

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.

**STIPULATION OF
SETTLEMENT,
GENERAL RELEASE, AND
ORDER OF DISMISSAL**

22-CV-2658 (VEC) (RFT)

STIPULATION OF SETTLEMENT, GENERAL RELEASE, AND ORDER OF DISMISSAL (“Settlement Agreement”) made by and between Plaintiff B.M., as Administratrix of the Estate of Her Sister, Z.O. (“Plaintiff”), Defendants Elizabeth Gonzalez, Shirley Washington, Purity Mabodoko, Christine Barnett, Niesha Johnson, Bernicia Sogbesan, Carol Card, Angeline Neely, Torrairie Baynes, Raven Ellis, Angelee Martin, Shemaiah Hargrove, Niesha White, Kristal Dixon, and David Rotchford (“Defendants”), and the New York State Office for People Developmental Disabilities (“OPWDD”) (Plaintiff, Defendants, and OPWDD, collectively, “the Signatories”) as of 16 December, 2024:

WHEREAS, Plaintiff commenced the above-captioned action by filing a Complaint on or about March 31, 2022 (ECF No. 1), alleging causes of action against Defendants for common-law negligence and pursuant to 42 U.S.C. § 1983; N.Y. Estates, Powers, and Trusts Law § 5-4.1, *et seq.*; and N.Y. C.P.L.R. § 214-a; and

WHEREAS, Plaintiff filed her Amended Complaint and Jury Demand on or about September 23, 2024 (ECF No. 156), adding a cause of action against Defendants for retaliation in violation of 42 U.S.C. § 1983; and

WHEREAS, the claims and allegations asserted in the above-captioned action, together with all related filings and proceedings, constitute “the Action”; and

WHEREAS, on or about March 25, 2022, Plaintiff filed a Claim against the State of New York in the New York State Court of Claims under Claim No. 137635, alleging claims for common-law medical malpractice and pursuant to the N.Y. Ct. Cl. Act § 10(2) (wrongful death) and the N.Y. Ct. Cl. Act § 10(3) (negligence); and

WHEREAS, the claims and allegations asserted in the New York State Court of Claims matter, together with all related filings and proceedings, constitute “the Claim”; and

WHEREAS, on or about February 16, 2023, the Honorable Jeanette Rodriquez-Morick so-ordered a Stipulation of Conditional Dismissal (the “SCD”) in the Claim, which reflects the parties’ agreement that the Claim would be conditionally dismissed with prejudice while the Action proceeds. The SCD permits the Claim to be reactivated by the Claimant, or by mutual agreement of the parties, in the event that final resolution of the Action “does not provide that which claimant considers would be full relief[.]” The SCD further provides that the Claim will be dismissed “on the merits and with prejudice” as of 5:00 PM on the ninetieth day after the final disposition of the Action, without further order of the Court of Claims, “unless by that time a party has reactivated this claim.”

WHEREAS, Defendants expressly deny any wrongful conduct or liability, or violation of any federal, state, or local statute, ordinance, or law in the Action and in the Claim whatsoever; and

WHEREAS, the Signatories desire to fully resolve the claims between them and any and all other disputes, whether known or unknown, without further litigation or proceedings before any court or other agency, and without admission of fault or liability; and

WHEREAS, no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party to this Settlement Agreement has an interest in the subject matter of the Action or the Claim;

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations, and other consideration contained in this Settlement Agreement, the Signatories hereby stipulate and agree, and the Court orders, as follows:

1. **Dismissal of the Action with Prejudice.** The Action and all causes of action asserted therein are hereby dismissed, with prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and without payments, attorneys' fees, costs, disbursements, or expenses in excess of the amounts specified in Paragraph 3 of this Settlement Agreement.

2. **Dismissal of the Claim with Prejudice.** The Claim and all claims asserted therein are hereby discontinued, with prejudice, pursuant to N.Y. C.P.L.R. 3217(a)(2) and without payments, attorneys' fees, costs, disbursements, or expenses in excess of the amounts specified in Paragraph 3 of the Settlement Agreement. Plaintiff, who is also the Claimant in the Claim, considers the terms of this Settlement Agreement to provide her with "full relief" and will not seek to re-activate the Claim.

3. **Payment to Plaintiff and Plaintiff's Attorneys.** For and in consideration of Plaintiff's execution of this Settlement Agreement, her agreement to be bound by its terms, and her undertakings as set forth herein including, but not limited to, the dismissal of the Action and the Claim with prejudice and other good and valuable consideration, the sufficiency of which is

hereby acknowledged, and subject to any reservation for payment to Medicare or other taxes, liens, or setoffs as set forth in Paragraphs 6, 8, and 9 herein, the State of New York, on behalf of Defendants, shall pay the total sum of TEN MILLION DOLLARS AND ZERO CENTS (\$10,000,000.00), for which the Office of the New York State Comptroller shall issue any and all appropriate Internal Revenue tax forms, as follows:

a. The State of New York, on behalf of Defendants, shall pay the gross sum of TEN MILLION DOLLARS AND ZERO CENTS (\$10,000,000.00), in full and complete satisfaction of any and all claims, allegations, or causes of action for compensatory damages, including but not limited to, pain and suffering, and mental and emotional anguish and trauma; damage to reputation; economic damages; lost wages, including but not limited to benefits, back pay, front pay, severance pay, commissions, bonuses, reimbursements, pension plan contributions, and any non-vested retirement, pension, health, or savings plan benefits, or other compensation; punitive damages; and liquidated damages; and any and all claims, allegations, or causes of action for attorneys' fees, costs, disbursements, and expenses incurred by Plaintiff's attorneys or Plaintiff for any and all counsel who have at any time represented or assisted Plaintiff in the Action or the Claim, or in connection with any other proceeding, administrative, judicial, or otherwise and any other claim or action arising from, related to, based upon, or alleging any of the acts, transactions, occurrences, or omissions asserted or purportedly asserted in the Action or the Claim. The foregoing payment shall be made payable to "Emery Celli Brinckerhoff Abady Ward & Maazel LLP, As Attorney for the Estate of Z█████ O█████" and mailed to Ilann Maazel, Esq., Emery Celli Brinckerhoff Abady Ward & Maazel LLP, 600 Fifth Avenue, 10th Floor, New York, New York 10020.

4. **State Approval of Payment.** Payment of the amount specified in Paragraph 3 of

this Settlement Agreement is conditioned upon and subject to the approval of all appropriate State officials in accordance with N.Y. Pub. Off. Law § 17. Plaintiff and Plaintiff's attorneys agree to execute and deliver all necessary and appropriate vouchers and other documentation requested with respect to obtaining such approval and effectuating payment including, but not limited to, Plaintiff's Affirmation of Medicare Eligibility Status as set forth in Paragraph 9 of this Settlement Agreement, and, if applicable, the NYS Standard Voucher, and the Comptroller's Substitute W-9. In the event that any additional documentation is requested from Plaintiff to effectuate payment, Plaintiff agrees to cooperate in good faith with any such requests.

5. **Accrual of Interest.** In the event that payment of the amount specified in Paragraph 3 of this Settlement Agreement has not been made by the one hundred twentieth (120th) day after receipt by the Office of the Attorney General ("OAG") of a "So Ordered" copy of this Agreement, entered into the record by the Clerk of Court, together with all other documentation required under Paragraphs 4 and 9 of this Settlement Agreement, interest on any part of the settlement amount not paid by the one hundred twentieth (120th) day shall accrue at the statutory rate prescribed by 28 U.S.C. § 1961, commencing on the one hundred twenty-first (121st) day after receipt by the OAG of all documentation required under Paragraphs 4 and 9 of this Settlement Agreement.

6. **Responsibility for Taxes.** It is understood and agreed that any taxes, or interest or penalties on taxes, which may attach to the payment specified in Paragraph 3 of this Settlement Agreement, by operation of law or otherwise, shall be the sole and complete responsibility of Plaintiff and Plaintiff's attorneys, and that Plaintiff and Plaintiff's attorneys shall have no claim, right or cause of action against Defendants, OPWDD, or the State of New York (including, but not limited to, any and all present and former agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys,

insurers, and assigns, whether in an individual or official capacity) on account of such taxes, interest or penalties. Plaintiff agrees that she will defend, indemnify, and hold harmless Defendants, OPWDD, and the State of New York (including, but not limited to, any and all present and former agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity) in any claim, proceeding, action, or demand brought in any forum or manner, judicial, administrative or otherwise, to satisfy or for the satisfaction of any such tax or interest or penalty on such tax.

7. **Waiver of Liens.** For and in consideration of Plaintiff's execution of this Settlement Agreement, her agreement to be bound by its terms, and her undertakings as set forth herein including, but not limited to, the dismissal of the Action and the Claim with prejudice and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the State of New York and OPWDD waive their right to seek recovery of any OPWDD lien against the Z [REDACTED] O [REDACTED] Supplemental Needs Trust or the estate of Z [REDACTED] O [REDACTED] including any amounts due for the following alleged liens held by its District 98:

a. Lien in the amount of \$6,487,935.70 against B [REDACTED] M [REDACTED] as Trustee of the Z [REDACTED] O [REDACTED] Supplemental Needs Trust pursuant to N.Y. Social Services Law § 366(2)(b)(2), as set forth in the Notice of Claim, sworn to on the 28th day of May, 2024; and

b. Lien in the amount of \$397,668.46 against the Estate of Z [REDACTED] O [REDACTED] pursuant to N.Y. Social Services Law § 104-b (Recovery Case No. 242871), as set forth in the Notice of Lien, sworn to on the 17th day of June, 2024.

This waiver does not relieve Plaintiff of her obligation to satisfy the Medicaid lien in the amount of \$9,844.35 covering the period from 2/1/2020-3/1/2020, as set forth in the March 14, 2024 letter

from the NYC Department of Social Services.

8. Responsibility for Liens and Setoffs. Except as provided in Paragraph 7 of this Settlement Agreement, it is understood and agreed that any liens, setoffs, deductions, or recoupments of any kind (including, but not limited to, any and all workers' compensation, tax, Medicare, Medicaid, unemployment compensation or benefits, or child support liens) which may attach to the payment specified in Paragraph 3 of this Settlement Agreement, by operation of law or otherwise, shall be the sole and complete responsibility of Plaintiff and Plaintiff's attorneys, and that Plaintiff and Plaintiff's attorneys shall have no claim, right or cause of action against Defendants, OPWDD, or the State of New York (including, but not limited to, any and all present and former agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity) on account of such taxes, interest or penalties. Plaintiff agrees that she will defend, indemnify, and hold harmless Defendants, OPWDD, and the State of New York (including, but not limited to, any and all present and former agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity) in any claim, proceeding, action, or demand brought in any forum or manner, judicial, administrative or otherwise, to satisfy or for the satisfaction of any such any liens, setoffs, deductions, or recoupments.

9. Medicare Certification. Plaintiff represents and warrants that Z [REDACTED] O [REDACTED] is not currently a Medicare recipient and/or Medicare eligible, has never been on Medicare or Social Security Disability Insurance, that no conditional payments have been made on her behalf by Medicare, and further that she does not expect to be Medicare eligible and/or a Medicare recipient

within the next thirty (30) months following the date of this Settlement Agreement. Plaintiff agrees to deliver a fully executed Affirmation of Medicare Eligibility Status in the form annexed hereto as Exhibit A (“Medicare Affirmation”) to the OAG. Plaintiff acknowledges and understands that receipt of a fully executed Medicare Affirmation by the OAG, together with any required supporting documentation, is a prerequisite to payment of the settlement amount referenced in Paragraph 3 herein, and falls within the category of “other documentation” and “required documentation” described in Paragraphs 4 and 5 of this Settlement Agreement.

10. Responsibility for Medicare Payments or Medicare Liens. Plaintiff agrees to defend, indemnify, and hold harmless Defendants, OPWDD, and the State of New York (including, but not limited to, any and all present and former agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity) for any liens or past or future Medicare payments presently known or unknown in connection with the Action or the Claim. If conditional or future anticipated Medicare payments have not been satisfied, Defendants, OPWDD, and the State of New York reserve the right to issue a multi-party settlement check naming Medicare as a payee or to issue a check to Medicare directly based on the Medicare Final Demand Letter with respect to the settlement amount specified in Paragraph 3 of this Settlement Agreement. Upon receipt of all required documentation under Paragraphs 4 and 9, payment of the settlement amounts specified in Paragraph 3 of this Settlement Agreement shall be made in accordance with the terms set forth herein.

11. General Release. For and in consideration of the payment of the settlement amount referenced in Paragraph 3 of this Settlement Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and except for the rights and obligations set forth

in this Settlement Agreement, Plaintiff, on behalf of herself, the Estate of Her Sister Z█████ O█████, her heirs, executors, administrators, successors, and assigns (collectively, “the Releasing Parties”), hereby releases and forever discharges Defendants, OPWDD, and the State of New York, together with their present and former agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, heirs and assigns, whether in an individual or official capacity, or any of them, or all of them (collectively, “the Released Parties”) from all manner of claims, actions, proceedings, suits, grievances, administrative charges, injuries, debts, obligations, dues, sums of money, accounts, contracts, agreements, promises, damages, judgments, and demands whatsoever, direct or indirect, known or unknown, discovered or undiscovered, that the Releasing Parties ever had, now has, or shall or may have in the future against some, any, or all of the Released Parties, related to or arising out of the acts, transactions, occurrences, or omissions which are described, alleged, or contained in the Action or the Claim, including any and all claims under the United States Constitution; the New York State Constitution; or any other claims, causes of action, rights, or administrative charges for relief, whether for moneys owed, equitable relief, costs, fees, or other expenses, including attorneys’ fees. This General Release also includes a waiver and release of any and all claims related to allegations made before the U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, and/or a local commission on human rights, as well as any and all claims against the State of New York, its agencies, departments, and officials in the New York Court of Claims or any other forum, administrative or otherwise, related to or arising from any transactions, acts, omissions, or occurrences up to and including the date of this Settlement Agreement which are described, alleged, or contained in the Action or the Claim.

Plaintiff is not waiving or releasing any nonwaivable statutory protections, or waiving or

releasing any claims that may arise after execution of this Settlement Agreement. Plaintiff is also not waiving or releasing any claims under New York Military Law; any claims under N.Y. Labor Law §§ 220 to 224; or any unemployment benefit rights under the New York Unemployment Insurance Law. Additionally, nothing in this General Release prohibits Plaintiff from speaking with a law enforcement agency, the Equal Employment Opportunity Commission, the New York State Division of Human Rights, a local commission on human rights, or an attorney retained by an employee or potential employee, or testifying, assisting, or participating in an investigation, hearing, or proceeding conducted by any state, federal, or local government agency.

12. No Other Action or Proceeding. Other than the Action or the Claim, Plaintiff represents that she has not commenced, maintained, or prosecuted any action, charge, complaint, grievance, or proceeding of any kind that is still pending against the Released Parties, on her own behalf or on behalf of any other person or estate, and/or on behalf of or as a member of any alleged class of persons, that none of the foregoing is currently pending in any court or before any administrative or investigative body or agency, and acknowledges that this representation constitutes a material inducement for Defendants and OPWDD to enter into this Settlement Agreement.

13. Waiver of Attorneys' Liens. The undersigned attorneys for Plaintiff do hereby release and waive any attorneys' lien they may have on the settlement proceeds in the Action or the Claim pursuant to N.Y. Judiciary Law §§ 475 and 475-a or any other state or federal law, statute, contract, or otherwise.

14. No Other Attorneys. Plaintiff represents and warrants that, besides the undersigned attorneys for Plaintiff, there are no other attorneys that have a lien on the settlement proceeds in the Action or the Claim pursuant to the provisions of N.Y. Judiciary Law §§ 475 and

475-a or any other state or federal law, statute, contract, or otherwise.

15. **No Prevailing Party.** Neither Plaintiff nor Defendants shall be deemed a “prevailing party” for any purpose including, but not limited to, any statutory or contractual claim based upon “prevailing party” status with respect to the Action or the Claim.

16. **No Admission of Liability.** It is understood and agreed that any actions taken or payments made pursuant to this Settlement Agreement are made solely to avoid the burdens and expense of protracted litigation, and that this Settlement Agreement and the actions taken or payments made pursuant hereto are not to be construed as constituting any determination on the merits of any claims in the Action or the Claim or as constituting any admission of wrongdoing or liability on the part of Defendants, OPWDD, or the State of New York (including, but not limited to, any and all present and former agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity). Nothing contained in this Settlement Agreement shall be deemed to constitute a policy, practice, or custom of Defendants, OPWDD, or the State of New York (including, but not limited to, any and all present and former agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity).

17. **No Precedential Value.** This Settlement Agreement shall not in any manner be construed as determinative of the issues or claims raised in the Action or the Claim or any other proceeding, and shall have no precedential value. In addition, notwithstanding the provisions of any paragraph herein, this Settlement Agreement shall not bind or collaterally estop Defendants, OPWDD, or the State of New York (including, but not limited to, any and all present and former

agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity) in any pending or future actions or proceedings in which the same or similar issues are raised, from defending any and all issues raised in said actions or proceedings, or from advancing any and all available defenses.

18. Authority. Each signatory to this Settlement Agreement hereby represents and warrants that they have the requisite authority to enter into this Settlement Agreement and have not previously assigned or transferred any rights or interests with respect to the matters covered by this Settlement Agreement.

19. Voluntary Agreement. Plaintiff represents that she has carefully read and fully understands all provisions of this Settlement Agreement, including the General Release. Plaintiff represents that she has executed and delivered this Settlement Agreement voluntarily after being fully informed of its terms, contents, and effect, and acknowledges that she understands its terms, contents, and effect. Plaintiff acknowledges that no compromise or representation of any kind, other than as set forth or referred to herein, has been made to any party or anyone acting on behalf of any party.

20. Negotiated Agreement. The Signatories acknowledge that each party has cooperated in the drafting and preparation of this Settlement Agreement. The language in all parts of this Settlement Agreement shall be in all cases construed according to its fair meaning and not strictly for or against any party.

21. Binding Effect on Successors and Assigns. The terms and conditions of this Settlement Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each party hereto.

22. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement between the Signatories hereto pertaining to the subject matter hereof, and supersedes and embodies, merges and integrates all prior and current agreements and understandings of the Signatories hereto, whether written or oral, with respect to the subject matter of this Settlement Agreement, and may not be clarified, modified, changed, or amended except in a writing duly executed by the Signatories hereto or an authorized representative of the Signatories hereto.

23. **Governing Law.** The terms of this Settlement Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts to be performed wholly within the State of New York, except to the extent that federal law may apply to Plaintiff's release and waiver of federal claims pursuant to Paragraph 10 of this Settlement Agreement.

24. **Severability.** With the exception of Paragraphs 1, 2, 3, 4, 7, 8, 11, 14, and 15 of this Settlement Agreement, if any other provision of this Settlement Agreement shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable in whole or in part, such decision shall not invalidate the remaining portion or affect its validity.

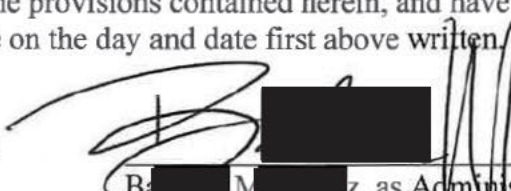



25. **Headings.** The headings contained in this Settlement Agreement are for convenience of reference only and are not a material part of this Settlement Agreement.

26. **Counterparts.** This Settlement Agreement may be executed in several counterparts, each of which shall be deemed an original and which, taken together, shall constitute one and the same instrument.


27. **Submission to the Court.** This Settlement Agreement shall be submitted without further notice to the Court to be "So Ordered."

WHEREFORE, the Signatories hereto acknowledge that they have read this Settlement Agreement and accept and agree to the provisions contained herein, and have each executed this Settlement Agreement to be effective on the day and date first above written.

Dated: 12/16/24, 2024


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

STATE OF NEW YORK)
) ss.:
COUNTY OF New York)

On the 16th day of December, 2024, before me personally came and appeared B.  personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Jacob Schneebaum
NOTARY PUBLIC 

Jacob Schneebaum
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01SC0020941
Qualified in New York County
Commission Expires 02 09 2028

Dated: Dec. 16th, 2024
New York, New York

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP
Attorneys for Plaintiff

By: 

Ilann M. Maazel
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000
imaazel@ecbawm.com

Dated: December 18, 2024
Albany, New York

THE NEW YORK STATE OFFICE FOR
PEOPLE WITH DEVELOPMENTAL
DISABILITIES

By:



Eileen Haynes
General Counsel
44 Holland Avenue
Albany, New York 12229
(866) 946-9733
Eileen.M.Hayes@opwdd.ny.gov

Dated: December 18, 2024
New York, New York

LETITIA JAMES
Attorney General
State of New York
Attorney for Defendants

By:



Caroline P. Wallitt
Assistant Attorney General
28 Liberty Street
New York, New York 10005
(212) 416-6228
Caroline.Wallitt@ag.ny.gov

Dated: _____, 2024
New York, New York

SO ORDERED:

Honorable Valerie E. Caproni
United States District Judge

Exhibit A

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.

**AFFIRMATION
OF MEDICARE
ELIGIBILITY STATUS**

22-CV-2658 (VEC) (RFT)

B. [REDACTED] M. [REDACTED] as Administratrix of the Estate of Her Sister Z. [REDACTED] O. [REDACTED] (“Z.O.”), hereby affirms the following, pursuant to N.Y. C.P.L.R. 2106:

1. I am the Plaintiff in the above-captioned action (“the Action”). I am also the Claimant in the related case pending in the New York State Court of Claims under the caption *B.M. v. State of New York* and Claim No. 137635 (“the Claim”).
2. I submit this affirmation on personal knowledge as the Plaintiff. I am aware that it will be relied upon by the Office of the Attorney General (“OAG”) in connection with the settlement of or the judgment in the Action and the Claim as it relates to the OAG’s obligations concerning Medicare compliance pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (“MMSEA”) and the Medicare Secondary Payer Act (“MSP”).
3. I understand that a query has been or will be made pursuant to Section 111 of the MMSEA, 42 U.S.C. § 1395y(b)(8), to verify the Medicare status of my sister and the decedent in this case, Z.O., due to the injuries alleged in the Action and in the Claim.
4. I acknowledge and understand that pursuant to the MMSEA and MSP and as mandated by the U.S. Centers for Medicare and Medicaid Services rules and regulations, I am, as the Plaintiff, required to:
 - a. reimburse Medicare from the proceeds of the settlement or judgment in the Action

and the Claim for conditional payments Medicare has made for treatment of the injuries alleged in the Action and the Claim; and

- b. use the settlement or judgment proceeds in the Action and the Claim to pay for any future medical expenses, when those expenses are for care or treatment related to the injuries alleged in the Action and the Claim.
5. I further acknowledge that the information provided herein will be relied upon by the OAG as true and accurate and, when applicable, will be used for reporting pursuant to Section 111 of the MMSEA as deemed necessary and/or required by the OAG.
 6. I agree to promptly provide OAG with any and all information necessary and required for its reporting pursuant to Section 111 of the MMSEA and MSP.

PEDIGREE INFORMATION

✍ Please provide the noted personal background information. ✍

7. Z.O. has been known by the following names (including any and all alias names and former names):_____. I hereby acknowledge that Z.O. was identified by these names and that all these names were indeed referring to her.
8. I consent to OAG verifying Z.O.’s Medicare status for purposes of OAG’s compliance with Section 111 of the MMSEA.
9. I affirm that:
 - a. Z.O.’s security number was: _____
 - b. Z.O.’s date of birth was: _____
 - c. Z.O.’s gender was: _____
 - d. Z.O.’s address was: _____
 - e. Z.O.’s telephone number was: _____

CURRENT MEDICARE STATUS

✍ Please initial next to the statements below that apply to your current Medicare eligibility status. ✍

10. As of the effective date of the settlement or judgment in the Action and the Claim:
 - a. _____ Z.O. is not currently receiving, nor have she ever received, Medicare coverage and/or benefits, including coverage or benefits under Medicare Part A (Hospital Insurance), Part B (Medical Insurance), Part C (Medicare Advantage), and Part D (Prescription Drug Coverage).

-OR-

11. As of the effective date of the settlement or judgment in the Action and the Claim:
 - a. _____ Z.O. is a Medicare beneficiary. Her Medicare number is _____

_____. I am aware of the obligation to reimburse Medicare, including any Medicare Part C and Part D Plans for payments and/or benefits that Z.O. received directly or indirectly from Medicare for medical treatment of expenses for injuries that were alleged in the Action and the Claim. I understand that reimbursement directly to Medicare may be made from the proceeds received from the settlement or judgment in the Action and the Claim; and

- i. _____ Medicare (Part A and Part B) has confirmed that no payment is due and owing from the proceeds of the settlement or judgment in the Action and the Claim. **Attached is a copy of the Medicare Conditional Payment Letter and/or Final Demand Letter.**
- ii. _____ Medicare (Part C and Part D), if applicable, have confirmed that no payment is due and owing from the proceeds of the settlement or the judgment in the Action and the Claim. **Attached is a copy of the Medicare Lien Letter.**
- iii. _____ Medicare (Part A and Part B) has confirmed that it will accept the total amount of \$ _____ as full and final reimbursement of all Medicare payments made to date. In accordance with the attached Medicare letter, I consent to the payment of that sum directly from the proceeds of the settlement or the judgment in the Action and the Claim. **Attached is a copy of the Medicare Conditional Payment Letter and/or Final Demand Letter.**
- iv. _____ Medicare (Part C and Part D) have confirmed that it will accept the total amount of \$ _____ (for Medicare Part C) and \$ _____ (for Medicare Part D) as full and final reimbursement of all Medicare payments made to date under Medicare Part C and Medicare Part D. In accordance with the attached Medicare Lien Letter(s), I consent to the payment of these sums in a total of \$ _____ directly from the proceeds of the settlement or the judgment in the Action and the Claim in reimbursement to the provider(s) of my Medicare Part C and Part D benefits. **Attached is a copy of the Medicare Lien Letter.**
- v. _____ I am awaiting a Conditional Payment Letter and/or Final Demand Letter from Medicare. Upon receipt, I will promptly provide it to the assigned AAG and to OAG's Medicare Compliance Officer by email at Medicare.Compliance@ag.ny.gov. I agree that no interest or penalty will be assessed or demanded by me or Z.O. or on my or Z.O.'s behalf against the OAG for any delay in payment pursuant to the terms and conditions of the settlement or judgment in the Action and the Claim prior to OAG's receipt of all necessary documentation from me issued by Medicare. In accordance with the Medicare Conditional Payment Letter and/or Final Demand Letter, I consent to the payment, directly from the proceeds of the settlement or judgment in the Action and the Claim, of the sum stated in the Medicare Conditional Payment Letter and/or Final Demand Letter as the sum that Medicare will accept as full and final reimbursement of all Medicare payments made to date.

FUTURE MEDICARE STATUS

✍ Please initial next to the statements below that apply to your future Medicare status. ✍

12. As of the effective date of the settlement or judgment in the Action and the Claim:

- a. _____ Z.O. is not Medicare eligible and has no reasonable expectation of becoming Medicare eligible within 30 months of the effective settlement or judgment date in the Action because:
 - i. _____ Z.O. has not applied for social security disability (SSDI);
 - ii. _____ Z.O. has not been denied SSDI and anticipating appealing that decision;
 - iii. _____ Z.O. is not in the process of appealing or re-filing for SSDI;
 - iv. _____ Z.O. is not 62.5 years or older; and
 - v. _____ Z.O. does not have End Stage Renal Disease (a qualifying condition for Medicare).

-OR-

13. As of the effective date of the settlement or judgment in the Action and the Claim:

- a. _____ Z.O. is not a Medicare beneficiary and has no reasonable expectation of becoming a Medicare beneficiary within 30 months of the effective settlement or judgment date in the Action and the Claim because she does not reasonably expect her current incarceration to end within 30 months.

-OR-

14. As of the effective date of the settlement or judgment in the Action and the Claim:

- a. _____ Z.O. is not a Medicare beneficiary. **However**, I anticipate that she will become a Medicare beneficiary within 30 months of the effective settlement or judgment date in the Action and the Claim; and
 - i. _____ Z.O. does **not** require any future treatment for injuries that are alleged in the Action and the Claim. The required attached physician certification confirms that there is no anticipated future treatment required for the injuries alleged in the Action and the Claim. **Attached is a copy of the Physician Certification.**

-OR-

- ii. _____ Z.O. does require future treatment for the injuries that are the subject of the Action and the Claim. In accordance with the attached Medicare Set-Aside Trust (“MSA”), I consent to the payment of \$_____, payable to _____ from the proceeds of the settlement or judgment in the Action and the Claim. I affirm this sum will be used for Z.O.’s future medical expenses relating to the injuries alleged in the Action and the Claim. **Attached is a copy of the MSA Trust.**

-OR-

- iii. _____ Z.O. has not sought treatment for the injuries alleged in the Action and the Claim and, as such, there are no medical expenses relating to the alleged injuries. Furthermore, Z.O. does not anticipate seeking medical treatment for the injuries alleged in the Action and the Claim. I understand and agree that, if Z.O. requires future treatment and/or prescription medication for such injuries, I will use the requisite amount of proceeds from the settlement or judgment in the Action and the Claim to pay for any medical expenses relating to such injuries.

15. As of the effective date of the settlement or judgment in the Action and the Claim:

- a. _____ Z.O. is a Medicare beneficiary; and
 - i. _____ Z.O. does not require any future treatment for injuries that are alleged in the Action and the Claim. The required attached physician certification confirms that no anticipated future treatment is required for the injuries that are alleged in the Action and the Claim. **Attached is a copy of the Physician Certification.**

-OR-

- ii. _____ Z.O. does require future treatment for the injuries that are the subject of this personal injury action. In accordance with the attached Medicare Set-Aside Trust (“MSA”), I consent to the payment of \$_____, payable to _____ from the total proceeds of the settlement or judgment in the Action and the Claim. I affirm this sum will be used for Z.O.’s future medical expenses relating to the injuries that are the subject of this Action and the Claim. **Attached is a copy of the MSA Trust.**

-OR-

- iii. _____ Z.O. has not sought treatment for the injuries alleged in the Action and the Claim and, as such, there are no medical expenses relating to the injuries alleged in the Action and the Claim. Furthermore, I do not anticipate seeking medical treatment for Z.O.’s injuries alleged in the Action and the Claim. I understand and agree that, if Z.O. requires future treatment and/or prescription medication for such injuries, I will use the amount of proceeds from the settlement or the judgment in the Action and the Claim to pay for any medical expenses relating to such injuries.

I affirm under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an

action or proceeding in a court of law.

Dated: _____, 2024
New York, New York

B [REDACTED] M [REDACTED], as Administratrix
of the Estate of Her Sister, Z [REDACTED] O [REDACTED]