STATE OF NEW YORK

COURT OF CLAIMS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

VERIFIED NOTICE OF INTENTION

TO FILE A CLAIM

Index No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[INSERT LEGAL FIRST AND LAST NAME IN ALL CAPS],

All similarly situated Corrections Officers formerly employed by The Department of Corrections and Community Supervision,

Claimant,

- v -

THE STATE OF NEW YORK,

THE DEPARTMENT OF CORRECTIONS

AND COMMUNITY SUPERVISION,

KATHY HOCHUL, Governor of the State of New York, in her official and personal capacity,

DANIEL MARTUSCELLO III, Commissioner of the New York State Department of Corrections and Community Supervision, in his official and personal capacity,

JAIFA COLLADO, Executive Deputy Commissioner of the New York State Department of Corrections and Community Supervision, in her official and personal capacity,

DARREN AYOTTE, Deputy Commissioner for Administrative Services of the New York State Department of Corrections and Community Supervision, in his official and personal capacity,

[INSERT SUPERINTENDENT NAME AND FULL CORRECTIONAL FACILITY NAME] in his official and personal capacity,

Respondents.

TO THE CLERK OF THE COURT OF CLAIMS AND THE ATTORNEY GENERAL

OF THE STATE OF NEW YORK:

PLEASE TAKE NOTICE that the above-named Claimant, intends to file claim against the State of New York, the Department of Corrections and Community Supervision (“DOCCS”), and the aforenamed State employees, officials, and representatives pursuant to the Court of Claims Act.

1. Post office address of Claimants: Schedule A attached hereto identifies

Claimant and the post office address of the Claimant. Claimants’ mailing address and personal contact information are otherwise known to Respondents as they were employed by DOCCS and the other Respondents. Claimants’ employment and employment benefits were unlawfully terminated by Respondents in violation of governing law including the Family and Medical Leave Act, 29 U.S.C. §§ 2601 et seq. (“FMLA”) as described below.

2. Identity of counsel: Claimant reserves the right to represent themself and/or to retain legal counsel at a future date.

3. Time and place where such claims arose: Respondents’ illegal activities began and Claimants’ claims arose when Respondents collaborated and conspired to violate Claimants’ rights, including to interfere with and retaliate against Claimant for assertion of their rights as protected under the FMLA. This culminated in termination letters by DOCCS Commissioner Martuscello issued on, around and/or effective as of March 10, 2025, to Claimant as well as other similarly situated Corrections Officers.

Upon information and belief, Respondents’ illegal and unlawful plan and scheme included the following activities:

(a) Respondents conducted conference calls and/or meetings during which Commissioner

Martuscello and Deputy Commissioner for Administrative Services Ayotte conceived

and conspired to require that all staff asserting FMLA protected rights should be

ordered to report to work regardless of pre-existing documentation or circumstances,

and that any staff that failed to report should be deemed absent without leave

(“AWOL”).

(b) Deputy Commissioner for Administrative Services Ayotte directed other Respondents, including the Superintendents for each and every Correctional Facility operated by DOCCS in the State of New York, to designate anyone absent from work based on circumstances protected by FMLA to be AWOL.

(c) Respondent Ayotte directed the Superintendentsthat (i) all FMLA related leave by staff should be terminated/rejected, (ii) that all staff with documented FMLA leave or

asserting circumstances for leave protected under the FMLA should be “Ordered” to

report for duty, and (iii) that a failure to report for duty should be deemed an AWOL

Violation.

(d) Claimant asserted claims for protected FMLA leave, including that such claims

were supported by medical documentation, pre-approvals from DOCCS, and/or other

circumstances qualifying for FMLA protection.

(e) Respondents uniformly and unlawfully designated Claimant and other similarly

situated staff AWOL for having raised FMLA protected circumstances for leave.

(f) Respondents did not reasonably notify Claimant or other similarly situated staff who

asserted FMLA protected rights that (i) their previously approved leave was revoked,

(ii) their FMLA asserted rights were rejected/denied, (iii) they had specific reporting

dates/times, and/or (iv) they were being designated AWOL.

(g) On or after March 3, 2025, Respondents issued letters that Claimant and other

similarly situated staff members that their employment related benefits for medical,

dental and vision coverage had been terminated effective February 22, 2025, in

retaliation for assertion of their rights under the FMLA.

(h) On or after March 10, 2025, Commissioner Martuscello issued a letter to Claimant

notifying them that “you are separated from employment with an effective date March

2, 2025.” Such termination by Respondents constitutes ongoing unlawful interference

and retaliation in violation of the FMLA.

(i) On or about March 10, 2025, Governor Kathy Hochul issued Executive Order No. 47.3 (the “Executive Order”). The Executive Order states that “it is therefore necessary to establish a State policy barring the hiring of individuals participating in the illegal and

unlawful strike and recommending their separation from State service be reported as a

removal for cause, consistent with State law and applicable regulations.” The Executive

Order also states that “No New York State agency shall hire or appoint any individual

who was previously employed by the Department of Corrections and Community

Supervision and thereafter separated from such employment in connection with such

individual’s participation in the illegal and unlawful strike.”

(j) The Executive Order barred Plaintiff from State employment, as Defendants

considered Plaintiffs “AWOL” despite taking leave protected by the FMLA. The

Executive Order constitutes ongoing unlawful interference and retaliation in violation

of the FMLA.

In sum, Claimant claims arose at their place of employment as **listed on Schedule A** when

Claimant was the subject of unlawful employment actions, including termination of benefits and termination of employment. Respondents’ violations giving rise to these claims are continuing.

4. The nature of the claims: The claims asserted against Respondents including The

State of New York, DOCCS, and the above-named individual Commissioners, Deputy

Commissioners, Superintendents, and other state employees, officials, and representatives are for violation of Claimants’ rights protected under the FMLA, including the termination of employment benefits, denial of COBRA benefits, and termination of employment. Respondents’ actions are continuing unlawful interference and retaliation in violation of the FMLA.

Without prejudice to other remedies, Claimant and other similarly situated staff are

entitled to reinstatement without prejudice, back pay, front pay, punitive damages and an award of reasonable attorneys' fees (if utilized) and costs.

Dated: [INSERT TOWN/CITY], New York

[INSERT MONTH, INSERT DAY], 2025

[INSERT YOUR NAME]

[INSERT YOUR FULL ADDRESS]

[YOUR PHONE #W/AREA CODE]

[INSERT YOUR EMAIL ADDRESS]

Schedule A

Insert your name

Correctional Facility Physical Address

Correctional Facility

Insert Name

Insert physical address

VERIFICATION

STATE OF NEW YORK.)

COUNTY OF [INSERT COUNTY]) ss.:

[INSERT NAME IN ADVANCE] being duly sworn, deposes and says that he is a Claimant referred to above; he has read the foregoing NOTICE OF INTENTION TO FILE A CLAIM and knows the contents thereof, that the statements contained therein are true and correct to his own knowledge, except as to such statements which are based upon information and belief, which statements he believes to be true.

****

**[SIGN ON LINE in front of Notary]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**[TYPE YOUR FULL LEGAL NAME HERE IN ADVANCE]**

Subscribed and sworn before me

this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 2025.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public