

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Shaleda Busbee, Administrator of the Estate of Tyrone Briggs,	:	
	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 1:20-cv-02401-CCC-SES
	:	
Pennsylvania Department of Corrections et al.,	:	
	:	
	:	
Defendants.	:	
	:	

**Plaintiff's Petition To Settle
Wrongful Death And Survival Action**

Plaintiff Shaleda Busbee, through counsel, respectfully petitions the Court to enter the attached proposed Order approving the settlement of this action and the requested distribution of the settlement proceeds. Plaintiff submits this Petition pursuant to 20 Pa. C.S. § 3323. Under that statute, this Court has authority to approve the settlement and proposed distribution. *See* 20 Pa. C.S. § 3323(b)(1) (authorizing “any court” in which estate’s action for damages “is pending” to approve settlement on petition by estate’s representative); *Rodi v. Williams*, No. CV 4:12-1379, 2015 WL 1863006, at *2 (M.D. Pa. Apr. 23, 2015) (approving settlement for estate and wrongful death beneficiaries).

In support of this Petition, Plaintiff asserts as follows:

1. Plaintiff Shaleda Busbee is the mother of Tyrone Briggs, who died at the age of 29 on November 11, 2019.

2. Plaintiff was appointed Administrator of the Estate of Tyrone Briggs on October 28, 2020, by the Register of Wills of Philadelphia County. *See* Ex. A.

3. At the time of his death, Mr. Briggs had no Will. He had no spouse and no children. His surviving parents are his only intestate heirs. *See* 20 Pa. C.S. § 2103(2). Mr. Briggs' parents are:

- a. His mother, Plaintiff Shaleda Busbee; and
- b. His father, Houston Briggs.¹

4. On December 22, 2020, Plaintiff initiated this action on behalf of the Estate of Tyrone Briggs and his heirs. In the lawsuit, Plaintiff brought civil rights claims alleging that the Defendant correctional officers and medical providers failed to address Mr. Briggs' emergency need for intensive medical attention when he came into contact with OC spray, which, due to his asthma condition, led to his death by asphyxiation.

5. Upon the filing of the lawsuit, the parties engaged in negotiations aimed at seeking a resolution of the claims. As a result of those negotiations, the parties reached a final settlement to globally resolve the case.

¹ Notice of the institution of this action was provided to Mr. Briggs through his counsel, David L. Woloshin, Esq. Undersigned counsel have advised Mr. Briggs, through his counsel, as to the status of this settlement.

6. As outlined in the attached fully executed release, the settlement is for the gross amount of \$8,500,000. *See* Ex. B.

7. Plaintiff, as stated in the attached Declaration, agrees with the terms of the settlement and believes that those terms constitute an appropriate resolution of this litigation. *See* Ex. C.

8. Undersigned counsel are of the professional opinion that the terms of the settlement are reasonable. Counsel, whose firms are nationally recognized for their work in high profile civil rights litigation, believe that the proposed settlement is the largest ever obtained in a Pennsylvania case concerning the death of an incarcerated person.

9. For purposes of allocating the settlement proceeds, undersigned counsel request fees in the amount of \$2,833,333.33, representing one-third of the gross settlement as prescribed in the Attorney Retainer Agreement entered into by Plaintiff and counsel.

10. The Abolitionist Law Center has incurred litigation costs totaling \$2,243.39 for travel, record collection, and court fees. *See* Ex. D.

11. The Pennsylvania Department of Human Services has notified counsel that it has no lien against this settlement. *See* Ex. E.

12. No other creditors have provided notice of claims against the Estate.

13. Upon the deduction of counsel fees and costs, the net amount payable to the Estate of Tyrone Briggs and the wrongful death beneficiaries is \$5,664,423.28.

14. Plaintiff requests an allocation of this amount between the wrongful death beneficiaries' claims and the Estate's survival claims, as follows:

- a. Wrongful Death Claim: 50% (\$2,832,211.64)
- b. Survival Claim: 50% (\$2,832,211.64)

15. Counsel believes that this allocation is fair and reasonable based upon previous awards in similar cases, as well as the elements of the damages involved.

16. The Pennsylvania Department of Revenue has informed counsel that it agrees to this allocation. Ex. F.

17. Pursuant to the Wrongful Death Statute, 42 Pa. C.S. § 8301, the beneficiaries of the decedent, and the proportion of their interests, are as follows: one-half each to Mr. Tyrone Briggs' mother, Plaintiff Shaleda Busbee, and Mr. Briggs' father, Houston Briggs.

18. The net wrongful death settlement proceeds will be distributed to Ms. Busbee and Mr. Houston Briggs to compensate each for the harms suffered by them resulting from the death of Mr. Tyrone Briggs.

19. The amount of the settlement allocated to the survival claim is payable to the Estate of Tyrone Briggs for administration and ultimate distribution

to the intestate heirs in accordance with Pennsylvania law and any orders of the Philadelphia Orphans' Court under 20 Pa. C.S. § 711(1), after payment of all claims against the Estate, including the prospective payment of attorneys' fees and costs to separate counsel for legal assistance in the administration of the Estate.

20. Plaintiff Shaleda Busbee has reviewed the proposed allocation of the settlement proceeds described above, and as noted in her Declaration, approves of that allocation and requests that the Court approve the settlement and allocations.

See Ex. C at ¶¶ 5-8.

WHEREFORE, Plaintiff Shaleda Busbee, through counsel, respectfully requests that the Court approve the proposed settlement and allocations as set forth in the attached proposed Order.

Respectfully submitted,

/s/ Jonathan H. Feinberg
Jonathan H. Feinberg
jfeinberg@krlawphila.com
KAIRYS, RUDOVSKY, MESSING, FEINBERG
& LIN LLP
718 Arch Street, Suite 501 South
Philadelphia, PA 19106
(215) 925-4400

/s/ Bret D. Grote
Bret D. Grote
Quinn Cozzens
Jamelia N. Morgan – *of counsel**
ABOLITIONIST LAW CENTER
P.O. Box 8654
Pittsburgh, PA 15221
(412) 654-9070

DATE: September 7, 2021

EXHIBIT A

LETTERS OF ADMINISTRATION

REGISTER'S OFFICE
PHILADELPHIA COUNTY, PA

N^o A2791-2020



ESTATE OF Tyrone Jockeem Kyhill Briggs

Social Security No. 202-17-5409

WHEREAS, Tyrone Jockeem Kyhill Briggs
late of 251 N Robinson Street, PHILADELPHIA, PA 19139

died on the 11th day of November, 2019 ;
and

WHEREAS, the grant of letters of administration is required for the administration of said estate.

THEREFORE, I, TRACEY L. GORDON, Register for the Probate of Wills and Grant of Letters Testamentary and of Administration, in and for the County of Philadelphia in the Commonwealth of Pennsylvania, hereby certify that I have granted Letters of Administration

to Shaleda Busbee

who has duly qualified as Administratrix of the estate of the above named decedent and has agreed to administer the estate according to law, all of which fully appear of record in the Office of the Register of Wills of Philadelphia County, Pennsylvania.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at Philadelphia, the 28th day of October, 2020

Tracey L. Gordon
Deputy Register

Office of the Register of Wills of Philadelphia County, Pennsylvania

File #: A2791-2020

Commonwealth of Pennsylvania
County of Philadelphia

} ss.

I, **TRACEY L. GORDON**, Register for the Probate of Wills and Granting Letters of Administration in and for the County of Philadelphia, in the Commonwealth of Pennsylvania

DO HEREBY CERTIFY AND MAKE KNOWN That on the 28th day of October
in the year of our Lord 2020 LETTERS OF ADMINISTRATION

on the Estate of Tyrone Jockeem Kyhill Briggs

Deceased, were granted unto Shaleda Busbee

having first been qualified well and truly to administer the same. And I further certify that no revocation of said Letters appears of record.

Date of death 11/11/2019

Given under my hand and seal of office, this 29th day of October, 20 20

Klaus A. Birm
Deputy Register



NOT VALID WITHOUT ORIGINAL SIGNATURE AND IMPRESSED SEAL

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SHALEDA BUSBEE,
ADMINISTRATRIX OF THE
ESTATE OF TYRONE BRIGGS

Plaintiff,

v.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS; SUPERINTENDENT
THERESA DELBALSO; DEPUTY
SUPERINTENDENT CHARLES
STETLER; JOHN DOES #1-11,

Defendants

No. 1:20-cv-02401

Magistrate Judge Susan E. Schwab

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS is entered into on the 23rd day of July, 2021 between Plaintiff Shaleda Busbee, Administratrix of the Estate of Tyrone Briggs (hereinafter "Plaintiff") and Pennsylvania Department of Corrections, Superintendent Theresa Delbalso, Deputy Superintendent Charles Stetler, and John Does #1-11, (hereinafter "Defendants") individually and on behalf of the Pennsylvania Department of Corrections, and is intended as a complete statement of the terms of the settlement and release of claims between the undersigned Parties in the case known as: *Shaleda Busbee, Administratrix of the Estate of Tyrone Briggs v. Pennsylvania Department of Corrections, et al*, in the United States District Court for the Middle District of Pennsylvania, at Case No. 1:20-cv-02401 (hereinafter, the "underlying case"). With the intent to be legally bound hereby, the Parties agree as follows:

1. This Settlement Agreement and Release of Claims represents a full and final settlement of all claims, including all claims for fees and costs under federal or state law, that were or could have been brought relating to the death of Tyrone Briggs, including the circumstances described in the Complaint filed in the underlying case.

2. It is acknowledged and agreed that this Settlement Agreement and Release of Claims is in compromise of a disputed claim or claims embodied in the underlying case and is being entered into in lieu of an adjudication of Plaintiff's claims, to limit the burden further litigation poses to both parties. Thus, the Settlement Agreement and Release of Claims is not to be construed as an acknowledgment by either party as to the merit of any claim or defense.

3. The Defendants shall pay to Plaintiff the total sum of Eight Million Five-Hundred Thousand Dollars (\$8,500,000), in settlement of all claims raised in the underlying case, including without limitation claims for physical injury, emotional distress, costs and attorneys' fees. Payment shall be made by one (1) check made payable to Kairys, Rudovsky, Messing, Feinberg, Lin & LLP, in the amount of Eight Million Five-Hundred Thousand dollars (\$8,500,000) from the Commonwealth of Pennsylvania. The Settlement Amount will be paid as expeditiously as possible after full execution of this Agreement. Payment by any date certain, however, shall not be a condition or requirement of this Agreement. Plaintiff hereby waives the requirements and remedies of Pennsylvania Rule of Civil Procedure 229.1, to the extent it is applicable to this Agreement.

4. It is agreed and understood that Plaintiff and her attorneys are solely responsible for the tax liabilities and consequences, if any, related to their receipt of settlement proceeds under this Settlement Agreement and Release of Claims, and the Defendants shall not bear any responsibility for such liability or consequences, if any.

5. Payment shall be made in the form of the one fully negotiable check as previously described that represents the liquidation in full of all claims by Plaintiff, including attorneys' fees and costs.

6. The DOC further acknowledges and represents that it has implemented, or is in the process of implementing, modifications to policy, procedure and training programs to address the heightened risk OC may pose to inmates with asthma and other respiratory diseases. Those modifications include:

- Mandatory training for all corrections staff who have care, custody and control or therapeutic care, custody and control of incarcerated persons concerning the heightened risk OC may pose to those with asthma/respiratory disease - for new hires and as an annual training requirement.
- Required annual training for all DOC medical staff and agency/contract medical staff on the heightened risk OC may pose to individuals with respiratory disabilities.
- Reiterate and clarify mandatory procedures for nursing assessments of inmates with respiratory disabilities who come into contact with OC, including:
 - examine inmate's medical chart for notations of respiratory disease
 - obtain pulse ox reading
 - contact on-call medical provider with vital statistics and assessment information
 - on-call medical provider makes determination as to whether inmate can be cleared or should remain in medical for further observation

Counsel for the DOC shall provide written verification to counsel for Plaintiff confirming that these modifications have been implemented, including an interim status report/verification at 4 and 8 months from the date of this agreement while implementation is in progress.

7. In consideration thereof, Plaintiff hereby releases, remises and forever discharges Defendants and the Commonwealth of Pennsylvania, Department of Corrections, and its officers, officials, employees, agents, representatives and assigns, of and from any and all liability, suits, causes of action, whether in law or in equity, judgments, demands or claims of any nature whatsoever, known and unknown, foreseen and unforeseen, which Plaintiff now has or may hereafter have at any time prior to the execution of this Settlement Agreement and Release of

Claims on account of and/or in any way arising from or relating to his restricted housing unit confinement with the Commonwealth of Pennsylvania, Department of Corrections, including the incidents and claims that were or could have been raised in the underlying case.

8. It is acknowledged and agreed that this Settlement Agreement and Release of Claims, with due regard for the pertinent provisions of the Commonwealth Attorneys Act, is not, cannot and shall not be construed to be a consent decree.

9. The Parties acknowledge and consent to the dismissal with prejudice of the underlying case. To that end, within thirty (30) days of receipt of the settlement proceeds, Plaintiff will file a Stipulation of Dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure.

10. It is acknowledged, understood and agreed, that this Settlement Agreement and Release of Claims contains the entire agreement between Plaintiff and Defendants, and its terms are contractual and no mere recital.

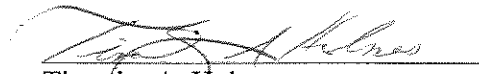
11. We state that we have read carefully the foregoing document, know and understand its contents and sign the same as the free and voluntary act of each of us with the intent to be bound by its terms, and more specifically that Plaintiff in this respect has conferred with her counsel, including but not limited to Attorneys Bret Grote and Jonathan Feinberg concerning its terms and the consequences of her respective signature.

14. This Agreement may be executed in counterparts.

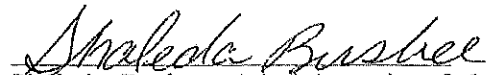
INTENDING TO BE LEGALLY BOUND, the Parties hereto have approved and executed this Settlement Agreement and Release of Claims on the dates set forth opposite their respective signatures.

CAVEAT - PLEASE READ BEFORE AFFIXING YOUR SIGNATURE.

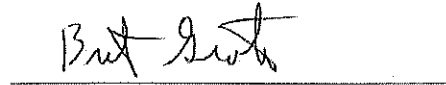
7/23/21
Date


Timothy A. Holmes
On behalf of the Pennsylvania Department of Corrections and all Defendants

7/23/21
Date


Shaleda Busbee, Administratrix of the Estate of Tyrone Briggs,
Plaintiff

7-23-21
Date


Bret D. Grote, Esquire
Abolitionist Law Center
Attorney for Plaintiff

7/23/21
Date

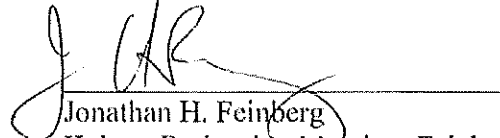

Jonathan H. Feinberg
Kairys, Rudovsky, Messing, Feinberg & Lin, LLP
Attorney for Plaintiff

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Shaleda Busbee, Administrator of the Estate of Tyrone Briggs,	:	
	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 1:20-cv-02401-CCC-SES
	:	
Pennsylvania Department of Corrections et al.,	:	
	:	
	:	
Defendants.	:	
	:	

DECLARATION OF SHALEDA BUSBEE

Pursuant to 28 U.S.C. § 1746, I, Shaleda Busbee, declare under penalty of perjury, as follows:

1. I am the mother of Tyrone Briggs, who died on November 11, 2019, at the age of 29.
2. I was appointed as the Administrator of the Estate of Tyrone Briggs by the Philadelphia County Register of Wills. I understand that with that appointment, I have a responsibility to protect the legal interests of the Estate and of my son's heirs.
3. In my role as Administrator of the Estate, I sought to retain counsel to pursue litigation concerning the circumstances of my son's death. I signed an agreement retaining my attorneys and agreeing to pay my attorneys a contingent

fee equal to one-third of any financial recovery. I also agreed to reimburse my attorneys for any out-of-pocket expenses they incurred.

4. Based on my attorneys' advice, I decided to file a civil rights lawsuit in this Court. After the case was started, I closely followed the litigation and remained in frequent contact with my attorneys concerning the progress of the case.

5. When my attorneys advised that the case could be settled, I consulted with my attorneys about the range of possible results if the case were to go to trial. On July 23, 2021, I agreed to a final settlement of the case, and I signed a release confirming that agreement. I believe that the settlement amount is a fair and appropriate result in this case.

6. My attorneys have provided me with a chart showing the proposed distribution of the settlement funds, including payment of contingent attorneys' fees and reimbursement for my counsels' costs. I believe that the distribution of the settlement funds presented by my attorneys is fair and appropriate and is consistent with the retainer agreement I signed with my attorneys.

7. My attorneys have explained to me the allocation of the settlement proceeds between wrongful death funds and survival funds. I have reviewed the allocation proposed by my attorneys, and I believe that the allocation is fair and appropriate in this case.

8. Based on all of the above, I request that the Court grant the request for approval of the settlement in this case and the that the Court approve the proposed distributions and allocation of the settlement funds.

Executed this 23 day of July, 2021.



Shaleda Busbee

EXHIBIT D

ABOLITIONIST LAW CENTER

Profit & Loss

January 2019 through December 2021
~~Jan '19 - Dec 21~~

AI

Ordinary Income/Expense

Expense

5400 · Travel Expenses	
5401 · Tolls	85.10
5405 · Parking	15.00
5410 · Other travel expenses	609.49
Total 5400 · Travel Expenses	<u>709.59</u>
5450 · Meetings	122.55
7000 · Legal Costs	
7010 · Legal Records	919.25
7040 · Filing Fees	402.00
z7070 · Prof Fees	90.00
Total 7000 · Legal Costs	<u>1,411.25</u>
Total Expense	<u>2,243.39</u>
Net Ordinary Income	<u>(2,243.39)</u>
Net Income	<u><u>(2,243.39)</u></u>

EXHIBIT E



July 19, 2021

JONATHAN FEINBERG
KAIRYS RUDOVSKY
718 ARCH STREET
SUITE 501 SOUTH
PHILADELPHIA PA 19106

Re: Tyrone Briggs
SSN: ###-##-5409

Dear Jonathan Feinberg:

Pursuant to your letter dated July 08, 2021, the Department of Human Services (DHS), Third Party Liability (TPL) - Casualty Unit, has reviewed the information you provided regarding the above-referenced individual.

DHS has determined this individual stopped receiving medical assistance on October 31, 2006. Therefore, the Department's TPL - Casualty Unit has no claim on this individual.

If this case has already settled, in the event you bring any action against another party that may result in further recovery, you must comply with the statutory notice requirement pursuant to §1409(b)(5), as the Department reserves its right to seek recovery of medical claims we paid related to this incident.

Please contact DHS within thirty (30) days of settlement or thirty (30) days prior to a hearing regarding damages for this incident so that DHS can determine if there is a claim at that time.

If you have any questions, please feel free to contact me.

Sincerely,

Third Party Liability Recovery Unit
1-866-850-8117
717-772-6553 FAX

EXHIBIT F



Date Issued 08/16/2021



KAIRYS, RUDOVSKY, MESSING, FEINBERG &
LIN LLP
JONATHAN H. FEINBERG, ESQUIRE
718 ARCH ST STE 501S
PHILADELPHIA PA 19106-1525

Letter ID L0006380079

Case Number 0-002-083-713

Wrongful Death Survival Action Allocation

The Pennsylvania Department of Revenue received the Petition for Approval of Settlement Claim to be filed on behalf of the below-referenced estate in regard to a Wrongful Death and Survival Action. It was forwarded for the approval of allocated proceeds paid to settle the actions.

According to the petition, the decedent died as a result of asphyxiation. The decedent is survived by his parents. The decedent was 29 years old.

Account Information

Estate of: BRIGGS, TYRONE J

File Number: 5120A2791

Departmental determination

If you have any questions regarding this matter, please direct them using the contact information listed below.

Carolyn Dymond
(717) 787-8327

Please be advised that, based upon these facts and for Inheritance Tax purposes only, the department has no objection to the proposed allocation of the gross proceeds of this action:

Wrongful Death Claim: \$4,250,000.00

Survival Action Claim: \$4,250,000.00

Proceeds of a Survival Action are an asset included in the decedent's estate and are subject to the imposition of Pennsylvania Inheritance Tax (42 Pa. C.S.A. § 8302) (72 P.S. §§ 9106, 9107). Costs and fees must be deducted in the same percentages as the proceeds are allocated (*Estate of Merryman*).

As the department has no objections to the petition, an attorney from the Pennsylvania Department of Revenue will not be attending any hearing regarding it.

Please use the contact information provided above if you or the Court have any questions or requires anything additional from this bureau.

References

In re Estate of Merryman, 669 A.2d 1059 (Pa. Cmwlth. Ct. 1995)

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Shaleda Busbee, Administrator of the	:	
Estate of Tyrone Briggs,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 1:20-cv-02401-CCC-SES
	:	
Pennsylvania Department of Corrections	:	
et al.,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW this _____ day of _____, 2021,
upon consideration of Plaintiff’s Petition to Settle Wrongful Death and Survival
Action filed in the captioned matter, it is hereby **ORDERED** that the Petition is
GRANTED, and Plaintiff Shaleda Busbee, Administrator of the Estate of Tyrone
Briggs, is authorized to enter into a settlement with the defendants in this matter in
the gross sum of \$8,500,000.00. **IT IS FURTHER ORDERED** that the
settlement proceeds are allocated and shall be distributed, as follows:

Allocation of Gross Settlement

Gross Settlement	\$8,500,000.00
Attorneys’ Fees to Abolitionist Law Center and Kairys, Rudovsky, Messing, Feinberg & Lin LLP (one-third contingent fee)	\$2,833,333.33

Reimbursement of Litigation Costs to Abolitionist Law Center	\$2,243.39
Lien to Pennsylvania Department of Human Services	\$0
Net Proceeds to Estate and Wrongful Death Beneficiaries	\$5,664,423.28

Allocation of Net Proceeds to Estate and Wrongful Death Beneficiaries

Allocated to Wrongful Death Beneficiaries' Claims (50% of net recovery), with one-half of the allocation paid to the decedent's mother, Plaintiff Shaleda Busbee, and one-half of the allocation paid to the decedent's father, Houston Briggs	\$2,832,211.64
Allocated to Estate's Survival Claims (50% of net recovery)	\$2,832,211.64

By the Court:

Susan E. Schwab
United States Magistrate Judge