IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIDNEY L. PETERSON, Plaintiff, v. WEXFORD HEALTH SOURCES, INC., *et al*., Defendant.	)	Case no. 19-cv-00415 Honorable Charles P. Kocoras

DEFENDANT'S REPLY IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT

The Defendant, Sarah Mays, by and through her attorney Kwame Raoul, Attorney General of Illinois, in support of her Motion to Enforce Settlement, respectfully states as follows:

Argument

This is a relatively simple matter. The parties negotiated a settlement, agreed upon a settlement amount and terms, and had authority to do so. The Parties memorialized their agreement in writing, and filed it with this Honorable Court. What remained were clerical entries and execution. Plaintiff argues that Illinois Attorney General Kwame Raoul must personally review and approve all settlement terms before a settlement agreement may be valid and enforceable. This is not supported by law or practice, and accepting Plaintiff's arguments would eviscerate the binding nature of agreements made during the course of settlement conferences.

1. Plaintiff asserts that settlement of this case is governed by 5 ILCS 350/2(a), which he argues requires the Illinois Attorney General to approve all provisions of any settlement. However, 5 ILCS 350/2(a) fails to address any requirement for approval of settlement provisions. Rather, 5 ILCS 350/2(a) states in pertinent part,

> In the event that any civil proceeding is commenced against any State employee … the Attorney General shall, upon timely and appropriate notice … defend the action…. Any such notice… shall authorize the Attorney General to represent and defend the employee in the proceeding. The giving of this notice to the Attorney General shall constitute… a consent that **the Attorney General shall conduct the defense as he deems advisable and in the best interests of the employee, including settlement in the Attorney General's discretion**. In any such proceeding, the State shall pay the court costs and litigation expenses of defending such action, to the extent approved by the Attorney General as reasonable, as they are incurred."

5 ILCS 350/2(a). This statute does not require approval of settlement provisions. Only with respect to the Attorney General's payment of ongoing court costs and litigation expenses of defense is approval by the Attorney General contemplated.

Plaintiff attempts to draw further support for his misplaced proposition from two irrelevant cases. Steidl v. Madigan discusses 5 ILCS 350/2(d). Section (d) of 5 ILCS 350/2 relates to the private representation of State employees, and has nothing to do with the current matter. 5 ILCS 350/2(d) states in pertinent but irrelevant part, "Where the employee is represented by private counsel, any settlement must be so approved by the Attorney General and the court having jurisdiction, which shall obligate the State to indemnify the employee" 5 ILCS 350/2(d). The only relevance of this provision is the fact that the 5 ILCS 350/2 expressly requires Attorney General approval in the context of State employees who are represented by private counsel, but lacks this express language with respect to the Attorney General's representation of State employees without representation by private counsel. Because the express approval requirement is stated in some contexts, in some sub-paragraphs, but not others, the clear intent of the legislature is that the absence of the express provision is meaningful and deliberate.

Gust K. Newberg, Inc. v. Illinois State Toll Highway Auth. Similarly relates to an irrelevant statutory provision, specifically, Ill. Rev. Stat. 1977, ch. 121, par. 100 -- 15. This statute pertains to the scope of authority and representation of the Attorney General with respect

to his legal representation of the Illinois State Toll Highway Authority ("Authority"). The Authority is not a party to this litigation. Likewise, because the express approval requirement is stated in some contexts, in some statutes, but not others, it is the clear intent of the legislature that the absence of the express approval provision is meaningful and deliberate.

Of note, the court in *Gust* noted, where a statute prescribes the method by which an officer or agent may bind an administrative agency of the State of Illinois such as the Authority [citation], that method must be followed." *Gust K. Newberg, Inc. v. Illinois State Toll Highway Authority*, 98 Ill. 2d 58, 66, 456 N.E.2d 50, 54-55 (1983). No such statute exists in this matter. The non-existence of such prescriptions in 5 ILCS 350/2(a) is understood to be deliberate in light of the presence of such prescriptions in the irrelevant statutes cited by Defendant.

Accordingly, the legislature intended that there not be an express and plain settlement approval provision in subsection (a). Rather, the word "discretion" is used. In this case, the Attorney General had discretion to allocate settlement authority to his deputy – specifically, the Assistant Attorney General representing the Defendant in this matter.

2. Plaintiff asserts that Defendant "concedes" that the Attorney General has not approved the settlement of this case. This is a mischaracterization of the facts and arguments at issue. The Parties Agreement had been approved with respect to the settlement amount and the Agreement's standard settlement language, used daily in the Attorney General's Office. Indeed, this very same settlement agreement was acceptable to Plaintiff's counsel in the matter of *Anderson v Lozano*, 23-cv-14208. All that remained was the manner of payment, whether paid directly to the Plaintiff or to Plaintiff's counsel's IOLTA account. This is not a material term. The Parties Agreement is enforceable as to all material terms, and there was a meeting of the minds memorialized in writing and filed in court. ECF 132.

3. Plaintiff next asserts that Plaintiff's Motion to Enforce does not allege that IDOC approved any settlement. This is inaccurate. The IDOC approved a settlement of this matter for $5,000 on January 17, 2025 at 9:43 PM. Defendant needed only to verify the IDOC's approval from the Parties' prior settlement conference in this matter. Further, this was a simple settlement because the Parties agreed to the Attorney General's standard settlement language, which the IDOC executes as a matter of course. The standard settlement language is effectively "pre-approved" in these circumstances. All that remained was the clerical entry of payment information so that complete paperwork could be submitted for execution. Plaintiff refused to provide this information despite numerous requests.

4. Plaintiff argues that the Parties did not reach a meeting of the minds on all material terms. This is unsupported factually and legally: on January 17, 2025, Defendant sent Plaintiff a settlement agreement containing all agreeable terms, including a confidentiality provision, and lacking only the clerical entry of the Parties' names and the settlement amount. The Parties agreed to a $5000 settlement amount (orally and substantiated in writing) and the Parties names were known. Following discussions, the Parties filed their January 17, 2025 Joint Status Report, negotiated by the parties, stating, "[t]he parties report that they have an agreement subject to formal approval by IDOC and request 28 days for completion of settlement documents." This is plainly a meeting of the minds on all material terms. Further, Plaintiff's belief that the confidentiality provision may transform a non-taxable settlement for personal injury into a partially taxable settlement is based upon a misunderstanding of Plaintiff's cited law. *Amos*, the court found that a portion of the settlement amount was paid in return for an NDA as to the existence of the settlement agreement, among other things. *Amos v. Commissioner*, No. 13391-01, 2003 Tax Ct. Memo LEXIS 330, at *1 (T.C. Dec. 1, 2003). Conversely, the

Agreement's consideration in this matter is expressly in consideration for the full and complete settlement of this claim. No consideration is apportioned to the existence of the confidentiality provision in this matter.

5. Finally, Plaintiff argues that the enforcement of the Parties Agreement is barred by laches. *Laches* "is grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his rights to the detriment of the opposing party." *Tully v. State*, 143 Ill. 2d 425, 432, 574 N.E.2d 659, 158 Ill. Dec. 546 (1991). To successfully assert *laches*, it must be shown "that a party unreasonably delayed asserting a known right and that delay unduly prejudiced the opposing party." *Renth v. Krausz*, 219 Ill. App. 3d 120, 121-22, 579 N.E.2d 11, 161 Ill. Dec. 754 (1991).

Defendant put Plaintiff on notice of the enforceability of the Parties' Agreement on February 27, 2025 when Defendant requested this Honorable Court to find that the Parties' Agreement is valid and enforceable, and to order Plaintiff's cooperation in the finalization of settlement paperwork. ECF 135. Defendant's request that this Honorable Court find the Parties Agreement valid and enforceable is written and filed proof of Defendant's pursuit of her rights under the Parties Agreement. Plaintiff was given additional on notice of Defendant's intent to enforce the Parties Agreement when Defendant filed her Status Report on May 1, 2025, which noticed Defendant's intent to move to enforce the Parties' Agreement.

At no point has Defendant led Plaintiff to believe that Defendant intended to do anything but pursue enforcement of the Parties Agreement. Plaintiff's assertion that he would not have instructed his expert to prepare a report in the face of a Motion is thin at best. Plaintiff was fully aware of Defendant's intent to enforce the Parties Agreement, and Plaintiff's alleged reliance on a failure to pursue rights under the Parties Agreement is unreasonable.

Further, Plaintiff's expert report was inexplicably emailed only to James Robinson on June 13, 2025 without notifying the undersigned despite a year and a half of correspondence and litigation with the undersigned; James Robinson's last direct interaction with this matter was August 8, 2024. Plaintiff's expert report is dated June 12, 2025. An invoice contained within the report shows that Plaintiff's expert worked on and created the report between June 9, 2025 and June 12, 2025. Exhibit A. Plaintiff fails to assert when he commissioned the report, or when he paid his expert. Certainly, this report was commissioned after Plaintiff's February 27, 2025 notice of Defendant's intent to pursue her rights under the Parties' Agreement, and almost definitely after Defendant's May 1, 2025 express statement regarding her intent to file a motion to enforce.

Accordingly, laches does not apply, Plaintiff was fully aware of Defendant's intent to pursue the enforceability of the Parties' Agreement, and the accrual of costs in retaining an expert was with full knowledge that such costs would be borne by the Defendant in the event that the Parties Agreement is held valid and enforceable.

WHEREFORE, Defendant respectfully requests that this Honorable Court (1) grant leave to provide all referenced emails to this Honorable Court, either through email to chambers, filing on the docket, or any other method ordered by this Honorable Court, (2) grant Defendant's Motion, (3) order Plaintiff to provide all necessary information for final completion and execution of the Parties' Settlement Agreement, (4) find that the Parties' Settlement Agreement is valid and enforceable, (5) dismiss this matter with prejudice upon Plaintiff's receipt of the settlement amount, (6) and enter such further relief this Honorable Court finds reasonable and just.

Dated: July 31, 2025

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

By: */s/ Michael Norton*

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CERTIFICATE OF SERVICE

The undersigned certifies that on July 31, 2025, the foregoing document was filed with the Clerk of the Court using the CM/ECF system.

/s/ Michael Norton