



1 Massachusetts Public Accommodation Law for denying Lynn equal use and enjoyment of the  
2 Center on the basis of Lynn’s sex, gender identity, race, and color.

3 **FACTS PERTINENT TO THE MOTION TO DISMISS**

4 Lynn has set forth the facts bearing on the charge of discrimination in the Complaint and in  
5 the Complainant’s Rebuttal to Respondent’s Position Statement, filed contemporaneously with this  
6 Opposition to Respondent’s Motion to Dismiss. Complainant relies on those facts in support of this  
7 Opposition and sets forth below only those additional facts about Respondent’s Center that bear  
8 distinctly on the Respondent’s Motion to Dismiss.

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10 Respondent characterizes itself as a Christian, non-profit, charitable, and church corporation  
11 that relies heavily (96%) on donations from the public to fulfill its sole mission of helping the less  
12 fortunate. (Resp’t Position Statement 6, 21; Resp’t Mot. Dismiss 2.) Information about  
13 Respondent’s work and available programs, including the Center, are advertised on their website.  
14 Springfield Rescue Mission, [www.springfieldrescuemission.org](http://www.springfieldrescuemission.org) (last visited May 11, 2017).  
15 Respondent’s website and description of services and events are also advertised on its public  
16 Facebook page. Springfield Rescue Mission, Facebook (May 11, 2017, 11:48 AM), [https://](https://www.facebook.com/hope4springfield/)  
17 [www.facebook.com/hope4springfield/](https://www.facebook.com/hope4springfield/). Respondent’s website and services are also listed in public  
18 directories, including Respondent’s claimed profile on Yelp<sup>1</sup> and their profile on Homeless Shelter  
19 Directory. Springfield Rescue Mission, Yelp, [https://www.yelp.com/biz/springfield-rescue-](https://www.yelp.com/biz/springfield-rescue-mission-springfield)  
20 [mission-springfield](https://www.yelp.com/biz/springfield-rescue-mission-springfield) (last visited May 11, 2017); Springfield Rescue Mission, Homeless Shelter  
21 Directory, <http://www.homelessshelterdirectory.org/cgi-bin/id/shelter.cgi?shelter=8585> (last visited  
22 May 11, 2017). Respondent has also advertised some of its services and solicited donations from  
23 the general public via radio ads. (“Affidavit of Emily Moulton” (Moulton Aff.), attached as Ex. 3, ¶  
24 40.)  
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<sup>1</sup> Yelp, About Us, at <https://www.yelp.com/about>.

1 In 1989, Respondent established the Center for “the purpose of distributing clothing, coats,  
2 shoes, toiletries, and household items to *anyone who is in need.*” (“Springfield Rescue Mission  
3 June 1, 2016 Screenshots,” attached as Ex. 6 (emphasis added).)<sup>2</sup> The Center “is just one of a  
4 number of programs that [Springfield Rescue Mission] offers to people in need,” (Resp’t Position  
5 Statement 17), but is the only Springfield Rescue Mission program at issue in this case.<sup>3</sup>  
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7 There are no membership requirements to access or shop at the Center. Respondent admits  
8 the Center is open to “people in need” or “the needy” and “strives to accommodate individuals and  
9 families throughout the Greater Springfield area with clothing items, household goods, personal  
10 care items, all free of charge.” (Resp’t Position Statement 6, 17, 20; Resp’t Mot. Dismiss 3.) The  
11 Center’s policy is for people to “[c]all for an appointment,” “[s]how ID prior to receipt for  
12 services,” and “[b]ring a bag not to exceed the size of a 13 gallon trash bag to gather and carry items  
13 selected.” (“Springfield Rescue Mission Give Away Center Policy,” attached as Ex. 7 in Resp’t  
14 briefs.) The Center’s policy does not include a screening process or other criteria limiting whom  
15 may make an appointment to shop at the Center. (Resp’t Ex. 7.)  
16

17 Appointments to shop at the Center are not limited to a selective or exclusive group.  
18 Anyone can make an appointment. Ms. Moulton was never asked any pre-screening questions  
19 pertaining to the eligibility of her clients to shop at the Center when she called to make  
20 appointments for them. (Moulton Aff. ¶¶ 12, 30.) Ms. Moulton “was not asked to and did not  
21 provide any information related to [her] clients’ income, housing status, or any other client specific  
22 information that would indicate clients were homeless or living in poverty.” (Moulton Aff. ¶¶ 12,  
23 30.) Ms. Moulton would simply call SRM and schedule an appointment for her clients to shop at  
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25  
26 <sup>2</sup> Respondent remodeled its website sometime after June 1, 2016. Respondent’s new website also indicates that the  
Center provides bags of groceries filled with “nutritious food items and food staples and other items for daily living” to  
anyone in need. (“August 31, 2016 Springfield Rescue Mission Screenshots,” attached as Ex. 7.)

27 <sup>3</sup> Respondent attempts to divert attention away from the Center by focusing on the requirements to gain access to its  
28 other programs, like the Men’s Rehabilitation Program. However, the Men’s Rehabilitation Program is not the venue of  
dispute in this case. Therefore, the requirements to gain access to the Men’s Rehabilitation Program, which are separate  
and apart from the Center, are irrelevant to this case.

1 the Center. (Moulton Aff. ¶¶ 12, 31.)

## 2 DISCUSSION

3 Respondent’s motion to dismiss is without merit, as its Center is a covered place of public  
4 accommodation under Massachusetts law, and SRM is not categorically exempt from the law  
5 simply by asserting a status as a religious organization. *See Hiles v. Episcopal Diocese of Mass.*,  
6 437 Mass. 505, 514 (2002) (“the rights of religion are not beyond the reach of the civil law”)  
7 (quoting *Madsen v. Erwin*, 395 Mass. 715, 726-727 (1985)).

8  
9 G. L. c. 272, § 98 prohibits, in relevant part, “distinction, discrimination, or restriction” “in  
10 any place of public accommodation, resort or amusement” on the basis of race, color, sex, or gender  
11 identity. A place of public accommodation, resort, or amusement includes “any place, whether  
12 licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public.”  
13 Mass. Gen. Laws ch. 272, § 92A (2017). The definition of a place of public accommodation, resort,  
14 or amusement in G. L. c. 272, § 92A is followed by an illustrative and nonexclusive list of places of  
15 public accommodation, resort, or amusement that is not meant to restrict the broad construction and  
16 interpretation of the Massachusetts Public Accommodation Law. *See Local Fin. Co. v. Mass.*  
17 *Comm’n Against Discrimination*, 355 Mass. 10, 13 (1968) (“The . . . language . . . in § 92A,  
18 particularly when read in the light of the obviously broad legislative purpose, strongly indicates that  
19 the enumerated specific examples of ‘places of public accommodation’ do not restrict the preceding  
20 general statutory language or provide a basis for applying the principle of ejusdem generis.”); *see*  
21 *also Currier v. Nat’l Bd. of Med. Examiners*, 462 Mass. 1, 18 (2012) (“the list is nonexclusive.”).

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24 Massachusetts courts have consistently found entities not enumerated in G. L. c. 272, § 92A  
25 to be places of public accommodation. *See, e.g., Local Fin. Co.*, 355 Mass. at 15 (finding a loan  
26 company to be a place of public accommodation); *see also, e.g., Currier*, 462 Mass. at 20 (finding a  
27 testing service with no actual physical location to be a place of public accommodation); *Nathanson*  
28 *v. Commonwealth*, 2003 Mass. Super. LEXIS 293, at \*13-\*14 (Mass. Super. Ct. 2003) (concluding

1 that a law office, like many other places not enumerated in G. L. c. 272, § 92A, including, but not  
2 limited to, a loan company, taxicab service, insurance company, dentist office, and gun sportsman  
3 club, is a place of public accommodation).

4 **I. Respondent’s Center is a Place of Public Accommodation under Massachusetts Law**  
5 **and not a Private Entity.**

6 The Center is open to the public. It provides clothing, shoes, toiletries, and other household  
7 items to anyone in need. Anyone is permitted to make an appointment to shop at the Center. The  
8 general public is permitted to access and use the entire Center. Respondent advertises its services –  
9 including services provided by the Center – on its website, Facebook page, public directories, and  
10 solicits donations from the public via at least one local radio station. Respondent also admits to its  
11 heavy reliance on funds from the general public to support its work – a factor weighing towards its  
12 public nature. (Resp’t Position Statement 21; Resp’t Mot. Dismiss 4.) The Center unequivocally  
13 falls within the definition of a place of public accommodation. *See, e.g., Wanders v. Bear Hill Golf*  
14 *Club*, 1998 Mass. Super. LEXIS 650, at \*4-\*5 (Mass. Super. Ct. 1998) (finding a nonprofit golf  
15 club with no discernible membership selection pattern that depends on revenue derived from the  
16 nonmember public, advertises its services to the public, and permits nonmembers access to its  
17 facility, to be a place of public accommodation); *see also, e.g., Murray v. Framingham Country*  
18 *Club*, 2005 Mass. Super. LEXIS 352, at \*13-\*15 (Mass. Super. Ct. 2005) (holding that a jury could  
19 find that a nonprofit social and golfing club with a lax membership policy that does not require  
20 current members to know applicants and solicits membership on its website, advertises its events to  
21 the public, relies on fundraisers to the public to pay for certain improvements, and permits  
22 nonmembers to use its facility, is a place of public accommodation).

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26 Moreover, the Center clearly performs a public function that cannot be ignored. In  
27 *Nathanson*, 2003 Mass. Super. LEXIS 293, at \*16, the court considered the critical role attorneys  
28 have as “officers of the legal system” in protecting individual as well as the public’s legal rights

1 when assessing the public character of a law office. The Commission has similarly considered an  
2 organization’s public function involving charitable and community activities when determining its  
3 public nature. *See Schkolnick, et. al. v. The Fly Club*, 1990 Mass. Comm’n Against Discrimination  
4 LEXIS 28, at \*20-\*21 (1990). With homelessness and poverty rates still high in Massachusetts,<sup>4</sup>  
5 the critical items offered by the Center allow the most vulnerable among us to obtain imperative  
6 social services needed to live full and productive lives. For transgender people, especially  
7 transgender people of color, access to the items offered at the Center are even more critical as  
8 transgender people experience extreme rates of poverty in comparison to the general population and  
9 LGBT community as a whole.<sup>5</sup>

11 In an attempt to demonstrate that the Center is a private organization not open to the public,  
12 Respondent does nothing more than vaguely allege that visitors to the Center must go through a pre-  
13 screening process and meet undefined eligibility criteria to gain access to the Center. (Resp’t Mot.  
14 Dismiss 3-4, 11-12.) However, the record shows that Ms. Moulton, who Respondent admits  
15 regularly scheduled appointments for her clients to shop at the Center “[s]ince in or around 2014,”  
16 (Resp’t Position Statement 7; Resp’t Mot. Dismiss 5), was never asked any pre-screening questions  
17 when she called SRM to make appointments for her clients, including Lynn. (Moulton Aff. ¶¶ 12,  
18 30.) Ms. Moulton “was not asked to and did not provide any information related to [her] clients’  
19 income, housing status, or any other client specific information that would indicate clients were  
20 homeless or living in poverty.”<sup>6</sup> (Moulton Aff. ¶¶ 12, 30.) Ms. Moulton would simply call the

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24 <sup>4</sup> See Massachusetts Coalition for the Homeless, Basic Facts on Homelessness in Massachusetts and Across the  
25 Country, <http://mahomeless.org/about-us/basic-facts> (last visited May 11, 2017).

26 <sup>5</sup> See Center for American Progress and Movement Advancement Project, *Paying an Unfair Price: The Financial  
27 Penalty of Being Transgender in America* (Feb. 2015), [http://www.lgbtmap.org/file/paying-an-unfair-price-  
28 transgender.pdf](http://www.lgbtmap.org/file/paying-an-unfair-price-transgender.pdf).

29 <sup>6</sup> Even if the Center were able to prove the use of some eligibility criteria based on income to access the Center, limiting  
30 the Center’s services to people of certain income levels does not establish the Center as private entity not open to the  
31 public. A finding to the contrary would jeopardize access to imperative and potentially life-saving services for the poor.  
32 Moreover, Respondent does not dispute that Lynn met any income or need criteria at the time of the visit to the Center  
33 in issue.

1 Center and schedule an appointment for her clients. (Moulton Aff. ¶¶ 12, 31.)

2 Furthermore, Respondent’s own policy is silent as to any pre-screening process or eligibility  
3 criteria. The Center’s policy – requiring people to “[c]all for an appointment,” “[s]how their ID  
4 prior to receipt for services,” and “[b]ring a bag not to exceed the size of a 13 gallon trash bag to  
5 gather and carry items selected” – does not constitute the type of genuine selectivity criteria that  
6 might make an entity private and not a place of public accommodation. (Resp’t Ex. 7.) Rather,  
7 calling for an appointment, showing identification upon check-in for the appointment, and bringing  
8 necessary materials for the appointment is akin to processes for acquiring medical appointments,  
9 hair appointments, RMV appointments, and other similar places quite obviously considered public  
10 accommodations.  
11

12 In *Concord Rod & Gun, Inc. v. Mass. Comm’n Against Discrimination*, 402 Mass. 716  
13 (1988), the Massachusetts Supreme Judicial Court (“the SJC”) found a nonprofit Massachusetts  
14 corporation organized, in part, to encourage and promote the proper use of rods, guns, and hunting  
15 dogs, to be a place of public accommodation because of “the total absence of genuine selectivity in  
16 membership.” *Id.* at 721. This was so even though the club’s membership was limited to 300  
17 persons; applicants had to be male, at least 21 years of age or have parental permission, and be  
18 eligible for a sporting license; applicants had to obtain signatures of three current club members,  
19 one of whom must sponsor the applicant; and applicants had to interview with the club’s board of  
20 governors and then obtain the board’s approval for membership after the applicant’s name had been  
21 published in the call of the club’s monthly general membership meeting. *Id.* at 719.  
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24 Unlike the nonprofit in *Concord*, Respondent’s Center has no membership, no application  
25 process, and does not require people be of a certain age or gender to access the Center. Respondent  
26 does not set any defined limit on how many people can access the Center per year. In fact,  
27 Respondent impressively admits the Center provided services to over 1,600 males and females in  
28 2016, which further demonstrates the wide reach of the Center’s services. (Resp’t Position

1 Statement 14.) The record also indicates that anyone can make an appointment to shop at the  
2 Center without any pre-screening process.

3 To the extent Respondent relies on the Center's appointment-only policy, that is insufficient  
4 to establish the Center as a private entity outside the scope of the Massachusetts Public  
5 Accommodation Law. *See Immacula Saint Louis v. La Reine Boutique*, 2006 Mass. Comm'n  
6 Against Discrimination LEXIS 14, at \*9-\*11 (2006) (finding a bridal shop with an appointment  
7 only policy to be a place of public accommodation); *see also Cahill v. Rosa*, 89 N.Y. 2d 14, 21-23,  
8 674 N.E. 2d 274 (1996) (finding a dental office operating with an appointment only policy was a  
9 place of public accommodation because appointments were open to all comers and patient roster  
10 was not selective or exclusive).

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12 In addition, Respondent's reliance on the Center's check-in process (i.e. showing an  
13 identification) and the gate surrounding the building in which the Center is located is equally  
14 unavailing, especially considering the proliferation of security desk check-ins at many publicly  
15 accessible buildings in the modern era. *See Concord*, 402 Mass. at 718, 721 (considering but  
16 ultimately finding that the club's secluded wooded area was not enough to classify the club as a  
17 purely private entity); *see also In the Matters of Beverly Port Marina and City of Beverly*, 2011 MA  
18 ENV LEXIS 65, at \*76 (2011) (Appellant "also raised the question of whether the floats will be  
19 open to the public, calling attention to the security gate and signage, but the definition of facilities  
20 of public accommodation does not require open access to the public at all times, nor do the  
21 regulations"). Respondent simply cannot establish selectivity and exclusivity with regard to access  
22 and use of its Center.

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25 The record in this case demonstrates that Respondent's Center is a place of public  
26 accommodation within the meaning of the Massachusetts law. For this reason, Respondent's  
27 motion to dismiss should be denied.  
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1 **II. Respondent’s Center is not Exempt From the Public Accommodations Law on**  
2 **Religious Grounds.**

3 A. Religious organizations are not categorically exempt from coverage under the  
4 Massachusetts Public Accommodation Law.

5 The Public Accommodations Law has no religious exemption. Respondent asserts that it is  
6 a religious organization and, therefore, exempt from the Massachusetts Public Accommodation  
7 Law. (Resp’t Mot. Dismiss 2, 7-10.) This proposition is unsupported by both the text and history  
8 of the law. By their express terms, G. L. c. 272, §§ 98 and 92A contain no exemption for religious  
9 organizations. And, contrary to Respondent’s argument, the absence of religious organizations  
10 from the list of examples of public accommodations in § 92A does not create the exemption  
11 Respondent desires. It is settled law that the list in § 92A is illustrative and non-exclusive. *See,*  
12 *e.g., Currier*, 462 Mass. at 18.

14 Moreover, prior amendments to the Massachusetts Public Accommodation Law reinforce  
15 this conclusion. In a 1953 amendment to the Massachusetts Public Accommodation Law, religious  
16 and charitable organizations were expressly exempted from coverage. *See An Act further defining*  
17 *a place of public accommodation, resort or amusement*, 1953 Mass. Acts 0437, *available at*  
18 <http://archives.lib.state.ma.us/handle/2452/108533>. However, in 1971, the Massachusetts  
19 Legislature expressly repealed those exemptions. *See An Act to prohibit discrimination on the basis*  
20 *of sex in public accommodations*, 1971 Mass. Acts 0418, *available at*  
21 <http://archives.lib.state.ma.us/handle/2452/19865>. This legislative action indicates an intention that  
22 the Massachusetts Public Accommodation Law should apply to at least some religious  
23 organizations. *See Concord*, 402 Mass. at 720 (concluding that the Legislature’s elimination of the  
24 exemption provided to membership clubs in the Massachusetts Public Accommodation Law shows  
25 the Legislature intended that the “anti-discrimination statute should apply to at least some  
26 membership clubs traditionally viewed as private”).  
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1 In short, Respondent is wrong in asserting that religious organizations are categorically  
2 exempt under the terms of the Massachusetts Public Accommodation Law.

3 B. Case law also squarely rejects Respondent’s position.

4 Respondent relies on the SJC’s decision in *Donaldson v. Farrakhan*, 436 Mass. 94 (2002) to  
5 argue that churches and religious organizations are exempt from the public accommodation laws.  
6 (Resp’t Mot. Dismiss 9-10.) However, Respondent totally misreads *Donaldson*.  
7

8 In *Donaldson*, Muhammad’s Mosque No. 11 (“mosque”), which is an affiliate of the  
9 religion of the Nation of Islam, rented a theater owned by the city of Boston to hold an expanded  
10 section of the mosque’s weekly religious men’s meeting. *Id.* at 97-98. The event was for men only  
11 as women do not attend the mosque’s men’s meeting. *Id.* at 98. The plaintiffs asserted that the  
12 mosque violated the Massachusetts Public Accommodation Law by excluding women. *Id.* at 95-96.  
13

14 The SJC upheld a directed verdict against the plaintiffs on two grounds: (1) the theater  
15 where the meeting was held was not a place of public accommodation vis-à-vis this particular event;  
16 and (2) the application of the law to this event would have violated the defendants’ constitutional  
17 rights of expressive association. *Id.* at 100, 102.

18 Contrary to Respondent’s assertion, the SJC did not hold that religious organizations and  
19 churches are exempt from the public accommodations law. Indeed, the Court made clear that the  
20 defendants could have been liable if they held a “public, secular function” as opposed to a religious  
21 men’s meeting. *Id.* at 100. The plaintiffs simply failed to prove such a public, secular event.  
22

23 Therefore, even assuming that Respondent is a religious organization, it is not entitled to a  
24 free pass under the public accommodations law. It can be liable for its activities that come within  
25 the terms of the law. *See, e.g., Stevens v. Optimum Health Inst.*, 810 F. Supp. 2d 1074, 1088-1089  
26 (S.D. Cal. 2011) (a holistic health program operated by a religious nonprofit was a covered public  
27 accommodation).  
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1 Similarly, although the Respondent cites to the expressive association aspects of *Donaldson*  
2 for support, (Resp't Mot. Dismiss 9-10), the SJC was not creating a blanket exemption from the  
3 public accommodations law, but rather simply acknowledging that the law cannot apply if its  
4 application would significantly burden a defendant's ability to express its chosen message.

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6 The Respondent does not – and, indeed, could not – attempt to maintain that allowing Lynn  
7 to shop in the men's section of the Center would somehow burden any message it might seek to  
8 convey. Therefore, the constitutional freedom of association has no bearing on the present case.

9 For these additional reasons, the Respondent is not exempt from the terms of the public  
10 accommodations law.

### 11 CONCLUSION

12 As demonstrated above, the Respondent's Give-Away Center is a place of public  
13 accommodation, and the Respondent is not categorically exempt from the coverage of the public  
14 accommodation law because of its asserted religious nature. Therefore, the Respondent's motion to  
15 dismiss should be denied in its entirety.  
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1 DATED: May 12, 2017

Respectfully submitted,

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Lynn M. Rivera  
By Lynn's attorney,

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GLBTQ LEGAL ADVOCATES &  
DEFENDERS

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*/s/ Allison Wright*

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Allison W. Wright, BBO# 684753

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GLBTQ Legal Advocates &  
Defenders

11

30 Winter Street, Suite 800

12

Boston, MA 02108

13

Office: 617-426-1350

14

Fax Number: 617-426-3594

15

Email: [awright@glad.org](mailto:awright@glad.org)

16

\*Attorney for the Complainant

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1 **CERTIFICATE OF SERVICE**

2 I, Allison Wright, hereby certify that a true copy of the above document was served upon  
3 each party, the attorney of record for each party, and on the Commission by First Class Mail and by  
4 Electronic Mail on May 12, 2017 at the following addresses:

5 Ron Willoughby, Executive Director/CEO

6 [ronw@springfieldrescuemission.org](mailto:ronw@springfieldrescuemission.org)

7 Springfield Rescue Mission

8 10 Mill Street, P.O. Box 9045

9 Springfield, MA, 01102-9045

10 Phone: 413-732-0808 ext. 205

11 Carole Sakowski Lynch, Partner

12 [clynch@morrisonmahoney.com](mailto:clynch@morrisonmahoney.com)

13 Fred P. Frangie, Esq.

14 [ffrangie@morrisonmahoney.com](mailto:ffrangie@morrisonmahoney.com)

15 Morrison Mahoney LLP

16 Tower Square

17 1500 Main Street, Suite 2400

18 P.O. Box 15387

19 Springfield, MA 01115-5387

20 Phone 413.737.4373

21 Fax 413.739.3125

22 \*Attorneys for Respondent

23 Matthew Marotta, Investigator

24 [matthew.marotta@state.ma.us](mailto:matthew.marotta@state.ma.us)

25 Massachusetts Commission

26 Against Discrimination

27 436 Dwight Street, Suite 220

28 Springfield, MA 01103

Phone 413.314.6116

Fax 413.784.1056

*/s/ Allison Wright*

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Allison W. Wright