

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

B.M., as Administratrix of the Estate of Her Sister  
Z.O.,

Plaintiff,

-against-

ELIZABETH GONZALEZ, SHIRLEY  
WASHINGTON, PURITY MABODOKO,  
CHRISTINE BARNETT, NIESHA JOHNSON,  
BERNICIA SOGBESAN, CAROL CARD,  
ANGELINE NEELY, TORRAINE BAYNES,  
RAVEN ELLIS, ANGELA MARTIN,  
SHEMAIAH HARGROVE, NIESHA WHITE,  
KRISTAL DIXON, VANESSA WOODS,  
OLUEBERE NWOKOCHA, AVRIL BROWN,  
and DAVID ROTCHFORD,

Defendants.

Civil Action No. 22-2658

**AMENDED COMPLAINT AND  
JURY DEMAND**

Plaintiff B.M., as the Administratrix of the Estate of Her Sister Z.O., by and  
through her attorneys Emery Celli Brinckerhoff Abady Ward & Maazel LLP, alleges as follows:

**DEATH BY BOWEL IMPACTION AT NEW YORK STATE GROUP HOME**

1. For years, Z.O. and other residents at the Union Avenue IRA, a group  
home for people with severe developmental disabilities, suffered unspeakable physical and  
psychological abuse at the hands of New York State employees who ran the facility.

2. Staff beat them, force-fed them until they vomited, stripped them naked  
and laughed, locked them in their rooms, falsified their medical records, and/or gave them cold  
baths and showers.

3. The abuse was so sustained and horrific that New York State agreed to give up control of the house to a non-profit provider as part of a September 2019 settlement of a lawsuit brought by Z.O. and two other residents (the “Prior Action”).

4. In October 2019, just weeks before the State relinquished control of the house under the settlement, staff committed appalling medical neglect.

5. That month, Z.O. and D.K., another plaintiff from the prior lawsuit, suffered simultaneous bowel impactions.

6. D.K. recovered after outside doctors discovered her bowel impaction.

7. But for Z.O., the State employees’ medical neglect was fatal.

8. To prevent Z.O.’s bowel impaction, Defendants, Union Avenue nursing and other staff responsible for Z.O.’s care, were supposed to administer medication, monitor her bowel movements, and conduct regular body checks of her abdomen. They did none of this.

9. Z.O.’s bowel impaction was so severe that she was rushed to the emergency room in acute respiratory distress. She was immediately intubated, and more than *13 liters* of stool were evacuated in three consecutive bowel disimpaction procedures.

10. She spent the next five months fighting for her life in and out of hospitals, intubated for weeks at a time and suffering waves of seizures, fevers, and pneumonia.

11. She ultimately died on March 31, 2020.

12. Union Avenue’s own records reveal its deliberate indifference and gross negligence that caused Z.O.’s bowel impaction and resulting death.

13. Defendants created false and inaccurate documentation of the medication they were required to administer for Z.O. to prevent bowel impactions.

14. Union Avenue records signed by Defendants also claim Z.O. had normal bowel movements and was in fine health right up until October 14, 2019, facts that are medically inconsistent with the severity of her condition that day.

15. Z.O.'s bowel impaction would not have happened had staff given her prescribed medication and properly monitored her bowel movements and abdomen. She would still be alive today.

16. Abhorrent text messages exchanged by Defendants immediately following Z.O.'s death also reveal that Defendants intentionally and maliciously withheld Z.O.'s Care in retaliation for Z.O. and Plaintiff filing the Prior Action.

17. On the day Z.O. died, Defendant Bernicia Sogbesan asked a group of Union Avenue staff whether the money from the settlement of the Prior Action was "worth it." Defendant Christine Barnett expressed agreement with Sogbesan's cruel question. Defendant Elizabeth Gonzalez wrote that B.M. "should be happy" about her sister's death. And Sogbesan called B.M. a "bitch" who is "still digging for money."

18. Nothing can turn back the clock to prevent Z.O.'s tragic and avoidable death. B.M., Z.O.'s sister and the Administratrix of her Estate, seeks damages for Defendants' unconscionable failure to provide needed care to prevent the bowel obstruction that caused her death.

### **JURISDICTION AND VENUE**

19. This action arises under the Fourteenth Amendment to the United States Constitution, various New York State statutes, and New York State common law.

20. This Court has subject matter jurisdiction over Plaintiff's federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3)-(4) because Plaintiff's claims arise under

the laws of the United States, namely 42 U.S.C. § 1983, and seek redress of the deprivation, under color of state law, of rights guaranteed by the Constitution of the United States.

21. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

22. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b) because Plaintiff's claims arose in this judicial district.

### **JURY DEMAND**

23. Plaintiff demands trial by jury in this action.

### **PARTIES**

#### **A. Plaintiff**

24. Plaintiff Z.O. resided at the Union Avenue IRA in Bronx County, New York from the 1990s through October 2019, when she was rushed to the emergency room in respiratory distress with a severe bowel impaction. Z.O. died of complications arising from the bowel impaction on March 31, 2020. She was a United States citizen with profound intellectual functioning disability, impulse control disorder, and autism. She was non-verbal. She was 52 years old on the date of her death.

25. B.M. is Z.O.'s sister, legal guardian, and the Administratrix of her Estate. She is a citizen of the United States and a resident of Bronx County, New York.

#### **B. Defendants**

26. The Office for People with Developmental Disabilities ("OPWDD") is an agency of the State of New York that "ha[s] the responsibility for seeing that persons with developmental disabilities . . . are provided with services including care and treatment, that such

services are of high quality and effectiveness, and that the personal and civil rights of persons receiving such services are protected.” N.Y. Mental Hygiene Law § 13.07(c).

27. The Union Avenue IRA was a group home for people with severe developmental disabilities in the Bronx, New York, and was at all relevant times operated and controlled by OPWDD.

28. Defendant David Rotchford was at all relevant times an employee of OPWDD assigned to work as a Nurse at the Union Avenue IRA. Among other responsibilities, he was responsible for conducting in-service training of staff on bowel movement monitoring, reviewing bowel movement monitoring charts, and ensuring that staff gave residents prescribed medications.

29. Defendant Avril Brown was at all relevant times an employee of OPWDD assigned to work as a Community Mental Health Nurse at the Union Avenue IRA. Among other responsibilities, she was responsible for conducting in-service training of staff on bowel movement monitoring, reviewing bowel movement monitoring charts, and ensuring that staff gave residents prescribed medications.

30. Defendant Oluebere Nwokocha was at all relevant times an employee of OPWDD assigned to work as a Nurse Administrator at the Union Avenue IRA. Among other responsibilities, Nwokocha supervised Defendants Rotchford and Brown, including with regard to staff in-service training, reviewing bowel movement monitoring charts, and ensuring residents received prescribed medications.

31. Defendant Vanessa Woods was at all relevant times an employee of OPWDD assigned to work as a Nursing Program Coordinator at the Union Avenue IRA. Among other responsibilities, she supervised Defendant Nwokocha and other Nurse Administrators,

including with regard to staff in-service training, reviewing bowel movement monitoring charts, and ensuring residents received prescribed medications.

32. Defendants Rotchford, Brown, Nwokocha, and Woods shall be referred to collectively herein as the “Nurse Defendants.”

33. Defendant Purity Mabodoko was at all relevant times of an employee of OPWDD assigned to work at the Union Avenue IRA. She was responsible for the care and supervision of Z.O., including but not limited to administering Z.O.’s medications, documenting medication administration, and monitoring Z.O.’s bowel movements.

34. Defendant Christine Barnett was at all relevant times an employee of OPWDD assigned to work at the Union Avenue IRA. She was responsible for the care and supervision of Z.O., including but not limited to administering Z.O.’s medications and documenting medication administration.

35. Defendant Niesha Johnson was at all relevant times an employee of OPWDD assigned to work at the Union Avenue IRA. She was responsible for the care and supervision of Z.O., including but not limited to administering Z.O.’s medications, documenting medication administration, monitoring Z.O.’s bowel movements, and conducting body checks of Z.O.

36. Defendant Carol Card was at all relevant times an employee of OPWDD assigned to work at the Union Avenue IRA. She was responsible for the care and supervision of Z.O., including but not limited to administering Z.O.’s medications and documenting medication administration.

37. Defendant Angeline Neely was at all relevant times an employee of OPWDD assigned to work at the Union Avenue IRA. She was responsible for the care and

supervision of Z.O., including but not limited to administering Z.O.'s medications, documenting medication administration, and monitoring Z.O.'s bowel movements.

38. Defendant Raven Ellis was at all relevant times an employee of OPWDD assigned to work at the Union Avenue IRA. She was responsible for the care and supervision of Z.O., including but not limited to administering Z.O.'s medications, documenting medication administration, monitoring Z.O.'s bowel movements, and conducting body checks of Z.O.

39. Defendant Angela Martin was at all relevant times an employee of OPWDD assigned to work at the Union Avenue IRA. She was responsible for the care and supervision of Z.O., including but not limited to administering Z.O.'s medications, documenting medication administration, monitoring Z.O.'s bowel movements, and conducting body checks of Z.O.

40. Defendants Mabodoko, Barnett, Johnson, Card, Neely, Ellis, and Martin shall be referred to collectively herein as the "Medication Falsification Defendants."

41. Defendant Elizabeth Gonzalez was at all relevant times an employee of OPWDD assigned to work as a supervisor at the Union Avenue IRA. She was responsible for supervising Union Avenue staff caring for Z.O. and other residents, as well as the care and supervision of Z.O., including but not limited to ensuring that Union Avenue staff monitored Z.O.'s bowel movements and conducted body checks.

42. Defendant Shirley Washington was at all relevant times an employee of OPWDD assigned to work as a supervisor at the Union Avenue IRA. She was responsible for supervising Union Avenue staff caring for Z.O., as well as the care and supervision of Z.O., including but not limited to ensuring that Union Avenue staff monitored Z.O.'s bowel movements.

43. Defendant Shemaiah Hargrove was at all relevant times an employee of OPWDD assigned to work at the Union Avenue IRA. She was responsible for the care and supervision of Z.O., including but not limited to monitoring Z.O.'s bowel movements and conducting body checks of Z.O.

44. Defendant Niesha White was at all relevant times an employee of OPWDD assigned to work at the Union Avenue IRA. She was responsible for the care and supervision of Z.O., including but not limited to monitoring Z.O.'s bowel movements and conducting body checks of Z.O.

45. Defendant Bernicia Sogbesan was at all relevant times an employee of OPWDD assigned to work at the Union Avenue IRA. She was responsible for the care and supervision of Z.O., including but not limited to monitoring Z.O.'s bowel movements and conducting body checks of Z.O.

46. Defendant Torraine Baynes was at all relevant times an employee of OPWDD assigned to work at the Union Avenue IRA. Baynes was responsible for the care and supervision of Z.O., including but not limited to monitoring Z.O.'s bowel movements, and conducting body checks of Z.O.

47. Defendant Kristal Dixon was at all relevant times an employee of OPWDD assigned to work at the Union Avenue IRA. She was responsible for the care and supervision of Z.O., including but not limited to monitoring Z.O.'s bowel movements.

48. Defendants Neely, Ellis, Baynes, Sogbesan, Johnson, Martin, Gonzalez, Washington, Hargrove, White, and Dixon shall be referred to collectively herein as the "Bowel Movement Monitoring Defendants."



49. Defendants Gonzalez, Sogbesan, Neely, Baynes, Ellis, Hargrove and White shall be referred to collectively herein as the “Body Check Defendants.”

50. At all times relevant hereto, and in all relevant respects, each and every one of the above-identified Defendants acted under color of state law and within the scope of their employment as employees of the State of New York.

Defendants are sued in their individual capacities.

### **FACTS**

#### **2014-2019: Whistleblower and Lawsuit Expose Years of Horrific Abuse of Z.O. and Other Residents of the Union Avenue IRA**

51. In the summer of 2014, an anonymous whistleblower sent a letter detailing “extreme abuse” of several residents at the Union Avenue IRA.

52. The allegations in the letter centered around abuse of Z.O. and two other residents: D.K. and B.R.

53. Like Z.O., D.K. and B.R. are non-verbal and could not advocate for themselves or otherwise report the abuse.

54. The letter stated that six different Union Avenue IRA staff and supervisors “abused and beat consumers” openly at the house.

55. Among other appalling allegations, the letter stated that staff and supervisors “kicked Z.O. in the legs to the point where they swelled up like balloons”; punched D.K. in the back, causing her to slam into a wall and sustain a black eye; pulled D.K.’s hair and “spit directly in her face”; denied food to residents; “bust[ed]” a disabled resident’s eardrum; and hit, kicked, and punched B.R. because they “don’t like” her.

56. The letter further stated that the people in charge of running Union Avenue “cover[] up every and anything that goes on” at the facility and “are fully aware of the abuse and even know who the abusers are.”

57. The State eventually initiated an investigation, led by the Justice Center, that reached an array of shocking conclusions. It determined, among many other horrific acts, that staff at the house punched and kicked residents and forced them to wait naked on their beds for cold showers.

58. The Justice Center investigation also found extensive evidence of medical neglect, including that Union Avenue staff falsified medical records concerning the provision of prescription medications to Z.O. and D.K., and failed to document injuries to Z.O.

59. In June 2016, Z.O., D.K., and B.R., by their respective guardians, filed a lawsuit against numerous staff members and supervisors of Union Avenue and OPWDD regional Directors. *See* Am. Compl., ECF No. 130, *D.K. v. Teams*, No. 16 Civ. 3246 (S.D.N.Y. 2016) (the “Prior Action”).

60. Deposition testimony in the Prior Action confirmed the abuse of Z.O., D.K., and B.R. over the course of several years.

61. Discovery in the Prior Action further revealed the failure of senior leadership that permitted this vicious abuse to go unchecked for years. The house manager at Union Avenue was often drunk at work, stashing bottles of liquor in his office. The entire region of OPWDD responsible for overseeing the Union Avenue IRA turned a blind eye to years of reports of systemic failures to protect residents from abuse.

**September 2019: OPWDD Agrees to Give Up Control of the Union Avenue IRA to a Private Provider as Part of Settlement**

62. On September 30, 2019, the parties settled the Prior Action for \$6 million as well as an agreement for an auspice change, requiring OPWDD to transition control of all operations and residential services at Union Avenue to a private not-for-profit provider:

The Office for People with Developmental Disabilities (“OPWDD”) shall take all steps within its authority to transition control over all residential programs currently maintained at 570 Union Avenue, Bronx, NY, including Union Avenue IRA 3 where D.K., B.R. and Z.O. reside, to a not-for profit provider(s), and to assure that residential services currently provided by OPWDD to D.K., B.R. AND Z.O. will be transitioned to the non-profit provider as part of any change of Auspice.

63. The settlement agreement meant that OPWDD employees would no longer work at Union Avenue or be responsible for the care of its residents, and that staff at Union Avenue would have to find a job elsewhere.

**October 2019: Z.O. and D.K. Suffer Simultaneous, Unexplained Bowel Impactions Just Weeks Before OPWDD Loses Control of Union Avenue**

64. In March 2018, L.K., D.K.’s guardian, overheard Lisa Pesante, a Union Avenue staff member, say that Z.O., D.K., and B.R. were going get a “severe beat down” if OPWDD lost control of the Union Avenue IRA as a result of the lawsuit. “Staff at the house are not going to be happy” with losing control of the house, Pesante said.

65. In October 2019, with the settlement agreement finalized, OPWDD was just weeks away from losing control of the house.

66. That month, Union Avenue staff exercised gross medical negligence that caused Z.O. and D.K. to suffer simultaneous, unexplained bowel impactions within days of one another.

67. Both bowel impactions were sufficiently severe that Z.O. and D.K. required emergency medical attention.

68. D.K. recovered after receiving an enema, suppository, and laxative medications.

69. Z.O. was not so lucky. As detailed below, after being rushed to the emergency room in respiratory distress, she spent the next five and a half months in and out of hospitals. She suffered from persistent fevers, pneumonia, and had numerous seizures. She was intubated for weeks at a time. She never recovered.

70. On March 31, 2020, she died of complications from the bowel impaction.

71. Z.O. was just 52 years old when she died.

**October 14, 2019: Z.O. Is Rushed to the Emergency Room with Severe Fecal Impaction and Respiratory Failure; She Never Recovers**

72. On October 14, 2019, Z.O. was rushed to the Lincoln Medical Center with a “massive abdominal distension” and “respiratory failure requiring intubation.”

73. She was immediately admitted to the Surgical Intensive Care Unit for resuscitation and was intubated to support her breathing.

74. A CT of her abdomen taken that day revealed “a very large stool burden” and “severe fecal impaction.”

75. She was disimpacted at her bedside with a “large evacuation of stool.”

76. The next day, October 15, 2019, Z.O. had an operation that included a second bowel disimpaction.

77. Another day later, October 16, 2019, Z.O. had a third operation during which an additional 13 liters of stool and stagnant succus were evacuated from her abdominal cavity.

78. Z.O. remained in the hospital in critical medical condition for the next several weeks.

79. On October 22, 2019, six days after her third disimpaction procedure, Z.O. required a tracheostomy tube to be placed due to additional difficulty breathing.

80. Z.O. remained on the tracheostomy tube for more than two weeks.

81. Z.O. remained in the hospital throughout November 2019, where she suffered multiple seizures.

82. On December 11, 2019, Z.O. was discharged from the Lincoln Medical Center nearly two months after being admitted.

83. Z.O. was discharged to the Wayne Center, a separate rehabilitation facility.

84. Z.O. stayed there for just four days, traveling to the emergency room at Montefiore Medical Center on December 15, 2019, because of another seizure.

85. She remained at Montefiore for the next month, where she suffered a lung collapse and persistent fever.

86. She returned to Montefiore again in early March 2020, where she had several additional seizures and persistent fevers.

87. She died at Montefiore on March 31, 2020.

**Union Avenue's Medication Records and Bowel Movement Monitoring Are False, Inaccurate, and Inconsistent with Z.O.'s Medical Condition**

88. Z.O. was prescribed a comprehensive "Nursing Plan of Service: Monitoring and Treatment of Constipation" to prevent constipation and bowel impactions.

89. Z.O. was prescribed this Plan of Service because she had a history of constipation, a prior abdominal surgery, and took medications whose side effects included constipation.

90. The Plan of Service required Union Avenue staff assigned to her care on each shift to “[a]dminister bowel medications as per MD order.”

91. The Plan of Service also required that staff on “[a]ll 3 shifts must observe bowel movement and record it on a daily monitoring chart.”

92. The Plan of Service further required that staff monitor Z.O.’s body for “[b]loating of the abdomen,” which staff were required to document in body checks at the beginning and end of each eight-hour shift.

93. The Nurse Defendants were responsible for ensuring that Union Avenue staff adhered to the Plan of Service.

94. Defendants Brown and Rotchford were responsible for conducting in-service training of all staff so that they understood and fulfilled their obligations to administer Z.O.’s medications, monitor her bowel movements, and conduct regular body checks.

95. Defendant Nwokocha supervised Brown and Rotchford, and Defendant Woods supervised Nwokocha. Nwokocha and Woods were responsible for ensuring that Defendants Brown, Rotchford, and other nursing staff held in-service trainings to ensure that staff provided residents with needed medical care. They also oversaw the provision of medical care to Union Avenue residents, including Z.O.’s Plan of Service for monitoring and treating constipation.

96. Union Avenue records indicate that the Nurse Defendants did not conduct any in-service training for Z.O.’s Nursing Plan of Service for Monitoring and Treatment of

Constipation going back to at least August 2018, more than a year before Z.O.'s emergency bowel impaction.

97. Even without the in-service training the Nurse Defendants failed to provide, the Defendant staff members and supervisors responsible for administering Z.O.'s medications (Medication Falsification Defendants), monitoring her bowel movements (Bowel Movement Monitoring Defendants), and conducting body checks (Body Check Defendants) knew or should have known about the requirements of the Nursing Plan of Service because a checklist attached to their daily sign-in sheets stated that they must complete "Physician Orders, Nursing Notes, Plans of Care, Medication Administration Records," as well as "Body Check Assessment Forms."

98. Defendants completely failed to adhere to Z.O.'s Nursing Plan of Service for treating and monitoring constipation. They created false and inaccurate medication administration records that showed them giving prescribed medications to Z.O. for a full week *after* she was rushed to the hospital, as well as bowel movement monitoring and body check records that were inconsistent with Z.O.'s medical condition on October 14, 2019.

***Seven Different Staff Members Produce False and Inaccurate Medical Records***

99. As of October 2019, Z.O.'s doctor had prescribed three separate daily laxative and stool softening medications that Union Avenue staff were required to administer and track on Medication Sheets.

100. The seven Medication Falsification Defendants created false and inaccurate Medication Sheets of the administration of these medications.

101. The Medication Falsification Defendants signed off on Medication Sheets claiming that Z.O. received daily doses of her constipation medications and other medications through October 21, 2019.

102. However, October 21, 2019 was a full week after Z.O. was admitted to the Lincoln Medical Center, and no longer at Union Avenue.

103. The Medication Falsification Defendants could not have administered medications to Z.O. while she was intubated at the hospital.

104. The Medication Falsification Defendants nonetheless signed off on phony medication records claiming to have given Z.O. medications on every shift between October 15, 2019, and October 21, 2019.

105. The Medication Falsification Defendants were also the Union Avenue staff members responsible for administering and documenting Z.O.'s constipation medication during the week before she suffered her emergency bowel impaction.

106. These seven Defendants, each of whom submitted false records of Z.O.'s medication administration from October 15 through October 21, 2019, signed records indicating that they had administered Z.O.'s medications to prevent constipation from October 7 through October 14, 2019.

107. The Justice Center investigation in the Prior Action found, among many other abuses, that Union Avenue staff had falsified records regarding the provision of medications to Z.O.

108. The Medication Falsification Defendants' false and inaccurate records show a systematic failure to adequately track the delivery of Z.O.'s medications needed to prevent the bowel impaction that caused her death.



109. Given staff's history of falsifying Z.O.'s medical records, the Medication Falsification Defendants' conduct raises the plausible inference that they falsified medical records to cover up their failure to give Z.O. her medication, a failure which proximately caused Z.O.'s rush to the hospital, her suffering over the next months, and her death.

***Union Avenue's Bowel Movement Monitoring and Body Check Records Are Inconsistent with Z.O.'s Medical Condition***

110. Under Z.O.'s Nursing Plan of Service, Union Avenue staff were also required to track and document Z.O.'s bowel movements in eight-hour shifts throughout the day, including whether her bowel movements were small, medium, or large, and whether the stool was hard or watery.

111. Tracking the consistency of the stool was particularly important because watery stool is a signal of a bowel impaction.

112. The eleven Bowel Movement Monitoring Defendants were required to monitor Z.O.'s bowel movements precisely to prevent the disimpaction that ultimately caused Z.O. to rush to the hospital, suffer for many months, and die.

113. The Bowel Movement Monitoring Defendants each signed off on Z.O.'s bowel movement monitoring chart from October 7 through October 14, 2019. Defendants Gonzalez and Washington signed off on the records as supervisors responsible for overseeing staff's bowel movement monitoring. The remaining Bowel Movement Monitoring Defendants signed off on the records as staff members who conducted the bowel movement monitoring.

114. The records signed by the Bowel Monitoring Defendants are inconsistent with the severity of Z.O.'s medical condition on October 14, 2019.

115. Union Avenue records indicate that Z.O. had normal bowel movements, was healthy, and appeared normal right up until the morning of October 14, 2019.

116. For instance, the records show she had one large and one small bowel movement on October 11; a large and small bowel movement on October 12; two small bowel movements on October 13, 2019; and one large bowel movement on October 14, 2019.

117. But on October 14, 2019, Z.O.'s bowel impaction was so severe that she needed to be intubated and had three bowel disimpaction procedures on three consecutive days, the last of which evacuated 13 liters of stool and succus.

118. The OPWDD records showing that Z.O. had normal bowel movements up through and until October 14, 2019 are medically inconsistent with Z.O.'s critical medical condition that day.

119. A person in Z.O.'s condition would not have had regular bowel movements in the days leading up to her hospitalization.

120. If she had bowel movements at all, she would have had watery stool because that is all that could have made it around the impacted stool blocking her colon.

121. But the Bowel Movement Monitoring Defendants failed to document whether her stool was hard or watery, even though Z.O.'s Plan of Service made clear that they needed to monitor for “[w]atery stool (caused by waste products trying to bypass hard stool or blockage).”

122. Nor did the Bowel Movement Monitoring Defendants note any abnormalities in her bowel movements right up to the moment she was rushed to the emergency room.

123. The plain inference is that the Bowel Movement Monitoring Defendants either failed to monitor Z.O.'s bowel movements entirely or failed to do so with even minimal

care. Either way, their failure proximately caused Z.O.'s rush to the hospital, her suffering over the next months, and her death.

124. In January 2020, Defendant Gonzalez told state investigators from the Justice Center that she did not know if Z.O. had a bowel movement monitoring protocol at all, despite signing off as a supervisor on Z.O.'s bowel movement monitoring charts on October 5, 6, 7, 8, 11, 13, and 14, 2021.

125. Z.O.'s body check records leading up to October 14, 2019 are just as inconsistent with her severe fecal impaction that day as her bowel movement monitoring records.

126. The Body Check Defendants were responsible for conducting Z.O.'s body checks and signing off on her body check records on October 12, 13, and 14, 2019, the two days before and the day she was rushed to the emergency room.

127. Z.O.'s Nursing Plan of Service required the Body Check Defendants to check for a bloated or distended abdomen.

128. The purpose of this requirement was, in part, to prevent the disimpaction that ultimately caused Z.O. to rush to the hospital, suffer for many months, and die.

129. A person in Z.O.'s medical condition on October 14, 2019 would have had a noticeably distended abdomen for at least the two days before she began experiencing respiratory distress.

130. However, the Body Check Defendants noted no distended abdomen in the two days leading up to Z.O. being rushed to the hospital, even though Z.O.'s Plan of Service required them to examine for this condition.

131. This failure proximately caused Z.O.'s rush to the hospital, her suffering over the next months, and her death.

132. Together, the Medication Falsification Defendants, Bowel Movement Monitoring Defendants, and Body Check Defendants orchestrated a complete breakdown of the medical treatment and monitoring required to prevent the severe fecal impaction that ultimately killed Z.O.

133. These were not isolated acts. The large majority of these Defendants belong to multiple Defendant groups. That is, they participated in at least two, if not all three, of the treatment and monitoring breakdowns. Defendants Johnson, Ellis, and Martin belong to all three Defendant groups. They created the phony medical records and participated in the inaccurate bowel movement monitoring and body check records. Defendants Mabodoko, Neely, Gonzalez, Hargrove, Sogbesan, Baynes, and White belong to two of the Defendant groups. Mobodoko and Neely created phony medical records and inaccurate bowel movement monitoring records, and Gonzalez, Hargrove, Sogbesan, Baynes, and White participated in inaccurate bowel movement monitoring and body check records.

134. The Nurse Defendants, responsible for training and overseeing staff to ensure the provision of needed medical care, failed to ensure that staff were trained on these protocols for more than a year before Z.O.'s tragic and avoidable bowel impaction.

135. Defendants' total failure to provide the medical care required by Z.O.'s Plan of Service demonstrates severe, reckless, and deliberately indifferent neglect.

### **Union Avenue Fails to Schedule Annual Gastroenterology Evaluation Prior to Bowel Impaction**

136. On information and belief, the Nurse Defendants were responsible for ensuring all Union Avenue residents, including Z.O., attended needed medical appointments.

137. In 2019, the Nurse Defendants failed to schedule Z.O.'s required annual gastroenterology appointment.

138. On October 11, 2018, Z.O. met with a gastroenterologist who recommended a follow-up appointment within one year.

139. As of October 14, 2019, the date Z.O. was rushed to the emergency room and more than one year since her most recent gastroenterology appointment, she had not had her annual follow-up appointment, nor was one scheduled.

**D.K. Suffers Bowel Impaction at the Same Time as Z.O.**

140. D.K., who lived on the same floor as Z.O. at Union Avenue, suffered a bowel impaction within days of Z.O., just weeks before OPWDD lost control of Union Avenue pursuant to the settlement of Z.O. and D.K.'s lawsuit.

141. Defendants Woods, Brown, and Rotchford were responsible for the oversight of D.K.'s medical care to prevent bowel impactions, as they were responsible for Z.O.'s medical care.

142. Because Z.O. and D.K. lived on the same floor, the seven Medication Falsification Defendants who were responsible for administering and documenting Z.O.'s medications from October 7 through October 14, 2019 (Card, Barnett, Mabodoko, Neely, Ellis, Barnett, and Johnson) were also responsible for administering and documenting D.K.'s medications.

143. Union Avenue records also show that Defendants Dixon, Ellis, Sogbesan, Baynes, and White were assigned as the primary staff members responsible for D.K.'s care between October 7 and 14, 2019.

144. On October 12, 2019, two days before Z.O. was rushed to the emergency room, L.K., D.K.'s guardian, noticed during a visit to D.K. that D.K. was unable to go to the toilet even though she wanted to.

145. One week later, on October 19, 2019, L.K. visited D.K. again and noticed that D.K. was sluggish, out of sorts, and not interested in eating. L.K. observed that D.K. was vocalizing loudly, as though she was in pain.

146. That day, L.K. also noticed that D.K.'s stomach was distended and bloated and felt hard to the touch.

147. L.K. then asked a Union Avenue staff member to see D.K.'s bowel movement monitoring chart. The staff member told her that the facility did not monitor D.K.'s bowel movements, even though D.K. was supposed to be on mandatory bowel movement monitoring.

148. On information and belief, Union Avenue staff took no action to address D.K.'s clear symptoms of bowel impaction, even though Z.O. was rushed to the emergency room with the exact same condition just five days earlier.

149. On October 22, 2019, L.K. met D.K. at a doctor's appointment for a flu shot.

150. When D.K. arrived, L.K. noticed she was coughing and wheezing. The coughing and wheezing were so severe that she could not receive her flu shot that day.

151. L.K. then told the physician's assistant and nurse at the doctor's office that she thought D.K. was constipated, and they arranged for an abdominal x-ray at a nearby urgent care facility.

152. On the way to the urgent care facility, Union Avenue staff who were supposed to be accompanying D.K. stopped at a Wendy's Drive-Thru window.

153. The x-ray at the urgent care showed that D.K. had "much fecal matter in the colon area."

154. D.K. then received an enema, suppository, and treatment over the course of the next several days, which eased the bowel impaction.

155. D.K.'s bowel impaction at the same time as Z.O.'s, just weeks before the State relinquished control of Union Avenue as a result of their lawsuit, reflects a systematic failure by Defendants to provide them with needed medical care.

156. On October 28, 2019, after the Nurse Defendants failed to hold an in-service training on treatment and monitoring to prevent constipation for more than a year before Z.O. and D.K.'s bowel impactions, Defendant Rotchford held an in-service training on bowel movement monitoring. Two days later, the House Manager of Union Avenue held an in-service training on body checks and daily documentation.

157. These after-the-fact trainings, an apparent acknowledgment of the past failure to train, were too late to have any chance of saving Z.O.

158. Z.O. suffered and died as a result of Defendants' gross and wanton medical neglect.

**Messages Defendants Exchanged Immediately After Z.O.'s Death Strongly Suggest They Intentionally and Maliciously Withheld Z.O.'s Care in Retaliation for the Prior Action**

159. On March 31, 2020—the same day that Z.O. died—Defendants directly and personally involved in Z.O.'s care exchanged disturbing text messages which explicitly link Z.O.'s death to the Prior Action and illustrate their animus toward both Z.O. and Plaintiff B.M.

160. On the day Z.O. died, Defendant Bernicia Sogbesan, referencing the settlement of the Prior Action, asked a group of Union Avenue staff: “The money [w]as is [sic] worth it”?

161. Defendant Christine Barnett responded, “Facts,” indicating her agreement with Sogbesan's text asking whether the money from the Prior Action was “worth” Z.O.'s death.

162. After Defendants were served with the summons and complaint in this matter, Sogbesan referred to Plaintiff B.M. as a “bitch” and wrote, “She still digging for money.”

163. Defendant Elizabeth Gonzalez, a supervisor, stated in a text message sharing the news of Z.O.’s death, “Her sister must be [h]appy” because of the settlement money from the Prior Action. On information and belief, Gonzalez sent this text message on or shortly after the date of Z.O.’s death.

164. Defendants’ text messages directly linking Z.O.’s death to the Prior Action—together with (1) Lisa Pesante’s statement that the plaintiffs from the Prior Action would receive a “severe beat down” if OPWDD lost control of Union Avenue IRA, (2) D.K.’s bowel impaction during the same week as Z.O.’s, and (3) the timing of D.K. and Z.O.’s simultaneous impactions just weeks before Defendants lost their jobs at Union Avenue under the Prior Action settlement—strongly suggest that Defendants intentionally withheld Z.O.’s care in retaliation for her and B.M.’s filing of the Prior Action.

### **DAMAGES**

165. As a direct and proximate result of Defendants’ actions, Z.O. suffered severe physical and emotional injury, including conscious pain and suffering, that resulted in death. She also suffered loss of enjoyment of life.

166. As a direct and proximate result of Defendants’ actions, Z.O.’s sister, B.M., was deprived of Z.O.’s love, care, support, and companionship.

167. Defendants’ acts were reckless, willful, wanton, and malicious, thus entitling Plaintiff to an award of punitive damages.

### **FIRST CAUSE OF ACTION** 42 U.S.C. § 1983 FOURTEENTH AMENDMENT



(Against All Defendants in Their Individual Capacities)

168. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

169. By reason of the foregoing, including Defendants' total failure to implement Z.O.'s Nursing Plan of Service for treating and monitoring constipation, Z.O. suffered physical injury, severe pain and suffering, and death. Defendants deprived Z.O. of rights, remedies, privileges, and immunities guaranteed to every citizen of the United States, in violation of the 42 U.S.C. § 1983, including, but not limited to, rights guaranteed by the Fourteenth Amendment to the United States Constitution.

170. Defendants Brown and Rotchford exhibited deliberate indifference to Z.O.'s substantive due process rights and failed to act as professionals working with specialized knowledge based on professional judgment by the foregoing, and by failing to conduct required in-service training for staff for more than a year before Z.O.'s emergency bowel impaction. Brown and Rotchford were responsible for conducting such trainings, which were required to ensure that Union Avenue staff administered Z.O.'s prescribed medication and kept true and accurate medication, bowel movement monitoring, and body check records so that Z.O. would not suffer the bowel impaction that ultimately caused her death.

171. Defendants Woods and Nwokocha exhibited deliberate indifference to Z.O.'s substantive due process rights and failed to act as professionals working with specialized knowledge based on professional judgment by the foregoing, and by failing in their supervisory responsibilities of Defendants Brown and Rotchford to ensure that staff timely received required in-service trainings regarding the treatment and monitoring of constipation.

172. The deliberate indifference and absence of professional judgment exercised by all four Nurse Defendants is confirmed by their failure to oversee medical care needed to prevent D.K.'s simultaneous bowel impaction, as well as their failure to schedule a follow-up annual gastroenterology appointment for Z.O.

173. The Medication Falsification Defendants exhibited deliberate indifference to Z.O.'s substantive due process rights by the foregoing, and by keeping false and inaccurate records of the administration of Z.O.'s constipation prevention medications, raising the plausible inference that they falsified her records to cover up their failure to administer her medications. The Medication Falsification Defendants knew or should have known they were required to administer and accurately track Z.O.'s constipation medications under her Nursing Plan of Service because they were reminded to follow the Plan of Service and track medication administration on a checklist attached to their daily sign-in sheets.

174. The Bowel Movement Monitoring Defendants and Body Check Defendants exhibited deliberate indifference to Z.O.'s substantive due process rights by the foregoing, by keeping records inconsistent with Z.O.'s medical condition on October 14, 2019, and by failing to document whether Z.O.'s stool was watery as required to monitor for bowel impactions. A person with Z.O.'s severe fecal impaction on October 14, 2019 would have either had no bowel movements or watery bowel movements in the days leading up to October 14. The Bowel Movement Monitoring Defendants failed to document these conditions for the week before Z.O. was rushed to the hospital. Z.O. also would have also had a distended abdomen for at least two days before she was rushed to the hospital, but the Body Check Defendants failed to document this. The Bowel Movement Monitoring Defendants and Body Check Defendants knew or should have known that they were required to accurately document Z.O.'s bowel

movements, including their consistency, as well as the condition of her abdomen, under her Nursing Plan of Service because they were reminded to follow the Plan of Service and conduct body checks on a checklist attached to their daily sign-in sheets.

175. Defendant Gonzalez exhibited deliberate indifference to Z.O.'s rights by the foregoing, and by signing off on Z.O.'s bowel movement monitoring sheet nearly every day for ten days before Z.O.'s emergency bowel impaction despite not knowing that Z.O. had a bowel movement monitoring protocol at all.

176. As a direct and proximate result of the misconduct detailed above, Z.O. sustained the damages hereinbefore alleged.

**SECOND CAUSE OF ACTION**

N.Y. Estates, Powers, and Trusts Law § 5-4.1 *et seq.*

**WRONGFUL DEATH**

(Against All Defendants in Their Individual Capacities)

177. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

178. As a direct and proximate result of Defendants' misconduct and negligence detailed above, the statutory distributees of Z.O.'s estate sustained loss resulting from the loss of Z.O.'s love, comfort, society, attention, services, income, support, and life.

179. Defendants are liable for the wrongful death of Z.O.

**THIRD CAUSE OF ACTION**

**NEGLIGENCE**

(Against All Defendants in Their Individual Capacities)

180. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

181. Defendants owed a duty of care to Z.O., who was in their care and custody as a resident of the Union Avenue IRA, a New York State group home.

182. At all relevant times, Defendants acted within the scope of their employment as New York State employees.

183. Defendants breached the duty of care that they owed to Z.O. by their conduct above, including (1) the Nurse Defendants' failure to hold in-service trainings on monitoring and treatment for constipation for more than a year before Z.O.'s bowel impaction; (2) the Nurse Defendants' failure to ensure staff took medically prescribed steps to prevent Z.O. and D.K. from suffering simultaneous bowel impactions just weeks before OPWDD lost control of Union Avenue; (3) the Medication Falsification Defendants creating and maintaining false and inaccurate records of the administration of Z.O.'s constipation medications that showed them giving Z.O. her medication for more than a week after she was rushed to the emergency room, raising the plausible inference that they sloppily falsified the records to cover up their failure to administer her medications; (4) the Bowel Movement Monitoring Defendants and Body Check Defendants keeping bowel movement monitoring and body check records that were inconsistent with Z.O.'s medical condition; (5) the Bowel Movement Monitoring Defendants failing to document the consistency of Z.O.'s bowel movements, as required by her Nursing Plan of Service; (6) Defendant Gonzalez signing off on Z.O.'s bowel movement monitoring chart despite being unaware of Z.O.'s bowel monitoring protocol; and (7) The Nurse Defendants' failure to schedule Z.O.'s required annual gastroenterology evaluation.

184. These breaches of the duty of care were the proximate cause of Z.O.'s serious and unnecessary injuries, her many months of pain and suffering, and her death.

185. As a direct and proximate result of the misconduct and abuse of authority detailed above, Z.O. sustained the damages hereinbefore alleged.

**FOURTH CAUSE OF ACTION**

CPLR 214-a

MEDICAL MALPRACTICE  
(Against the Nurse Defendants in Their Individual Capacities)

186. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein

187. At all relevant times, the Nurse Defendants undertook to provide medical care to Z.O. as a resident of the Union Avenue IRA and were legally obligated and had a special duty to do so effectively.

188. At all relevant times, the Nurse Defendants held themselves out as possessing the proper degree of learning and skill necessary to render medical care, treatment, and services in accordance with good and accepted medical practice, and held themselves out as using reasonable care and diligence in the care and treatment of the residents of the Union Avenue IRA, including Z.O.

189. By their misconduct detailed above, the Nurse Defendants acted contrary to sound medical practice and committed acts of medical malpractice against Z.O.

190. As a direct and proximate result of Defendant's negligence, Z.O. sustained the damages hereinbefore alleged.

191. A Certificate of Merit pursuant to Section 3012-a of the New York Civil Practice Law and Rules is annexed to this Complaint.

**FIFTH CAUSE OF ACTION**  
42 U.S.C. § 1983  
FIRST AMENDMENT RETALIATION  
(Against All Defendants in Their Individual Capacities)

192. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

193. Z.O. has a right protected by the First Amendment in seeking judicial

relief for the physical and psychological abuse perpetrated by New York State officials and employees at the Union Avenue IRA.

194. Z.O. exercised her First Amendment rights in filing the Prior Action.

195. At all relevant times, the medical neglect and mistreatment committed by Defendants was motivated or substantially caused by Z.O.'s exercise of her First Amendment rights in filing the Prior Action. As a direct and proximate result of Defendants' retaliatory actions toward Z.O., Z.O. sustained the injuries and damages hereinbefore alleged.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request judgment against defendants as follows:

1. Awarding compensatory damages against Defendants in their individual capacities in an amount to be determined at trial;
2. Awarding punitive damages in an amount to be determined at trial;
3. Awarding Plaintiffs reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and
4. Directing such other and further relief as the Court may deem just and proper, together with attorneys' fees, interest, costs, and disbursements of this action.

Dated: September 23, 2024  
New York, New York

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\_\_\_\_\_  
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