

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ENZO COSTA, *et al.*,

Plaintiffs,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

No. 1:19-cv-3185 (RDM)

NOTICE OF SETTLEMENT

Plaintiffs file herewith a copy of the Settlement Agreement and Release dated February 10, 2023, between Plaintiffs Enzo Costa, William Dunbar, and Vinita Smith and Defendants District of Columbia, Barbara J. Bazron, and Mark J. Chastang.

Dated: February 14, 2023

Respectfully submitted,

/s/ Kaitlin Banner

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SETTLEMENT AGREEMENT AND RELEASE

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This Settlement Agreement and Release (hereinafter “Agreement”) is hereby entered into this 10th day of February 2023 between the District of Columbia (“the District”), Barbara J. Bazron, and Mark J. Chastang (collectively “Defendants”) and Enzo Costa, Vinita Smith, and William Dunbar (“Plaintiffs”), who all are collectively referred to herein as the “Parties.” Plaintiffs sued Defendants in this matter, *Costa, et al. v. Bazron, et al.*, Civil Action No. 1:19-cv-3185 (RDM), asserting claims of federal statutory violations and constitutional violations under 42 U.S.C. § 1983, and seeking declaratory and injunctive relief (“Lawsuit”).

In reliance upon the representations contained here, and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for good and valuable consideration, Plaintiffs and Defendants, through their undersigned counsel, agree and stipulate as follows:

TERMS

1. Definitions

(a) “**Agreed-Upon Language**” means specific revisions to Saint Elizabeths Hospital’s Emergency Preparedness Plan and Pandemic/Outbreak Section of the Emergency Preparedness Plan that have been mutually agreed upon by the Parties on February 6, 2023, prior to the execution of this Agreement.

(b) “**Court**” means the United States District Court for the District of Columbia.

(c) “**Defendant Released Parties**” means the District of Columbia, the District’s former and current employees, representatives, successors and successors in interest and the Individual Defendants Barbara Bazron and Mark Chastang, including any successors in interest.

(d) “**District of Columbia**” means Defendant District of Columbia and all of its predecessors and successors in interest.

(e) “**Effective Date**” means the date when this Agreement becomes effective. This Agreement shall be effective on the date all Parties have signed this Agreement.

(f) “**Effective Period**” means the period beginning on the Effective Date and ending one calendar year after.

(g) “**Hospital**” or “**Saint Elizabeths**” means Saint Elizabeths Hospital.

(h) “**Lawsuit**” or “**Plaintiffs’ Lawsuit**” means the lawsuit styled *Costa, et al. v. Bazron, et al.*, filed in the United States District Court for the District of Columbia, Case No. 1:19-cv-3185 (RDM).

(i) “**Mediators**” means the mediators assigned to this case by the United States Court of Appeals for the District of Columbia Circuit Mediation Program.

(j) “**Plaintiff Released Parties**” means Enzo Costa, Vinita Smith, William Dunbar, and their family members, agents, representatives, successors and successors in interest.

(k) “**Plaintiffs’ Designated Representatives**” means Plaintiffs’ counsel of record in this litigation.

(l) “**Released Parties**” means the Defendant Released Parties and the Plaintiff Released Parties.

2. **The District’s Settlement Obligations as to Prospective Relief**

(a) Within thirty (30) days of the Effective Date of this Agreement, the District will provide to Plaintiffs the water remediation plan for Saint Elizabeths Hospital, the process for regular testing of the water supply, the contract and scope of work for the vendor who is conducting the testing and remediation of the water supply at Saint Elizabeths Hospital, and the two most recent quarterly inspection reports prior to the Effective Date.

(b) Substantive Revisions to the Saint Elizabeths Hospital Emergency Preparedness Plan. Within sixty (60) days of the Effective Date of this Agreement, the District will incorporate the agreed-upon revisions to the following sections of the Saint Elizabeths Emergency Management Plan:

1. **Special Considerations for Other Emergency Events:** The District will incorporate Agreed-Upon Language addressing circumstances under which Saint Elizabeths Hospital will (1) evaluate the need to temporarily cease any new admissions from local hospitals; and (2) collaborate with DC Health, the DC Hospital Association (DCHA), Homeland Security and Emergency Management Services (HSEMA), and the Mayor's Office to determine whether patients should be evacuated and relocated to other facilities. The Agreed-Upon Language additionally addresses when to consider discharging or transferring patients to other locations and provides specific limitations on relocating patients to shelters, nursing homes, and the Department of Corrections.
2. **Continued Patient Services:** The District will incorporate Agreed-Upon Language specifying that to the extent possible, clinical treatment will continue in the usual manner during an emergency. The Agreed-Upon Language includes procedures applicable when in-person services must be disrupted, including provisions for telehealth services, the development of modified treatment plans, and solicitation of input from the Patient Advisory Council.

3. **Communications:** The District will incorporate Agreed-Upon Language addressing how and under what circumstances Hospital staff will communicate with patients about the continuity of care plans and patient concerns during emergencies. The Agreed-Upon Language additionally specifies that for emergencies expected to last more than two weeks, the Hospital, in communication with the Patient Advisory Council, will assess whether to continue operating with modifications or resume normal operations.
4. **Assisting Patients with Disabilities:** The District will incorporate Agreed-Upon Language specifying procedures for evacuating the Hospital when required. The Agreed-Upon Language additionally specifies procedures for triaging and transferring patients to other hospitals/long-term care facilities in the event of a full evacuation, including procedures for transport and continuity of care.
5. **Medical Records for Continued Patient Care:** The District will incorporate Agreed-Upon Language addressing the off-site availability of patient records in the event of an emergency.
6. **Assistance with Supply Shortages:** The District will incorporate Agreed-Upon Language specifying the process for seeking essential supplies during a supply shortage from existing contract providers, HSEMA, DCHA, and Mutual Aid Hospitals, or, if these entities cannot provide supplies, any existing contracted vendors servicing District government agencies with which the Hospital can complete a purchase order.
7. **Designation of Emergency Level:** The District will incorporate Agreed-Upon Language specifying the process for identifying the level of an emergency

affecting the Hospital. The Agreed-Upon Language additionally addresses procedures for collaboration between District government entities to assess the need for sheltering-in-place or evacuation, the Hospital's capacity to continue mental health care, the effect of any staff absenteeism on patient care or safety, the Hospital's ability to provide medication or supplies, the effect of any utility outages on patient care, the risk posed by the emergency to patients and staff, and any risks that may be posed by evacuating the Hospital.

8. **Arrangements with Other Facilities:** The District will incorporate Agreed-Upon Language specifying procedures for the Incident Commander to activate the Hospital's Memorandum of Understanding with the DCHA and District of Columbia Health and Medical Coalition (HMC) governing mutual aid such as physical space, patient beds, equipment and supplies, and personnel as needed and available. The Agreed-Upon Language further addresses relocating forensic patients consistent with court orders.
9. **Sharing Information With Families and Guardians:** The District will incorporate Agreed-Upon Language specifying the information that, to the extent known, will be communicated to patient families and guardians if an emergency will be prolonged and disrupt services.
10. **Process for Sharing Information with Staff and Patients.** The District will incorporate Agreed-Upon Language specifying the information that Hospital leadership will provide to patients as soon as possible following the beginning of an emergency. The Agreed-Upon Language further specifies that the Director of

Clinical Operations, working with Consumer Affairs and the Patient Advisory Council, will also provide ongoing information to all patients.

(c) Substantive Revisions to the Saint Elizabeths Hospital Outbreak/Pandemic Management Section. Emergency Preparedness Plan. Within sixty (60) days of the Effective Date of this Agreement, the District shall incorporate the Agreed-Upon Language in the Outbreak/Pandemic Management Section into its Emergency Preparedness Plan. The Outbreak/Pandemic Management Section will include Agreed-Upon Language in the Outbreak/Pandemic Management Section, including:

1. Provisions ensuring compliance with infection control guidelines as determined by the D.C. Department of Health and Centers for Disease Control and Prevention during suspected and confirmed outbreaks, including provisions ensuring: adequate PPE and cleaning supplies are available throughout the facility; proper use of necessary PPE; proper isolation precautions for suspected and confirmed positive patients; infection control guidelines related to handling laboratory specimens, food preparation, laundry and cleaning services and waste management; visitor restrictions when appropriate; limits on staff movement between wards; appropriate use of common spaces; procedures to screen patients, staff, and visitors for symptoms; and sick-leave policies for staff exposed to, suspected of having, or confirmed to have the infectious disease in question.
2. Procedures for assessing whether patient services can be continued with or without modifications, such as providing one-to-one counseling and use of telehealth, and procedures for delivering modified services when appropriate.
3. Procedures for reducing patient census.

4. Procedures for addressing large amounts of staff absenteeism.
5. Procedures for maintaining adequate inventories of supplies, such as PPE, hand sanitizer and cleaning solutions.
6. Language specifying that the Hospital will consult with DC Health on infection control guidance if there is a suspected viral outbreak and will follow guidance from the Centers for Disease Control and Prevention and DC Health in responding to an outbreak.
7. Procedures for managing both actual and suspected outbreaks, establishing leadership roles, and completing surveillance and reporting.
8. An Outbreak or Pandemic Preparedness and Response work plan to be implemented in cases of an outbreak or pandemic situation related to a novel virus.

(d) Training: Within sixty (60) days of implementation of the revisions in sub-paragraph 2(b) and 2(c), the District will provide updated copies of the Emergency Preparedness Plan to all nursing stations and on the Hospital's intranet. Within thirty (30) days of implementation of the revisions in sub-paragraph 2(b) and 2(c), the District will provide written training to all staff on the changes to the Emergency Preparedness Plan. Once implemented, all employees will receive training on the Emergency Preparedness Plan at orientation and annual trainings.

(e) Plaintiffs' Review and Comment on Changes to the Emergency Plan

1. **Initial Review.** At least thirty (30) days before Saint Elizabeths adopts revised policies to implement its obligations under Section 2(b) and 2(c) of this Agreement, the District will provide Plaintiffs' Designated Representative a copy of the revised Emergency Preparedness Plan, the Outbreak/Pandemic Management Plan and any

other implementation documents. Any disputes over the revised Emergency Preparedness Plan or other implementation documents will be resolved pursuant to Paragraph 11 of this Agreement.

2. **Ongoing Review.** For one year following the Effective Date of this Agreement, the District may not change or modify any policy adopted pursuant to this Agreement, unless the proposed change is provided to Plaintiffs' Designated Representative for their review. Unless there is an emergency (as defined below), Plaintiffs shall have 21 days from the District's submission of a proposed change to review and comment before the change is adopted. If Plaintiffs object to or otherwise dispute a proposed change, such dispute will be resolved pursuant to Paragraph 11 of this Agreement.

3. **Review of an Emergency Policy Change.** In the event that the District must implement a policy change necessary to address an emergency that will have a significant adverse effect on patients or staff, the District may make the change before Plaintiffs have the opportunity to review. If the District implements an emergency change in policy, it shall notify Plaintiffs' Designated Representative of the necessity as soon as practicable. Following notification, Plaintiffs will have 21 days to review and comment. If Plaintiffs object to or otherwise dispute a proposed change, such dispute will be resolved pursuant to Paragraph 11 of this Agreement.

(f) **Reporting:** For one year following the Effective Date, the District will provide notice to Plaintiffs' Designated Representative of any incident constituting a Tier III or Tier IV emergency as defined in the Saint Elizabeths Hospital Emergency Management Plan, as well as any emergency expected to last for more than 72 hours. Notification will be provided as soon as

practicable but no later than 72 hours after the onset of the emergency and will include: (1) the nature of the emergency; (2) the cause of the emergency (if known); (3) any known injuries or deaths resulting from the emergency; (4) any anticipated changes in the provision of mental health services; (5) any immediate steps the District plans to take in response; and (6) if the emergency is an outbreak or pandemic, the plan for addressing the outbreak/pandemic developed pursuant to the “Outbreak/Pandemic Response” section of the emergency plan.

The District will notify Plaintiffs’ Designated Representative as soon as practicable after determining that the emergency has ended. All reports may be redacted for personally identifiable information and other privileged information.

(g) **Attorney’s Fees and Costs.** Within forty-five (45) days of the Effective Date of this Agreement and the District’s receipt of payment instructions and an executed IRS Form W-9 from Plaintiffs’ counsel, the District will pay Plaintiffs’ counsel \$455,000 to satisfy all attorney’s fees and costs by means of one electronic transfer made payable to Arnold & Porter, 601 Massachusetts Avenue NW, Washington, DC 20001.

3. Plaintiffs’ Settlement Obligations.

(a) Plaintiffs agree not to make or file any lawsuits, complaints, or other proceedings against any of the Defendant Released Parties or to join in any such lawsuits, complaints, or other proceedings in any forum against any of the Defendant Released Parties concerning any matters that were or could have been asserted based on the facts alleged in the Complaint or Amended Complaint of the Plaintiffs’ Lawsuit that arose on or prior to the Effective Date of this Agreement, provided that during the Effective Period, Plaintiffs may initiate judicial proceedings in the Court to reopen this case to enforce the terms of this Agreement.

(b) Within seven (7) days of the Effective Date, Plaintiffs will file a Notice of Settlement and request that the Court conditionally dismiss the complaint with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) while retaining jurisdiction to enforce this Settlement Agreement. If the Court does not retain jurisdiction to enforce the Agreement, the Agreement shall be void. Following dismissal, Plaintiffs may only move to reopen the case if they believe in good faith that the District has committed a breach of this Settlement Agreement after the Parties attempt to resolve the dispute pursuant to the procedures in Paragraph 11, below. If any such motion is granted, Plaintiffs may only seek enforcement of the term or terms believed to have been breached.

4. **Release.** The Parties agree that, for consideration of the relief set forth in this Settlement Agreement, and to the maximum extent permitted by law, each Party will, and hereby does, forever and irrevocably release and discharge the Released Parties from any and all claims, actions, or causes of action, including requests for attorney's fees and costs, that were or could have been asserted by Plaintiffs based on the facts alleged in the Complaint or Amended Complaint of the Plaintiffs' Lawsuit. **This waiver and release does not apply to any claim arising from facts that were not alleged in the Complaint or Amended Complaint of the Plaintiffs' Lawsuit or that may arise after the Effective Date of this Agreement.** Plaintiffs do not release any claim to enforce the terms of this Agreement pursuant to paragraph 11 of this Agreement or to seek attorney's fees and costs for such enforcement. In entering into this Agreement, there is no admission of liability by Defendants or admission of any factual contentions that have been asserted by Plaintiffs in this Lawsuit.

5. **Cessation of Litigation Activity.** Upon executing this Agreement, the Parties shall stay all litigation activity related to the Lawsuit and all activity in the Lawsuit, other than any activity

to implement or consummate the Agreement. Upon the Effective Date of this Agreement, the Parties shall advise the Court of the Settlement.

6. **Counterparts.** Provided that all Parties execute a copy of this Agreement, the Settlement Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered amongst the Parties by email or other comparable means. This Settlement Agreement shall be deemed fully executed and entered into on the date of execution by the last signatory.

7. **Entire Agreement.** The Parties acknowledge that certain revisions to the Hospital's Emergency Preparedness Plan (known as the "Agreed-Upon Language") are part of this Agreement and incorporated by reference. The Agreement (with the Agreed-Upon Language) contains the entire agreement between the Parties concerning the subject matter and supersedes all prior oral or written communications or agreements between the Parties concerning such subject matter, and that there are no additional promises, contracts, terms or conditions between the Parties other than those contained here. Neither this Agreement (with the Agreed-Upon Language), nor any of its terms, may be changed, waived, or added to except in a writing signed by all parties to whom such change applies and only if such modification complies with the requirements of the laws of the District of Columbia. The Parties acknowledge that they have not relied upon any representations or actions that are not expressly in this Agreement (with the Agreed-Upon Language).

8. **Voluntariness.** Each Plaintiff acknowledges, certifies and agrees: (a) that he/she has carefully read this Agreement and understands all of its terms; (b) that he/she had a reasonable amount of time to consider his/her decision to sign this Agreement; (c) that in executing this

Agreement he/she does not rely and has not relied upon any representation or statement made by any of Defendants' agents, representatives, or attorneys with regard to the subject matter, basis, or effect of the Agreement; (d) that he/she enters into this Agreement voluntarily, of his/her own free will, without any duress and with knowledge of its meaning and effect; and (e) Plaintiffs represent that they have consulted with an attorney of their choice prior to executing this Agreement, and that said attorney reviewed and approved this Agreement prior to Plaintiffs' execution of it.

9. **Governing Law.** This Agreement shall be governed by the laws of the District of Columbia.

10. **Term of the Agreement.** The Parties' obligations under this Agreement will remain in effect for one year from its Effective Date as specified above.

11. **Dispute Resolution Process and Jurisdiction.** During the Effective Period of the Agreement, any party claiming a dispute under this Agreement must provide a written, detailed notice, via either electronic transmission or hand delivery, to the opposing party and their Representatives and the Mediators describing the dispute and stating the factual and legal basis for the allegation. The Parties shall meet and confer with the Mediators and attempt to negotiate a resolution of the claim for a period of at least 15 business days. A Party may move to reopen the case and seek relief from the Court if no resolution is reached within that 15-day period.

12. **Third Party Beneficiaries.** Only the Parties to this Agreement, and their successors in interest as specified in Paragraphs I(b) and I(i), are beneficiaries of this Agreement. No third party shall have any rights under this Agreement.

13. **Mutual Interpretation.** The Parties stipulate that this Agreement was negotiated on an "arms' length" basis between parties of equal bargaining power to resolve a bona fide dispute between the Parties, and that counsel for Plaintiffs and counsel for Defendants jointly drafted this

Agreement. Accordingly, this Agreement shall not be construed in favor of or against any of the Parties. Neither party shall be considered the drafter of this Agreement for purposes of interpreting the Agreement, or the application of any rule of construction.

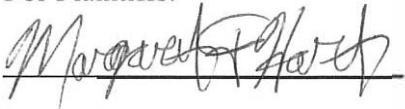
14. Modification. The Parties may jointly make changes, modifications, and amendments to this Agreement in writing signed by each of the Parties hereto. Changes, modifications, and amendments to this Agreement will be encouraged when the Parties agree that an Agreement provision as drafted is not furthering the purpose of the Agreement, or that there is a preferable alternative that will achieve the same purpose. Any modification made necessary by changes in statutory or case law will be addressed through negotiations between the Parties, subject to the dispute resolution process described above.

15. Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective personal representatives, administrators, heirs, successors, and assigns of Plaintiffs and the affiliates, successors, predecessors, subsidiaries, divisions, officers, agents, assigns, representatives, directors and employees of Defendants.

16. Representation of Authority. By their signatures hereto, each Party represents that they have the authority to agree to the terms of this Agreement.

SIGNED AND AGREED TO BY:

For Plaintiffs:



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Dated: 2/7/23

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Dated: February 10, 2023