

SLR:MJG:KHF

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

-against-

TRIBOROUGH BRIDGE AND TUNNEL  
AUTHORITY a/k/a MTA BRIDGES AND  
TUNNELS,

Defendant.

## SETTLEMENT AGREEMENT

Civil Action No.  
CV-15-6417

( Amon, C.J.)  
( Scanlon, M.J.)

### INTRODUCTION

WHEREAS, the United States of America, through the United States Attorney's Office for the Eastern District of New York, filed a complaint in this action on November 10, 2015, asserting that the TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, a/k/a/ MTA BRIDGES AND TUNNELS ("TBTA" or "Defendant"), has engaged in and continues to engage in a pattern or practice of discrimination against pregnant TBTA Bridge and Tunnel Officers, Sergeants, and Lieutenants (collectively, "TBTA Bridge and Tunnel Operating Force Officers or "BTOFO's") in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). See 42 U.S.C. §§ 2000e-2(a); 2000e(k); and

WHEREAS, the United States maintains that Defendant violated and continues to violate Title VII by declaring BTOFOs unfit for full duty solely because they were pregnant; and

WHEREAS, Defendant denies these allegations; and

WHEREAS, the United States and the TBTA now seek to resolve the United States' claims without the expense, delays, risks, and uncertainties of litigation. By entering into this

Settlement Agreement ("Settlement Agreement"), the TBTA does not admit to the truth of any claims made against it by the United States. Further, nothing in this Settlement Agreement shall be construed as an acknowledgment or admission by the United States that the TBTA has acted, or continues to act, in full compliance with the United States Constitution or federal law;

THEREFORE, the parties agree to and this Court hereby enters this Settlement Agreement pursuant to 42 U.S.C. § 2000e-6 and the terms set forth, as follows:

## **I. STATEMENT OF AGREEMENT**

### **A. General Provisions and Equitable Relief**

1. The TBTA will not discriminate against any prospective, current, or former employees in violation of Title VII, on the basis of sex, including pregnancy;

2. The TBTA will not retaliate against any prospective, current, or former employees in violation of Title VII for engaging in protected activity related to discrimination on the basis of sex, including pregnancy;

3. Within 90 days of the date this Settlement Agreement is fully executed by the parties, (the "Effective Date"), the TBTA will revise its existing EEO policy. This revised policy will comply with Title VII and will be consistent with all other applicable laws and regulations, and will include, among other things, a clear outline of what steps an employee may take if he/she believes that he/she has been discriminated against by the TBTA in violation of Title VII, and the names or position titles of individuals to whom any related communications should be directed. Thirty days prior to finalization, the TBTA will submit a copy of the revised policy for review and approval to the Office of the United States Attorney for the Eastern District of New York, 271 Cadman Plaza East, 7th Floor, Brooklyn, New York 11201, Attention: Kelly

Horan Florio, Esq. and to the Equal Employment Opportunity Commission, Buffalo Local Office, 6 Fountain Plaza, Suite 350, Buffalo, New York, 14202, Attn: Jean Mulligan and to "Consent Decree Monitor" at [decree\\_monitor.nydo@eeoc.gov](mailto:decree_monitor.nydo@eeoc.gov).

4. Within 90 days of the Effective Date of this Settlement Agreement, the TBTA will create a policy that conforms to the requirements of Title VII and any other applicable statutes and regulations to address the guidelines for fitness for duty status and workplace accommodations based on the physical abilities and mental health of BTOFOs. This policy will treat individuals who are pregnant or suffer from pregnancy-related conditions in the same manner as other individuals similar in their ability or inability to work, including provision of reasonable accommodations. At a minimum, this policy will provide for and describe the type of accommodations available for persons with disabilities including a temporary medical condition such as pregnancy during the period where such accommodations are necessary. Such available accommodations will include, but not be limited to, accommodations with respect to: uniforms; including, but not limited to belts and other accessories; duty assignments; and the firearms privilege of TBTA Bridge and Tunnel Operating Force Officers. The policy will provide that BTOFOs shall not be required to notify the TBTA of pregnancy where those officers believe they are capable of performing full duty and are not seeking workplace accommodations. Thirty days prior to finalization, the TBTA will submit a copy of the policy for review and approval to the Office of the United States Attorney for the Eastern District of New York, 271 Cadman Plaza East, 7th Floor, Brooklyn, New York 11201, Attention: Kelly Horan Florio, Esq. and to the Equal Employment Opportunity Commission, Buffalo Local Office, 6 Fountain Plaza,

Suite 350, Buffalo, New York, 14202, Attn: Jean Mulligan and to "Consent Decree Monitor" at [decree\\_monitor.nydo@eeoc.gov](mailto:decree_monitor.nydo@eeoc.gov).

5. Within 90 days of the Effective Date of this Settlement Agreement, the TBTA will create or revise a written policy establishing standards for fitness for duty examinations conducted by the TBTA's Occupational Medical Consultant contractor(s) ("OMC") on behalf of the TBTA. These standards will be based on the job description for BTO's, Sergeants, and Lieutenants which are or will be provided to the OMCs by TBTA, and will include three categories of fitness: (i) medically fit for full duty; (ii) not medically fit for full duty -- specified medical restrictions; (ii) not medically fit for full duty -- no duty. The categories of fitness for duty will also include a separate category concerning medical eligibility for firearms privileges. Pursuant to the new or revised policy, TBTA will inform its OMC and any other medical staff contractors of these standards. Where a BTOFO's fitness for duty examination results in the category of "not fit for full duty -- specified medical restrictions," TBTA will consider available alternatives to his or her assigned duties based on the availability of suitable assignments and the qualifications of that BTOFO for any such available alternative assignment. As part of this new or revised policy, the TBTA will also create a mechanism by which BTOFOs can challenge or appeal an OMC's fitness for duty determination. Thirty days prior to finalization, TBTA will submit a copy of the policy for review and approval to the Office of the United States Attorney for the Eastern District of New York, 271 Cadman Plaza East, 7th Floor, Brooklyn, New York 11201, Attention: Kelly Horan Florio, Esq. and to the Equal Employment Opportunity



Commission, Buffalo Local Office, 6 Fountain Plaza, Suite 350, Buffalo, New York, 14202, Attn: Jean Mulligan and to "Consent Decree Monitor" at [decree.monitor.nydo@eeoc.gov](mailto:decree.monitor.nydo@eeoc.gov).

6. Within 120 days of the Effective Date of this Settlement Agreement by the parties, or by December 31, 2015, whichever is later, the TBTA will provide training to all employees, including temporary employees, with respect to the requirements of Title VII regarding the protection that Title VII affords pregnant TBTA employees. This training will include interactive components designed to engage the viewer/listener at various points during the program. The TBTA will, thereafter, provide such training to all new employees within 75 days of hire. Sixty (60) days prior to finalization, the TBTA will submit a copy of all proposed training materials for review and approval to the Office of the United States Attorney for the Eastern District of New York, 271 Cadman Plaza East, 7th Floor, Brooklyn, New York 11201, Attention: Kelly Horan Florio, Esq. and to the Equal Employment Opportunity Commission, Buffalo Local Office, 6 Fountain Plaza, Suite 350, Buffalo, New York, 14202, Attn: Jean Mulligan and to "Consent Decree Monitor" at [decree.monitor.nydo@eeoc.gov](mailto:decree.monitor.nydo@eeoc.gov).

7. Within 75 days of the Effective Date of this Settlement Agreement, the TBTA will provide advice and direction to all medical staff contractors, including OMCs, with respect to the requirements of Title VII regarding the protection that Title VII affords pregnant TBTA employees. TBTA policy will prohibit management from requiring that a BTOFO present herself to an OMC for an examination solely by reason of that employee's pregnancy. In the event that a pregnant BTOFO is otherwise

subject to a fitness for duty examination, TBTA's advice and direction will include a direction to the OMC that, when determining the medical fitness for duty of pregnant BTOFOs, the OMC shall perform an individualized medical assessment which assessment shall consider the physical and mental abilities and/or inabilities specific to the BTOFO being examined. The direction to the OMCs shall also include a requirement that the OMC advise the BTOFO being examined that she may submit for the OMC's consideration information or opinions from her private physicians with respect to her medical condition, and that the OMC shall consider any such information in reaching his or her determination as to that BTOFO's medical fitness for duty. The OMC shall also be directed to document his or medical fitness for duty determination and forward said form to TBTA, which will advise the BTOFO of the OMC's determination, and which will provide a right to appeal. This advice and direction will also address other applicable laws and regulations that may specifically impact pregnant TBTA employees. The TBTA will, thereafter, provide such advice and direction to any new medical contractor within 30 days of the execution of his or her employment contract and/or any full-time Official Medical Consultant employed directly by the TBTA. Thirty days prior to finalization, the TBTA will submit a copy of the proposed materials setting forth such advice and direction for review and approval to the Office of the United States Attorney for the Eastern District of New York, 271 Cadman Plaza East, 7th Floor, Brooklyn, New York 11201, Attention: Kelly Horan Florio, Esq. and to the Equal Employment Opportunity Commission, Buffalo Local Office, 6 Fountain Plaza, Suite 350, Buffalo, New York, 14202, Attn: Jean Mulligan and to "Consent Decree Monitor" at [decree\\_monitor.nydo@eeoc.gov](mailto:decree_monitor.nydo@eeoc.gov).

8. The TBTA will maintain records of all training conducted in accordance with paragraph 6 and advice and direction given in accordance with paragraph 7 for the duration of this Settlement Agreement and will make such records available to the United States and the Equal Employment Opportunity Commission ("EEOC") for inspection upon request.

9. Every six months from the date of entry of this Settlement Agreement, the TBTA will provide a written report to both the United States Attorney's Office for the Eastern District of New York and the EEOC, which reflects the TBTA's treatment of its pregnant BTOFOs. Specifically, by the 15th day of each required reporting month, the TBTA will provide the following information for the prior six months: (1) the names of any BTOFOs who reported a pregnancy to her supervisor or TBTA facility management during the relevant period; (2) the names of any BTOFOs evaluated by the OMC for fitness for duty relating, in whole or in part, to the medical condition of pregnancy during the relevant period; (3) the fitness for duty determination results of those OMC evaluations as well as any determinations made by the TBTA on appeal of any such evaluations; (4) whether the TBTA and/or OMC received input from the employees' personal physicians and, if so, what that input was; and (5) whether the identified BTOFOs received a change in duty status or a reasonable accommodation as a result of the OMC evaluation. As an initial matter, the TBTA will produce these reports in a redacted version which does not include personal identifying information of the individuals, including the names of the BTOFOs. However, should the United States request production of the redacted information, the parties will, within 45 days of the United States' request, execute an appropriate protective order and submit it for entry by the Court. Within 15 days of the entry of that protective order, the TBTA will produce unredacted copies of the requested reports to the Office

of the United States Attorney for the Eastern District of New York, 271 Cadman Plaza East, 7th Floor, Brooklyn, New York 11201, Attention: Kelly Horan Florio, Esq. and to the Equal Employment Opportunity Commission, Buffalo Local Office, 6 Fountain Plaza, Suite 350, Buffalo, New York, 14202, Attn: Jean Mulligan and to "Consent Decree Monitor" at [decree\\_monitor.nydo@eeoc.gov](mailto:decree_monitor.nydo@eeoc.gov).

**B. Individual Relief**

Lori Ann DiPaolo

10. Within sixty (60) days of the Effective Date of this Settlement Agreement, the TBTA agrees to pay Lori Ann DiPalo, who filed Charge No. 520-2009-01464, alleging pregnancy discrimination, the amount of One Hundred Thousand Dollars (\$100,000.00). Fifty percent of that sum is to be considered back pay and 50% is to be considered emotional distress damages. In addition, within 60 days of the Effective Date of this Settlement Agreement, the TBTA agrees to pay Forty-Four Thousand Six Hundred Twenty-Five Dollars (\$44,625.00) in attorneys' fees to Ms. DiPalo's attorneys in full settlement of any and all claims Ms. DiPalo has or has had against the TBTA related to any pregnancies prior to the date of execution of this Settlement Agreement. TBTA agrees to withhold taxes from the backpay portion of Ms. DiPalo's award. The parties make no representation as to the potential tax consequences of the remaining sum and agree that Ms. Di Palo will assume full responsibility for any such consequences.

11. In exchange therefore, Ms. DiPalo will release her claims pursuant to the EEO charge referenced in paragraph 10 above.

Christina Lampropoulos

12. Within sixty (60) days of the Effective Date of this Settlement Agreement, the TBTA agrees to pay Christina Lampropoulos, who filed Charge No. 520-2009-00702, alleging pregnancy discrimination, the amount of Thirty Five Thousand Dollars (\$35,000.00). Four thousand three hundred dollars (\$4,300.00) of that sum is to be considered back pay and the remainder is to be considered emotional distress damages. This total payment will fully settle any and all claims Ms. Lampropoulos has or has had against the TBTA related to any pregnancies prior to the date of execution of this Settlement Agreement. TBTA agrees to withhold taxes from the back pay portion of Ms. Lampropoulos' award. The parties make no representation as to the potential tax consequences of the remaining sum and agree that Ms. Lampropoulos will assume full responsibility for any such consequences.

13. In exchange therefore, Ms. Lampropoulos will release her claims pursuant to the EEO charge referenced in paragraph 12 above.

14. By January 31, 2017, TBTA will issue, via First Class mail to the addresses on file with the TBTA, a Form 1099 to BTOFOs DiPalo and Lampropoulos for the non-back pay portion of the damages awarded them under this Settlement Agreement.

**Additional Payments to Persons Affected By Pattern or Practice of Discrimination**

15. The TBTA agrees to pay a sum of Seventy-One Thousand Five Hundred Dollars (\$71,500.00) in back pay to eleven (11) additional individuals identified in in sealed Exhibit A to this Settlement Agreement as described therein. In order to protect the confidential health information of those eleven (11) individuals, Exhibit A to this Settlement Agreement will remain under seal and not available for public review.

16. The TBTA will notify each of the individuals identified in Exhibit A to this Settlement Agreement of the individual relief being afforded to them under the terms of this Settlement Agreement within 10 days after the date of entry by mailing to them, by certified mail, return receipt requested, Notice Letters as set forth in Exhibit B ("Notice Letter") and the Release and Election forms set forth in Exhibit C. The Notice Letter will advise the individuals identified in Exhibit A that, in order to accept the individual relief offered, they must execute the Release and Election forms, and return them to the TBTA, by hand delivery or certified mail, within 30 days of their receipt of the Notice Letter, unless they can demonstrate good cause, to be determined by the United States, for failure to do so.

17. The TBTA will copy the United States on all correspondence sent to the Individuals identified in Exhibit A pursuant to the previous paragraph and will provide the United States with copies of the executed Release and Election forms received within one (1) week of receiving each form. Should the United States request a completed return receipt for any claimant, the TBTA will provide a copy of such receipt within one (1) week of receiving the request.

18. Within 60 days of the deadline for receipt of executed release forms set forth in paragraph 15, the TBTA will pay the amounts set forth in Exhibit A to those individuals who have signed the release. The TBTA will pay the individual monetary relief amounts by mailing a certified or bank check made payable to the individual at that individual's address on file with the TBTA.

19. Within 30 days after the United States informs the TBTA that it has found "good cause" to accept an untimely release form, as described in paragraph 15, the TBTA will pay the claimant in question by the same method described in paragraph 17.

20. Each time the TBTA pays the individual monetary relief to individuals identified in Exhibit A, as specified in paragraph 17 or 178, the TBTA will concurrently provide the United States with copies of the payments.

## **II. ENFORCEMENT**

21. If the United States believes that the TBTA has violated any portion of this Settlement Agreement, the United States will notify the undersigned counsel in writing within 60 days of receiving notice of the alleged violation in writing and provide the basis and evidence for the notice. Within 30 days of such notice, counsel for the parties shall attempt to resolve the issues in good faith. If, at the end of that period, the parties have been unable to reach satisfactory resolution of the alleged noncompliance, the United States may take steps to enforce the terms of this Settlement Agreement.

22. The Court shall retain jurisdiction over this action and over Defendants for three years from the date of entry of the Settlement Agreement to enforce its terms, after which time the case shall be dismissed with prejudice. The United States may, at its discretion, move to extend the duration of the Settlement Agreement.

23. The Settlement Agreement shall be binding on Defendant and any of its employees, representatives, officers, subsidiaries, or successors in interest.

24. Failure by the United States to enforce the entire Settlement Agreement with regard to any deadline or any other provision of the Settlement Agreement shall not be construed as a waiver of its right to enforce other deadlines or provisions of the Settlement Agreement.

25. This Settlement Agreement constitutes the entire agreement between the parties relating to the issues raised in the complaint, and no other statement, promise, or agreement,



either written or oral, made by either party or agents of either party prior, that is not contained in this Settlement Agreement, shall be enforceable.

26. *Cost and Fees:* Except as discussed above in paragraphs 10 and 12, the United States and the TBTA will each bear its own costs and attorney's fees associated with this litigation.

27. *Construction:* For purposes of construction, this Settlement Agreement shall be deemed to have been drafted by each of the parties and shall not, therefore, be construed against either party in any subsequent dispute.

28. *Severability:* If any provision of this Settlement Agreement is hereafter determined to be invalid for any reason, the balance of this Settlement Agreement shall remain in full force and effect.

29. *Authorized Representatives:* The undersigned signatories represent that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind to this document the party that they represent.

Dated: Brooklyn, New York  
December 23, 2015

ROBERT L. CAPERS  
United States Attorney for the  
Eastern District of New York  
Attorney for Plaintiff United States  
271 Cadman Plaza East, 7th floor  
Brooklyn, New York 11201

By: Kelly Horan Florio  
Kelly Horan Florio  
Assistant United States Attorney  
(718) 254-6007



Dated: New York, New York  
December 22, 2015

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MTA Bridges and Tunnels

By: M. Margaret Terry  
M. Margaret Terry, Esq.

AGREED AND CONSENTED TO:

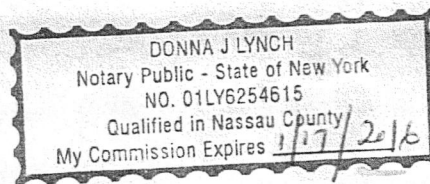
I have read and understood the above

Christina Lampropoulos  
CHRISTINA LAMPROPOULOS

**Acknowledgment**


On the 23 day of December in the year 2015, before me, the undersigned, personally appeared CHRISTINA LAMPROPOULOS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Donna J. Lynch  
NOTARY PUBLIC



Dated: Brooklyn, New York  
December 10, 2015

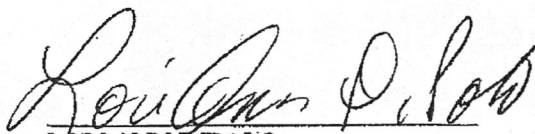
United States Equal Employment  
Opportunity Commission

By:   
Kevin Berry



**AGREED AND CONSENTED TO:**

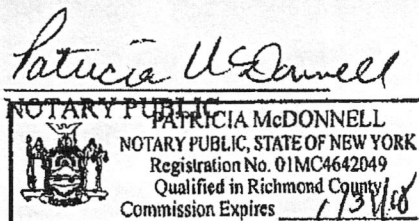
I have read and understood the above

  
LORI ANN DIPALO

**Acknowledgment**

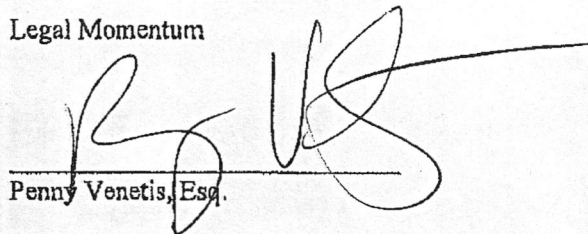
On the 22 day of December in the year 2015, before me, the undersigned, personally appeared LORI ANN DIPALO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Dated: New York, New York  
December 22, 2015



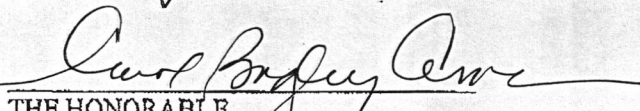
Legal Momentum

By:

  
Penny Venetis, Esq.

SO ORDERED this

21 day of Jan, 2016

  
THE HONORABLE  
United States District Judge

**EXHIBIT A**

<b>NAME</b>	<b>AMOUNT</b>	<b>COVERED PREGNANCIES</b>
Pearl Anderson	\$5,500	2010
Nikole Brown	\$11,000	2007 2010
Hilda Ellis	\$5,500	2011
Melissa Gatto	\$11,000	2009 2010
Shatima James	\$5,500	2009
Debra Jarldane	\$5,500	2010
Isis Murray-Carillo	\$5,500	2009
Yuleisha Nicholson	\$5,500	2010
Keisha Prescod	\$5,500	2010
Maxine Vickers	\$5,500	2010
Erin Petrina	\$5,500	2008



**EXHIBIT B**

**NOTICE LETTER**

[Date]

[Name of similarly situated female BTOFO]

[address]

[address]

[address]

Re: *United States v. MTA Bridges and Tunnels*  
*a/k/a Triborough Bridge and Tunnel Authority*

Dear Ms. [last name]:

On \_\_\_\_\_, 2015, the United States District Court for the Eastern District of New York entered a Settlement Agreement executed by the United States, MTA Bridges and Tunnels a/k/a Triborough Bridge and Tunnel Authority ("TBTA"), and one female "TBTA Bridge and Tunnel Operating Force Officer ("BTOFO") who is separately represented by counsel. In the Complaint filed in the same case, the private plaintiff and the United States (referred to together as "Plaintiffs") allege that TBTA discriminated against pregnant female BTOFOs on the basis of pregnancy. Specifically, the Plaintiffs allege that TBTA discriminated against pregnant BTOFOs by declaring them unfit for full duty on the basis of pregnancy alone, regardless of the physical capabilities of those officers and, at times, in contrast to the recommendations of the officers' personal physicians.

Under the terms of the Settlement Agreement, you are being offered certain monetary relief as settlement for any claim of pregnancy discrimination in employment against TBTA you might have arising out of the job assignment system in place at TBTA between 2007 and June 2014. You are being offered \$ \_\_\_\_\_ in back pay in full and final settlement of any claims of pregnancy discrimination you may have relating to the following pregnancies:

\_\_\_\_\_. This relief is being offered to you on the following condition: if you accept the relief, TBTA will require you to release it from all claims of pregnancy discrimination with respect to the identified pregnancies. If you decline the relief, TBTA will nevertheless have satisfied its obligation to the United States pursuant to the Settlement Agreement in the above-captioned case and the United States will not seek additional relief for you.

**In order to obtain the offered relief, or any part of it, you must complete and return the enclosed Release form within thirty (30) days of receiving this letter.** If you accept the offered relief, TBTA or its representative will send you the appropriate monetary award within \_\_\_\_\_ days of receiving that form.

Any payments made pursuant to this letter and the Settlement Agreement will be subject to all payroll withholdings, which will be reflected in a form W-2 to be issued to you by January 31, 2017 at the address of record TBTA has on file for you.

**IF YOU FAIL TO SUBMIT THE RELEASE FORM, AS DIRECTED IN THIS LETTER, WITHIN THIRTY DAYS FROM YOUR RECEIPT OF THIS LETTER, YOU WILL FORFEIT YOUR RIGHTS TO ANY MONETARY RELIEF UNDER THE SETTLEMENT AGREEMENT.**

If you have any questions concerning this settlement, you may contact an attorney of your choosing and at your own expense if you wish. If you are not represented by counsel and do not wish to have counsel, you may contact Kelly Horan Florio, attorney for the United States of America, at (718) 254-6007 with any questions.



**EXHIBIT C**

**RELEASE**

*United States of America v. MTA Bridges and Tunnels  
a/k/a Triborough Bridge and Tunnel Authority*

For and in consideration of the acceptance of the monetary award of \_\_\_\_\_ in back pay for the following pregnancies: \_\_\_\_\_, or any part of it, offered to me by MTA Bridges and Tunnels a/k/a Triborough Bridge and Tunnel Authority ("TBTA") pursuant to the provisions of the Settlement Agreement entered by the Honorable \_\_\_\_\_, United States District Judge, on \_\_\_\_\_, in *United States of America v. MTA Bridges and Tunnels a/k/a Triborough Bridge and Tunnel Authority*, \_\_\_-CV-\_\_\_\_\_, (\_\_\_\_\_, J.) (\_\_\_\_\_, M.J.), I, [NAME], hereby release and forever discharge TBTA, its current and future officials, employees and agents, of and from all legal and equitable claims of pregnancy discrimination relating to the above-referenced pregnancies.

I understand that the relief granted to me in consideration for this Release does not constitute an admission by TBTA of the validity of any claim raised by me or by the United States.

This Release constitutes the entire agreement between TBTA and me, without exception or exclusion.

I acknowledge that a copy of the Settlement Agreement in this action has been made available to me.

**I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS  
THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.**

Date: \_\_\_\_\_  
[Name]