STATE OF NEW YORK

COURT OF CLAIMS

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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 Claimant: 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 New York State Civil Service Law; Section 75 Civil Service (CVS) CHAPTER 7, ARTICLE 5, TITLE B. and therefore blocked claimant's ability to further appeal determinations under New York State Service Law; Section 76 Civil Service (CVS) CHAPTER 7, ARTICLE 5, TITLE B. as described below.

§ 75. Removal and other disciplinary action. 1. Removal and other disciplinary action. A person described in paragraph (a) or paragraph (b), or paragraph (c), or paragraph (d), or paragraph (e) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.

§ 76. Appeals from determinations in disciplinary proceedings. 1. Appeals. Any officer or employee believing himself aggrieved by a penalty or punishment of demotion in or dismissal from the service, or suspension without pay, or a fine, or an official reprimand, unaccompanied by a remittance of said officer or employee's prehearing suspension without pay, imposed pursuant to the provisions of section seventy-five of this chapter, may appeal from such determination either by an application to the state or municipal commission having jurisdiction, or by an application to the court in accordance with the provisions of article seventy-eight of the civil practice law and rules.

As a result of the respondents actions and subsequent violation of § 75 and § 76 of New York State Civil Service Law, the claimants' 14th Amendment rights under the US Constitution have been violated for lack of equal protection under the law and lack of due process.

The Fourteenth Amendment’s Due Process Clause provides that no state may deprive any person of life, liberty, or property, without due process of law.

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 who is protected under § 75 and § 76 of New York State Civil Service Law. 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 pre approved leave, FMLA protected rights, Parental Leave as well as other types of leave 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 under any circumstances, therefore considering everyone to be AWOL.

(c) Claimant and other similarly situated officers asserted claims for leave, including that such claims were supported by medical documentation, pre-approvals from DOCCS, and/or other circumstances qualifying for excused absences including but not limited to injury and subsequent treatment, personal obligations such as child birth, medical appointments for cancer treatment, bereavement leave for an immediate family member, childcare obligations related to a single parent household, scheduled and paid for preplanned out of state and or country vacations, and/or was unable to work mandated 72 hour shifts that did not allow a claimant to leave their facility without threat of being terminated etc.

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

situated staff AWOL for having raised circumstances for leave, some protected under federal and state law as well as personal safety and health concerns such as PTSD related to mandated 24 hour shifts, exposures, assaults, and increasing violence within facilities.

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

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

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

dates/times, and/or (iv) they were being designated AWOL before the 10th day that designated them resigned as per article 14.10 per the collective bargaining agreement between NYSCOPBA and NYSDOCCS.

(g) On or after March 3, 2025, Respondents issued letters that Claimant and dependants 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 and or a disciplinary manner in violation of § 75 and § 76 of New York State Civil Service Law.

(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 of § 75 and § 76 of New York State Civil Service Law with claimants rights under those articles affected.

(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” and therefore discharged for misconduct per the Department of Labor findings in relation to claimants/and or other similarly situated former staff unemployment benefits. This is violation of due process hearings under § 75 and § 76 of New York State Civil Service Law therefore violating the claimants 14th Amendment rights of the US Constitution.

The Executive Order constitutes ongoing unlawful interference and discipline in violation

of the § 75 and § 76 of New York State Civil Service Law therefore violation of claimants equal protection rights and due process rights under 14th Amendment of the US Constitution.

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 in violation of Claimants’ rights protected under § 75 and § 76 of New York State Civil Service Law including the termination of employment benefits, denial of COBRA benefits, and termination of employment without hearing and related retaliatory actions and therefore in violation of claimants 14th Amendment rights. Respondents’ actions are continuing unlawful interference and retaliation in violation of the § 75 and § 76 of New York State Civil Service Law and therefore violating the 14th Amendment.

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

entitled to immediate reinstatement without prejudice, back pay, front pay, reimbursement of any out of pocket medical costs, punitive damages for the claimant and their immediate affected dependants, 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 your Name

Home 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.

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 **[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