

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NEW YORK STATE CITIZENS' : 10-cv-03485 (WFK) (RER)
COALITION FOR CHILDREN, :
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 Plaintiff, : **STIPULATION OF SETTLEMENT,**
 : **GENERAL RELEASE AND**
 : **ORDER OF DISMISSAL**
 v. :
 :
 SHEILA J. POOLE, Commissioner of the :
 New York State Office of Children & :
 Family Services, in her official capacity, :
 :
 :
 Defendant. :
-----X

This Stipulation of Settlement, General Release and Order of Dismissal with prejudice (the "Stipulation") is entered into, by and between Plaintiff the ADOPTIVE AND FOSTER FAMILY COALITION OF NEW YORK (f/k/a the NEW YORK STATE CITIZENS' COALITION FOR CHILDREN) ("Plaintiff") and Defendant SHEILA J. POOLE ("Defendant"), sued herein in her official capacity as Commissioner of the New York State Office of Children & Family Services ("OCFS"), as follows:

WHEREAS, on or about July 29, 2010, Plaintiff commenced the above-captioned action (the "Action") against Defendant in the United States District Court for the Eastern District of New York, 10-cv-03485, by the Complaint (ECF No. 1) alleging that New York State's statutory scheme for reimbursement of foster parents does not comply with the federal Adoption Assistance and Child Welfare Act, 42 U.S.C. § 670 et seq. (the "CWA"), and seeking declaratory and injunctive relief under 42 U.S.C. § 1983; and

WHEREAS, in New York State, children who are in or entering foster care are in the custody and care of the relevant county-level local department of social services ("LDSS"), see N.Y. Family Court § 1017 and;

WHEREAS, under New York law, each LDSS independently determines a per child rate at which it reimburses foster parents in that county on a monthly basis, see N.Y. Soc. Servs. Law §§ 153, 398-a; and

WHEREAS, following extensive discovery in the Action, Defendant moved to dismiss on July 31, 2012 (ECF No. 45) on the grounds that Plaintiff did not have a private right of action under the CWA; and

WHEREAS, Plaintiff moved for summary judgment on July 31, 2012 (ECF Nos. 46-50); and

WHEREAS, by Decision and Order dated July 17, 2014, the District Court (William F. Kuntz, II, D.J.) granted Defendant's motion to dismiss and held that the Decision and Order rendered Plaintiff's summary judgment motion moot (ECF No. 66); and

WHEREAS, Plaintiff appealed the Decision and Order to the United States Court of Appeals for the Second Circuit (the "Second Circuit") (ECF No. 68); and

WHEREAS, the Second Circuit vacated the District Court's Decision and Order and remanded the action to the District Court on the issue of whether Plaintiff had Article III standing (ECF Nos. 70, 72); and

WHEREAS, the case was referred to Magistrate Judge Ramon E. Reyes, who, following limited discovery and an evidentiary hearing, found in a Report and Recommendation that Plaintiff had organizational standing (ECF No. 78); and

WHEREAS, the District Court adopted the Report and Recommendation in full (ECF No. 84); and

WHEREAS, on April 19, 2019, the Second Circuit affirmed the District Court's ruling that Plaintiff had organizational standing, overruled the District Court's ruling that Plaintiff did

not have a private right of action under the CWA, and remanded the case to the District Court for further proceedings, Poole v. N.Y. State Citizens' Coalition for Children, 922 F.3d 69 (2d Cir. 2019); and

WHEREAS, Defendant denies any wrongdoing alleged in the Complaint and in the Action and any liability whatsoever to Plaintiff, and further asserts that she has meritorious defenses to the Action; and

WHEREAS, OCFS has developed a methodology to calculate foster parent reimbursement rates that “cover the cost of and the cost of providing” all items enumerated in the federal definition of a foster care maintenance payment set forth in 42 U.S.C. § 675(4)(a) utilizing currently available data, including but not limited to the United States Department of Agriculture Estimated Annual Expenditures and United States Department of Labor, Bureau of Labor Statistics compensation data for supportive care (the “Methodology”), as set forth in Exhibit A attached hereto; and

WHEREAS, OCFS has agreed to create by regulation a new rate at a higher level of difficulty called “extraordinary,” to be defined by regulation; and

WHEREAS, Plaintiff and Defendant (collectively, the “Parties”) desire to avoid the expense and uncertainty of future litigation and trial and to resolve the controversy between them amicably and expeditiously; and

WHEREAS, the Parties have agreed to the entry of this Stipulation without any admission of liability and without a trial;

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations, and other considerations contained in this Stipulation, the Parties hereby stipulate and agree, and the Court orders, as follows:

I. Dismiss of this Action with Prejudice

Upon the Court’s so-ordering of this Stipulation (the “Effective Date”), the Complaint, the Action, all claims asserted therein, and all claims which could have been asserted therein or in the Complaint or otherwise, are hereby dismissed, with prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), without payments, attorneys’ fees, costs, disbursements, or expenses other than, in addition to, or in excess of the amounts specified in Section IX of this Stipulation.

II. Annual Calculation of Foster Parent Reimbursement Rates

Beginning State fiscal year 2022-2023, which commences on April 1, 2022, and on an annual basis for the Term of this Stipulation as set forth in Section VI hereof, OCFS shall utilize the Methodology set forth in Exhibit A to calculate foster parent reimbursement rates at the basic, special, exceptional, and extraordinary levels of difficulty.

III. Legislative Mandate

- A. OCFS shall propose that legislation mandating that all New York State LDSSs reimburse all foster parents at the foster parent reimbursement rates set annually utilizing the Methodology (the “Legislative Mandate”), as set forth in Section II of this Stipulation, be included in the Article VII bills of the Executive budget for State fiscal year 2022-2023. If the Legislative Mandate is not passed by the State Legislature in State fiscal year 2022-2023, OCFS shall propose that the Legislative Mandate be included in the Article VII bill of the Executive budget for State fiscal year 2023-2024.
- B. OCFS will use its best efforts to seek approval of the Legislative Mandate set forth in Section III(A) of this Stipulation, including seeking sufficient appropriation authority in the Executive budget appropriation bill to be submitted

to the State Legislature for State fiscal year 2022-2023 and State fiscal year 2023-2024 if applicable. The Legislative Mandate is subject to all State approvals and budgetary processes and contingent upon legislative appropriations therefor. The failure of the State Legislature to pass the Legislative Mandate, notwithstanding OCFS's best efforts, shall not be deemed a violation of a federal right by Defendant during the Term of this Stipulation or a breach of this Stipulation by Defendant. In the event that the State Legislature does not pass the Legislative Mandate as set forth in Section III.A above, OCFS shall continue to fulfill all of its other obligations under this Stipulation that are not impacted if the State Legislature does not pass the Legislative Mandate.

IV. Compliance with Laws

In the event of any change in any federal or state laws, statute, ordinance, rule, or regulation that Defendant believes amends, changes, or voids OCFS's responsibilities pursuant to this Stipulation, Defendant shall so notify Plaintiff in writing and the Parties shall attempt to come to an agreement as to any modifications of this Stipulation that are warranted by any such changes in federal, state, or local law, statute, ordinance, rule, or regulation. If no resolution is reached within thirty (30) days following the written notice, Defendant may move this Court for an order for all appropriate relief pursuant to any applicable rule or procedure.

V. General Release

A. For and in consideration of the obligations specified in this Stipulation, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Plaintiff, on behalf of itself and its heirs, executors, administrators, successors, and assigns (the "Releasing Parties") hereby jointly

and severally releases and discharges on the merits with prejudice, for the Term of this Stipulation as set forth in Section VI hereof, Defendant, OCFS, and all of its past and present officials, employees, directors, representatives, agents, agencies, departments, subdivisions, their successors and assigns and their respective heirs, executors, administrators, personal representatives and transferees (the "Releasees") of and from, without limitation, any and all manner of claims, actions, costs, whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or not accrued, direct or indirect, from the beginning of time through the date that the Court so-orders this Stipulation, that Plaintiff ever had, now has, or can, shall or may hereafter have against Releasees, or any of them, either alone or in any combination with others, for, by reason of, involving, concerning, arising from or in any way relating to any claim which is or could have been stated against Releasees concerning the allegations asserted or conduct challenged in the Complaint or the Action, or which could have been asserted in the Complaint or the Action. For the avoidance of doubt, this release includes a release of any and all claims the Releasing Parties had, have, or may have against Releasees for attorneys' fees, costs, disbursements, and all other expenses related to, concerning, or in connection with the Complaint or the Action except as specifically provided in Section IX hereof.

- B. The Parties represent and warrant to one another that they have not assigned or otherwise transferred, either in whole or in part, any interest in any claim that was or could have been asserted in the Action. The Parties agree that none of them may assign its claims, rights, or obligations pursuant to this Stipulation.

C. This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and each and all of their respective successors, heirs, assigns, executors, and legal representatives.

VI. Term

Without further action by the Parties or the Court, this Stipulation shall expire five years from the Effective Date as defined in Section I hereof.

VII. Meeting Prior to the Expiration of the Term

One year prior to the expiration of the Term as set forth in Section VI hereof, the parties will meet regarding OCFS's utilization of the Methodology following the expiration of the Term. Plaintiff shall contact OCFS to arrange a mutually convenient date for this meeting.

VIII. No Other Action or Proceeding Commenced

Plaintiff represents and warrants that it has not commenced, maintained, or prosecuted any action, charge, complaint, grievance, or proceeding of any kind, that relates to the allegations in the Complaint, against Defendant (including, but not limited to, any and all agencies, departments, offices, subdivisions, officials, employees, affiliates, or agents thereof) on its own behalf and/or on behalf of any person and that none of the foregoing is currently pending in any court or before any administrative or judicial body or agency; and Plaintiff and Plaintiff's counsel acknowledge that this representation constitutes a material inducement for Defendant to enter into the Stipulation.

IX. Attorneys' Fees and Costs

A. In full consideration of Plaintiff's execution of this Stipulation, Plaintiff's agreement to be bound by its terms, and the undertakings as set forth herein, including the dismissal of the Action with prejudice, and other good and valuable

consideration, the sufficiency of which is hereby acknowledged, the State of New York agrees to pay Plaintiff's attorneys' fees and costs in the aggregate amount of \$1,500,000.00, for which an I.R.S. Form 1099 shall be issued, in full and complete satisfaction of any and all claims for attorneys' fees, costs, disbursements, and expenses incurred by Plaintiff for any and all counsel who have at any time represented Plaintiff in this Action, as well as in connection with any other proceeding, administrative, judicial, or otherwise, and any other claim or action alleging any of the acts, transactions, occurrences, or omissions asserted in the Action. The payment referred to in this Section shall be made payable by check and delivered to Morrison & Foerster LLP, 250 West 55th Street, New York, New York 10019-9601.

- B. State Approval of Payment. The payment referenced in Section IX(A) of this Stipulation is subject to the approval of all appropriate State officials in accordance with N.Y. Public Officers Law § 17. Plaintiff and its attorneys agree to execute and deliver all necessary or appropriate vouchers and other documents requested with respect to effectuating such payments.
- C. Accrual of Interest. In the event that the payment referenced in Section IX(A) of this Stipulation has not been received by Plaintiff's attorneys within 120 days after receipt by the Office of the Attorney General of a "so-ordered" copy of this Stipulation, endorsed by a judge and entered into the record by the clerk of the court, and subject to Plaintiff's prompt execution and delivery to counsel for Defendant of all necessary and appropriate documentation required under Section IX(B) of this Stipulation, interest shall accrue on the outstanding principal balance

at the statutory rate pursuant to 28 U.S.C. § 1961, beginning on the one-hundred-and-twenty-first (121st) day after receipt by the Office of the Attorney General of the fully-executed so-ordered Stipulation and all other documents necessary to effectuate payment.

- D. Liability for Taxes. Plaintiff and Plaintiff's undersigned attorneys agree that any taxes on the payments, and/or interest or penalties on taxes on the payments referenced in Section IX(A) shall be their sole and complete responsibility. Plaintiff and its attorneys shall have no claim, right, or cause of action against Defendant, the State of New York (including but not limited to any and all agencies, departments, or subdivisions thereof) or any of their officials, employees, or agents, whether in their individual or official capacities, on account of such taxes, interest, or penalties. Plaintiff agrees that it will defend, indemnify, and hold harmless Defendant, the State of New York (including but not limited to any and all agencies, departments, or subdivisions thereof) and any of their officials, employees, or agents, whether in their individual or official capacities, for the satisfaction of any such taxes, interest, or penalties.
- E. Waiver of Attorneys' Lien. The undersigned attorneys for Plaintiff do hereby release and waive any attorneys' lien they may have on the settlement proceeds in the Action pursuant to N.Y. Judiciary Law §§ 475 and 475-a or any other state or federal law, statute, contract, or otherwise.
- F. No Other Attorney. Plaintiff represents and warrants that besides the undersigned attorneys for Plaintiff, there are no other attorneys that have a lien on the settlement proceeds in the Action pursuant to the provision of N.Y. Judiciary Law

§§ 475 and 475-a or any other state or federal law, statute, contract, or otherwise for services rendered to Plaintiff in the litigation.

- G. Other Liens. Plaintiff and Plaintiff's undersigned attorneys agree that neither Defendant, the State of New York (including but not limited to any and all agencies, departments, or subdivisions thereof) nor any of their officials, employees, or agents, whether in their individual or official capacities, shall be responsible for any liens, setoffs, or claims of any kind, whether known or unknown, that may attach to the payments set forth in this Stipulation. Plaintiff and Plaintiff's attorney shall have no claim, right, or cause of action against Defendant, the State of New York (including but not limited to any and all agencies, departments, or subdivisions thereof) and any of their officials, employees, or agents, whether in their individual or official capacities, on account of such liens, setoffs, or claims.

X. Miscellaneous Provisions

- A. Authority. Each signatory to this Stipulation hereby represents and warrants that the signatory has the requisite authority to enter into this Stipulation and has not previously assigned or transferred any rights or interests with respect to the matters covered by this Stipulation.
- B. Modifications. Any date set forth herein may be extended by mutual written agreement of the Parties, through their counsel, by e-mail stipulation. This Stipulation may not otherwise be amended, changed, modified, superseded, altered, or canceled, and the terms and conditions hereof may not be waived, except by a written instrument signed by each of the Parties expressly stating that

it is intended to amend.

- C. Entire Agreement. This Stipulation constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes and embodies, merges, and integrates entirely all prior and current agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of the Stipulation, and may not be clarified, modified, changed, or amended except in a writing duly executed by the Parties or an authorized representative of the Parties.
- D. Waiver. No waiver of any provision of this Stipulation or the breach thereof shall be effective unless expressed in a writing signed by the waiving Party. The waiver by any Party of any of the provisions of the Stipulation or of the breach thereof shall not operate or be construed as a waiver of any other provision or breach thereof.
- E. Severability. With the exception of Sections I, II, III, IV, V, and VII of this Stipulation, if any provision of this Stipulation is held to be or becomes invalid or unenforceable under the law of any jurisdiction, the remainder of the Stipulation shall remain in effect and with full force.
- F. No Reliance. The Parties represent and warrant that (i) they have had reasonable opportunity to consult with counsel, have consulted with counsel regarding the terms of this Stipulation and its execution, and have read and understand all provisions of this Stipulation; (ii) they have freely and voluntarily entered into this Stipulation with an intent to bind themselves to its terms; and (iii) no promises or representations were made to them by any person to induce them to

enter into this Stipulation (other than the express terms set forth herein).

- G. Negotiated Agreement. This Stipulation has been negotiated and drafted by all of the Parties and their respective counsel and shall not be construed in favor of, or against, any Party on the basis of its having been drafted by that Party. Each Party agrees that, in interpreting and applying the terms and provisions of the Stipulation, no Party shall be deemed the drafter of any provision, no presumption shall exist or be implied for or against any Party as a result of who drafted any provision, and any uncertainty or ambiguity in this Stipulation shall not be interpreted against any Party.
- H. Governing Law, Venue, and Jurisdiction. This Stipulation shall be governed by and construed in accordance with the laws of the State of New York, without regard or giving effect to New York's choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern. Any dispute arising out of or related to this Stipulation shall be brought in the United States District Court for the Eastern District of New York.
- I. No Admission of Liability. By entering into this Stipulation, Defendant in no way admits any violation of law or any liability whatsoever to Plaintiff, all such liability being expressly denied. Rather, Defendant enters into this Stipulation to avoid further protracted litigation and to resolve and settle all disputes with Plaintiff. Settlement of the Action, negotiation and execution of this Stipulation, and all acts performed or documents executed pursuant to or in furtherance of this Stipulation or the settlement (i) are not, shall not be deemed to be, and may not be

used as an admission or evidence of any wrongdoing or liability on the part of Defendant, or of the truth of any of the factual allegations in the Complaint; and (ii) are not, shall not be deemed to be, and may not be used as an admission or evidence of fault or omission on the part of Defendant in any civil, criminal, administrative, or arbitral proceeding.


- J. No Precedential Value. This Stipulation shall not in any manner be construed as determinative of the issues or claims raised, purportedly raised, or that could have been raised in the Complaint, the Action, or any other proceeding. This Stipulation shall have no precedential value or effect whatsoever and shall not be admissible in any action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Stipulation. In addition, notwithstanding the provisions of any paragraph or section herein, this Stipulation shall not bind or collaterally estop Defendant (including, but not limited to, any and all agencies, departments, offices, subdivisions, officials, employees, affiliates, and agents thereof) in any pending or future actions or proceedings in which the same or similar issues are raised from defending any and all issues raised in said actions or proceedings, or from advancing any and all available defenses.
- K. Headings. The headings designated in this Stipulation are solely for descriptive purposes and do not serve to alter, modify, detract from, or add to the substantive terms of this Stipulation in any way.
- L. Execution. This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one

and the same instrument. Upon signature by all Parties, this Stipulation shall be submitted without further notice to the Court.

IN WITNESS WHEREOF, the Parties hereto acknowledge that they have read this Stipulation and accept and agree to the provisions contained herein, and have each duly executed this Stipulation to be effective on the day and date indicated below.

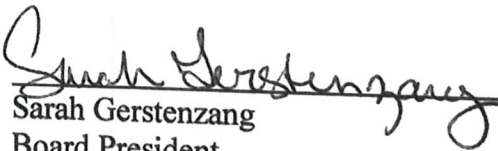
Date: December 22, 2021
New York, New York

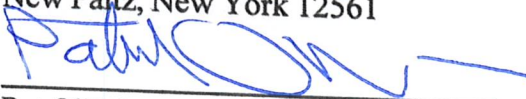
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Date: December 21, 2021
New Paltz, New York


THE ADOPTIVE AND FOSTER FAMILY
COALITION OF NEW YORK

By: 
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Board President
108 Main Street, Suite 5
New Paltz, New York 12561

By: 
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108 Main Street, Suite 5
New Paltz, New York 12561


Date: December 21, 2021
New York, New York

LETITIA JAMES
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Date: December 30, 2021
Rensselaer, New York

NEW YORK STATE OFFICE OF
CHILDREN AND FAMILY SERVICES

By: 
Sheila J. Poole
Commissioner
New York State Office of Children and
Family Services
52 Washington Street
Rensselaer, New York 12144

Dated: _____
Brooklyn, New York

SO ORDERED:

HON. WILLIAM F. KUNTZ, II
United States District Judge