

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SMITH,

Plaintiff,

– against –

DEPUTY SUPERINTENDENT EILEEN
GONZALEZ-RUSSELL, DEPUTY
SUPERINTENDENT FOR PREA ELAINE VELEZ,
DOCTOR MICHELLE SMALL, OFFENDER
REHABILITATION COORDINATOR LAURA
SCHADE, PREA SERGEANT I. MEDINA,
SUPERVISING OFFENDER REHABILITATION
COORDINATOR JOY DEJESUS,
SUPERINTENDENT AMY LAMANNA, AND
DOCTOR JOHN MCGURTY in their individual
capacities;

Defendants.

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

Case No. 22-CV-7384 (AS)(JLC)

STIPULATION OF SETTLEMENT, GENERAL RELEASE, AND ORDER OF DISMISSAL (“Settlement Agreement”) made by and between Plaintiff John Smith (“Plaintiff”), proceeding anonymously pursuant to Court order, and Defendants Deputy Superintendent (DS) Eileen Gonzalez Russell, Assistant Deputy Superintendent (ADS) Elaine Velez, Doctor (Dr.) Michelle Small, Offender Rehabilitation Coordinator (ORC) Laura Schade, Sergeant (Sgt.) Irialis Medina, Supervising Offender Rehabilitation Coordinator (SORC) Joy DeJesus, Superintendent (Supt.) Amy LaManna, and Dr. John McGurty (“Defendants”) (Plaintiff and Defendants, collectively, “the Parties”):

WHEREAS, Plaintiff commenced the above-captioned Action by filing a Complaint on or about August 29, 2022, (ECF No. 1), alleging claims against Defendants DS Gonzalez Russell, ADS Velez, Dr. Small, ORC Schade, Sgt. Medina, SORC DeJesus and Supt. LaManna, all, at all

relevant times, then employees of the New York State Department of Corrections and Community Supervision (DOCCS), pursuant to 42 U.S.C. § 1983; and

WHEREAS, by Orders dated August 31, 2022 (ECF No. 8), and February 21, 2023 (ECF No. 33), Plaintiff was permitted to proceed anonymously by means of the pseudonym “John Smith”; and

WHEREAS, Plaintiff filed an Amended Complaint on July 14, 2023 (ECF No. 41); and

WHEREAS, Plaintiff filed a Second Amended Complaint (the “Complaint”) on February 9, 2024 (ECF No. 69), realleging the claims against the original Defendants and adding claims against Dr. McGurty as a new Defendant; and

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

WHEREAS, Defendants expressly deny any wrongful conduct or liability, or violation of any federal, state, or local statute, ordinance, or law in the Action whatsoever (see ECF No. 29); and

WHEREAS, the Parties participated in a settlement conference with Magistrate Judge James L. Cott on February 29, 2024; and

WHEREAS, in connection with the settlement conference with Magistrate Judge James L. Cott, the Parties reached an agreement in principle on March 14, 2024; and

WHEREAS, the Parties desire to fully resolve the claims between them that are subject to the Action; and

WHEREAS, by an Order dated March 14, 2024 (ECF No. 74), the Court ordered dismissal of the Action in light of the settlement in principle, without prejudice to the right to reopen the action within sixty days of the date thereof if a settlement agreement with respect thereto is not

consummated; and

WHEREAS, by an Order dated May 9, 2024 (ECF No. 76), the Court extended the deadline established in the Order of March 14, 2024, to May 28, 2024; and

WHEREAS, by an Order dated May 28, 2024 (ECF No. 78), the Court again extended the deadline to June 14, 2024, and on May 31, 2024, the parties appeared for a mediation concerning a dispute over the terms of this settlement agreement, which are now resolved to the Parties' mutual satisfaction; and

WHEREAS, no party hereto is an infant or incompetent person for whom a committee has been appointed; and

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

1. Dismissal of the Action with Prejudice. The Action and all claims 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 2 of this Settlement Agreement.

2. Payment to Plaintiff. For and in consideration of Plaintiff's execution of this Settlement Agreement, his agreement to be bound by its terms, and his undertakings as set forth herein including, but not limited to, the dismissal of the Action 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 5 through 8 herein, the State of New York, on behalf of Defendants, shall pay the total sum of Two Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00), for which the Office

of the New York State Comptroller shall issue any and all appropriate Internal Revenue tax forms, as follows:

The State of New York, on behalf of Defendants, shall pay the gross sum of Two Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00), 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; 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 for any and all counsel who have at any time represented or assisted Plaintiff in the Action, 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. In connection therewith, the Parties agree that the Two Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) is compensation in satisfaction of Plaintiff's claims for physical and emotional injuries as described in the Complaint. In connection with this agreement, Plaintiff and Plaintiff's attorneys are expressly waiving any and all claims for attorneys' fees and recoverable costs incurred in connection with the Action. Plaintiff also waives any claims for punitive damages. The foregoing payment shall be made payable to [REDACTED] [REDACTED] (the legal name of Plaintiff John Smith) and mailed to his attorney at the following address: Paul Hastings LLP, 200 Park Avenue, New York, NY 10166, c/o Daniel A. Fliman, Esq.

3. State Approval of Payments. Payment of the amount(s) specified in Paragraph 2 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 limited to, Plaintiff's Affirmation of Medicare Eligibility Status as set forth in Paragraph 7 of this Settlement Agreement.

4. **Accrual of Interest.** In the event that payment of the amount(s) specified in Paragraph 2 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 3 and 7 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 3 and 7 of this Settlement Agreement. However, if the provisions of N.Y. Exec. Law § 632-a apply to Plaintiff and the payment to Plaintiff of any amount(s) specified in Paragraph 2 of this Settlement Agreement constitutes "funds of a convicted person" under the Son of Sam Law, the one hundred and twenty (120) day period shall be extended by an additional thirty (30) days to allow for compliance with that law.

5. **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 2 of this Settlement Agreement, by operation of law or otherwise, shall be the sole and complete responsibility of Plaintiff, and that Plaintiff shall have no claim, right or cause of action against Defendants 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 he will defend, indemnify, and hold harmless Defendants 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. Notwithstanding the foregoing, under no circumstance shall Plaintiff be liable for any such “hold harmless” obligations described in this Settlement Agreement in an aggregate amount in excess of \$275,000.00.

6. Responsibility for Liens and Setoffs. 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(s) specified in Paragraph 2 of this Settlement Agreement, by operation of law or otherwise, shall be the sole and complete responsibility of Plaintiff, and that Plaintiff shall have no claim, right or cause of action against Defendant 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 he will defend, indemnify, and hold harmless Defendants 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. Notwithstanding the foregoing, under no circumstance shall Plaintiff be liable for any such “hold harmless” obligations described in this Settlement Agreement in an aggregate amount in excess of \$275,000.00. For the avoidance of doubt, Plaintiff represents that he has not sought medical treatment for the injuries alleged in the Complaint.

7. **Medicare Certification.** Plaintiff represents and warrants that he 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 his behalf by Medicare, and further that he 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(s) referenced in Paragraph 2 herein, and falls within the category of “other documentation” and “required documentation” as described in Paragraphs 3 and 4 of this Settlement Agreement.

8. **Responsibility for Medicare Payments or Medicare Liens.** Plaintiff agrees to defend, indemnify, and hold harmless Defendants 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. Notwithstanding

the foregoing, under no circumstance shall Plaintiff be liable for any such “hold harmless” obligations described in this Settlement Agreement in an aggregate amount in excess of \$275,000.00. If conditional or future anticipated Medicare payments have not been satisfied, Defendants 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(s) specified in Paragraph 2 of this Settlement Agreement. Upon receipt of all required documentation under Paragraphs 3, 4 and 7, (specifically, the Medicare Affirmation and any documentation required by it, and the voucher for the payment to Plaintiff and any documentation required to process payment, such as a Substitute Form W-9), payment of the settlement amounts specified in Paragraph 2 of this Settlement Agreement shall be made in accordance with the terms set forth herein.

9. General Release. For and in consideration of the payment of the settlement amount referenced in Paragraph 2 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 himself, his heirs, executors, administrators, successors, and assigns (collectively, “the Releasing Parties”), hereby releases and forever discharges Defendants, the New York State Department of Corrections and Community Supervision, 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 any other claims, causes of action, rights, or administrative charges for relief related to Plaintiff's incarceration or community supervision with the New York State Department of Corrections and Community Supervision prior to the date of submission of this Settlement Agreement to the Court for signature, whether for moneys owed, equitable relief, costs, fees, or other expenses, including attorney's fees. This General Release also includes a waiver and release of any and all claims related to allegations made before 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 related to Plaintiff's incarceration or community supervision with the New York State Department of Corrections and Community Supervision up to and including the date of submission of this Settlement Agreement to the Court for signature. Plaintiff represents that he is not currently aware of any potential claim or cause of action in any forum arising from any transactions, acts omissions or occurrences of any kind whatsoever against the Released Parties and has no pending claims against the Released Parties apart from this Action.

Plaintiff is not waiving or releasing any nonwaivable statutory protections, or waiving or releasing any claims that may arise after the date of submission of this Settlement Agreement to the Court for signature. 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, an attorney retained by an employee or potential employee, or any other person about the events alleged in the Complaint, or from testifying, assisting, or participating in an investigation, hearing, or proceeding conducted by any state, federal, or local government agency.

10. No Other Action or Proceeding. Other than the Action, Plaintiff represents that he 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 his own behalf or on behalf of any other person 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 Defendant to enter into this Settlement Agreement.

11. 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 pursuant to N.Y. Judiciary Law §§ 475 and 475-a or any other state or federal law, statute, contract, or otherwise.

12. No Other Attorneys. Plaintiff represents and warrants that there are no attorneys that have a lien on the settlement proceeds in the Action pursuant to the provisions of N.Y. Judiciary Law §§ 475 and 475-a or any other state or federal law, statute, contract, or otherwise.

13. 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.

14. 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 as constituting any admission of wrongdoing or liability on the part of Defendants 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 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).

15. 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 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 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.

16. **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.

17. **Voluntary Agreement.** Plaintiff represents that he has carefully read and fully understands all provisions of this Settlement Agreement, including the General Release. Plaintiff represents that he has executed and delivered this Settlement Agreement voluntarily after being fully informed of its terms, contents, and effect, and acknowledges that he 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.

18. **Negotiated Agreement.** The Parties 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 shall not be more strictly construed for or against any Party on the grounds that it was drafted by one Party.

19. **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.

20. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, and supersedes and embodies, merges and integrates all prior and current agreements and understandings of the Parties 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 Parties

hereto or an authorized representative of the Parties hereto.

21. **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 9 of this Settlement Agreement.

22. **Severability.** With the exception of Paragraphs 1, 2, 3, 7, 8, 9, 10, and 14 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.

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

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

25. **Submission to the Court.** This Settlement Agreement shall be submitted without further notice to the Court to be "So Ordered." This Settlement Agreement shall be deemed effective as to the Parties upon such order of the Court.

26. **Retention of Jurisdiction.** This Court retains exclusive jurisdiction and power to interpret and enforce the terms of this Settlement Agreement and this stipulated and agreed order.

WHEREFORE, the Parties 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 upon being "So Ordered" by the Court.

Dated: 6/11, 2024

[Redacted] a/k/a JOHN SMITH

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

On the 11th day of JUNE, 2024, before me personally came and appeared [Redacted] 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.

Dennis Cairns
NOTARY PUBLIC

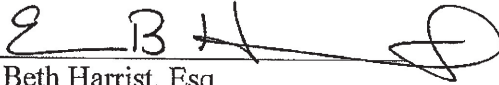
DENNIS CAIRNS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CA6114237
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES 08/09/2024

Dated: June 12, 2024
New York, New York

PAUL HASTINGS LLP
Attorneys for Plaintiff

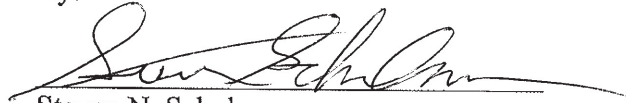
By: [Signature]
Daniel A. Fliman, Esq.
200 Park Avenue
New York, NY 10166
(212) 318-6000
danfliman@paulhastings.com

THE LEGAL AID SOCIETY
Attorneys for Plaintiff

By: 
Erin Beth Harrist, Esq.
199 Water Street, 6th Floor
New York, NY 10038
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Eharrist@legal-aid.org

Dated: June 13, 2024
New York, New York

LETITIA JAMES
Attorney General
State of New York
Attorney for Defendants
By:


Steven N. Schulman
Assistant Attorney General
28 Liberty Street-18th Floor
New York, New York 10005
(212) 416-8654
steven.schulman@ag.ny.gov

Dated: June 14, 2024
New York, New York

SO ORDERED:



HONORABLE ARUN SUBRAMANIAN
United States District Judge

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SMITH,

Plaintiff,


– against –

DEPUTY SUPERINTENDENT EILEEN
GONZALEZ-RUSSELL, DEPUTY
SUPERINTENDENT FOR PREA ELAINE VELEZ,
DOCTOR MICHELLE SMALL, OFFENDER
REHABILITATION COORDINATOR LAURA
SCHADE, PREA SERGEANT I. MEDINA,
SUPERVISING OFFENDER REHABILITATION
COORDINATOR JOY DEJESUS,
SUPERINTENDENT AMY LAMANNA, AND
DOCTOR JOHN MCGURTY in their individual
capacities;

Defendants

**AFFIRMATION
OF MEDICARE
ELIGIBILITY STATUS**

Case No. 22-CV-7384 (AS)(JLC)

, a/k/a JOHN SMITH, 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”).
2. I submit this affirmation on personal knowledge as the Plaintiff. I am aware that this affirmation will be relied upon by the Office of the Attorney General (“OAG”) in connection with the settlement of the Action 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 my Medicare status due to the injuries alleged in the Action.
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 in the Action for conditional payments Medicare has made for treatment of my injuries alleged in

the Action; and

- b. use the settlement proceeds in the Action to pay for my future medical expenses, when those expenses are for care or treatment related to the injuries alleged in the Action.
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 by the OAG.
 6. I agree to promptly provide OAG with any and all information necessary for its reporting pursuant to Section 111 of the MMSEA and MSP.

PEDIGREE INFORMATION

✍ Please provide the noted personal background information. ✍

7. I have been known by the following names (including any and all alias names and former names): _____
I hereby acknowledge that I can be identified by these names and that all these names are indeed referring to me.
8. I consent to OAG verifying my Medicare status for purposes of OAG’s compliance with Section 111 of the MMSEA.
9. I affirm that:
 - a. My social security number is: _____
 - b. My date of birth is: _____
 - c. My gender is: _____
 - d. My address is: _____
 - e. My telephone number is: _____

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 in the Action:
 - a. _____ I am not currently receiving, nor have I 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:
 - a. _____ I am a Medicare beneficiary. My Medicare number is _____.
I am aware of my obligation to reimburse Medicare, including any Medicare Part C

and Part D Plans for payments and/or benefits that I received directly or indirectly from Medicare for medical treatment of expenses for injuries that were alleged in the Action. I understand that reimbursement directly to Medicare may be made from the proceeds I receive from the settlement or judgment in the Action; 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. **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. **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. **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 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 on my behalf against the OAG for any delay in payment pursuant to the terms and conditions of the settlement or judgment in the Action 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, 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:

- a. _____ I am not Medicare eligible and have no reasonable expectation of becoming Medicare eligible within 30 months of the effective settlement or judgment date in the Action because:
- i. _____ I have not applied for social security disability (SSDI);
 - ii. _____ I have not been denied SSDI and anticipating appealing that decision;
 - iii. _____ I am not in the process of appealing or re-filing for SSDI;
 - iv. _____ I am not 62.5 years or older; and
 - v. _____ I do 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:

- a. _____ I am not a Medicare beneficiary and have no reasonable expectation of becoming a Medicare beneficiary within 30 months of the effective settlement or judgment date in the Action because I do not reasonably expect my current incarceration to end within 30 months.

-OR-

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

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

-OR-

- ii. _____ I do require future treatment for the injuries that are the subject of the Action. 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. I affirm this sum will be used for my future medical expenses relating to the injuries alleged in the Action. **Attached is a copy of the MSA Trust.**

-OR-

- iii. _____ I have not sought treatment for the injuries alleged in the Action and, as

such, there are no medical expenses relating to the alleged injuries. Furthermore, I do not anticipate seeking medical treatment for the injuries alleged in the Action. I understand and agree that, if I require 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 to pay for any medical expenses relating to such injuries.

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

a. _____ I am a Medicare beneficiary; and

i. _____ I do not require any future treatment for injuries that are alleged in the Action. The required attached physician certification confirms that no anticipated future treatment is required for the injuries that are alleged in the Action. **Attached is a copy of the Physician Certification.**

-OR-

ii. _____ I do 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. I affirm this sum will be used for my future medical expenses relating to the injuries that are the subject of this Action. **Attached is a copy of the MSA Trust.**

-OR-

iii. _____ I have not sought treatment for the injuries alleged in the Action and, as such, there are no medical expenses relating to the injuries alleged in the Action. Furthermore, I do not anticipate seeking medical treatment for injuries alleged in the Action. I understand and agree that, if I require 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 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

a/k/a JOHN SMITH