

At an IA Part ____ of the Supreme
Court of the State of New York held
in and for the County of Bronx at
the Courthouse, 851 Grand Concourse
Bronx, New York on the _____ day of
_____ 202____.

PRESENT: HON.

JUSTICE OF SUPREME COURT

In the Matter of the application of

for the appointment

of a Personal Needs and/or Property

Management Guardian of

an Alleged Incapacitated Person

INDEX NO.

ORDER AND JUDGMENT

APPOINTING GUARDIAN TO

AN (INCAPACITATED PERSON)

OR (PERSON IN NEED)

An order having been duly made herein at an IAS Part ____ of this court on the
day of the _____ of _____, 20____, directing that

(date of signing of Order To Show Cause)

(list interested parties)

show cause why a guardian for personal needs and/or property management should not
be appointed for **(IP's Name)** _____ and granting other relief and
having been appointed as court evaluator herein and having duly appeared as same and
having been appointed as counsel for the alleged incapacitated person and having
appeared for on behalf of the incapacitated person, and having appeared for the

petitioner and this matter having regularly come on for a hearing on the (date of hearing)_____ and the parties having adduced their proof and it appearing therefrom to the satisfaction of the court by clear and convincing evidence that the alleged incapacitated person is likely to suffer harm because the alleged incapacitated person is unable to provide for personal needs and property management and cannot understand and appreciate the nature and consequences of such inability, and the court having made the findings required by Section 81.15 of the Mental Hygiene Law in a decision made on the record on the (date of Courts decision)_____, and upon all the pleadings and proceedings heretofore had herein, and due deliberation having been had, on motion of _____, attorney for the petitioner, it is

FINDING:

- 1 **ORDERED AND ADJUDGED**, that (IP/PING's NAME) _____ be and hereby is determined to be an incapacitated person requiring the appointment of a guardian for personal needs and property management as the court has found that said incapacitated person is likely to suffer harm because of inability to provide for personal needs and property management and is unable adequately to understand and appreciate the nature and consequences of such inability; and it is further

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GUARDIAN(S) APPOINTMENT AND BOND:

2 **ORDERED AND ADJUDGED**, that _____,
address: _____, **direct number:** _____
email: _____ is hereby appointed guardian for personal
needs and property management of (IP/PING's NAME) _____, upon filing
with this court, pursuant to Mental Hygiene Law Section 81.25, a bond in the sum of
\$ _____ with sufficient sureties, conditioned that the said guardian will in all things
faithfully discharge the trust imposed herein, obey all the directions of the court in respect to
the trust, make and render a true and just account of all monies and other properties received
pursuant to the authority granted herein and the application thereof, and of all acts
performed in the administration of the trust imposed herein whenever required to do so by
the court, and will file the oath and designation required by section 81.26 of the Mental
Hygiene Law; and it is further

GUARDIANS OATH, DESIGNATION AND COMMISSION:

3 **ORDERED AND ADJUDGED**, that pursuant to section 81.27 of the Mental
Hygiene Law, upon the filing of such oath, bond and designation as required by statute, a
commission in due form of law shall be issued by the clerk of the court which shall state 1) the
title of the proceeding and the name, address and telephone number of the incapacitated
person; and 2) the name, address, and telephone number of the guardian and the specific
powers of such guardian 3) the date when the appointment of the guardian was ordered by
the court; and 4) the date on which the appointment terminates if one has been ordered by
the court, **and the commission shall be filed within 15 days of entry of this Order /**
Judgment, and it is further **<Enter Index No.>**

4 **ORDERED AND ADJUDGED**, that the attorney for the petitioner shall serve upon the court appointed guardian a copy of this Order and Judgment, assist in the preparation of the commission, oath and designation and obtain, if necessary, the bond, assist the guardian in obtaining the required training and the certified and executed commission from the Clerk of the Court; and it is further

5 **ORDERED AND ADJUDGED**, that the authority of the guardian for property management shall extend to all the property of the incapacitated person, both real and personal, and it is further

DURATION OF GUARDIANSHIP:

6 **ORDERED AND ADJUDGED**, that the duration of this guardianship shall be indefinite; and it is further

7 **ORDERED AND ADJUDGED**, that all persons are hereby directed and commanded to deliver to the guardian for property management, upon demand and presentation of a certified copy of the commission, all property of the incapacitated person, of every kind and nature, which may be in their possession or under their control; and it is further,

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FILINGS:

8 **ORDERED AND ADJUDGED**, that the Guardian shall ensure that all bank account(s) and/or all brokerage accounts, and/or all trust accounts to be established hereunder shall provide duplicate monthly statements with copies of cancelled checks in imaged formats to the court examiner assigned herein. Proof of compliance with the foregoing shall be included as part of the 90-day Initial Report.

9 It shall be the obligation of the Court Examiner to verify that this provision has been complied with by the Guardian and to immediately report any non-compliance to the Court.

EXPENDITURES:

10 **ORDERED AND ADJUDGED**, that the guardian for property management may, without prior authorization of the court, make reasonable expenditures for the purpose of providing the incapacitated person with necessities or preserving the property of the incapacitated person, and it is further

11 **ORDERED AND ADJUDGED**, that the guardian for property management may, without prior authorization of the court, invest surplus funds in investments eligible by law for the investment of trust funds and may dispose of investments so made and reinvest the proceeds as so authorized. Except as herein provided, no investment shall be made by the guardian other than pursuant to an order of the court authorizing such investment. Nothing herein contained shall be deemed to limit the power of the court to approve any investment made without its authorization, or to control the disposition of the property of the incapacitated person or investment or reinvestment of the incapacitated person's funds, or to make a new order respecting investments at any time; and it is further

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12 **ORDERED AND ADJUDGED**, that the guardian for property management may not alien, mortgage, lease or otherwise dispose of real property without special direction of the court obtained upon proceedings taken for that purpose as prescribed in Article 17 of the Real Property Actions and Proceedings Law, provided, however that without instituting such proceedings, the guardian for property management may with authorization of the court lease real property for a term not exceeding five years and may, without further authorization of the court, lease a primary residence for the incapacitated person for a term not to exceed three years; and it is further

13 **ORDERED AND ADJUDGED**, that the guardian for property management may, without prior authorization of the court, maintain in his or her own name and official title any civil judicial proceeding which the incapacitated person might have maintained were he or she competent; and it is further

SECONDARY APPOINTMENTS:

14 **ORDERED AND ADJUDGED**, that the guardian may make any secondary appointments without the prior approval of the Court, and that the guardian shall comply with Part 36 of the Rules of the Chief Judge, and it is further (for appointees not subject to Part 36 rules)

OR

14 **con't ORDERED AND ADJUDGED**, that the guardian shall not make any secondary appointments without the prior approval of the Court, and that the guardian shall comply with Part 36 of the Rules of the Chief Judge, and it is further (for appointees subject to Part 36 rules)

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FEES:

15 **ORDERED AND ADJUDGED**, that the guardian shall not pay any fees to said secondary appointees without prior approval of the court, and it is further

SAFE DEPOSIT BOX ACCESS AND INVENTORY:

16 **ORDERED AND ADJUDGED**, that if the incapacitated person has a safe deposit box in any bank, then the guardian be and is hereby directed to take an inventory of the contents of such safe deposit box in the presence of a representative of the surety on the bond (unless the surety waives their presence in writing) and an officer of the bank, and that a list of the contents of such safe deposit shall be certified by all present, and a copy thereof shall be promptly filed by the guardian with the court; and it is further

FUNERAL EXPENSES:

17 **ORDERED AND ADJUDGED**, that pursuant to section 81.36(e) of the Mental Hygiene Law, upon the death of the incapacitated person, the guardian shall have the authority to pay for the reasonable funeral expenses of the incapacitated person; and it is further

FINAL EXPENSES:

18 **ORDERED AND ADJUDGED**, that upon the death of the incapacitated person, the guardian shall have the power to pay the bills of the incapacitated person which were incurred prior to the death of the incapacitated person, provided the guardian would otherwise have had the right to pay such bills; and it is further

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19 **ORDERED AND ADJUDGED**, that in the event the Incapacitated Person received financial assistance from the New York City Human Resources Administration Medical Assistance Program (“Medicaid”), then in that event the Guardian shall reimburse Medicaid for any and all expenses paid on behalf of the Incapacitated Person out of the excess resources of the Incapacitated Person, as may be legally required, with prior Court approval; and it is further

20 **ORDERED AND ADJUDGED**, that the guardian for property management shall have such authority as may be granted by any statute of the United States of America or the State of New York to a guardian for property management, conservator or committee of the property and the guardian for personal needs shall have such authority as may be granted by any statute of the United States of America or the State of New York to a guardian for personal needs or a committee of the person unless any such statute specifically requires the permission of the court before the exercise of such power granted therein; and it is further

GUARDIAN’S POWERS:

21 **ORDERED AND ADJUDGED**, that pursuant to section 81.20 of the Mental Hygiene Law the guardian shall:

- (a) exercise only those powers that the guardian is authorized to exercise by order of the court;
- (b) exercise the utmost care and diligence when acting on behalf of the incapacitated person;
- (c) exhibit the utmost degree of trust, loyalty and fidelity in relation to the incapacitated person;

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- (d) visit the incapacitated person not less than four times per year;
- (e) afford the incapacitated person the greatest amount of independence and self-determination with respect to property management and personal needs in light of that person's functional level, understanding and appreciation of his or her functional limitations, and personal wishes, preferences and desires with regard to managing the activities of daily living; and it is further

21 con't ORDERED AND ADJUDGED, that pursuant to section 81.20 of the Mental Hygiene Law the guardian of the property shall:

- (a) preserve, protect and account for the incapacitated person's property and financial resources faithfully;
- (b) determine whether the incapacitated person has a will, determine the location of any will and the appropriate persons to be notified in the event of the death of the incapacitated person and, in the event of the death of the incapacitated person, notify those persons;
- (c) at the termination of the appointment, deliver the property of the incapacitated person to the person legally entitled to it;
- (d) file with the recording office of the county wherein the incapacitated is possessed of real property, an acknowledged statement to be recorded and indexed under the name of the incapacitated person, identifying the real property possessed by the incapacitated person, and the tax number of the property, and stating the date of adjudication of incapacity of the person regarding property management and the name, address and telephone number of the guardian and the guardian's surety;
- (e) perform all other duties required by law; and it is further

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22 **ORDERED AND ADJUDGED**, that to the extent of the net estate available therefore, the guardian shall provide for the maintenance, support and personal well-being of the incapacitated person and then may, without further Order of the court, provide for the maintenance and support of persons legally dependent upon the incapacitated person; and it is further

23 **ORDERED AND ADJUDGED**, that pursuant to Section 81.22 of the Mental Hygiene Law, the guardian for personal needs shall have the authority to make the following decisions concerning the personal needs of the incapacitated persons:

- (a) determine who shall provide personal care and assistance to the incapacitated person.
- (b) make decisions regarding social environment and other social aspects of the life of the incapacitated person
- (c) determine whether the incapacitated person should travel.
- (d) determine whether the incapacitated should possess a license to drive
- (e) authorize access to or release of confidential records
- (f) apply for government and private benefits
- (g) consent to or refuse generally accepted routine or major medical or dental treatment provided that the guardian for personal needs shall make treatment decisions consistent with the findings herein and section 81.15 of the Mental Hygiene Law and in accordance with the incapacitated person's wishes, including the incapacitated person's religious and moral beliefs, or if the incapacitated persons' wishes are not known and cannot be ascertained with reasonable diligence, in accordance with the incapacitated person's best interest,

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including a consideration of the dignity and uniqueness of every person, the possibility and extent of preserving the incapacitated person's life, the preservation, improvement or restoration of the incapacitated person's health or functioning, the relief of the incapacitated person's suffering, the adverse side effects associated with the treatment, any less intrusive alternative treatments, and such other concerns and values as a reasonable person in the incapacitated person's circumstances would wish to consider

(h) choose the place of abode of the incapacitated person, provided that the choice of abode must be consistent with the findings herein pursuant to Mental Hygiene Law Section 81.15, the existence of and availability of family, friends and social services in the community, the care, comfort and maintenance, and where appropriate, rehabilitation of the incapacitated person, the needs of those with whom the incapacitated person resides;

PLACEMENT:

(i) based upon the findings made by this court, the guardian for personal needs (**shall , shall not**) have the authority to place the incapacitated person in a nursing home or residential care facility as those terms are defined in Section 2801 of the Public Health Law without the consent of the incapacitated person; and it is further

GUARDIAN(S) REQUIRED TRAINING:

24 ORDERED AND ADJUDGED, that pursuant to Section 81.39 of the Mental Hygiene Law, the guardian shall attend a training program approved by the Chief Administrator of the Courts and obtain proof that the training was completed and furnish proof of such with the Guardianship Clerk and Court Examiner; and it is further **<Enter Index No.>**

GUARDIAN(S) INITIAL REPORT:

25 **ORDERED AND ADJUDGED**, that pursuant to section 81.30 of the Mental Hygiene Law, no later than ninety days after the issuance of a commission to the guardian, **the guardian shall file with the Guardianship Department of Bronx Supreme Court, Room 216, an initial report and shall mail a copy to the court examiner assigned herein and persons entitled to notice**; and it is further

GUARDIAN(S) ANNUAL ACCOUNTING:

26 **ORDERED AND ADJUDGED**, the guardian shall file during the month of May of each year with the Guardianship Department of Bronx Supreme Court, Bronx County Room 216, an **annual report** in the form required by Section 81.31 of the Mental Hygiene Law and shall mail a copy of said report to the court examiner assigned herein and persons entitled to notice; and it is further

CHANGE IN POWERS:

27 **ORDERED AND ADJUDGED**, that if the initial or annual report sets forth any reasons for a change in the powers authorized by the court, the guardian shall make application within ten days of the filing of such report for a change in powers on notice to the persons entitled to such notice, and it is further

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GUARDIAN(S) COMPLIANCE

28 ORDERED AND ADJUDGED, that upon the guardian's failure to file the initial report within ninety days after the issuance of the commission, the court examiner shall serve the guardian with a demand letter by certified mail, and upon the guardian's failure to comply, move the court by order to show cause to remove the guardian; and it is further

NOTICE OF CHANGE:

29 ORDERED AND ADJUDGED, that the guardian shall immediately notify the Guardianship Department, Room 216, the Court Examiner and persons entitled to Notice upon any change of address of the guardian or the incapacitated person, and it is further

NOTICE OF DEATH:

30 ORDERED AND ADJUDGED, that in the event of the death of the incapacitated person, the Guardian shall within 20 days of the date of death serve a copy of a Statement of Death on the Court Examiner and upon the Representative of the Estate of the Incapacitated Person stated in the will or Trust Instrument if known, and upon the Public Administrator of the County of the Bronx, and file a copy of this Statement of Death or Death Certificate with the Guardianship Department, Room 216 of this Court, within the same 20 day period, and it is further

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TERMINATION DUE TO DEATH:

30 con't ORDERED AND ADJUDGED that in the event of the death of the incapacitated person, the Guardian shall within 150 days of the date of death serve a Statement of Assets and Notice of Claim upon the Representative stated in the Will or Trust Instrument if known, or if there be none, upon the Public Administrator of the County of the Bronx, and file a copy of this Statement of Assets and Notice of Claim with the Guardianship Department, Room 216 of this Court, within the same 150 day period, and it is further

30 con't ORDERED AND ADJUDGED that in the event of the death of the incapacitated person, the Guardian within 150 days of the date of death shall deliver all Guardianship assets, except for property retained by the Guardian to secure any known claim, lien or administrative costs of the Guardianship, to the duly appointed personal representative, or to the Public Administrator, and it is further

30 con't ORDERED AND ADJUDGED that in the event of the death of the incapacitated person, the Guardian shall within 150 days of the date of death, unless extended by order of the Court, file the Final Report with the Fiduciary Department, Room 216 of this Court and thereupon proceed to judicially settle the final report by Order to Show Cause with due notice, including notice to the person or entity to whom the property was delivered, and it is further

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COMPENSATION TO GUARDIAN(S):

31 **ORDERED AND ADJUDGED**, that the compensation of the guardian(s) shall be at the same rate as that of Section _____ of the Surrogate's Court Procedure Act; and it is further

32 **ORDERED AND ADJUDGED**, that the guardian shall take no annual commissions/compensation for any year until that year's annual account is filed, reviewed by the Court Examiner, and approved by the court; and it is further

COURT APPROVED FEES:

33 **ORDERED AND ADJUDGED**, that upon receipt of the commission from the Clerk of the County of the Bronx, the guardian(s) shall make the following disbursements from the funds of the incapacitated person: **(MAY NEED TO CHANGE PAYEE, i.e. Petitioner, Comptroller, pursuant to 18b, Cross Petitioner)**

(a) To _____ the sum of \$ _____ as and for a legal fee for serving as attorney for the Petitioner and \$ _____ for disbursements.

(b) To _____ the sum of \$ _____ for services rendered as court evaluator.

(c) To _____ the sum of \$ _____ for services rendered as attorney for the incapacitated person.

(d) To _____ M.D. the sum of \$ _____ for expert services rendered herein; and it is further

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34 ORDERED AND ADJUDGED, that none of the above authorized fees shall be paid until the guardian(s) has filed the bond (if So Ordered), oath and designation and received the commission from the Clerk of the County of the Bronx, and it is further

PARTIES ENTITLED TO NOTICE:

35 ORDERED AND ADJUDGED, that pursuant to 81.16(c)(3) of the Mental Hygiene Law notice of all further proceedings with regard to this matter shall be given to:

**(list names of persons and entities, include examiner and surety, administrator of the facility NYCHRA/OLA, MHLS, (if IP/PING resides in a facility) and the Guardian(s)(if other than a Part
36 Appointee or Agency);**

Name	Address	Phone number	email	Role
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

and it is further

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NOTICE TO THE IP/PING:

36 **ORDERED AND ADJUDGED**, that pursuant to Section 81.16(e) of the Mental Hygiene Law a copy of this order and judgment shall be personally served upon and explained to the incapacitated person by the guardian(s); and it is further

STANDBY GUARDIAN(S)

37 **ORDERED AND ADJUDGED**, that pursuant to Section 81.38 of the Mental Hygiene Law, _____, **Fiduciary No.:** _____ of _____, **direct number:** _____, **email:** _____

is hereby appointed standby guardian for personal needs and property management of the incapacitated person and that upon qualification, the standby guardian for personal needs and property management shall have all the duties, powers and responsibilities of the original guardian for personal needs and property management appointed herein; and it is further

37con't**ORDERED AND ADJUDGED**, that upon the filing with the court by the standby guardian of a bond, oath and designation, and in addition, upon the filing of an acknowledged statement of resignation signed by the original guardian appointed herein, a certified death certificate of said guardian, or a copy of a judicial order indicating that said guardian has been removed, discharged, suspended, or become incapacitated, the Clerk of the Court shall issue a commission in the due form of law which shall state that it is valid for sixty days from its issuance; and it is further

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COURT EXAMINER:

38 **ORDERED AND ADJUDGED**, that _____, **Fiduciary No.:** _____
of _____
direct number: _____ **email:** _____

is appointed Court Examiner by Order of the Presiding Justice of the Appellate Division, First Department, is assigned to examine the initial and annual reports of the guardian(s) named herein; and it is further

39 **ORDERED AND ADJUDGED**, that the petitioner's attorney herein, within thirty (30) days of the signing of this Order and Judgment, serve upon the Court Examiner a copy of this Order and Judgment together with notice of entry; and it is further

EXCESS BOND:

40 **ORDERED AND ADJUDGED**, that the said guardian, before taking possession of any personal property valued in excess of the above-mentioned bond, shall apply to the court for an order fixing an additional bond pursuant to Article 81 of the Mental Hygiene Law, and it is further

FIDUCIARIES SUBJECT TO PART 36 & 26:

41 **ORDERED AND ADJUDGED**, that any appointee herein subject to Part 36 rules, shall comply with Part 36 of the Rules of the Chief Judge by filing the OCA 872 form electronically with the Fiduciary Clerk in Bronx Supreme Court. Any subsequent affidavit or affirmation of service submitted to this court must contain a statement indicating such compliance, and it is further

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PARTIES ENTITLED TO NOTICE OF DEATH AND DISPOSITION:

42 **ORDERED AND ADJUDGED**, that the following individuals shall receive notice of the incapacitated person or person in need of a guardian's death, the intended disposition of the remains of the decedent, funeral arrangements and the final resting place of the incapacitated person or person in need of a guardian when the information is known or can be reasonable ascertained by the guardian: (LIST INDIVIDUALS INCLUDING: COURT EXAMINER AND GUARDIANSHIP CLERK)

NAME	ADDRESS	PHNOE NO.	EMAIL	ROLE
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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GUARDIAN(S) CONTACT INFORMATION AND NOTICE TO THE COURT:

43 **ORDERED AND ADJUDGED**, that the Guardian(s) represents that their current address is: _____, direct phone number is: _____ and current email is: _____, address is: _____, direct phone number is: _____ and current email is: _____.

That they acknowledge that court notices may be sent to them by either text message or by email, and that these messages have the same effect as having received a notice by regular mail. That they realizes that if either the cell phone number or email address changes, that they **must** notify the Court immediately by calling the Guardianship Office at **718-618-1330**, by sending an email to BXFIDUCIARY@NYCOURTS.GOV, **subject line: indicate index number and IP/PING's last name**, by fax at 212-618-5248 or by writing a letter to that office at **851 Grand Concourse, Room 216, Bronx, NY 10451**, and it is further

GUARDIAN(s) COMPLIANCE:

44 **ORDERED AND ADJUDGED**, that the Guardian recognizes that they may be required to participate in virtual conferences or hearings with reference to the guardianship, and he/she will cooperate with reference to scheduling such conferences or hearings, and will fully participate in them, and it is further

45 **ORDERED AND ADJUDGED**, that failure of the Guardian to respond to messages sent by the above methods will result in the Guardian being ordered to appear in person, utilizing whatever court facilities are established for the purpose of such hearings and conferences being held, and it is further

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46 **ORDERED AND ADJUDGED**, that the failure of the Guardian to respond to court notifications and/or participate in virtual or in-person court proceedings, or otherwise fail to fulfill the duties of a Guardian as outlined in this judgment may subject the Guardian to removal or a surcharge proceeding, or other measures that the Court may appropriately order; and it is further

COURT EXAMINER COMPLIANCE:

47 **ORDERED AND ADJUDGED**, that the Court Examiner appointed herein shall notify the Court on _____ by sending an email to

(<COURT WILL ENTER DATE>120 days from signing)

BXFIDUCIARY@NYCOURTS.GOV, of any non-compliance, **subject line: indicate index number and IP's last name; and it is further**

NYSCEF FILINGS:

48. **ORDERED AND ADJUDGED**, that this proceeding is an E-File case and is subject to the rules of NYSCEF. To obtain Certified copies the request can be made either in-person, via e-mail (bxcc-cert@nycourts.gov), or postal mail. The fee is \$8.00 for a certified copy plus an additional .65 per page, minimum of \$1.30. If appearing in person, the fee for copies of each page is 25 cents, plus the \$8.00 certification fee. If the case type is confidential, the guardian(s) have to submit an affirmed letter requesting a certified copy. If the person is not a party to the action, they must provide a letter from the guardian(s)/plaintiff, or attorney of record authorizing them to receive a certified copy; and it is further

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AMENDED CAPTION

ORDERED AND ADJUDGED, that the caption in this matter is amended as follows:

_____X

In the Matter of

Index No:

<IP or PINGs NAME>

<An Incapacitated Person> **or** <A Person in Need of a Guardian>

_____X

It is hereby deemed that all service has been properly completed.

ENTER:

HON. LAURA G. DOUGLAS, J.S.C.

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HON. ANDREW J. COHEN, J.S.C.

Rev.1/2024