

63. As a result of the harassment and discrimination Marsha has experienced and continues to experience tremendous anxiety and fear. She feels unsafe and unwelcome in her own home. She has lost a significant amount of weight. She worries every time she leaves her room.

64. For more than fifteen months, Marsha has been subjected to a pattern of severe and pervasive verbal and physical harassment, threats, and intimidation because of her sex and sexual orientation. This has created a hostile environment that has unreasonably interfered with Marsha's right to use and enjoy her home, discriminated against her in the terms, conditions, and privileges of renting a place to live at GSALC, and discriminated against her in the provision of services or facilities in connection with renting a place to live at GSALC.

65. Marsha has been subjected to this severe and pervasive verbal and physical harassment because she is a woman whose primary emotional and romantic attachments are to other women, and because she shared an intimate, committed relationship with Judy for thirty years. Marsha would not have been subjected to this hostile housing environment if she were a man whose primary emotional and romantic attachments are to women, or if she were a man who shared an intimate, committed relationship with a woman for thirty years.

66. Marsha has been subjected to this severe and pervasive verbal and physical harassment because she is a woman who defies sex-stereotypes, including stereotypes about the

sex of the person to whom a woman should be attracted, about the sex of the person with whom a woman should have a relationship and raise children, and about how a woman should appear or act.

67. Marsha has been subjected to this severe and pervasive verbal and physical harassment because of her association with women. If Marsha's primary emotional and romantic attachments were to men or had Judy been a man, Marsha would not have been subjected to this hostile housing environment.

68. Defendants have utterly failed to take prompt action to correct or end the discriminatory conduct of the other residents toward Marsha despite having a duty to do so. Defendants knew or should have known that Marsha was being subjected to extensive unwelcome harassment because of her sex and sexual orientation and that this harassment was sufficiently severe and pervasive as to create a hostile environment. Defendants disregarded Marsha's complaints and those of witnesses to the verbal and physical harassment Marsha experienced. Defendants have actively discouraged Marsha from taking steps to address the harassment and violence she has experienced because of her sex and sexual orientation. Any actions taken by Defendants in response have penalized or harmed Marsha rather than correcting or ending the hostile environment created by the harassment and discrimination of the other residents.

69. Defendants have also retaliated against Marsha for complaining about the illegal harassment and discrimination she was experiencing at GSALC because of her sex and sexual orientation. The Administration responded to Marsha's complaints by limiting her access to GSALC facilities and resources, and by threatening and attempting to kick her out of GSALC.

Defendants have coerced, intimidated, threatened, and interfered with Marsha's exercise and enjoyment of her housing rights.

70. Defendants' duty to correct and end the discriminatory conduct of the other residents toward Marsha stems both from their own policies and from federal and state law.

71. The Tenant's Agreement governing independent living apartments at GSALC sets forth that "acts or omissions that constitute a direct threat to the health and safety of other individuals" are grounds for termination of the agreement, and sets forth that the obligation not to engage in such behavior is a responsibility of each tenant. It also obligates tenants not to engage in any activity that "unreasonably interferes with the peaceful use and enjoyment of the community by other tenants or threatens to damage the community's reputation." Despite ample evidence that Bob and Elizabeth engaged in acts that directly threatened Marsha's health and safety, and that several residents engaged in activities that unreasonably interfered with Marsha's peaceful use and enjoyment of GSALC, Defendants failed to take any action against any of the perpetrators of harassment, intimidation, discrimination, and violence toward Marsha.

72. Defendants also owe Marsha a duty to ensure her equal housing opportunity free from discrimination on the bases of sex and sexual orientation under the FHA and the IHRA, both of which make it unlawful to discriminate in making housing available, in the terms, conditions, and privileges of housing, and in providing services or facilities in connection therewith. The hostile environment created by the severe and pervasive harassment Marsha has experienced based on her sex and sexual orientation and Defendants' failure to correct or end the harassment have had the effect of discriminating against Marsha's rental of a dwelling in violation of both the FHA and the IHRA.

**CAUSES OF ACTION**

**COUNT I  
VIOLATION OF THE FAIR HOUSING ACT**

73. Plaintiff realleges and incorporates by reference all allegations contained in paragraphs 1-72 as if set forth fully herein.

74. Pursuant to 42 U.S.C. § 3604, the FHA prohibits a person from making unavailable or denying a dwelling to any person “because of . . . sex.” It also prohibits discriminating against any person in the terms, conditions, or privileges of renting a dwelling, or in the provision of services or facilities in connection therewith “because of . . . sex.”

75. Pursuant to 42 U.S.C. § 3617, the FHA also makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any right granted or protected by substantive protections of the FHA.

76. Defendants engaged in unlawful sex discrimination in violation of the FHA, 42 U.S.C. § 3604. Defendants have discriminated against Marsha in the terms, conditions, and privileges of renting her apartment at GSALC, and in the provision of services and facilities in connection therewith because of Marsha’s sex, including because of sexual orientation;

77. Defendants violated the FHA, 42 U.S.C. § 3604, by failing to fulfill their duty to take prompt action to correct and end the sex-based harassment suffered by Marsha at the hands of other residents;

78. Defendants violated the FHA, 42 U.S.C. § 3617, by failing to fulfill their duty to take prompt action to correct and end the sex-based harassment suffered by Marsha at the hands of other residents; and

79. Defendants retaliated against Marsha in violation of the FHA, 42 U.S.C. § 3617, by limiting her access to facilities and resources, by intimidating and threatening her, and by

attempting to evict her through duplicity and fabrication because Marsha asserted her right to an equal opportunity to use and enjoy the property without being subject to sex-based harassment.

80. Defendants' actions were taken intentionally, willfully, and in disregard for Marsha's federally-protected rights, and constituted a discriminatory housing practice, as defined in 42 U.S.C. § 3602(f).

81. Marsha is an "aggrieved person" as defined in 42 U.S.C. § 3602(i).

82. Marsha has been injured by Defendants' discriminatory conduct and has suffered damages as a result. Accordingly, under 42 U.S.C. § 3613(c), Marsha is entitled to and seeks actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

## **COUNT II VIOLATION OF THE ILLINOIS HUMAN RIGHTS ACT**

83. Plaintiff realleges and incorporates by reference all allegations contained in paragraphs 1-72 as if set forth fully herein.

84. Pursuant to 775 Ill. Comp. Stat. Ann. 5/1-103, 5/3-102 (a), (b), the IHRA prohibits discrimination in making available the rental or lease of a home "because of" a person's sex or sexual orientation. It also prohibits discriminatorily altering the terms, conditions, or privileges of the rental or lease of a home, and discrimination in furnishing facilities or services in connection with the rental or lease of a home "because of" a person's sex or sexual orientation,

85. Pursuant to 775 Ill. Comp. Stat. Ann. 5/3-105.1, the IHRA also makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any right granted or protected by Article 3 of the IHRA.

86. Defendants engaged in unlawful sex and sexual orientation discrimination in violation of the IHRA, 775 Ill. Comp. Stat. Ann. 5/3-102. Defendants have discriminated against

Marsha in the terms, conditions, and privileges of renting her apartment at GSALC, and in the furnishing of facilities and services in connection therewith because of Marsha's sex and sexual orientation;

87. Defendants violated the IHRA, 775 Ill. Comp. Stat. Ann. 5/3-102, by failing to fulfill their duty to take prompt action to correct and end the sex-based and sexual orientation-based harassment suffered by Marsha at the hands of other residents;

88. Defendants violated the IHRA, 775 Ill. Comp. Stat. Ann. 5/3-105.1, by failing to fulfill their duty to take prompt action to correct and end the sex-based and sexual orientation-based harassment suffered by Marsha at the hands of other residents; and

89. Defendants retaliated against Marsha in violation of the IHRA, 775 Ill. Comp. Stat. Ann. 5/3-105.1, by limiting her access to facilities and resources, by intimidating and threatening her, and by attempting to evict her through duplicity and fabrication because Marsha asserted her right to an equal opportunity to use and enjoy the property without being subject to sex-based and sexual orientation-based harassment.

90. Defendants' actions were taken intentionally, willfully, and in disregard for Marsha's state-protected rights, and constituted unlawful discrimination and a civil rights violation, as defined in the IHRA, 775 Ill. Comp. Stat. Ann. 5/1-103 (D), (Q), 5/3-102.

91. Marsha is an "aggrieved person" as defined in 775 Ill. Comp. Stat. Ann. 5/1-103 (B).

92. Marsha has been injured by Defendants' discriminatory conduct and has suffered damages as a result. Accordingly, under 775 Ill. Comp. Stat. Ann. 5/10-102, Marsha is entitled to and seeks actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court enter an order:

A. Declaring that the discriminatory conduct of Defendants as set forth above violates the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*;

B. Declaring that the discriminatory conduct of Defendants as set forth above violates the Illinois Human Rights Act, 775 Ill. Comp. Stat. Ann 5.1-101 *et seq.*

C. Permanently enjoining Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them from:

i. discriminating in the sale or rental of, or otherwise making unavailable or denying, a dwelling to any person because of sex or sexual orientation;

ii. discriminating against any person in the terms, conditions, or privileges of a sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of sex or sexual orientation;

iii. coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right protected by the Fair Housing Act or the Illinois Human Rights Act.

D. Requiring Defendants to take such affirmative steps as may be necessary to restore, as nearly as practicable, Marsha Wetzel to the position she would have but in but for the discriminatory conduct;

E. Requiring Defendants to take affirmative action, including but not limited to instituting and carrying out policies and practices to prevent unlawful discrimination (including

on the basis of sex and sexual orientation) in the future and to eliminate, to the extent practicable, the effects of Defendants' unlawful practices;

F. Requiring Defendants to complete a fair housing training in order to prevent the reoccurrence of discriminatory housing practices in the future and to eliminate, to the extent practicable, the effects of their unlawful practices;

G. Awarding Plaintiff compensatory and punitive damages pursuant to the Fair Housing Act, 42 U.S.C. § 3613(c)(1), and the Illinois Human Rights Act, 775 Ill Comp. Stat. Ann. 5/10-102(C)(1);

H. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees; and

I. Granting such other and further relief in favor of Plaintiff as this Court deems just and proper.

Respectfully submitted,

Dated: July 27, 2016

By: s/ Karen L. Loewy

*Attorneys for Plaintiff Marsha Wetzel*

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
DEFENDANT

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
REAL PROPERTY
TORTS
PERSONAL INJURY
PERSONAL PROPERTY
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

VII. Previous Bankruptcy Matters (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)

VIII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

IX. RELATED CASE(S) IF ANY (See instructions):
JUDGE
DOCKET NUMBER

X. This case (check one box)
Is not a refiling of a previously dismissed action
is a refiling of case number previously dismissed by Judge
DATE SIGNATURE OF ATTORNEY OF RECORD

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the six boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

**VII. Previous Bankruptcy Matters** For nature of suit 422 and 423 enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this court. Use a separate attachment if necessary.

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**IX. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**X. Refiling Information.** Place an "X" in one of the two boxes indicating if the case is or is not a refiling of a previously dismissed action. If it is a refiling of a previously dismissed action, insert the case number and judge.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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

MARSHA WETZEL, )  
)  
Plaintiff, ) Case No. 16-cv-07598  
)  
v. ) Honorable Judge Samuel Der-Yeghiayan  
)  
GLEN ST. ANDREW LIVING )  
COMMUNITY, LLC; GLEN ST. )  
ANDREW LIVING COMMUNITY )  
REAL ESTATE, LLC; GLEN )  
HEALTH & HOME MANAGEMENT, )  
INC.; ALYSSA FLAVIN; CAROLYN )  
DRISCOLL; and SANDRA CUBAS, )  
)  
Defendants. )

**DEFENDANTS' MOTION TO DISMISS**

Defendants, Glen St. Andrew Living Community, LLC; Glenn St. Andrew Living Community Real Estate, LLC; Glen St. Andrew Health & Home Management, Inc.; Alyssa Flavin; Carolyn Driscoll; and Sandra Cubas, by and through their attorneys, Gordon & Rees LLP, move for the dismissal of Plaintiff's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In support, Defendants state as follows:

**I. INTRODUCTION**

On July 27, 2016, Plaintiff, Marsha Wetzel (hereinafter referred to as "Plaintiff" or "Wetzel"), filed the instant action against Glen St. Andrew Living Community, LLC; Glenn St. Andrew Living Community Real Estate, LLC; Glen St. Andrew Health & Home Management, Inc.; Alyssa Flavin (Executive Director at Glen St. Andrew); Carolyn Driscoll (Director of Supportive Services and Director of Resident Relations at Glen St. Andrew); and Sandra Cubas (Regional Director of Operations for Glen St. Andrew). *See generally, docket entry #1, Exhibit A.* Plaintiff alleges that in November of 2014 she moved in to an apartment at Glen St. Andrew

Living Community (“GSALC”), and shortly thereafter she began to be discriminated against and harassed by *other tenants* because of her sexual orientation (lesbian), including her having a relationship with another woman, Judith Kahn. *Id.* at ¶4. The Plaintiff alleges violations of the Fair Housing Act, Section 3604(b) and Section 3617, for discrimination based on her sex, as well as violations of the Illinois Human Rights Act (“IHRA”), for discrimination based on her sex and sexual orientation. *Id.* at Count I and Count II.

Specifically, the Plaintiff alleged the following instances of harassment all of which occurred *by other tenants*:

- In April of 2015 Robert Herr (tenant) verbally harassed Plaintiff using homophobic slurs. *Id.* at ¶28.;
- In July of 2015 Robert Herr (tenant) uttered a homophobic slur and “rammed” Plaintiff’s scooter with his walker. *Id.* at ¶30.;
- Continued utterances of homophobic slurs by Robert Herr (tenant). *Id.* at ¶32.;
- Elizabeth Ribera (tenant) making disparaging statements regarding Plaintiff’s sexual orientation. *Id.* at ¶33.;
- Elizabeth Rivera ramming her chair into Plaintiff’s table in the dining hall. *Id.* at ¶33.;
- Elizabeth Rivera’s (tenant) spitting on Plaintiff’s shirt. *Id.* at ¶34.;
- Audrey Chase (tenant) stating a homophobic slur to Plaintiff. *Id.* at ¶35.;
- Robert Herr (tenant) hit Plaintiff’s motorized chair with his scooter and Audrey Chase (tenant) reporting that it was Plaintiff that hit Robert Herr (tenant). *Id.* at ¶36.;
- January 5, 2016, attack in the mail room—Plaintiff suspects this was Robert Herr (tenant). *Id.* at ¶44-45, 47.;
- Robert Herr (tenant) not allowing Plaintiff back into the building after she had been outside smoking. *Id.* at ¶59.

Notably, the Plaintiff does not allege that she was subjected to any harassment or discrimination by the Defendants nor does she allege that any of the Defendants’ actions were motivated by a discriminatory intent. *See Docket No. 1, generally.* Rather, the Plaintiff readily admits throughout the entirety of her Complaint that the harassment was solely from the tenants. *Id.* The Plaintiff’s only allegations against the Defendants are that they failed to prevent or intervene in the tenant-on-tenant harassment, or failed to investigate her complaints. However, importantly,

Plaintiff never alleges that the Defendants' alleged refusal to intervene in the tenant-on-tenant harassment was based on the Defendants' own discriminatory animus.

As is discussed in more detail below, the Plaintiff's Complaint must fail for several reasons. First, the Plaintiff has not plead any discriminatory intent on the part of the Defendants, which is required to state a claim under the Fair Housing Act and Illinois Human Rights Act. Second, the Plaintiff's sole basis for bringing claims under the Fair Housing Act and Illinois Human Rights Act are incidents of tenant-on-tenant harassment, and a landlord cannot be liable for tenant-on-tenant harassment. Third, the Section 3604(b) claim must fail because Section 3604(b) does not apply to claims of post-acquisition harassment or discrimination. Lastly, Glen St. Andrew Living Community Real Estate, LLC must be dismissed as they are not a proper party to the lawsuit.

## **II. LEGAL STANDARD: FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

Rule 12(b)(6) evaluates the legal sufficiency of a plaintiff's complaint. *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). In ruling on a motion to dismiss, all well-pleaded facts are accepted as true, and all reasonable inferences are drawn in the plaintiff's favor. *Hale v. Chu*, 614 F.3d 741, 744 (7th Cir. 2010) (internal citations omitted). The allegations in the complaint "must plausibly suggest that the plaintiff has a right to relief, raising that possibility above a 'speculative level'; if they do not, the plaintiff pleads itself out of court." *Id.* (quoting *EEOC v. Concentra Health Servs., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007)). To withstand a motion brought under Rule 12(b)(6), plaintiffs must allege "more than an unadorned, the 'defendant-unlawfully-harmed-me' accusation." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). A complaint that contains allegations that are "merely consistent with a defendant's liability ... stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (internal quotations omitted). Moreover, if the complaint so unmistakably establishes the presence of a defense that the suit is

rendered frivolous, the affected allegations can be dismissed before a responsive pleading is filed. *Walker v. Thompson*, 288 F.3d 1005, 1009-10 (7th Cir. 2002).

### III. ARGUMENT

#### ***A. The Plaintiff's Fair Housing Claims Must Be Dismissed As The Plaintiff Has Failed to Plead Any Intentional Discrimination On The Part Of The Defendants.***

Section 3604(b) of the Fair Housing Act makes it unlawful “[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 therewith, because of race, color, religion, sex, familial status, or national origin.” To establish a claim under Section 3604(b), the Plaintiff must plead that the defendant had discriminatory intent when making its decision or by showing that the decision caused a discriminatory effect. *See Edwards v. Lake Terrace Condo. Ass’n*, 2011 U.S. Dist. LEXIS 43304, \*12 (N.D. Ill. 2011) (dismissing plaintiff’s complaint for failing to plead any discriminatory intent on the part of the defendant).

Section 3617 of the Fair Housing Act prohibits “interfer[ing] with any person in the exercise or enjoyment of, or on account of [her] having exercised or enjoyed, . . . any right granted or protected by Section 3603, 3604, 3605, or 3606 of this title.” 42 U.S.C. § 3617. The Seventh Circuit has held that, to succeed on a Section 3617 claim for interference, a plaintiff must only show that “(1) she is a protected individual under the FHA, (2) she was engaged in the exercise or enjoyment of her fair housing rights, (3) the defendants coerced, threatened, intimidated, or interfered with the plaintiff on account of her protected activity under the FHA, and (4) **the defendants were motivated by an intent to discriminate.**” *Bloch v. Frischholz*, 587 F.3d 771, 783 (7th Cir. 2009). (Emphasis added).

Similar to Section 3604(b), the Seventh Circuit has repeatedly held that discriminatory intent is a requirement of Section 3617, and that the plaintiff’s complaint must be dismissed where

she has failed to plead that the defendant's acted with an intent to discriminate. *See Davis v. Fenton*, 2016 U.S. Dist. LEXIS 50145. \*26 (N.D. Ill. 2016) (granting defendant's motion to dismiss where plaintiff failed to allege that the defendant's actions were motivated by prohibited discrimination); *Bloch*, 587 F.3d at 783; *Echemendia v. Gene B. Glick Mgmt. Corp.*, 199 F. App'x 544, 547 (7th Cir. 2006) (“[t]o prevail on a claim of retaliation under § 3617 of the FHA, [the plaintiff] must show both a retaliatory motive and [the defendant's] intent to discriminate on a forbidden ground[.]”); *East-Miller v. Lake Cty. Highway Dep't*, 421 F.3d 558, 563 (7th Cir. 2005) (“[A] showing of intentional discrimination is an essential element of a §3617 claim.”); *Sofarelli v. Pinellas Cty.*, 931 F.2d 718, 722 (11th Cir. 1991) (requiring plaintiffs to show “that race played some role” in the defendants’ actions that allegedly violated §3617).

Illinois courts have looked to the Fair Housing Act in interpreting the Illinois Human Rights Act, and therefore the Plaintiff's Illinois Human Rights Act claims will be subject to the same analysis and case law as the Fair Housing Act claims. *See Norville v. Dep't of Human Rights*, 792 N.E.2d 825, 827 (Ill. App. Ct. 2003).

Here, the Plaintiff does not allege any discriminatory motive or intent to discriminate on the part of the Defendants. In fact, the Plaintiff only alleges that the other residents at the facility were responsible for the alleged harassment, and as is discussed in detail below, the Defendants cannot be liable for the actions of its tenants. The Plaintiff does allude to some acts by the Defendants in her Complaint, including coming to her room to question the Plaintiff about smoking in the facility, and addressing the terms of her lease; however, the Plaintiff never alleges that the actions of the Defendants were the result of intentional discrimination.<sup>1</sup> One would assume that the since the Plaintiff has detailed several instances of discriminatory behavior *by tenants* in her Complaint, she

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<sup>1</sup> The Plaintiff does make one reference to staff members asking if the Plaintiff was gay when she visited the other resident. However, this one comment does not rise to the level of discrimination or harassment required under the Fair Housing Act and Illinois Human Rights Act. *See Dicenso v. Cisneros*, 96 F.3d 1004, 1008-09 (7<sup>th</sup> Cir. 1996).

would have included these same allegations against the Defendants if they existed. However, the Plaintiff's Complaint makes clear that no such intent to discriminate occurred on the part of the Defendants, and therefore the Plaintiff cannot state a claim under the Fair Housing Act or Illinois Human Rights Act.

The Plaintiff tries to work around the discriminatory intent requirement by labeling the Defendants' conduct as "retaliation." However, in order to state a claim for retaliation under the Fair Housing Act and Illinois Human Rights Act, the Plaintiff still must plead a discriminatory intent on the part of the Defendant—a requirement which the Plaintiff has failed to meet. *Bloch*, 587 F.3d at 783; *Echemendia v. Gene B. Glick Mgmt. Corp.*, 199 F. App'x 544, 547 (7th Cir. 2006) (“[t]o prevail on a claim of retaliation under §3617 of the FHA, [the plaintiff] must show *both* a retaliatory motive and [the defendant's] intent to discriminate on a forbidden ground”). Accordingly, because the Plaintiff's Complaint is silent as to any discriminatory motive on the part of the Defendants, the Plaintiff's Complaint must be dismissed as it fails to plead sufficient facts to state a cause of action under the Fair Housing Act or Illinois Human Rights Act.

In addition to the Plaintiff's failure to plead any intentional discrimination by the Defendants as a whole, the Plaintiff has also failed to state any separate intentional discrimination on the part of the individual defendants. Accordingly, the Plaintiff's allegations against the individual defendants are duplicative of those allegations against Glen St. Andrew Living Community, LLC and Glen St. Andrew Health & Home Management, Inc., and therefore those claims should be dismissed as a matter of law.

***B. The Plaintiff's Fair Housing Claims Must Be Dismissed Because The Defendants Cannot Be Liable For Tenant-on-Tenant Harassment.***

Courts around the country have routinely found that a landlord or property management company cannot be liable for a tenant's harassment of another or “tenant-on-tenant” harassment. In

fact, one court in the Seventh Circuit has dismissed the plaintiff's complaint against a landlord, stating that a landlord cannot be liable under the Fair Housing Act as a result of tenant-on-tenant harassment. *See Smith v. Hous. Auth. Of South Bend*, 867 F.Supp.2d 1004, 1013 (N.D. Ind. 2012). Further, a review of the case law from other jurisdictions also shows that tenant-on-tenant harassment will not impose liability on a landlord or property management company. *See Francis v. King Park Manor, Inc.*, 91 F.Supp.3d 420 (E.D. N.Y. 2015); *Ohio Civil Rights Commission v. Akron Metro. Housing Authority*, 119 Ohio St.3d 77 (Ohio 2008) (finding that tenant-on-tenant harassment is not actionable against a landlord. The Court further noted that a landlord's authority to evict a tenant who disturbs another's peaceful enjoyment of their accommodations is insufficient to hold the landlord liable for that tenant's discriminatory behavior).

These same courts have also held that a landlord or property management company's refusal to intervene in tenant-on-tenant harassment will not subject those entities to liability. *Smith*, 867 F.Supp.2d at 1013 (holding that Plaintiff's allegations that landlord refused to intervene in tenant's harassment of the Plaintiff did not provide for a cause of action under the Fair Housing Act); *Francis* 91 F.Supp.3d at 420 (dismissing plaintiff's complaint for failure to state a claim under the Fair Housing Act. The court held that a landlord's failure to intervene in tenant-on-tenant harassment, without more, was insufficient to state a cause of action under the Fair Housing Act); *Lawrence v. Courtyards at Deerwood Association, Inc.*, 318 F.Supp.2d 1133, 1144 (S.D. Fla. 2004) (in dismissing the plaintiff's complaint, the court found that a landlords failure to intervene in a tenant's harassment of another tenant was insufficient to state a claim under the Fair Housing Act).<sup>2</sup>

In finding that a landlord or property management company cannot be liable for failing to intervene in tenant-on-tenant harassment, courts have looked at the well-settled case law requiring

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<sup>2</sup> Illinois courts have looked to the Fair Housing Act in interpreting the Illinois Human Rights Act, and therefore the Plaintiff's Illinois Human Rights Act claims will be subject to the same analysis and case law as the Fair Housing Act claims. *See Norville v. Dep't of Human Rights*, 792 N.E.2d 825, 827 (Ill. App. Ct. 2003).

that the plaintiff specifically plead that the defendant engaged in intentional discrimination in order to state a claim under the Fair Housing Act and Illinois Human Rights Act. *Francis*, 91 F.Supp.3d 420. Specifically, these courts have held that a defendant's not intervening in tenant-on-tenant harassment, without evidence of intentional discrimination, fails to state a claim under the Fair Housing, because if such a claim were allowed to stand it would erase the required element of these claims—intentional discrimination. *Id.*

As discussed in detail above, the factual allegations in Plaintiff's Complaint make clear that the Plaintiff is only complaining about tenant-on-tenant harassment, and nowhere in the Complaint does the Plaintiff allege that the Defendants' conduct was the result of any discriminatory animus. The law is clear that a landlord does not have a duty to intervene in a tenant's harassment of another tenant, and a landlord's failure to intervene will not impose liability on them under the Fair Housing Act or Illinois Human Rights Act. Further, the Fair Housing Act and Illinois Human Rights Act require that the landlord actually create the alleged hostile environment, rather than simply be a bystander to others' harassment, and the Plaintiff has not alleged any independent acts of harassment on the part of the Defendants. Even more importantly, the Plaintiff has not alleged that the Defendants failed to intervene because of any discriminatory intent—rather, the Plaintiff simply seeks to hold the Defendant's liable for their failure to act, a claim which the Seventh Circuit and other courts have repeatedly rejected. Accordingly, the Plaintiff's Complaint—which is solely concerned with harassment by other residents—must be dismissed as a matter of law.

***C. Any Claims Under Section 3604(b) Must Be Dismissed As The Alleged Harassment Occurred Post-Acquisition.***

As stated above, Section 3604(b) makes it unlawful “[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 therewith, because of race, color, religion, sex, familial status,

or national origin.” In post-acquisition cases (where the plaintiff has already leased the property), Section 3604(b) is only applicable where there are allegations of constructive eviction, *Bloch*, 587 F.3d at 779, or discriminatory restrictions imposed by condo boards or homeowners associations, such as “conditions” of sale or rental. *Id.* In order to allege constructive eviction, a plaintiff must allege that his/her “residence is ‘unfit for occupancy,’ often to the point that she is ‘compelled to leave.’” *Id.* at 777

Here, the Plaintiff alleges that she experienced the alleged harassment after she began renting her unit, and therefore any Section 3604(b) claim must be analyzed under the post-acquisition requirements, which the Plaintiff clearly cannot meet. The Plaintiff has not alleged constructive eviction or that her unit was unavailable to her as a result of some discrimination by the Defendants. Accordingly, any claim by the Plaintiff under Section 3604(b) must be dismissed as the Plaintiff cannot state a claim for post-acquisition discrimination.

***D. Glen St. Andrew Living Community Real Estate, LLC Is An Improper Party, And Therefore Must Be Dismissed.***

Defendant Glen St. Andrew Living Community Real Estate, LLC (“GSALC Real Estate, LLC”) must be dismissed because Plaintiff completely fails to assert any factual allegations against GSALC Real Estate, LLC. *See Stevens v. Hollywood Towers & Condo Ass’n*, 836 F.Supp.2d 800 (N.D. Ill. 2011). In Plaintiff’s Complaint, she alleges one single allegation against Defendant GSALC Real Estate, LLC. She alleges only that GSALC Real Estate, LLC owns the land and the building where the subject property is located. *See* Pl. Compl. ¶ 12. GSALC Real Estate, LLC does not lease the property, does not manage the property, and does not employ anyone who leases or manages the property. *See generally* Pl. Compl. ¶ 13-17.

Further, Plaintiff alleges absolutely no involvement, control, connection, association, or participation with any alleged discriminatory behavior by GSALC Real Estate, LLC throughout the

entirety of her Complaint. *See generally* Pl. Compl. As discussed more fully above, where Plaintiff fails to allege any intent to discriminate, the claims must be dismissed under Rule 12(b)(6). *Edwards*, 2011 U.S. Dist. LEXIS at \*12; *Davis*, 2016 U.S. Dist. LEXIS at \*26. Not only does Plaintiff fail to allege intent here, she wholly negates to allege anything against GSALC Real Estate, LLC besides the fact that they own the land and building. Plaintiff's Complaint is completely devoid of any allegations demonstrating that GSALC Real Estate, LLC denied her equal housing opportunities or created a hostile housing environment, as alleged against the other Defendants. What is more, Plaintiff does not submit any factual allegations that other Defendants were acting as agents for GSALC Real Estate, LLC. There are absolutely no allegations pertaining to any alleged discriminatory behavior on the part of GSALC Real Estate, LLC, and therefore GSALC Real Estate, LLC must be dismissed from this lawsuit.

### CONCLUSION

WHEREFORE, Defendants Glen St. Andrew Living Community, LLC; Glenn St. Andrew Living Community Real Estate, LLC; Glen St. Andrew Health & Home Management, Inc.; Alyssa Flavin; Carolyn Driscoll; and Sandra Cubas respectfully request that this Honorable Court enter an order dismissing Plaintiff's Complaint in its entirety with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and for such further relief as this Court deems just and proper.

Dated: August 22, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2016, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record:

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**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1  
Eastern Division**

Marsha Wetzel

Plaintiff,

v.

Case No.: 1:16-cv-07598

Honorable Samuel  
Der-Yeghiayan

Glen St. Andrew Living Community, LLC,  
et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, August 31, 2016:

MINUTE entry before the Honorable Samuel Der-Yeghiayan: Motion hearing held. Defendants' motion to dismiss [15] is entered and continued. Plaintiff's response shall be filed by 10/04/16 and Defendants' reply shall be filed by 10/18/16. Initial status hearing set for 01/19/17 at 9:00 a.m. Mailed notice (mw, )

**ATTENTION:** This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

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

MARSHA WETZEL, )  
)  
Plaintiff, )  
v. )  
) Case No. 1:16-cv-07598  
GLEN ST. ANDREW LIVING )  
COMMUNITY, LLC; GLEN ST. ANDREW ) Hon. Samuel Der-Yeghiayan  
LIVING COMMUNITY REAL ESTATE, )  
LLC; GLEN HEALTH & HOME )  
MANAGEMENT, INC.; ALYSSA FLAVIN; )  
CAROLYN DRISCOLL; and SANDRA )  
CUBAS, )  
)  
Defendants. )

**PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS**

Plaintiff Marsha Wetzel filed this action seeking redress for the hostile housing environment to which she has been subjected because of her sex and sexual orientation over the course of more than fifteen months while living at Glen St. Andrew Living Community. Defendants seemingly have no quarrel with the straightforward proposition that the Complaint alleges severe and pervasive harassment because of her sex and sexual orientation in violation of the Fair Housing Act (“FHA”), 42 U.S.C., § 3601 et seq., and the Illinois Human Rights Act (“IHRA”), 775 Ill. Comp. Stat. 5/3-101 et seq. Defendants also do not challenge the fact that Marsha has alleged their knowledge of and failure to address the severe and pervasive harassment she has experienced and their retaliation against her for seeking to enforce her right to be free from harassment. Instead, Defendants argue only that a complaint is per se not viable if it (a) is based on “incidents of tenant-on-tenant harassment;” (b) does not allege “discriminatory intent on the part of the Defendants;” or (c) invokes Section 3604(b) and is based on “post-acquisition harassment.” Defendants’ Motion to Dismiss (ECF 15) at 3. These arguments wholly

disregard the prevailing jurisprudence regarding hostile housing environment claims, under which Defendants may clearly be held liable for post-acquisition conduct, including tenant-on-tenant harassment, without specific allegations of Defendants' discriminatory animus. Defendant Glen St. Andrew Living Community Real Estate, LLC also raises the meritless argument that it is "an improper defendant." *Id.* Defendants' Motion to Dismiss should be denied.

### **ALLEGATIONS IN THE COMPLAINT**

Marsha Wetzel is a 69-year-old woman who lives at Glen St. Andrew Living Community ("GSALC") in Niles, Illinois. Compl. ¶¶ 2, 11, 20. Marsha is a lesbian, and she moved to GSALC in November 2014 after the death of her partner of thirty years, Judy, with whom she raised a child. *Id.* ¶¶ 3, 11, 21-25. Over the course of more than fifteen months, Marsha was subjected to a severe and pervasive pattern of discrimination, harassment, threats, and intimidation because of her sex and sexual orientation by other residents of GSALC. *Id.* ¶¶ 4-6, 28-36, 43-44, 47-52, 57-59, 61-64. She has been called countless profanities, subjected to sexist and homophobic slurs, told that she looks like a man and that she would never want a woman again if she ever had a sexual relationship with a man, taunted about her relationship with Judy and their son, spit on, threatened with bodily harm, intimidated, and repeatedly assaulted. *Id.* ¶¶ 4, 28, 30, 32-36, 43-45, 47, 50, 52, 57-59, 61. These incidents have created a hostile housing environment that has caused Marsha tremendous fear, anxiety, and emotional distress and have unreasonably interfered with her use and enjoyment of her home, all because Marsha is a woman who had a committed relationship and created a family with another woman and because she is a lesbian. *Id.* ¶¶ 4, 6, 11, 47, 51, 55, 57, 59, 62-67.

Marsha repeatedly complained about the sex- and sexual orientation-based harassment she experienced to the staff and administration of GSALC, including to Defendants Flavin,

Driscoll, and Cubas. *Id.* ¶¶ 5, 29, 31-32, 37, 39, 41-43, 45, 52, 56, 60. Witnesses to some of the incidents, including GSALC staff and other residents, also reported the incidents to the administration. *Id.* ¶¶ 30-31, 52-53, 56, 61. Yet Defendants have failed to take any meaningful action to put a stop to the harassment and discrimination Marsha has experienced despite having the authority and obligation to do so. On the contrary, Defendants have ratified and condoned the abuse, actively discouraged Marsha from taking steps to address it, marginalized and penalized her, and retaliated against her for complaining to them about the discriminatory harassment she has faced by limiting her access to GSALC facilities and resources and by threatening and attempting to kick her out of GSALC. *Id.* ¶¶ 5-6, 11, 29, 31-32, 37-43, 45-46, 48, 51-56, 60-72. In so doing, they have deprived her of equal housing opportunity.

### **ARGUMENT**

Defendants' Motion to Dismiss is a futile attempt to avoid judicial review of the unlawful hostile housing environment they have allowed to permeate the senior living community they own and run and of their retaliation against Marsha for complaining about this unlawful discrimination. A well-established body of law applies both the FHA and IHRA's prohibitions of housing discrimination to situations in which harassment on a discriminatory basis is so severe and pervasive as to create a hostile housing environment that interferes with a resident's equal housing opportunity. *See, e.g., DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996) (creating a hostile housing environment can violate the FHA, whether under 42 U.S.C. § 3604(b) or § 3617); *Szkoda v. Ill. Human Rights Comm'n*, 706 N.E.2d 962, 968-69 (Ill. App. Ct. 1998) (addressing hostile housing environment claims under both FHA (§ 3604) and the IHRA (§ 3-102(B))).<sup>1</sup> Hostile housing environment claims have proceeded under both § 3604(b) and § 3617

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<sup>1</sup> Illinois courts look to the FHA in interpreting the IHRA, so courts generally consider claims under the IHRA to be subject to the same analysis as FHA claims. *See Stevens v. Hollywood Towers & Condo*.

in recognition that a severe and pervasive pattern of harassment may constitute both discrimination “in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith,” § 3604(b), and “coerc[ion], intimidat[ion], threat[s], or interference with” a person’s exercise or enjoyment of her equal housing rights, § 3617. *See, e.g., Bloch v. Frischholz*, 587 F.3d 771, 779, 783 (7th Cir. 2009) (citing *DiCenso*; *Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993)); *Nguyen v. Patek*, No. 14-C-1503, 2014 WL 5293425 (N.D. Ill. Oct. 16, 2014) (allegations of persistent course of racially-motivated harassment by neighbors sufficient to plead FHA claims under §§ 3604(b) and 3617).

Marsha’s Complaint plainly sets forth a hostile housing environment claim, alleging that (1) Marsha is a member of a protected class (woman, lesbian), ¶¶ 3, 11, 21, 64-65; (2) she has been subjected to unwelcome harassment, ¶¶ 4, 64; (3) the harassment was based on her sex and sexual orientation, ¶¶ 4, 11, 65-67; (4) the harassment was sufficiently severe or pervasive to deprive her of her right to enjoy her home, ¶¶ 6, 64-67; and (5) Defendants knew or should have known of the harassment in question and failed to take prompt remedial action, ¶¶ 68-72. *See Krieman v. Crystal Lake Apartments Ltd. P’ship*, No. 05-C-0348, 2006 WL 1519320, at \*11 (N.D. Ill. May 31, 2006); *Chesler v. Conroy*, No. 08-C-2679, 2008 WL 4543031, at \*3 (N.D. Ill. Oct. 8, 2008). As well, in alleging that Defendants marginalized, alienated, penalized, and took adverse actions against Marsha in response to her complaints about the harassment she was experiencing because of her sex and sexual orientation, Compl. at ¶¶ 5, 11, 32, 37-43, 53-55, 60, 68-69, Marsha has stated claims of unlawful retaliation under the FHA and IHRA. *See, e.g., Mehta v. Beaconridge Improvement Ass’n*, 432 Fed. App’x 614, 617 (7th Cir. 2011); *Gorski Ass’n*, 836 F. Supp. 2d 800, 808 (N.D. Ill. 2011) (citing *Norville v. Dep’t of Human Rights*, 792 N.E.2d 825 (Ill. App. Ct. 2003)); *see also generally Rozsavolgyi v. City of Aurora*, --- N.E.3d ---, 2016 Ill. App. 2d 150493, *reh’g denied* (July 6, 2016) (prohibition of discrimination in “terms, conditions, or privileges” encompasses hostile environment harassment based on any enumerated characteristic); *but see Martinez v. Nw. Univ.*, No. 14-C-2180, 2016 WL 1213913 (N.D. Ill. Mar. 29, 2016).

*v. Troy*, 929 F.2d 1183, 1189-90 (7th Cir. 1991). These allegations more than meet the requirement of “stat[ing] a claim for relief that is plausible on its face.” *Huri v. Office of the Chief Judge of the Circuit Court of Cook Cty.*, 804 F.3d 826, 832-33 (7th Cir. 2015).

Defendants seek to import requirements for stating hostile housing environment and retaliation claims—including those related to intent, post-acquisition claims, and vicarious liability—that do not exist, have been squarely rejected, or ignore longstanding principles of civil rights law. This Court should reject Defendants’ attempt to shirk their liability, whether direct or vicarious, for failing to address the harassment and discrimination they tolerated and ratified at GSALC and for retaliating against Marsha when she sought to put an end to the abuse. Specifically, the Court should reject Defendants’ arguments that any housing discrimination complaint must be dismissed if it (1) turns on tenant-on-tenant harassment; (2) does not allege discriminatory intent on the part of Defendants; or (3) invokes Section 3604(b) and is based on post-acquisition harassment or discrimination. The Motion should be denied.

I. **THE FHA IMPOSES LIABILITY ON HOUSING PROVIDERS FOR THE HOSTILE HOUSING ENVIRONMENT CREATED BY HARASSMENT BY OTHER TENANTS.**

Contrary to Defendants’ gross misstatement of the jurisprudence across the country, the vast majority of courts have held that landlords and property owners may be held directly and vicariously liable for hostile housing environment discrimination as a result of harassment by other tenants. *See, e.g., Krieman*, 2006 WL 1519320, at \*11-12; *Scialabba v. Sierra Blanca Condo. No. One Ass’n*, No. 00-C-5344, 2001 WL 803676, at \*6 (N.D. Ill. July 16, 2001); *Wilstein v. San Tropai Master Ass’n*, No. 98-C-6211, 1999 WL 262145, at \*11 (N.D. Ill. Apr. 22, 1999). Applying longstanding civil rights and tort principles, courts have regularly allowed complaints regarding tenant-on-tenant harassment to proceed against housing providers like Defendants when those defendants knew or should have known about the discriminatory conduct

and failed to stop it. *See, e.g., Scialabba*, 2001 WL 803676, at \*6 (housing provider must have knowledge of harassment for hostile housing environment claim to proceed against it); *Wilstein*, 1999 WL 262145, at \*11 (allowing hostile housing environment claim against condo association that was aware that “other residents of the complex, repeatedly and systematically harassed, insulted and otherwise tormented him at his place of residence.”); *Neudecker v. Boisclair*, 351 F.3d 361, 365 (8th Cir. 2003) (FHA violated where tenants harassed and threatened plaintiff because of disability and management ignored complaints); *Hicks v. Makaha Valley Plantation Homeowners Ass’n*, Civ. No. 14-00254, 2015 WL 4041531 (D. Haw. Jun. 30, 2015) (hostile environment claim stated by allegations that residents engaged in racial harassment and management company knew and failed to remedy); *Fahnbulleh v. GFZ Realty, LLC*, 795 F. Supp. 2d 360 (D. Md. 2011) (landlord liable for hostile environment created by tenant’s sexual harassment where “landlord knew or should have known of the harassment and took no effectual action to correct the situation” (quotation omitted)); *Martinez v. Cal. Investors XII*, No. CV 05-7608-JTL, 2007 WL 8435675 (C.D. Cal. Dec. 12, 2007) (allowing claim against management company that ratified racial harassment by other tenants); *U.S. v. Applewood of Cross Plains, LLC*, No. 3:16-cv-00037-jdp, Consent Decree (W.D. Wis. Jan. 20, 2016) (settling claim that apartment complex, its owner, and its manager discriminated against tenants “by failing to fulfill their duty to take prompt action to correct and end the disability-related harassment of [tenants] by other tenants”).

This understanding of landlord liability is reflected in the regulations on hostile environment harassment recently issued by the Department of Housing and Urban Development (“HUD”). *See* HUD, *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act*, 81 FR 63054 (Aug. 18, 2016)

(“HUD Final Rule”).<sup>2</sup> This rule adds § 100.7 to 24 CFR part 100, stating that a person is directly liable for “[f]ailing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it.” *Id.* HUD explains that this provision reflects well-established standards in civil rights and tort laws:

A housing provider’s obligation to take prompt action to correct and end a discriminatory housing practice by a third party derives from the Fair Housing Act itself, and its liability for not correcting the discriminatory conduct of which it knew or should have known depends upon the extent of the housing provider’s control or any other legal responsibility the provider may have with respect to the conduct of such third-party.

81 FR at 63067.

The cases cited by Defendants do not undermine the viability of FHA claims against housing providers for tenant-on-tenant harassment. First, Defendants’ reliance on *Smith v. Hous. Auth. of South Bend*, 867 F. Supp. 2d 1004 (N.D. 2012), is misplaced. The court in *Smith* did *not* explicitly state that the FHA does not apply to tenant-on-tenant harassment. Rather, the court rejected a poorly pleaded bullying claim that the plaintiffs did not specifically link to any of the listed causes of action. *Id.* at 1013. Second, *Ohio Civil Rights Comm’n v. Akron Metro. Hous. Auth.*, 892 N.E.2d 415 (Ohio 2008), did not involve claims under the FHA, but under Ohio’s discriminatory practices law, Ohio Rev. Code Ann. § 4112.02 (H)(4). Further, that case rejects applying Title VII hostile environment principles that this Circuit has already stated apply to FHA claims. *Compare Ohio Civil Rights Comm’n*, 892 N.E.2d at 419-20 with *DiCenso*, 96 F.3d at 1008. Defendants sole support for their position then rests on *Francis v. King Park Manor, Inc.*, 91 F. Supp. 3d 420 (E.D.N.Y. 2015), a decision that is a complete outlier from the core

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<sup>2</sup> As the agency charged with administering the FHA, 42 U.S.C. § 3608(a), HUD’s interpretation of landlord liability for tenant-on-tenant harassment under the FHA is entitled to deference under *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844-45 (1984).

body of case law on this issue and is now on appeal to the Second Circuit, Docket No. 15-1823 (2d Cir., filed Jun. 4, 2015). *See* HUD Final Rule, 81 FR 63068-69.

Holding landlords liable for tenant-on-tenant harassment is consistent with the underlying purpose of the FHA. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982) (Congress intended FHA to be broadly remedial); *United States v. Sabbia*, No. 10-C-5967, 2011 WL 1900055, at \*6 (N.D. Ill. May 19, 2011) (“The Seventh Circuit has indicated that the courts ‘must hold those who benefit from the sale and rental of property to the public to the specific mandates of anti-discrimination law if the goal of equal housing opportunity is to be reached.’”) (quoting *City of Chicago v. Matchmaker Real Estate Sales Ctr., Inc.*, 982 F.2d 1086, 1097 (7th Cir. 1992)).

**II. PLAINTIFF IS NOT REQUIRED TO SPECIFICALLY ALLEGE DEFENDANTS’ DISCRIMINATORY INTENT.**

To state claims for hostile housing environment discrimination and retaliation, Marsha does not need to allege specific ill intent on the part of Defendants. *See Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2518-19 (2015) (intent not a pre-requisite for FHA claim). She needs only to contend that (1) Defendants knew of the harassment and they ratified and endorsed it rather than exercising their authority to address it, and (2) they took adverse actions in response to her complaints about the unlawful discriminatory harassment. *See* Part I, *supra*; *Mehta*, 432 Fed. Appx. at 617 (retaliation alleged where defendants took adverse action in response to plaintiff’s complaint of unlawful discriminatory actions). In *Inclusive Communities*, the Supreme Court rejected the notion that a violation of the FHA requires a showing of discriminatory intent. 135 S. Ct. at 2518-19. The Court addressed the argument that the FHA’s use of the phrase “because of” requires a showing that the protected characteristic was the reason for an action, and concluded that, in light of its

results-oriented language, the FHA allows consideration of the “consequences of actions and not just to the mindset of actors” where such an interpretation is consistent with statutory purpose. *Id.* at 2518.

**A. A Hostile Housing Environment Claim Does Not Require Specific Allegations Of Defendants’ Discriminatory Intent.**

Under tort principles applicable to FHA claims, *Meyer v. Holley*, 537 U.S. 280, 282 (2003), a housing provider’s negligence in failing to address a discriminatory housing environment within its control is a sufficient basis for liability. *See, e.g., Hicks*, 2015 WL 4041531, at \*11. No additional showing of animus is required. *See Martinez*, 2007 WL 8435675, at \*5-\*7 (defendants’ ratification of a pattern of racially-based harassment and intimidation caused by a co-tenant stated claims under §§ 3604(b) and 3617); *cf. Sabbia*, 2011 WL 1900055, at \*4 (allowing claim against real estate agent to proceed, despite lack of alleged personal animus, because liability could attach for knowingly assisting others in unlawful discriminatory conduct; citing *Moore v. Townsend*, 525 F.2d 482, 485 (7th Cir. 1975)). As HUD stated plainly in its Final Rule, a housing provider’s liability arises under a negligence standard, “which does not require proof of discriminatory intent or animus on the part of the provider.” 81 FR at 63068-69.

Applying analogous case law under Title VII, courts in this Circuit and across the country have held that an employer may similarly be held liable for failing to address harassment caused by non-employees, customers, or other third parties. *See, e.g., Fulmore v. Home Depot, U.S.A., Inc.*, No. 1:03-CV-0797-DFH-VSS, 2006 WL 839459, at \*15 (S.D. Ind. Mar. 30, 2006) (“[U]nder circumstances in which an employer ratifies or otherwise condones a customer’s racist conduct, such as by requiring an employee to continue serving such a customer despite continued harassment, there can be a basis for employer liability.”); *Galdamez v. Potter*, 415 F.3d 1015,

1022 (9th Cir. 2005); *Turnbull v. Topeka State Hospital*, 255 F.3d 1238, 1244 (10th Cir. 2001); *Crist v. Focus Homes, Inc.*, 122 F.3d 1107, 1111 (8th Cir. 1997); *Mutua v. Texas Roadhouse Mgmt. Corp.*, 753 F. Supp. 2d 954, 962 (D.S.D. 2010); *Rosenbloom v. Senior Res., Inc.*, 974 F. Supp. 738, 743-44 (D. Minn.1997). As the Seventh Circuit has noted, “The employer’s responsibility is to provide its employees with nondiscriminatory working conditions. The genesis of inequality matters not; what *does* matter is how the employer handles the problem.” *Dunn v. Washington Cty. Hosp.*, 429 F.3d 689, 691 (7th Cir. 2005) (emphasis in original).

So, too, in the housing context. A housing provider’s obligation is to provide its residents with non-discriminatory living conditions. This includes fulfilling their obligation to act to address complaints from tenants about other tenants. *See Tyrrell v. Manly*, No. 11-C-8207, 2012 WL 3765188, at \*4 (N.D. Ill. Aug. 29, 2012). A complaint alleging that a housing provider has failed to address a discriminatory hostile housing environment of which it has been made aware and over which it exercises control therefore states a claim under the FHA.

**B. A Retaliation Claim Does Not Require Specific Allegations of Defendants’ Discriminatory Intent.**

Defendants’ arguments concerning Marsha’s retaliation claim are similarly meritless. Retaliation for a tenant’s complaints about discriminatory harassment is prohibited by the FHA, 42 U.S.C. § 3617, and the IHRA, 775 Ill. Comp. Stat. 5/3-105.<sup>3</sup> Regulations adopted by HUD confirm that § 3617 prohibits retaliating against any person because that person has made a

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<sup>3</sup> This section of the FHA states:

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

42 U.S.C. § 3617. Section 3-105.1 of the IHRA is nearly identical.

complaint under the FHA, 24 C.F.R. § 100.400(c)(5), or against any person who has reported a discriminatory housing practice to a housing provider. *See* 81 FR 63075 (adding 24 C.F.R. § 100.400(c)(6)). This retaliation prohibition applies to adverse actions taken by housing providers in response to complaints about harassment by other tenants. *See Neudecker*, 351 F.3d at 363–64 (tenant alleged a retaliation claim under § 3617 by asserting that landlord threatened to evict him in response to his complaints about other tenants’ disability-related harassment).

In order to state a claim for retaliation under this section, a complaint merely needs to state that defendants took adverse action in response to a plaintiffs’ complaint of unlawful discriminatory actions. *See, e.g., Mehta*, 432 Fed. App’x at 617 (allegation that defendants restricted access to facilities, designated account as delinquent, and sought to hold plaintiffs financially responsible for unnecessary work in response to plaintiffs’ complaints about unlawful discrimination stated viable retaliation claim); *Gorski*, 929 F.2d at 1189-90 (allegations that couple was evicted after challenging landlord’s discriminatory policy stated retaliation claim under § 3617); *Wilstein*, 1999 WL 262145, at \*9 (allegations that condo association and officers took adverse actions in response to plaintiff’s assertion of rights under the FHA sufficient to state a claim under § 3617). No further demonstration of animus is required.

Defendants’ arguments about Marsha’s alleged failure to address discriminatory intent miss the mark. Even assuming specific intent allegations may be required under § 3617, *see Inclusive Communities, supra*, the cases Defendants cite regarding intent are inapplicable because those cases considered § 3617 claims separate and apart from claims arising under other provisions of the FHA. *See* Motion at 5-6 (citing *Echemendia v. Gene B. Glick Mgmt. Corp.*, 199 Fed. App’x 544 (7th Cir. 2006); *East-Miller v. Lake Cty. Hwy. Dep’t*, 421 F.3d 558 (7th Cir. 2005); *Davis v. Fenton*, No. 13-C-3224, 2013 WL 1529899 (N.D. Ill. 2016)). Here, the

retaliation claims are inextricably linked to the underlying hostile housing environment claims, as Defendants' retaliatory adverse actions were part and parcel of their failure to respond to Marsha's complaints of harassment and their ratification of the other tenants' discrimination. Therefore, just as Marsha stated a claim that Defendants' conduct constituted illegal discrimination under a hostile environment theory, so too did she state a claim for unlawful retaliation. *See Grubbs v. Hous. Auth. of Joliet*, No. 91-C-6454, 1997 WL 281297, at \*26 (N.D. Ill. May 20, 1997) (when same conduct by the same party allegedly violated both § 3617 and § 3604, validity of the § 3617 claim turns on whether the conduct violated § 3604) (citing *South Suburban Housing Center v. Greater South Suburban Bd. of Realtors*, 935 F.2d 868, 886 (7th Cir.1991)). Defendants' endorsement and condonation of the residents' animus fulfills any intent requirement. Furthermore, in *Krieman*, 2006 WL 1519320, at \*11, the court noted that the requirements for a retaliation claim under § 3617—that a plaintiff show that she engaged in activity protected by the FHA, that Defendants took adverse action against her, and that a causal connection exists between the housing complaint and the adverse action—parallel the elements of the *East-Miller* test for interference with enjoyment of FHA rights. Under this test, Marsha has met the requirements for a retaliation claim.

**III. HOSTILE HOUSING ENVIRONMENT CLAIMS ARE PERMISSIBLE POST-ACQUISITION CLAIMS UNDER THE FHA.**

Defendants' suggestion that hostile housing environment claims cannot proceed because the harassment arose after the property has been leased misstates the Circuit case law on post-acquisition claims. Motion at 8-9. In *Bloch*, 587 F.3d at 772, 782, the court conclusively rejected the narrow application of the FHA solely to pre-acquisition claims set forth in *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327 (7th Cir. 2004). Other courts in this Circuit have expressly recognized this. *See, e.g., Luis v. Smith Partners & Assocs., LTD*, No. 12-

C-2922, 2012 WL 5077726, at \*2 (N.D. Ill. Oct. 18, 2012) (“The Act governs conduct regardless of whether it occurs before or after a tenant or owner has acquired a property interest in a dwelling.”); *Davis v. Wells Fargo Bank*, 685 F. Supp. 2d 838, 845 (N.D. Ill. 2010), *aff’d sub nom. Estate of Davis v. Wells Fargo Bank*, 633 F.3d 529 (7th Cir. 2011); *Edwards v. Lake Terrace Condominium Board*, No. 1:10-cv-2986, 2011 WL 1548023 (N.D. Ill. Apr. 21 2011).

The HUD Final Rule rejects Defendants’ argument as well, stating, “the Act and HUD’s regulations, including this final rule, make clear that the Act prohibits discrimination that occurs while a person resides in a dwelling, and courts have repeatedly interpreted the Act similarly.” 81 FR at 63059. The HUD Final Rule pointed to “language covering the maintenance of housing, the continued use of privileges, services, or facilities associated with housing, and the ‘exercise or enjoyment’ of housing” in both prior regulations and these new regulations as “indicat[ing] circumstances in which residents—as opposed to just applicants—benefit from the Act’s protections throughout their residency.” *Id.*

Furthermore, alleging harassment that is sufficiently severe and pervasive to state a claim of hostile housing environment is akin to a constructive eviction claim, and falls within the post-acquisition claims the Seventh Circuit has explicitly allowed under even the most restrictive view of the FHA. *See Halprin*, 388 F.3d at 329, 330 (citing *DiCenso* as form of constructive discharge claim; recognizing viable claim for “*pattern* of harassment, invidiously motivated, and, . . . backed by the homeowners’ association” making it “a matter of the neighbors’ ganging up on them . . . far from a simple quarrel between two neighbors or the isolated act of harassment”) (emphasis in original).

Accordingly, Defendants’ arguments lack merit and their Motion should be denied.

**IV. GLEN ST. ANDREW LIVING COMMUNITY REAL ESTATE, LLC IS A PROPER DEFENDANT.**

The Complaint's allegations regarding Glen St. Andrew Living Community Real Estate, LLC (GSALC Real Estate, LLC) are sufficient to state a claim upon which relief can be granted. Contrary to Defendants' characterization, Motion at 9-10, the Complaint alleges that GSALC Real Estate LLC owns the land and building where Marsha lives, Compl. ¶ 12, that an agency relationship exists between all three corporate Defendants and the three individual Defendants, *Id.* ¶¶ 15-17, and that all corporate Defendants are parties to the Tenant's Agreement with Marsha. *Id.* ¶ 26. These allegations plainly assert GSALC Real Estate, LLC's vicarious liability for the hostile housing environment created and maintained by its agents and for their illegal retaliation against Marsha for complaining about the sex- and sexual orientation-based harassment she was experiencing. Applying ordinary tort principles, the FHA "imposes liability without fault upon the employer in accordance with traditional agency principles, i.e., it normally imposes vicarious liability upon the corporation." *Meyer*, 537 U.S. at 282.

Even if Defendants were correct that the only allegation against GSALC Real Estate LLC was that it owns the land and building, Motion at 9-10, that allegation would be sufficient for stating a claim of vicarious liability under the Fair Housing Act. *See Uhler v. Beach Park, LLC*, No. 1:06-cv-03473, 2006 U.S. Dist. LEXIS 94308 (N.D. Ill. Dec. 20, 2006) (complaint alleging corporation's ownership of the housing facility sufficient to survive a motion to dismiss).

**CONCLUSION**

For the foregoing reasons, the Court should deny the Defendants Motion to Dismiss.

Dated: October 4, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of October, 2016, I electronically filed the foregoing document with the Clerk of Court by means of the CM/ECF system, which will send notification of this filing to all counsel of record:

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

MARSHA WETZEL, )  
)  
Plaintiff, ) Case No. 16-cv-07598  
)  
v. ) Honorable Judge Samuel Der-Yeghiayan  
)  
GLEN ST. ANDREW LIVING )  
COMMUNITY, LLC; GLEN ST. )  
ANDREW LIVING COMMUNITY )  
REAL ESTATE, LLC; GLEN )  
HEALTH & HOME MANAGEMENT, )  
INC.; ALYSSA FLAVIN; CAROLYN )  
DRISCOLL; and SANDRA CUBAS, )  
)  
Defendants. )

**DEFENDANTS' REPLY IN SUPPORT OF ITS MOTION TO DISMISS**

Defendants, Glen St. Andrew Living Community, LLC; Glenn St. Andrew Living Community Real Estate, LLC; Glen St. Andrew Health & Home Management, Inc.; Alyssa Flavin; Carolyn Driscoll; and Sandra Cubas, by and through their attorneys, Gordon & Rees LLP, presents its Reply in Support of Its Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In support, Defendants state as follows:

**I. ARGUMENT**

***A. The Plaintiff's Fair Housing Claims Must Be Dismissed As The Plaintiff Has Failed To Plead Any Intentional Discrimination On The Part Of The Defendants.***

Plaintiff attempts to avoid the requirement of pleading intent on the part of the Defendants by arguing that she is pleading a hostile housing environment claim, and therefore intent is not required. However, the Plaintiff's argument ignores the well-settled case law addressing Section 3604(b) and Section 3617, that intent is an essential element of these claims. *See Edwards v. Lake Terrace Condo. Ass'n*, 2011 U.S. Dist. LEXIS 43304, \*12 (N.D. Ill. 2011) (dismissing plaintiff's

complaint for failing to plead any discriminatory intent on the part of the defendant); *See Davis v. Fenton*, 2016 U.S. Dist. LEXIS 50145 \*26 (N.D. Ill. 2016) (granting defendant's motion to dismiss where plaintiff failed to allege that the defendant's actions were motivated by prohibited discrimination)

Despite the Plaintiff providing a laundry list of cases discussing hostile housing environment claims, none of the cases relied upon by Plaintiff stand for the proposition that intent is not a required element to prove the claim, and all of those cases involved specific allegations of direct discrimination on the part of the landlord. The fact that direct discrimination by the landlord is alleged in each of those cases is significant because, as a result of the direct discrimination allegations, each of the complaints allege an intent to discriminate by the defendants, and therefore intent is not an issue in the hostile housing environment claims. None of the cases cited by Plaintiff address the issue presented in the instant case—a Plaintiff trying to hold a landlord liable for acts of its tenants, with absolutely no allegations of intentional discrimination by the landlord. Even more problematic for the Plaintiff is that some of the cases relied upon by Plaintiff actually infer that intent on the part of the landlord *is required* to state a claim for hostile housing environment. *See Martinez v. Cal. Investors XII*, (C.D. Cal. December 12, 2007) (citing *Lawrence v. Courtyards at Deerwood Association, Inc.*, 318 F.Supp.2d 1133, 1144 (S.D. Fla. 2004), which requires intent for a hostile housing environment claim, in analyzing its own hostile housing environment claim). Each of the cases cited by the Plaintiff are readily distinguishable from the case at hand, and most do not stand for the proposition that Plaintiff states:

- *Krieman v. Crystal Lake Apartments Ltd. Partnership*, (N.D. Ill. May 31, 2006) (hostile housing environment was brought as a result of property manager making harassing comments to plaintiff. No tenant-on-tenant harassment was alleged).
- *Scialabba v. Sierra Blanca Condo. No. One Ass'n*, (N.D. Ill. July 16, 2011 ) (specifically noted that conduct of other residents and defendants' inaction does not violate Section 3617).

Further, there were allegations of direct discrimination, including harassment, by the landlord, creating the presumption that intent was already established).

- *Wilstein v. San Tropei Master Ass'n*, (N.D. Ill. April, 22, 1999) (specifically alleged that residents, who were members of the condo association, were acting behalf of the condo association in making harassing comments. Clearly, intent was alleged in this complaint).
- *Neudeck v. Boisclair*, 351 F.3d 865 (8<sup>th</sup> Cir. 2003) (harassment was by children of the property management team. Further, issue of intent was never addressed, and there were allegations of direct discrimination and harassment by the landlord and property managers).
- *Hicks v. Makaha Valley Plantation Homeowners Ass'n*, (D. Haw. June 30, 2015) (Intent was alleged as there were allegations of direct discrimination on the part of the landlord. Further the hostile housing environment claim was support by allegations that employees of the landlord (the gardener) performed actions that contributed to the hostile housing environment).
- *Fahnbulleh v. GFZ Realty, LLC*, 795 F.Supp.2d 360 (D. Md. 2011) (court specifically stated that it was only deciding that tenant-on-tenant harassment could be actionable, but it would not address what needed to pled to state a cause of action).

Intent is a required element to prove discrimination under Section 3604(b) and Section 3617, and any argument to the contrary is in direct contradiction to the well-settled case law. *See Edwards*, 2011 U.S. Dist. LEXIS at \*12 (dismissing plaintiff's complaint for failing to plead any discriminatory intent on the part of the defendant); *See Davis*, 2016 U.S. Dist. at \*26 (granting defendant's motion to dismiss where plaintiff failed to allege that the defendant's actions were motivated by prohibited discrimination); *Bloch*, 587 F.3d at 783; *Echemendia v. Gene B. Glick Mgmt. Corp.*, 199 F. App'x 544, 547 (7th Cir. 2006) (“[t]o prevail on a claim of retaliation under § 3617 of the FHA, [the plaintiff] must show *both* a retaliatory motive and [the defendant's] intent to discriminate on a forbidden ground[.]”); *East-Miller v. Lake Cty. Highway Dep't*, 421 F.3d 558, 563 (7th Cir. 2005) (“[A] showing of intentional discrimination is an essential element of a §3617 claim”); *Sofarelli v. Pinellas Cty.*, 931 F.2d 718, 722 (11th Cir. 1991) (requiring plaintiffs to show “that race played some role” in the defendants’ actions that allegedly violated §3617).

Recognizing that intent is a required element of a Section 3604(b) claim and Section 3617 claim, all courts that have addressed a hostile housing environment claim—supported only by allegations of tenant-on-tenant harassment—have either held that a separate cause of action does not exist or that intent is a required element of this claim. The courts have reasoned that to allow for a hostile housing environment claim to stand, without intent, would be in direct contradiction to the congressional intent in Section 3604(b) and Section 3617, and the well-settled case law requiring intent to be pled. *See Smith v. Hous. Auth. Of South Bend*, 867 F.Supp.2d 1004, 1013 (N.D. Ind. 2012) (refusing to recognize a separate cause of action for tenant-on-tenant harassment); *See Francis v. King Park Manor, Inc.*, 91 F.Supp.3d 420 (E.D. N.Y. 2015) (dismissing plaintiff's complaint for failure to state a claim under the Fair Housing Act. The court held that a landlord's failure to intervene in tenant-on-tenant harassment, without more, was insufficient to state a cause of action under the Fair Housing Act); *Ohio Civil Rights Commission v. Akron Metro. Housing Authority*, 119 Ohio St.3d 77 (Ohio 2008) (finding that tenant-on-tenant harassment is not actionable against a landlord. The Court further noted that a landlord's authority to evict a tenant who disturbs another's peaceful enjoyment of their accommodations is insufficient to hold the landlord liable for that tenant's discriminatory behavior); *Lawrence v. Courtyards at Deerwood Association, Inc.*, 318 F.Supp.2d 1133, 1144 (S.D. Fla. 2004) (in dismissing the plaintiff's complaint, the court found that a landlords failure to intervene in a tenant's harassment of another tenant was insufficient to state a claim under the Fair Housing Act).

The case law is clear that intent is required to state a claim under Section 3604(b) and Section 3617, and to hold to the contrary would be against the well-settled case law in this Circuit and in others. Although the issue of hostile housing environment claims involving *only* tenant-on-tenant harassment, with no direct discrimination claims against the defendants, has not been widely

addressed in this Circuit or in others, those courts that have addressed this issue have uniformly found that intent is a required element of these claims, or that something more than mere tenant-on-tenant harassment is required. Accordingly, because the Plaintiff's Complaint fails to plead any discriminatory motive on the part of the Defendants, and the Plaintiff's response makes clear that she is seeking to hold Defendants liable solely for their inaction in tenant-on-tenant harassment, a claim that was rejected by a court in this Circuit, *Smith v. Hous. Auth. Of South Bend*, Plaintiff's Complaint must be dismissed in its entirety.

***B. Department of Housing and Urban Developments recent regulation addressing hostile housing environment claim is not entitled to deference under Chevron, and cannot be applied in this matter.***

Recognizing that there is no case law to support her argument that intent is not required when a plaintiff alleges tenant-on-tenant harassment or a hostile housing environment claim, the Plaintiff next cites to the Department of Housing and Urban Development ("HUD") regulation 81 FR 63054. This regulation adds Section 100.7 to 24 CFR part 100, stating, in part, that a person is directly liable for "failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it." *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act*, 81 FR 63054 (Aug. 18, 2016). The Plaintiff automatically assumes that this regulation should be accorded deference under *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). However, the Plaintiff's argument carries little weight as the Plaintiff has failed to go through the two-part test required under *Chevron* to determine whether such a regulation should be given deference. Had the Plaintiff gone through this required test, and as demonstrated in detail below, it would have been clear that this regulation

cannot be afforded any deference because Congress' intent on this statute is clear, and HUD's interpretation of the statute is completely unreasonable.

Pursuant to *Chevron*, 467 U.S. at 842-43, courts must defer to agency interpretation of a statute where Congressional intent is unclear, and a statute affords an agency authority under the statute. A two-step analysis is used for determining whether *Chevron* deference applies. In the first step of the *Chevron* analysis, the court must determine whether "the intent of Congress is clear" regarding the question at issue. *See Barnhart v. Walton*, 535 U.S. 212, 218, 122 S. Ct. 1265, 152 L. Ed. 2d 330 (2002) (citing *Chevron*, 467 U.S. at 842-43, 104 S. Ct. 2778, 81 L. Ed. 2d 694). If "the statute speaks clearly 'to the precise question at issue,' [a court] 'must give effect to the unambiguously expressed intent of Congress.'" *Id.* If, on the other hand, "the statute is silent or ambiguous with respect to the specific issue," the Court proceeds to the second step of the *Chevron* analysis, in which the Court defers to any reasonable agency interpretation of the statute. *See Castro v. Chicago Hous. Auth.*, 360 F.3d 721, 727 (7th Cir. 2004).

1. *The Intent of Congress in Section 3604(b) and Section 3617 is clear.*

*Chevron* deference is not total, when straightforward judicial interpretation dissipates any possible statutory ambiguity and fills any possible gap in the statute, *Chevron* deference is not owed. *Krzalic v. Republic Title Co.*, 314 F.3d 875, 879 (7<sup>th</sup> Cir. 2002). Courts glean congressional intent from two sources, the statutory language itself and (at least at times) the legislative history. *See Chevron*, 467 U.S. at 846-848; *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475, 120 L. Ed. 2d 379, 112 S. Ct. 2589 (1992) ("In a statutory construction case, the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished").

Here, Section 3604(b) and Section 3617 are clear that, aside from disparate impact, which is not pled in this case, Congress intended only to hold a landlord liable if he acted with discriminatory intent. There is absolutely nothing in Section 3604(b) or Section 3617 which would suggest that Congress intended to hold a landlord liable for the actions of its tenants, when there are no allegations of discriminatory animus on the part of the defendant. In fact, Section 3604(b) specifically states: “[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 therewith, **because of** race, color, religion, sex, familial status, or national origin.” (Emphasis added). Similarly, Section 3617 specifically prohibits “interfer[ing] with any person in the exercise or enjoyment of, or on account of [her] having exercised or enjoyed, . . . any right granted or protected by Section 3603, 3604, 3605, or 3606 of this title.” 42 U.S.C. § 3617. The Seventh Circuit has held that, to succeed on a Section 3617 claim for interference, a plaintiff must show that the defendants were motivated by an intent to discriminate.” *Bloch v. Frischholz*, 587 F.3d 771, 783 (7th Cir. 2009). (Emphasis added).

Accordingly, Congress’ intent is clear that Section 3604(b) and Section 3617 require some action on the part of the landlord, whether it be through enacting a policy (disparate treatment) or direct discrimination (disparate treatment). Neither statute permits an interpretation that a landlord can be liable for the acts of third-parties, including its tenants, and there is no gap in the statute that would allow for such an interpretation. Further, it is clear under the statute that the defendant must act with discriminatory animus, and therefore to hold a landlord liable for the acts of its tenants—without more—is in direct contradiction to the clear language of Section 3604(b) and Section 3617. Accordingly, 81 FR 63054 should not be accorded deference by this Court as Section 3504(b) and Section 3617 are clear on this issue.

2. HUD's regulation on hostile environment is unreasonable.

Should this Court find that Congress' intent was not clear or that Section 3604(b) and Section 3617 are somehow ambiguous on this issue, *Chevron* deference is still not permitted because HUD's interpretation of the statute is unreasonable. HUD's new regulation seeks to impose direct liability on the part of a landlord for the acts of its tenants when it knew or should have known of the harassment. Such a regulation would have significant ramifications on the housing industry, and would essentially eviscerate the long held requirement that a landlord must act with discriminatory animus to be held liable under the FHA.<sup>1</sup> Looking at the totality of HUD's proposed new regulation, HUD seeks to impose the same liability on a landlord for its own employees actions as a third-party tenant over whom the landlord has no control.

a) *Direct liability*. (1) A person is directly liable for:

- (i) The person's own conduct that results in a discriminatory housing practice.
- (ii) Failing to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, where the person knew or should have known of the discriminatory conduct.
- (iii) Failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct and end a discriminatory housing practice by a third-party depends upon the extent of the person's control or any other legal responsibility the person may have with respect to the conduct of such third-party.

To allow such a regulation to stand, without requiring something more for tenant-on-tenant harassment, would essentially put a landlord in the same shoes as an employer is to its employees with respect to tenants—a third-party who, unlike an employee, is not acting on behalf of the landlord. Clearly, the broad scope of liability that HUD seeks to impose on a landlord for the actions

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<sup>1</sup> Defendants recognize the recent ruling in *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S.Ct. 2507, 2518-19 (2015), and Plaintiff's reliance on that case in its argument that intent is not required. However, that case dealt with Section 3604(a), and involved disparate impact claims, which are not at issue in the instant case.

of its tenants is unreasonable, and no deference should be accorded to this regulation. In fact, this Circuit has specifically recognized the unreasonable nature of HUD's regulation in finding that mere allegations of tenant-on-tenant bullying cannot suffice to state a cause of action. *Smith*, 867 F.Supp.2d at 1013. Further adding to the unreasonable nature of the regulation is that it could potentially impose liability on a landlord for speech that, although distasteful, is protected by the First Amendment. Simply put, HUD's regulation will seek to impose significant liability on a landlord for actions outside of its control, and committed by an individual over whom it has no control nor is acting on behalf of the landlord, and such a regulation is therefore unreasonable.

Lastly, given the significant impact that this regulation will have landlords, and the fact that this type of liability was never imposed before, this rule should be not given retroactive effect, and therefore should not apply to the case at hand. "Congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988). Fairness concerns dictate that courts must not lightly disrupt settled expectations or alter the legal consequences of past actions. *See Landgraf v. USI Film Products*, 511 U.S. 244 (1994); *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990). Nowhere is HUD's regulation does it state that it will have retroactive affect, and because the statute was not put into place until October 14, 2016, this regulation should not apply to the instant action.

Accordingly, for the reasons stated above, Plaintiff's Complaint still must be dismissed in its entirety.

***C. Glen St. Andrew Living Community Real Estate, LLC Is An Improper Party, And Therefore Must Be Dismissed.***

Defendant Glen St. Andrew Living Community Real Estate, LLC ("GSALC Real Estate, LLC") must be dismissed because Plaintiff completely fails to assert any factual allegations against

GSALC Real Estate, LLC. See *Stevens v. Hollywood Towers & Condo Ass'n*, 836 F.Supp.2d 800 (N.D. Ill. 2011). In Plaintiff's Complaint, she alleges one single allegation against Defendant GSALC Real Estate, LLC. She alleges only that GSALC Real Estate, LLC owns the land and the building where the subject property is located. See Pl. Compl. ¶ 12. GSALC Real Estate, LLC does not lease the property, does not manage the property, and does not employ anyone who leases or manages the property. See generally Pl. Compl. ¶ 13-17. Plaintiff tries to combat her failure to plead any liability on the part of GSALC Real Estate, LLC by relying on her conclusory allegations that all defendants are in an agency relationship, and that GSALC Real Estate, LLC is a party to the lease. Plaintiff has provided absolutely no factual allegations to support these conclusory allegations, and a review of the lease clearly shows it is between Marsha Wetzel and "St. Andrew Life Center". In fact, there is no mention of GSALC Real Estate, LLC anywhere in the lease.<sup>2</sup>

Plaintiff's reliance on *Uhler v. Beach Park, LLC*, 2006 U.S. Dist. LEXIS 94308 (N.D. Ill. Dec. 20, 2006) is also misplaced because in that case the defendant was the owner of the property where the incident took place, and there was *no lease* of the property by a separate party. Here, the property owned by GSALC Real Estate, LLC is leased by Glen St. Andrew Living Community, LLC. Further, basic tort principles suggest that an owner is not liable for property that is leased to another. *Gilley v. Kiddell*, 372 Ill.App.3d 271, 275 (2<sup>nd</sup> Dist. 2007); *Richard v. Nederlander Palace Acquisition, LLC*, 2015 IL App (1<sup>st</sup>) 143492, ¶ 39. Accordingly, because the property is

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<sup>2</sup> A copy of the Tenant Agreement is attached hereto as Exhibit A. If a district court is asked to consider matters outside the pleadings, procedural rules normally require that the motion shall be treated as one for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. *GE Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1080 (7<sup>th</sup> Cir. 1997). The Courts, however, may also "examine documents that a defendant attaches to a motion to dismiss if they are referred to in the plaintiff's claim and are central to her claim." *Albany Bank & Trust Co. v. Exxon Mobil Corp.*, 310 F.3d 969, 971 (7<sup>th</sup> Cir. 2002). Effectively, incorporation-by-reference doctrine provides that if a plaintiff mentions a document in his complaint, the defendant may then submit the document to the court without converting defendant's 12(b)(6) motion to a motion for summary judgment. *Brownmark v. Films, LLC v. Comedy Partners*, . The doctrine prevents a plaintiff from evading dismissal under Rule 12(b)(6) by failing to attach to its complaint a document that proves its claim has no merit. *Id.*

leased by Glen St. Andrew Living Community, LLC, GSALC Real Estate, LLC is an improper party to this lawsuit, and therefore must be dismissed.

**CONCLUSION**

WHEREFORE, Defendants Glen St. Andrew Living Community, LLC; Glenn St. Andrew Living Community Real Estate, LLC; Glen St. Andrew Health & Home Management, Inc.; Alyssa Flavin; Carolyn Driscoll; and Sandra Cubas respectfully request that this Honorable Court enter an order dismissing Plaintiff's Complaint in its entirety with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and for such further relief as this Court deems just and proper.

Dated: October 18, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 18, 2016, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record:

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# **EXHIBIT**

## **A**

ST. ANDREWS LIFE CENTER

TENANT'S AGREEMENT

SECTION I - PARTIES

THIS AGREEMENT, made as of the 26 day of November, 2014, by and between ST. ANDREWS LIFE CENTER, an Illinois not-for-profit corporation ("Owner") and Marsha Wetzel ("Tenant")

SECTION II - PREMISES

The Owner hereby leases to Tenant, and Tenant hereby leases from Owner those premises of the ST. ANDREWS LIFE CENTER known as Apartment 204 located at 7000 North Newark Avenue, Niles, Illinois 60714 ("Premises")

SECTION III - TERM AND TERMINATION

- (1) Term. The term of this Agreement shall commence as of the date of Tenant's occupancy ("Occupancy Date") and continue until terminated pursuant to Section (2), below.
- (2) Termination. This Agreement shall terminate upon the earliest of the following:
  - (a) Upon the written agreement of Tenant and Owner.
  - (b) Pursuant to Section XVII of this Agreement, upon written notice by Owner to Tenant, if Tenant fails to meet his/her financial obligations of tenancy.
  - (c) Pursuant to Section XVII of this Agreement, upon written notice by Owner to Tenant, if Tenant fails to comply with the terms of this Agreement;
  - (d) Pursuant to Section XVII of this Agreement, upon written notice by Owner to Tenant, if Tenant fails to comply with the terms of the Tenant Handbook or other rules or regulations promulgated by Owner;
  - (e) Upon written notice by Owner to Tenant, if Tenant engages in acts or omissions that constitute a direct threat to the health and safety of other individuals or result in substantial physical damage to the property of others;
  - (f) Upon the death of Tenant or, in the case of more than one tenant, the death of the last surviving Tenant;
  - (g) Upon expiration of a thirty (30) day period following receipt by Owner of written notice of Tenant's intent to terminate this Agreement without cause; or
  - (h) Pursuant to Sections XI or XV of this Agreement;

- (3) Surrender of Unit. Upon the termination of this Agreement, Tenant will return the Premises keys to Owner and will leave the Premises in as good condition as it was when Tenant took possession of the Premises (subject to any alterations or improvements made by Tenant which Owner decides to retain), except for reasonable wear and tear. Tenant agrees to reimburse Owner for any and all damage and costs of restoring the Unit to the condition existing at the beginning of Tenant's occupancy (subject to any alterations or additions made by Tenant which Owner decides to retain), except for reasonable wear and tear.
- (4) **Obligations Upon Termination.** Upon the termination of this Agreement, neither party will have any further obligations hereunder except for (a) obligations accruing prior to the termination of this Agreement and (b) obligations, promises or covenants set forth in this Agreement that are expressly made to extend beyond the termination of this Agreement

**SECTION IV - RENT**

- (a) Tenant shall pay to Owner as rent at such place as may be designated by Owner, the sum of Twelve thousand twenty four U.S. Dollars, (\$ 12,024. ) annually, in monthly installments of one thousand two U.S. Dollars, (\$ 1002.<sup>00</sup> ) each payable in advance of the first day of each calendar month, and on a prorated basis at the same rate for fractions of the month if the term shall begin any day except on the first day of the calendar month ("Rent").
- (b) Rent shall be subject to an increase on July 1 of each year. The amount of such increase, if any, shall be based on increases in operating costs as determined by Owner.
- (c) The amount of Rent presumes that the Premises shall be exempt from real property taxes. In the event the Owner is required to pay real property taxes, Rent shall be increased as follows:
- (1) The additional annual rent shall be determined by multiplying the total taxes by a fraction, the numerator of such fraction shall be the square feet in the Premises leased hereunder and the denominator shall be the total square feet of the individual apartments in the community.
  - (2) Such additional rent shall be payable on the first day of each calendar month.
- (d) In the event Rent presumes more than one tenant living on the Premises and after the Occupancy Date the number of tenants living on the Premises is permanently reduced, then there shall be a reduction in Rent as determined by Owner. Such reduction shall be the current, per month, market cost for an additional tenant for each tenant who is no longer residing on the Premises.

*SECTION V - FINAL PAYMENT*

When this Agreement is terminated pursuant to Section III, above, Tenant or his/her estate shall be liable for Rent until the last day of the calendar month in which all persons and property belonging to Tenant are removed from the Premises

*SECTION VI - USE OF PREMISES*

- (a) The Premises leased herein are intended for retirement living. Tenant agrees to use the Premises and conduct himself/herself in a manner consistent with such a community. Tenant agrees not to engage in any activity that Owner determines unreasonably interferes with the peaceful use and enjoyment of the community by other tenants or threatens to damage the community's reputation and further agrees to abide by the restrictions of this Section.
- (b) The Premises shall not be used for the conduct of any business or profession. Notwithstanding the foregoing, Tenant may entertain business associates or clients and may, if he/she has a separate business location, occasionally use the Premises to perform an isolated business transaction or client interview.

*SECTION VII - VISITORS/INVITEES*

- (a) Tenant may have Tenant's visitors or invitees (including caregivers) stay with him/her on the Premises from time to time in accordance with the rules and regulations promulgated by Owner.
- (b) Tenant agrees to be responsible for the conduct of any visitor or invitee (including any caregiver) of Tenant and shall ensure each such visitor or invitee's compliance with all rules and regulations to which Tenant is bound.
- (c) Owner reserves the right to prescribe additional rules and regulations for visitors and invitees (including caregivers) of Tenant that are not inconsistent with the terms of this Agreement.

*SECTION VIII - OWNER SERVICES*

- (a) In addition to use of the Premises, Owner shall provide at no extra charge three (3) well-balanced meals per day to be served in a central location at a time selected by Owner.
- (b) Owner shall provide for the use of all tenants, a community room(s) for use in accordance with the rules and regulations promulgated by Owner.
- (c) Owner shall develop a life enrichment program for tenants. Any such activities are optional and may require additional payments for specific programs and/or supplies.
- (d) Owner shall be available for consultation with Tenant on the subject of how to obtain health care and other necessities of life. The cost of any health care required by Tenant or the cost of any other necessities of life required by Tenant which are not specifically provided under this Agreement shall be the sole responsibility of Tenant.

- (f) Owner shall make available laundry facilities for all tenants.
- (g) Owner shall supply locks for all doors. These locks are not to be removed or replaced except by Owner. No additional locks shall be installed.
- (h) Owner shall be responsible for painting the Premises at intervals deemed appropriate by Owner.
- (i) Owner shall supply adequate heat for the Tenant's Premises
- (j) Owner shall, upon request, make or permit Tenant to make reasonable modifications to the Premises as reasonably necessary for Tenant's use and at Tenant's expense. Should Tenant make such modifications, all such work shall be performed diligently, in a first-class workmanlike manner and under Owner's direction.

#### SECTION IX – TENANT'S RESPONSIBILITIES

- (a) Tenant shall have sole responsibility for the cost of the following items:
  - (1) Telephone service for his/her Premises
  - (2) Tenant shall maintain his/her Premises in a clean, safe and habitable condition.
  - (3) Furniture for his/her Premises. Owner can provide furniture if needed
  - (4) Nursing or supportive care services provided to Tenant
- (b) Tenant shall not bring into his/her Premises any dishwasher, refrigerator, freezer or other large electrical appliance without prior written approval of Owner.
- (c) Tenant shall make no alteration to the electrical wiring or plumbing fixtures, which have been installed in his/her Premises without the prior written approval of Owner.
- (d) Upon termination of this Agreement, Tenant or his/her estate shall remove all of Tenant's furniture and other personal property.
- (e) Tenant will provide Owner with an executed copy of his/her Power of Attorney for Property and Health Care, if any, and any amendments thereto.
- (f) Tenant shall comply with the terms of the Tenant Handbook and all other rules and regulations promulgated by Owner, as may be amended from time to time.
- (g) Tenant shall not engage in any act or omission that constitutes a direct threat to the health and safety of other individuals or results in substantial physical damage to the property of others.

#### SECTION X – NON-ASSIGNABILITY

Tenant may not assign this Agreement, nor any part thereof, nor may Tenant sublet any part of the Premises. In the event an assignment or subletting is attempted, this Agreement may be immediately terminated solely at the Owner's option.

*SECTION XI - OWNER'S TITLE*

Title to the Premises is vested in the Owner. Tenant shall do no act that shall encumber Owner's title. If Tenant causes any encumbrance, he/she shall cause the same to be removed solely at Tenant's expense.

*SECTION XII - REPAIRS AND ALTERATIONS*

- (a) Tenant covenants and agrees with Owner to take good care of and keep in clean and workable condition the Premises and their fixtures, and to commit and suffer no waste therein; that no changes or alterations of the Premises shall be made, or partitions erected, or no painting may be done, without the prior written approval of Owner; and that no wallpapering or wallpaper borders may be affixed without the prior written approval of Owner.
- (b) Tenant will pay for all repairs required to the walls, windows, glass, ceiling, paint, plastering, plumbing work, pipes and fixtures belonging to the Premises whenever damage or injury to the same shall have resulted from misuse or neglect by Tenant or Tenant's visitors; and Tenant agrees to pay for any and all repairs that shall be necessary to put the Premises in the same condition as when he/she entered therein, reasonable wear and tear excepted, and the expense of such repair shall be included within the terms of the Agreement and any judgement by confession entered therefore.
- (c) At any time Owner may, at Owner's own expense, make repairs, alterations, additions, or improvements in or to the Building or any part thereof, including the Premises, and during operations, may close entrances, doors, corridors, elevators or other facilities, all without liability to Tenant by reason of interference, inconvenience or annoyance.

*SECTION XIII - RIGHTS RESERVED BY THE OWNER*

- (a) The Owner reserves the following rights:
  - (1) To change the name of the corporation or retirement community or its address without notice or liability to Tenant.
  - (2) To enter the Premises if Tenant has not been heard from or Tenant's whereabouts not known for a period under circumstances that would lead a reasonable person to suspect Tenant may be in need of assistance.
  - (3) During the last thirty (30) days of the term of this Agreement or any part thereof, if Tenant vacates the Premises, to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy.
  - (4) To retain passkeys to the Premises and to establish a key control system which designates distribution and use of such keys. Outside door keys and Premises keys may be duplicated by Owner only, and not by Tenant, and must be returned upon vacating the Premises.
  - (5) The Owner may enter the Premises and may exercise any or all foregoing rights thereby reserved to it without being deemed guilty of an eviction or

disturbance of Tenant's use or possession and without being liable in any manner to Tenant.

- (6) To inspect the Premises or the Building as may be necessary or desirable for the safety, protection, or preservation of the Premises or the Building or Owner's interests, or as may be necessary or desirable in the operation of the Building.
- (7) To approve the weight, size and location of furniture and equipment and articles in and about the Premises and the Building, and to require all such equipment and furniture and bulky items to be moved in and out of the Building and the Premises at such time or times as may be fixed by Owner and in such a manner as Owner shall prescribe and, in all events as Tenant's responsibility.

#### *SECTION XIV - EMINENT DOMAIN*

In the event that the whole or any part of the Building or Premises shall be lawfully condemned or taken in any manner for any public or quasi-public use, at Owner's option, this Agreement and the term hereby granted shall forthwith cease and terminate on the date of the taking of possession by the condemning authority and Owner shall be entitled to receive the entire award without any payment to Tenant; Tenant hereby assigns to Owner Tenant's interest in the award, if any, and the Rent shall be apportioned as of such date and the Membership Fee refunded in accordance with Section V of this Agreement

#### *SECTION XV - WAIVER OF SUBROGATION*

Each party hereto hereby waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectible insurance policies covering loss by fire or any of the perils insured under the standard extended coverage rider.

#### *SECTION XVI - DEFAULT*

- (a) If Tenant defaults in the payment of Rent and Tenant does not cure such default within twenty (20) days after demand for payment of such Rent, Tenant shall be in default of this Agreement and Owner may at its sole option terminate this Agreement.
- (b) If Tenant fails to conform to the provisions of this Agreement, or any additional rules or regulations promulgated by the Owner and such defect is not cured within thirty (30) days of demand by Owner, Tenant shall be in default of this Agreement and Owner may at its sole option terminate this Agreement.

#### *SECTION XVII - CONFESSION*

Tenant hereby irrevocably constitutes any attorney of any court of record in this state, attorney for Tenant in Tenant's name, on default by Tenant of any of the covenants herein, and upon complaint made by Owner, or its agent or assignees, and filed in any such court, to enter Tenant's appearance in any such court of record, waive process and service thereof, and confess judgment, from time to time, for any Rent which may be

due to Owner, or Owner's assignees by the terms of this Agreement with costs and a reasonable sum for attorney's fees, and to waive all errors and all right of appeal from said judgment. and to consent in writing that a writ of execution may be issued immediately.

#### *SECTION XVIII - AMENDMENTS*

At any time this Agreement may be altered or amended. Any alteration or amendment of this Agreement must be in writing and signed by both parties except as may be otherwise provided by this Agreement.

#### *SECTION XIX - CONDITION OF PREMISES*

Tenant acknowledges that the Premises are in good repair, except as herein otherwise specified, and that no representations as to the condition or the repair thereof have been made by Owner, or Owner's agent, prior to or at the execution of this Agreement that are not herein expressed.

#### *SECTION XX - POSSESSION*

In the event of the failure of Owner to deliver possession of the Premises at the time of commencement of the term of this Agreement, neither Owner nor its agents or management contractor shall be liable for any damage caused thereby, nor shall this Agreement thereby become void or voidable, nor shall the term be extended, but Tenant shall not be liable for Rent until possession is delivered.

#### *SECTION XXI - PLURALS, SUCCESSORS*

The words, "Tenant" and "Owner" wherever herein occurring in use shall be construed to mean "Owners" and "Tenants" in case more than one person constitutes either party to this Agreement and all such persons shall be jointly and severally liable hereon; and all covenants and agreements herein contained shall be binding upon and inure to their respective successors, heirs, executors, administrators and assigns and be exercised by their attorney or agent.

#### *SECTION XXII - MISCELLANEOUS*

- (a) No receipt of money from Tenant after the termination of this Agreement; after the service of any notice; after the commencement of any suit; or after final judgment for possession shall renew, reinstate, or extend the term of this Agreement or affect any such notice, demand or suit.
- (b) No waiver of any default of Tenant hereunder shall be implied from any omission by Owner to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated.
- (c) The headings of sections are for convenience only and do not limit or construe the contents of the sections.

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The duplicate original held by Owner and signed by both parties.

- (e) Owner and its employees and agents shall not be liable for damages or injuries to any Tenant, any visitor or invitee (including caregiver) of Tenant, or any other person occurring on the Premises or any part thereof, and Tenant agrees to hold harmless Owner and its employees and agents from any and all such claims. This provision shall survive the termination of this Agreement.
- (f) In the event of the necessity of the employment of an attorney by Owner because of Tenant's violation or breach of any term, condition or covenant or for enforcement thereof under this Agreement, Tenant agrees to pay Owner any costs or fees involved, including reasonable attorney's fees, whether or not suit has been instituted. All such payment shall be considered additional accrued Rent and shall be so cured hereunder. This provision shall survive the termination of this Agreement.
- (g) Tenant is liable for any costs, expenses, damages, injuries, losses or other liabilities (collectively "Liabilities") which are caused by Tenant's negligence or willful act or by that of any visitor or invitee (including any caregiver) of Tenant. Tenant agrees to indemnify Owner and its employees and agents for all Liabilities, including reasonable attorney's fees, arising from Tenant's negligence or willful act or that of any visitor or invitee (including caregiver) of Tenant. This provision shall survive the termination of this Agreement.
- (h) Unless Owner has written directions on how to dispose of Tenant's personal property, Owner shall dispose of any personal property not claimed within thirty (30) days after this Agreement has been terminated. Tenant agrees to reimburse Owner for any and all costs of removal and/or storage of Tenant's personal property. Owner is not responsible for the loss of any of Tenant's personal property due to theft, fire, water, or any other cause.
- (i) All information required to be submitted by Tenant constitutes a material part of this Agreement, and Tenant represents and warrants that such information is accurate and complete and contains no material misrepresentation or omission. By signing this Agreement, Tenant warrants that, in Tenant's judgment, Tenant's income and assets are adequate to meet Tenant's financial obligations to Owner and to cover Tenant's personal and incidental expenses during the term of this Agreement.
- (j) This Agreement is subordinate to any present or future lease, mortgage or land use restriction affecting the community. Upon request, Tenant agrees to execute, acknowledge and deliver to lenders such further written evidence of such subordination as such lenders may reasonably require.
- (k) Any notices which any party may or is required to give pursuant to this Agreement must be in writing and either be given personally to the person to whom the notice is directed or mailed to the person by certified or registered mail, return receipt requested. Notice is to be given to Tenant at the address set forth in this Agreement and to Owner at Saint Andrew.

Notices will be considered given when received if given personally, or, if mailed, when deposited, postage prepaid, in the mail.

- (l) Owner's rights and remedies under this Agreement are cumulative. The exercise of any one or more of Owner's rights and remedies hereunder will not exclude or preclude Owner from exercising any other right or remedy.
- (m) This Agreement, including any exhibit or other attachment, constitutes the entire Agreement between Owner and Tenant with respect to the subject matter hereof. Owner is not liable for, nor bound in any manner, by any statements, representations or promises made by any person representing or purporting to represent Owner unless such statements, representations or promises are set forth in this Agreement.
- (n) No breach of Owner's obligations under this Agreement will result from an interruption of, or failure to provide, contracted services due to an act of God or other cause beyond the reasonable control of Owner, specifically including strikes or other forms of labor disturbances, government edicts, regulations and/or embargoes, acts of war or terrorism, shortages of labor or materials, fire, flood, inclement weather, interruption of utility services, or acts of Tenant or any visitor or invitee (including caregiver) of Tenant
- (o) This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois without regard to conflict of laws. In the event any provision of this Agreement is determined by a court of competent jurisdiction to be illegal or invalid, that provision shall be construed and enforced, to the extent practicable and legal, as if it had been more narrowly drawn so as not to be illegal or invalid, and the remainder of this Agreement shall remain in force.

I, THE UNDERSIGNED HAVE READ THE ABOVE AGREEMENT, TERMS AND CONDITIONS AND RULES, AND I AGREE TO ABIDE BY THEM AS A CONDITION TO MY RESIDENCE AT ST. ANDREWS LIFE CENTER. I ACKNOWLEDGE AND AGREE THAT THE COMMUNITY IS INTENDED FOR OCCUPANCY BY PERSONS AGE SIXTY-TWO (62) YEARS AND OLDER

IN WITNESS WHEREOF, this instrument has been duly executed by the parties hereto, in duplicate, each of which executed counterparts shall be deemed and considered an original document, as of the day and year first above written.

RESURRECTION HEALTH CARE, INC d/b/a  
ST. ANDREWS LIFE CENTER

OWNER BY: [Signature] Date: 11-26-14

TENANT: Marsha Wetzel Date: 11-26-14

TENANT: \_\_\_\_\_ Date: \_\_\_\_\_

WITNESS: [Signature] Date: 11-26-14

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

MARSHA WETZEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. 1:16-cv-07598
GLEN ST. ANDREW LIVING	)	
COMMUNITY, LLC; GLEN ST. ANDREW	)	Hon. Samuel Der-Yeghiayan
LIVING COMMUNITY REAL ESTATE,	)	
LLC; GLEN HEALTH & HOME	)	
MANAGEMENT, INC.; ALYSSA FLAVIN;	)	
CAROLYN DRISCOLL; and SANDRA	)	
CUBAS,	)	
	)	
	)	
Defendants.	)	

**INITIAL STATUS REPORT**

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### **1) Nature of claims and counterclaims**

Plaintiff Marsha Wetzel brought this housing discrimination action pursuant to both the Fair Housing Act, 42 U.S.C. §§ 3604, 3617, and the Illinois Human Rights Act, 775 Ill. Comp. Stat. Ann. 5/3-102, 5/3-105.1, to address Defendants' discriminatory denial of her equal housing opportunity because of her sex and sexual orientation. Ms. Wetzel has alleged that for most of the time she has lived at Glen St. Andrew Living Community ("GSALC"), the senior housing community owned, leased, managed, supervised, operated, and administered by the Defendants, she has been subjected to a severe and pervasive pattern of discrimination and harassment, including persistent verbal harassment, threats, intimidation, and three separate assaults, at the hands of other residents all because she had a committed relationship and created a family with another woman and because she is a lesbian. Ms. Wetzel has further alleged that she and other residents and staff repeatedly notified GSALC administrators, including Defendants Flavin, Driscoll, and Cubas, of the sex- and sexual orientation-based harassment she experienced and continues to experience, but rather than taking meaningful action to stop the harassment, Defendants instead have marginalized and alienated Ms. Wetzel and retaliated against her for complaining about the discriminatory hostile housing environment to which she has been subjected based on her sex and sexual orientation. Ms. Wetzel claims that Defendants' failure to correct and end such harassment and discrimination denies her equal housing opportunity in violation of both the Fair Housing Act and the Illinois Human Rights Act.

Defendants deny that they ever discriminated against or harassed the Plaintiff in any manner. Defendants further deny that they are in any way liable for any discrimination, harassment or retaliation alleged by Plaintiff. Defendants further deny all material allegations of wrongdoing.

Counterclaims: None at this time. The time for filing counterclaims has not run as there is currently a pending motion to dismiss that would be dispositive of the entire case.

**2) Relief sought by Plaintiff**

Plaintiff seeks: (i) declaratory and injunctive relief to end the discriminatory hostile housing environment Defendants have allowed to persist; (ii) compensatory and punitive damages; (iii) attorneys' fees and costs; and (iv) any other further relief the Court deems just and proper.

**3) Names of parties not served**

All parties have been served.

**4, 5) Principal legal and factual issues**

Plaintiff's proposed legal and factual issues:

- (a) Whether Ms. Wetzel was denied equal housing opportunity by being subjected to a discriminatory hostile housing environment caused by severe and pervasive harassment on the bases of her sex and sexual orientation;
- (b) Whether Defendants knew or should have known about the discriminatory hostile housing environment to which Ms. Wetzel was subjected;
- (c) Whether Defendants failed to take sufficient action to correct or end the discriminatory harassment to which Ms. Wetzel was subjected; and
- (d) Whether Defendants retaliated against Ms. Wetzel for complaining about illegal discriminatory harassment.

Defendants' Proposed legal and factual issues:

Defendants object to the legal and factual issues proposed by the Plaintiff as they address the very issue at the heart of the dispositive motion, which is whether the Plaintiff must establish that the Defendants had an intent to discriminate.

Defendants propose the following legal and factual issues:

- (a) Whether the alleged acts by the tenants of Glen St. Andrew Living Community constituted severe and pervasive harassment on the basis of Ms. Wetzel's sex and sexual orientation;
- (b) Whether Defendants acted with an intent to discriminate in their addressing and/or failing to address any alleged complaints by Ms. Wetzel as to the actions of the tenants of Glen St. Andrew Living Community; and
- (c) Whether Defendants had a duty to act in response to Ms. Wetzel's complaints of harassment based on her sex and sexual orientation.

**6) List of pending motions and brief summary of bases for motions**

Defendants have filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), arguing that the complaint must be dismissed because it does not allege specific discriminatory intent on the part of the Defendants, because the Defendants cannot be held liable for tenant-on-tenant harassment, and because the harassment occurred post-acquisition. They also assert that Defendant Glen St. Andrew Living Community Real Estate, LLC, is an improper party. Plaintiff has opposed Defendants' motion, countering that allegations that Defendants knew or should have known of the hostile housing environment caused by other tenants' discriminatory harassment and failed to correct or end that harassment state a claim upon which relief can be granted. The motion is fully briefed before the Court and the parties are awaiting a ruling.

### **7) Description of discovery requested and exchanged**

The Defendants have not yet answered the complaint. Although the parties' initial disclosures were due on January 3, 2017 pursuant to Fed. R. Civ. P. 26(a)(1), the parties have stipulated to exchanging them within fourteen days of this court's disposition of the Defendants' pending Motion to Dismiss. No other discovery has been requested or exchanged by the parties as of the date the parties file this disclosure.

### **8) Type of discovery needed**

The parties anticipate the need for both written discovery and depositions in this matter. Generally, the topics to be explored via written and oral discovery include the following: the underlying factual bases for the claims at issue; actual damages allegedly suffered by Plaintiff; and the bases for Defendants' defenses. The parties anticipate exchanging written discovery and taking depositions. To that end, the parties respectfully submit the following proposed scheduling order.

### **9) Proposed Scheduling Order:**

a. Rule 26(a)(1) disclosures will be made within fourteen days of the Court's disposition of Defendants' Motion to Dismiss.

b. Fact discovery to be completed by:

Plaintiff's position: Plaintiff proposes that discovery be completed by May 2017. Plaintiff indicated during the Rule 26(f) conference the desire to move through the discovery process as swiftly as possible in light of the Plaintiff's continued residence at Defendants' facility and the ongoing ramifications of the issues presented in this case. Plaintiff made clear during the conference that she plans to depose the individual Defendants, corporate representatives, and the witnesses to various events set forth in the complaint. The list of

potential deponents may change after Defendants submit their responsive pleading and responses to written discovery. Plaintiff does not agree with Defendants' assessment of the time needed to depose residents of Defendants' facility, especially given that they are all in one location. When Plaintiff asked whether it was possible to agree to an earlier date for the close of discovery than the September deadline they proposed during the conference, Defendants refused.

Defendants' position: Given the pending Motion to Dismiss and Plaintiff's refusal, during the Rule 26 Conference conducted on December 20, 2016, to identify the any potential witnesses it intends to call, Defendants object to Plaintiff's proposal of a fact discovery completion date of May 2017. Plaintiff has identified vague categories of witnesses it intends to depose, but has not provided the names of any witnesses nor has Plaintiff provided an estimate as to the number of witnesses it may depose. In light of the pending Motion to Dismiss, Defendants will be filing a Motion for Protective Order, if required by the Court, to stay further discovery until a ruling is issued on the Motion to Dismiss.

Should the Court wish to consider a discovery completion date, the Defendants state that they have requested that Plaintiff provide an estimate as to the number witnesses and the identity of those witnesses to enable to parties to accurately calculate a discovery closure date. To date, Plaintiff has not provided this information. Further, it is known that a majority of the witnesses in this case are elderly individuals (residents of Glen St. Andrew) who may be prevented from sitting for a seven (7) hour deposition in one day, and that each of these depositions will likely take multiple days to complete. Defendants further anticipate that these witnesses will need to be subpoenaed for their depositions as they are not a party to this lawsuit. Defendants also anticipate out-of-state depositions, including the Plaintiff's son who is believed to currently reside in Oregon. Based on the above, and with the anticipation that a ruling on the Motion to Dismiss is

entered on January 19, 2017, the Defendants propose a fact discovery completion date of October 1, 2017.

- c. The parties do not anticipate the need for expert discovery at this time.
- d. Dispositive motions to be filed 45 days after the close of fact discovery.
- e. Pretrial order to be filed within five months after the deadline for dispositive motions.

**10-12) Timing, length, and type of trial**

The case should be ready for trial six months after the deadline for dispositive motions, and the parties anticipate it will last approximately five (5) to ten (10) days depending on the availability and condition of the witnesses, which is discussed above. Plaintiff has not requested a jury trial, but Defendants have indicated that they will request a jury trial.

**13) Whether there have been settlement discussions and the outcome of such discussions**

The parties have agreed to proceed before the Magistrate Judge for purposes of exploring settlement. On January 10, 2017, Plaintiff responded to Defendants' request for a settlement demand.

**14) Whether the parties consent to proceed before a Magistrate Judge**

Plaintiff consents to proceed before a Magistrate Judge. The Defendants agree to proceed before the Magistrate Judge for settlement purposes only. Defendants, respectfully, do not agree to proceed before the Magistrate Judge for all other matters.

Date: January 13, 2017

Respectfully submitted,

/s/ Karen L. Loewy  
Counsel for Plaintiff Marsha Wetzel

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/s/ Lindsay A. Watson  
Counsel for Defendants Glen St.  
Andrew Living Community, LLC; Glen  
St. Andrew Living Community Real  
Estate, LLC; Glen Health & Home  
Management, Inc.; Alyssa Flavin;  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MARSHA WETZEL,	)	
	)	
Plaintiff,	)	
v.	)	
	)	Case No. 1:16-cv-07598
GLEN ST. ANDREW LIVING	)	
COMMUNITY, LLC; GLEN ST. ANDREW	)	Hon. Samuel Der-Yeghiayan
LIVING COMMUNITY REAL ESTATE,	)	
LLC; GLEN HEALTH & HOME	)	
MANAGEMENT, INC.; ALYSSA FLAVIN;	)	
CAROLYN DRISCOLL; and SANDRA	)	
CUBAS,	)	
	)	
	)	
Defendants.	)	

**JOINT JURISDICTIONAL STATUS REPORT**

The Plaintiff, Marsha Wetzel, and the Defendants, Glen St. Andrew Living Community, LLC, Glen St. Andrew Living Community Real Estate, LLC, Glen Health & Home Management, Inc., Alyssa Flavin, Carolyn Driscoll, and Sandra Cubas, by and through their attorneys, submit the parties’ Joint Jurisdictional Status Report as follows:

**I. Subject Matter Jurisdiction**

This Court has federal question jurisdiction over this matter pursuant to 42 U.S.C. § 3613 and 28 U.S.C. §§ 1331 and 1343, because Plaintiff has alleged discrimination in violation of the Fair Housing Act. As such, her claims arise under the laws of the United States, including those laws providing for the protection of civil rights.

This Court has supplemental jurisdiction over Plaintiff’s claims under the laws of the State of Illinois because they are so related to the Plaintiff’s federal claims that the state and federal claims form part of the same case or controversy pursuant to 28 U.S.C. § 1367(a).

## **II. Venue (Plaintiff's Position)**

Venue is proper in the Northern District of Illinois, Eastern Division. Plaintiff has alleged housing discrimination by the Defendants at the facility they own, operate, manage, and administer, which is located at 7000 N. Newark Avenue, in the Village of Niles, Cook County, Illinois. Throughout the relevant timeframe of Plaintiff's allegations and continuing to the present, Plaintiff has resided at that property. Thus the alleged discrimination – the events and omissions giving rise to the claims – occurred in this district and division and the housing property at issue in this matter is in this district and division, thereby satisfying the requirements for venue pursuant to 28 U.S.C. § 1391(b)(2).

Furthermore, all Defendants were served at an address within this district and division, and on information and belief, all Defendants reside in this district and division. Defendants Glen St. Andrew Living Community, LLC, Glen St. Andrew Living Community Real Estate, LLC, and Glen Health and Home Management, Inc., all list 5454 Fargo Avenue, Skokie, Illinois as their principal office in their LLC and corporate files with the Illinois Secretary of State and all were served with the summons and complaint in this matter via their agent, whose address is 55 West Monroe, Suite 2400, Chicago, Illinois. Defendant Cubas was served at her place of domicile in Oak Brook, Illinois, and on information and belief, Defendants Flavin and Driscoll also reside in Illinois and have sufficient contact with this district and division through their employment at Glen St. Andrew Living Community, LLC, Glen St. Andrew Living Community Real Estate, LLC, and/or Glen Health and Home Management, Inc. such that venue in this district and division is proper.

Date: January 13, 2017

Respectfully submitted,

/s/ Karen L. Loewy  
Counsel for Plaintiff Marsha Wetzel

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Health & Home Management, Inc.; Alyssa  
Flavin; Carolyn Driscoll; and Sandra Cubas

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**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1  
Eastern Division**

Marsha Wetzel

Plaintiff,

v.

Case No.: 1:16-cv-07598

Honorable Samuel  
Der-Yeghiayan

Glen St. Andrew Living Community, LLC,  
et al.

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, January 18, 2017:

MINUTE entry before the Honorable Samuel Der-Yeghiayan: For the reasons stated in the Court's memorandum opinion date 01/18/17, Defendants' motion to dismiss [15] is granted. All pending dates and motions, if any, are stricken as moot. Civil case terminated. Mailed notice (mw, )

**ATTENTION:** This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

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

**MARSHA WETZEL,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** ) **No. 16 C 7598**  
 )  
 **GLEN ST. ANDREW LIVING** )  
 **COMMUNITY, LLC, et al.,** )  
 )  
 **Defendants.** )

**MEMORANDUM OPINION**

SAMUEL DER-YEGHIAYAN, District Judge

This matter is before the court on Defendants Glen St. Andrew Living Community, LLC’s (GSALC), Defendant Glen St. Andrew Living Community Real Estate, LLC’s, Defendant Glen Health & Home Management, Inc.’s, Defendant Alyssa Flavin’s (Flavin), Defendant Carolyn Driscoll’s (Driscoll), and Defendant Sandra Cubas’ (Cubas) motion to dismiss. For the reasons stated below, Defendants’ motion to dismiss is granted.

**BACKGROUND**

Marsha Wetzel (Wetzel) alleges that she moved to GSALC in November 2014. Wetzel alleges that she signed a tenant agreement with GSALC on November 26, 2014 to rent an apartment and in exchange for her rental payment, GSALC would

provide a private room, bathroom, utilities, maintenance, laundry facilities, three meals a day, access to community rooms and other necessities. Wetzel alleges that over fifteen months, she was subjected to a severe and pervasive pattern of discrimination, threats, harassment, and intimidation because of her gender and sexual orientation. Wetzel includes in her complaint claims brought under the Fair Housing Act (FHA) for alleged violations of 42 U.S.C. § 3617 (Section 3617) and 42 U.S.C. § 3604 (Section 3604) (Count I), and claims brought under the Illinois Human Rights Act, 775 ILCS 5/3-102, 5/3-105.1 (Count II). Defendants move to dismiss all claims.

### LEGAL STANDARD

In ruling on a motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) (Rule 12(b)(6)), the court must draw all reasonable inferences that favor the plaintiff, construe the allegations of the complaint in the light most favorable to the plaintiff, and accept as true all well-pleaded facts and allegations in the complaint. *Appert v. Morgan Stanley Dean Witter, Inc.*, 673 F.3d 609, 622 (7<sup>th</sup> Cir. 2012); *Thompson v. Ill. Dep't of Prof'l Regulation*, 300 F.3d 750, 753 (7<sup>th</sup> Cir. 2002). A plaintiff is required to include allegations in the complaint that “plausibly suggest that the plaintiff has a right to relief, raising that possibility above a ‘speculative level’” and “if they do not, the plaintiff pleads itself out of court.” *E.E.O.C. v. Concentra Health Services, Inc.*, 496 F.3d 773, 776 (7<sup>th</sup> Cir. 2007)(quoting in part *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007));

see also *Morgan Stanley Dean Witter, Inc.*, 673 F.3d at 622 (stating that “[t]o survive a motion to dismiss, the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face,” and that “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged”)(quoting *Ashcroft v. Iqbal*, 556 U.S. 662 (2009))(internal quotations omitted).

## DISCUSSION

### I. Section 3617 Claims

#### A. Discriminatory Intent.

Defendants argue that Wetzel’s FHA Section 3617 claim should be dismissed because Wetzel has failed to plead any intentional discrimination on the part of the Defendants. The FHA prohibits “interfer[ing] with any person in the exercise or enjoyment of, or on account of [her] having exercised or enjoyed, . . . any right granted or protected by Section 3603, 3604, 3605, or 3606 of this title.” 42 U.S.C. § 3617. The Seventh Circuit has established that in order to prevail on a Section 3617 claim, the plaintiff must show that “(1) she is a protected individual under the FHA, (2) she was engaged in the exercise or enjoyment of her fair housing rights, (3) the defendants coerced, threatened, intimidated, or interfered with the plaintiff on account of her protected activity under the FHA, and (4) the defendants were

motivated by an intent to discriminate.” *Bloch v. Frischholz*, 587 F.3d 771, 783 (7th Cir. 2009). The Seventh Circuit has stated that “a showing of intentional discrimination is an essential element of a § 3617 claim.” *East-Miller v. Lake County Highway Dept.*, 421 F.3d 558, 563 (7th Cir. 2005). A plaintiff must show that the defendants “had a discriminatory intent either directly, through direct or circumstantial evidence, or indirectly, through the inferential burden shifting method known as the *McDonnell Douglas* test.” *Kormoczy v. Sec’y, U.S. Dep’t of Hous. & Urban Dev.*, 53 F.3d 821, 823-24 (7th Cir. 1995).

Wetzel argues that she is not required to allege discriminatory intent and cites to *Texas Dep’t. of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015). However, in *Inclusive Communities Project*, the Supreme Court found that discriminatory intent is not required to be plead in cases alleging disparate-impact under the FHA. *Id.* at 2518-19. In contrast, a “plaintiff must establish that the defendant had a discriminatory intent or motive” when pleading a disparate-treatment case. *Id.* at 2513. In the instant action, Wetzel alleges a claim of disparate-treatment under the FHA. Thus, Wetzel is required to plead facts alleging discriminatory intent by Defendants.

Defendants argue that Plaintiff has failed to allege any discriminatory motive or intent to discriminate on the part of Defendants due to her sexual orientation and/or gender. Defendants contend that Wetzel’s complaints relate to discriminatory actions by other tenants, for which the Defendants cannot be held liable. Wetzel alleges that she was verbally harassed by tenants. Wetzel also alleges that she was

physically harassed by other tenants due to her sexual orientation and gender.

Wetzel alleges that she complained about the tenant's harassment to Defendants and that the harassment did not end. On April 24, 2016, Wetzel alleges that she was awoken at 5:00 am and was physically confronted by Defendants' employees after they accused her of smoking in the room. Wetzel alleges that she called the police and filed a police report in regards to the incident. Wetzel argues that Defendants actions and failure to intervene constitute an implicit ratification of the other tenants' discrimination.

Wetzel does not allege any discriminatory motive or intent to discriminate on the part of the Defendants. Wetzel does not allege any facts that suggest any actions taken against her by Defendants that were based on her gender or sexual orientation. Wetzel fails to cite any discriminatory animus, motive, or intent. Thus, Wetzel has fails to allege facts that plausibly suggest a right to pursue relief under Section 3617.

Wetzel argues that holding landlords liable for tenant-on-tenant discrimination where the landlord was aware of the discrimination is consistent with the underlying purpose of the FHA. However, Wetzel fails to cite controlling precedent establishing this legal standard and the Seventh Circuit precedent indicates that intent to discriminate should be pled. *See Bloch*, 587 F.3d at 771. Therefore, Defendants' motion to dismiss the Section 3617 claims is granted. To the extent Wetzel references conduct by Defendants after she complained, the court notes that Wetzel has not pled a retaliation claim.

## II. Section 3604(b) Claims

Defendants argue that Wetzel has failed to state a claim under Section 3604(b). Section 3604(b) makes it unlawful “[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 therewith, because of race, color, religion, sex, familial status, or national origin.” 42 U.S.C. § 3604(b). Depriving an individual of “the right to inhabit the premises. . .by making the premises uninhabitable violates Section 3604(b).” *Bloch*, 587 F.3d at 779. In post-acquisition cases, Section 3604(b) may apply to bring a claim of constructive eviction. *See Bloch*, 587 F.3d at 779 (7th Cir. 2009)(stating that constructive eviction is an option for post-acquisition cases under Section 3604). In order “[t]o establish a claim for constructive eviction, a tenant need not move out the minute the landlord's conduct begins to render the dwelling uninhabitable.” *Bloch*, 587 F.3d at 778. However, “it is well-understood that constructive eviction requires surrender of possession by the tenant.” *Id.* Also, “[i]f the tenant fails to vacate within a reasonable time, she waives her claim for constructive eviction.” *Id.* Wetzel contends that post-acquisition claims may be alleged under the FHA. Defendants do not dispute that contention. However, Defendants argue that Wetzel’s allegations fail to contain sufficient facts stating a plausible cause of action under Section 3604. Wetzel alleges that she continues to reside at GSALC. Wetzel also fails to allege GSALC is uninhabitable, and, as stated above, does not allege that Defendants acted as they did due to her sexual orientation or gender. Accordingly, Wetzel has failed to state facts that plausibly suggest a right

to pursue relief under Section 3604(b). Therefore, Defendants' motion to dismiss the Section 3604 claims is granted.

### III. Remaining State Law Claims

Having resolved the federal claims in this case, the court must determine whether to continue to exercise supplemental jurisdiction over the remaining state law claims. Once the federal claims in an action no longer remain, a federal court has discretion to decline to exercise supplemental jurisdiction over any remaining state law claims. *See Wright v. Associated Ins. Cos.*, 29 F.3d 1244, 1251-52 (7th Cir. 1994)(stating that “the general rule is that, when all federal-law claims are dismissed before trial,” the pendent claims should be left to the state courts). The Seventh Circuit has indicated that there is no “‘presumption’ in favor of relinquishing supplemental jurisdiction. . . .” *Williams Electronics Games, Inc. v. Garrity*, 479 F.3d 904, 906-07 (7th Cir. 2007). The Seventh Circuit has stated that, In exercising its discretion, the court should consider a number of factors, including “the nature of the state law claims at issue, their ease of resolution, and the actual, and avoidable, expenditure of judicial resources. . . .” *Timm v. Mead Corp.*, 32 F.3d 273, 277 (7th Cir. 1994). The court has considered all of the pertinent factors and, as a matter of discretion, the court declines to exercise supplemental jurisdiction over the remaining state law claims brought under the IHRA. Such claims are therefore dismissed without prejudice.

## CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss is granted.

  
Samuel Der-Yeghiayan  
United States District Court Judge

Dated: January 18, 2017

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

Marsha Wetzel,

Plaintiff(s),

v.

Glen St. Andrew Living Community, LLC, et al.,

Defendant(s).

Case No. 16 C 7598  
Judge Samuel Der-Yeghiayan

**JUDGMENT IN A CIVIL CASE**

Judgment is hereby entered (check appropriate box):

in favor of plaintiff(s)  
and against defendant(s)  
in the amount of \$ \_\_\_\_\_,

which  includes pre-judgment interest.  
 does not include pre-judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

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in favor of defendant(s) Glen St. Andrew Living Community, LLC, Glen St. Andrew Living Community Real Estate, LLC, Glen Health & Home Management, Inc. Alyssa Flavin, Carolyn Driscoll, and Sandra Cubas  
and against plaintiff(s) Marsha Wetzel

Defendant(s) shall recover costs from plaintiff(s).

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other:

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This action was (*check one*):

- tried by a jury with Judge \_\_\_\_\_ presiding, and the jury has rendered a verdict.  
 tried by Judge \_\_\_\_\_ without a jury and the above decision was reached.  
 decided by Judge Samuel Der-Yeghiayan on a motion to dismiss.

Date: 1/18/2017

Thomas G. Bruton, Clerk of Court

Michael Wing , Deputy Clerk