

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FLORENCE WALLACE, ET AL.	:	CONSOLIDATED TO:
	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:09-cv 0286
	:	
v.	:	
	:	(JUDGE CAPUTO)
ROBERT J. POWELL, ET AL.	:	
	:	
Defendants.	:	

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM CONWAY, ET AL.	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:09-cv-0291
	:	
v.	:	
	:	(JUDGE CAPUTO)
MICHAEL T. CONAHAN, ET AL.	:	
	:	
Defendants.	:	

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

H.T., ET AL.	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:09-cv-0357
	:	
v.	:	
	:	(JUDGE CAPUTO)
MARK A. CIAVARELLA, ET AL.	:	
	:	
Defendants.	:	

Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs, move for an order certifying a settlement class pursuant to Federal Rule of Civil Procedure 23(b)(3) and preliminarily approving a partial settlement that, upon final judicial approval, shall fully resolve all of Plaintiffs' claims against the Releasees, as defined in the Master Stipulation and Agreement of Settlement ("Settlement Agreement" or "Agreement"), attached hereto as Exhibit 1; and, in connection therewith, the Plaintiffs seek an order to:

1. Certify the Settlement Classes defined herein for settlement purposes only;
2. Appoint counsel to represent all proposed Settlement Class Members ("Settlement Class Counsel") solely for the purposes of the implementation, approval and consummation of this Settlement;
3. Appoint Representative Plaintiffs solely for the purposes of the implementation, approval and consummation of this Settlement;
4. Grant preliminary approval of this Settlement Agreement and schedule deadlines for Settlement Class Members to participate in the Settlement, opt out of the Settlement, or object to the settlement.
5. Authorize notice of this Settlement Agreement in the form

attached to the Motion;

6. Schedule a hearing to review any potential comments concerning this Agreement, to consider its fairness, reasonableness and adequacy, and to determine whether to enter a Final Order approving the Settlement as proposed by the Parties (“Final Settlement Hearing”);
and
7. Require non-binding mediation for any Settlement Class Member who properly and timely opts out and intends to pursue a separate claim against the Releasees.

For the reasons set forth below, and in Plaintiffs’ Memorandum of Law, the Motion should be granted.

BACKGROUND

1. The first of these consolidated cases, *Wallace v. Powell*, No. 09-0286, was filed on February 13, 2009 on behalf of plaintiffs represented by Caroselli, Beachler, McTiernan & Conboy, LLC (“Caroselli Beachler”) against a number of defendants, including the Powell Defendants.

2. Two putative class actions, *Conway v. Conahan*, No. 09-0291, filed by Anapol Schwartz, and *H.T. v. Ciavarella*, No. 09-0357, filed by Hangley Aronchick Segal Pudlin & Schiller (“Hangley Aronchick”) and Juvenile Law

Center (“JLC”), were filed shortly thereafter, again naming as defendants, among others, the Powell Defendants.

3. In addition, presently pending before this Court are the following related civil actions against the Powell Defendants:

(a) *Humanik v. Ciavarella*, No. 09-630

(b) *Clark v. Ciavarella*, No. 09-2535

(b) *Dawn v. Conahan*, No. 10-797

(c) *Belanger v. Ciavarella*, No. 10-1405

(d) *Eliav. Powell*, Nos. 11-0465, 11-0466

(e) *Gillette v. Ciavarella*, No. 11-658

These cases, together with *Wallace, Conway*, and *H.T.*, are referred to collectively herein as the “Civil Actions.”¹

4. Three of the Civil Actions, *Conway, H.T.*, and *Belanger*, are class actions. The *Conway* and *H.T.* plaintiffs filed a Master Complaint for Class Actions (“CAC”) in June 2009.

5. The remaining Civil Actions were filed on behalf of individual plaintiffs. Contemporaneously with the filing of the Master Complaint for Class Actions, the *Wallace* and *Humanik* plaintiffs filed a Master Long Form Complaint

¹ The term Civil Actions is different from the term “Actions.” Actions only refers to the lawsuits included in this Settlement and does not include the *Belanger* or the *Clark* cases.

for individual actions (“IC”).

6. The Civil Actions assert a number of causes of actions against some or all of the Powell Defendants, including: (1) claims under 42 U.S.C. § 1983 (IC Count III, V; CAC Counts II, IV); (2) claims alleging violations of 18 U.S.C. §§ 1961 *et seq.* (IC Count I; CAC Counts V, VI); (3) claims alleging conspiracy to violate 18 U.S.C. § 1962(d) (IC Count II; CAC Count VII); and (4) a claim alleging state-law civil conspiracy (IC Count VIII).

7. On August 24, 2010, the Court's ruling on motions to dismiss filed in the *Wallace, Conway, H.T.*, and *Humanik* cases allowed said cases, in large part, to proceed. (*See* Doc. No. 573.)

8. In 2011, following extensive arms-length negotiations, Plaintiffs in the Actions reached a settlement (the “Mericle Settlement”) with Defendants Robert K. Mericle and Mericle Construction, Inc. (collectively the “Mericle Parties”) on December 16, 2011. The Court conditionally approved the Mericle Settlement on February 28, 2012 and appointed the law firms of Hangley Aronchick; Caroselli Beachler; Anapol Schwartz; and JLC as acting Class Counsel on a preliminary basis. (*See* Doc. No. 1084.)

9. Class Counsel noticed, processed, and administered the Mericle Settlement for the next eight months. A final approval hearing for the Mericle Settlement was held on November 19, 2012. Thereafter, the Court granted final

approval of the Mericle Settlement and final certification of the Mericle Settlement Classes for settlement purposes. Additionally, the Court found that Class Counsel adequately represented the Classes for purposes of entering and implementing the Mericle Settlement and satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure. The Court also dismissed the claims against the Mericle Parties with prejudice. (*See* Doc. No. 1268.)

10. Apart from the Mericle Settlement, the litigation proceeded against Pa Child Care, LLC (“PACC”), Western Pa Child Care, LLC (“WPACC”) and Mid-Atlantic Youth Services, Corp. (“MAYS” and collectively the “Provider Defendants”) and other defendants, including former judges Michael Conahan and Mark Ciavarella, Robert Powell, and Vision Holdings. Discovery was extensive. Documents were produced by Plaintiffs and by other defendants in the Civil Actions and depositions were taken.

11. On May 14, 2013, the Court granted Class Plaintiffs’ Motion for Class Certification as to All Issues of Defendants’ Liability to Plaintiffs and certified litigation classes pursuant to Federal Rule of Civil Procedure 23(b)(3). (*See* Doc. No. 1410.)

12. Also in 2013, following extensive arms-length negotiations and due diligence, the Plaintiffs in the Actions reached a settlement (the “Provider Defendants Settlement”) with the Provider Defendants. The Court preliminarily

approved the Provider Defendants Settlement on December 9, 2013 and appointed the law firms of Hangley Aronchick; Caroselli Beachler; Anapol Schwartz; and JLC as acting Class Counsel on a preliminary basis. (*See* Doc. No. 1491.)

13. Class Counsel noticed, processed, and administered the Provider Defendants Settlement for the next year. A final approval hearing for the Provider Defendant Settlement was held on June 10, 2014. Thereafter, the Court granted final approval of the Provider Defendant Settlement and final certification of the Provider Defendant Settlement Classes for settlement purposes. Additionally, the Court found that Class Counsel adequately represented the Classes for purposes of entering and implementing the Provider Defendant Settlement and satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure. The Court also dismissed the claims against the Provider Defendant Parties with prejudice. (*See* Doc. No. 1539.)

14. Apart from the Provider Defendant Settlement, the litigation proceeded against Defendants Robert J. Powell (“Powell”), Vision Holdings, LLC; and Powell Law Group, P.C. (“PLG”) (collectively the “Powell Defendants”), and other defendants, including former judges Michael Conahan and Mark Ciavarella.

15. The Court scheduled the trial of the Powell Defendants to begin on January 12, 2015.

16. Despite the Parties’ strong belief in their respective positions, the

Parties recognize that there are substantial uncertainties and significant litigation costs with respect to the Actions and their potential outcomes if they were taken to trial. Having thoroughly considered their investigations and analyses of the facts and their evaluations of the law relating to the matters set forth in the Complaints, they have each determined that settlement of the Plaintiffs' claims and allegations, as set forth in the Agreement, is a fair and reasonable result for the Settlement Class Members.

17. The delay inherent in complex litigation may eliminate or diminish the chance for any meaningful recovery from the Powell Defendants. For that reason and for the reasons outlined above and more fully set forth in Plaintiffs' Memorandum of Law, Plaintiffs thus desire to proceed promptly to finalize and implement their settlement with the Powell Defendants.

18. While denying any liability, the Powell Defendants also consider it desirable that the Actions be settled and ended so as to halt the substantial expense of litigation.

19. After this settlement, additional claims will remain in the litigation, including Plaintiffs' claims against the Non-Releasees, as defined in the Agreement.

20. For these reasons, both Plaintiffs and the Powell Defendants believe it is in their best interests, and in the best interest of the members of the Settlement

Class, to settle the Actions under the terms presented.

BASIC TERMS OF THE SETTLEMENT

The Settlement Class

21. Pursuant to Paragraph 1(r) and (ff) of the Settlement Agreement, the proposed Settlement Classes are defined as follows:

- A. All juveniles who appeared before former Luzerne County Court of Common Pleas Judge Mark A. Ciavarella Jr. between January 1, 2003 and May 28, 2008 who were adjudicated delinquent or placed by Ciavarella (“Juvenile Settlement Class”).
- B. All parents and/or guardians of all juveniles in paragraph (A) who, as a result of their child’s adjudication of delinquency or placement by Judge Ciavarella between January 1, 2003 and May 28, 2008: (i) made payments in their own names or had wages, social security or other entitlements in their own names garnished or withdrawn; (ii) had costs, fees, interest and/or penalties in their own names assessed against them or their child; and/or (iii) suffered any loss of companionship and/or familial integrity (“Parent Settlement Class”) and were not fully reimbursed as a result of claims made in connection with the Mericle Settlement and/or the Provider Defendant Settlement, defined in the Agreement.

The Releasees

22. Paragraph 1(tt) of the Agreement defines the Releasees, which include the “Powell Defendants” as defined in Paragraphs 1(kk) of the Agreement. The Powell Defendants have agreed to settle for the benefit of all Releasees.

The Cash Settlement Fund

23. In final settlement of the obligations of the Releasees to the

Settlement Class Members, and in return for full and unconditional releases of the claims of the Settlement Class Members against the Powell Defendants, the Powell Defendants have agreed to pay a total of \$4,750,000.00 (the “Settlement Amount”) into an escrow account at PNC Bank (“Escrow Account”). The Settlement Amount will be deposited into the Escrow Account in two transactions:

- (1) Within thirty (30) days after the Court’s entry of the Preliminary Approval Order, the Powell Defendants will transfer \$200,000.00 (the “First Escrow Payment”) into the Escrow Account.
- (2) On or before December 21, 2015, the Powell Defendants will transfer an amount of money into the Escrow Account such that, together with interest accrued on the money deposited pursuant to the paragraph above, the balance will be \$4,750,000 (the “Second Escrow Payment” and collectively with the First Escrow Payment, the “Escrow Payment”).

24. Further, on or before the earlier of December 21, 2016 or 30 days after all litigation brought by Gregory Zappala or entities he owns or controls against the Powell Defendants is terminated by settlement or a final non-appealable judgment and Powell has received all fees and expenses from the proceeds of the *Tronox, Inc. v. Anadarko Petroleum Corp.*, No 14 Civ. 5495(KBF), if Powell’s Net Worth is greater than \$4,750,000 as calculated pursuant to

Paragraphs 7-9 of the Agreement, the Powell Defendants will deposit into the Escrow Account the conditional payment below.

- a. Powell Defendants, thirty (30) days before the latest date for determining Powell's Net Worth (Net Worth Evaluation Date) shall proffer their evaluation of Powell's Net Worth using the formula set forth in Paragraphs 7-9 of the Agreement. Plaintiffs have 10 business days to accept or dispute the proffer.
- b. In the event that Plaintiffs' dispute the proffer the parties will jointly engage Thomas Pratt who will be provided with all documentation he may reasonably request for performing the computation set forth in Paragraphs 7-9 of the Agreement. His opinion shall be binding on the parties with no further right of appeal.

25. The settlement proceeds described above comprise the "Cash Settlement Fund" and shall be applied as follows:

- (1) Common benefit attorneys' fees and costs awarded by the Court upon application by Settlement Class Counsel pursuant to Paragraph 44-46 of the Settlement Agreement;
- (2) All settlement administration costs and costs of notice related to the settlement; and
- (3) Distribution of all remaining funds to the Settlement Class Members who properly and timely submit the required Proof of Claim Form and any required additional documentation, as described in Paragraphs 47-57 of the Settlement Agreement and in the Notice.

The Plan of Allocation

26. Under the Plan of Allocation, the amount remaining in the Cash Settlement Fund after payment of the attorneys' fees and cost will be distributed as described in the Notice of the Proposed Settlement, attached as Exhibit A to the Agreement. Exhibit A includes the "Legal Notice" of the proposed Settlement and an abbreviated version of the Legal Notice, referred to as the "Published Notice."

Notice

27. As described generally in Paragraphs 33-35 of the Settlement Agreement, adequate notice will be provided to Settlement Class members.

28. Upon approval by the Court, the Legal Notice of Proposed Settlement will be mailed via first class mail to the last known address of each Settlement Class Member for whom Settlement Class Counsel have an address, advising Settlement Class Members of the Settlement Agreement; of the procedure for filling a Proof of Claim Form, opting out and/or objecting to the Settlement; and of the applicable deadlines.

29. The Legal Notice will also be made available on the settlement website, www.kidswinsettlement.com, on the same date on which it is mailed to the Settlement Class Members. This website is the same website accessed by Settlement Class Members for information about the Mericle Settlement and the Provider Defendants Settlement.

30. Upon approval by the Court, the Published Notice will be published in the *Citizens Voice* and the *Times Leader* the same week the Legal Notice is mailed to Settlement Class Members. The Proof of Claim deadline, which will be assigned by the Court in the Preliminary Approval Order, will be inserted into the Published Notice before publication.²

Opt-Outs and Objections

31. Pursuant to Paragraphs 59-65 of the Settlement Agreement, Settlement Class Members will have the right to exclude themselves from the Settlement (“Opt-Out”) by returning a Proof of Claim Form indicating their Opt-Out election no later than the Proof of Claim Deadline (also, the “Opt-Out Deadline”).

32. Pursuant to Paragraphs 59-65 of the Settlement Agreement, Settlement Class Members will also have the right to object to the Settlement no later than the Proof of Claim Deadline (also, the “Objection Deadline”). In order to object to the Settlement, Settlement Class Members shall deliver to the Claims Committee a written statement of any objection(s) as described in Paragraph 62 of the Agreement.

² The Proof of Claim deadline assigned by the Court in the Preliminary Approval Order will be no later than 60 days after the Court has entered its Preliminary Approval Order and shall be consistent with Fed. R. Civ. P. 6(a), meaning that the deadline will not fall on a weekend or legal holiday.

33. In order for an Opt-Out or Objection to be timely, the completed form or written objection must be either (1) physically received by the Claims Committee by the Proof of Claim Deadline (which is the same as the Opt-Out Deadline and the Objection Deadline),³ or (2) clearly postmarked by the United States Postal Services or a commercial mail carrier no later than the Proof of Claim Deadline.

34. Settlement Class Members who do not timely Opt-Out shall automatically be included in the settlement as Settlement Class Members, as described in Paragraph 47-56-7 of the Agreement.

35. Settlement Class Members who elect to opt out of the Settlement (the “Opt-Out Plaintiffs”) and who intend to pursue claims against the Powell Defendants will, pursuant to Paragraph 33 of the Agreement, be required to participate in confidential non-binding mediation with the Powell Defendants.

The Claims Committee

36. The Claims Committee, as further described in Paragraph 36 of the Agreement, shall consist of four attorneys, including one representative from each of the following firms: (1) Hangley Aronchick; (2) Anapol Schwartz; (3) Caroselli Beachler; and (4) JLC. The Powell Defendants shall have no liability for the

³ The Proof of Claim Deadline, which is the same date as the Opt-Out Deadline and the Objection Deadline, will be designated in the Court’s order conditionally approving the settlement.

administration and processing of claims. The Claims Committee shall be responsible for: (1) reviewing the Proof of Claims Forms returned by the Proof of Claim Deadline; (2) determining which Settlement Class Members have elected to Opt-Out; (3) notifying the Court and Powell Defendant Counsel of any objections to the Settlement; and (4) pursuant to the Plan of Allocation, calculating the amount of the Cash Settlement Fund to be paid to each Settlement Class Member who participates in the Settlement.

37. The Claims Committee will maintain a toll-free number and a website (www.kidswinsettlement.com) for Settlement Class Members.

The toll-free number and website address will be printed in the Legal Notice and the Published Notice. The Claims Committee shall make itself available for consultations with Settlement Class Members as reasonably necessary to assist any Settlement Class Member in evaluating and asserting his or her rights under the Settlement Agreement and Plan of Allocation.

38. As required by Paragraph 42 of the Settlement Agreement, the Claims Committee will report to the Court the number of: (a) individuals who participating in the Settlement; (b) Settlement Class Members who qualifying for payment under the terms of the Settlement, (c) Settlement Class Members who opt out of the Settlement, and (d) Settlement Class Members who submit objections to the Settlement.

39. If the Court gives final approval to the Settlement at or following the Final Settlement Hearing, the Claims Committee will coordinate the payment to Settlement Class Members pursuant to the Plan of Allocation.

Appeals from Allocation Determinations

40. Pursuant to Paragraph 39 of the Settlement Agreement, the Parties request that the Court approve Judge Marina Corodemus (Ret.) as the Special Master for Allocation Appeals, to resolve the claims of each Settlement Class Member who disputes the award made to him or her by the Claims Committee.

41. Judge Corodemus was appointed and served with distinction as the Special Master for Allocation Appeals for the Mericle Settlement (*see* Doc. No. 1268) and the Provider Defendants Settlement (*see* Doc. No. 1538), and is therefore familiar with this litigation.

THE SETTLEMENT CLASS SHOULD BE PRELIMINARY CERTIFIED

42. The Parties jointly seek certification of this Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3). Rule 23 provides for class treatment when the elements of Rule 23(a) are met and “questions of law or fact common to class members predominate over any questions affecting only individual members, and ... a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”

43. This Court has previously certified a litigation class under Rule 23

applying the same factors as required to certify a class for the purposes of the Powell Defendants Settlement.

44. As set forth below, the following elements of Rule 23(a) are established: (1) the settlement class is so numerous that separate joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Numerosity

45. According to daily case lists maintained by the Juvenile Probation Department and reviewed by Settlement Class Counsel and the Claims Committee for the Mericle Settlement and the Provider Defendants Settlement, the Juvenile Settlement Class consists of at least 2,400 individuals who were adjudicated delinquent or referred to placement by Ciavarella between January 1, 2003 and May 28, 2008. The Parent Settlement Class is at least as large; based on the information reviewed by the same. For purposes of this Settlement, however, the Cash Settlement Fund will only be used to reimburse Parent Settlement Class Members who were not fully reimbursed for eligible payments by the Mericle Settlement and/or the Provider Defendant Settlement. (*See* Doc. No. 1409, at 9.)

Commonality

46. The claims set forth in the Master Complaints raise many questions of law or fact common to the Settlement Class Members. “When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more elements of that cause of action will be common to all of the persons affected.” Newberg § 3:20 (5th ed. 2011). This element is satisfied. (*See* Doc. No. 1409, at 9-12.)

Typicality

47. The claims of the Class Representatives are typical of the claims of the class. (*See* Doc. No. 1409, at 13-14.)

48. As described in additional detail in Plaintiffs’ Memorandum of Law, the proposed Juvenile Settlement Class representatives assert the same facts and claims against the Defendants as are asserted on behalf of the classes they represent.

49. Alexandra Fahey and Dezare Dunbar, like the other Settlement Class Members who will be paid from the Probation Only Benefit Fund, as described in the Notice, were adjudicated delinquent by Ciavarella during the class period, but spent no time in out-of-home placements.

50. H.T. and Jessica Van Reeth, like the other Settlement Class Members who will be paid from the Non-PACC/WPACC Benefit Fund, as described in the

Notice, were adjudicated delinquent by Ciavarella during the class period, and were sent to out-of-home placements by Ciavarella, but spent no time in either the PACC or the WPACC facility.

51. Elizabeth Habel and Angelia Karsko, like the other Settlement Class members who will be paid from the PACC/WPACC Benefit Fund, as described in the Notice, were adjudicated delinquent by Ciavarella during the class period and were sent by him to out-of-home placements at either the PACC or WPACC facilities.

52. Jack Van Reeth, the father of Jessica Van Reeth, is the proposed representative of the Parent Settlement Class. Like all other members of the Parent Settlement Class, he asserts RICO claims based on Defendants' alleged conspiratorial conduct resulting in payments of court fees, fines, interest and/or penalties. As a result of Jessica's adjudication and place by Ciavarella, Mr. Van Reeth made payment and had costs and fees assessed against him.

Adequacy of Representation

53. Finally, with respect to Rule 23(a) elements, the representative parties will fairly and adequately protect the interest of the class. The Class Representatives were previously approved as adequate representatives of the settlement classes under the Mericle Settlement (Doc. No. 1268) and the Provider Defendant Settlement (Doc. No. 1538) and as adequate representatives of the

litigation classes approved by this Court as to all issues of Defendants' Liability to Plaintiffs (Doc. No. 1410). The Class Representatives' interests are aligned with those of the class represented, as they have asserted the same claims as the class represented. (*See* Doc. No. 1409, at 17.)

54. Additionally, Plaintiffs are represented by counsel with extensive experience with complex litigation, class actions, and juvenile-justice in general. More significantly, Anapol Schwartz, Caroselli Beachler, Hanglely Aronchick, and JLC were previously appointed as Settlement Class Counsel for the Mericle Settlement and the Provider Defendants Settlement and found to "have fully and adequately represented the Classes for purposes of entering and implementing the Settlement and have satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and applicable law." (*See* Doc. Nos. 1268 and 1538.) This Court also appointed three of these firms as Class Counsel for the certified litigation classes as to all issues of Defendants' Liability. (*See* Doc. No. 1410; *see also* Doc. No. 1409, at 15-16.) The proposed Class Counsel have demonstrated their full commitment to the continued prosecution of this litigation, and they possess the skill, experience, and resources to do so. *See* Exhibit 2 (attaching biographies).

Rule 23(b)(3) Factors: Predominance and Superiority

55. Plaintiffs' claims satisfy the requirements of Rule 23(b)(3) insofar as such requirements are relevant in the content of the proposed Settlement Class.

(See Doc. No. 1409, at 20-31 (analyzing predominance in the context of certifying a litigation class).)

56. Courts have recognized that, where the focus is on liability-imposing conduct of defendants that is identical as to all putative plaintiffs, the predominance element may be satisfied. *See, e.g., Harrington v. City of Albuquerque*, 222 F.R.D. 505 (D.N.M. 2004). Additionally, there is no indication that Settlement Class Members have an interest in the individual prosecution of their actions, particularly in light of the fact that the Actions were all consolidated and settled with the Mericle Parties and the Provider Defendants, with very few opt-outs and no objectors. This forum is the most efficient and desirable location in which to resolve this lawsuit.

THE SETTLEMENT AGREEMENT IS WITHIN THE RANGE OF FAIR AND REASONABLE SETTLEMENT

57. At this stage, the Court is not being asked to finally approve the settlement; final approval may take place only after the Final Settlement Hearing. Instead, the Court is being asked simply to preliminarily approve the Settlement and authorize the dissemination of Notice.

58. Approving dissemination of notice “is at most a determination that there is what might be termed 'probable cause' to submit the proposed to class members and hold a full-scale hearing as its fairness.” *In re Traffic Exec. Ass 'n-*

Eastern R.R.s, 627 F.2d 631, 634 (2d Cir. 1980).

59. Moreover, a “presumption of correctness” should attach to this settlement, which was reached in “arm's-length negotiations between experienced, capable counsel after meaningful discovery.” *In re Linerboards Antitrust Litig.*, 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) (quoting *Hanrahan v. Britt*, 174 F.R.D. 356, 366 (E.D. Pa. 1997)).

60. The Agreement between the Parties is the product of lengthy arms'-length negotiations undertaken in good faith. Furthermore, the Settlement was negotiated by counsel with extensive experience in complex litigation who zealously advocated their clients' interest and positions. Through motions, briefs, and discovery, the Parties, through counsel, carefully considered and evaluated the relevant legal authorities to support the claims asserted against the Powell Defendants, the likelihood of prevailing on these claims, and the risk, expense and duration of continued litigation.

61. The proposed Settlement falls well within the range of possible approval. *See Stoetznerv. U.S. Steel Corp.*, 897 F.2d 115, 117-20 (3d Cir. 1990).

WHEREFORE, for the reason set forth herein, the Parties respectfully request that the Court enter the proposed Order attached hereto.

**For Plaintiffs in the action titled,
Wallace v. Powell, et al., No. 3:09-cv-286
(M.D. Pa.)**

By: /s/ David S. Senoff
William R. Caroselli, Esquire
Caroselli, Beachler, McTiernan &
Conboy
20 Stanwix Street, 7th Floor
Pittsburgh, PA 19522
(412) 391-9860

David S. Senoff, Esquire
Lauren C. Fantini
Caroselli, Beachler, McTiernan &
Conboy
1845 Walnut Street, 15th Floor
Philadelphia, PA 19102
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**For Plaintiffs in the action titled,
Conway, et al. v. Conahan et al.,
No. 09-cv-291 (M.D. Pa.), *Elia v. Powell*,
No. 11-cv-465 (M.D. Pa.), and *Elia v.*
Powell, No. 11-cv-466 (M.D. Pa.)**

By: /s/ Sol H. Weiss
Sol H. Weiss, Esquire
Joseph J. Fantini, Esquire
Anapol Schwartz
1710 Spruce Street
Philadelphia, PA 19103
(215) 735-2098

**For Plaintiffs in the action titled,
H.T., et al. vs. Ciavarella, et al.,
No. 09-cv-357
(M.D. Pa.)**

By: /s/ Marsha L. Levick
Marsha L. Levick, Esquire
Juvenile Law Center
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Philadelphia, PA 19107
(215) 625-0551

By: /s/ Daniel Segal
Daniel Segal, Esquire
Rebecca S. Melley, Esquire
Hangley Aronchick Segal Pudlin &
Schiller
One Logan Square, 27th Floor
18th and Cherry Streets
Philadelphia, PA 19103
(215) 568-6200

Dated: March 10, 2015

CERTIFICATE OF CONCURRENCE OR NONCONCURRENCE

I, David S. Senoff, hereby certify that pursuant to Local Rule 7.1, that counsel for all represented parties was contacted for purposes of seeking concurrence in the foregoing Motion, Counsel for Powell Defendants concur with the instant Motion.

/s/ David S. Senoff
David S. Senoff, Esquire

CERTIFICATE OF SERVICE

I, David S. Senoff, Esquire, hereby certify that, a true and correct copy of Motion for Preliminary Approval of Class Action Settlement Between Plaintiffs and Provider Parties was filed electronically on March 10, 2015 and is available to all parties for viewing electronically. Additionally, the foregoing Motion was served via First Class Mail upon the following *pro se* parties:

Mark A. Ciaverella, 15008-67
Federal Correctional Institution
P.O. Box 5000 Pekin,
IL 61555-5000

Michael T. Conahan
Inmate #15009-067
FCI Coleman Low
PO Box 1031
Coleman, FL 33521

Dated: March 10, 2015

/s/ David S. Senoff
David S. Senoff