

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

ANDREW C., by his next friend)
GREGORY ELLIOTT, for himself and)
those similarly situated, et al.,)

Plaintiffs,)

v.)

Class Action
Civil Action No. 1:07-cv-00241-S-PAS

GINA M. RAIMONDO, in her official)
capacity as Governor of the State of)
Rhode Island, et al.,)

Defendants.

**PLAINTIFFS’ UNOPPOSED MOTION FOR APPROVAL OF NEGOTIATED
ATTORNEYS’ FEES AND EXPENSES**

Pursuant to Federal Rules of Civil Procedure 23(h) and 54(d)(2), Plaintiffs respectfully move this Court to approve the parties’ negotiated agreement for the recovery of all Plaintiffs’ attorneys’ fees and expenses in the agreed amount of \$3,400,00.00 (the “Fees Settlement”) after proper notice to the class. For the reasons below and in the accompanying Memorandum, the parties’ negotiated Fees Settlement is reasonable, meets the requirements of Section 1988, and should be approved. The Fees Settlement is a significant reduction from the total time and expenses generated in this ten-year litigation. Further, the agreement was reached only after protracted, arms-length negotiations. The parties have agreed on a Proposed Notice of Fees Settlement and a Proposed Order Approving Form and Manner of Notice of Negotiated Attorneys’ Fees and Expenses. Plaintiffs therefore request that the Court enter the attached order, approve notice to the class, and approve the parties’ negotiated Fees Settlement after due consideration.

Respectfully submitted,

/s/ Sara M. Bartosz

Sara M. Bartosz, *pro hac vice*
Joshua Rosenthal, *pro hac vice*
Elizabeth Pitman, *pro hac vice*
Children's Rights, Inc.
88 Pine Street, Suite 800
New York, New York 10005
(212) 683-2210
(212) 683-4015 (Fax)

Dated: February 1, 2018

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I filed the Motion via the ECF filing system and that a copy is available for viewing and downloading. I have also caused a copy to be sent via the ECF System to the following attorneys of record on this 1st of February 2018:

Brenda D. Baum, Esq.
Assistant Attorney General
R.I. Department of the Attorney General
150 South Main Street
Providence, RI 02903-2907
Phone: (401) 274-4400 x 2294
Facsimile: (401) 222-3016
Email: bbaum@riag.ri.gov

Neil F.X. Kelly, Esq.
Assistant Attorney General
R.I. Department of the Attorney General
150 South Main Street
Providence, RI 02903-2907
Phone: (401) 274-4400
Facsimile: (401) 222-2995
Email: nkelly@riag.ri.gov

Edward G. Mullaney, Esq.
Special Assistant Attorney General
R.I. Department of the Attorney General
150 South Main Street
Providence, RI 02903-2907
Phone: (401) 274-4400
Facsimile: (401) 222-2995
Email: emullaney@riag.ri.gov

Ariele Yaffee, Esq.
Special Assistant Attorney General
R.I. Department of the Attorney General
150 South Main Street
Providence, RI 02903-2907
Phone: (401) 274-4400
Facsimile: (401) 222-2995
Email: ayaffee@riag.ri.gov

DATED: February 1, 2018

/s/ Sara M. Bartosz
Sara M. Bartosz, *pro hac vice*
CHILDREN'S RIGHTS, INC.
88 Pine Street, Suite 800
New York, NY 10005
(212) 683-2210

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

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Rhode Island, <i>et al.</i>,)	
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Defendants.		

**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR
APPROVAL OF NEGOTIATED ATTORNEYS’ FEES AND EXPENSES**

The parties have reached a negotiated agreement regarding the recovery of all Plaintiffs’ attorneys’ fees and expenses in the agreed amount of \$3,400,000.00 (the “Fees Settlement”).¹ The Fees Settlement represents a small portion of the hours and expenses that Plaintiffs’ counsel have expended in this ten-year litigation. Plaintiffs therefore move, under Federal Rules of Civil Procedure 23(h) and 54(d)(2), for approval of the Fees Settlement after proper, approved notice to the Class. The parties have agreed on a Proposed Notice of Fees Settlement, attached as Exhibit A, and a Proposed Order Approving Form and Manner of Notice of Negotiated Attorneys’ Fees and Expenses, attached as Exhibit B. Defendants do not oppose this motion.

A. Background

Ten Named Plaintiff children commenced this lawsuit, through their Next Friends, on June 28, 2007. Dkt. 1. Plaintiffs alleged systemic deficiencies in Rhode Island’s child welfare

¹ During negotiations, counsel for the State consulted with the Governor’s Office that provided its assent to this agreed upon amount.

system, and raised constitutional and alleged statutory claims on behalf of themselves and a putative class of all children in the legal custody of the Rhode Island Department of Children, Youth and Families (“DCYF”) due to a report or suspicion of abuse or neglect. Dkt. 550. Over the following eight years, the parties extensively litigated this case during which, among other things, Plaintiffs analyzed hundreds of thousands of pages in document and electronic discovery; filed numerous briefs, including discovery and dispositive motions; reviewed and analyzed 18 expert reports that addressed numerous aspects of the state’s child welfare system; conducted or defended over 40 depositions; litigated a 16-day trial on the claims of two individual Named Plaintiffs; and briefed and argued two successful appeals before the First Circuit Court of Appeals. Affidavit of Michael A. Kelly, Esq. ¶ 7 (hereafter, “Kelly Affidavit”), attached as Exhibit C.²

Following remand from the second First Circuit appeal, the parties agreed to participate in settlement talks with District Court Judge John J. McConnell serving as mediator. Between January 2016 and January 2018, the parties engaged in protracted, arms-length negotiations regarding the substance and structure of a settlement agreement to resolve Plaintiffs’ claims. The parties exchanged numerous position statements and written proposals. These negotiations also involved extensive in-person mediation sessions at the Federal Courthouse in Providence.

In January 2018, the parties signed a comprehensive Settlement Agreement (the “Settlement Agreement”) that addresses key areas of the state child welfare system. Specifically, the Settlement Agreement requires reforms in the areas of (1) Assessments; (2) Placement in Shelters and Assessment and Stabilization Centers; (3) Placement in Congregate Care; (4) Sibling Placement; (5) Case Management; (6) Caseworker-Child, Sibling, and Parent-Child

² Attorney Michael Kelly and Assistant Attorney General Neil Kelly are not related.

Visitation; (7) Licensing; (8) Child Protective Services; (9) Foster Care Maintenance Payments; (10) Case Plans; (11) Maltreatment in Care; and (12) Foster Home Array. Further, the Settlement Agreement includes benchmarks that must be achieved for each section of commitments to exit Court jurisdiction. Finally, the Settlement Agreement provides for a two-part monitoring team that will ensure compliance with the agreement's terms—namely, the Rhode Island Office of the Child Advocate and an independent data validator who will act as an evaluator and final arbiter of the data that the State submits pursuant to the agreement. The Court granted preliminary approval of the Settlement Agreement and certified the Class on January 11, 2018.

B. The Parties' Negotiated Fees Settlement is Reasonable and Should be Approved

The parties' negotiated Fees Settlement is reasonable in light of the hours and recoverable expenses expended in this litigation and should be approved. The Federal Rules authorize the recovery of attorneys' fees and expenses in a class action that are allowable under law or the parties' agreement, provided that notice has been served on the parties and "directed to class members in a reasonable manner." Fed. R. Civ. P. 23(h)(1). The parties have reached a negotiated agreement to settle all Plaintiffs' claims for attorney fees and expenses, including but not limited to, any claim under 42 U.S.C. § 1988 for fees incurred prior to final approval of the Settlement Agreement, for \$3,400,000.00.

This Fees Settlement is reasonable, easily meets the requirements of the Federal Rules and § 1988, and should be approved. First, the parties reached this agreement through arms-length negotiations. The parties exchanged numerous rounds of offers and counter-offers over a period of months and agreed on the above figure only after protracted talks.

Second, the Fees Settlement of \$3,400,000.00 in satisfaction of Plaintiffs' § 1988 claim for attorneys' fees and expenses represents a significant reduction (65%) from the total time and

expenses generated in this litigation. Kelly Affidavit ¶ 22.³ Plaintiffs' counsel had accumulated a total of nearly \$10 million in fees and expenses, which accounts for over 35,000 hours of professional time expended over the course of ten years of litigation. Kelly Affidavit ¶¶ 13, 18. This compromise also includes all costs and expenses incurred by Plaintiffs' counsel.

Third, to calculate the total fees that Plaintiffs' counsel generated throughout the course of this litigation (from which they agreed to a 65% reduction), Plaintiffs applied local hourly rates that were considerably lower than the specialized rates that Plaintiffs were entitled to seek. Specifically, Plaintiffs applied the following rate structure: \$225 per hour for attorneys 0-4 years out of law school, \$265 per hour for attorneys who are 5-8 years out of law school, \$300 per hour for attorneys who are 9-14 years out of law school, and \$335 per hour for attorneys who are 15 years or longer out of law school. Kelly Affidavit ¶ 14. These rates are well within the range of prevailing rates in the Providence legal market, and are lower than the rates Plaintiffs could have sought under § 1988 due to the specialized child welfare knowledge required for this litigation. Kelly Affidavit ¶ 15.

Fourth, in calculating the total fees generated in this litigation, Plaintiffs reduced the local hourly rate by 50% for any travel time spent by counsel at Children's Rights for, among other things, depositions, hearings, trial, appellate work, and the mediation process. Declaration of Ira Lustbader In Support of Plaintiffs' Unopposed Motion for Approval of Negotiated Attorneys' Fees and Costs ¶ 6 (hereafter "Lustbader Decl."), attached as Exhibit D.⁴

³ Following execution of the Kelly Affidavit, the parties reached a revised agreement for \$3,400,000.00 instead of the \$3,500,000.00 reflected in the affidavit.

⁴ Following execution of the Lustbader Decl., the parties reached a revised agreement for \$3,400,000.00 instead of the \$3,500,000.00 reflected in the declaration.

Finally, the Fees Settlement is considerably lower than § 1988 awards that have been approved in analogous, and considerably shorter, foster care reform class action lawsuits in which consent decrees have been entered. For example,

- In *D.G. v. Yarbrough*, the District Court for the Northern District of Oklahoma entered a judgment approving \$6,011,888.80 in § 1988 attorneys' fees and costs to Plaintiffs after approximately four years of litigation. Opinion and Order at 16 (Dkt. No. 858), *D.G. v. Yarbrough*, (N.D. Okla. Apr. 1, 2013) (No. 08-CV-074-GKF-FHM).
- In *Dwayne B. v. Granholm*, the District Court for the Eastern District of Michigan approved a settlement regarding attorneys' fees and costs in the amount of \$6,200,000.00 after approximately two years of litigation. Order Granting Joint Motion for Approval of Settlement Regarding Plaintiffs' Attorneys' Fees and Non-Taxable Expenses at 1 (Dkt. No. 160), *Dwayne B. v. Granholm*, (E.D. Mich. Jan. 22, 2009) (No. 2:06-cv-13548).
- And in *Olivia Y. v. Barbour*, the District Court for the Southern District of Mississippi approved a settlement regarding attorneys' fees and costs in the amount of \$4,863,557.50 after less than four years of litigation. Consent Order at 1 (Dkt. No. 480), *Olivia Y. v. Barbour*, (S.D. Miss. Aug. 7, 2008) (No. 3:04-cv-251LN).

In none of the above-mentioned cases was a trial conducted. The Fees Settlement, which follows ten years of litigation, including a bench trial and two appeals, is particularly reasonable in light of the much larger § 1988 awards approved in similar litigation.

C. Conclusion

For the above reasons, Plaintiffs respectfully request that the Court enter the attached order, approve notice to the class, and approve the parties' negotiated Fees Settlement after due consideration.

Respectfully submitted,

/s/ Sara M. Bartosz

Sara M. Bartosz, *pro hac vice*

Joshua Rosenthal, *pro hac vice*

Elizabeth Pitman, *pro hac vice*

Children's Rights, Inc.

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Dated: February 1, 2018

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150 South Main Street
Providence, RI 02903-2907
Phone: (401) 274-4400 x 2294
Facsimile: (401) 222-3016
Email: bbaum@riag.ri.gov

Neil F.X. Kelly, Esq.
Assistant Attorney General
R.I. Department of the Attorney General
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Providence, RI 02903-2907
Phone: (401) 274-4400
Facsimile: (401) 222-2995
Email: nkelly@riag.ri.gov

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Providence, RI 02903-2907
Phone: (401) 274-4400
Facsimile: (401) 222-2995
Email: emullaney@riag.ri.gov

Ariele Yaffee, Esq.
Special Assistant Attorney General
R.I. Department of the Attorney General
150 South Main Street
Providence, RI 02903-2907
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Facsimile: (401) 222-2995
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DATED: February 1, 2018

/s/ Sara M. Bartosz
Sara M. Bartosz, *pro hac vice*
CHILDREN'S RIGHTS, INC.
88 Pine Street, Suite 800
New York, NY 10005
(212) 683-2210

EXHIBIT A

This Notice may affect you. Please read carefully.

TO ALL CHILDREN WHO ARE IN THE LEGAL CUSTODY OF THE RHODE ISLAND DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES DUE TO A REPORT OR SUSPICION OF ABUSE OR NEGLECT:

This notice concerns the approval of a settlement regarding attorneys' fees and expenses relating to the class action lawsuit that concerns the Rhode Island foster care system, *Andrew C. v. Raimondo*, No. 1:07-cv-00241, before federal Chief Judge William E. Smith. A previous settlement of the claims in this case was preliminarily approved on January 11, 2018.

Because this case is a federal civil rights case, Plaintiffs' counsel can recover attorneys' fees and costs. This notice is to let you know that the Parties to this case have reached a proposed settlement of Plaintiffs' claim for the recovery of attorneys' fees and expenses in the amount of \$3,400,000.00. The sole purpose of this notice is to inform you of this settlement and your right to submit comments about it.

If you are a child in the legal custody of DCYF due to a report or suspicion of abuse or neglect, you have the right to review the unopposed motion for approval of negotiated attorneys' fees and expenses and, if you choose, you may submit written comments to tell the court what you think about this settlement before the court decides to approve the settlement, or not. You are not required to provide any comments to the court.

For a full description of the settlement entered in this case, a copy of the unopposed motion for approval of the settlement of the attorneys' fees and expenses, and other information about this case, you can visit: www.childrensrights.org or www.dcyf.ri.gov. If a computer is not available, please call DCYF at (401) 528-5371 and ask for Mary Simas. For any other questions, please contact Children's Rights at DCYFsettlement@childrensrights.org or DCYF at dcyf.webmaster@dcyf.ri.gov.

Class members or their legal representatives may submit written comments about the settlement of attorneys' fees and expenses to Plaintiffs' counsel, if postmarked on or before April 9, 2018. To submit comments, Class members or their legal representatives must send or deliver a signed letter, including a printed name, address, and telephone number, addressed to:

Children's Rights
Attn: Sara M. Bartosz, Esq.
88 Pine Street, Suite 800
New York, NY 10005

Class counsel will share your written letter with Defendants' counsel within five days of receipt and the parties will share any written submissions with the Court by April 24, 2018.

****PLEASE DO NOT CALL JUDGE WILLIAM E. SMITH OR THE CLERK OF THE COURT.**** They will not be able to answer your questions about the class action lawsuit or the Settlement Agreement.

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ANDREW C., by his next friend)	
GREGORY ELLIOTT, for himself and)	
those similarly situated, <i>et al.</i> ,)	
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Plaintiffs,)	
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v.)	Class Action
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capacity as Governor of the State of)	
Rhode Island, <i>et al.</i> ,)	
)	
Defendants.)	

**[PROPOSED] ORDER APPROVING FORM AND MANNER OF NOTICE OF
NEGOTIATED ATTORNEYS' FEES AND EXPENSES**

This matter came before the Court on Plaintiffs’ Unopposed Motion for Approval of Negotiated Attorneys’ Fees and Expenses (the “Unopposed Motion”). Having reviewed the Unopposed Motion and the negotiated agreement regarding the recovery of Plaintiffs’ attorneys’ fees and costs (the “Fees Settlement”), the Court hereby orders as follows:

1. Notice to Class Members

On or before February 2, 2018, State Defendants shall, at their sole expense, take the following steps to notify Class members and their legal representatives of the proposed Fees Settlement, as follows:

- a. State Defendants shall prepare and transmit a true copy of the Notice of Fees Settlement in *Andrew C., et al. v. Raimondo, et al.* to the persons and locations listed below.
 - DCYF will post the Notice of Fees Settlement in the DCYF main and regional offices in a conspicuous public place.

- b. DCYF will email the Notice of Fees Settlement and ask that it be disseminated to staff and posted in locations in which they are most likely to be seen by Class members and/or their legal representatives, and request that the information remain posted until May 9, 2018, to the following:
- The Chief Judge of the Family Court;
 - Each congregate care placement, Assessment and Stabilization Center, group home, residential counseling center, residential treatment center, and child placing agency; and
 - The offices of the guardian ad litem(s), and to the Court Appointed Special Advocates.
- c. State Defendants shall prominently post the Notice of Fees Settlement on the DCYF website and maintain that posting on the website until May 9, 2018.
- d. State Defendants shall also advertise in a newspaper of statewide circulation the filing of the Unopposed Motion for Approval of Negotiated Attorneys' Fees and Expenses and reference the web address where the Notice of Fees Settlement is located on the DCYF website.
- e. Counsel for the parties shall work cooperatively to maximize communication of the Notice of Fees Settlement to Class members and their legal representatives.
- f. State Defendants will file with the Court, on or before February 10, 2018, an affidavit certifying compliance with the notice requirements of this order.

2. Comments

- a. Objections, support, or comments by Class members, or their legal representatives, regarding the proposed Fees Settlement will be considered if submitted on or before April

9, 2018 to Children's Rights, Attn: Sara M. Bartosz, 88 Pine Street, Suite 800, New York, NY 10005.

- b. Counsel for the Class will provide counsel for the State any objections, support, or comments received from Class members, their legal representatives, or any other person, entity, or interested party regarding the proposed Fees Settlement and any information received in relation to Paragraph 2(a) within five days of receipt.
- c. Counsel for the Class will submit to the Court all written submissions received from Class members, their legal representatives, or other interested parties, and any written responses to such submissions, on or before April 24, 2018.
- d. Counsel for the Class and for Defendants will have until _____, 2018, to file responses to any objections by Class members and to provide other information, as appropriate, bearing on whether or not the Fees Settlement should be approved.

IT IS SO ORDERED:

The Honorable William E. Smith
Chief Judge, United States District Court

Dated:

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ANDREW C., by his next friend)
GREGORY ELLIOTT, for himself and)
those similarly situated, *et al.*,)

Plaintiffs,)

v.)

Civil Action No. 1:07-cv-00241-S-PAS

GINA M. RAIMONDO, in her official)
capacity as Governor of the State of)
Rhode Island, *et al.*,)

Defendants.)

AFFIDAVIT OF MICHAEL A. KELLY, ESQ.

I, Michael A. Kelly, Esq., swear and depose as follows:

1. I have been a member in good standing of both the Bar of the State of Rhode Island and the Bar of the United States District Court for the District of Rhode Island since 1978.

2. I am a principal and the founding partner of the law firm of Kelly & Mancini, P.C., 128 Dorrance Street, Providence, Rhode Island 02903; www.kellymancini.com. I started the firm in 2001 as the Law Offices of Michael A. Kelly, P.C.. Prior to my founding of the Kelly & Mancini firm, I was General Counsel at Cumberland Farms, Inc./Gulf Oil, Inc. from 1995 to 2001. Prior to my in-house counsel engagement at Cumberland Farms/Gulf Oil, I was an Associate and then a Partner at the well-known Providence law firm of Adler, Pollock & Sheehan, P.C. from 1978 to 1995.

3. I have regularly been involved in litigation in the United States District Court for the District of Rhode Island and in the various trial courts of the State of Rhode Island for the past thirty-nine (39) years.

4. I have been engaged by counsel for the Plaintiffs (and the proposed Plaintiff class) – specifically, Children’s Rights, Inc. of New York City, New York; John W. Dineen, Esq. of Providence, Rhode Island; and Weil, Gotshal & Manges, LLP of Redwood Shores, California – to opine as to the reasonableness of the amount of the legal fees to be remitted by the Defendants to counsel for the Plaintiffs (and the proposed Plaintiff class) as part of a comprehensive settlement agreement entered into by the parties to this case, which is subject to the approval of this Court.

5. This Affidavit is submitted by me as an independent counsel, who is not representing any of the parties in the action in which the fees are being sought and/or awarded.

6. I am familiar with the hourly rates regularly charged by litigators handling complex civil matters in the Providence, Rhode Island market – both in the local Federal Court and the State of Rhode Island Superior Court. My current hourly rate for handling such litigation is \$450/hr. In 2014 and 2015, my usual hourly rate was \$395/hr.

7. In undertaking my analysis, I have reviewed the entire USDC-RI docket for this case from 2007 to the present. I have made the following observations relative to the 10+ year procedural history of this complex litigation:

The parties have extensively litigated this case since the original Named Plaintiffs commenced this action, through their Next Friends, over ten (10) years ago on June 28, 2007. *See* USDC-RI Dkt. 1. The Plaintiffs have alleged systemic deficiencies in Rhode Island’s child welfare system and have raised constitutional and alleged statutory claims on behalf of themselves and a putative Class. *See* USDC-RI Dkt. 550. The Defendants, who are represented by the Rhode Island Attorney General’s Office, have vigorously contested the Plaintiffs’ claims throughout this dispute. Over

the preceding ten (10) years, this case traveled through multiple stages, including but not limited to a 16-day Bench trial and two full appeals to the First Circuit Court of Appeals. The Plaintiffs prevailed in each of the two appeals to the First Circuit Court of Appeals, and a judgment that had been entered in favor of the Defendants in 2014 was vacated on appeal. The travel of the case includes, *inter alia*, the following events:

- The parties engaged in voluminous and substantial document production and electronic discovery, which included numerous discovery disputes, requests for protective orders by the Defendants, and hotly contested motion practice as to the scope and nature of the discovery permitted in the case.
- Plaintiffs' counsel extensively briefed the issues in this case on multiple occasions: in defending several dispositive motions filed by the Defendants; in pressing and/or opposing numerous discovery motions filed in the case; in post-trial briefing to the original trial judge, and in successfully presenting two full appeals to the First Circuit Court of Appeals and a petition for review, among other filings.
- There were eighteen (18) written expert reports on numerous aspects of the Rhode Island child welfare system, which reports were meticulously reviewed and analyzed by Plaintiffs' counsel for depositions and trial.
- Plaintiffs' counsel conducted and/or defended over forty (40) fact and expert depositions in this case.
- A 16-day Bench trial was held on the claims of two individual Named Plaintiffs in November, 2013 – January, 2014 before U.S. District Judge Lisi, and extensive post-trial briefing occurred thereafter.
- Plaintiffs' counsel fully briefed and argued two separate plenary appeals in this matter before the First Circuit Court of Appeals, one in 2010 and one in 2014. The Plaintiffs prevailed on both First Circuit appeals. The latter appeal resulted in the vacating of the judgment that had been issued by U.S. District Judge Lisi in 2014, and the remanding of this action to this Honorable Court in 2015, which has led to the proposed comprehensive, omnibus settlement being presented at this time.

8. In addition to my review of the USDC-RI docket, I have read and analyzed the following documents from the litigation, *inter alia*:

- a. The two First Circuit Court of Appeals opinions in this case, issued on June 18, 2010 (Torruella, J.) and on April 21, 2015 (Selya, J.);

- b. The 57-page Memorandum and Order issued by then Chef Judge Lisi on July 20, 2011 on the Defendants' dispositive motions;
- c. Various rulings made by USMJ Almond on numerous pre-trial discovery disputes in this case;
- d. Plaintiffs' Pre-Trial Memorandum and Trial Exhibit List;
- e. The 108-page Memorandum of Decision issued by District Judge Lisi on April 30, 2014 after the Bench trial;
- f. A draft of the comprehensive settlement agreement and a proposed Joint Motion seeking class certification and preliminary approval of the comprehensive settlement agreed to by the Plaintiffs and the Defendants; and
- g. A letter agreement memorializing the parties' settlement relative to the compromised, negotiated and agreed upon amount of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 to be paid by the Defendants to Plaintiffs' counsel over time pursuant to a stipulated schedule.

9. In addition, I have reviewed the following materials relative to the attorneys' fees and expenses incurred by Plaintiffs' counsel from the inception of the case in 2007 to the present:

- a. Detailed letters from Plaintiffs' counsel (Sara Bartosz, Esq.) to the Defendants' counsel (the Rhode Island Attorney General's Office), describing the fees and expenses incurred by the Plaintiffs to date in this matter, including a description of the hourly rates accumulated – based on local Providence market rates – and reduced rates for travel time of attorneys;
- b. A detailed chart of all of the timekeepers' (attorneys, paralegals and legal interns) time spent on this matter on behalf of the Plaintiffs from inception to the present for Children's Rights, Inc., John W. Dineen, Esq. and Weil, Gotshal & Manges, LLP;
- c. Itemized breakdowns of all expenses incurred by Children's Rights, Inc. and Weil, Gotshal & Manges, LLP, including but not limited to stenographic costs, outside printing and copying charges, travel expenses, e-discovery services, witness fees and filing fees; and
- d. A letter agreement memorializing the parties' settlement relative to the compromised, negotiated and agreed upon amount of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 to be paid by the Defendants to Plaintiffs' counsel over time pursuant to a stipulated schedule.

10. I was assisted in the review of these voluminous documents and billing records by my colleague, Randall L. Souza, Esq., who is of Counsel at Kelly & Mancini. Mr. Souza has been

a member in good standing of the Bar of the State of Rhode Island since 1989, and of the Bar of the United States District Court for the District of Rhode Island since 1991.

11. In reviewing these materials, I reviewed the time spent by Plaintiffs' counsel as it relates to fees potentially recoverable pursuant to 42 U.S.C. § 1988. In doing so, I analyzed the billing summaries and other documents for duplicative, unproductive or excessive hours, and then applied prevailing rates in the Providence legal market, taking into account the qualifications, experience and specialized competence of the attorneys involved.

12. In addition, after initially reviewing the documents and materials, Mr. Souza and I interviewed Joshua Rosenthal, Esq. and Sara Bartosz, Esq. of Children's Rights, Inc. on multiple occasions about the litigation, potential class certification, the comprehensive, omnibus settlement agreement, the proposed negotiated fee amount and the accumulated attorneys' fees and expenses of Plaintiffs' counsel in this matter.

13. Over the 10+ years of this complex class action litigation, various attorneys, paralegals and legal interns at Children's Rights have spent over 35,000 hours of time on this matter. During that time, Plaintiffs' counsel bore the risk associated with the ongoing litigation, and they have been paid no fees to date. Nor has Plaintiffs' counsel been reimbursed for any expenses to date, including direct, out-of-pocket disbursements for, *inter alia*, stenographic costs, outside printing and copying charges, travel expenses, e-discovery services, witness fees and filing fees.¹

14. In this case, Plaintiffs' counsel has applied a schedule of local Providence market hourly rates in determining the value of professional time devoted to this case, even though Plaintiffs' counsel may be entitled under 42 U.S.C. § 1988 to recover higher national rates for

¹ Except for the costs that were awarded to Plaintiffs' counsel as the prevailing party by the First Circuit Court of Appeals in each of the two appeals to the First Circuit, which costs were assessed against the Defendants.

attorneys based upon the specialized expertise required in this case – namely, complex, child welfare institutional reform law. Specifically, Plaintiffs’ counsel has accounted for all attorney time on this matter per the following fee structure: \$335/hr. for attorneys who are 15 or more years out of law school; \$300/hr. for attorneys who are 9-14 years out of law school; \$265/hr. for attorneys who are 5-8 years out of law school; and \$225/hr. for attorneys who are 0-4 years out of law school. Paralegals and legal interns were billed at the universal rate of \$125/hr.

15. Based upon my knowledge of the hourly rates prevailing in Providence, Rhode Island during 2007-2017 applicable to complex litigation of this nature in Federal Court, it is my opinion, based upon a reasonable degree of certainty, that the rates of Plaintiffs’ counsel which have been applied in this case are within the range of prevailing rates in the local legal market, taking into account the qualifications, experience and specialized expertise of the attorneys and paralegals involved.

16. The materials and billing records that I have reviewed reflect that, **as of April 19, 2016**, Plaintiffs’ counsel, over the then 9-year history of this litigation, had accumulated \$9,187,633.45 in legal fees and \$405,185.59 in expenses in this matter, for a total of \$9,592,819.04, broken down as follows:

a. Children’s Rights – professional fees	\$8,175,086.45
b. Weil Gotshal – professional fees	\$ 772,547.00
c. John Dineen, Esq. – professional fees	\$ 240,000.00
d. Children’s Rights – expenses	\$ 261,867.43
e. Weil Gotshal – expenses ²	\$ 143,318.16

² This amount is EXCLUSIVE of fees charged by experts and consultants in the litigation, which were advanced by Weil Gotshal.

17. The materials and billing records that I have reviewed also reflect that, from April 19, 2016 to April 17, 2017, Plaintiffs' counsel incurred an additional 1,737.75 hours of professional time in the litigation and mediation of this matter, at a value of \$389,261.38.

18. Accordingly, the total attorneys' fees and expenses incurred by Plaintiffs' counsel to date is approximately \$10 million, with additional work yet to be performed in order to consummate the comprehensive, omnibus settlement and certify the class action in this litigation.

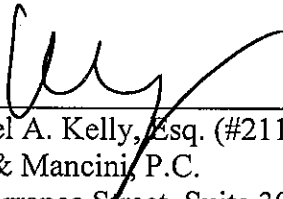
19. Against that backdrop, I have reviewed the letter agreement between Plaintiffs' counsel and Defendants' counsel (as well as some correspondence that had been exchanged between the parties prior thereto), whereby Plaintiffs' counsel has agreed to a significant **65% reduction in their attorneys' fees and costs recoverable under 42 U.S.C. § 1988**, so that the Defendants would pay a **compromised sum of \$3,500,000.00 in full** satisfaction of the Plaintiffs' (and the putative class's) claimed legal fees and expenses, which amount is to be remitted by the Defendants over time per a stipulated schedule of payments, with the last payment to be made by the Defendants on or before November 15, 2019.

20. The compromised sum of \$3,500,000.00 addresses all legal fees and expenses of Plaintiffs' counsel to date, as well as all legal fees incurred in the future in order to consummate the comprehensive settlement and certify the class action in this litigation.

21. Based upon my knowledge of the complexity, breadth and length of this proposed class action case during its 10+ years of litigation, it is my opinion, based upon a reasonable degree of certainty, that the hours expended by Plaintiffs' counsel in the various and myriad litigation tasks in this matter were reasonable and appropriate, taking into account the qualifications, experience and specialized expertise of the attorneys and paralegals involved, as well as the scope of this matter and its lengthy procedural history.

22. Furthermore, the compromise of Plaintiffs' counsel's fees and expenses by approximately 65% down to a figure of \$3,500,000.00 to be paid over time by the Defendants (rather than in a lump sum), in my professional opinion, evidences a significant reduction in the potential attorneys' fees recoverable in this class action litigation and demonstrates the exercise of sound discretion by Plaintiffs' counsel in an effort to settle this case. To the extent that there might be any inefficiencies in the billable time recorded by the professionals employed by Plaintiffs' counsel – due to the comings and goings of attorney staff and/or the learning curve of professionals brought into the case mid-stream during its 10+ year duration – any such inefficiencies would comprise only a scant portion of the 65% in potentially recoverable fees and expenses that Plaintiffs' counsel is effectively waiving by the parties' agreement to the compromised fee amount of \$3,500,000.00.

23. Therefore, it is my opinion to a reasonable degree of certainty, based upon my independent review, and coupled with an analysis of the rates charged, the time incurred and the tasks performed by Plaintiffs' counsel during the 10+ year history of this complex litigation, that the payment of the amount of \$3,500,000.00 by the Defendants to Plaintiffs' counsel over time per a stipulated schedule of payments represents a reasonable and appropriate amount of attorneys' fees and expenses, in conjunction with the comprehensive, omnibus settlement that the parties have negotiated, subject to the approval of this Honorable Court.



Michael A. Kelly, Esq. (#2116)
Kelly & Mancini, P.C.
128 Dorrance Street, Suite 300
Providence, RI 02903
mkelly@kellymancini.com

STATE OF RHODE ISLAND
PROVIDENCE COUNTY

Subscribed and sworn to before me in Providence, Rhode Island on this 9th day of November, 2017.

Valaree R. Simas

Notary Public

My Commission expires on: 8/3/2019

VALAREE R. SIMAS
Notary Public, State of Rhode Island
My Commission Expires Aug. 3, 2019

EXHIBIT D

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

ANDREW C., by his next friend)
GREGORY ELLIOTT, for himself and)
those similarly situated, et al.,)

Plaintiffs,)

v.)

GINA M. RAIMONDO, in her official)
capacity as Governor of the State of Rhode)
Island, et al.,)

Defendants.)

Class Action
Civil Action No. 1:07-cv-00241-S-PAS

**DECLARATION OF IRA LUSTBADER IN SUPPORT OF PLAINTIFFS’ UNOPPOSED
MOTION FOR APPROVAL OF NEGOTIATED ATTORNEYS’ FEES AND COSTS**

I, Ira Lustbader, do hereby declare as follows:

1. I am a member of the Bar of the State of New York. I was admitted to practice in this Court *pro hac vice* for purposes of the captioned case. Since 2014, I have served as the Litigation Director of Children’s Rights, Inc. (“CR”), a national non-profit children’s advocacy organization. From 2001 through August 2014, I served as the Associate Director of CR. I also acted as lead counsel for the Plaintiff Class in the trial of this case and have been responsible for the oversight and supervision of my organization’s work in this case. I submit this Declaration in support of Plaintiffs’ Unopposed Motion for Approval of Negotiated Attorneys’ Fees and Costs (the “Motion”).

2. Pursuant to Federal Rule of Civil Procedure 23(h), Local Civil Rule 54.1, and 42 U.S.C. § 1988, the Motion seeks approval of the parties’ negotiated agreement calling for Defendants to reimburse Plaintiffs in the amount of \$3,500,000.00 (to be paid in five installments over three

fiscal years) for reasonable attorneys' fees and litigation expenses incurred by Plaintiffs' attorneys in this case from its inception to the final court approval of the Settlement Agreement.

3. I am familiar with the policies, practices, and procedures of CR governing the recording and maintenance of time and expense records. During the period covered by this Motion, it was the consistent policy and business practice of CR to require each attorney and paralegal to maintain contemporaneous and specific records of all time worked in a particular case, and for such records to be entered in a computerized billing system. Charts summarizing the fees for which Plaintiffs seek reimbursement are available upon request by the Court. Computerized copies of CR's contemporaneous time records, detailing the work performed, the time expended, the date of the work, and the person who performed each task are likewise available upon request by the Court. These records are an accurate statement of the professional time spent on this litigation.

4. I and other senior lawyers at CR made reasonable efforts throughout the period covered by this Motion to balance the workloads of the attorneys and paralegals working on this case to ensure that the work assigned to them was commensurate with their level of experience. I and other senior lawyers at CR also made every effort to keep the number of staff assigned to the case to a minimum. I believe the case was appropriately staffed at all times. The attorneys and paralegals working on this case had the ability and experience to perform the work assigned to them to a high degree of professionalism, and all have received appropriate supervision.

5. Throughout the covered period, attorneys assigned to this case made diligent efforts to hold expenses, which must be paid when incurred, to a minimum. As of April 19, 2016, Plaintiffs' expenses totaled \$405,185.59. A detailed, itemized list of those expenses is available upon request by the Court. These expenses were reasonable and necessary to protect the interests of the Plaintiff Class. The trips by CR attorneys were all necessary to protect the interests of the Plaintiff Class.

I and the other CR attorneys working on this case made concerted efforts to minimize the number and cost of trips, as well as the number of attorneys who participated in each trip. The remaining costs related to reasonable office expenses associated with this litigation, such as copier and phone costs, court transcript costs, and costs associated with the online legal database PACER. Plaintiffs took care to minimize these costs wherever possible.

6. In calculating the total fees generated in this litigation, Plaintiffs' counsel has applied a reduced rate of 50% of local hourly rates for travel time. Plaintiffs applied the following Providence market rates for all Plaintiffs' counsel, paralegals, and interns who worked on this case:

Staff Position	Hourly Rate
Attorneys who are 15 or more years out of law school	\$335/hr.
Attorneys who are 9-14 years out of law school	\$300/hr.
Attorneys who are 5-8 years out of law school	\$265/hr.
Attorneys who are 0-4 years out of law school	\$225/hr.
Paralegals and Legal Interns	\$125/hr.

7. Plaintiffs' counsel collectively have incurred approximately \$10,000,000 in attorneys' fees and reasonable litigation expenses. Through good faith, arms-length negotiations, the parties through their counsel have agreed to settle Plaintiffs' claim for reimbursement of their combined fees and expenses in the total amount of \$3,500,000 to be paid by Defendants to Plaintiffs.

8. In addition to this action, attorneys from CR are also actively litigating federal impact litigation cases in three other cases, including (i) *M.D. v. Abbott* (Texas); (ii) *M.B. v. Corsi* (Missouri); and (iii) *B.K. v. McKay* (Arizona). Attorneys from CR are also currently monitoring consent decrees and other injunctive court orders in six cases, including (i) *Juan F. v. Malloy* (Connecticut); (ii) *Kenny A. v. Deal* (Atlanta, Georgia); (iii) *Jeanine B. v. Walker* (Milwaukee, Wisconsin); (iv) *Dwayne B. v. Snyder* (Michigan); (v) *Michelle H. v. Haley* (South Carolina); and (vi) *Brian A. v. Haslam* (Tennessee).

9. Formed in 1996, CR is a leading national non-profit children's advocacy organization, which, to my knowledge, has unparalleled experience in the depth of child welfare litigation and post-judgment monitoring and enforcement work done by its attorneys and staff.

Wherefore, I respectfully request that this Court grant Plaintiffs' Unopposed Motion for Approval of Negotiated Attorneys' Fees and Costs.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Ira Lustbader _____
Ira Lustbader
Dated: November 16, 2017

