

**THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION**

JOHN DOE (minor child) by and through his
Guardian JANE DOE,

Plaintiff,

v.

NIKKI HALEY, et al.,

Defendants.

Civil Action No.: 13-CV-01772-GRA

**Jane Doe’s Petition to
Approve a Minor Settlement**

TO: Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, Johnny Jones and their respective attorneys:

Plaintiff has settled and/or dismissed all claims with Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones.

Plaintiff asks the Court to (1) appoint Jane Doe as John Doe’s guardian ad litem for purposes of this settlement and (2) approve a settlement for John Doe, a minor child, who has settled Counts VI and VIII and dismissed Counts V and VII against Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones.

The Plaintiffs and Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones reached an agreement to settle the claims for allegedly failing to provide mental health treatment and to dismiss all claims against these Defendants (both concerning the alleged attack and sexual assault on Plaintiff and the alleged subsequent denial of mental health treatment) with prejudice. Defendants Boys Home of the South, Vernon Hayes,

Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones will pay \$ [REDACTED] to Plaintiff John Doe, by and through his guardian Jane Doe for the benefit of John Doe. The funds for John Doe will be placed in a discretionary trust and an educational trust for his benefit.

I. Legal and factual basis of Jane Doe’s authority to seek settlement approval.

At the time this matter was filed, Jane Doe was John Doe’s maternal aunt and foster mother. The Abbeville County Family Court has determined that Plaintiff John Doe’s parents should not have custody of the minor child. Exhibit 1.

Other facts which show good cause for the Court to appoint Jane Doe as the guardian ad litem for John Doe include:

- Jane Doe is John Doe’s guardian and protector;
- Jane Doe has had physical custody of John Doe since March 28, 2012;
- Jane Doe has provided for the health, safety, care, and nourishment of John Doe since this time;
- The Abbeville County Family Court made a finding of fact that Jane Doe should be responsible for the care and custody of John Doe, and it became the family court’s order. Exhibit 1.

For these reasons, Petitioner Jane Doe asks the Court to find good cause to appoint her as the guardian ad litem for John Doe.

II. The nature of the action.

On April 1, 2013 Plaintiff filed suit against the SCDSS and BHOTS. An amended complaint was filed on May 30, 2013 and Defendants removed this case to

the United States District Court for the District of South Carolina on June 28, 2013. In the suit, Plaintiff John Doe claimed that he was allegedly sexually abused while in foster care by another foster child, A.R. Dkt. #1-2. The Plaintiffs further alleged that the sexual abuse was preventable because the SCDSS (and its employee defendants) and BHOTS (and its employee defendants) allegedly had notice and knowledge that A.R. had a history of sexually acting out with other young boys. Plaintiffs alleged inadequate supervision at BHOTS. Plaintiff also alleged that the Defendants failed to provide Plaintiff with urgently needed medical and mental health treatment after the alleged abuse. Plaintiffs alleged negligence and gross negligence based tort claims and constitutional claims under 42 U.S.C. § 1983 against all Defendants. Dkt. #1-2, *29 – 32. Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones have denied liability in this matter and asserted various defenses under state and federal law.

III. The state of the proceedings at the time of settlement.

The Court has been fully briefed on the nature of the case, Plaintiff's allegations, and the Defendants' defenses and allegations. Defendants' motions for summary judgment are set to be argued on February 11, 2013. Trial is scheduled for some time in April.

IV. The nature and extent of injuries.

The extent of John Doe's injuries are emotional/psychological and include pain and suffering. There are projected future damages which have been reviewed and opined upon by a vocational expert, a psychologist, a life care planner, and an

economist. The settlement tendered by Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones is for and is only in consideration of any injuries related to Counts VI and VIII, allegations that Plaintiff was denied urgently needed mental health treatment after the alleged attack and assault by Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones, all of which are disputed. Plaintiff has and is proceeding with state law and federal 1983 claims against the SCDSS Defendants concerning both the attack and sexual assault on Plaintiff, and the failure to provide Plaintiff with urgently needed mental health treatment after the attack and assault. Dkt. #1-2, Amended Complaint, Counts I – IV.

V. Factors influencing the decision to settle the claim.

Plaintiff's claims were hotly contested by all Defendants. The injuries to Plaintiff and the filing of this case followed the Fourth Circuit's decision in *Doe ex rel Johnson v. S.C. Dept. Soc. Svcs.*, 597 F.3d 163 (4th Cir, 2010) concerning the alleged violation of rights asserted in this case on behalf of a foster child in state custody in which the Defendants are alleged to have had notice and knowledge of an obvious danger and ignored those dangers, resulting in injury, exposing the BHOTS Defendants to the potential of uncapped damages, punitive damages, and attorney's fees and costs.

Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones have tendered [REDACTED]

[REDACTED] Furthermore, counsel for these

Defendants have informed Plaintiffs' counsel that the Boys Home of the South has ceased operations and will soon be filing articles of dissolution with the South Carolina Attorney General. Thus, this opportunity is the best that will ever be available to settle with these Defendants.

Plaintiff has also considered evidentiary issues, proof issues, cost of prosecution, and cost of a verdict for all defendants in accepting the offer to settle this matter. Jane Doe has actively participated, listened to counsel, voiced her concerns about how the trial of the case would proceed, and she made the ultimate decision to settle.

VI. The amounts and nature of any insurance coverage relevant to the action.

The parties that settled, Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones, were provided attorneys through BHOTS's insurance company, Philadelphia Indemnity Insurance Company (PIIC). Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones were all provided insurance coverage through PIIC. Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones had a primary policy of \$ [REDACTED] in coverage and an excess policy of \$ [REDACTED]. The total amount of all insurance coverage available is \$ [REDACTED] minus defense costs which have been incurred in the defense of Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens, and Johnny Jones. Plaintiffs' constitutional claims under 42 U.S.C. § 1983 and negligence/gross

negligence tort claims against individual employees have no cap, leave a possibility of punitive damages, and attorney's fees and costs for the § 1983 claims.

VII. The names of any creditors and amounts of their claims.

Plaintiff is assembling the costs of the Medicaid Lien. Plaintiff asks the Court for permission to distribute earned attorney's fees and costs in advance of settling the Medicaid lien and for permission to distribute \$75,000.00 to Hite & Stone's IOLTA account for use in prosecuting Plaintiff's remaining claims against the SCDSS Defendants. Plaintiff's foster parents secured a loan in the amount of \$952.26 with Heritage Finance Company to pay for Plaintiff's psychological treatment

VIII. The amount and terms of the settlement and detailed explanation of how proceeds will be distributed.

Plaintiffs have agreed to a general release of all claims in exchange for \$ [REDACTED] by Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens and Johnny Jones in consideration of only Plaintiff's damages related to the allegations that Defendants failed to provide medical and mental health treatment to Plaintiff.

Below is a breakdown of how the proceeds will be distributed:

Name/Entity	Purpose of Distribution	Total
Discretionary and Education Trust	For the benefit of John Doe	\$ [REDACTED]
Trust Attorney	Establish Trusts	\$1,500
Medicaid	Repay medical bills incurred due to damages related from Defendants' failure to provide medical and	\$17,413.22

	mental health treatment	
The Camden Law Firm, PA	1/3 of Contingency Fee Per Fee Splitting Agreement	\$ [REDACTED]
Hite & Stone	1/3 of Contingency Fee Per Fee Splitting Agreement	\$ [REDACTED]
Children's Rights	1/3 of Contingency Fee Per Fee Splitting Agreement	\$ [REDACTED]
The Camden Law Firm, PA	Costs	\$6,578.62
Hite & Stone	Costs	\$25,030.08
Children's Rights	Costs	\$60,716.09
Hite & Stone IOLTA	Costs for prosecution of the remainder of the case with remaining monies to be refunded at the end of this matter	\$75,000.00
Theodore Goetz, Ph.D.	Counseling and Psychological Services	\$1,095.00
Heritage Finance	Loan for Counseling and Psychological Services	\$952.26

Plaintiff believes that there may still be some minor costs or liens and will amend this petition before the final hearing.

Jane Doe signed a written fee splitting agreement when counsel was retained. Itemized lists of costs from each firm will be submitted under seal if the Court would so require.

IX. The nature of the release to be given.

A receipt and release is given by the Petitioner on behalf of John Doe, which is binding on the minor and his heirs, executors, administrators and assigns,

releasing and forever discharging Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens and Johnny Jones, their agents, servants, employees, former employees, and their heirs, successors and assigns and all other persons, firms, governmental entities, and corporations of and from any claim, suits, demand, or cause of action, state or federal, arising from or by reason of any known and/or unknown, foreseen and/or unforeseen injuries, lost wages, medical expenses, mental anguish, pain and suffering, and any other damages of any kind to him and the consequences thereof resulting and to result from any matter or thing which has happened, developed or occurred before the signing of this Release, and particularly, but not in limitation of any of the foregoing general terms, because of Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens and Johnny Jones' involvement in the placement of A.R. with the John Doe from May 2010 – June 2011 , and as more fully described in the Amended Complaint for federal Civil Action Number: 8:13-cv-01772-GRA (formerly South Carolina Civil Action Number: 2013-CP-01-0104).

Plaintiff dismisses Counts V and VII with prejudice. Any settlement amounts paid by Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens and Johnny Jones are in consideration of and only for Counts VI and VIII, the alleged failure to provide urgently needed mental health treatment to Plaintiff. In consideration of this settlement, Plaintiff specifically dismisses Counts V, VI, VII, and VIII in the amended complaint with prejudice and any and all possible claims, suits, demands, or causes of action against Defendants Boys Home of the South, Vernon Hayes, Nicole Lindsey, Cynthia Brock, Richelle Owens

and Johnny Jones. Plaintiff is proceeding, however, on Counts I, II, III, and IV against the SCDSS defendants, under both state law claims and federal 1983 claims concerning both the attack and sexual assault on Plaintiff, and the failure to provide Plaintiff with urgently needed mental health treatment after the attack and assault,

X. The status of any other actions arising out of the same incident which have been or may be filed and the impact on the fairness of any settlement in this action.

There are no other lawsuits related to this matter. There are remaining claims in this matter against SCDSS, Donna Outen, Merry Eve Poole, Ursula Best, and Cassandra Daniels. A motion for summary judgment was filed by the SCDSS Defendants and Outen (Dkt. No. 138 and 140), Plaintiff's responded on January 21, and the SCDSS Defendants replied on January 31, 2014. The motions will be heard on February 11, 2014. Rule 26(a)(3) briefs are due March 7, 2014. Mediation is scheduled for March 24, 2014 before the Honorable (Retired) Don S. Rushing in Anderson, South Carolina. Jury selection will occur at the Court's discretion in the beginning of April and will be followed by a trial that same month. Plaintiff asserts that the posture of the remaining claims will not impact the fairness of this settlement to the minor child.

XI. Known, anticipated, or potential disputes as to the distribution of proceeds or approval of the settlement.

There are no known, anticipated, or potential disputes as to the distributions of proceeds or approval of the settlement.

XII. Set forth the amount of attorneys' fees and costs.

Attorney's fees and costs and future costs for the prosecution of the remainder of this law suit are listed above in Part VIII. Attorney's fees are \$ [REDACTED] for a one-third contingency fee. Attorney's fees for the trust attorney, Peter Manning, Esq., are \$1,500.00. No additional monies will be charged by Peter Manning, Esq., the trust attorney to finish the establishment of the trusts for this settlement.

XIII. Petitioner's statement.

Jane Doe believes that the amount and terms of the settlement as well as the costs and fees are fair and reasonable and she asks the Court to approve the minor settlement.

XIV. S.C. Code Ann. § 62-5-433.

In accordance with S.C. Code Ann. § 62-5-433 there are no known, anticipated, or potential disputes as to the distributions of proceeds or approval of the settlement.

Respectfully Submitted,



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Attorneys for Plaintiff John Doe

Camden, South Carolina
February 4, 2014

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on February 4, 2014, I electronically filed the foregoing document with the United States District Court for the District of South Carolina, Anderson/Greenwood Division, and it is available for viewing and downloading from the ECF system for all counsel of record. I further certify that on this day I caused to be served, via ECF, a copy of said document to the attorneys of record listed below:

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DISTRICT OF SOUTH CAROLINA
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JOHN DOE (minor child) by and through his
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Civil Action No.: 13-CV-01772-GRA

Plaintiff,

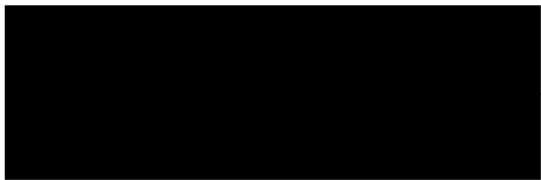
VERIFICATION

v.

NIKKI HALEY, et al.,

Defendants.

PERSONALLY appeared before me [REDACTED] who being duly sworn says that she is the plaintiff and the guardian ad litem for John Doe, that she has read the foregoing **Petition to Approve Minor Settlement on Behalf of John Doe**, and that she knows of her own knowledge that the allegations contained therein are true, except so much thereof as is alleged upon information and belief, and as to them she believes them to be true.



SWORN TO and subscribed before me

this 4th day of February, 2014.


NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 6-16-18