

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

STEPHEN COHODES,

Plaintiff,

vs.

UNITED STATES OF AMERICA, CALLEN-  
LORDE COMMUNITY HEALTH CENTER,  
MEERA SHAH, M.D., JAMES BRAUN, D.O.,  
WENDY STARK, and JANE DOE 1, JANE DOE  
2, and JANE DOE 3 (CALLEN-LORDE NURSES  
OR ASSISTANTS),

Defendants.

No. 17 Civ. 8307 (KBF)

**STIPULATION AND ORDER OF  
SETTLEMENT AND DISMISSAL**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Stephen Cohodes (“Plaintiff”) and Defendants the United States of America (“United States”), Callen-Lorde Community Health Center (“Callen-Lorde”), Meera Shah, M.D. (“Shah”), James Braun, D.O. (“Braun”), and Wendy Stark (“Stark”), (collectively, “Defendants” and, together with Plaintiff, the “Parties”), that the above-captioned action (the “Action”) shall be resolved as follows:

1. This Action is hereby dismissed with prejudice, and without interest, costs, expenses, disbursements, or fees to any party, except as specified in paragraphs 3, 7, and 9 below.

2. This Stipulation and Order of Settlement and Dismissal (hereinafter “Stipulation”) shall not constitute an admission of liability or fault on the part of Defendants.

3. The United States hereby agrees to pay Plaintiff the total sum of four hundred thousand dollars (\$400,000.00) (the “Settlement Amount”). The Settlement Amount shall be in full settlement of any and all claims that Plaintiff now has or may hereafter acquire against the United States, or any present or former department, agency, agent, officer, or employee of the United States, including but not limited to, the U.S. Department of Health and Human Services,

Callen-Lorde, and any employees, agents, or officers thereof (including but not limited to Shah, Braun, Stark, and Jane Does 1, 2, and 3), on account of the alleged facts, events, incidents, circumstances, or injuries giving rise to this Action.

4. Plaintiff stipulates and agrees to accept the Settlement Amount in full settlement, satisfaction, and release of any and all claims, demands, rights, and causes of action that he and his heirs, executors, successors in interest, administrators, or assigns may have or hereafter acquire against the United States, or any of its present or former departments, agencies, agents, officers, or employees, including but not limited to Callen-Lorde, Shah, Braun, Stark, and Jane Does 1, 2, and 3, arising from or related to the alleged facts, events, incidents, circumstances, or injuries giving rise to or referred to in this Action, and any claims incident thereto. Plaintiff agrees to reimburse, indemnify, and hold harmless the United States, and any of its present or former departments, agencies, agents, officers, or employees, including but not limited to Callen-Lorde, Shah, Braun, Stark, and Jane Does 1, 2, and 3, from any and all such claims, causes of action, valid liens, rights, or subrogated or contribution interests incident to or resulting or arising directly or indirectly from the acts or omissions that gave rise to the above-captioned action.

5. Defendants stipulate and agree to release and forever discharge any and all claims against Plaintiff arising directly or indirectly from the alleged facts, events, incidents, circumstances, or injuries giving rise to or referred to in this Action.

6. Plaintiff shall assume all responsibility for, and agrees to protect, indemnify, defend, and hold harmless the United States, and any of its present or former departments, agencies, agents, officers, or employees, including but not limited to Callen-Lorde, Shah, Braun, Stark, and Jane Does 1, 2, and 3, from (a) any liability or claim of liability arising from the prosecution of any claims by Plaintiff against any third party, and (b) any liability or claim of

liability for any amounts assessed by or due to any federal, state, or local government or agency (including but not limited to workers' compensation liens, medical liens, and federal, state, and local taxes owed) in connection with Plaintiff's receipt of the Settlement Amount or arising from the assignment of claims or liens upon the Settlement Amount. Plaintiff further agrees to reimburse or advance, at the option of counsel for the United States, any expense or cost that may be incurred incident to or resulting from any such further litigation, and this Stipulation shall constitute a written agreement to that that effect.

7. The Settlement Amount includes attorney's fees in accordance with 28 U.S.C. § 2678, and all liens, fees, and disbursements are to be satisfied out of the Settlement Amount and not in addition thereto. Pursuant to 28 U.S.C. § 2678, Plaintiff attorney's fees may not exceed twenty-five percent (25%) of the Settlement Amount. Plaintiff understands that taxes will not be withheld from the Settlement Amount.

8. Payment of the Settlement Amount shall be made to Plaintiff only after execution by the Parties and entry by the Court of this Stipulation. In the event that the Court does not sign and enter this Stipulation and Order, or makes changes to the Stipulation to which the Parties do not agree in writing, the entire Stipulation is null and void, with no force or effect.

9. Within ten (10) business days after the attorney of record for the United States receives (i) this Stipulation signed by Plaintiff and his counsel; (ii) entry by the Court of this Stipulation and signed Order; and (iii) the Social Security numbers or tax identification numbers of Plaintiff and his attorneys, counsel for the United States will send a request to the U.S. Department of Health and Human Services requesting that the sum of four hundred thousand dollars (\$400,000.00) be made by check or electronic funds transfer/deposit payable to White and Williams LLP, attorney for Plaintiff.

10. This Stipulation is specifically subject to the condition that payment of the Settlement Amount by the United States is subject to there being sufficient funds in the account established pursuant to 42 U.S.C. § 233(k) to pay the Settlement Amount in its entirety. In the event that there are insufficient funds in the account established pursuant to 42 U.S.C. § 233(k) to pay the Settlement Amount in its entirety, the entire Stipulation is null and void, with no force or effect.

11. This Court shall retain jurisdiction to resolve any dispute that should arise with respect to the payment or disposition of the Settlement Amount.

12. During the time period relevant to this litigation, Callen-Lorde was deemed to be a part of the Public Health Service, and Shah, Braun, and Stark were employees of Callen-Lorde acting within the scope of their employment, including for the alleged acts and omissions set forth in Plaintiff's complaint. Accordingly, the FTCA provides that the exclusive remedy with respect to Plaintiff's claims was a suit against the United States. *See* 42 U.S.C. § 233(a); *Cuoco v. Moritsugu*, 222 F.3d 99, 107 (2d Cir. 2000). Therefore, Callen-Lorde, Shah, Braun, and Stark are dismissed from this action for the additional reason that they are not appropriate Defendants under the FTCA.

13. The Parties understand and agree that this Stipulation contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the Parties or their counsel that are not included herein shall be of any force or effect.

14. This Stipulation may be signed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. Facsimiles and/or PDFs of

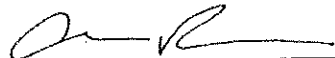
signatures shall have the same force and effect as the original signatures and constitute acceptable, binding signatures for purposes of the Stipulation.

*[Remainder of Page Intentionally Left Blank]*

WHEREAS, the Parties accept the terms, conditions, and requirements of this Stipulation as of the dates written below:

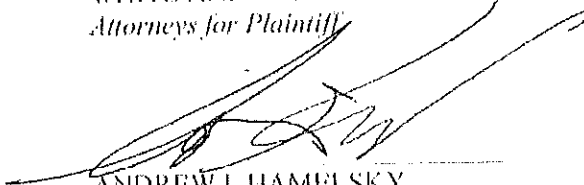
Dated: New York, New York  
June 11, 2018

GEOFFREY S. BERMAN  
United States Attorney for the  
Southern District of New York  
*Attorney for Defendants United  
States, Callen-Lorde, Shah, Braum,  
and Stark*

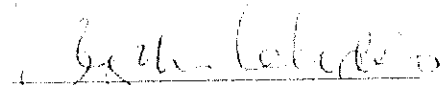
By:   
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Dated: New York, New York  
JUNE 8, 2018

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*Attorneys for Plaintiff*

  
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hamelskya@whiteandwilliams.com

Dated: New York, New York  
June 7, 2018

  
STEPHEN COLIODES

SO ORDERED:

K.B. Forrest  
HON. KATHERINE B. FORREST  
United States District Judge

Dated: 6/12/18