

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

ASHLEY M., GRACE R., DAVID and)
LINDA H., and RICHARD and CAROLYN C.,)
individually and on behalf of all others similarly)
situated,)

Plaintiffs,)

vs.)

ILLINOIS DEPARTMENT OF CHILDREN)
AND FAMILY SERVICES, and RICHARD H.)
CALICA, in his capacity as DIRECTOR OF)
THE ILLINOIS DEPARTMENT OF)
CHILDREN AND FAMILY SERVICES,)

Defendants.)

No. 2013 CH 20278
Hon. David B. Atkins

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and General Release, (“Agreement”), is made and entered into by and between the Plaintiffs, Ashley M., Grace R., David and Linda C., Richard and Carolyn C., individually and on behalf of all others similarly situated, and the Defendants, the Illinois Department of Children and Family Services and Bobbie Gregg, Acting Director and a successor in office to Richard H. Calica.

RECITALS

WHEREAS, the Plaintiffs filed this lawsuit in Circuit Court of Cook County, Illinois, case number 2013 CH 20278, entitled Ashley M., et al., v. Illinois Department of Children & Family Services, et al. (“Action”) alleging violations of rights protected by statute(s), regulation(s), common law, the Constitution of the State of Illinois and/or the Constitution of the United States;

WHEREAS, the action is brought as a class action and the Court has issued an order certifying the Lawsuit as a class action and defining the Plaintiff class (“Plaintiffs”) as: any

and all persons located in the State of Illinois who were investigated or indicated as perpetrators of child neglect under 89 Ill. Admin. Code, Chapter III, subchapter b, Part 300, App. B, Allegation 60, from July 13, 2012 through December 31, 2013;

WHEREAS, the Defendants ("Director", "DCFS" or the "Department") deny the allegations and deny any statutory, common law, constitutional or regulatory violations, and affirmatively states that the Plaintiffs have failed to state a claim upon which relief can be granted;

WHEREAS the Circuit Court of Cook County has denied the Defendant's motion to dismiss the Action and granted Plaintiffs' motion for class certification;

WHEREAS, the Defendants posted an emergency rule on January 1, 2014, through the process for such posting set forth pursuant to the Administrative Procedures Act, 5 ILCS 100/5-10(c), and which emergency rule contained amendments to 89 Ill. Admin. Code Chapter III, subchapter b, Part 300, App. B;

WHEREAS, such emergency rule expired on May 31, 2014;

WHEREAS, on June 11, 2014, the Joint Commission on Administrative Rules approved the final promulgation of a rule replacing 89 Ill. Admin. Code Chapter III, subchapter b, Part 300, App. B, Allegation 60 following notice and comment pursuant to Administrative Procedures Act 5/ILCS 5-40, and such rule went into effect on that date and has been maintained in the Illinois Administrative Code since that date; and

WHEREAS, so as to avoid further expense and in recognition of the positions of the Parties to the above case, the Parties wish to settle and compromise the pending Action, thereby terminating this litigation;

IT IS HEREBY AGREED, by and between the Parties as follows:

1. In consideration for the full and complete settlement of this claim, within 90 days after final approval of this Agreement by the Court, following a fairness hearing pursuant to 735 ILCS 5/2-806, the Department shall expunge the indicated findings of "Allegation 60" for any and all persons located in the State of Illinois who were investigated or indicated as perpetrators of child neglect under 89 Ill. Admin. Code, Chapter III, subchapter b, Part 300, App. B, Allegation 60, between July 13, 2012 and December 31, 2013.

2. In further consideration for the full and complete settlement of this claim, within 90 days after final approval of this Agreement by the Court, following a fairness hearing pursuant to 735 ILCS 5/2-806, the Department further agrees that it shall expunge the indicated findings of "Allegation 60" for any and all persons located in the State of Illinois who were indicated as perpetrators of child neglect under 89 Ill. Admin. Code, Chapter III, subchapter b, Part 300, App. B, Allegation 60, between May 31, 2014 through June 11, 2014.

3. Within 90 days after final approval of this Agreement by the Court, following a fairness hearing pursuant to 735 ILCS 5/2-806, the Department shall prepare and implement a procedure conforming the Allegation 60 procedure to the rule setting forth the definition of Allegation 60 and shall issue a memorandum to all employees and "purchase of service" providers notifying them that: (a) a revised rule and procedure is available to all DCFS staff and "purchase of service" providers on the departmental intranet and providing a link thereto; (b) Allegation 60 indicated findings are being expunged in accordance with Paragraphs 1 and 2 above; and (c) that Allegation 60 has been promulgated in a revised version effective June 12, 2014, and all employees and "purchase of service" providers are to cease using the rule, policy and procedure set forth as to Allegation 60 in any version prior to June 12, 2014. The memorandum shall set forth the amendments to the standard for indication under Allegation 60 in accordance with the Rule and ANCRA as follows:

“Environment injurious means that a child’s environment creates a likelihood of harm to the child’s health, physical well-being, or welfare and the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities. . . . Blatant disregard is defined as an incident where the real, significant and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm.”

4. Within 90 days after final approval of this Agreement by the Court, following a fairness hearing pursuant to 735 ILCS 5/2-806, the Department shall prepare a training program for DCFS investigative staff that explains Allegation 60 under the rule and procedure in effect since June 12, 2014. The Department shall ensure that all DCFS investigative staff receive the training within 90 days thereafter.

5. In further consideration for the full and complete settlement of this claim, the Plaintiffs shall receive attorney’s fees and costs in the sum of fifty thousand dollars (\$50,000.00) payable from appropriations made to the Illinois Department of Children and Family Services for fiscal year 2015. The Parties understand that the amount payable under this Agreement is subject to state laws governing the State Comptroller’s obligation to withhold funds that named Plaintiffs, Ashley M., Grace R., David and Linda C., Richard and Carolyn C., may owe to other persons or to state agencies. The named Plaintiffs may contest the validity of these claims through applicable state procedures.

6. It is expressly agreed that the Defendants in their individual capacities shall not be responsible for payment of any sum under this Agreement.

7. It is further understood and agreed that the above tendered consideration is not to be construed as an admission of any liability therefore, such liability having been expressly denied. No inducements or representations have been made by any agent or attorney of any party hereby released as to the legal liability or other responsibility of any party claimed responsible, and it is agreed that this release applies to known or unknown injuries, costs,

expenses and/or damages alleged to have been suffered or incurred by the named Plaintiffs due to the actions or inactions of the Defendants as stated in the Plaintiffs' complaint(s) filed in the Action, and is intended to be a full and complete disposition of the entire claim(s) and/or cause(s).

8. Plaintiffs agree that the relief provided by the Defendants through this Settlement Agreement fully satisfies and resolves the claims Plaintiffs brought pursuant to the Illinois Administrative Procedures Act, 5 ILCS 100/5-10(c), seeking to enjoin DCFS and its agents, employees, and all persons acting in concert or cooperation with them, from using a void version of Allegation 60 to investigate, indicate, and register the Plaintiffs as responsible for child neglect. Therefore, any claims for injunctive and declaratory relief due to the actions or inactions of the Defendants as stated in the Plaintiffs' complaint filed in the Action have been resolved to the satisfaction of all Plaintiffs.

9. The named Plaintiffs, their heirs, successors and assigns, agree to release, and hereby release and forever discharge the Defendants in their individual and official capacities, Illinois Department of Children and Family Services and the State of Illinois, their agents, former and present employees, attorneys, successors, heirs, and assigns and all other persons (hereinafter "Releasees") from all actions, claims, demands, setoffs, suits, causes of action, controversies, disputes, equitable relief, compensatory and punitive damages, costs and expenses which arose or could have arisen from the facts alleged or claims made in the Action, which the Plaintiffs own, have or may have against the Releasees, whether known or unknown, from the beginning of time until the effective date of this Stipulation, including but not limited to those at law, in tort (including actions under 42 U.S.C. § 1983) or in equity.

10. The Parties agree that the Action shall be dismissed with prejudice upon final approval of this Agreement by the Court, following a fairness hearing pursuant to 735 ILCS 5/2-

806. The Parties agree that notice of the terms of the settlement agreement and the fairness hearing may be provided to the class by publication on the internet. The internet posting shall be on the DCFS web site and the Family Defense Center web site.

11. No promise has been made to pay or give the Plaintiffs any greater or further consideration other than as stated in this Agreement. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties hereto concerning the subject matter of this Agreement are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party hereto to any other party concerning the subject matter of this Agreement. All prior and contemporaneous negotiations, possible and alleged agreements, representations, covenants and warranties, between the Parties concerning the subject matter of this Settlement Agreement are merged into this Settlement Agreement. This Agreement contains the entire agreement between the Parties.

12. The Plaintiffs enter into this Agreement as a free and voluntary act with full knowledge of its legal consequences. The Plaintiffs have not relied on any information or representations which are not contained in this Agreement.

13. This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois, without regard to principles of conflict of laws.

14. This Agreement may not be changed, modified or assigned except by written agreement of the Plaintiffs, the Illinois Department of Children and Family Service and the Illinois Attorney General.

15. This Agreement shall not be construed to constitute a waiver of sovereign immunity of the State of Illinois or the Illinois Department of Children and Family Services.

16. If any provision of this Agreement is declared invalid or unenforceable, the balance of this agreement shall remain in full force and effect.

17. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on the Parties hereto, notwithstanding that all of the Parties are not signatory to the same counterpart.

AGREED:

[Signature]
Plaintiffs

Date: 1/8/15

[Signature]
Counsel for Plaintiffs

Date: 1/8/15

[Signature]
Defendants
Michelle Jackson
Chief Legal Counsel

Date: 1/8/15