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July 20, 2022

BY REGULAR MAIL AND E-MAIL

Daniel Braun, Esq.

Assistant Corporation Counsel

Special Federal Litigation Division

New York City Law Department

100 Church Street, Room 3-149

New York, NY 10007

Re: Krystin Hernandez, et al. v. City of New York, et al. – 21-cv-07406
(CM)(GWG)

Counsel:

I write to inform you that all Plaintiffs in the above-captioned matter hereby accept Defendants' Rule 68 Offer of Judgment dated July 7, 2022, a copy of which is attached.

I will contact you separately regarding the outstanding claims for attorney's fees and costs to see if we can reach a stipulation that would avoid the need for a formal application to the Court.

Thank you for your consideration in this matter.

Yours,

Gideon Orion Oliver

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
KRYSTIN HERNANDEZ, NATALIE BAKER, ETHAN
CHIEL, KYLA RASKIN, REX SANTUS, ROXANNE
ZECH, RAFAEL-LEV GILBERT, SARAH MILLS-
DIRLAM, AUGUST LEINBACH, JALEN MATNEY,
JONATHAN DAVIS, and DAVID HOTLON,

Plaintiffs,

-against-

THE CITY OF NEW YORK; NEW YORK CITY
MAYOR BILL DE BLASIO; NEW YORK POLICE
DEPARTMENT ("NYPD") COMMISSIONER DERMOT
SHEA; NYPD CHIEF OF DEPARTMENT TERRENCE
MONAHAN; NYPD DEPUTY COMMISSIONER FOR
LEGAL MATTERS ERNEST F. HART; NYPD
ASSISTANT CHIEF KENNETH LEHR; NYPD LEGAL
BUREAU SERGEANT KENNETH RICE; NYPD
STRATEGIC RESPONSE GROUP ("SRG") MEMBER
FIRST NAME UNKNOWN ("FNU") RABEL; NYPD
SUPERVISOR FNU HYLAND; and NYPD MEMBERS
JOHN AND JANE DOES 1-157,

Defendants.
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**RULE 68
OFFER OF JUDGMENT**

21CV07406 (CM) (GWG)

Pursuant to Rule 68 of the Federal Rules of Civil Procedure, defendants, and any defendant who is currently or subsequently named and hereafter represented by the Office of the Corporation Counsel in this action, hereby offer to allow plaintiffs Krystin Hernandez, Natalie Baker, Ethan Chiel, Kyla Raskin, Rex Santus, Roxanne Zech, Rafael-Lev Gilbert, Sarah Mills-Dirlam, August Leinbach, Jalen Matney, Jonathan Davis, and David Holton to take a judgment against the City of New York in this action for the total sum of Ten Thousand and One (\$10,001.00) Dollars for plaintiff Krystin Hernandez, Two Thousand Five Hundred and One (\$2,501) for plaintiff Natalie Baker, Four Thousand Five Hundred and One (\$4,501) for plaintiff

Ethan Chiel, Two Thousand Five Hundred and One (\$2,501) for plaintiff Kyla Raskin, Three Thousand Five Hundred and One (\$3,501) for plaintiff Rex Santus, Three Thousand Five Hundred and One (\$3,501) for plaintiff Roxanne Zech, Three Thousand Five Hundred and One (\$3,501) for plaintiff Rafael-Lev Gilbert, Three Thousand Five Hundred and One (\$3,501) for plaintiff Sarah Mills-Dirlam, Three Thousand Five Hundred and One (\$3,501) for plaintiff August Leinbach, Four Thousand Five Hundred and One (\$4,501) for plaintiff Jalen Matney, Three Thousand Five Hundred and One (\$3,501) for plaintiff Jonathan Davis, and Four Thousand and One (\$4,001) for plaintiff David Holton, plus reasonable attorneys' fees, expenses, and costs to the date of this offer for plaintiffs Krystin Hernandez, Natalie Baker, Ethan Chiel, Kyla Raskin, Rex Santus, Roxanne Zech, Rafael-Lev Gilbert, Sarah Mills-Dirlam, August Leinbach, Jalen Matney, Jonathan Davis, and David Holton's federal claims. **This offer is contingent upon all plaintiffs (Krystin Hernandez, Natalie Baker, Ethan Chiel, Kyla Raskin, Rex Santus, Roxanne Zech, Rafael-Lev Gilbert, Sarah Mills-Dirlam, August Leinbach, Jalen Matney, Jonathan Davis, and David Holton) accepting the Rule 68 Offer of Judgment.**

This judgment shall be in full satisfaction of all federal and state law claims or rights that plaintiffs Krystin Hernandez, Natalie Baker, Ethan Chiel, Kyla Raskin, Rex Santus, Roxanne Zech, Rafael-Lev Gilbert, Sarah Mills-Dirlam, August Leinbach, Jalen Matney, Jonathan Davis, and David Holton may have to damages, or any other form of relief, arising out of the alleged acts or omissions of defendants or any official, employee, or agent, either past or present, of the City of New York, or any agency thereof, in connection with the facts and circumstances that are the subject of this action.

This offer of judgment may only be accepted by written notice within 14 days after being served.

This offer of judgment is made for the purposes specified in Rule 68 of the Federal Rules of Civil Procedure and is not to be construed as an admission of liability by defendants or any official, employee, or agent of the City of New York, or any agency thereof; nor is it an admission that plaintiffs have suffered any damages.

Acceptance of this offer of judgment will act to release and discharge defendants; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by plaintiffs Krystin Hernandez, Natalie Baker, Ethan Chiel, Kyla Raskin, Rex Santus, Roxanne Zech, Rafael-Lev Gilbert, Sarah Mills-Dirlam, August Leinbach, Jalen Matney, Jonathan Davis, and David Holton arising out of the facts and circumstances that are the subject of this action.

Acceptance of this offer of judgment also will operate to waive plaintiffs Krystin Hernandez, Natalie Baker, Ethan Chiel, Kyla Raskin, Rex Santus, Roxanne Zech, Rafael-Lev Gilbert, Sarah Mills-Dirlam, August Leinbach, Jalen Matney, Jonathan Davis, and David Holton's rights to any claim for interest on the amount of the judgment.

Plaintiffs agree that payment of Ten Thousand and One (\$10,001.00) Dollars for plaintiff Krystin Hernandez, Two Thousand Five Hundred and One (\$2,501) for plaintiff Natalie Baker, Four Thousand Five Hundred and One (\$4,501) for plaintiff Ethan Chiel, Two Thousand Five Hundred and One (\$2,501) for plaintiff Kyla Raskin, Three Thousand Five Hundred and One (\$3,501) for plaintiff Rex Santus, Three Thousand Five Hundred and One (\$3,501) for plaintiff Roxanne Zech, Three Thousand Five Hundred and One (\$3,501) for plaintiff Rafael-Lev Gilbert,


Three Thousand Five Hundred and One (\$3,501) for plaintiff Sarah Mills-Dirlam, Three Thousand Five Hundred and One (\$3,501) for plaintiff August Leinbach, Four Thousand Five Hundred and One (\$4,501) for plaintiff Jalen Matney, Three Thousand Five Hundred and One (\$3,501) for plaintiff Jonathan Davis, and Four Thousand and One (\$4,001) for plaintiff David Holton within ninety (90) days of the date of acceptance of the offer shall be a reasonable time for such payment, unless plaintiffs received medical treatment in connection with the underlying claims in this case for which Medicare has provided, or will provide, payment in full or in part. If either plaintiff Krystin Hernandez, Natalie Baker, Ethan Chiel, Kyla Raskin, Rex Santus, Roxanne Zech, Rafael-Lev Gilbert, Sarah Mills-Dirlam, August Leinbach, Jalen Matney, Jonathan Davis, or David Holton is a Medicare recipient who received medical treatment in connection with the claims in this case, the ninety (90) day period for payment shall start to run from the date plaintiff(s) submits to counsel for defendants a final demand letter from Medicare.

By acceptance of this Rule 68 Offer of Judgment, plaintiffs Krystin Hernandez, Natalie Baker, Ethan Chiel, Kyla Raskin, Rex Santus, Roxanne Zech, Rafael-Lev Gilbert, Sarah Mills-Dirlam, August Leinbach, Jalen Matney, Jonathan Davis, and David Holton agree to resolve any claim that Medicare may have for reimbursement of conditional payments it has made as secondary payer, and a Medicare Set-Aside Trust shall be created, if required by 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26. Plaintiffs Krystin Hernandez, Natalie Baker, Ethan Chiel, Kyla Raskin, Rex Santus, Roxanne Zech, Rafael-Lev Gilbert, Sarah Mills-Dirlam, August Leinbach, Jalen Matney, Jonathan Davis, and David Holton further agree to hold harmless defendants and all past and present officials, employees, representatives and agents of the City of New York, or any agency thereof, regarding any past and/or future Medicare payments, presently known or unknown, made in connection with this matter.

The judgment shall contain and recite the terms and conditions set forth herein.

Dated: New York, New York
July 7, 2022

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel of the
City of New York
*Attorney for Defendants City, De Blasio, Shea,
Monahan, Hart, Lehr, Rice, and Rabel*
100 Church Street, Room 3-149
New York, New York 10007
(212) 356-2659

By 
Daniel Braun
Assistant Corporation Counsel

To: VIA FIRST CLASS MAIL
Elena L. Cohen, Esq.
Cohen & Green P.L.L.C.
1639 Centre Street, Ste. 216
Ridgewood, NY 11385

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
KRYSTIN HERNANDEZ, NATALIE BAKER, ETHAN)
CHIEL, KYLA RASKIN, REX SANTUS, ROXANNE)
ZECH, RAFAEL-LEV GILBERT, SARAH MILLS-)
DIRLAM, AUGUST LEINBACH, JALEN MATNEY,)
JONATHAN DAVIS, and DAVID HOLTON,)
)
Plaintiffs,)
-against-)
)
THE CITY OF NEW YORK; NEW YORK CITY)
MAYOR BILL DE BLASIO; NEW YORK POLICE)
DEPARTMENT ("NYPD") COMMISSIONER DERMOT)
SHEA; NYPD CHIEF OF DEPARTMENT TERENCE)
MONAHAN; NYPD DEPUTY COMMISSIONER FOR)
LEGAL MATTERS ERNEST F. HART; NYPD)
ASSISTANT CHIEF KENNETH LEHR; NYPD LEGAL)
BUREAU SERGEANT KENNETH RICE; NYPD)
STRATEGIC RESPONSE GROUP ("SRG") MEMBER)
FIRST NAME UNKNOWN ("FNU") RABEL; NYPD)
SUPERVISOR FNU HYLAND; AND NYPD MEMBERS)
JOHN AND JANE DOES 1-157,)
)
Defendants.)
-----X	

**DECLARATION OF
SERVICE OF ACCEPTANCE
OF RULE 68 OFFER OF
JUDGMENT**

21-cv-07406 (CM)(GWG)

GIDEON ORION OLIVER hereby declares under penalties of perjury:

I am over 18 years of age and not a party to this action.

On July 20, 2022, I served upon the Defendants the attached July 20, 2022 letter accepting Defendants' Rule 68 Offer of Judgment dated July 7, 2022 by (1) depositing a true and correct copy of the same properly enclosed in a post-paid wrapper in the official depository maintained and exclusively controlled by the United States directed to Daniel Braun, Esq., Assistant Corporation Counsel, New York City Law Department, 100 Church Street, New York, New York, 10007; and (2) e-mailing the same to opposing counsel Daniel Braun, Esq.

Dated: Brooklyn, New York
July 20, 2022

Nidean Chien Chin
