

SEQUENCE NO. 2

At Part 19 of the Supreme Court of the State of New York, held in and for the County of Queens, located at 88-11 Sutphin Boulevard, Jamaica, New York 11435, on the 15th day of May, 2018.

**P R E S E N T: HON. PAM JACKMAN BROWN
J.S.C.**

Index No.: 709107/2014

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MATTHEW ABREU an Infant by his Mother and Natural
Guardian MARIA BUENO and MARIA BUENO Individually,

Plaintiff(s),

-against-

LONG ISLAND JEWISH MEDICAL CENTER,

Defendant(s).
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**UNREDACTED
INFANT'S
COMPROMISE
ORDER**

Upon reading and filing the affidavit of Maria Abreu, the mother and natural guardian of the infant plaintiff Matthew Abreu the affirmation of John M. Daly, Esq. of counsel to The Fitzgerald Law Firm, P.C.; the report of Michael D. Katz, M.D.; and Maria Abreu and Matthew Abreu having appeared before the Court during the trial of this case which took place from September 26, 2017 to October 31, 2017; and it appearing that Matthew Abreu was born on May 28, 2012; and the said case having been settled on May 23, 2017, after the April 1, 2011 effective date of the New York Medical Indemnity Fund (the "Fund"); and the Court having concluded that the aforementioned infant has sustained a "birth related neurological injury" and is a "qualified plaintiff" as defined under §§ 2999-(h)(1) and 2999-(h)(4) of the Public Health Law and therefore eligible for enrollment in the Fund and the settlement includes provision for payment of future medical expenses addressed by that Title. In the event that the Administrator of The Fund determines that plaintiff is a qualified plaintiff, all payments for future medical

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expenses shall be paid in accordance with Title 4, in lieu of that portion of this settlement that provided for the payment of such expenses; and the case having been tried and a verdict in favor of the defendant Long Island Jewish Medical Center have been rendered by the jury; and a high/low agreement having been entered into prior to said verdict with \$750,000.00 being the low and \$4,500,000.00 being the high with a 50% apportionment to the Fund; and it appearing to the satisfaction of the Court that it is in the best interest of the infant plaintiff to settle and compromise the cause of action herein against defendant Long Island Jewish Medical Center for the total amount of \$750,000.00 (\$375,000.00 for past pain and suffering, loss of wages and non-medical damages and \$375,000.00 for future "Medicals and Qualifying Health Care Costs");

NOW, on motion of The Fitzgerald Law Firm, P.C., attorneys for the plaintiffs, it is hereby

ORDERED, that for good cause shown, the inclusion of unredacted personal information in this Order is deemed material and necessary to effectuate the Order of the Court; and it is further

ORDERED, that the caption of this action is hereby amended to reflect the adult plaintiff's legal name as follows:

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MATTHEW ABREU an Infant by his Mother and Natural Guardian MARIA ABREU and MARIA ABREU Individually,

Plaintiff(s),

-against-

LONG ISLAND JEWISH MEDICAL CENTER,

Defendant(s).

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and it is further

ORDERED, that Maria Abreu, as mother and natural guardian of Matthew Abreu, be and she is hereby authorized to enter into a compromise of the personal injury claims of Matthew Abreu against defendant Long Island Jewish Medical Center upon the within terms; and it is further

ORDERED, that the cause of action brought on behalf of Matthew Abreu against defendant Long Island Jewish Medical Center be and the same is hereby settled for a total of \$750,000.00 upon the within terms; and it is further

ORDERED, that per agreement of the parties and approved by this Court, the \$750,000.00 settlement is allocated 50% to the claims for the infant plaintiff's damages for past pain and suffering, loss of wages and non-medical damages, and 50% to the infant plaintiff's claims for future medical expenses; and it is further

ORDERED, that as soon as practical, the parties shall cooperate in submitting an application on behalf of the infant plaintiff for enrollment in the Fund as established by Title 4 of the Public Health Law; and it is further

ORDERED, that as set forth in Public Health Law §2999-j (6)(a), in the event the administrator of the Fund determines that the infant plaintiff is a qualified plaintiff as that term is defined in Title 4 of the Public Health Law, §2999-h(4), all plaintiff's future medical expenses shall be paid in accordance with Title 4 of the Public Health Law; and it is further

ORDERED, that defendant Long Island Jewish Medical Center shall pay said settlement as follows:

- a) \$292,041.73 to be paid to The Fitzgerald Law Firm, P.C., as and for its attorney's fee, inclusive of disbursements, consisting of \$80,682.29 for defendant's pro rata share of attorney's fees on the "fund" damages and;

- \$80,682.28 on the past pain and suffering and other “non-fund” damages; and \$130,677.16 in disbursements;
- b) \$2,150.39 to the Department of Social Services in full satisfaction of its Medicaid lien against Matthew Abreu’s settlement proceeds;
 - c) \$30,000.00 to Maria Abreu for Maria Abreu’s loss of services and the extraordinary care that Maria Abreu renders to Matthew Abreu; and
 - d) \$131,490.17 to Maria Abreu, as mother and natural guardian of Matthew Abreu, jointly with an officer of Apple Bank for Savings, located at 168-42 Hillside Avenue, Jamaica, New York 11432 to be deposited in a time deposit or certificate of deposit account as provided hereinafter, for the sole use and benefit of the infant plaintiff Matthew Abreu;

and it is further

ORDERED, that the funds to be deposited in the bank account on behalf of Matthew Abreu shall be deposited in the above bank in the name of Maria Abreu, as mother and natural guardian of Matthew Abreu, and held for the infant’s sole use and benefit in an account paying the highest rate of interest available subject to the further order of this Court until the infant reaches the age of eighteen years; and it is further

ORDERED, that the aforesaid time deposit or certificate of deposit account shall be continuously renewed upon maturity at the highest rate of interest then available, except that the date of maturity shall not extend beyond the infant’s eighteenth birthday, and in the event that no such time deposit or certificate of deposit account is available, the accumulated funds shall then be placed in the bank’s insured money market account; and it is further

ORDERED, that said bank shall pay out of the infant's account such sums as may from time to time become due and payable for Federal and New York State income tax, or any other state or local income tax for which the infant is or may become liable, limited to taxes due from income earned by the infant's account, including penalties or interest thereon, and any amounts that may be required for payments of estimated income taxes to the United States or to the State of New York in such amounts as may be certified to the bank by a qualified tax preparer retained or employed on behalf of the infant by the infant's mother and natural guardian, Maria Abreu, or such amounts as may be due and payable for that portion of the infant's personal income tax liability attributable to income earned by his account, including interest and penalties thereon, as shown on any official bill therefore issued by the United States or the State of New York or other income tax authority; and it is further

ORDERED, that said bank be and is hereby authorized without further order of this Court to pay out of the infant's bank account, reasonable fees for the preparation of any income tax, estimated income tax returns or accountings that may be required to be filed by or on the infant's behalf regarding the tax due for the income earned from the infant's account; and it is further

ORDERED, that there shall be no right of withdrawal from the aforesaid bank account, including any insured money market account, until the infant's eighteenth birthday, except upon further order of this Court, which shall be certified by the Clerk of the Court; and it is further

ORDERED, that said bank shall upon Matthew Abreu's demand thereof and without further Court Order, pay over to Matthew Abreu when he reaches the age of eighteen on May 28, 2030 all monies held for his benefit in his account upon presentation of proper proof thereof to said bank; and it is further

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