

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

SANDRA LAMB,

Plaintiff,

-against-

NRAD MEDICAL ASSOCIATES, P.C., BLUE
DOT HOLDINGS, LLC, MERIDIAN
IMAGING GROUP, LLC, and NYU
LANGONE MEDICAL CENTER

Defendants.

Case No. 17-cv-1181-JMA-AYS

SETTLEMENT AGREEMENT

1. Introduction

1.1 This Settlement Agreement (“Agreement”) is entered into by Plaintiff Sandra Lamb (“Plaintiff”) and Defendants NRAD Medical Associates, P.C. (“NRAD”), Blue Dot Holdings, LLC (“Blue Dot”), Meridian Imaging Group, LLC (“Meridian”), and NYU Langone Medical Center (“NYU Langone”) (collectively, “Defendants”) (individually, each of these is a “Party”; collectively, they are the “Parties”).

1.2 Plaintiff filed a complaint against Defendants in the Eastern District of New York on March 2, 2017 including claims under Title III of the Americans with Disabilities Act, the New York State Human Rights Law, and the New York City Human Rights Law (hereinafter “the Lawsuit”). The Lawsuit was assigned to United States District Judge Joan M. Azrack.

1.3 The Parties now wish to effectuate a complete resolution of all claims, disputes, and controversies relating to Plaintiffs’ allegations against Defendants, and to resolve their differences and disputes by settling the Lawsuit.

1.4 Defendants maintain that there is no substance to the allegations and charges made against them in the Lawsuit and further maintain that they have valid defenses to all such charges and allegations, and that they have denied and continue to deny all allegations of wrongdoing asserted against them in connection with these allegations, and have disclaimed any liability with respect thereto.

2. Definitions.

In addition to the terms defined elsewhere in the Agreement, the following terms shall have the meanings set forth below:

2.1. **“Access”** and **“Accessible”** mean and refer to conditions that comply with the relevant and applicable standards set forth in the disability rights laws, including the Americans with Disabilities Act as codified at 42 U.S.C. § 12101 *et seq.*; the ADA Standards for Accessible Design, commonly referred to as the Americans with Disabilities Act Access Guidelines, as codified at Appendix A to 28 C.F.R. Part 36; the New York State Human Rights Law, N.Y. Executive Law § 290 *et seq.*; the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.*; and the New York State and City building codes.

2.2. **“Accessible Medical Equipment”** means and refers to medical equipment that is accessible to and useable by patients with disabilities under the Department of Justice technical assistance guide *Americans with Disabilities Act: Access To Medical Care For Individuals With Mobility Disabilities* (2010), available at https://www.ada.gov/medcare_ta.htm, and the United States Architectural and Transportation Barriers Compliance Board Standards for Accessible Medical Diagnostic Equipment, 36 CFR Part 1195.

2.3 **“Compliance Period”** shall mean six months from the date of this Agreement, or whenever all remediation under section 3 of this Agreement is complete to the satisfaction of the Plaintiff, whichever is later.

2.4 **“Effective Date”** shall mean the date this Agreement is signed by all Parties.

2.5 **“Subject Facilities”** shall mean the facilities located at NYU Langone Radiology—NRAD, Lake Success, Suite 101 (6 Ohio Drive, Suite 101, Lake Success, NY 11042); NYU Langone Radiology—NRAD, Lake Success, Suite 104 (6 Ohio Dr, Suite 104, Lake Success, NY 11042); NYU Langone Radiology—NRAD, Lake Success, Suite 204 (6 Ohio Drive, Suite 204, Lake Success, NY 11042); NYU Langone Radiology—NRAD, Lake Success, Suites 301B & 301C (410 Lakeville Avenue, Suites 301B and 301C, Lake Success, NY 11042); NYU Langone Radiology—NRAD, Garden City (765 Stewart Avenue, Garden City, NY 11530); NYU Langone Radiology—NRAD, Hempstead (230 Hilton Avenue, Hempstead, NY 11550); NYU Langone Radiology—NRAD Hillcrest (80-15 164th Street, Jamaica Estates, NY 11432); NYU Langone Radiology—Northern Breast & Women’s Imaging (6 Ohio Drive, Suite 205, Lake Success, NY 11042); and NYU Langone Radiology—NRAD, Woodbury (105 Froehlich Farm Boulevard, Woodbury, NY 11797).

2.6 **“Technical Assistance Guide”** shall mean the Department of Justice Technical Assistance Guide *Americans with Disabilities Act: Access To Medical Care For Individuals With Mobility Disabilities* (2010), available at https://www.ada.gov/medcare_ta.htm.

3. Injunctive Relief

A. Accessible Medical Equipment

3.A Within 18 months of the Effective Date of this Agreement, Defendants will ensure that at least one examination rooms in each of the Subject Facilities meets the following requirements of the Technical Assistance Guide, Part 4: (a) at least one Accessible examination table with the ability to lower to the height of 17-19 inches, or lower, from the floor, and with elements to stabilize and support a person during transfer and while on the table, such as rails, straps, and stirrups; and (b) at least one lift and one slide board with paddles to assist patients in transferring to that examination table.

B. Architectural Barrier Removal

3.B Within 18 months of the Effective Date of this Agreement, Defendants will ensure that each examination room within the Subject Facilities containing Accessible Medical Equipment in paragraph 3.A shall meet the following requirements of the Technical Assistance Guide, Part 3: (a) there is an entry door into the examination room with adequate clear width, maneuvering clearance, and accessible hardware; (b) there are appropriate models and placement of accessible examination equipment in the examination room; and (c) there is adequate clear floor space inside the room for side transfers and use of lift equipment.

C. Compliance

3.C.1. Within 18 months of the Effective Date, Defendants will demonstrate compliance with paragraph 3.A by sending Plaintiff applicable inventory descriptions or purchase and delivery orders.

3.C.2 Within 18 months of the Effective Date, Defendants will notify Plaintiff that paragraphs 3.A and 3.B have both been satisfied. Plaintiff will then have three (3) weeks from the date of that notice to designate fifty (50) percent of the Subject Facilities that she wishes to inspect with her attorneys to confirm compliance with paragraphs 3.A and 3.B, and to confirm that she is able to safely and independently access the Subject Facilities containing Accessible Medical Equipment. Notwithstanding the foregoing, Defendants shall have the right to de-designate one (1) of the Subject Facilities identified by Plaintiff for inspection. If Defendants opt to de-designate one of the originally designated facilities, Plaintiff may then designate one additional location.

3.C.3 The Parties will then have two (2) weeks from the date of Plaintiff's designation to agree to a schedule for these visits, and the visits will occur within thirty (30) days of determining that schedule.

3.C.4 Defendants will demonstrate compliance for the facilities that Plaintiff does not designate for visits, or a location that is de-designated by Defendants, by providing Plaintiff with scale drawings of the rooms containing the Accessible Medical Equipment within thirty (30) days after the schedule in paragraph 3.C.3 has been determined. The drawings will include the placement of all furniture and equipment within the rooms.

3.C.5 If, following any of these visits or the receipt of these drawings, Plaintiff has an objective, good-faith reasoned basis to believe that paragraph 3.A or 3.B has not been satisfied, or if she is unable to safely and independently access the locations in which the Accessible Medical Equipment is contained, Plaintiff shall notify Defendants of her concern, and the parties shall meet-and-confer in a good faith attempt to resolve the dispute within ten (10) business days of Plaintiff's notification.

3.C.6 If the parties are able to resolve the dispute, the Plaintiff will have the option of designating a further inspection date in order to confirm compliance. If the dispute remains unresolved, the parties may proceed with the dispute resolution process outlined in Section 4.1 of this Agreement.

C. Training, Policies, and Public Information

3.C.1. Within 6 weeks of the Effective Date of this Agreement, Defendants will make certain that they have policies in place to ensure that (a) appointments for patients requiring accessible medical equipment are scheduled in the rooms containing that equipment, (b) accommodations are noted in patients' charts for future visits, and (c) staff who encounter patients with disabilities know how to assist those patients respectfully and appropriately. Within 6 weeks of the Effective Date of this Agreement, Defendants will train the relevant staff in these policies.

3.C.2 Defendants will conduct training to all relevant staff on the use of the Accessible Medical Equipment purchased pursuant to this Agreement, including how to transfer patients to that equipment, within six weeks of the Effective Date. The training will include hands-on demonstrations and written material that will be maintained in the rooms where the accessible equipment is kept. This training will be provided as part of "new staff training" for the duration of this agreement.

3.C.3 Within 6 weeks of the Effective Date of this Agreement, Defendants will train all relevant staff who make appointments at or assist with providing information about the Subject Facilities on how to provide accurate information about the Accessible Medical Equipment available and how to ensure that a patient requiring Accessible Medical Equipment is scheduled for a room containing that equipment during his or her appointment.

3.C.4 Within 6 weeks of the Effective Date of this Agreement, Defendants will ensure that their websites contain complete and accurate information about the accessible equipment available at the Subject Facilities.

3.C.5 Defendants will demonstrate compliance with this section by sending Plaintiff applicable copies of the relevant policies, links to the websites, and written assurance that necessary training was provided no later than two months from the Effective Date.

4. Dispute Resolution

4.1 Any disputes arising from this Agreement shall be resolved according to the following procedure:

4.1.a Notification in Writing: Counsel for each Party shall notify counsel for the other Parties in writing of any perceived non-compliance by any Party.

4.1.b Meet and Confer: Unless otherwise agreed to by the Parties, with respect to any particular dispute, the Parties agree to meet and confer in good faith, within ten (10) business days after a written notification of a dispute is raised pursuant to section 4.1.a, *supra*, by either Party to discuss and try to resolve such dispute.

4.1.c Motion to Enforce: If the dispute is not resolved after sixty (60) days of meet and confer efforts between the Parties pursuant to section 4.1.b, *supra*, any Party may file a motion with the Court to enforce the settlement. Attorneys' fees and costs in connection with any motion to enforce the terms of the settlement may be claimed in accordance with applicable law. Notwithstanding anything foregoing to the contrary, other than attorney's fees and costs awarded pursuant to this paragraph 4.1.c, Plaintiff agrees she is not entitled to, and will not seek, reimbursement for attorney's fees and costs regarding this Lawsuit or this Agreement concerning post-Effective Date time periods.

5. Dismissal and Continuing Jurisdiction

5.1 The Parties hereby agree to enter into a Stipulation of Dismissal of the lawsuit, in accordance with Federal Rule of Civil Procedure 41(a)(1)(A)(ii), within five (5) days of the Effective Date. Plaintiffs shall file the stipulation with the Court immediately after.

5.2 The Stipulation of Dismissal shall be with prejudice, subject to the District Court's retention of jurisdiction as described below.

5.3 The U.S. District Court for the Eastern District of New York shall have continuing jurisdiction to enforce the Agreement until ninety (90) days after the end of the Compliance Period.

5.4 The Agreement shall, for all purposes, be governed by, construed, and enforced in accordance with federal law.

6. Attorneys' Fees and Costs

6.1 Respondents agree to pay a total of \$80,000 in attorney's fees and costs for work through the Effective Date within thirty (30) days of the Court accepting continuing jurisdiction over this Agreement for purposes of enforcement and dispute resolution.

7. Entire Agreement

7.1 This Agreement contains all the agreements, conditions, promises, and covenants among Plaintiffs and Defendants regarding matters set forth in it. No representations, warranties, or promises have been made or relied upon by any party hereto, other than those contained herein. It supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral, with respect to the subject matter of the present Agreement.

8. Amendment or Modification

8.1 The Agreement may be modified only by means of a superseding written agreement, signed by the Parties.

9. Execution

9.1 The Agreement may be executed in counterparts. All such counterparts taken together shall be deemed to constitute one and the same Agreement.

10. Communications Among Parties

10.1 Unless otherwise indicated in the Agreement, all notices or communications required by this Agreement shall be in writing by certified mail addressed as follows, unless counsel for any Party notifies counsel for any other Party in writing of any change:

10.1.1 To Plaintiffs' Counsel:

Christina Brandt-Young
Disability Rights Advocates
655 Third Avenue, 14th Floor
New York, NY 10017

10.1.2 To Meridian, Blue Dot, and NRAD's Counsel:

Robert A. Cirino
Westerman Ball Ederer Miller Zucker & Sharfstein, LLP
1201 RXR Plaza, Uniondale, New York 11556
rcirino@westermanllp.com

10.1.3 To NYU Langone's Counsel:

Roy Breitenbach
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, NY 11021

11. Miscellaneous

11.1 This Agreement shall be binding upon, and inure to the benefit of the Parties, their respective heirs, executors, representatives, successors, and assigns.

11.2 In the event that any portion of the Agreement is determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect, and such invalid or unenforceable provision shall automatically be deemed rewritten to the minimal extent necessary to eliminate such invalidity or unenforceability.

11.3 The delay or failure to enforce or seek enforcement of any right under this Agreement shall not constitute or be construed as: (a) a waiver of such rights or any other rights; (b) a waiver of any remedy to enforce such rights or any other rights; or (c) acquiescence in any default.

11.4 The Parties agree to exchange any press releases relating to the Agreement no later than forty-eight (48) hours prior to their release. The Party issuing the press release will consider the other Parties' comments and suggestions in good faith. In the event of a dispute, the Court will retain jurisdiction to resolve that issue.

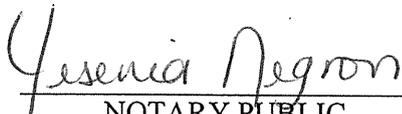
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

MERIDIAN IMAGING GROUP, LLC

By: 
Name: Alan Winakor
Title: CEO

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

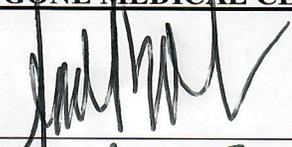
On April 27, 2018, before me, personally came Alan Winakor, to me known, who, being by me duly sworn, did depose and say that he resides in the State of New York; that he is the CEO of Meridian Imaging Group, LLC, the organization described in and which executed the above instrument; and that he signed his name thereto by authority of the board of directors of said corporation.


NOTARY PUBLIC

YESENIA NEGRON
Notary Public, State of New York
No. 01NE6271576
Qualified in Nassau County
Commission Expires 11/05/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

NYU LANGONE MEDICAL CENTER

By: 
Name: Andrew Brotman, MD
Title: Sr VP + Vice Dean Clinical Affairs

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On July 2, 2018, before me, personally came Andrew Brotman, to me known, who, being by me duly sworn, did depose and say that he resides in the State of New York; that s/he is the Sr VP + Vice Dean of NYU Langone Medical Center, the organization described in and which executed the above instrument; and that s/he signed her/his name thereto by authority of the board of directors of said professional corporation.


NOTARY PUBLIC

VITA M. PRAINITO
Notary Public, State of New York
No. 01PR5017802
Qualified in Nassau County
Commission Expires 11-25-21