

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRINCESS JANAE PLACE, JULES DONAHUE, and
JAIME MITCHELL,

Plaintiffs,

- against -

OFFICE OF TEMPORARY AND DISABILITY
ASSISTANCE, OFFICE OF TEMPORARY AND
DISABILITY ASSISTANCE COMMISSIONER
MICHAEL HEIN in his official capacity, NEW YORK
STATE DEPARTMENT OF HEALTH, NEW YORK
STATE DEPARTMENT OF HEALTH
COMMISSIONER HOWARD ZUCKER in his official
capacity, NEW YORK STATE, NEW YORK STATE
GOVERNOR ANDREW CUOMO in his official
capacity, NEW YORK CITY, NEW YORK CITY
DEPARTMENT OF SOCIAL SERVICES, NEW
YORK CITY DEPARTMENT OF SOCIAL SERVICES
COMMISSIONER STEVEN BANKS in his official
capacity,

Defendants.

Index No. 153065/2021

Hon. Debra A. James

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

This Stipulation of Settlement, General Release, and Order of Dismissal with Prejudice (the “Stipulation”) is entered into, by and between plaintiffs Princess Janae Place, Jules Donahue, and Jaime Mitchell (collectively, “Plaintiffs”) and defendants New York State Governor Andrew G. Cuomo in his official capacity¹; the New York State Office of Temporary and Disability Assistance, sued herein as “Office of Temporary and Disability Assistance,” and Commissioner Michael Hein in his official capacity, sued herein as “Office of Temporary and

¹ Kathy Hochul, the current Governor of New York, is to be substituted for Defendant Andrew G. Cuomo pursuant to Civil Practice Law and Rules (“CPLR”) 1019.

Disability Assistance Commissioner Michael Hein” (together, “OTDA”)²; the New York State Department of Health, and Commissioner Howard Zucker in his official capacity, sued herein as “New York State Department of Health Commissioner Howard Zucker” (together, “DOH”)³; and New York State (collectively, “State Defendants”), as follows:

WHEREAS on or about March 29, 2021, Plaintiffs commenced the above-captioned action against State Defendants (the “Action”), by Summons and Complaint alleging that State Defendants violated the New York State Human Rights Law, Executive Law § 296, New York Civil Rights Law § 40-c, New York City Human Rights Law, N.Y.C. Admin. Code § 8- 107, the equal protection guarantees of the New York State Constitution (including Art. I § 11), and the due process guarantees of the New York State Constitution (including Art. I §§ 1, 6);

WHEREAS Plaintiffs also named as defendants New York City, New York City Department of Social Services (“NYC DSS”), and NYC DSS Commissioner Steven Banks in his official capacity (collectively, “City Defendants”);

WHEREAS Plaintiffs are represented in this Action by the New York Civil Liberties Union Foundation (“Plaintiffs’ Counsel”);

WHEREAS on May 21, 2021, State Defendants moved pursuant to CPLR 1003 and 3211(a)(1), (a)(2), and (a)(7) for an order dismissing all claims for relief against all State Defendants (the “Motion to Dismiss”);

WHEREAS Plaintiffs opposed the Motion to Dismiss and the Court has not decided the Motion to Dismiss;

² Barbara C. Guinn, the Acting Commissioner of OTDA, is to be substituted for Michael Hein pursuant to CPLR 1019.

³ James V. McDonald, the current Commissioner of DOH, is to be substituted for Howard Zucker pursuant to CPLR 1019.

WHEREAS on June 14, 2021, Plaintiffs filed a “Notice of Discontinuance, Without Prejudice, As to City Defendants Only” (NYSCEF Doc. No. 36);

WHEREAS N.Y. Civil Rights Law § 79-q took effect on April 9, 2022;

WHEREAS on October 21, 2022, Plaintiffs moved pursuant to CPLR 3214(b) to lift the automatic stay of discovery (the “Stay Motion”);

WHEREAS State Defendants opposed the Stay Motion and the Court has not decided the Stay Motion;

WHEREAS Plaintiffs and State Defendants (the “Parties”) desire to avoid the expense and uncertainty of future litigation and trial and to resolve the controversy between them amicably and expeditiously; and

WHEREAS the Parties have agreed to the entry of the Stipulation without any admission of liability and without a trial;

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations, and other considerations contained in the Stipulation, the Parties hereby stipulate and agree as follows:

I. Dismissal of this Action with Prejudice

Upon the Court’s so-ordering of the Stipulation (the “Effective Date”), the Complaint, the Action, all claims asserted therein, and all claims which could have been asserted therein or in the Complaint or otherwise, are hereby dismissed with prejudice, without payments, attorneys’ fees, costs, disbursements, or expenses.

II. Complete New York Civil Rights Law § 79-q Updates by January 1, 2024

A. By January 1, 2024, OTDA shall comply with N.Y. Civil Rights Law § 79-q by making available a sex “X” option at the point of data collection and by updating all applicable physical and online forms to make a sex “X” option available.

B. By January 1, 2024, DOH shall bring into compliance with N.Y. Civil Rights Law § 79-q the points of data collection and applicable physical and online forms corresponding to the forms identified in Appendix A to this Agreement.

C. OTDA and DOH shall permit NYC DSS to update its local-equivalent forms to comply with N.Y. Civil Rights § 79-q before January 1, 2024, provided that NYC DSS has adequate technology in place to translate sex “X” option into “F” in the “sex” field in the Welfare Management System (“WMS”) (hereinafter the “WMS Sex Field”).

III. Issue Directive Regarding WMS and Sex “X”

Within 30 days of their respective updates described in Section II, OTDA and DOH will respectively issue a directive, guidance, or instructions to the fifty-eight local departments of social services (“LDSS”) explaining that LDSS personnel should input “F” in the WMS Sex Field whenever an applicant or recipient chooses sex “X” at a point of data collection or on any applicable physical and online forms. When communicating this directive, guidance, or instructions to the LDSSs, OTDA and DOH shall state that, while “M” indicates that a person selected sex “male,” “F” indicates that a person selected either sex “female” or sex “X,” and that LDSS personnel should not assume that an individual with sex “F” in WMS is female.

Nothing in Section III shall prevent OTDA and DOH from in the future using an updated system—in the form of WMS, an Integrated Eligibility System (“IES”), or any successor or supplemental system—that adds a new sex coding option specifically for “X” and amending or withdrawing its directive, guidance, or instructions to reflect such a change.

IV. Training

Within ninety (90) days of their respective issuance of the guidance, directive, or instruction described in Section III, OTDA and DOH shall make training available to their respective employees and to LDSS employees explaining the changes described in Sections II

and III of this Agreement. Within ninety (90) days of their respective issuance of the guidance, directive, or instruction described in Section III, OTDA and DOH also shall make cultural competency and sensitivity training available to their respective employees and to LDSS employees, with a specific focus on service to non-binary clients. The subject-matter of the trainings described in Section IV may be part of one or more separate training materials.

V. Compliance with Laws

In the event of any intervening change in any federal, state, or local law, statute, ordinance, rule, regulation, or guidance, or in the event of any corrective action required by a federal agency, that OTDA and/or DOH believes amends, changes, or voids its responsibilities pursuant to the Stipulation (“Intervening Change”), counsel for OTDA and/or DOH shall so notify Plaintiffs’ Counsel in writing within twenty-one (21) days of OTDA and/or DOH becoming aware of such Intervening Change, and the Parties shall attempt to come to an agreement as to any modifications of the Stipulation that are warranted by any such Intervening Change. Counsel for OTDA and/or DOH shall provide Plaintiffs’ Counsel with the proposed implementation, change, alteration, or amendment to the Stipulation within thirty (30) days of notice to Plaintiffs’ Counsel of the Intervening Change. Plaintiffs’ Counsel shall respond within fifteen (15) days. Counsel for OTDA and/or DOH shall advise Plaintiffs’ Counsel within fifteen (15) days of its position on the proposed implementation, change, alteration, or amendment to the Stipulation. If there remains a dispute as to the effect of the Intervening Change on this Stipulation, any Party may present that dispute to the Court within thirty (30) days of OTDA and/or DOH’s response.

Notwithstanding the foregoing, neither OTDA nor DOH will be required to take or to continue any action it reasonably believes, based on advice of competent counsel, to be either

unlawful or to risk federal funding as a result of an Intervening Change, other than by order of the Court.

VI. General Release

For and in consideration of the obligations specified in the Stipulation, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Plaintiffs, on behalf of themselves and their heirs, executors, administrators, successors, and assigns (the “Releasing Parties”) hereby jointly and severally release and discharge on the merits with prejudice New York State, State Defendants, and all of State Defendants' past and present officials, employees, directors, representatives, agents, agencies, departments, subdivisions, their successors and assigns, and their respective heirs, executors, administrators, personal representatives, and transferees (the “Releasees”) of and from, without limitation, any and all manner of claims, actions, costs, whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or not accrued, direct or indirect, from the beginning of time through the date that the Court so-orders the Stipulation, that Plaintiffs ever had, now have, or can, shall, or may hereafter have against Releasees, or any of them, either alone or in any combination with others, for, by reason of, involving, concerning, arising from, or in any way relating to any claim which is or could have been stated against Releasees concerning the allegations asserted or conduct challenged in the Complaint or the Action, or which could have been asserted in the Complaint or the Action, for the Term of the Stipulation as set forth in Section VII. For the avoidance of doubt, this release includes a release of any and all claims the Releasing Parties had, have, or may have against Releasees for attorneys’ fees, costs, disbursements, and all other expenses related to, concerning, or in connection with the Complaint or the Action. The Stipulation shall be binding upon and inure to the benefit of the Parties hereto and each and all of their respective successors, heirs, assigns, executors, and legal representatives.

VII. Term

Within fifteen (15) days of OTDA and DOH's completion of their respective obligations under Sections II, III, and IV of this Stipulation, counsel for State Defendants shall provide written notice of such completion to Plaintiffs' Counsel. Without further action by the Parties or the Court, this Stipulation shall expire as to OTDA and DOH, respectively, nine (9) months from the written notice(s) of OTDA and DOH's completion of their respective obligations under Sections II, III, and IV of this Stipulation.

VIII. Continuing Jurisdiction

A. "Continuing Jurisdiction Period" shall mean the period between the Effective Date and the date of the expiration of this Stipulation as defined in Section VII.

B. During the Continuing Jurisdiction Period, the jurisdiction of the Court shall be limited to the purpose of enforcing the terms of Sections II, III, IV, and V of this Stipulation as against OTDA or DOH only.

C. As of the Effective Date, Plaintiffs' claims in this Action shall be deemed resolved and fully satisfied. This Stipulation shall be deemed unenforceable upon the end of the Continuing Jurisdiction Period.

IX. No Other Action or Proceeding Commenced

Plaintiffs, for themselves individually, represent and warrant that they have not commenced, maintained, or prosecuted any action, charge, complaint, grievance, or proceeding of any kind, that relates to the allegations in the Complaint, against any State Defendant (including, but not limited to, any and all agencies, departments, offices, subdivisions, officials, employees, affiliates, or agents thereof) on their own behalf and/or on behalf of any person and that none of the foregoing is currently pending in any court or before any administrative or judicial body or agency; and Plaintiffs and Plaintiffs' Counsel acknowledge that this

representation constitutes a material inducement for State Defendants to enter into the Stipulation.

X. General Provisions

A. Authority. Each signatory to this Stipulation hereby represents and warrants that the signatory has the requisite authority to enter into this Stipulation and has not previously assigned or transferred any rights or interests with respect to the matters covered by this Stipulation.

B. Modifications. Any date set forth herein may be extended by mutual written agreement of the Parties, through their counsel, by e-mail stipulation. This Stipulation may not otherwise be amended, changed, modified, superseded, altered, or canceled, and the terms and conditions hereof may not be waived, except by a written instrument signed by each of the Parties expressly stating that it is intended to amend.

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

D. Waiver. No waiver of any provision of this Stipulation or the breach thereof shall be effective unless expressed in a writing signed by the waiving Party. The waiver by any Party of any of the provisions of the Stipulation or of the breach thereof shall not operate or be construed as a waiver of any other provision or breach thereof.

E. No Reliance. The Parties represent and warrant that: (i) they have had reasonable opportunity to consult with counsel, have consulted with counsel regarding the terms of this

Stipulation and its execution, and have read and understand all provisions of this Stipulation; (ii) they have freely and voluntarily entered into this Stipulation with an intent to bind themselves to its terms; and (iii) no promises or representations were made to them by any person to induce them to enter into this Stipulation (other than the express terms set forth herein).

F. Negotiated Agreement. This Stipulation has been negotiated and drafted by all of the Parties and their respective counsel and shall not be construed in favor of, or against, any Party on the basis of its having been drafted by that Party. Each Party agrees that, in interpreting and applying the terms and provisions of the Stipulation, no Party shall be deemed the drafter of any provision, no presumption shall exist or be implied for or against any Party as a result of who drafted any provision, and any uncertainty or ambiguity in this Stipulation shall not be interpreted against any Party.

G. Governing Law and Venue. This Stipulation shall be governed by and construed in accordance with the laws of the State of New York, without regard or giving effect to New York's choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern. Any dispute arising out of or related to this Stipulation shall be brought in New York County Supreme Court of the State of New York.

H. No Admission of Liability. Nothing contained in this Stipulation, and no action taken pursuant to this Stipulation, shall be deemed to be admission of any of Plaintiffs' allegations by any State Defendant or any agency, office, official, employee, or agent therefor, nor an admission by any State Defendant that they have in any manner or way violated Plaintiffs' rights. By entering into this Stipulation, State Defendants in no way admit any violation of law or any liability whatsoever to the Plaintiffs, individually or collectively, all such liability being

expressly denied. Rather, State Defendants enter into this Stipulation to avoid further protracted litigation and to resolve and settle all disputes with Plaintiffs. Settlement of the Action, negotiation and execution of this Stipulation, and all acts performed or documents executed pursuant to or in furtherance of this Stipulation or the settlement (i) are not, shall not be deemed to be, and may not be used as an admission or evidence of any wrongdoing or liability on the part of any State Defendant, or of the truth of any of the factual allegations in the Complaint; and (ii) are not, shall not be deemed to be, and may not be used as an admission or evidence of fault or omission on the part of any State Defendant in any civil, criminal, administrative, or arbitral proceeding.

I. No Precedential Value. This Stipulation shall not in any manner be construed as determinative of the issues or claims raised, purportedly raised, or that could have been raised in the Complaint, the Action, or any other proceeding. This Stipulation shall have no precedential value or effect whatsoever and shall not be admissible in any judicial or administrative action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Stipulation. In addition, notwithstanding the provisions of any paragraph or section herein, this Stipulation shall not bind or collaterally estop any State Defendant (including, but not limited to, any and all agencies, departments, offices, subdivisions, officials, employees, affiliates, and agents thereof) 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.

J. Headings. The headings designated in this Stipulation are solely for descriptive purposes and do not serve to alter, modify, detract from, or add to the substantive terms of this Stipulation in any way.

K. Execution. This Stipulation may be executed by facsimile or email signatures in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Upon signature by all Parties, this Stipulation shall be submitted without further notice to the Court.

L. Computation of Time. In computing any time period specified by this Stipulation, the following rules apply: (i) exclude the day of the event that triggers the period; (ii) count every day, excluding intermediate Saturdays, Sundays, and New York State (“NYS”) legal holidays; and (iii) include the last day of the period, but if the last day is a Saturday, Sunday, or NYS legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or such NYS legal holiday.

IN WITNESS WHEREOF, the Parties hereto acknowledge that they have read this Stipulation and accept and agree to the provisions contained herein, and have each duly executed this Stipulation on the day and date indicated below.

Dated: New York, New York
October 4, 2023

NEW YORK CIVIL LIBERTIES UNION FOUNDATION
Attorneys for Plaintiffs

By:



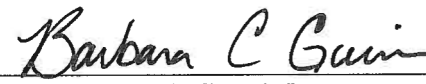
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40 North Pearl Street
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JAMES V. MCDONALD
Commissioner
NYS Department of Health
ESP Corning Tower
Albany, New York 12237

SO ORDERED:

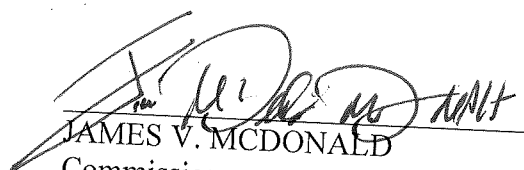
DEBRA A. JAMES, J.S.C.

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JAMES V. MCDONALD
Commissioner
NYS Department of Health
ESP Corning Tower
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SO ORDERED:

DEBRA A. JAMES, J.S.C.

APPENDIX A

Form Name		Form #
1	Access NY - Health Insurance for Older Adults, People with Disabilities and Certain Other Populations Application	DOH-4220
2	Medicare Savings Program	DOH-4328
3	Medicaid Presumptive Eligibility for the Family Planning Benefit Program Provider Screening Form	DOH-5057
4	Family Planning Benefit Program Application	DOH-4282
5	Medicaid Presumptive Eligibility for Pregnant Individuals Screening	DOH-5224
6	Medicaid Presumptive Eligibility for Children Screening	DOH-4441
7	Recertification for Medical Assistance (Chronic Care)	LDSS-4411
8	FPPB (tied to DOH-4282)	Z61
9	Medicare Savings Program Renewal - Upstate	Z46
10	Medicare Savings Program Renewal - NYC	MAP 909-F
11	Notice of Renewal for QI1 (Upstate and Downstate)	Z40-R0043-¶ 20081201
12	Upstate Renewals*	Z61
13	Downstate Renewals*	MAP 909-E
*DOH does not make any representation or agreement regarding changes to the sex field in the voter registration forms referenced within these forms. DOH is not responsible for voter registration forms.		