

## MEMORANDUM OF UNDERSTANDING

### I. GENERAL PROVISIONS

1. This Memorandum of Understanding ("Agreement") is entered into by the United States and the Nassau Health Care Corporation, owner-operator of the A. Holly Patterson Extended Care Facility ("Patterson"). This Agreement addresses the United States' investigation into the conditions of care and treatment of the residents at Patterson, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997.
2. The Parties recognize that the Chief Executive Officer of the Nassau Health Care Corporation and the Administrator of Patterson have responsibilities with regard to the operation of Patterson.
3. Patterson is an institution that is operated by the Nassau Health Care Corporation, which is a public benefit corporation established pursuant to New York law to provide health care services and health facilities for the benefit of the people of the state of New York and the county of Nassau. N.Y. PUB. AUTH. § 3401(2)(McKinney 2004).
4. The United States' investigation began on January 13, 2003, when the United States notified the State of New York and Patterson, pursuant to CRIPA, that it was initiating an investigation into the conditions of care and treatment of the residents in facility. As part of the investigation, the United States toured the facility in May 2003 and November 2003. On August 3, 2004, the United States notified the Governor of New York and Patterson of the findings and recommendations of its investigation ("the 8-3-04 Letter").
5. The 8-3-04 Letter identified alleged deficiencies in Patterson's care and treatment of residents that allegedly violated the residents' rights under the United States Constitution and federal law.
6. It is the position of the United States that the care, living conditions, and the treatment of Patterson residents implicate rights that are secured or protected by the Constitution of the United States and the laws of the United States.
7. The United States and its expert consultants recognize that Patterson has undertaken measures intended to improve the quality of care provided at Patterson during the period preceding the 8-3-04 Letter.
8. Patterson cooperated throughout the course of the investigation and indicated a willingness to voluntarily undertake measures to improve conditions at Patterson and to respond to the Department of Justice's 8-3-04 Letter. The Nassau Health Care Corporation enters into this

Agreement for the purpose of utilizing its resources in support of the quality improvement rather than allocating and exposing such resources to the risks and burdens of litigation.

9. Each and every provision of this Agreement is entered into by clear agreement of the Parties after thorough negotiations.

10. The provisions of this Agreement are a lawful, fair, adequate, and reasonable resolution of this investigation.

11. The purpose of this Agreement is to achieve the substantive outcomes set forth within this Agreement.

12. In entering into this Agreement, the Nassau Health Care Corporation does not admit any violation of state or federal law, and this Agreement may not be used as evidence of liability in any other legal proceeding.

13. Nothing in this Agreement, with regard to the operation of Patterson, shall be construed as an acknowledgment or admission by the United States that the Nassau Health Care Corporation has acted, or continues to act, in full compliance with the U.S. Constitution or federal law.

14. This Agreement is binding on the United States, the Nassau Health Care Corporation, any public benefit corporations, and/or departments, and any agency or corporation that is subject to CRIPA that may have an effect, either directly or indirectly, either currently or in the future, on the operations of Patterson or any facility that is subject to CRIPA that may be built or created to replace or supplement Patterson, and on the officers, agents, employees, assigns and successors of such entities and facility.

## **II. DEFINITIONS**

For the purposes of this Agreement:

15. “Adequate” or “appropriate” shall mean that level of service required for compliance with all applicable Federal laws, regulations, and codes, and with generally accepted professional standards and principles.

16. “A. Holly Patterson Extended Care Facility (“Patterson”)” means the A. Holly Patterson Extended Care Facility, located in Uniondale, New York. Patterson is operated by the Nassau Health Care Corporation, a public benefit corporation, which is a public benefit corporation established to provide health care services and health facilities for the benefit of the people of New York and of the county of Nassau.

17. "Care plan" shall mean a formal written individualized plan of treatment and activities, based upon comprehensive assessments performed by an appropriately-comprised interdisciplinary team of qualified professionals that a) describes the medical, nursing, and psychosocial needs of the individual resident; b) describes how such needs will be met; c) sets timetables for meeting those needs in order that each resident attains or maintains the highest practicable physical, mental, and psychosocial well-being; and d) is periodically reviewed and revised as appropriate.

18. "DOJ" means the United States Department of Justice, Civil Rights Division, the United States Attorney's Office for the Eastern District of New York, and their agents and employees.

19. "Consistent with Generally Accepted Professional Standard/Practice" means a qualified professional's decision that does not so substantially depart from contemporary, accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such judgment, practice or standards.

20. "Highest Practicable" shall mean the highest level of function and well-being possible, limited only by the individual's presenting functional status and potential for improvement or reduced rate of functional decline.

21. "The Parties" means the United States and the Nassau Health Care Corporation, owner-operator of Patterson.

22. "Qualified professional" shall mean an individual or individuals qualified to render the requisite and appropriate care, treatment, judgment, training, and service, based on credentials recognized in the specific field.

23. "Restraint" shall mean any device, procedure or medication that restricts, limits or directs a person's freedom of movement (including, but not limited to, powerful sedatives and the use of bed side rails).

24. "Quality assurance" shall refer to the process of performance improvement including, but not limited to, continuous quality improvement, clinical performance monitoring, peer review/case conferences, and risk management.

### **III. SUBSTANTIVE REMEDIAL MEASURES**

Patterson shall comply, within 60 days after the execution of this Agreement, with the following remedial measures:

## **A. MENTAL HEALTH CARE**

25. Patterson shall provide its residents with adequate mental health care, including psychiatric and mental health services.

26. Patterson shall provide its residents with psychotropic medications when appropriately justified, *i.e.*, only after a thorough evaluation and diagnosis according to generally accepted professional standards of care.

27. Patterson's diagnosis and evaluation of residents receiving mental health services shall be sufficiently documented to withstand clinical scrutiny and in a manner consistent with generally accepted professional standards of care.

28. Patterson's pharmacological practices regarding residents receiving mental health services shall include:

- a. Ensuring that all psychopharmacological practices comport with generally accepted professional standards.
- b. Ensuring that all use of drugs, including antidepressants, medication combinations, and benzodiazepines is professionally justified, carefully monitored, documented and reviewed by qualified staff.
- c. Ensuring that all medications are prescribed based on clinical diagnoses.
- d. Ensuring that medical and nursing staff are trained in the safe and proper administration and monitoring of psychiatric medications.
- e. Ensuring that the Pharmacy Consultant complies with the federal regulations and generally accepted professional standards that address the use of psychiatric medications in long-term-care facilities.
- f. Ensuring that informed consent or proper authorization is obtained prior to administering psychotropic medications and other invasive treatments.

29. Patterson shall ensure that there is continuity and coordination of care in the provision of mental health services and medical care.

30. Patterson shall ensure that medical and nursing staff are trained in the evaluation, diagnosis, and treatment of residents with psychiatric and/or behavioral problems in accordance with generally accepted professional standards and federal law.

## **B. RESTRAINT USE**

31. Patterson shall use restraints only when clinically justified or on an emergency basis, and only pursuant to generally accepted professional standards and federal law.

32. Patterson shall conduct a comprehensive assessment of the appropriateness of the restraint prior to application of the restraint, except when necessary on an emergency basis, which is only to be used consistent with generally accepted professional standards.
33. Patterson shall monitor restraint use in accordance with generally accepted professional standards and federal law.
34. Patterson shall immediately implement procedures to assess and monitor the use of siderails to ensure the siderails pose no undue risks to the resident's safety.
35. Patterson shall obtain consent for restraint use, unless applied in emergency circumstances, pursuant to generally accepted professional standards.
36. Patterson shall appropriately document all uses of restraint and seclusion.
37. Patterson shall ensure that staff is trained on the use of restraints in accordance with generally accepted professional standards and federal law.

### **C. CLINICAL CARE**

38. Patterson shall assist residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being.
39. Patterson shall provide residents with adequate medical and nursing care, consistent with generally accepted professional standards.

#### **Assessment and Care Plans**

40. Patterson shall provide ongoing assessments, individualized care plans, and health care interventions consistent in content with generally accepted professional standards and applicable federal regulations.
41. The care plan shall include, at a minimum, assessments addressing:
  - a. Medically defined conditions and prior medical history;
  - b. Medical status measurement;
  - c. Physical and mental functional status;
  - d. Sensory and physical impairments;
  - e. Nutritional status;
  - f. Psychosocial well-being;
  - g. Discharge potential;
  - h. Activities potential;

- i. Cognitive status;
- j. Medications; and
- k. Appropriateness of restraints.

42. Patterson shall develop, implement and provide to each resident an individualized care plan that, among other things:

- a. Shall be developed by an appropriately comprised interdisciplinary team of qualified professionals, including a physician, registered nurse, psychiatrist, psychologist, dietician, and rehabilitation therapist(s);
- b. Shall describe the medical, nursing, and psychosocial needs of the resident and how such needs will be met;
- c. Shall be based upon comprehensive assessment of each resident's functional capacity;
- d. Shall be prepared within timelines established by federal law; and
- e. Shall include, to the maximum extent possible, input from the resident.

43. Patterson shall develop, implement, and revise as appropriate, health care interventions consistent with ongoing assessments and the individualized care plans.

44. Patterson shall develop, implement, and revise, as appropriate, a policy addressing the decision making process for cognitively impaired residents who are not competent to make decisions about their care and treatment. Such policy shall be designed to ensure that cognitively impaired residents who are not competent to make decisions about their care and treatment shall have guardians or representatives appointed or designated to make decisions relating to the residents' stay at Patterson.

45. Patterson shall educate residents and their guardians or representatives about all prescribed medications.

46. Patterson shall ensure that its staff training reinforces, promotes, and protects the rights of residents to dignity, privacy, and self-determination in accordance with generally accepted professional standards and federal law.

47. Patterson shall ensure that its quality assurance mechanisms monitor the delivery of medical care services to residents in accordance with generally accepted professional standards and federal law.

### **Restorative Care**

48. Patterson shall provide ongoing and systematic evaluation, as necessary, of all residents who have sustained loss of function and/or are clearly at risk for further loss of function to determine their needs for rehabilitation and restoration and develop and implement an appropriate

individualized plan for such residents based on this evaluation designed to promote his or her mobility, continence, self-care, and involvement in meaningful activity.

49. Patterson shall assure that appropriate functional body alignment and posture is provided for frail residents such as the use of pillows, and adapted chairs, as necessary.

50. Patterson shall ensure that it provides appropriate seating for all residents and tables to promote resident involvement in activities.

51. Patterson shall ensure that the residents are wearing appropriate footwear at appropriate times.

52. Patterson shall ensure that its quality assurance mechanisms monitor the delivery of restorative care services to residents in accordance with generally accepted professional standards and federal law.

### **Therapeutic Care**

53. Patterson shall ensure that therapeutic activities meet the needs of all residents through individual design, implementation, and accessibility.

54. Patterson shall ensure that its therapeutic activity programs address and prevent complications associated with inactivity (e.g., loss of function, depression, weight loss, and pressure sores) for residents, as appropriate in accordance with generally accepted professional standards and federal law.

55. Patterson shall ensure that its activity plans address the behavior and specific needs of each resident with a psychiatric diagnosis or who is receiving psychoactive medication, in accordance with generally accepted professional standards and federal law.

56. Patterson shall ensure that its therapeutic assessment process provides adequate rehabilitative services in accordance with generally accepted professional standards and federal law.

57. Patterson shall ensure that its staff is trained in the requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 and provides activities and services to individuals with disabilities consistent with the Acts' requirements.

58. Patterson shall ensure that its quality assurance mechanisms monitor the delivery of therapeutic care services to residents in accordance with generally accepted professional standards and federal law.

#### **D. NUTRITIONAL CARE**

59. Patterson shall provide adequate nutritional management services to its residents.
60. Patterson shall ensure that adequate nutritional assessments of individual resident's specific nutritional needs are included as part of the care plan.
61. Patterson shall ensure that residents receive appropriate diets and adequate amounts of fluids to ensure proper hydration.
62. Patterson shall ensure that residents who need assistance in eating are assisted by adequately trained staff.
63. Patterson shall ensure that meal services are provided in a manner that preserves resident dignity, promotes quality of life, and ensures resident safety.
64. Patterson shall ensure that residents are provided with appropriate equipment, devices, and positioning necessary for safe eating and swallowing.
65. Patterson shall ensure that its quality assurance mechanisms monitor the delivery of nutritional services to residents.

#### **E. QUALITY ASSURANCE AND INCIDENT MANAGEMENT**

66. Patterson shall develop and implement, consistent with generally accepted professional standards, a written functional quality improvement program for the provision of mental health and medical care which shall include development of a written quality improvement plan that includes annual self-evaluation, a formalized process for the assessment, planning, implementation and evaluation of services provided and of client outcomes; the selection of performance indicators, mortality and peer review and the establishment of a Quality Improvement Committee ("QIC"), composed of a multi-disciplinary team of qualified professionals.
67. The quality improvement program shall include an annual plan with defined measurable outcomes and a program evaluation.
68. The QIC shall develop written protocols for regularly providing training regarding the provision of medical and mental health care to clinical and administrative staff.
69. Patterson shall develop and implement professionally appropriate quality assurance and staff oversight policies. These policies shall include:

- a. Mortality and peer reviews (i.e. an organized procedure conducted by appropriate medical professionals for completing detailed assessments of resident deaths, negative outcomes, and resident care, in order to evaluate the performance of treating professionals in meeting the standards of their specialty);
- b. Objective, reliable, verifiable data collection to identify problem trends or issues;
- c. Professionally appropriate corrective action in response to any identified problem trends (e.g. facility, shift, resident, or housing unit patterns of resident abuse; injuries; pressure sores; falls; restraint use; infections; communicable disease outbreaks; psychotropic medication use; incontinence; or loss of function).
- d. Procedures to ensure accurate reporting of serious incidents, including the reporting of possible abuse to other agencies as required by law.

70. Patterson shall ensure that incidents involving injury and unusual incidents, including but not limited to unexpected deaths and sentinel events, are timely evaluated and incorporated appropriately as a quality assurance tool.

71. Patterson shall track, with sufficient particularity, clinical outcomes, including, but not limited to, psychoactive medication use, use of chemical and physical restraints, falls, and lack of involvement in activities. Patterson shall analyze regularly the meaning of these outcomes to identify trends, and whenever appropriate, revise practices, and implement changes to prevent future harm to residents.

72. Patterson shall address the root causes of falls and other injuries to minimize their occurrence, and provide appropriate, individualized intervention.

73. For all residents who are identified to be at risk of accident and/or falls, Patterson shall:

- a. develop and implement a proactive, individualized accident/fall prevention plan;
- b. include the residents' accident/fall prevention plans in their care plans;
- c. provide residents with adequate supervision to prevent accidents and falls;
- d. ensure that residents receive adequate and appropriate assistive devices to prevent accidents and falls;
- e. utilize adequate safety devices to help prevent accidents and falls; and
- f. take actions to ensure that the residents' environment remains as free of accident hazards as is possible.

74. Patterson shall ensure that assessments are conducted to determine whether root causes have been addressed and, if not, ensure that appropriate feedback is provided to the responsible disciplines and direct-care areas.

75. Patterson shall ensure that the results of the analyses described above are transmitted to the relevant disciplines and direct-care areas for responsive action, and that responses are monitored to ensure that appropriate steps are taken.

#### **F. DISCHARGE PLANNING AND MOST INTEGRATED SETTING**

76. Patterson shall assess adequately on an ongoing, timely basis the discharge potential of each resident, whether the resident opposes discharge, and the appropriateness and clinical necessity of such residents' continued stay at the facility. Patterson shall take appropriate action to encourage and assist residents to move to the most integrated settings consistent with the determinations of treating professionals that community placement is appropriate, and where the transfer is not opposed by the resident.

77. Patterson shall ensure that care plans are coordinated, interdisciplinary, and address the goal of increasing residents' independence and improved functioning.

78. Patterson shall develop and implement a policy for discharge planning that includes consideration of non-institutional care and more integrated settings.

79. Patterson shall provide residents with the support services and information regarding community placement.

80. Patterson shall create, maintain, and monitor comprehensive, up-to-date information relative to available housing options and other treatment services for its residents.

81. Patterson shall ensure that residents are not unnecessarily isolated and that residents are provided treatment in the most integrated setting consistent with federal law.

#### **IV. FEDERAL STATUTORY COMPLIANCE**

82. In the operation and management of Patterson and in providing services to Patterson residents, Patterson shall fully comply with all applicable federal statutes and applicable implementing regulations, including but not limited to the following laws, to the extent such apply to Patterson: Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395i-3 et seq.; requirements for, and assuring quality of care in, skilled nursing facilities; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396r et seq.; requirements for nursing facilities; the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.; and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, Nondiscrimination under Federal grants and programs.

## **V. IMPLEMENTATION AND COMPLIANCE**

### **A. SATISFACTION OF THE AGREEMENT**

83. "Substantial Compliance" with this Agreement for a period of twelve consecutive months shall fully satisfy the Agreement. To determine substantial compliance the Monitor (defined in Section V.B. below) shall utilize a sampling methodology to select resident records for review for evidence of compliance with the terms of this Agreement. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance.

84. Patterson, by and through its officials, agents, employees, and successors, shall engage in a pattern or practice of conduct at Patterson that does not deprive the residents of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

85. The Nassau Health Care Corporation is responsible for providing necessary support to Patterson to enable it to fulfill its obligations under this Agreement.

### **B. MONITOR**

86. The Parties agree to the appointment of Marie Boltz, MSN, APRN-BC, NHA, and Susan M Renz, APRN-BC, as the experts to monitor implementation of this Agreement. The monitor and his or her consultants ("Monitor") shall have full authority to independently review and report on the implementation and compliance with the provisions of this Agreement twice a year. All reasonable costs and expenses of the Monitor shall be borne by the Nassau Health Care Corporation.

87. The overall duties of the Monitor will be set forth in a written agreement between the Monitor and Patterson, which shall be subject to approval by the United States. Such overall duties shall be to observe, review and report findings, and make recommendations to Patterson with regard to implementation of this Agreement. The Monitor shall review the protections, services, programs, and supports provided to the residents in this residential setting, to determine the implementation and compliance with this Agreement. The Monitor may make both announced and unannounced inspections of the facility.

88. The Monitor shall have full and complete access to all of Patterson's buildings and facilities, staff, residents, resident records, and documentation relating to the issues addressed in this Agreement. Patterson shall direct all employees to cooperate fully with the Monitor. The Monitor shall be permitted to initiate and receive communications from any of the Parties without the other Parties. The Monitor shall address written communications and requests for

written documentation to counsel for the Parties.

89. Within three (3) months after the effective date of this Agreement, the Monitor shall conduct its initial visit of Patterson in order to evaluate the extent to which Patterson has complied with the requirements of this Agreement.

90. The Monitor shall provide the Parties with written Status Reports describing the steps taken by Patterson to implement this Agreement and evaluating the extent to which Patterson has complied with the requirements of this Agreement. Status Reports shall be issued every six (6) months, unless the Parties agree otherwise. Drafts of the Status Reports shall be provided to the Parties at least ten (10) business days prior to the issuance of the Status Reports unless the Parties agree otherwise. The Monitor shall conduct telephonic conferences with the Parties on a quarterly basis. Additionally, the Parties shall have access to all written and oral briefings and reports provided by the Monitor and to the Monitor.

91. Patterson and the Monitor shall agree to a budget sufficient to allow Monitor to carry out the responsibilities described in this Agreement.

92. Patterson shall provide the United States with 90 days written notice of its intent to terminate its written agreement with the Monitor. Such notice shall be accompanied by a written explanation and documentation supporting the intent to terminate. Patterson shall not terminate its agreement with the Monitor absent the express consent of the United States. In the event that the Monitor withdraws as Monitor, or the United States consents to Patterson's termination of its agreement with the Monitor, the United States and Patterson shall agree mutually on the identity of a new Monitor. The duties of the new Monitor shall be set forth in a written agreement between the new Monitor and Patterson, which shall be subject to approval by the United States. This Agreement shall be tolled for any period of time greater than 45 days that it takes for the parties to agree mutually on the identify of the new Monitor and for the new Monitor to begin the performance of its obligations pursuant to this Agreement. Any time tolled pursuant to this paragraph shall not reduce the number of scheduled monitoring visits required under this Agreement.

### **C. COMPLIANT POLICIES, PROCEDURES AND PROTOCOLS**

93. Patterson shall revise and/or develop as necessary its policies, procedures, protocols, training curricula, and practices to ensure that they are consistent with, incorporate, address, and implement all provisions of this Agreement. Patterson shall revise and/or develop as necessary other written documents such as screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreement.

94. Patterson shall submit quarterly compliance reports to the United States and the Monitor, the first of which shall be submitted within 45 days after the effective date of this Agreement. The

reports shall describe the actions that Patterson has taken during the reporting period to implement this Agreement, which actions shall be subject to review and approval of the United States and the Monitor. The reports shall make specific reference to the Agreement provisions being implemented. The reports shall identify the names and titles of all individuals involved in preparation of the reports. Patterson shall make available records or other documents to verify that it has taken such actions as described in its compliance reports and will provide copies of all documents reasonably requested by the United States and the Monitor without charge.

#### **D. DOJ ACCESS**

95. DOJ, its staff, consultants, and agents may, at their discretion, tour Patterson to assess compliance with this Agreement and shall have reasonable access to Patterson residents and staff, documents, and information relating to implementation of this Agreement for the purpose of evaluating the implementation of this Agreement. Patterson agrees to provide DOJ access to residents living at Patterson, outside the presence of staff (unless the resident requests otherwise).

96. Prior to any tour, DOJ shall provide reasonable notice to Patterson. Within a reasonable time in advance of the tour, DOJ shall identify any expert consultants it plans to use on the tour.

#### **E. ENFORCEMENT**

97. Failure by either Party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Agreement.

98. Within a reasonable period of time after the conclusion of any visit, DOJ shall make available to Patterson any post-tour reports prepared by its expert consultants, if any.

#### **F. UNFORESEEN DELAY**

99. If any unforeseen circumstance occurs which causes a failure to timely carry out any requirements of this Agreement, Patterson shall notify the DOJ in writing within twenty (20) calendar days of the time that Patterson becomes aware of the unforeseen circumstance and its impact on Patterson's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. Patterson shall implement all reasonable measures to avoid or minimize any such failure.

**G. MODIFICATION**

100. If, at any time, any Party to this Agreement desires to modify it for any reason, that party will notify all other Parties to this Agreement, in writing, of the proposed modification and the reasons therefore. No modification will occur unless there is written agreement by all Parties.

**VI. TERMINATION**

101. This Agreement will terminate three (3) years after the effective date of this Agreement or prior to the conclusion of the three-year period, if, as set forth in paragraph 83, the Monitor reports that Patterson has maintained substantial compliance with the provisions of this Agreement for a period of twelve consecutive months. Patterson shall have the burden to demonstrate compliance.

FOR the NASSAU HEALTH CARE CORPORATION as owner-operator of Patterson.

/s/ Daniel Kane

/s/ Sharon Popper

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Daniel Kane  
President/Chief Executive Officer  
Nassau Health Care Corporation

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Sharon Popper, Esq.  
General Counsel  
Nassau Health Care Corporation

/s/ Larry Slatky

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Larry Slatky  
Administrator  
A. Holly Patterson Extended Care Facility

FOR THE UNITED STATES

/s/ Roslynn R. Mauskopf

**ROSLYNN R. MAUSKOPF**  
United States Attorney  
Eastern District of New York

/s/ Wan J. Kim

**WAN J. KIM**  
Assistant Attorney General  
Civil Rights Division

/s/ Bradley J. Schlozman

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**BRADLEY J. SCHLOZMAN**  
Deputy Assistant Attorney General  
Civil Rights Division

/s/ Pamela K. Chen

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**PAMELA K. CHEN**  
Chief  
Civil Rights Litigation Section  
Eastern District of New York

/s/ Shanetta Y. Cutlar

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**SHANETTA Y. CUTLAR**  
Chief  
Special Litigation Section

/s/ Arethea Coles

/s/ David Deutsch

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**DAVID DEUTSCH**  
**ARETHEA COLES**  
Trial Attorneys  
Special Litigation Section  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
(202) 514-6270

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