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U.S. DISTRICT COURT E.D.N.Y.

★ JUN 29 2011 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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A.M., *et al.*, :
: *Plaintiffs*, :
-against- :
JOHN B. MATTINGLY, in his official capacity as :
Commissioner of the New York City Administration for :
Children's Services, :
: *Defendant*. :
----- X

BROOKLYN OFFICE

10 Civ. 2181 (BMC)

: **STIPULATION AND ORDER**
: **OF SETTLEMENT AS TO**
: **ATTORNEYS' FEES**

WHEREAS, Plaintiff A.M., by her next friend C.B. Mobley, Plaintiff M.M., by his next friend Cynthia Godsoe, and Plaintiff S.M., by his next friend Kinda Serafi (collectively "the Individually Named Plaintiffs"), commenced this action by filing a Class Action Complaint (the "Complaint") on May 12, 2010, alleging that the Defendant violated federal and state law by improperly retaining the Individually Named Plaintiffs, and a proposed class of Plaintiff children, in acute care psychiatric hospitals; and

WHEREAS, the Complaint contains a prayer for an award of costs, expenses, disbursements, and attorneys' fees in prosecuting this action; and

WHEREAS, on June 10, 2010, the Court so-ordered the parties' Stipulation and Order for Class Certification pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, certifying the following class ("Class"):

Children under the age of 18 who are in the custody of the New York City Administration for Children's Services ("ACS") and who are currently admitted or will be brought to and admitted to acute psychiatric hospitals and who, once admitted and deemed ready for discharge, are not moved by ACS and/or one of its contract agencies to the least restrictive setting appropriate to their needs; and

WHEREAS, the Defendant is implementing a new policy and procedure for the provision of emergency and inpatient mental health services for children in foster care and the child protective system and is implementing a new system for tracking and monitoring children in acute care psychiatric hospitals; and

WHEREAS, the Defendant denies each and every allegation contained in the Complaint; and

WHEREAS, no finding of liability has been made; and

WHEREAS, the Court approved and so-ordered the Stipulation and Order of Settlement of the claims of the Class for injunctive relief (“Class Settlement”) on March 11, 2011; and

WHEREAS, the Class Settlement provides that within 90 days of the entry of the Class Settlement, Plaintiffs’ counsel may submit a request for attorneys’ fees and costs to the Court; and

WHEREAS, the Legal Aid Society and Paterson Belknap Webb & Tyler LLP (collectively, “Plaintiffs’ counsel”) have represented and continue to represent the Individually Named Plaintiffs and the certified Plaintiff Class (together, “Plaintiffs”); and

WHEREAS, Plaintiffs’ counsel have not received, and will not receive, any payment from the Individually Named Plaintiffs or other Plaintiff Class member in connection with work done on behalf of the Plaintiffs in this action; and

WHEREAS, the Plaintiffs and the Defendant wish to resolve the Plaintiffs’ claim for attorneys’ fees, expenses, disbursements, and costs in prosecuting this action;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The Plaintiffs hereby agree that the settlement described in this Stipulation and Order of Settlement as to Attorneys Fees (the “Attorneys’ Fees Stipulation”) fully satisfies the claim set forth in the Complaint for an award of attorneys’ fees, expenses, disbursements, and costs in the prosecution and settlement of this action, including all work performed with respect to the damages claims of the Named Plaintiffs.

2. The Defendant agrees to pay Patterson Belknap Webb & Tyler LLP, at 1133 Avenue of the Americas, New York, New York, 10036-6710, on behalf of its office and on behalf of the Legal Aid Society, the sum of three hundred and eight thousand dollars (\$308,000.00) in full settlement and release of the Plaintiffs’ claim against the Defendant for attorneys’ fees, expenses, disbursements, and costs in the prosecution and settlement of this action. Payment will be made within ninety (90) days of the so-ordering of this Attorneys’ Fees Stipulation and receipt of all papers necessary to effectuate this Stipulation (including, but not limited to, original copies of the Waiver and Release to which paragraph 3 below refers).

3. This Attorneys’ Fees Stipulation and the payment described in paragraph “2” above is contingent upon the execution by each of the Individually Named Plaintiffs, through their next friends, and delivery to Defendant’s counsel, of the Waiver and Release in the form attached hereto as **Exhibit 1**.

4. Nothing contained herein shall be deemed to be an admission by the Defendant of having violated in any manner or way the Plaintiffs’ rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York, or any other rules, regulations, or bylaws of any department, agency, or subdivision of the City of New York.

5. This Attorneys' Fees Stipulation is solely for the purpose of settlement of Plaintiffs' claim for attorneys' fees, expenses, disbursements, and costs set forth in the Complaint and does not reflect the positions of the parties in any other judicial or administrative proceeding. Nothing contained in this Attorneys' Fees Stipulation shall be deemed, implied or construed to be a policy, custom or procedure of the Defendant, the City of New York, or any of its agencies.

6. This Attorneys' Fees Stipulation shall not be admissible in any other litigation, except for enforcement of the provisions contained herein.

7. If any date or period of time described in this Attorneys' Fees Stipulation falls or ends on a public holiday or on a weekend, the date or period of time shall be extended to the next business day.

8. This Attorneys' Fees Stipulation is not in settlement or release of any potential future claim for attorneys' fees, expenses, disbursements, and costs incurred in connection with monitoring or enforcing the terms of the Class Settlement. Nothing herein shall be deemed to constitute a waiver of any defenses to any future application Plaintiffs may make in connection with attorneys' fees, costs, expenses, or disbursements in the future in this action.

9. This Attorneys' Fees Stipulation is final and binding on all Parties, as well as their successors and assigns.

10. This Attorneys' Fees Stipulation contains all of the terms and conditions agreed to by the parties regarding the settlement of Plaintiffs' claim for attorneys' fees, expenses, disbursements, and costs set forth in the Complaint. No oral agreement entered into at any time nor any other written agreement entered into prior to the execution of this Stipulation shall be deemed to exist, to bind the parties, or to vary the terms and conditions set forth in this Stipulation.

Dated: New York, New York
May 26, 2011

A.M., by and through her next friend,
C.B. MOBLEY

M.M., by and through her next friend,
CYNTHIA GODSOE

S.M., by and through her next friend,
KINDA SERAFI

THE LEGAL AID SOCIETY
Steven Banks, Attorney-in-Chief
Kimberly Forte, of counsel
Attorney for Plaintiffs
199 Water Street, 3rd Floor
New York, NY 10038
(212) 577-3300

By: /s/ Tamara A. Steckler
Tamara A. Steckler
Attorney in Charge, Juvenile Rights
Practice

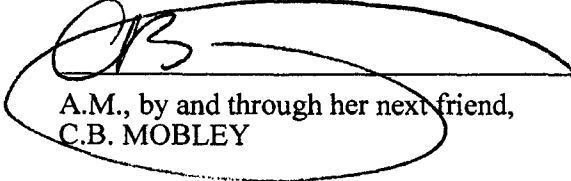
PATTERSON BELKNAP WEBB & TYLER LLP
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1133 Avenue of the Americas
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Telephone: (212) 336-2000

By: /s/ Lisa E. Cleary
Lisa E. Cleary
Partner

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant
100 Church Street
New York, New York 10007
(212) 788-0923

By: /s/ Martha Calhoun
Martha Calhoun
Assistant Corporation Counsel

Dated: New York, New York
May 17, 2011


A.M., by and through her next friend,
C.B. MOBLEY

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Corporation Counsel of the
City of New York
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M.M., by and through her next friend,
CYNTHIA GODSOE

By: _____
Martha Calhoun
Assistant Corporation Counsel

S.M., by and through her next friend,
KINDA SERAFI

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By: _____
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Practice

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Telephone: (212) 336-2000

By: _____
Lisa E. Cleary
Partner

Dated: New York, New York

May 7, 2011

A.M., by and through her next friend,
C.B. MOBLEY

M.M., by and through her next friend,
CYNTHIA GODSOE

S.M., by and through her next friend,
KINDA SERAFI

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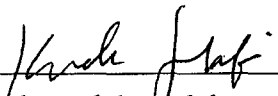
By: _____

Martha Calhoun
Assistant Corporation Counsel

Dated: New York, New York
May 27, 2011

A.M., by and through her next friend,
C.B. MOBLEY

M.M., by and through her next friend,
CYNTHIA GODSOE



S.M., by and through her next friend,
KINDA SERAFI

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Lisa E. Cleary
Partner

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By: _____
Martha Calhoun
Assistant Corporation Counsel

IT IS HEREBY ORDERED that:

1. This Stipulation and Order of Settlement as to Attorneys' Fees is entered as an order of the Court and thereby takes effect.

/s/(BMC)

Hon. Brian M. Cogan
United States District Judge
Date: 6/24, 2011