

FIRST CIRCUIT COURT
STATE OF HAWAII
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Class Counsel

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PATRICK SHEEHEY; PATRICIA
SHEEHEY; RAYNETTE NALANI AH
CHONG; SHERRY CAMPAGNA;
MICHAEL HOLM; and TIARE HOLM,
*individually, and on behalf of a class of
Hawai'i-licensed resource families;
B.S.; and T.B., a Minor, by her Next
Friend N.A., individually and on behalf
of a class of persons similarly situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC
(Contract)
Civil Action; Class Action

**PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
AMENDED CLASS ACTION
SETTLEMENT; MEMORANDUM IN
SUPPORT OF MOTION; DECLARATIONS
OF CLAIRE WONG BLACK; EXHIBITS
"A" - "D"; NOTICE OF HEARING OF
MOTION AND CERTIFICATE OF
SERVICE**

HEARING MOTION

JUDGE: Honorable Virginia L. Crandall
DATE: April 3, 2018
TIME: 1:00 p.m.

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF AMENDED CLASS ACTION SETTLEMENT**

Plaintiffs, as representatives of two settlement classes previously certified by this Court on March 28, 2017, seek preliminary approval of an amended settlement between Plaintiffs and the Defendant State of Hawai'i in this action, including approval of the form of class notice and plan for distribution of the notice. The Amended State Lawsuit Class Action Settlement Agreement (Amended State Settlement Agreement), executed by counsel for the parties, is attached as Exhibit "A"; and the proposed forms of class notice are included as Exhibits "1A" and "1B" to the Amended State Settlement Agreement.

The Amended State Settlement Agreement is part of a global settlement that resolves parallel state and federal court litigation over the foster care maintenance payment rate, calculation, and related benefits made available to foster families and for the benefit of children and young adults in Hawaii's foster care system.

The terms of the Amended State Settlement Agreement are nearly identical to the 2017 State Settlement Agreement preliminarily approved by the Court last year. *See* ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION TO CERTIFY SETTLEMENT CLASSES AND FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT, FILED MARCH 28, 2017; and PLAINTIFFS' UNOPPOSED MOTION TO CERTIFY SETTLEMENT CLASSES AND FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT, filed March 20, 2017 (attached hereto as Exhibit "D," and incorporated herein by reference). The only material change to the State Settlement is the extension of the Legislative Enactment Date and other deadlines to effectuate the settlement.

The material change to the Federal Settlement is the voluntary reduction by Class Counsel to the amount of attorneys' fees and costs award in the *Federal* Action from \$1,100,000 to \$850,000. This further compromise was made in the hopes of securing long-awaited relief for the Settlement Classes, who, prior to this litigation, had been waiting for the State to increase foster

board rates since 1990. The amended settlement, if approved, includes a comprehensive notice program that will provide direct notice of the amended settlement to the Settlement Classes and will allow each Class member a full and fair opportunity to evaluate the settlement and decide whether to participate.

Pursuant to Haw. R. Civ. P. 7 and 23(e), Plaintiffs respectfully request that the Court:

- (1) grant preliminary approval of the amended State Settlement Agreement, including the Parties' plan of allocation and distribution of settlement funds, as fair, reasonable, and adequate; and
- (2) approve the Parties' jointly-drafted proposed amended Class Notices (including the opt-out provisions) and the plan to distribute the notices to class members.

Defendant does not oppose preliminary approval of the proposed settlement, certification of the settlement classes for damages, or approval of the proposed schedule, form, and procedures for notice, class member opt-outs, and distribution of settlement payments. However, it does not agree, concede, or adopt Plaintiffs' description of the facts and issues presented, or the factual or procedural background. To the contrary, the State continues to assert that its conduct was lawful at all times.

DATED: Honolulu, Hawai'i, April 3, 2018.



PAUL ALSTON
JOHN-ANDERSON L. MEYER
CLAIRE WONG BLACK
VICTOR GEMINIANI
GAVIN THORNTON

Class Counsel

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PATRICK SHEEHEY; PATRICIA SHEEHEY; RAYNETTE NALANI AH CHONG; SHERRY CAMPAGNA; MICHAEL HOLM; and TIARE HOLM, *individually, and on behalf of a class of Hawai`i-licensed resource families; B.S.; and T.B., a Minor, by her Next Friend N.A., individually and on behalf of a class of persons similarly situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC
(Contract)
Civil Action; Class Action

**MEMORANDUM IN SUPPORT
OF MOTION**

MEMORANDUM IN SUPPORT OF MOTION

I. History of the Failed 2017 Settlement and Amended 2018 Settlement

Last March, on the eve of trial in the Federal Action, the State agreed to a global settlement with Hawaii's foster families both in this action (the State Action) and a companion lawsuit filed in the United States District Court for the District of Hawai'i (the Federal Action).

The global settlement promised millions in payments to former foster families and foster youth and tens of millions in added benefits for current and future foster families. The state settlement provided a settlement fund of \$2,341,103.10, the net proceeds of which would be distributed to eligible families (members of the Parent Settlement Class) and young adults who received higher education stipends (members of the Higher Education Settlement Class) after notice and opportunity to object or opt out. *See* March 20, 2017 MOTION FOR PRELIMINARY APPROVAL. The federal settlement would have

increased the Hawai'i Department of Human Services' (HDHS) monthly board reimbursement and annual clothing stipend to foster families and required HDHS to account for Hawaii's higher costs of living as compared to the mainland and inflation when setting future board rates, among other things.

As is often true, the settlement was contingent upon funding from the Legislature. And despite strong backing from the Governor, the Attorney General, HDHS, and thousands of hard-working foster families, key legislators took the unprecedented step of refusing to fund the settlement. They viewed the settlement as “judicial overreach” meddling with “legislative prerogative” and claimed that the agreed-upon limit on Class Counsel’s fees and costs in the federal action was too high—even though the State refused many overtures to resolve the dispute when the fees were much lower, the lodestar fees were much higher, and the amount was negotiated with vigor by the Attorney General, leading to a greatly reduced fee. Indeed, the amount then agreed upon was so low only because Class Counsel cared deeply for the welfare of the foster families and were willing to accept below-market-rate compensation to see that the money started flowing to the foster families without delay.

Because of the legislators’ disregard for the Court and the recommendations of the executive branch, it became necessary to restart the litigation. As a result, the Federal Court set a new, March 2018 trial date and the parties resumed trial preparations. In 2018, the parties renewed settlement negotiations while continuing to prepare for trial in the federal action. Class Counsel voluntarily reduced the attorneys’ fees further so that the legislature would have no excuse to hold up the global settlement that the litigants (and Governor) agreed to.¹

In early March 2018, the parties reached an agreement to amend the global settlement. The material changes to the Federal Settlement Agreement are: (1) extension of the 2017 Legislative Enactment date and

¹ As a material condition to settlement, the State required that both the Federal Lawsuit and State Lawsuit be resolved or neither would be resolved.

effective date of board rate increases from to June 30, 2018 and July 1, 2018, respectively; and (2) reduction of class counsel's fees and costs for the federal lawsuit from \$1,100,000 to \$850,000—which is a fraction of more than \$3 million fees incurred and costs fronted by class counsel in the federal action over the past four years in order to vindicate the rights of Hawaii's foster families. The State Settlement Agreement remains largely unchanged: (1) the 2017 Legislative Enactment date has been extended one year; and (2) adjustments were made to corresponding deadlines for finalizing settlement documents and implementing the notice program. As with the 2017 settlement, the State required as a material condition to the settlement that both the Federal Lawsuit and State Lawsuit be resolved or neither would be resolved.

Both the State Settlement Agreement and Federal Settlement Agreement require approval from the respective courts pursuant to applicable court rules. And the terms of the settlement are still subject to Legislative approval and appropriation of funds necessary to make the payments to the State settlement classes and to fund the increase the monthly foster board rates under the Amended Federal Settlement Agreement. See Black Decl., Ex. A, State Settlement Agreement, Section III.

In order to secure Legislative approval of the Amended Settlement Agreement, United States Magistrate Judge Kevin S.C. Chang met with key legislators on March 5, 2018. Black Decl., ¶8. The essential terms of the settlement were placed on the record before Judge Chang on March 7, 2018. Black Decl., ¶9. Defendant in the Federal Action moved for preliminary approval of the Amended Federal Settlement Agreement on March 23, 2018. The United States District Court for the District of Hawai'i (Hon. Leslie E. Kobayashi, presiding) preliminarily approved the Amended Federal Settlement Agreement on March 30, 2018. See Black Decl., Exhibit "C," ORDER PRELIMINARILY APPROVING AMENDED CLASS ACTION SETTLEMENT, APPROVING NOTICE PLAN, AND SCHEDULING DATE FOR FAIRNESS HEARING in *Ah Chong v. Bhanot*, Civil No. 13-00663 LEK-KSC, Dkt. 389, dated March 30, 2018.

II. The Terms of the Global Settlement

The amended global settlement will still provide the following benefits, all of which were part of the 2017 global settlement:

- (1) a settlement fund of \$2,341,103.10, the net proceeds of which will be distributed to eligible Resource Families (members of the proposed Parent Settlement Class) and young adults who received higher education stipends (members of the proposed Higher Education Settlement Class) after notice and opportunity to object or opt out (Black Decl. in Support of Amended Motion, Ex. A, State Settlement Agreement at Section IV);
- (2) increase to the monthly payment rate to *all* Resource Families going forward (Black Decl., Ex. B, Federal Settlement Agreement Section II);
- (3) requires HDHS to take into account Hawaii's higher cost of living as compared to other states when setting new board rates (*id.*, Sections II.2, II.3, III.1-3); and
- (4) sets a benchmark for assessing rising costs and requires HDHS, for the next decade, to initiate and support legislation to increase the monthly payments when the increase in those benchmark costs exceed 5% (*id.*).

A. Payments to Eligible Members of the State Settlement Classes and Dismissal of Claims

Under the State Settlement Agreement, the State will provide a settlement fund totaling \$2,341,103.10 (the "Class Settlement Amount"). The Class Settlement Amount was calculated by multiplying the number of foster children, children in permanent custody/legal guardianship, adoptive children with special needs, and former foster youth receiving Higher Education Board Payments for whom HDHS made monthly payments for the time period July 1, 2013 to June 30, 2014 (the State's fiscal year for the year prior to the filing of the State Lawsuit), by \$35.00 per month.

Under the terms of the settlement, members of both the Parent Settlement Class and the Higher Education Settlement Class will be eligible to receive payment if they received a Monthly Payment during the time period from July 1, 2013 to June 30, 2014 (designated as “Payment Recipients”). This means that there may be members of the Settlement Classes who will not receive any payments under the terms of the settlement. Black Decl., Ex. A, State Settlement Agreement at IV.2.

The amount of each eligible Class Member’s settlement payment will be determined by pro-rating the actual days of care provided by the Resource Family to a foster child, adoptive child, or child in permanent placement/legal custody (for the Parent Settlement Class) and the actual days a young adult received Higher Education Board Payments (for the Higher Education Settlement Class) using data in HDHS’s payment database. Black Decl., Ex. A, State Settlement Agreement, IV.1.b.

This Court will retain jurisdiction to enforce the State Settlement Agreement. Black Decl., Ex. A, State Settlement Agreement, VII.9. Named Plaintiffs and Settlement Class Members agree to release the State and HDHS from any and all claims that were alleged, sought, or litigated, or that could have been alleged, sought or litigated against the State in the State Lawsuit. Within 14 days after distribution of settlement funds, the Parties will submit a stipulated dismissal with prejudice of class claims, and a dismissal of Plaintiff T.B.’s individual claims.

B. Service Awards to Named Plaintiffs and Attorneys’ Fees and Costs

Plaintiffs’ Counsel will also apply to the Court for a service award (“Service Award”) to the Class Representatives in recognition for their services to the Class. This service award will be separate and apart from any other recovery to which Named Plaintiffs may be entitled under the Settlement as a Class Member. The service award is intended to recognize: (a) the time and effort that Named Plaintiffs expended on behalf of the Class, including the critical participation of Named Plaintiffs in a face-to-face meeting with then-

HDHS Director Wong during final settlement negotiations; (b) the consequent value conferred to the Class; and (c) the exposure and risk incurred by taking a leadership role in the litigation, which was considerable.

Any Service Award shall be deducted from the amount of attorneys' fees approved by the Court rather than the Net Settlement Amount. In other words, the Service Awards will reduce the amount of attorneys' fees recovered by Plaintiffs' Counsel, NOT the amount of payments to Class Members. Black Decl., Ex. A, State Settlement Agreement, VI.2. The State has agreed not to challenge the Service Awards because they will not be paid by the State. *Id.*

In prosecuting this matter, Class Counsel performed substantial work advancing the rights of the Class Members, as explained above. Prior to the deadline for Class Members to object to the Settlement, Class Counsel will petition the Court for an award of attorneys' fees. Class Counsel's fee agreement allows them to petition the Court for up to 25% of any recovery on behalf of the Class Members. However, Class Counsel voluntarily reduced the amount of the award it will petition the Court for—to not more than **20%** of the Class Settlement Amount.² In addition, any Service Award to Named Plaintiffs shall be deducted from the amount of attorneys' fees awarded by the Court rather than the Net Settlement Amount.

C. Class Notices and the Notice Program

There are two forms of proposed Class Notices—one for Class Members who will receive payments under the terms of the settlement and another for Class Members who will not receive payments. The proposed Class

² The compensation sought for Plaintiffs' Counsel (of up to 20% of the fund created by their efforts) is consistent with applicable precedent in Hawai'i state and federal courts. *Garner v. State*, (awarding 25% of common benefit fund in attorneys' fees); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (25 percent of the common fund is the benchmark for an attorneys' fee award in class actions); *In re Omnivision Techs., Inc.*, 2007 WL 4293467, at *10 (N.D. Cal. Dec. 6, 2007) ("in most common fund cases, the award exceeds that [25%] benchmark"); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (collecting cases and concluding that nearly all common fund awards are in the 30% range).

Notices provide Class Members with an opportunity to opt out of their respective Classes, an opportunity to object to the settlement or to the request for award of attorneys' fees, and the opportunity to contact Plaintiffs' Counsel by email, mail, telephone with questions or concerns. The proposed Class Notices also inform Class Members that, upon obtaining compensation for the class, Class Counsel—who have worked on a pure contingency basis—will ask the Court to award attorneys' fees equal to 20% of the fund awarded. Black Decl., Ex. A, State Settlement Agreement, VI.1.

The Parties have agreed to notice procedures that attempt to provide individual notice to each Class Member by mail. Under the terms of the State Settlement Agreement, within a reasonable time after Preliminary Approval, and by a Court-ordered deadline, HDHS as Notice Administrator (or another mutually agreed-upon Notice Administrator) shall send the approved Class Notices to each Settlement Class Member by U.S. mail, postage prepaid in accordance with the terms of the Preliminary Approval Order. If HDHS is not the Notice Administrator, it shall provide contact information (the "Class List") for all Settlement Class Members to the Notice Administrator and Class Counsel. Black Decl., Ex. A, State Settlement Agreement, VII.3. In order to most effectively reach Settlement Class Members, the Notice Administrator shall process the Class List against the National Change or Address Database maintained by the U.S. Postal Service (USPS). If a Notice is returned as undeliverable and a forwarding address is provided by USPS, the Notice Administrator shall mail the Notice to the forwarding address within three business days. *Id.* If no forwarding address is available, the Notice Administrator will use skip tracing services (as agreed to by Class Counsel and defense counsel) to obtain updated contact information. Re-mailings of Notices shall be completed no later than 20 days before the Opt-Out deadline and shall only be re-mailed once. *Id.* Reasonable administrative costs of typesetting, printing, and mailing the Class Notice, processing the Class List, and performing skip tracing services shall be deducted from the Class Settlement Amount. *Id.*

The form of the Class Notice is attached to the State Settlement Agreement (Black Decl., Ex. A) as Exhibits 1A (Notice to Class Members who are not Payment Recipients) and 1B (Notice to Payment Recipients). The Class Notice informs Class Members about:

- the definition of the Settlement Classes,
- basic background information about the State and Federal Lawsuits ;
- the material terms of the Amended State Settlement Agreement;
- attorneys' fees and Service Awards to Class Members;
- options available to Class Members to either object or opt out;
- procedures, deadlines, and effect of opting out; and
- this Preliminary Approval process and the date of the final Fairness Hearing.

There are two forms of proposed notices: one identifies the recipient of the notice as a Payment Recipient under the settlement; the other informs the recipient that they are *not* a Payment Recipient. Black Decl., Ex. A, State Settlement Agreement, VII.2; *id.*, Exhibits 1A and 1B (Notices). Based on the Class Members' responses to the 2017 Class Notices, information concerning whether a class member is or is not a Payment Recipient is now prominently stated on the first page of the notice.

III. Preliminary Approval of the Amended Settlement is Appropriate

HRCP Rule 23(e) provides that Court approval must be obtained before a class action is settled. The law favors settlement of class actions. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005) (quotations omitted). The approval of a proposed class action settlement is within the discretion of the trial court. The approval should be granted if the settlement is "fundamentally fair, adequate, and reasonable." *Durkin v. Shea & Gould*, 92 F.3d 1510, 1512 n.6 (9th Cir. 1996). *See also Amantiad v. Odum*, 90 Haw. 152, 162-63, 977 P.2d 160, 170-71 (1999). The Court must consider the strengths of the plaintiff's case; the risk, expense, complexity, and likely

duration of further litigation; . . . the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; . . . and the reaction of the class members to the proposed settlement.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

This Court previously weighed these factors, and concluded that the 2017 State Settlement Agreement was appropriate. Other than the Legislative Enactment Date and related deadlines, the terms of the Amended State Settlement Agreement remain the same. Consequently, the Court should approve the Amended Settlement Agreement as well.

IV. Conclusion

For all the reasons discussed above, Plaintiffs respectfully request that the Court grant this motion and:

- (1) grant preliminary approval of the Amended State Settlement Agreement and the Parties’ plan of allocation of settlement funds as fair, reasonable, and adequate;
- (2) approve the Parties’ jointly-drafted proposed Class Notices, including the opt-out provisions, and the plan to distribute the notices to class members; and
- (3) order further submissions by the Parties and related deadlines as follows:
 - (a) Defendant to commence mailing class notices to members of the State Settlement Classes by **April 12, 2018**;
 - (b) Class Counsel to update previously-filed motion for service awards and attorneys’ fees and costs by **April 20, 2018**;
 - (c) Postmark deadline for members of the State Settlement Classes to opt out, object, or submit notices to appear shall be **May 28, 2018**;
 - (d) Parties to file their motion for final approval of settlement by **May 31, 2018**; and
 - (d) Final Fairness Hearing shall be **June 15, 2018 at 9:00 a.m.**

DATED: Honolulu, Hawai'i, April 3, 2018.



PAUL ALSTON
JOHN-ANDERSON L. MEYER
CLAIRE WONG BLACK
VICTOR GEMINIANI
GAVIN THORNTON

Class Counsel

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
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PATRICK SHEEHEY; PATRICIA SHEEHEY; RAYNETTE NALANI AH CHONG; SHERRY CAMPAGNA; MICHAEL HOLM; and TIARE HOLM, *individually, and on behalf of a class of Hawai`i-licensed resource families; B.S.; and T.B., a Minor, by her Next Friend N.A., individually and on behalf of a class of persons similarly situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC
(Contract)
Civil Action; Class Action

**DECLARATION OF
CLAIRE WONG BLACK**

DECLARATION OF CLAIRE WONG BLACK

I, CLAIRE WONG BLACK, declare that:

1. I am an attorney licensed to practice before this Court and am one of the attorneys appointed as Class Counsel in this matter.
2. I make this Declaration based on my personal knowledge and am competent to testify about the matters contained in this Declaration.
3. Attached as Exhibit "A" is a true and correct copy of the Amended State Lawsuit Class Action Settlement Agreement, which includes the proposed notices to class members as Exhibit 1A (proposed form of notice to persons who are not Payment Recipients) and Exhibit 1B (proposed form of notice to Payment Recipients).
4. Attached as Exhibit "B" is a true and correct copy of the fully executed Amended Federal Lawsuit Class Action Settlement Agreement.

5. A hearing on the motion for preliminary approval of the Amended Federal Settlement was held on March 27, 2018 at 10:00 a.m. before the Honorable Leslie E. Kobayashi, United States District Judge for the District of Hawai'i.

6. The U.S. District Court preliminarily approved the Amended Federal Settlement Agreement. Attached as Exhibit "C" is a true and correct copy of the ORDER PRELIMINARILY APPROVING AMENDED CLASS ACTION SETTLEMENT, APPROVING NOTICE PLAN, AND SCHEDULING DATE FOR FAIRNESS HEARING, dated March 30, 2018.

7. Attached as Exhibit "D" is a true and correct copy of Plaintiffs' previously-filed UNOPPOSED MOTION TO CERTIFY SETTLEMENT CLASSES AND FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT, filed March 20, 2017, and declarations and exhibits thereto, which are incorporated into the instant motion in their entirety.

8. On March 5, 2018, United States Magistrate Judge Kevin S.C. Chang met with key legislators to facilitate legislative approval of the amended settlement.

9. The essential terms of the Amended Federal Settlement were placed on the record before Judge Chang on March 7, 2018.

10. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Honolulu, Hawai'i on April 3, 2018.



CLAIRE WONG BLACK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

PATRICK SHEEHEY; PATRICIA SHEEHEY; RAYNETTE NALANI AH CHONG; SHERRY CAMPAGNA; MICHAEL HOLM; and TIARE HOLM, *individually, and on behalf of a class of Hawai'i-licensed resource families; B.S.; and T.B., a Minor, by her Next Friend N.A., individually and on behalf of a class of persons similarly situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

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CIVIL NO. 14-1-1709-08 VLC
(Civil Action; Contract; Class Action)

AMENDED STATE LAWSUIT CLASS ACTION SETTLEMENT AGREEMENT

HEARING ON PRELIMINARY APPROVAL OF SETTLEMENT

JUDGE: Hon. Virginia L. Crandall
DATE: April 3, 2018

AMENDED STATE LAWSUIT CLASS ACTION SETTLEMENT AGREEMENT

This Amended State Lawsuit Class Action Settlement Agreement (“**State Settlement Agreement**”) is entered into by and between Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, Tiare Holm, B.S., and T.B., a minor by her next friend, N.A. (collectively, the “**Named Plaintiffs**”), on behalf of themselves and members of the Classes defined in this Agreement (collectively, “**Plaintiffs**”), on the one hand, and the State of Hawaii, including its departments, agencies, officials, and employees (collectively the “**State**”), on the other hand. Named Plaintiffs and the State are collectively referred to as the “**Parties.**”

Subject to Court approval as required by Rule 23 of the Hawai'i Rules of Civil Procedure (“**HRCP**”), the Parties hereby stipulate and agree that, in consideration of the mutual promises, covenants, and consideration set forth in this State Settlement Agreement, the above-captioned action (“**State Lawsuit**”) shall be settled and compromised in accordance with the terms herein.

The Parties acknowledge and agree that although this State Settlement Agreement sets forth the terms and conditions by which the State Lawsuit will be settled, this State Settlement Agreement is part of a larger settlement that includes the Federal Lawsuit (defined below), and that unless

both Lawsuits settle on the terms set forth in their respective settlement agreements, neither Lawsuit will be settled.

The Parties further acknowledge and agree that the settlement of the State Lawsuit and the Federal Lawsuit is contingent on the enactment of legislation by the Hawaii Legislature to authorize the appropriation of funds to make the payments described herein and in the Federal Settlement Agreement. If such legislation is not enacted on or before the Legislation Enactment Deadline as defined in this State Settlement Agreement and the Federal Settlement Agreement, unless such date is mutually agreed to be extended by the parties to both Agreements, this State Settlement Agreement shall automatically become null and void, trial in the Federal Lawsuit shall resume, and the State Lawsuit shall also proceed.

RECITALS

WHEREAS, on August 7, 2014, a Complaint for Damages against the State of Hawaii was filed in an action entitled *Sheehy, et al. v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC (the “State Lawsuit”), a First Amended Complaint for Damages was filed on February 6, 2015, and a Second Amended Complaint for Damages was filed on June 8, 2015; and

WHEREAS, the Second Amended Complaint in the State Lawsuit is pled as a class action lawsuit and asserts claims on behalf of three general categories of people:

- a. individuals who have taken in abused or neglected children by serving as resource caregivers (foster parents) for such children, by adopting such children (these children are referred to under the law as “children with special needs”), or by becoming the permanent custodians/legal guardians for such children, and who were entitled to receive foster care maintenance payments, adoption assistance, or permanency assistance under state or federal law (collectively, referred to herein as the “**Parent Group**”)¹;
- b. former foster youth who receive higher education board allowance payments from the Hawaii Department of Human Services (“**DHS**”) (collectively, the former foster youth are referred to herein as the “**Higher Education Group**”); and

¹ Because of the application of the statute of limitations to any claims by the Parent Group, the Parties acknowledge that the Court presiding over the State Lawsuit, if presented with the issue, would likely have limited the people in the Parent Group to those adults who have provided care to foster children, adoptive children with special needs, or children in permanent custody/legal guardianships on or after August 7, 2012.

c. foster children, adoptive children with special needs, and children in permanent custody/legal guardianships who were under the age of 20 on August 7, 2014 (collectively referred to herein as the “**Beneficiary Group**”); and

WHEREAS, the Second Amended Complaint alleges that the foster care maintenance payments paid by the State (through DHS) to members of the Parent Group who are resource caregivers were and are inadequate under state and federal law, and are flawed because they fail to take into account Hawaii’s cost of living; and further alleges that if the monthly payment rate set in 1990 (and not changed until 2014) had been adjusted to keep up with inflation, the required foster care maintenance payment at the time of the filing of the Complaint would exceed \$950 per month; and

WHEREAS, because by DHS policy the amount of the foster care basic board rate is also the amount paid by the State to adoptive parents of children with special needs, legal guardians/permanent custodians and former foster youth receiving higher education benefits, the Second Amended Complaint also alleges that the payments made to the remaining members of the Parent Group and payments made to the Higher Education Group are also inadequate²; and

WHEREAS, the Second Amended Complaint asserts seven claims for relief, based on the following allegations

a. failure to pay amounts required to be paid under written agreements entered into by the State and individual members of the Parent Group (which agreements require the State to make certain payments to these individuals), resulting in damages suffered by individual members of the Parent Group equal to the shortfall between the amounts required to be paid and the amounts actually paid;

b. failure to pay amounts required to be paid under written agreements entered into by the State and individual members of the Parent Group, resulting in damages to the Beneficiary Group (who are the intended beneficiaries of the written agreements described in the first claim for relief);

c. violation by the State of Chapter 17-1617 of the Hawaii Administrative Rules by failing to pay foster care maintenance payments sufficient to comply with its obligations under the Adoption Assistance and Child Welfare Act of 1980, as amended, codified as Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679c (the “**Child Welfare Act**”), resulting in damages to resource caregivers and foster children;

² Members of the Beneficiary Group do not directly receive maintenance payments from the State.

d. violation by the State of Chapter 17-1620 of the Hawaii Administrative Rules by failing to pay adequate monthly adoption assistance payments as a result of DHS' policy of limiting its adoption assistance payments to the amount of its foster care maintenance payment rates;

e. violation by the State of Chapter 17-1621 of the Hawaii Administrative Rules by failing to pay adequate permanency assistance payments as a result of DHS' policy of limiting permanency assistance payments to the amount of its foster care maintenance payment rates;

f. violation by the State of Haw. Rev. Stat. § 346-17.4 by failing to pay adequate higher education board payments as a result of DHS' policy and practice of limiting higher education board payments authorized by Section 346-17.4 to the amount of its foster care maintenance payment rates, resulting in damages to eligible members of the Higher Education Group equal to the shortfall in payments; and

g. failure by the State to assure the continuing appropriateness of its foster care maintenance payment rates by conducting periodic reviews but knowingly failing to establish adequate payment rates, resulting in the denial of Plaintiffs' rights under federal and state law; and

WHEREAS, the Second Amended Complaint seeks damages from the State for the alleged contract breaches and statutory and rules-based violations described therein; and

WHEREAS, Raynette Ah Chong, on behalf of a separate putative class of Hawaii-licensed foster care providers, filed a class action complaint for declaratory and permanent injunctive relief against Patricia McManaman,³ in her official capacity as the Director of the Hawaii Department of Human Services, in an action entitled *Ah Chong v. McManaman*, Civ. No. 13-00663 LEK-KSC, in the United States District Court for the District of Hawai'i (the "Federal Lawsuit"), on December 3, 2013, as amended on April 30, 2014; and

WHEREAS, some of the issues in this State Lawsuit overlap with the issues in the Federal Lawsuit (primarily, whether DHS provides foster care maintenance payments adequate to cover the cost of and the cost of providing basic necessities to children in Hawaii's foster care system and whether DHS' periodic review of the foster care maintenance payments results in the establishment of appropriate payment rates); and

WHEREAS, from approximately 1990 until June 2014, Hawaii's basic foster board rate was \$529 per child, per month for all foster children; and

³ Pankaj Bhanot has been substituted as defendant in the Federal Lawsuit pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 25(d).

WHEREAS, effective July 1, 2014, DHS increased the basic foster care board rate (“Basic Board Rate”), based on the age of the foster child, to: \$576 (children ages 0-5); \$650 (children ages 6-11); and \$676 (children ages 12+); and

WHEREAS, in addition to the Basic Board Rate, there are additional payments and benefits available for the care of foster children (“Foster Care Related Payments and Benefits”), depending on the needs of the child; and

WHEREAS, DHS’ position is that its existing system of a Basic Board Rate plus Foster Care Related Payments and Benefits complies with the Child Welfare Act, and DHS also takes the position that having certain payments or benefits available only if the child needs them, and requiring resource caregivers (foster parents) to apply for certain payments and benefits complies with the Child Welfare Act; and

WHEREAS, Plaintiffs’ position is that the DHS’ Basic Board Rates are still inadequate because they were set in 2014 using a 2011 government (USDA) study on the cost of raising children across the United States (and used cost estimates for families living in the Urban West region rather than Hawai`i), and because the Basic Board Rates utilized less than 100% of the estimated costs of food; housing; and miscellaneous expenses rather than all eight items listed in the Child Welfare Act; and

WHEREAS, Plaintiffs’ position is that DHS’ system of providing Foster Care Related Payments and Benefits is inadequate because the payments and benefits (1) are not provided to all foster children, (2) are subject to eligibility requirements, (3) are subject to availability of funds, and (4) many foster families simply are not aware that these additional payments and benefits exist or that DHS is required to cover certain costs that DHS claims are covered through the Foster Care Related Payments and Benefits; and

WHEREAS, the Parties do not agree on (1) the extent of DHS’ obligations under the Child Welfare Act; (2) the sufficiency of the Basic Board Rate; (3) the value or adequacy of the Foster Care Related Payments and Benefits; (4) whether DHS provides adequate information to resource caregivers regarding the availability of the Foster Care Related Payments and Benefits; (5) whether DHS provides adequate opportunity for resource caregivers to apply for the Foster Care Related Payments and Benefits; and (6) whether DHS conducts periodic reviews that assure the continuing appropriateness of its foster care maintenance payment rates; and

WHEREAS, because of the overlapping issues in the State Lawsuit and the Federal Lawsuit, the State Lawsuit was placed on hold while the parties in the Federal Lawsuit extensively litigated the issue of the adequacy of DHS’ foster care maintenance payments (among other things, engaging in substantial

discovery, including production of thousands of pages of documents, depositions, and expert discovery); and

WHEREAS, in December 2015, the Federal Court ruled that federal law did not prohibit DHS' system of providing foster care maintenance payments through a Basic Board Rate plus additional Foster Care Related Payments and Benefits, and that the foster care maintenance payment system could possibly be sufficient if DHS provides resource caregivers with sufficient information about the Foster Care Related Payments and Benefits and sufficient opportunities to apply for them; and

WHEREAS, the Federal Court also ruled that the "shelter" expense in the Child Welfare Act's definition of "foster care maintenance payments" need not include mortgage payments, rent, property taxes, or other similar expenses;⁴ and

WHEREAS, the Federal Court did not rule on certain key issues, and saved them for trial in the Federal Lawsuit, including:

- (1) whether DHS adequately conducts periodic reviews of the foster care maintenance payments to assure their continuing appropriateness, as required by law;
- (2) whether DHS provided and provides adequate information to resource caregivers about the Foster Care Related Payments and Benefits;
- (3) whether DHS provided adequate opportunities to resources caregivers to apply for the Foster Care Related Payments and Benefits;

and, if the Court answered (2) and (3) in the affirmative, then

- (4) whether DHS' foster care maintenance payment system of Basic Board Rate-plus-Foster Care Related Payments and Benefits adequately covered the cost of (and the cost of providing) the basic necessities of children in Hawaii's foster care system, as required by the Child Welfare Act; and

WHEREAS, Plaintiffs in the Federal Lawsuit strenuously disagreed with the Federal Court's rulings and strongly believe that these rulings would be reversed on appeal; and

⁴ It is Defendant's position that the Federal Court's ruling on "shelter expense" significantly lessened Plaintiffs' chances of prevailing on their assertion that DHS does not pay enough for the items enumerated in the Child Welfare Act because, while the ruling confirmed that DHS need not pay for rent, mortgage, or similar expenses, DHS' calculation of the Basic Board Rates in fact took such costs into account because a large portion of the "housing" category of the USDA report includes such costs.

WHEREAS, the State's position is that if Plaintiffs in the Federal Lawsuit could not show that the foster care maintenance payments were inadequate, then the Parent Group and Higher Education Group in the State Lawsuit also could not show that their respective payments were inadequate; and

WHEREAS, the State's position is that discovery in the Federal Lawsuit indicated that even if resource caregivers could prove that the foster care maintenance payments were inadequate, the Beneficiary Group were unlikely to be able to prove damages separate from the resource caregivers (because resource caregivers likely supplemented the shortfall in the State's alleged inadequate foster care maintenance payments from their own income in order to lessen the damages suffered by their foster, adoptive, and permanency placements due to the alleged inadequate payments); and

WHEREAS, the State believes it has meritorious defenses, including sovereign immunity, failure of the Plaintiffs to state a claim upon which relief can be granted, statute of limitations, and lack of standing; and

WHEREAS, the ultimate outcome of the Federal Lawsuit was uncertain and the Parties disagree on the impact and effect of the Federal Court's rulings on the State Lawsuit; and

WHEREAS, shortly before trial in the Federal Lawsuit was scheduled to commence on August 23, 2016, the Parties engaged in settlement discussions through their respective counsel, with the assistance of the Honorable Kevin S.C. Chang, Magistrate Judge of the United States District Court for the District of Hawai'i; and

WHEREAS, the State insists that both the Federal Lawsuit and State Lawsuit must be resolved together; and

WHEREAS, the State denied and continues to deny any and all liability and damages to Plaintiffs with respect to the claims or causes of action asserted in the State Lawsuit and the Federal Lawsuit, but nonetheless acknowledges that bringing the cases to a close now through settlement—rather than after years of litigation and appeals, with uncertain outcomes and concomitant attorneys' fees and costs that would be incurred by both sides—would help move the Parties toward a better working relationship for the benefit of all children in Hawaii's foster care system, and the relief Defendant agrees to provide under this State Settlement Agreement is offered solely as a compromise, and not because Defendant believes DHS has any obligation to Plaintiffs to provide said relief; and

WHEREAS, in light of the Federal Court's rulings and their uncertain impact on the State Lawsuit, the opinions of the parties' experts, and the attorneys' fees and costs that all Parties would continue to expend, and in the interest of bringing these matters to a resolution, the Parties and counsel agree that a

limited, one-time payment to be made only to certain Settlement Class Members (the Payment Recipients), is an appropriate means of settling this case; and

WHEREAS, Plaintiffs and their counsel have analyzed, evaluated, and extensively litigated the merits of the claims made against Defendants in the State Lawsuit and the Federal Lawsuit and the impact of settlement (as well as the impact of not settling) on Plaintiffs, the members of the Federal Class, and members of the putative State Class and—recognizing the substantial risks of continued litigation, including the possibility that the State Lawsuit, if not settled now, might result in an outcome that is less favorable or that a fair and final judgment may not occur for several years—Plaintiffs and their counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interests of all the members of the putative class; and

WHEREAS, the Parties reached a proposed comprehensive settlement of the State and Federal Lawsuits and, on August 26, 2016, the Parties in the State Lawsuit and the parties in the Federal Lawsuit agreed to the essential terms of a valid and binding settlement agreement, which was placed on the record before the Honorable Kevin S.C. Chang at a hearing held in the Federal Lawsuit; and

WHEREAS, the settlement placed on the record on August 26, 2016, was subsequently memorialized in written settlement agreements dated effective March 14, 2017; and

WHEREAS, the written settlement agreements stated that the settlement was contingent upon the appropriation of funds to make the payments described therein, and if such legislation was not enacted on or before June 30, 2017, unless such date was mutually agreed to be extended by the parties, the agreements shall automatically become null and void; and

WHEREAS, the Hawaii Legislature did not appropriate the funds for the settlement on or before the June 30, 2017 deadline; and

WHEREAS, the Parties desire to extend the deadline by which the Hawaii Legislature may fund the Settlement, as amended by this State Settlement Agreement and the Amended Federal Lawsuit Class Action Settlement Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this State Settlement Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the State Lawsuit on the following terms and conditions:

TERMS OF AGREEMENT

I. Definitions

A. In addition to the definitions contained in the foregoing Recitals, the following definitions shall apply:

1. **“Administration Costs”** shall mean only the reasonable cost to typeset, print, and mail the Class Notice to the Settlement Classes; the reasonable cost to process requests to opt-out of the Settlement Classes; and the reasonable cost to prepare and mail Settlement Payments to the Payment Recipients.

2. **“Amount Payable to Each Payment Recipient”** shall mean the amount prescribed in section IV.b. below.

3. **“Class Counsel”** shall mean:

Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800,
Honolulu, Hawaii 96813; and

Hawaii Appleseed Center for Law and Economic Justice, 119
Merchant Street, Suite 605, Honolulu, Hawaii 96813.

Plaintiffs’ counsel shall request that the Court appoint them as class counsel (or order that they continue to serve as class counsel) pursuant to HRCF Rule 23 to represent the Settlement Classes for purposes of this State Settlement.

4. **“Class Notice”** shall mean a document substantially in the form of the Notice attached hereto as Exhibit 1 which has been agreed to by the Parties subject to Court approval and which the Notice Administrator will mail to each Settlement Class Member explaining the terms of the Settlement, and the opt-out and objection processes.

5. **“Class Settlement Amount”** shall mean an amount no greater than \$2,341,103.10. The Class Settlement Amount is based on \$35 per month per foster child, child in permanent custody/legal guardianship, adoptive child with special needs, and former foster youth in the higher education program, for whom DHS made monthly payments for the time period July 1, 2013 to June 30, 2014 (which is the State’s 2014 fiscal year), pro rated for actual days in care. The Class Settlement Amount is the maximum amount the State is required to pay under this State Settlement Agreement.

6. **“Contact Information”** shall mean the most current information DHS then has available of a Settlement Class Member’s name and mailing address.

7. **“Court”** shall mean the Circuit Court of the First Circuit, State of Hawaii, the Honorable Virginia L. Crandall, presiding (or her successor).

8. **“Day”** shall mean a calendar day.

9. **“Fairness Hearing”** shall mean the hearing on the Motion for Final Approval of Settlement.

10. **“Federal Settlement Agreement”** shall mean the Amended Federal Lawsuit Class Action Settlement Agreement that embodies the terms of the settlement of the Federal Lawsuit.

11. **“Federal Court”** shall mean the United States District Court for the District of Hawaii. The presiding Judge in the Federal Lawsuit is the Honorable Leslie E. Kobayashi.

12. **“Final Approval”** shall mean the occurrence of the following:

Following the Fairness Hearing, the Court has issued an order approving the Settlement, and

- i. The time for appellate review and review by petition for certiorari has expired, and no notice of appeal has been filed; or
- ii. If appellate review or review by petition for certiorari is sought, after any and all avenues of appellate review have been exhausted, and the order approving settlement has not been modified, amended, or reversed in any way.

13. **“Legislation Enactment Deadline”** shall mean June 30, 2018, or such later time period as the Parties may agree to in writing.

14. **“Monthly Adoption Assistance Payments”** shall mean monthly subsidy payments made by DHS to adoptive parents of children with special needs under 42 U.S.C. § 673(a) and/or under Haw. Admin. R. § 17-1620-9.

15. **“Monthly Foster Care Maintenance Payments”** shall mean monthly payments made by DHS to licensed resource caregivers under 42 U.S.C. § 672 and/or under Haw. Admin. R. § 17-1617-3.

16. **“Monthly Higher Education Payments”** shall mean monthly payments made by DHS to or on behalf of eligible former foster youth under Haw. Rev. Stat. § 346-17.4

17. **“Monthly Permanency Assistance Payments”** shall mean monthly payments made by DHS to legal guardians or permanent custodians under 42 U.S.C. § 673(d) or Haw. Admin. R. § 17-1621-9.

18. **“Motion for Final Approval of Settlement”** shall mean the motion to be filed by Plaintiffs, the State, or the Parties jointly, seeking the Court’s final approval of the Settlement, which shall include a report on requests to opt-out of and on objections to the Settlement.

19. **“Named Plaintiffs”** shall mean the named plaintiffs in the State Lawsuit: Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, Tiare Holm, B.S., and T.B., a minor, by her Next Friend N.A.

20. **“Net Settlement Amount”** shall mean the Class Settlement Amount minus the combined total of any attorneys’ fees and costs approved by the Court and actual Administration Costs. The Net Settlement Amount is the amount that shall be distributed to Payment Recipients on a pro rata per child/per day basis pursuant to section IV, below.

21. **“Notice Administrator”** shall mean DHS (or, if DHS is unable or unwilling to perform the duties of the Notice Administrator, such other mutually agreed-upon entity). The Notice Administrator shall be responsible for sending the court-approved Class Notices to the Settlement Classes, and may utilize the services of a copy/mail vendor.

22. **“Opt-Out Letter”** refers to a written request to opt-out or exclude oneself from the Settlement sent by any Settlement Class Member who elects to be excluded from a Settlement Class. A Settlement Class Member must submit a valid and timely Opt-Out Letter to exclude himself or herself from the Settlement and from the release of claims pursuant to this Settlement.

23. **“Parties”** shall mean the Named Plaintiffs, Settlement Class Members, and the State.

24. **“Payment Administrator”** shall mean the Hawaii Department of Accounting and General Services, the agency that the Parties agree will issue checks for Settlement Payments to each Payment Recipient under this State Agreement (unless DAGS determines the funds should be distributed through some other entity)

25. **“Payment Recipients”** shall mean those Settlement Class Members who have not opted out of the Settlement and who are entitled to receive a payment pursuant to section IV below.

26. **“Preliminary Approval”** shall mean that the Court has entered a Preliminary Approval Order or orally granted Plaintiffs’ Motion for Preliminary Approval.

27. **“Preliminary Approval Order”** shall mean an order entered by the Court substantially in the form attached hereto as Exhibit 2 preliminarily

approving the terms set forth in this State Settlement Agreement, including the manner and timing of providing notice to the Classes, the time period for opting out or for submitting objections, and the date, time and location for a Fairness Hearing.

28. “**Releasees**” shall mean the State of Hawaii, DHS, the Director of Human Services, other Hawaii departments, agencies, directors, officers, agents, employees, representatives, insurers, attorneys, administrators, and all other persons acting on behalf of the State of Hawaii.

29. “**Settlement**” shall mean the compromise and settlement of the State Lawsuit as contemplated by this State Settlement Agreement.

30. “**Settlement Classes**” shall mean the two classes identified for the purposes of this State Agreement: the Parent Settlement Class and the Higher Education Settlement Class, subject to class certification by this Court.

31. “**Settlement Class Members**” shall mean the members of the Settlement Classes.

32. “**Settlement Payment**” shall mean the pro rata portion of the Net Settlement Amount that is to be paid to each Payment Recipient pursuant to this State Settlement Agreement.

33. “**State Settlement Agreement**” shall mean this Amended State Lawsuit Class Action Settlement Agreement.

II. Settlement Classes

There shall be two Settlement Classes: the Parent Settlement Class, and the Higher Education Settlement Class. Although the Second Amended Complaint does not set forth a Higher Education Class, the Higher Education class is separately established because the interests of the Higher Education Settlement Class are different from the interests of the putative class of beneficiaries pleaded in the Second Amended Complaint in that the Higher Education Settlement Class members are likely to be Payment Recipients.

1. Parent Settlement Class

The Parent Settlement Class shall consist of

- (a) all licensed resource caregivers in Hawaii (foster parents) who received Monthly Foster Care Maintenance Payments from DHS from August 7, 2012 (two years prior to the filing of the State Lawsuit) through March 20, 2018; and

(b) all legal guardians and permanent custodians who received Monthly Permanency Assistance from DHS from August 7, 2012 through March 20, 2018; and

(c) all adoptive parents of children with special needs who received Monthly Adoption Assistance Payments from DHS from August 7, 2012 through March 20, 2018.

The representatives of the Parent Settlement Class shall be Patrick Sheehy, Patricia Sheehy, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, and Tiare Holm. Plaintiffs' counsel shall seek the Court's appointment (or the continued appointment) of these individuals to be the representatives of the Parent Settlement Class.

2. Higher Education Settlement Class

The Higher Education Settlement Class shall consist of all individuals who received Monthly Higher Education Payments from DHS from August 7, 2012 (two years prior to the filing of the State Lawsuit) through March 20, 2018.

The representative of the Higher Education Settlement Class shall be Brittany Sakai, the individual identified in the Second Amended Complaint by the initials "B.S." Class Counsel shall seek the Court's appointment (or the continued appointment) of Ms. Sakai to be the representative of the Higher Education Settlement Class.

The Parties and Class Counsel agree that, if approved, certification (or the continued certification) of the Settlement Classes is a conditional certification for settlement purposes only, and if for any reason the Court does not grant final approval of the Settlement, or if for any other reason the Settlement does not become effective, the certification of the Settlement Classes for settlement purposes shall be deemed null and void without further action by the Court or any of the Parties, each Party shall retain their respective rights and shall be returned to their relative legal positions as they existed prior to execution of this State Settlement Agreement, and neither this Agreement nor any of its accompanying exhibits or any orders entered by the Court in connection with this Agreement shall be admissible or used for any purpose in the State Lawsuit or the Federal Lawsuit.

The Parties and Class Counsel agree that, if approved, certification of the Settlement Classes for settlement purposes is in no way an admission by the State that class certification is proper in any other litigation against the State.

III. Legislation

The Parties agree that this State Settlement Agreement is contingent on the enactment of legislation by the Hawaii Legislature to authorize the

appropriation of monies to fund the Class Settlement Amount in order to fund the Settlement Payments to the Payment Recipients pursuant to this State Settlement Agreement. The Parties agree that enactment of this legislation is material and essential to this Agreement and that if such legislation is not enacted into law by the Legislation Enactment Deadline, unless such date is mutually agreed by the Parties in writing to be extended, the global settlement of the State Lawsuit and the Federal Lawsuit shall automatically become null and void, trial in the Federal Lawsuit shall commence, and the State Lawsuit shall also proceed. In the event this State Settlement Agreement becomes null and void, nothing herein may be used against any Party for any purpose.

IV. Payments

1. Subject to other terms and conditions of this State Settlement Agreement, and in consideration of the releases and dismissals set forth in this Agreement, and subject to Court approval, the State agrees that the Class Settlement Amount shall be a maximum of \$2,341,103.10, which shall be paid as follows:

- a. Attorneys' fees and costs approved by the Court and Administration Costs shall first be deducted from the Class Settlement Amount to determine the Net Settlement Amount.
- b. The Net Settlement Amount shall be paid to the following individuals who have not validly and timely opted out of this Settlement in the following amounts: those members of the Parent Settlement Class and the Higher Education Settlement Class who received monthly foster care maintenance payments, monthly adoption assistance payments, monthly permanency assistance payments, or monthly higher education payments from DHS during the time period July 1, 2013 to June 30, 2014, prorated by actual days that the foster child, adoptive child, or child in permanent placement/legal custody was in care or a young adult was receiving higher education payments. The records of DHS shall be the source of information to determine which Settlement Class Members are eligible to receive payments under this State Agreement. The individuals eligible to receive payments pursuant to this sub-paragraph are referred to as the Payment Recipients. In the event a child was placed in the care of more than one person (e.g., a married couple) at a given time, nevertheless notice shall only be provided and any payments shall be made solely to the individual who is listed in DHS' records as the payee for that household (i.e., the person to whom checks are made payable when made to that household). Negotiation of the payment

check by one shall constitute a full and final discharge of the State's responsibility to both persons in that household.

- c. Payment checks issued to Payment Recipients pursuant to this State Settlement Agreement shall remain negotiable for the amount of time stated on the check. Any checks not negotiated within the time stated on the check will be subject to DAGS' usual procedures for handling uncashed checks. Payment Recipients who fail to negotiate their check(s) in a timely fashion shall, like all Settlement Class Members who did not validly and timely opt out of the Settlement, remain subject to the terms of the Settlement, including the releases set forth herein.

2. Other than the Settlement Payments described in sub-paragraph IV.1.b, above, no other payments to Settlement Class Members shall be made. ***In other words, there are members of the Settlement Classes who will not receive any payments under the terms of this Settlement.***

V. Releases

The Plaintiffs, including all Settlement Class Members, hereby release, acquit, and discharge Releasees from any and all claims, causes of action, rights, obligations, liabilities, penalties, demands, damages, costs (other than those costs to be paid pursuant to this State Settlement Agreement), requests for declaratory relief, or requests for injunctive relief of any and every kind that were alleged, sought, or litigated, or that could have been alleged sought, or litigated against the State in the State Lawsuit.

VI. Attorneys' Fees and Costs

1. By such date as the Court directs, Class Counsel may file a motion for an award of attorneys' fees and costs, which shall be paid from the Class Settlement Amount. Class Counsel may include the request for fees and costs within the Motion for Preliminary Approval. The State shall not oppose Class Counsel's application for an award of attorneys' fees and costs so long as it does not exceed 20% of the Class Settlement Amount, which amount is intended to cover all attorneys' fees and costs necessary to settle the State Lawsuit and administer this Settlement. The amount of attorneys' fees and costs that may be requested by Class Counsel is based on the agreement between Class Counsel and Plaintiffs ("**Retainer Agreement**"), a true and correct copy of which is attached as Exhibit 3, and does not exceed said agreement in that it reflects 20% of the Class Settlement Amount, whereas the Retainer Agreement expressly sets 25% of the total recovery as the presumptive "benchmark" against which the value of Class Counsel's services is to be

evaluated. See Exhibit 3 at Statement of Client Service and Billing Policies in Contingency Litigation Matters at Section A.

2. Class Counsel agree that they are responsible for allocating the attorneys' fees and costs approved by the Court among themselves and any other counsel that may have any other agreement with them. Class Counsel warrant and represent that there are no liens on the amounts to be paid pursuant to the terms of this State Agreement and that no assignments of the claims to be released or the attorneys' fees and costs to be paid pursuant to this State Agreement have been made or attempted.

In addition to class member relief, Named Plaintiffs may request approval to be provided reasonable service awards for themselves and former named plaintiff T.B. in recognition of the services each rendered on behalf of the class ("Service Award"). These Service Awards are intended to recognize the Named Plaintiffs for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards will be deducted from the Court's award of attorneys' fees and costs to Class Counsel. In other words, the Service Awards will not reduce the Net Settlement Amount. Defendant will not in any way be responsible for making any service payments or other payments to the Named Plaintiffs.

3. In the event the Court does not approve in full the amount requested by Class Counsel for attorneys' fees and costs, that finding shall not be a basis for rendering the entire Settlement or this State Settlement Agreement null, void, or unenforceable.

VII. Court Approval of Settlement; Processes for Settlement Class Members to Opt-Out of or Object to Settlement

1. **Motion for Preliminary Approval.** Plaintiffs shall file a motion for preliminary approval by the Court of the Settlement and this State Settlement Agreement at such time as the Court may direct, and attach a copy of this State Settlement Agreement and such other documents the Parties determine are necessary for the Court's consideration. The motion shall request preliminary approval of the Settlement, the State Settlement Agreement, and the Class Notice, and shall request that the Court certify the Settlement Classes, appoint the Class Representatives and Class Counsel, and specify the procedure required for the Court's final consideration of the Settlement, including the scheduling of the Fairness Hearing. The motion for preliminary approval may, but need not, include Class Counsel's request for attorneys' fees and costs.

Although Plaintiffs are responsible for filing the motion, it is intended that the Defendant will have reviewed the motion in advance and that the motion will be unopposed.

2. **Class Notice.** Within a reasonable time after Preliminary Approval, the Notice Administrator, in cooperation with Class Counsel and defense counsel, shall send the approved Class Notices to each Settlement Class Member by U.S. mail postage prepaid in accordance with the terms of the Preliminary Approval Order. DHS shall provide the Notice Administrator (if not DHS) and Class Counsel with Contact Information for all Settlement Class Members in each Settlement Class (the “Class List”).

DHS shall send to Payment Recipients and non-Payment Recipients a different form of Class Notice, depending on which category the Class Member falls into.

In the event a child was placed in the care of more than one person (e.g., a married couple) at a given time, Class Notice shall be sent to one address addressed to the person who is designated in DHS’ records as the payee, i.e., the person to whom payments are made when checks are issued by DHS to that household. Notice to the one member of a two-person household shall constitute sufficient and adequate notice to the household.

The determination of who is within each Settlement Class (and therefore entitled to notice) shall be made by DHS based on the data kept by DHS in the ordinary course of its business. The Parties agree that the contents of the Class List are confidential and shall not be shared with third parties other than the Notice Administrator (if not DHS) and any vendor retained by DHS to perform copying and mailing functions, and shall not be filed in Court unless the Court so orders.

Prior to mailing the Notices, the Notice Administrator shall process the Class List against the National Change of Address Database maintained by the United States Postal Service (“USPS”). If a Notice is returned as undeliverable, and if a forwarding address is provided by the USPS, the Notice Administrator shall re-mail the Notice within three (3) business days. If an undeliverable Notice is returned without a forwarding address, the Notice Administrator need attempt to obtain updated addresses only for Payment Recipients by using skip tracing services agreed to by Class Counsel and defense counsel. All re-mailings to skip traced Payment Recipients must be completed no later than 20 days prior to the Opt-Out deadline. Notices shall only be re-mailed once.

Reasonable Administrative Costs incurred in typesetting, printing, and mailing the Class Notice to Settlement Class Members, processing the Class List by USPS, and performing skip tracing services shall be deducted from the Class Settlement Amount.

3. **Content of Class Notice.** The Class Notice shall contain: the definitions of the certified Settlement Classes; a general description of the State Lawsuit and its claims, issues, and defenses; material terms of this proposed State Settlement Agreement including who will and will not be Payment Recipients; Class Counsel's request for attorneys' fees and costs; Service Awards; options available to Settlement Class Members, including the manner, time limits, forum and form of an objection to this Settlement; the right of any Settlement Class Member to enter an appearance *pro se* or through an attorney to object to the State Settlement Agreement or any of its terms; the manner, time limits, and forum and form of a request to opt out of this Settlement; the website address required to be maintained by Class Counsel; the date, time, and location of the Fairness Hearing; and the binding effect of the State Settlement Agreement on Settlement Class Members who do not opt out of the Settlement. The notice shall also inform Class Members that they may also be members of the class certified in the Federal Lawsuit, which has different opt out provisions.

4. **Establishment of Website.** Class Counsel shall, at their own expense, publish information regarding the Settlement on a website, including information on how to object to or opt out of the Settlement of the State Lawsuit and the deadline to do so. The website shall also include a copy of this State Settlement Agreement, the motion for attorneys' fees and costs including a copy of the agreement between Class Counsel and Plaintiffs, key pleadings, and information regarding the Federal Lawsuit and Federal Settlement Agreement. The web address for the website shall be included in the Class Notice. The website shall remain available starting 7 days after Preliminary Approval through December 31, 2019.

5. **Opt-Out Process.** A Settlement Class Member not wanting to participate in this Settlement and not wanting to release claims pursuant to this Settlement shall submit a valid and timely Opt-Out Letter.

a. To be valid, the Opt-Out Letter shall contain a statement which clearly conveys a request to be excluded from the Settlement Class, the individual's full name, mailing address, telephone number, and must be signed and dated.

b. To be timely, the Opt-Out Letter must be postmarked by the date indicated in the Notice, 45 days after the Notice is first mailed to Settlement Class Members. However, those Settlement Class Members who are mailed a new Notice after their original Notice was returned to sender shall have until the later of 14 calendar days from the date that the new Notice was postmarked or the original opt-out deadline to submit an Opt-Out Letter. No Opt-Out Letter will be honored if postmarked after the deadline set forth in this paragraph.

All Opt-Out Letters shall be sent to Class Counsel, who shall compile a list of the persons who have validly and timely opted out and submit the list to the Court under seal prior to the Fairness Hearing, with a copy to counsel for the State. Opt-Out Letters shall be made available for inspection by the Court or counsel for the State promptly upon request.

A Settlement Class Member who is entitled to a payment under this State Settlement Agreement because that person meets the definition of “Payment Recipient” but who submits an Opt-Out Letter shall not be paid, and forever waives their right to receive, a share of the Net Settlement Amount. In the event a child was placed in the care of more than one person (e.g., a married couple) at a given time, the submission of a valid and timely Opt-Out Letter by one of those persons shall constitute the submission of a valid and timely Opt-Out Letter by both persons, and both will be deemed to have waived their right to receive a share of the Net Settlement Amount.

No Opt-Out by any Settlement Class Member shall be the basis for rendering settlement of the State Lawsuit or Federal Lawsuit null and void.

6. Objections to Settlement or to Request for Attorneys’ Fees and Costs. A Settlement Class Member who wishes to object to this State Agreement, the Settlement, to Class Counsel’s request for attorneys’ fees and costs, or to the Service Awards must timely file with the Clerk of the Court and serve on the Parties a statement of their objection, and whether the Settlement Class Member intends to appear at the Fairness Hearing. Settlement Class Members who are minors may submit their objections through Class Counsel, who shall file the objections under seal, and submit the substance of the objections (without identifying information) in a filed document.

Any Settlement Class Member may appear at the Fairness Hearing to object to any aspect of this State Settlement Agreement, the Settlement, or Class Counsel’s motion for attorneys’ fees and costs. Settlement Class Members may act either on their own or through counsel employed at their own expense.

To be considered timely, a Settlement Class Member’s objection must be postmarked on or before the date that is 45 days after the Notice is first mailed to the Settlement Classes. Those Settlement Class Members who are mailed a new Notice after their original Notice was returned to sender shall have the later of 14 calendar days from the date that the new Notice was postmarked, or the original objections deadline, to submit their objections. Nothing in this paragraph requires the Notice Administrator to send a new Notice if the original Notice is returned to sender.

Settlement Class Members who fail to file and serve timely written objections or who do not appear at the Fairness Hearing and make objections shall be

deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

7. **Fairness Hearing.** On a date to be determined by the Court, the Court shall hold a Fairness Hearing. At the Fairness Hearing, the Parties will request that the Court:

- a. Consider any objections by Settlement Class Members;
- b. Give Final Approval to the Settlement as fair, reasonable, and adequate, and binding on those Settlement Class Members who did not validly and timely submit Opt-Out Letters.
- c. Determine the amount of the award of attorneys' fees and costs for Class Counsel;
- d. Determine the Net Settlement Amount to be distributed to Payment Recipients.

8. **Effect of Failure to Grant Final Approval.** In the event the Settlement and this State Settlement Agreement are not granted Final Approval, they shall be deemed null, void, and unenforceable and shall not be used or admissible in any subsequent proceedings against the State either in State Court or in any other judicial, arbitral, administrative, investigative, or other forum; trial in the Federal Lawsuit shall commence, and the State Lawsuit shall proceed. In the event the Settlement and this State Settlement Agreement are not approved by the Court, or otherwise fail to become effective and enforceable, the State will not be deemed to have waived, limited, or affected in any way its objections or defenses to the State Lawsuit.

9. **Court Enforcement:** The State Court retains jurisdiction to enforce the terms of this State Settlement Agreement.

VIII. Distribution Process

1. No claim form shall be required of Payment Recipients to be entitled to payments. Their entitlement to a settlement payment shall be based on DHS' records and eligibility under the definition of "Payment Recipients" set forth herein, provided they do not submit a valid and timely Opt-Out Letter.

2. Payments to Payment Recipients as provided in this State Settlement Agreement shall be dispersed by the State by check within a reasonable time after the funds are appropriated and allotted, if the funds to be paid under this State Settlement Agreement are appropriated, bearing in mind the overall number of checks that must be processed and the time of year, shortly after the start of the new state fiscal year. Payments may be processed in manageable batches, rather than all at once.

3. Likewise, payment to Class Counsel of attorneys' fees and costs that have been approved by the Court shall be dispersed by the State within a reasonable time after the funds have been appropriated, bearing in mind the overall number of checks to be processed for this Settlement and the time of year, shortly after the start of the new state fiscal year. Class Counsel shall deliver to counsel for the State written instructions signed by Class Counsel (by an authorized representative of each law firm) that describe to whom a check for attorneys' fees and costs shall be made payable, and a fully-executed Form W-9 with respect to the entity to whom the attorneys' fees and costs shall be paid (along with other documents or information the Department of Accounting and General Services may require to lawfully effectuate the payment). The State will issue to Class Counsel an IRS Form 1099 for such amounts paid for attorneys' fees and costs under this Settlement. If there is a reduction in the amount of attorneys' fees and/or costs sought by or awarded to Class Counsel, any such reduction shall revert to the Net Settlement Fund.

4. No later than 14 days after the Net Settlement Fund is distributed by the initial mailing of checks to Payment Recipients (whether or not the payment checks are received by or negotiated by Payment Recipients), the Parties will submit to the Court a stipulated dismissal with prejudice, which shall include a dismissal of Named Plaintiff T.B.'s claims, including any claims that are asserted on behalf of a putative class of beneficiaries, which class will not be certified.

5. No interest shall accrue on any payments to be made under this State Settlement Agreement.

IX. Additional Provisions

1. The rule of construction that an agreement is to be construed against the drafting party is not to be applied in interpreting this State Settlement Agreement. The Parties acknowledge that they have read this State Settlement Agreement, that they understand its meaning and intent, that they have executed it voluntarily and with opportunity to consult with legal counsel, and have participated and had an equal opportunity to participate in the drafting and approval of drafting of this State Settlement Agreement. No ambiguity shall be construed against any party based upon a claim that the party drafted the ambiguous language. This State Settlement Agreement contains all essential terms of the settlement the Parties have reached. While other documents may be prepared hereafter to further effectuate the provisions hereof, the Parties intend that this State Settlement Agreement is a valid, binding agreement, enforceable by the Court.

2. **Cooperation Between the Parties.** The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's approval of this State Settlement Agreement and all of its terms.

3. **No Third-Party Beneficiaries.** This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary of this State Settlement Agreement.

4. The respective signatories to this State Settlement Agreement each represent that they are fully authorized to enter into this State Settlement Agreement and bind the respective Parties to its terms and conditions. This Agreement may be executed in counterparts.

SIGNATURES

Wherefore, intending to be legally bound in accordance with the terms of this State Settlement Agreement, the Parties hereby execute this State Settlement Agreement, effective on April 3, 2018, 2018, which is the date on which the last signatory signed this State Settlement Agreement.

FOR PLAINTIFFS:



Alston Hunt Floyd & Ing,
Class Counsel

Hawai'i Appleseed Center
for Law and Economic Justice,
Class Counsel

FOR DEFENDANT:

Donna H. Kalama
Caron M. Inagaki
Deputy Attorneys General

3. **No Third-Party Beneficiaries.** This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary of this State Settlement Agreement.

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SIGNATURES

Wherefore, intending to be legally bound in accordance with the terms of this State Settlement Agreement, the Parties hereby execute this State Settlement Agreement, effective on _____, 2018, which is the date on which the last signatory signed this State Settlement Agreement.

FOR PLAINTIFFS:

Alston Hunt Floyd & Ing,
Class Counsel



Hawai'i Appleseed Center
for Law and Economic Justice,
Class Counsel

FOR DEFENDANT:

Donna H. Kalama
Caron M. Inagaki
Deputy Attorneys General

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SIGNATURES


Wherefore, intending to be legally bound in accordance with the terms of this State Settlement Agreement, the Parties hereby execute this State Settlement Agreement, effective on _____, 2018, which is the date on which the last signatory signed this State Settlement Agreement.

FOR PLAINTIFFS:

Alston Hunt Floyd & Ing,
Class Counsel

Hawai'i Appleseed Center
for Law and Economic Justice,
Class Counsel

FOR DEFENDANT:



Donna H. Kalama
Caron M. Inagaki
Deputy Attorneys General

FIRST CIRCUIT COURT FOR THE STATE OF HAWAII

A state court authorized this notice. This is not a solicitation from a lawyer.

**NOTICE OF AMENDED SETTLEMENT IN THE STATE LAWSUIT
ABOUT FOSTER BOARD PAYMENTS, PERMANENCY ASSISTANCE,
ADOPTION ASSISTANCE, AND HIGHER EDUCATION PAYMENTS**

In 2017, a notice was sent to Hawaii foster care providers, legal guardians/permanent custodians, adoptive parents of children with special needs, and higher education payment recipients about a settlement in a state class action lawsuit over Hawaii's board payments. The 2017 settlement would have provided a \$2.3 million fund to be used to make payments to those class members who received payments from the Hawaii Department of Human Services (DHS) between July 1, 2013 and June 30, 2014 (payment recipients); to pay court-appointed lawyers for investigating the facts, litigating the case, and negotiating the settlement; and to pay certain costs to administer the settlement. The 2017 settlement failed because the Hawaii Legislature did not provide the money needed to fund the settlement.

In March 2018, the Parties agreed to amend the settlement by extending the deadline for the Legislature to fund the settlement to June 30, 2018. This 2018 settlement will still include the \$2.3 million fund, and payments will still be made to class members who are payment recipients. The Legislature is not required to provide money for the settlement. If the Legislature chooses not to fund the settlement again, the lawsuit will continue.

**DHS' RECORDS INDICATE YOU ARE NOT A PAYMENT RECIPIENT, THEREFORE
YOU WILL NOT RECEIVE A PAYMENT UNDER THE SETTLEMENT.**

Your options in response to the proposed 2018 settlement are as follows:

- 1) You may do nothing. If you do nothing, you will be part of the settlement, which means you are giving up any claims you could have brought against the State that were made part of this lawsuit.
- 2) You may object to the 2018 settlement if you disagree with any of the terms. The deadline to postmark your objection letter is **May 28, 2018**. You may also tell the court your objections in person at the fairness hearing scheduled for **June 15, 2018**. You must tell the court in advance that you intend to come to the hearing by sending a notice of intent to appear postmarked by **May 28, 2018**.
- 3) You may exclude yourself from (opt out of) the 2018 settlement. This is the only option that allows you to ever be part of any other lawsuit against the State about the legal claims made in this case. The deadline to postmark your exclusion letter is also **May 28, 2018**.

If you sent in an objection letter or an exclusion letter for the 2017 settlement, you don't have to send another letter for the 2018 settlement.

Your legal rights are affected whether or not you act. Read this notice carefully.

PLEASE DO NOT CALL THE COURT WITH YOUR QUESTIONS

QUESTIONS? CALL 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>.

Differences Between this Lawsuit (the State Lawsuit) and the Federal Lawsuit

This lawsuit (in state court) focuses on the adequacy of board payments made in the past. There is a separate federal lawsuit that focuses on how much DHS should be paying for foster care in the future. *If* you are also part of the federal lawsuit, you will receive another notice describing that settlement. **Your legal rights and options in the state lawsuit and the federal lawsuit are different.** If you receive both notices (state and federal), please carefully note the differences.

BASIC INFORMATION

1. What is this state lawsuit about?

Plaintiffs filed this lawsuit claiming that the State did not pay enough for monthly foster care maintenance payments, permanency assistance, adoption assistance, and higher education payments. They claimed that the payments were too low under federal law, under state law, under DHS' administrative rules, and under the terms of agreements between resource caregivers and DHS. Plaintiffs believe they are entitled to payment for damages they suffered, equal to the shortfall between the amounts DHS should have paid, and the amounts DHS actually paid.

The State denies that its payments were inadequate or that it owes Plaintiffs any compensation.

The name of this lawsuit is *Sheehey v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC. Judge Virginia Lea Crandall, of the First Circuit Court, State of Hawaii (the State Court), is currently overseeing this case.

WHO IS IN THE SETTLEMENT

2. Who are the Members of the Settlement Classes?

There are two settlement classes:

Settlement Class 1 – Parent Settlement Class: (a) all licensed resource caregivers in Hawaii (foster parents) who received monthly foster care maintenance payments from DHS from August 7, 2012 through March 20, 2018; and (b) all legal guardians and permanent custodians who received monthly permanency assistance from DHS from August 7, 2012 through March 20, 2018; and (c) all adoptive parents of children with special needs who received monthly adoption assistance payments from DHS from August 7, 2012 through March 20, 2018.

Class Representatives of the Parent Settlement Class are Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, and Tiare Holm.

Settlement Class 2 – Higher Education Settlement Class: all individuals who received monthly higher education payments from DHS from August 7, 2012 through March 20, 2018.

The Class Representative of the Higher Education Settlement Class is Brittany Sakai.

All Class Members will be bound by the settlement unless they exclude themselves. The process for excluding yourself from the settlement and the lawsuit, also called "opting out," is described below. *Not all Class Members will receive payments under this settlement.*

QUESTIONS? CALL 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>.

3. What Class or Classes am I a member of?

If you were a resource caregiver (foster parent), an adoptive parent of a former foster child, or a legal guardian/permanent custodian, who received payments from DHS between August 7, 2012, and March 20, 2018, then you are a member of Settlement Class 1 – the Parent Settlement Class.

If you are a former foster youth who received higher education program benefits between August 7, 2012, and March 20, 2018, then you are a member of Settlement Class 2 – the Higher Education Settlement Class.

DHS' records show that you are a member of at least one of these classes. Therefore, if you received this notice, you will be part of the Settlement unless you opt out.

The Class Members who are also entitled to a payment are called Payment Recipients. **DHS' RECORDS INDICATE THAT YOU ARE NOT A PAYMENT RECIPIENT.**

4. Who is entitled to payments under the Settlement?

To be entitled to a monetary payment, a Class Member must be in Settlement Classes 1 or 2, **and** must have received one or more of these types of payments from DHS during the time period July 1, 2013 to June 30, 2014:

- monthly foster board payments for foster children in their care
- monthly adoption assistance for their adoptive children with special needs
- monthly permanency assistance for children in their legal guardianship/permanent custody
- monthly higher education board allowance (must have been an eligible former foster youth)

THE SETTLEMENT BENEFITS

5. What does the Settlement provide?

The State has agreed to provide \$2,341,103.10 (Total Settlement Amount) to be divided among the Payment Recipients and to pay for Class Counsel's attorneys' fees and costs and the administrative costs for carrying out the settlement.

The \$2,341,103.10 is based on \$35 per month per foster child, child in permanent custody/legal guardianship, adoptive child with special needs, and former foster youth in the higher education program, for whom DHS made monthly payments for the time period July 1, 2013 to June 30, 2014, pro-rated for actual days in care. The time period represents the one-year period right before the foster board rates were raised in July 2014. The \$35 figure was negotiated in the settlement, and represents a compromise figure agreed to by the Class Representatives and the State.

The amount that each Payment Recipient will receive will be calculated by subtracting the amount of the costs involved in administering this settlement (for example, copying and mailing this notice to, and locating Class Members) and the attorneys' fees and costs awarded by the Court from the Total Settlement Amount of \$2,341,103.10 to arrive at a Net Settlement Amount. This Net Settlement Amount will then be distributed to Payment

QUESTIONS? CALL 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>.

Recipients based on the number of days each eligible child was in care between July 1, 2013 and June 30, 2014.

6. Will I receive a payment under the Settlement?

Based on DHS' records, **you do not meet the criteria in Question 4 and are NOT a Payment Recipient.** Thus, you will not be receiving a payment under this settlement.

7. Why won't all Class Members receive a payment?

This settlement is a compromise between the Plaintiffs and the State. The State strongly believes it has no liability to any of the Class Members and does not owe any of them any money. The State believes its position is supported by court rulings in the federal lawsuit. But the State is willing to provide some money to some of the Plaintiffs as a way to bring an end to the case rather than continue to litigate. Plaintiffs strongly believe the State should be paying more to all of the Class Members, but also understand there are serious risks in continuing to litigate this case, including the possibility that none of the Class Members may get anything. Based on the federal court's rulings, and the risks inherent in any lawsuit, both the Class Representatives and Class counsel agreed to the settlement. Both the Federal Court and State Court preliminarily ruled in 2017 that the compromise is fair.

8. Are there any conditions to this Settlement?

This settlement will not become final until the Court approves this settlement, the federal court approves the settlement of the federal lawsuit, and the Hawaii Legislature approves the money that will be needed to pay for both settlements. If the Legislature does not approve the money needed to pay for both settlements, the settlement will not go forward, and the Plaintiffs in the federal lawsuit will go to trial.

BEING PART OF THE SETTLEMENT

9. Do I need to do anything to be a part of the Settlement?

No. You do not have to do anything to be part of the Settlement Classes.

10. When will payments be made to the Payment Recipients?

The Court will hold a Fairness Hearing on **June 15, 2018**, to finalize the settlement. If the presiding Judge approves the settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them takes time, perhaps more than a year. The Hawaii Legislature must also approve the funding for the payments. The legislative process lasts several months.

11. Do I give up anything if I am part of the Settlement?

Yes. Unless you exclude yourself, you are staying in the Class and will be part of the settlement even if you don't get a payment, which means you can't sue, continue to sue, or be part of any other lawsuit against the State about the legal issues in *this* case. It also means that all of the Court's orders will apply to you and legally bind you.

THE LAWYERS REPRESENTING YOU

12. Do I have lawyers in the case?

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. Their names are:

Paul Alston Anderson Meyer Claire Wong Black Alston Hunt Floyd & Ing 1001 Bishop Street, Suite 1800 Honolulu, HI 96813	Victor Geminiani Gavin Thornton Hawaii Appleseed Center for Law and Economic Justice 119 Merchant Street, Suite 605 Honolulu, HI 96813
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You will not be charged personally for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own personal expense.

13. How will the lawyers be paid? Do the Class Representatives get paid?

Class Counsel's fee agreement allows them to ask for up to 25% of any recovery on behalf of the Class Members. However, Class Counsel will ask the Court to approve payment of 20% of the Total Settlement Amount to them for attorneys' fees and costs. The fees and costs would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than these amounts. The attorneys' fees and costs will be deducted from the \$2,341,103.10. The State has agreed not to oppose these fees and costs.

The Court is not bound by any agreed upon or requested amounts. You may object to Class Counsel's request for attorneys' fees and costs. After considering the objections of Class Members, the Court will determine the amount of attorneys' fees and costs in accordance with controlling law.

DHS' expenses to administer the settlement (for example, the cost to mail out this notice) will also be deducted from the \$2,341,103.10. It is estimated that the administrative expenses will be approximately \$.

Class Counsel reserved the right to provide Service Awards for the Class Representatives. These Service Awards are intended to recognize the Class Representatives for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards, if any, will be deducted from any award of attorneys' fees and costs by the Court to Class Counsel. In other words, the Service Award will reduce the amount of money going to Class Counsel, **NOT** the amount of payments to Class Members.

OBJECTING TO THE SETTLEMENT

14. How do I object to the Settlement?

You may object to the settlement if you don't like any part of it. This includes the attorneys' fees and cost request for Class Counsel. The Court will consider your views.

To object, you must send a letter saying that you object to *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. Be sure to include your name, address, telephone number, your signature, the date, and the reasons you object to the settlement. Mail your objection to the following address postmarked no later than **May 28, 2018**:

Sheehey Objections
Clerk of the Court
First Circuit Court, State of Hawaii
Kaahumanu Hale
777 Punchbowl Street
Honolulu, HI 96813

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I get out of the Settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from or opt out of this case. Be sure to include your name, address, telephone number, your signature, and the date. Include the name of the case, *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. You must mail your exclusion letter postmarked no later than **May 28, 2018** to:

Sheehey Exclusions
c/o Alston Hunt Floyd & Ing
1001 Bishop Street, Suite 1800
Honolulu, HI 96813

If you ask to be excluded, you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue the State in the future.

16. If I don't exclude myself, can I sue the State for the same thing later?

No. Unless you timely exclude yourself, you give up any right to sue the State for the claims that this settlement resolves. If you have a pending lawsuit that asserts the same or similar claims, speak to your lawyer immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **May 28, 2018**.

THE COURT'S FAIRNESS HEARING

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing, called a Fairness Hearing, to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to. The Court will hold the **Fairness Hearing at 9:00 a.m. on June 15, 2018**, at the **Circuit Court for the First Circuit, 777 Punchbowl Street, Honolulu, Hawaii, in Courtroom 11**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing may be moved to a different date, time, or

QUESTIONS? CALL 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>.

courtroom without additional notice, so it is a good idea to visit Class Counsel’s website for updates: <http://hawaii.classaction.com/fostercare>.

18. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer questions the Judge may have. But you are welcome to come at your own expense. If you send an objection, you don’t have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend on your behalf, but it’s not necessary.

19. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intention to Appear in *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC.” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than **May 28, 2018**, and be sent to the Clerk of the Court at the address in Question 14 above. You cannot speak at the hearing if you excluded yourself from the settlement.

IF YOU DO NOTHING

20. What happens if I do nothing?

If you do nothing, you will be part of this lawsuit, and you won’t be able to be part of any other lawsuit against the State about the legal issues in *this* case, ever again. Because you are not a Payment Recipient, you will not receive any payment from the Settlement.

GETTING MORE INFORMATION

21. Are there more details about the Settlement?

This notice summarizes the proposed settlement. More details are in an Amended State Lawsuit Class Action Settlement Agreement. You can get a copy of the Settlement Agreement at: <http://hawaii.classaction.com/fostercare>. You may also send questions in writing to Class Counsel c/o Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai`i 96813.

22. How do I get more information?

You can call (808) 524-1800; write to Class Counsel at Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai`i 96813; or visit the website: <http://hawaii.classaction.com/fostercare> where you will find other information about the State Lawsuit, Federal Lawsuit, and the settlement.

[DATE]

PLEASE DO NOT CALL THE COURT WITH YOUR QUESTIONS

QUESTIONS? CALL 524-1800 OR VISIT <http://hawaii.classaction.com/fostercare>.

FIRST CIRCUIT COURT FOR THE STATE OF HAWAII

A state court authorized this notice. This is not a solicitation from a lawyer.

**NOTICE OF AMENDED SETTLEMENT IN THE STATE LAWSUIT
ABOUT FOSTER BOARD PAYMENTS, PERMANENCY ASSISTANCE,
ADOPTION ASSISTANCE, AND HIGHER EDUCATION PAYMENTS**

In 2017, a notice about a settlement in a state class action lawsuit over Hawaii's board payments was sent to Hawaii foster care providers, legal guardians/permanent custodians, adoptive parents of children with special needs, and higher education payment recipients. The 2017 settlement would have provided a \$2.3 million fund to be used to make payments to certain class members (payment recipients); to pay court-appointed lawyers for investigating the facts, litigating the case, and negotiating the settlement; and to pay certain costs to administer the settlement. The 2017 settlement failed because the Hawaii Legislature did not provide the money needed to fund the settlement.

In March 2018, the Parties agreed to amend the settlement by extending the deadline for the Legislature to fund the settlement to June 30, 2018. The 2018 settlement will still include the \$2.3 million fund, and payments will still be made to class members who are payment recipients. The Legislature is not required to provide money for the settlement. If the Legislature chooses not to fund the settlement again, the lawsuit will continue.

**DHS' RECORDS INDICATE THAT YOU ARE A PAYMENT RECIPIENT AND
WILL RECEIVE A PAYMENT UNDER THE SETTLEMENT.**

The amount of the payment will be determined later.

Your options in response to the proposed 2018 settlement are as follows:

- 1) You may do nothing. If you do nothing, you will receive a payment if the settlement is approved and give up any claims you could have brought against the State that were made part of this lawsuit.
- 2) You may object to the 2018 settlement if you disagree with any of the terms. The deadline to postmark your objection letter is **May 28, 2018**. You may also tell the court your objections in person at the fairness hearing scheduled for **June 15, 2018**. You must tell the court in advance that you intend to come to the hearing by sending a notice of intent to appear postmarked by **May 28, 2018**.
- 3) You may exclude yourself from (opt out of) the 2018 settlement. If you exclude yourself from the 2018 settlement, you will not receive a payment from this settlement. The deadline to postmark your exclusion letter is also **May 28, 2018**.

If you sent in an objection letter or an exclusion letter for the 2017 settlement, you don't have to send another letter for the 2018 settlement.

Your legal rights are affected whether or not you act. Read this notice carefully.

Differences Between this Lawsuit (the State Lawsuit) and the Federal Lawsuit

This lawsuit (in state court) focuses on the adequacy of board payments made in the past. There is a separate federal lawsuit that focuses on how much DHS should be paying for foster care in the future. *If you are also part of the federal lawsuit, you will receive another notice describing that settlement. **Your legal rights and options in the state lawsuit and the federal lawsuit are different.*** If you receive both notices (state and federal), please carefully note the differences.

PLEASE DO NOT CALL THE COURT WITH YOUR QUESTIONS

QUESTIONS? CALL 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>.

BASIC INFORMATION

1. What is this state lawsuit about?

Plaintiffs filed this lawsuit claiming that the State did not pay enough for monthly foster care maintenance payments, permanency assistance, adoption assistance, and higher education payments. They claimed that the payments were too low under federal law, under state law, under DHS' administrative rules, and under the terms of agreements between resource caregivers and DHS. Plaintiffs believe they are entitled to payment for damages they suffered, equal to the shortfall between the amounts DHS should have paid, and the amounts DHS actually paid.

The State denies that its payments were inadequate or that it owes Plaintiffs any compensation.

The name of this lawsuit is *Sheehey v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC. Judge Virginia Lea Crandall, of the First Circuit Court, State of Hawaii (the State Court), is currently overseeing this case.

WHO IS IN THE SETTLEMENT

2. Who are the Members of the Settlement Classes?

There are two settlement classes:

Settlement Class 1 – Parent Settlement Class: (a) all licensed resource caregivers in Hawaii (foster parents) who received monthly foster care maintenance payments from DHS from August 7, 2012 through March 20, 2018; and (b) all legal guardians and permanent custodians who received monthly permanency assistance from DHS from August 7, 2012 through March 20, 2018; and (c) all adoptive parents of children with special needs who received monthly adoption assistance payments from DHS from August 7, 2012 through March 20, 2018.

Class Representatives of the Parent Settlement Class are Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, and Tiare Holm.

Settlement Class 2 – Higher Education Settlement Class: all individuals who received monthly higher education payments from DHS from August 7, 2012 through March 20, 2018.

The Class Representative of the Higher Education Settlement Class is Brittany Sakai.

All Class Members will be bound by the settlement unless they exclude themselves. The process for excluding yourself from the settlement and the lawsuit, also called “opting out,” is described below. *Not all Class Members will receive payments under this settlement.*

3. What Class or Classes am I a member of?

If you were a resource caregiver (foster parent), an adoptive parent of a former foster child, or a legal guardian/permanent custodian, who received payments from DHS between August 7, 2012, and March 20, 2018, then you are a member of Settlement Class 1 – the Parent Settlement Class.

QUESTIONS? CALL 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>.

If you are a former foster youth who received higher education program benefits between August 7, 2012, and March 20, 2018, then you are a member of Settlement Class 2 – the Higher Education Settlement Class.

DHS' records show that you are a member of at least one of these classes. Therefore, if you received this notice, you will be part of the Settlement unless you opt out.

The Class Members who are also entitled to a payment are called Payment Recipients. **DHS' RECORDS INDICATE THAT YOU ARE A PAYMENT RECIPIENT.**

4. Who is entitled to payments under the Settlement?

To be entitled to a monetary payment, you must be in Settlement Classes 1 or 2, **and** you must have received one or more of these types of payments from DHS during the time period July 1, 2013 to June 30, 2014:

- monthly foster board payments for foster children in your care
- monthly adoption assistance for your adoptive children with special needs
- monthly permanency assistance for children in your legal guardianship/permanent custody
- monthly higher education board allowance (must have been an eligible former foster youth)

THE SETTLEMENT BENEFITS – WHAT YOU GET

5. What does the Settlement provide?

The State has agreed to provide \$2,341,103.10 (Total Settlement Amount) to be divided among the Payment Recipients and to pay for Class Counsel's attorneys' fees and costs and the administrative costs for carrying out the settlement.

The \$2,341,103.10 is based on \$35 per month per foster child, child in permanent custody/legal guardianship, adoptive child with special needs, and former foster youth in the higher education program, for whom DHS made monthly payments for the time period July 1, 2013 to June 30, 2014, pro-rated for actual days in care. The time period represents the one-year period right before the foster board rates were raised in July 2014. The \$35 figure was negotiated in the settlement, and represents a compromise figure agreed to by the Class Representatives and the State.

The amount that each Payment Recipient will receive will be calculated by subtracting the amount of the costs involved in administering this settlement (for example, copying and mailing this notice to, and locating Class Members) and the attorneys' fees and costs awarded by the Court from the Total Settlement Amount of \$2,341,103.10 to arrive at a Net Settlement Amount. This Net Settlement Amount will then be distributed to Payment Recipients based on the number of days each eligible child was in care between July 1, 2013 and June 30, 2014.

6. Will I receive a payment under the Settlement?

Based on DHS' records, **you are a Payment Recipient**. We cannot estimate the actual payment amount to each Payment Recipient because the Administrative Costs and attorneys' fees have not yet been determined. The actual amount of your payment will be determined at a later time.

7. Why won't all Class Members receive a payment?

This settlement is a compromise between the Plaintiffs and the State. The State strongly believes it has no liability to any of the Class Members and does not owe any of them any money. The State believes its position is supported by court rulings in the federal lawsuit. But the State is willing to provide some money to some of the Plaintiffs as a way to bring an end to the case rather than continue to litigate. Plaintiffs strongly believe the State should be paying more to all of the Class Members, but also understand there are serious risks in continuing to litigate this case, including the possibility that none of the Class Members may get anything. Based on the federal court's rulings, and the risks inherent in any lawsuit, both the Class Representatives and Class Counsel agreed to the settlement. Both the Federal Court and State Court preliminarily ruled in 2017 that the compromise is fair.

8. Are there any conditions to this Settlement?

This settlement will not become final until the Court approves this settlement, the federal court approves the settlement of the federal lawsuit, and the Hawaii Legislature approves the money that will be needed to pay for both settlements. If the Legislature does not approve the money needed to pay for both settlements, the settlement will not go forward, and the Plaintiffs in the federal lawsuit will go to trial.

BEING PART OF THE SETTLEMENT

9. Do I need to do anything to be a part of the Settlement?

No. You do not have to do anything to be part of the Settlement Classes or to get a payment if you are a Payment Recipient. If you are a Payment Recipient, your payment amount will be calculated for you and sent to you by mail. A claim form is not required.

10. If I am a Payment Recipient when will I get my payment?

The Court will hold a Fairness Hearing on **June 15, 2018**, to finalize the settlement. If the presiding Judge approves the settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them takes time, perhaps more than a year. The Hawaii Legislature must also approve the funding for the payments. The legislative process lasts several months.

11. Do I give up anything if I am part of the Settlement?

Yes. Unless you exclude yourself, you are staying in the Class and will be part of the settlement even if you don't get a payment, which means you can't sue, continue to sue, or be part of any other lawsuit against the State about the legal issues in *this* case. It also means that all of the Court's orders will apply to you and legally bind you.

THE LAWYERS REPRESENTING YOU

12. Do I have lawyers in the case?

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. Their names are:

Paul Alston Anderson Meyer Claire Wong Black Alston Hunt Floyd & Ing 1001 Bishop Street, Suite 1800 Honolulu, HI 96813	Victor Geminiani Gavin Thornton Hawaii Appleseed Center for Law and Economic Justice 119 Merchant Street, Suite 605 Honolulu, HI 96813
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You will not be charged personally for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own personal expense.

13. How will the lawyers be paid? Do the Class Representatives get paid?

Class Counsel’s fee agreement allows them to ask for up to 25% of any recovery on behalf of the Class Members. However, Class Counsel will ask the Court to approve payment of 20% of the Total Settlement Amount to them for attorneys’ fees and costs. The fees and costs would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than these amounts. The attorneys’ fees and costs will be deducted from the \$2,341,103.10. The State has agreed not to oppose these fees and costs.

The Court is not bound by any agreed upon or requested amounts. You may object to Class Counsel’s request for attorneys’ fees and costs. After considering the objections of Class Members, the Court will determine the amount of attorneys’ fees and costs in accordance with controlling law.

DHS’ expenses to administer the settlement (for example, the cost to mail out this notice) will also be deducted from the \$2,341,103.10. It is estimated that the administrative expenses will be approximately \$.

Class Counsel reserved the right to provide Service Awards for the Class Representatives. These Service Awards are intended to recognize the Class Representatives for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards, if any, will be deducted from any award of attorneys’ fees and costs by the Court to Class Counsel. In other words, the Service Award will reduce the amount of money going to Class Counsel, **NOT** the amount of payments to Class Members.

OBJECTING TO THE SETTLEMENT

14. How do I object to the Settlement?

You may object to the settlement if you don’t like any part of it. This includes the attorneys’ fees and cost request for Class Counsel. The Court will consider your views.

To object, you must send a letter saying that you object to *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. Be sure to include your name, address, telephone number, your signature, the date, and the reasons you object to the settlement. Mail your objection to the following address postmarked no later than **May 28, 2018**:

Sheehey Objections
Clerk of the Court
First Circuit Court, State of Hawaii
Kaahumanu Hale
777 Punchbowl Street
Honolulu, HI 96813

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I get out of the Settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from or opt out of this case. Be sure to include your name, address, telephone number, your signature, and the date. Include the name of the case, *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. You must mail your exclusion letter postmarked no later than **May 28, 2018** to:

Sheehey Exclusions
c/o Alston Hunt Floyd & Ing
1001 Bishop Street, Suite 1800
Honolulu, HI 96813

If you ask to be excluded, you will not get any settlement payment even if you would be entitled to one if you stayed in the lawsuit. You also cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue the State in the future.

16. If I don't exclude myself, can I sue the State for the same thing later?

No. Unless you timely exclude yourself, you give up any right to sue the State for the claims that this settlement resolves. If you have a pending lawsuit that asserts the same or similar claims, speak to your lawyer immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **May 28, 2018**.

THE COURT'S FAIRNESS HEARING

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing, called a Fairness Hearing, to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to. The Court will hold the **Fairness Hearing at 9:00 a.m. on June 15, 2018**, at the **Circuit Court for the First Circuit, 777 Punchbowl Street, Honolulu, Hawaii, in Courtroom 11**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel.

QUESTIONS? CALL 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>.

After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing may be moved to a different date, time, or courtroom without additional notice, so it is a good idea to visit Class Counsel's website for updates: <http://hawaiiiclassaction.com/fostercare>.

18. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer questions the Judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend on your behalf, but it's not necessary.

19. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than **May 28, 2018**, and be sent to the Clerk of the Court at the address in Question 14 above. You cannot speak at the hearing if you excluded yourself from the settlement.

IF YOU DO NOTHING

20. What happens if I do nothing?

If you do nothing, you will be part of this lawsuit, and you won't be able to be part of any other lawsuit against the State about the legal issues in *this* case, ever again. As a Payment Recipient, you will be paid your share of the Net Settlement Payment, as calculated by DHS.

GETTING MORE INFORMATION

21. Are there more details about the Settlement?

This notice summarizes the proposed settlement. More details are in an Amended State Lawsuit Class Action Settlement Agreement. You can get a copy of the Settlement Agreement at: <http://hawaiiiclassaction.com/fostercare>. You may also send questions in writing to Class Counsel c/o Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai'i 96813.

22. How do I get more information?

You can call (808) 524-1800; write to Class Counsel at Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai'i 96813; or visit the website: <http://hawaiiiclassaction.com/fostercare> where you will find other information about the State Lawsuit, Federal Lawsuit, and the settlement.

[DATE]

PLEASE DO NOT CALL THE COURT WITH YOUR QUESTIONS

QUESTIONS? CALL 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>.

Of Counsel:
ALSTON HUNT FLOYD & ING
Attorneys at Law
A Law Corporation

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JOHN-ANDERSON L. MEYER 8541
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cblack@ahfi.com

HAWAII APPLESEED CENTER FOR
LAW AND ECONOMIC JUSTICE
VICTOR GEMINIANI 4354
GAVIN THORNTON 7922
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Honolulu, Hawai'i 96813
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gavin@hiappleseed.org

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

PATRICK SHEEHEY; PATRICIA
SHEEHEY; RAYNETTE NALANI AH
CHONG; SHERRY CAMPAGNA;
MICHAEL HOLM; and TIARE HOLM,
*individually, and on behalf of a class
of Hawai'i-licensed resource families;*
B.S.; and T.B., a Minor, by her Next
Friend N.A., *individually and on
behalf of a class of persons similarly
situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC
(Contract)
Civil Action; Class Action

**ORDER GRANTING PLAINTIFFS'
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
AMENDED CLASS ACTION
SETTLEMENT**

HEARING MOTION

JUDGE: The Honorable
Virginia L. Crandall

HEARING DATE: April 3, 2018

HEARING TIME: 1:00 p.m.

ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF AMENDED CLASS ACTION SETTLEMENT

Plaintiffs' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF AMENDED CLASS ACTION SETTLEMENT, filed April 3, 2018 ("Unopposed Motion"), came on for hearing before the Honorable Virginia L. Crandall, Judge of the above-entitled court, on April 3, 2018 at 1:00 p.m. Claire Wong Black appeared on behalf of Plaintiffs and Deputy Attorney General Donna H. Kalama appeared on behalf of Defendant State of Hawai'i.

Having carefully considered the Unopposed Motion, the memorandum, exhibits, and declarations in support, and other filings in support of the Unopposed Motion, argument of counsel, and the records and files herein, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

Preliminary Approval of the Amended Settlement Agreement

1. The Court FINDS and CONCLUDES that the settlement and the proposed Amended State Settlement Agreement is fair, adequate, and reasonable; was reached after Class Counsel investigated and litigated the claims; and was the result of extensive, arms-length negotiations between counsel well-versed in the strengths and weaknesses of the claims asserted. The assistance of an experienced federal magistrate judge in settlement negotiations reinforces that the settlement reached is non-collusive.¹ The Court therefore CONCLUDES that the proposed settlement is within the possible range of settlement approval such that notice to the Settlement Classes is appropriate. The Amended State Settlement Agreement is hereby PRELIMINARILY APPROVED subject to final approval of the settlement.

Form and Manner of Distributing Class Notices

2. The Court FINDS that the proposed Class Notices constitute the best notice practicable under the circumstances. The Class Notices clearly and plainly describe:

¹ See *Capsolas v. Pasta Res., Inc.*, Civ. No. 10-5595, 2012 WL 1656920, at *1 (S.D.N.Y. May 9, 2012).

- a. basic information about the nature of this litigation and the Settlement Classes;
 - b. the terms of the proposed settlement, including the nature of class relief;
 - c. the right to opt out of the settlement and applicable opt-out procedures and deadlines;
 - d. Class Counsel's forthcoming application for attorneys' fees and proposed Service Awards to the Named Plaintiffs;
 - e. the right to object to the settlement terms, including attorneys' fees and Service Awards and applicable procedures and deadlines for objections;
 - f. information about the Court's procedures for final approval of the settlement; and
 - g. instructions on how to obtain additional information regarding this litigation and the settlement thereof.
3. Further, the proposed plan for distributing the Class Notices is a reasonable method, calculated to reach all members of the Settlement Class who would be bound by the Settlement.
 4. The Court accordingly ORDERS that:
 - a. The form of the Class Notices is approved. Non-material changes and corrections may be made to the Class Notices as the Parties deem appropriate or necessary.
 - b. The manner for distributing the Class Notices is approved. Non-material changes to the manner or timing of distribution of notices may be made as the Parties deem appropriate or necessary.
 - c. Class Counsel has already established a website to inform Class Members of the terms of the settlement and related information, which shall remain available until December 31, 2019.
 - d. Following entry of this Order, the Notice Administrator shall prepare final versions of the Class Notices, incorporating the relevant dates and deadlines set forth in this Order and shall,

along with the Parties, take all other actions in furtherance of settlement administration as specified in the Amended State Settlement Agreement.

Deadline to Request Exclusion From Settlement (“Opt Out”)

5. Members of the Settlement Classes may exclude themselves from, or “opt out” of, the settlement. Any request for exclusion or opt out must be in the form of a written, signed statement that clearly conveys a request to be excluded from the Settlement Class and must contain the individual’s full name, mailing address, telephone number and date.
6. To be effective, the exclusion or opt-out statement must be postmarked within forty-five days after the date Class Notices are first mailed to Settlement Class Members, except that Settlement Class Members whose notices are returned to sender will have until the **later** of 14 calendar days from the date that the new Notice was postmarked or the original opt-out deadline to submit a request for exclusion or opt-out statement.
7. Requests for exclusion or opt-out statements shall be sent to Class Counsel at the following address and Class Counsel shall forward to the Court and to defense counsel a list of members who wish to be excluded:

Alston Hunt Floyd & Ing
State Foster Care Settlement Opt-Out
1001 Bishop Street, Suite 1800
Honolulu, Hawai`i 96813
8. Members of the Settlement Classes who already excluded themselves from, or “opted out” of, the settlement during the prior class notice program are not required to submit new “opt out” statements.

Deadline to Object to Settlement, Attorneys’ Fees, Service Awards

9. Members of the Settlement Classes may object to the settlement, the Amended State Settlement Agreement, Class Counsel’s request for

attorneys' fees and costs, or Service Awards. Objections must be timely filed with the Clerk of the Court and served on the Parties and must state whether the objecting Class Member intends to appear at the Fairness Hearing. Objections must be in the form of a written, signed statement that clearly conveys the substance of the objection and must contain the case name, *Sheehey v. State of Hawai'i*, Civil No. 14-1-1709-08 VLC.

10. To be timely, any objections and notices of intention to appear must be postmarked within forty-five days after the date Class Notices are first mailed to Settlement Class Members, except that Settlement Class Members whose notices are returned to sender will have until the **later** of 14 calendar days from the date that the new Notice was postmarked or the original objection deadline to submit an objection and to file the notice of intention to appear.
11. Objections and notices of intention to appear shall be filed with or sent to the Clerk of the Court at:

Clerk of Court,
First Circuit Court, State of Hawai'i
Ka`ahumanu Hale
777 Punchbowl Street
Honolulu, Hawai'i 96813

Fairness Hearing and Final Approval of Settlement

12. The Court hereby schedules a Fairness Hearing to determine whether to grant final approval of the Amended State Settlement Agreement (including the proposed plan of payment to class members, payment of attorneys' fees and costs, and Service Awards to Named Plaintiffs for June 15, 2018 at 9:00 a.m. in the Circuit Court for the First Circuit, State of Hawai'i at Ka`ahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813.

Deadline for Submitting Motion Seeking Final Approval

13. A Motion for Final Approval of the Class Action Settlement shall be filed no later than 14 days before the Fairness Hearing.

Schedule and Continuances

14. The Court sets the following schedule for the Fairness Hearing and the actions that must precede it. The Court further reserves the right to adjourn or continue the Fairness Hearing and the following deadlines without further written notice.

Event	Deadline
Notice Administrator to begin mailing of Class Notices	April 12, 2018
Deadline for motion for attorneys' fees, costs, and Service Awards	April 20, 2018
Deadline to object to settlement, attorneys' fees, or Service Awards (date that objections must be postmarked)	May 28, 2018, or, if notice is returned as undeliverable, 14 days after the postmark date of the second mailing of the notice
Deadline to request exclusion from (opt out of) settlement (date that opt out request must be postmarked)	May 28, 2018, or, if notice is returned as undeliverable, 14 days after the postmark date of the second mailing of the notice
Deadline to file notice of intention to appear (date that notice must be postmarked)	May 28, 2018, or, if notice is returned as undeliverable, 14 days after the postmark date of the second mailing of the notice
Deadline to file motion for final approval	May 31, 2018
Final Fairness Hearing	June 15, 2018, 9:00 a.m.

DATED: Honolulu, Hawai'i, _____.

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

CARON M. INAGAKI
DONNA H. KALAMA
Deputy Attorneys General

Attorneys for Defendant
State of Hawai`i

Sheehey, et al. vs. State of Hawai`i; Civil No. 14-1-1709-08 VLC; First Circuit Court, State of Hawai`i; ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF AMENDED CLASS ACTION SETTLEMENT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

PATRICIA SHEEHEY, PATRICK SHEEHEY, RAYNETTE AH CHONG, individually and on behalf of the class of licensed foster care providers residing in the state of Hawai'i,

Plaintiffs,

vs.

PANKAJ BHANOT, in his official capacity as the Director of the Hawai'i Department of Human Services,

Defendant.

Case No. CV13-00663 LEK-KSC

AMENDED FEDERAL LAWSUIT CLASS ACTION SETTLEMENT AGREEMENT

AMENDED FEDERAL LAWSUIT CLASS ACTION SETTLEMENT AGREEMENT

This Amended Federal Lawsuit Class Action Settlement Agreement (“**Federal Settlement Agreement**”) is entered into by and between Raynette Ah Chong (the “Named Plaintiff”), on behalf of herself and members of the class certified by the United States District Court for the District of Hawai'i, and Patrick Sheehey and Patricia Sheehey, on the one hand (collectively “**Plaintiffs**”), and Pankaj Bhanot, in his official capacity as the Director of the Hawaii Department of Human Services¹ (“**Defendant**”), on the other hand. Plaintiffs and Defendant are collectively referred to as the “**Parties**.”

¹ The Federal Lawsuit named Defendant Patricia McManaman, in her official capacity as the then-Director of the Hawai'i Department of Human Services. Pankaj Bhanot is the current Director of Human Services, and has been automatically substituted as Defendant pursuant to Fed. R. Civ. P. Rule 25(d).

Subject to Court approval as required by the Federal Rules of Civil Procedure (“FRCP”) Rule 23, the Parties hereby stipulate and agree that, in consideration of the mutual promises, covenants, and consideration set forth in this Federal Settlement Agreement, the above-captioned action shall be settled and compromised in accordance with the terms herein.

The Parties acknowledge and agree that although this Federal Settlement Agreement sets forth the terms and conditions by which the Federal Lawsuit will be settled, this Federal Settlement Agreement is part of a larger settlement that includes the State Lawsuit (defined below), and that unless both Lawsuits settle on the terms set forth in their respective settlement agreements, neither lawsuit will be settled.

The Parties further acknowledge and agree that the settlement of the Federal Lawsuit and the State Lawsuit is contingent upon the appropriation of funds to make the payments described herein and in the State Settlement Agreement. If such legislation is not enacted on or before the Legislation Enactment Deadline as defined in this Federal Settlement Agreement and the State Settlement Agreement, unless such date is mutually agreed to be extended by the parties to both Agreements, this Federal Settlement Agreement shall automatically become null and void and trial in the Federal Lawsuit shall resume.

RECITALS

WHEREAS, on December 3, 2013, Plaintiff Raynette Ah Chong filed a class action complaint for declaratory and permanent injunctive relief against Patricia McManaman, in her official capacity as the Director of the Hawaii Department of Human Services, entitled *Ah Chong v. McManaman*, Civ. No. 13-00663 LEK-KSC, in the United States District Court for the District of Hawai`i (the “**Federal Lawsuit**”); and

WHEREAS, a First Amended Complaint was filed in the Federal Lawsuit on April 30, 2014, adding Patricia Sheehey and Patrick Sheehey as Plaintiffs; and

WHEREAS, the First Amended Complaint asserts a single claim under 42 U.S.C. § 1983, seeking a declaratory ruling that Defendant is failing to pay the proper amounts owed to resource caregivers (foster parents) in Hawai`i under the Adoption Assistance and Child Welfare Act of 1980, as amended, codified as Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679c (the “**Child Welfare Act**”) and injunctive relief prohibiting Defendant from allegedly continuing to violate the rights of resource caregivers under the Child Welfare Act by (1) failing to make

foster care maintenance payments adequate to cover the costs enumerated under the Child Welfare Act, (2) failing to set appropriate foster care maintenance payment rates; and (3) failing to update the foster care maintenance payment rates to assure their continuing appropriateness; but does not seek damages, and

WHEREAS, Plaintiffs and others, on behalf of a separate putative class of Hawaii-licensed foster care providers and children, also filed a Complaint for Damages against the State of Hawaii in the First Circuit Court, State of Hawai`i, in an action entitled *Sheehey, et al. v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC (the “**State Lawsuit**”), asserting claims for damages on behalf of resource caregivers and children and young adults who were removed from their home and placed under DHS’ care, based on alleged inadequate foster care maintenance payment rates under contract and state law; and

WHEREAS, some of the issues in the State Lawsuit overlap with the issues in the Federal Lawsuit (primarily, whether DHS provides foster care maintenance payments adequate to cover the cost of and the cost of providing basic necessities to children in Hawaii’s foster care system); and

WHEREAS, the Child Welfare Act defines “foster care maintenance payments” as payments sufficient to “cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, reasonable travel to the child’s home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement” (42 U.S.C. § 675(4)(A)), and Plaintiffs contend that DHS is required by federal law to make sufficient foster care maintenance payments and conduct periodic reviews to assure the continuing appropriateness of foster care maintenance payment rates (42 U.S.C. § 671(a)(11)); and

WHEREAS, from approximately 1990 until June 2014, Hawaii’s basic foster board rate was \$529 per child, per month for all foster children; and

WHEREAS, effective July 1, 2014, DHS increased the basic foster board rate (“**Basic Board Rate**”), based on the age of the foster child, to: \$576 (children ages 0-5); \$650 (children ages 6-11); and \$676 (children ages 12+); and

WHEREAS, in addition to the Basic Board Rate, there are additional payments and benefits available for the care of foster children (“**Foster Care Related Payments and Benefits**”), depending on the needs of the child; and

WHEREAS, DHS' position is that its existing system of a Basic Board Rate plus Foster Care Related Payments and Benefits complies with the Child Welfare Act, and DHS also takes the position that having certain payments or benefits available only if the child needs them, and requiring resource caregivers (foster parents) to apply for certain payments and benefits complies with the Child Welfare Act; and

WHEREAS, Plaintiffs' position is that the DHS' Basic Board Rates are still inadequate because they were set in 2014 using a 2011 government study (USDA report) on the cost of raising children across the United States (and used cost estimates for families living in the Urban West region rather than Hawai'i), and because the Basic Board Rates utilized less than 100% of the estimated costs of food; housing; and miscellaneous expenses rather than all eight items listed in the Child Welfare Act; and

WHEREAS, Plaintiffs' position is that DHS' system of providing Foster Care Related Payments and Benefits is inadequate because the payments and benefits (1) are not provided to all foster children, (2) are subject to eligibility requirements, (3) are subject to availability of funds, and (4) many foster families simply are not aware that these additional payments and benefits exist or that DHS is required to cover certain costs that DHS claims are covered through the Foster Care Related Payments and Benefits; and

WHEREAS, the Parties to the Federal Lawsuit do not agree on (1) the extent of DHS' obligations under the Child Welfare Act; (2) the sufficiency of the Basic Board Rates; (3) the value or adequacy of the Foster Care Related Payments and Benefits; (4) whether DHS provides adequate information to resource caregivers regarding the availability of the Foster Care Related Payments and Benefits; (5) whether DHS provides adequate opportunity for resource caregivers to apply for the Foster Care Related Payments and Benefits; and (6) whether DHS conducts periodic reviews that assure the continuing appropriateness of its foster care maintenance payment rates; and

WHEREAS, the Parties have engaged in substantial discovery (including depositions, the production of thousands of pages of documents, as well as expert discovery); and

WHEREAS, in August 2015, the Federal Court certified a class of all currently licensed foster care providers in Hawai'i who are entitled to receive foster care maintenance payments pursuant to the Child Welfare Act when they have foster

children placed in their homes (the “**Class**”)² and appointed the Hawai`i Appleseed Center for Law and Economic Justice, Alston Hunt Floyd & Ing, and Morrison & Foerster LLP as counsel for the class (“**Class Counsel**”); and

WHEREAS, in December 2015, the Federal Court ruled that federal law did not prohibit DHS’ system of providing foster care maintenance payments through a Basic Board Rate plus additional Foster Care Related Payments and Benefits, and that the foster care maintenance payment system could possibly be sufficient if DHS provides resource caregivers with sufficient information about the foster care related payments and benefits and sufficient opportunities to apply for them; and

WHEREAS, the Federal Court also ruled that the “shelter” expense in the Child Welfare Act’s definition of “foster care maintenance payments” need not include mortgage payments, rent, property taxes, or other similar expenses³; and

WHEREAS, the Federal Court did not rule on certain key issues, and saved them for trial, including:

- (1) whether DHS adequately conducts periodic reviews of the foster care maintenance payments to assure their continuing appropriateness;
- (2) whether DHS provides adequate information to resource caregivers about the Foster Care Related Payments and Benefits;

² The Class was certified under Fed. R. Civ. P. 23(b)(2) and Class Counsel appointed by order filed August 17, 2015. Dkt. 156 at 24-25, 33-34. No notice of class certification was provided to class members at the time of certification, nor was notice required, because of the nature of the class and the relief sought, which is solely prospective injunctive relief.

³ It is Defendant’s position that the Federal Court’s ruling on “shelter expense” significantly lessened Plaintiffs’ chances of prevailing on their assertion that DHS does not pay enough for the items enumerated in the Child Welfare Act because, while the ruling confirmed that DHS need not pay for rent, mortgage, or similar expenses, DHS’ calculation of the Basic Board Rates in fact took such costs into account because a large portion of the “housing” category of the USDA report includes such costs.

(3) whether DHS provides adequate opportunities to resource caregivers to apply for the Foster Care Related Payments and Benefits;

and, if the Court answered (2) and (3) in the affirmative⁴, then

(4) whether DHS' foster care maintenance payment system of Basic Board Rate-plus-Foster Care Related Payments and Benefits adequately covers the cost of (and the cost of providing) the items enumerated in the Child Welfare Act; and

WHEREAS, in July and August 2016, shortly before trial in the Federal Lawsuit was scheduled to commence, the Parties engaged in settlement discussions through their respective counsel, with the assistance of the Honorable Kevin S.C. Chang, Magistrate Judge of the United States District Court for the District of Hawai'i; and

WHEREAS, the Parties reached a proposed comprehensive settlement of the State and Federal Lawsuits and, on August 26, 2016, the Parties in the Federal Lawsuit and the parties in the State Lawsuit agreed to the essential terms of a valid and binding settlement agreement, which was placed on the record before the Honorable Kevin S.C. Chang; and

WHEREAS, the settlement placed on the record on August 26, 2016, was subsequently memorialized in written settlement agreements dated effective March 14, 2017; and

WHEREAS, those written settlement agreements stated that the settlement was contingent upon the appropriation of funds to make the payments described therein, and if such legislation was not enacted on or before June 30, 2017, unless such date was mutually agreed to be extended by the parties, the agreements shall automatically become null and void; and

WHEREAS, the Hawaii Legislature did not appropriate the funds for the settlement on or before the June 30, 2017 deadline; and

⁴ If the Court found at trial that DHS did not provide all resource caregivers with sufficient information about and opportunities to apply for the Foster Care Related Payments and Benefits, then it is Plaintiffs' position that DHS would only be able to rely upon the Basic Board Rates, and not the Foster Care Related Payments and Benefits, to demonstrate the adequacy of its foster care maintenance payment rates.

WHEREAS, the Parties desire to extend the deadline by which the Hawaii Legislature may fund the settlement as amended by this Federal Settlement Agreement and the Amended State Lawsuit Class Action Settlement Agreement; and

WHEREAS, Defendant denied and continues to deny any and all liability and damages to Plaintiffs with respect to the claims or causes of action asserted in the Federal Lawsuit and the State Lawsuit, but nonetheless acknowledges that bringing the cases to a close now through settlement—rather than after years of litigation and appeals, with uncertain outcomes and concomitant attorneys’ fees and costs that would be incurred by both sides—would help move the Parties toward a better working relationship for the benefit of all children in Hawaii’s foster care system, and the relief Defendant agrees to provide under this Federal Settlement Agreement is offered solely as a compromise, and not because Defendant believes DHS has any obligation to Plaintiffs to provide said relief; and

WHEREAS, Plaintiffs and Class Counsel have analyzed, evaluated, and extensively litigated the merits of the claims made against Defendant in the Federal Lawsuit and the impact of settlement (as well as the impact of not settling) on Plaintiffs and the members of the Class, and, recognizing the substantial risks of continued litigation—including the possibility that the Federal Lawsuit, if not settled now, might result in an outcome that is less favorable or that a fair and final judgment may not occur for several years—Plaintiffs and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interests of the Class;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Federal Settlement Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Federal Lawsuit on the following terms and conditions:

TERMS OF AGREEMENT

I. Definitions

In addition to the definitions contained in the Recitals, the following definitions shall apply.

- A. “**Administration Costs**” shall mean the reasonable cost to typeset, print, and mail the Class Notice to the Class.
- B. “**Class Members**” shall mean the members of the Class.

- C. **“Class Notice”** shall mean a document substantially in the form of the Notice attached hereto as Exhibit 1 which has been agreed to by the Parties subject to Court approval and which the Notice Administrator will mail to each Class Member explaining the terms of the Settlement and the objection process.
- D. **“Class Representative”** shall mean Plaintiff Raynette Ah Chong. The Class Representative is also referred to as the **“Named Plaintiff.”**
- E. **“Contact Information”** shall mean the most current information DHS then has available of a Class Member’s name and mailing address.
- F. **“Day”** shall mean a calendar day.
- G. **“Fairness Hearing”** shall mean the hearing on the Motion for Final Approval of Settlement.
- H. **“Federal Court”** shall mean the United States District Court for the District of Hawaii, the Honorable Leslie E. Kobayashi, presiding.
- I. **“Final Approval”** shall mean the occurrence of the following:
Following the Fairness Hearing, the Federal Court has issued an order approving the Settlement, and
 - i. The time for appellate review has expired, and no notice of appeal has been filed; or
 - ii. If appellate review is sought, after any and all avenues of appellate review have been exhausted, and the order approving settlement has not been modified, amended, or reversed in any way.
- J. **“Legislation Enactment Deadline”** shall mean June 30, 2018, or such later time period as the Parties may agree to in writing.
- K. **“Motion for Final Approval of Settlement”** shall mean the motion to be filed by Defendant seeking the Federal Court’s final approval of the Settlement.
- L. **“Notice Administrator”** shall mean DHS (or, if DHS is unable or unwilling to perform the duties of the Notice Administrator, such other mutually agreed-upon entity). The Notice Administrator shall be responsible for sending the court-approved Class Notice to the Class, and may utilize the services of a copy/ mailing vendor.
- M. **“Preliminary Approval”** shall mean that the Court has entered a Preliminary Approval Order.

- N. **“Preliminary Approval Order”** shall mean an order entered by the Federal Court substantially in the form attached hereto as Exhibit 2 preliminarily approving the terms set forth in this Federal Settlement Agreement, including the manner and timing of providing notice to the Class, the time period for objections, and the date, time and location for a Fairness Hearing.
- O. **“Releasees”** shall mean Defendant, DHS, the State of Hawai`i, other Hawaii departments, agencies, directors, officers, agents, employees, representatives, insurers, attorneys, administrators, and all other persons acting on behalf of the State of Hawaii.
- P. **“Resource caregiver”** shall mean an individual or couple licensed by the DHS as a resource caregiver or resource family pursuant to Hawaii Administrative Rules chapter 17-1625, as may be amended from time to time.
- Q. **“Settlement”** means the compromise and settlement of the Federal Lawsuit as contemplated by this Federal Settlement Agreement.
- R. **“USDA Report”** means the report periodically published by the United States Department of Agriculture titled Expenditures on Children by Families.
- S. **“CPI”** means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S., as reported by the Bureau of Labor Statistics, United States Department of Labor.

II. **Payment Amounts Starting Next State Fiscal Year**

1. The Federal Lawsuit shall be administratively closed⁵ (until the end of June 2018, or such later time as the Parties may agree to in writing) while DHS, with support and cooperation from the Class and Class Counsel, requests appropriations from the Hawaii Legislature in the DHS budget for state fiscal year 2019 (July 1, 2018 to June 30, 2019 sufficient to fund:

- (a) an increase in the monthly basic foster care maintenance board rates (the “Basic Board Rates”) to the following amounts: \$649 for ages 0-5, \$742 for ages 6-11, and \$776 for ages 12+; and

⁵ The Parties understand that administrative closure may include dismissal of the case by the Court, with the ability to reopen the case if the Settlement is not completed.

(b) an increase in the annual clothing allowance to the following amounts: \$810 for ages 0-5, \$822 for ages 6-11, and \$1026 for ages 12+. These amounts are in lieu of the current clothing allowance of \$600 per year plus \$125 for special circumstances. At DHS' option, it may choose to increase the clothing allowance without seeking an additional appropriation if it has determined that such an increase can be funded with its existing budget.

2. The increases in the Basic Board Rates were calculated by using 95% of the 2013 USDA report, overall United States, middle income category, expenditures on Food, Housing, and Miscellaneous, with an adjustment for inflation to January 2016 dollars using changes in the CPI⁶ from the year of the USDA report (2013), with an adjustment equal to the average of the 2014 Regional Price Parity Index (“RPP”), as reported by the Bureau of Economic Analysis, United States Department of Commerce, for (a) Hawaii (“Hawaii RPP”) (116.8) and (b) Hawaii Metropolitan Statistical Area (“Hawaii-Metro”) (120.2), which is referred to herein as the “Average Hawaii RPP” (118.5).

3. The increases in the clothing allowance were calculated by using 100% of the 2013 USDA report, overall United States, middle income category, expenditures on Clothing, with an adjustment for inflation to January 2016 dollars using changes in the CPI⁷ from the year of the USDA report (2013), with an adjustment based on the Average Hawaii RPP.

4. Collectively, paragraphs II.1(a) and II.1(b) are referred to herein as the “**Budget Request.**” DHS has exercised its option to increase the clothing allowance in State fiscal year 2019 without seeking an additional appropriation, having determined that such an increase can be funded with its existing budget. The amount necessary to fund the increase for the Basic Board Rates has been submitted to the 2018 Legislature as part of the Executive Budget.

5. DHS will take all reasonable steps available to it as an executive agency to recommend, promote, and endorse the Budget Request.

⁶ The Housing CPI series was used to calculate the Housing adjustment. The Food CPI series was used to calculate the Food adjustment. An average of the Recreation and Personal Care CPI series was used to calculate the Miscellaneous adjustment.

⁷ The Apparel CPI series was used to calculate the Clothing adjustment.

6. If DHS fails to submit a Budget Request in accordance with paragraph II.1, above, or if funds as requested in the Budget Request are not appropriated by the Legislation Enactment Deadline, Plaintiffs shall reopen the Federal Lawsuit, trial to commence immediately on a date set by Judge Kobayashi prior to the administrative closure. To the extent permitted by the Federal Court, the Parties agree that, prior to trial, they may update pre-trial submissions (including expert reports and written direct testimony statements) consistent with ongoing obligations under the Federal Rules of Civil Procedure and consistent with the Court's existing pre-trial rulings, and as necessary to account for the passage of time and changes to the facts and law, if any.

7. If the Budget Request is appropriated, the Parties will submit to the Federal Court a stipulated dismissal with prejudice, which shall be filed no later than 14 days after DHS issues the first payments based on the newly-established Basic Board Rates described in paragraph II.1(a), above.

III. Periodic Review

1. Defendant agrees that DHS will conduct periodic reviews of its Basic Board Rates and the annual clothing allowance, consistent with its administrative rules, using the following review process:

DHS shall calculate benchmark rates based on procedures outlined in paragraph II.2, above, using the most recent USDA report, with an adjustment for inflation based on changes in the CPI for the U.S. from the year of the USDA report to the most recently available month, and an adjustment using the most recent Average Hawaii RPP ("**Benchmark Rates**").

DHS shall calculate a "**Benchmark Clothing Allowance**" rate based on procedures outlined in paragraph II.3, above, using the most recent USDA report, with an adjustment for inflation based on changes in the CPI for the U.S. from the year of the USDA report to the most recently available month, and an adjustment using the most recent Average Hawaii RPP.

2. DHS shall seek appropriations from the Hawaii Legislature sufficient to increase the Basic Board Rates to the Benchmark Rates if the difference between the then-existing Basic Board Rates and the Benchmark Rates is more than 5%. DHS shall notify Class Counsel of its intent to seek appropriations prior to the start of the legislative session to enable the Class to prepare testimony to the Legislature supporting DHS' budget request.

3. Similarly, DHS shall seek appropriations from the Hawaii Legislature sufficient to increase the clothing allowance to the Benchmark Clothing Allowance rate if the difference between the then-existing clothing allowance and the Benchmark Clothing Allowance is more than 5%. DHS shall notify Class Counsel of its intent to seek appropriations prior to the start of the legislative session to enable the Class to prepare testimony to the Legislature supporting DHS' budget request.

4. Defendant cannot and does not agree to raise the Basic Board Rates or the clothing allowance automatically when the 5% benchmark threshold is met. Moreover, the 5% threshold is a figure agreed upon for settlement purposes only. Nothing in this Federal Settlement Agreement constitutes an admission by Defendant that 5% represents the threshold for substantial compliance with the Child Welfare Act. In other words, by agreeing to seek an increase when the 5% threshold is met, Defendant in no way admits that should the Legislature choose not to fund a requested increase, then Defendant is in violation of the Child Welfare Act. On the contrary, it is the Defendant's position that Defendant is in compliance with the Child Welfare Act, and that the payment increases agreed upon for purposes of this Settlement are not required by law.

IV. Other Terms

1. **Difficulty of Care ("DOC") Payments:** Subject to the promulgation of any required administrative rule and/or internal policy change, as of the date the Federal Court approves the Settlement Agreement, DHS agrees that the monthly DOC cap of 120 hours may be waived by DHS in appropriate circumstances until it implements planned changes to the current DOC system, which may require rulemaking. DHS agrees to take all reasonable steps necessary to implement this paragraph (including reasonable steps in advance of the Fairness Hearing). Any requests by resource caregivers to increase the number of hours over 120 per month will be subject to DHS procedures (other than the 120-hour cap) and can be approved only if it is in the best interest of the foster child and other children in the resource family home to do so. Nothing in this Federal Settlement Agreement shall impair the ability of DHS to impose conditions on the receipt of DOC payments that it deems appropriate for the protection of foster children or other children in a resource caregiver's home.

2. **Availability of Resources:** The Parties agree to work cooperatively on providing a short summary of the payments and benefits (including a mileage log reimbursement form, DOC calculation information, and information about foster parent liability insurance) available to resource caregivers, to be provided at least

semi-annually and to all newly-licensed resource caregivers. The summary may be sent to resource caregivers by DHS' contractors and will be made available on Class Counsel's website.

3. **Court Enforcement:** The Federal Court retains jurisdiction to enforce the terms of this Federal Settlement Agreement. If a Class Member believes the Defendant to be in material breach of this Federal Agreement, the Class Member, through Class Counsel, will provide the Defendant notice and a reasonable opportunity to cure prior to enforcing the agreement in Federal Court. The Parties will agree on a time period for cure depending on the particular nature of the claimed breach.

4. **Termination of this Agreement:** This Federal Settlement Agreement will terminate 10 years from the effective date of this Agreement, at which time it will no longer be enforceable.

5. **No Admission of Liability.** This Federal Settlement Agreement is not an admission of liability or wrongdoing by Defendant. Nor is it an admission by the Class regarding the sufficiency or appropriateness of the payments and procedures agreed to for purposes of this Settlement.

Defendant asserts that he has meritorious defenses in response to Plaintiffs' allegations. Furthermore, nothing in this Federal Settlement Agreement shall be construed as an admission of liability under any legal or factual theory propounded by the Plaintiffs. Defendant enters into this Federal Settlement Agreement solely for the purposes of settling, compromising, and terminating Plaintiffs' claims, and avoiding the expense and diversion of resources caused by protracted litigation.

6. **Subject to Federal Law.** This Federal Settlement Agreement is subject to any changes in applicable federal law. The State is not required to do more than federal law mandates and may make adjustments to its payments, policies, or procedures consistent with federal law.

7. **Court Approval and Legislative Appropriations.** Settlement of the Federal Lawsuit and the State Lawsuit and the obligation of Defendant to make the payments provided for herein are conditioned on (1) approval of the Federal Settlement Agreement and the State Settlement Agreement by both the United States District Court for the District of Hawaii and the Circuit Court of the First Circuit, State of Hawaii, respectively, and (2) appropriation of funds by the Legislature of the State of Hawaii to fund the amounts required to be paid under the Federal Settlement Agreement and the State Settlement Agreement.

8. **Notice under CAFA.** Within 10 days of submission of the Motion for Preliminary Approval to the Federal Court, Defendant shall serve any notices to federal and state officials required under 28 U.S.C. § 1715.

V. Releases

1. The Plaintiffs, including all Class Members, hereby release, acquit, and discharge Releasees from any and all claims, causes of action, rights, obligations, liabilities, penalties, demands, damages, costs (other than those costs to be paid pursuant to this Federal Agreement), requests for declaratory relief, or requests for injunctive relief of any and every kind that were alleged, sought, or litigated, or that could have been alleged, sought, or litigated against Defendant in the Federal Lawsuit. The foregoing does not preclude any Class Member from enforcing this Federal Agreement in Federal Court (after notice and opportunity to cure as set forth in paragraph IV.3, above) or commencing any other litigation concerning the claims alleged in the Federal Lawsuit after the termination of this Federal Settlement Agreement (paragraph IV.4, above).

VI. Attorneys' Fees and Costs

1. Class Counsel has provided defense counsel with materials supporting requested attorneys' fees and costs for review. The Parties have met and conferred in good faith and, subject to Federal Court approval, hereby agree to an award of \$850,000, inclusive of all attorneys' fees, costs, non-taxable expenses, and taxes.

Plaintiffs shall seek the Federal Court's approval of such amounts by renewing and updating Plaintiffs' Notice of Unopposed Motion and Unopposed Motion for Award and Approval of Settlement Regarding Attorneys' Fees and Service Awards (Dkt. 348) pursuant to FRCP Rule 23(h), which shall be filed no later than 7 days after the Motion for Preliminary Approval is filed or by such other date as the Court may direct. Notice shall be provided to the Class informing Class Members of the right to object. Such notice shall be given as part of the Class Notice described below. Defendant will not object to the motion so long as it does not seek attorneys' fees and costs in excess of the amounts set forth in this paragraph VI.1.

No separate award of attorneys' fees and costs shall be sought by or made to Plaintiffs or their counsel for claims not certified for class treatment in the Federal Lawsuit.

2. The payment of the amount of attorneys' fees and costs approved by the Federal Court is subject to the Hawaii Legislature's appropriation process. No

interest shall accrue on an award of attorneys' fees and costs. Any award of attorneys' fees and costs shall be paid within a reasonable time after the start of the state fiscal year following the legislative session during which the appropriation is made, in accordance with the State's policies and procedures for payments by the State of appropriated settlements.

3. Class Counsel agree that they are responsible for allocating the attorneys' fees and costs approved or awarded by the Federal Court among themselves and any other counsel that may have any other agreement with them. Class Counsel warrant and represent that there are no liens on the amounts to be paid pursuant to the terms of this Federal Settlement Agreement and that no assignments of the claims to be released or the attorneys' fees and costs to be paid pursuant to this Federal Settlement Agreement have been made or attempted.

Named Plaintiffs may seek the Court's permission to be paid a service award of up to \$5,000 each, provided that if any such payment is approved, it shall only come from any attorneys' fees and costs approved by the Court and appropriated by the Legislature, and under no circumstances will Defendant or the State be responsible for paying any moneys whatsoever to Plaintiffs.

4. In the event the Federal Court approves the motion for attorneys' fees and costs in an amount less than the amount requested by Class Counsel, that shall not be a basis for rendering the entire Settlement or this Federal Settlement Agreement null, void, or unenforceable. If the Legislature refuses to appropriate Class Counsel's fees and costs as approved by the Federal Court, the Settlement shall be null and void.

VII. Court Approval of Settlement; Process for Objections by Class Members

1. **Motion for Preliminary Approval.** Defendant shall file an updated motion for preliminary approval of the Settlement and this Federal Settlement Agreement by the Federal Court and attach a copy of this Federal Settlement Agreement and such other documents Defendant determines are necessary for the Federal Court's consideration. The motion shall request preliminary approval of the Settlement and approval of the Class Notice and notice procedure, and shall request that the Federal Court specify the procedure required for the Federal Court's final consideration of the Settlement, including the scheduling of the Fairness Hearing. Although Defendant is responsible for filing the motion, it is intended that Plaintiffs will have reviewed the motion before it is filed and that the motion will be unopposed.

2. **Class Notice.** By such date as the Court shall direct, the Notice Administrator, in cooperation with Class Counsel and defense counsel, shall send the approved Class Notice to each Class Member by U.S. mail postage prepaid in accordance with the terms of the Preliminary Approval Order. DHS shall provide the Notice Administrator (if not DHS) and Class Counsel with Contact Information for each Class Member. DHS shall pay the Administrative Expenses incurred in copying and mailing the Class Notice to the Class Members. For purposes of generating the mailing list for the Class Notice, DHS will identify Hawaii licensed resource caregivers for the time period August 17, 2015 through a cut-off date that is approximately two to three weeks prior to the date on which Class Notice is mailed, or as otherwise determined by the Court.

3. **Content of Class Notice.** The Class Notice shall contain: the definition of the certified Class; a general description of the Federal Lawsuit and its claims, issues, and defenses; material terms of this proposed Federal Settlement Agreement; Class Counsel's request for attorney's fees and costs; Plaintiffs' request for a Service Award; options available to Class Members, including the manner, time limits, forum and form of an objection to this Settlement; the right of any Class Member to enter an appearance *pro se* or through an attorney to object to the Federal Agreement or any of its terms; the website address for the website required to be maintained by Class Counsel; the date, time, and location of the Fairness Hearing; a statement that Class Members cannot opt out of the Class; and the binding effect of the Federal Agreement on Class Members. The notice shall also inform Class Members that they may also be members of the settlement class certified in the State Lawsuit and state that members of the settlement class in the State lawsuit may opt out of that class.

4. **Establishment of Website.** Class Counsel shall, at their own expense, publish information regarding the Settlement on a website, including information on how to object to the Settlement of the Federal Lawsuit and the deadline to do so. The website shall also include a copy of this Federal Agreement, the motion for attorneys' fees and costs, the motion for service award; key pleadings, and information regarding the State Lawsuit and State Agreement. The web address for the website shall be included in the Class Notice. The website shall remain available starting 7 days after Preliminary Approval through at least December 2019.

5. **Objections.** A Class Member who wishes to object to this Federal Settlement Agreement, the Settlement, Class Counsel's motion for attorneys' fees and costs, or the motion for service award must timely submit to Judge Kobayashi

a statement of their objection, and whether the Class Member intends to appear at the Fairness Hearing.

Any Class Member may appear at the Fairness Hearing to object to any aspect of this Federal Agreement, the Settlement, Class Counsel's motion for attorneys' fees and costs, or the motion for service award.

Class Members may act either on their own or through counsel employed at their own expense.

To be considered timely, a Class Member's objection must be postmarked or received on or before the date determined by the Court.

Class Members who fail to submit timely written objections or who do not appear at the Fairness Hearing and make objections shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

6. **No Right to Opt Out.** Class Members do not have the right to request exclusion from (opt out of) the Settlement. All Class Members are bound by the Settlement and by this Federal Settlement Agreement if approved by the Federal Court and if the other conditions of this Federal Settlement Agreement are met.

7. **Fairness Hearing.** On a date to be determined by the Federal Court, the Federal Court shall hold a Fairness Hearing. At the Fairness Hearing, the Parties will request that the Court:

- a. Consider any objections by Class Members;
- b. Give Final Approval to the Settlement as fair, reasonable, adequate, and binding on all Class Members;
- c. Determine whether to award reasonable attorneys' fees and costs for Class Counsel and/or service awards for Plaintiffs, and if so, the amount thereof.

Defendant shall file a Motion for Final Approval of Settlement no later than the date established by the Federal Court.

8. **Effect of Failure to Grant Final Approval.** In the event the Settlement and this Federal Settlement Agreement are not granted Final Approval, they shall be deemed null, void, and unenforceable and shall not be used or admissible in any subsequent proceedings against the Parties either in Federal Court or in any other

judicial, arbitral, administrative, investigative, or other forum. In the event the Settlement and this Federal Agreement are not approved by the Federal Court, or otherwise fail to become effective and enforceable, the Parties will not be deemed to have waived, limited, or affected in any way their claims, objections, or defenses in the Federal Lawsuit.

VIII. Additional Provisions

1. The rule of construction that an agreement is to be construed against the drafting party is not to be applied in interpreting this Federal Settlement Agreement. The Class Representative, Plaintiffs, and Defendant acknowledge that they have each read this Federal Settlement Agreement, that they understand its meaning and intent, that they have executed it voluntarily and with opportunity to consult with legal counsel, and have participated and had an equal opportunity to participate in the drafting and approval of drafting of this Federal Settlement Agreement. No ambiguity shall be construed against any party based upon a claim that the party drafted the ambiguous language. This Federal Settlement Agreement contains all essential terms of the settlement the Parties have reached. While other documents may be prepared hereafter to further effectuate the provisions hereof, the Parties intend that this Federal Settlement Agreement is a valid, binding agreement, enforceable by the Court.

2. **Cooperation Between the Parties.** The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Federal Court's approval of this Federal Settlement Agreement and all of its terms.

3. **No Third-Party Beneficiaries.** This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary of this Agreement.

4. The respective signatories to this Federal Settlement Agreement each represent that they are fully authorized to enter into this Federal Settlement Agreement and bind the respective Parties to its terms and conditions. This Agreement may be executed in counterparts.

SIGNATURES

Wherefore, intending to be legally bound in accordance with the terms of this Agreement, the Parties hereby execute this Agreement, effective on Friday, March 16, 2018, which is the date on which the last signatory signed this Federal Settlement Agreement.

FOR PLAINTIFFS:



Alston Hunt Floyd & Ing,
Class Counsel

Hawai`i Appleseed Center
for Law and Economic Justice,
Class Counsel

Morrison & Foerster LLP,
Class Counsel

FOR DEFENDANT:

Donna H. Kalama
Caron M. Inagaki
Deputy Attorneys General

FOR PLAINTIFFS:

Alston Hunt Floyd & Ing,
Class Counsel



Hawai`i Appleseed Center
for Law and Economic Justice,
Class Counsel

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FOR PLAINTIFFS:

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Class Counsel

Hawai`i Appleseed Center
for Law and Economic Justice,
Class Counsel

Morrison & Foerster LLP,
Class Counsel

FOR DEFENDANT:



Donna H. Kalama
Caron M. Inagaki
Deputy Attorneys General

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII
The federal court authorized this notice. This is not a solicitation from a lawyer.

NOTICE OF AMENDED SETTLEMENT OF THE FEDERAL FOSTER CARE PAYMENTS LAWSUIT

In 2017, a notice was sent to Hawaii-licensed foster care providers about a settlement in a federal class action lawsuit over Hawaii’s foster care payments. The 2017 settlement would have increased the monthly basic board rates and annual clothing allowance starting July 1, 2017; required DHS to ask for money to raise the board rates when certain costs of living increased by 5% or more; and provided other benefits to foster families. The 2017 settlement failed because the Hawaii Legislature did not provide the money needed to fund the settlement.

In March 2018, the Parties agreed to amend the settlement. The 2018 settlement is similar to the 2017 settlement in that:

- It increases the amounts to be paid to resource caregivers for the monthly basic board rates and for the annual clothing allowance starting July 1, 2018.
- It requires that, over the next ten years, DHS periodically monitor increases in Hawaii’s cost of living, and ask the Hawaii Legislature for funds to increase the basic board rates when those costs increase 5% or more.
- DHS will increase Difficulty of Care payments in appropriate circumstances by waiving the current cap of 120 hours per month.

There are two main changes in the 2018 settlement. First, the 2018 settlement increases the board rate and clothing allowance beginning in July 2018 instead of July 2017. Second, Class Counsel (the attorneys for the foster parents) agreed to reduce their attorneys’ fees to \$850,000.00.

The settlement does not require the Legislature to provide money for the settlement. If the Legislature chooses not to fund the settlement again, the lawsuit will continue.

You may object to the 2018 settlement if you disagree with any of the terms, which are described below and available at a website created by Class Counsel: <http://www.hawaiiclassaction.com/fostercare>. Deadlines to object and other important information are described in this Notice.

Differences Between this Lawsuit (the Federal Lawsuit) and the State Lawsuit

This lawsuit (in federal court) focuses on how DHS should calculate and increase the foster board rates *going forward* and how much DHS should pay foster parents *in the future*. There is a separate lawsuit in Hawaii state court that focuses on the adequacy of payments made to foster and adoptive families and children in the past. The state lawsuit has also settled. *If you are also part of the state lawsuit, you will receive another notice describing that settlement. Your legal rights and options in the federal lawsuit and the state lawsuit are different.* If you receive both notices (federal and state), please carefully note the differences.

Summary of Your Legal Rights and Options in the Amended Federal Settlement	
DO NOTHING	If the 2018 settlement is approved by the Court and money is provided by the Legislature, the increased payments will take effect July 1, 2018.
OBJECT TO THE SETTLEMENT	Tell the Court about your concerns and objections to the settlement by sending a letter postmarked by MM/DD/YYYY .
GO TO THE COURT HEARING	Tell the Court that you want to speak at the Court hearing on MM/DD/YYYY about the fairness of the proposed settlement by sending a letter postmarked by MM/DD/YYYY.

Your legal rights are affected whether or not you act. Read this notice carefully.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

BACKGROUND INFORMATION

What is this federal lawsuit about?

Foster parents filed this lawsuit claiming that DHS violates federal law because:

- The foster care maintenance payments paid by DHS to resource caregivers are too low;
- DHS does not conduct adequate periodic reviews of its foster care maintenance payments; and
- DHS does not provide enough information to resource caregivers about the kinds of additional payments and benefits that are available to support foster children.

Plaintiffs calculated that if DHS had increased its foster payments to keep up with changes in Hawaii’s cost of living, the payments would be over \$1,000 per month. Plaintiffs asked the Court to require DHS: (1) to increase the payments going forward; and (2) to change the way DHS calculates its payments going forward.

DHS contends that the way Plaintiffs are calculating the amount of the payments is flawed. DHS believes it is complying with the law and has no legal obligation to increase the payments, change the way it periodically reviews the payments, or change the way it provides information to resource caregivers about payments and benefits for foster children.

The name of this lawsuit is *Ah Chong v. Bhanot*, Civ. No. 13-00663 LEK-KSC. Judge Leslie E. Kobayashi, of the United States District Court for the District of Hawaii (the Court), is overseeing this case.

You received this notice because DHS’ records show that you were licensed as a resource caregiver between the time period relevant for this case, August 17, 2015, to _____, 2018, even if you don’t have any foster children in your care now.

What does the Settlement provide?

The settlement will do two main things:

- (1) Beginning July 1, 2018, the monthly basic board rate and clothing allowance paid to resource caregivers for the care of foster children will increase.

Monthly board payments are paid **after** the month of care provided. Therefore, the new increased board rate payments below will begin with the payments that are made at the beginning of August 2018 for care provided in July 2018.

Ages	Current Monthly Board Rate	New Monthly Board Rate
0-5	\$576	\$649
6-11	\$650	\$742
12+	\$676	\$776

The annual clothing allowance will increase from a single rate of \$600 per year plus \$125 for special circumstances for foster children of all ages to an age-tiered system. The settlement does not change the ways that a clothing allowance can be obtained from DHS.

Ages	Current Clothing Allowance	New Clothing Allowance
0-5	\$600 (+ \$125 for special circumstances)	\$810
6-11		\$822
12+		\$1026

- (2) The proposed settlement also requires DHS to conduct periodic reviews of the basic board rates, and to ask the Legislature for additional money to increase the board rates if Hawaii’s cost of living increases five percent or more. The settlement requires DHS to do this for ten years. And even though DHS must ask the Legislature to provide money to raise the board rates, the Legislature could refuse to fund any increases that DHS requests.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaii.classaction.com/fostercare>

In addition, DHS will work with the Class Representative and Class Counsel to provide more information to resource caregivers about the kinds of payments and benefits that are available to help support foster children.

Separate from this lawsuit, DHS has been looking into changing its difficulty of care (DOC) payments. Until it implements the changes, DHS has agreed to waive the current DOC payment cap of 120 hours per month in appropriate circumstances. Resource caregivers must request an increase in the number of hours over 120 per month, requests will be subject to current DHS procedures, and requests can be approved only if it is in the best interest of the foster child and other children in the resource family home.

Will I be paid any money under the Federal Settlement for foster children currently in my care or for foster children I cared for in the past?

No. This settlement sets future monthly basic board rates and clothing allowances beginning July 1, 2018. It does not increase payments right now for foster children currently in your care, and does not provide any payments for foster children who were in your care in the past. This settlement provides for what is called prospective, or future, relief only.

There is a possibility that you may be entitled to a payment for foster children you cared for in the past under a different lawsuit in state court. If you are part of the state lawsuit, you will receive a separate notice about that lawsuit and settlement. **The state lawsuit notice will tell you whether or not you will receive back payments.** Information about the state lawsuit is available at <http://www.hawaii.classaction.com/fostercare>.

Are there any conditions to this Settlement?

This settlement will not become final until the federal court approves this settlement, the state court approves the settlement of the state lawsuit, and the Hawaii Legislature approves the money that will be needed to pay for both settlements.

BEING PART OF THE SETTLEMENT

Do I need to do anything to get the benefits of the Settlement?

No. You do not have to do anything to be part of the Class or to get the benefits of the settlement of this federal lawsuit. If you have received this notice, you are part of the Class and automatically part of the settlement.

What if I don't want to be in the Settlement?

By law, you cannot exclude yourself from this settlement. But you can object to the settlement. If the Court approves this settlement, you will not be able to sue the State (including DHS) about the adequacy of the prior and current foster care maintenance payments, or the increased payments embodied in the Parties' settlement agreement, for the 10 years that this settlement remains in effect.

THE LAWYERS REPRESENTING THE CLASS

Do I have lawyers in the case?

Yes. The Court has appointed these lawyers to represent you and other Class Members as Class Counsel:

Paul Alston J. Blaine Rogers Claire Wong Black Alston Hunt Floyd & Ing 1001 Bishop Street, Ste. 1800 Honolulu, HI 96813	Victor Geminiani Gavin Thornton Hawaii Appleseed Center for Law and Economic Justice 119 Merchant St., Ste. 605 Honolulu, HI 96813	Marc D. Peters James R. Hancock Alessa Hwang Morrison & Foerster LLP 755 Page Mill Road Palo Alto, CA 93404
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You will not be charged personally for these lawyers. If you want to be represented by another lawyer to object to the proposed settlement, you may hire one to appear in Court for you at your own personal expense.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaii.classaction.com/fostercare>

How will the lawyers be paid? Do the plaintiffs get paid?

Plaintiffs will apply to the Court for an award of attorneys' fees, costs, and expenses (the "Fee Application") of not more than \$850,000.00. Copies of the Fee Application will be made available online at <http://hawaiiiclassaction.com/fostercare>.

You may object to the request for attorneys' fees and costs. After considering the objections of Class Members, the Court will determine the amount of attorneys' fees and costs to be paid to Class Counsel.

Neither you nor any other member of the Class is or will be personally liable for the Attorneys' Fee Award.

Class Counsel will ask the Court to allow Service Awards for the plaintiffs who brought this lawsuit. These Service Awards are intended to recognize the Named Plaintiffs for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards, if any, will be deducted from any award of attorneys' fees and costs by the Court.

OBJECTING TO THE SETTLEMENT

How can I object to the Settlement?

You may send a letter to the Court objecting to the settlement if you don't like any part of it. This includes the amount of the basic board rate increase, the clothing allowance increase, the Fee Application, or the Service Award for the Class Representative and Named Plaintiffs. The Court will consider your views.

Send objections to: The Honorable Leslie E. Kobayashi
United States District Court for the District of Hawai'i
300 Ala Moana Boulevard, Room C-338
Honolulu, HI 96850-0338

Your objection must include the following information:

Title: Objection to Class Settlement in *Ah Chong v. Bhanot*, Civil No. 13-00663 LEK-KSC

Contact Information: your name, address, and telephone number or email.

Objections: Tell the Court the reasons why you object to the settlement.

Deadline: Your objection must be **postmarked no later than _____, 2018.**

THE FAIRNESS HEARING

When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on _____, at _____, at the United States District Court for the District of Hawaii, 300 Ala Moana Boulevard, Honolulu, Hawaii, in Courtroom Aha Nonoi on the fourth floor. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check Class Counsel's website (<http://www.hawaiiiclassaction.com/fostercare>) or the federal court's calendar (<http://www.hid.uscourts.gov/base.cfm?pid=0&mid=2>) before you attend in person. You must bring government issued photo ID in order to get into the Courthouse.

At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

Do I have to come to the Fairness Hearing?

No. Class Counsel will answer questions the Judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend on your behalf, but it's not necessary.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiiclassaction.com/fostercare>

May I speak at the Fairness Hearing?

You may ask the Court for permission to speak in person or through a lawyer at the Fairness Hearing by sending a letter to Judge Kobayashi (at the same address you can send objections) saying that it is your “Notice of Intention to Appear in *Ah Chong v. Bhanot*, Civil No. 13-00663 LEK-KSC.” Be sure to include your name, address, and telephone number, and if a lawyer will attend for you, also include your lawyer’s name, address, and telephone number. Your Notice of Intention to Appear must be **postmarked** no later than _____.

GETTING MORE INFORMATION

How do I get more information?

This notice summarizes the proposed settlement. You can call Class Counsel at (808) 524-1800; email Class Counsel at fostercare@ahfi.com; or visit Class Counsel’s website for this litigation at <http://www.hawaii.classaction.com/fostercare>, where you will find other information about the federal lawsuit and the proposed settlement.

PLEASE DO NOT CALL THE COURT WITH YOUR QUESTIONS.

March __, 2018

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I**

PATRICIA SHEEHEY, PATRICK
SHEEHEY, RAYNETTE AH CHONG,
individually and on behalf of the class of
licensed foster care providers in the state
of Hawai‘i,

Plaintiffs,

vs.

PANKAJ BHANOT, in his official
capacity as the Director of the Hawai‘i
Department of Human Services,

Defendant.

CIVIL NO. CV13-00663 LEK-KSC

ORDER PRELIMINARILY
APPROVING AMENDED CLASS
ACTION SETTLEMENT,
APPROVING NOTICE PLAN, AND
SCHEDULING DATE FOR
FAIRNESS HEARING

**ORDER PRELIMINARILY APPROVING AMENDED
CLASS ACTION SETTLEMENT, APPROVING NOTICE
PLAN, AND SCHEDULING DATE FOR FAIRNESS HEARING**

Upon consideration of the unopposed Motion for Preliminary Approval of Amended Class Action Settlement filed by Defendant, Dkt ____ (the “Motion”), the hearing before this Court on _____, and the entire record herein, the Court grants preliminary approval of the Settlement embodied in the Amended Federal Lawsuit Class Action Settlement Agreement, Exhibit A to the Motion (hereinafter the “Federal Settlement Agreement”), upon the terms and conditions set forth in this Order. Capitalized terms and phrases in this Order shall have the same meaning as they have in the Federal Settlement Agreement.

The Court makes the following FINDINGS OF FACT:

1. Defendant Pankaj Bhanot, in his official capacity as the Director of the Hawaii Department of Human Services (“DHS”), filed the unopposed Motion on _____.

2. Plaintiff Ah Chong filed the complaint herein against Defendant on December 3, 2013, in the United States District Court for the District of Hawaii (the “Federal Lawsuit”). On April 30, 2014, Plaintiffs Ah Chong and Patrick Sheehey and Patricia Sheehey filed a First Amended Complaint. Dkt 47.

3. Plaintiffs bring this case pursuant to 42 U.S.C. § 1983, seeking declaratory judgment and injunctive relief on the grounds that DHS’ foster care maintenance payments and adoption assistance payments are inadequate, which they allege violates the Child Welfare Act, Title IV-E of the Social Security Act, §§ 670-679c. Dkt 47, First Amended Complaint at ¶¶ 1-3.

4. By order entered August 17, 2015, this Court certified the following class:

[A]ll currently licensed foster care providers in Hawai‘i who are entitled to receive foster care maintenance payments pursuant to the Child Welfare Act when they have foster children placed in their homes – (“the Class”)[.]

Dkt 156 at 33.

5. Plaintiff Ah Chong was appointed as representative of the Class. Dkt 156 at 34.

6. The attorneys from Hawaii Appleseed Center for Law and Economic Justice; Alston, Hunt, Floyd & Ing; and Morrison & Foerster LLP who are the current attorneys of record for Plaintiffs were appointed as Class Counsel. Dkt 156 at 34.

7. The Court denied a request to certify an adoption assistance subclass, and all claims not prosecuted by the Class were ordered to be prosecuted on behalf of the Named Plaintiffs only. Dkt 156 at 33-34.

8. The Named Plaintiffs, along with other individuals, also filed a putative class action lawsuit in the Circuit Court of the First Circuit, State of Hawaii, titled *Sheehey, et al. v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC (the “State Lawsuit”). The State Lawsuit claims that the State did not pay enough for monthly foster care maintenance payments, permanency assistance, adoption assistance, and higher education payments. The plaintiffs in the State Lawsuit contend that they are entitled to damages equal to the shortfall between the amounts they claim DHS should have paid them, and the amounts DHS actually paid.

9. In this case, the Parties conducted an extensive and thorough investigation and evaluation of the relevant laws, facts and allegations to assess the merits of the potential claims to determine the strength of defenses and liability asserted by the Parties.

10. As part of their investigation, Class Counsel engaged in substantial discovery about the cost of caring for children in Hawaii, DHS' foster care maintenance payment rates, DHS' process for setting and increasing those rates, additional benefits and payments that are available for the benefit of children in foster care and how many resource caregivers actually request or receive these additional benefits and payments, and the number of people affected by DHS' foster care maintenance payment rates.

11. Class Counsel received over 10,000 pages of hard copy documents from DHS and electronic databases with hundreds of thousands of payments made by DHS to resource caregivers. Both the Class Representative and Plaintiff Patricia Sheehey were deposed. Named Plaintiffs responded to written discovery requests from DHS.

12. Class Counsel was advised by various consultants and experts, including individuals with expertise in Hawaii's cost of living, and with expertise in foster care maintenance payment costs, payment systems, and payment rates in other States. Numerous expert reports were generated in this case, and depositions of the Parties' experts were taken.

13. On August 26, 2016, the Parties placed the essential terms of a binding settlement of both the Federal Lawsuit and the State Lawsuit on the record before Magistrate Judge Kevin S.C. Chang. Dkt 327. The settlement was

subsequently memorialized in written settlement agreements filed with this Court on March 14, 2017 (referred to collectively herein as the “original settlement”). Dkt 340-3 and 340-4.

14. The original settlement was conditioned on funding of required settlement payments by the Hawaii Legislature by a deadline of June 30, 2017. The Parties reported to the Court that the Legislature did not appropriate the required funds by that date.

15. The Parties subsequently agreed to amend the terms of the settlement to extend the Legislative Enactment Deadline by one year, to reduce the amount of attorneys’ fees to be sought by Class Counsel, and to make other conforming changes to the dates and deadlines previously agreed upon.

16. On March 7, 2018, the Parties placed the essential terms of the amended settlement on the record before Magistrate Judge Kevin S.C. Chang. Dkt 384.

17. The Parties have now executed an Amended Federal Lawsuit Class Action Settlement Agreement (“Federal Settlement Agreement”), Exhibit A to the Motion, in which the Parties formally document the settlement, as amended, of this Federal Lawsuit, subject to the approval and determination by the Court as to the fairness, reasonableness, and adequacy of the Settlement, which, if approved, will result in dismissal of the Federal Lawsuit with prejudice. A copy of the Amended

State Lawsuit Class Action Settlement Agreement (“State Settlement Agreement”), Exhibit B to the Motion, was also provided to the Court.

18. Because the proposed Settlement is a global settlement of both this Federal Lawsuit and the State Lawsuit, the parties to the State Lawsuit are separately seeking the State Court’s consent to the settlement of the State Lawsuit.

19. Under the terms of the Settlement, unless both Lawsuits are finally settled and approved by the respective courts, neither Lawsuit will be settled.

20. Because the State of Hawaii, through its designated DHS official in this Federal Lawsuit and as party-Defendant in the State Lawsuit, must seek appropriations from the Hawaii Legislature to pay for certain of the payments provided for under the Federal Settlement Agreement and the State Settlement Agreement, this Lawsuit will not be settled if the described appropriations are not made.

The Court having reviewed the Federal Settlement Agreement, and being familiar with the prior proceedings herein, and having found good cause based on the record, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. Stay of the Action. All non-settlement-related proceedings in this Federal Lawsuit are hereby stayed and suspended until further order of the Court.
2. Class, Class Representative, Class Counsel. The Class previously certified by this Court shall continue to be the Class for purposes of the Settlement.

Raynette Ah Chong shall continue to serve as Class Representative. Previously appointed counsel shall continue to serve as Class Counsel.

3. Preliminary Settlement Approval. The Court preliminarily approves the Settlement set forth in the Federal Settlement Agreement (Exhibit A to the Motion) as being within the range of possible approval as fair, reasonable, and adequate within the meaning of Rule 23 and the Class Action Fairness Act of 2005, subject to final consideration at the Fairness Hearing provided for below.

Accordingly, the Federal Settlement Agreement is sufficient to warrant sending notice to the Class.

4. Jurisdiction. The Court has subject-matter jurisdiction over this action pursuant to 28 USC § 1331 and has personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 USC § 1391.

5. Fairness Hearing. A Fairness Hearing will be held on _____, at _____, at the United States District Court for the District of Hawaii, 300 Ala Moana Boulevard, Honolulu, Hawaii, in Courtroom Aha Nonoi on the fourth floor, to determine, among other things: (a) whether the settlement of the Federal Lawsuit should be finally approved as fair, reasonable, and adequate pursuant to Rule 23(e); (b) whether the Federal Lawsuit should be dismissed with prejudice pursuant to the terms of the Federal Settlement Agreement; (c) whether Class Members should be bound by the releases set forth

in the Federal Settlement Agreement; (d) whether Class Members and related persons should be permanently enjoined from pursuing lawsuits based on the transactions and occurrences at issue in the Federal Lawsuit; (e) whether the request of Class Counsel for attorneys' fees and costs should be approved pursuant to Rule 23(h); and (f) whether the application of the Named Plaintiffs for a Service Award should be approved.

6. Administration. The Parties are authorized to establish the means necessary to administer the proposed Settlement in accordance with the Federal Settlement Agreement.

7. Class Notice. The proposed Class Notice and the notice methodology described in the Federal Settlement Agreement are hereby approved.

a. DHS is appointed Notice Administrator, meaning only that it is responsible for generating the mailing list of Class Members, based on its records, who are to be sent the Class Notice, and for mailing the approved Class Notice to Class Members. DHS may utilize the services of a copy/ mailing service to copy and mail the approved Class Notice, at its expense. The following persons shall be sent a copy of the Class Notice: DHS-licensed foster care providers in Hawaii who were licensed between August 17, 2015 (the date of entry of the order granting class certification) through _____ (the date on which the mailing list was generated by DHS).

b. Class Counsel shall continue to maintain the internet website relating to the Settlement, which shall inform Class Members of the terms of the Federal Settlement Agreement, their rights, dates and deadlines, and related information. The website shall include (but not be limited to), in Portable Document Format (“PDF”), materials agreed upon by the Parties and as further ordered by this Court. Class Counsel will also provide a telephone number that Class Members may call for information about the Settlement. Both the website and telephone number shall continue to be made available by Class Counsel through at least December 31, 2019.

c. Beginning not later than _____, 2018, and subject to the requirements of this Order and the Federal Settlement Agreement, DHS shall commence sending the Class Notice by U.S. mail to each Class Member described in paragraph 7.a., above, as identified through DHS’ records, at the Class Member’s last known address reflected in DHS’ records. DHS shall: (a) re-mail any Class Notices returned by the U.S. Postal Service with a forwarding address that are received by DHS within ten (10) days of receipt of the returned Class Notices that contain a forwarding address; and (b) by itself or using one or more address research firms, as soon as practicable following receipt of any returned Class Notices that do not include a forwarding address, research any such returned

mail for better addresses and promptly mail copies of the Class Notices to the addresses so found.

d. Not later than _____, 2018, counsel for DHS shall file with the Court details outlining the scope, methods, and results of the notice program, and compliance with the obligation to give notice to each appropriate State and Federal Official, as specified in 28 U.S.C. § 1715.

8. Findings Concerning Notice. The Court finds that the form, content, and method of giving notice to the Class as described in paragraph 7 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Federal Lawsuit, the terms of the proposed Settlement, including but not limited to the right to object to the proposed Settlement and other rights under the terms of the Federal Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the due process clause of the United States Constitution. The Court further finds that the Class Notice is written in simple terminology, is readily understandable by Class Members, and is materially consistent with the Federal Judicial Center's illustrative class action notices. Non-

material changes and corrections may be made to the Class Notice as the Parties deem appropriate or necessary.

9. No Exclusion from Class. Class Members cannot exclude themselves from the Settlement. The Class was certified under Rule 23(b)(2), and both the relief sought by Plaintiffs, and the payments and other terms under the Federal Settlement Agreement, are prospective in nature. Exclusion of individual Class Members is not consistent with the prospective, injunctive nature of the relief to be provided.

10. Objections and Appearances. Any Class Member or counsel hired at any Class Member's own expense who complies with the requirements of this paragraph may object to any aspect of the proposed Settlement. Class Members may object either on their own or through an attorney retained at their own expense. Any Class Member who fails to comply with the provisions of this paragraph 10 shall waive and forfeit any and all rights he or she may have to object, and shall be bound by all terms of the Federal Settlement Agreement, this Order, and by all proceedings and orders, including but not limited to the release in the Federal Settlement Agreement.

a. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Federal Settlement Agreement, the proposed Settlement, the request for attorneys' fees and cost, or the proposed Service

Awards to Plaintiffs, must submit the objection to the Court, with a postmarked date of no later than _____, 2018. The Court will provide copies of any such objection to counsel for the Parties.

b. The written objection must include: (i) the name and current address of the objector, and a caption or title that identifies it as “Objection to Class Settlement in *Ah Chong v. McManaman*, Civil No. 13-00663 LEK-KSC”; (ii) a written statement of objections, as well as the specific reasons for each objection. It shall be the responsibility of DHS to verify for the Court that an objector is a Class Member.

c. Any Class Member, including Class Members who file and serve a written objection as described above, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member’s expense, to object to or comment on the fairness, reasonableness, or adequacy of the Federal Settlement Agreement or proposed Settlement, or to the request for attorneys’ fees and costs or the proposed Service Awards to the Plaintiffs. Class Members who intend to make an appearance at the Fairness Hearing must submit a “Notice of Intention to Appear” to the Court, listing the name, address, and phone number of the attorney, if any, who will appear, with a postmarked date of no later than _____, 2017, or as the Court may otherwise direct.

d. Class Counsel and Defendant shall have the right to respond to any objections no later than _____, 2018, or as the Court may otherwise direct. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objecting Class Member or to the individually-hired attorney for the objecting Class Member; to all Class Counsel; and to counsel for Defendant.

11. Disclosures. Counsel for the Parties shall promptly furnish to each other copies of any and all objections that might come into their possession.

12. Termination of Settlement. This Order shall become null and void and shall not prejudice the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the Settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Federal Settlement Agreement; or (b) the Settlement does not become effective as required by the terms of the Federal Settlement Agreement for any other reason. In such event, the Settlement and Federal Settlement Agreement shall become null and void and be of no further force and effect, and neither the Federal Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement, shall be used or referred to for any purpose.

13. Stay and Preliminary Injunction. Other than the State Lawsuit, which is not affected by this paragraph, effective immediately, any actions or proceedings pending in any state or federal court in the United States involving the State of Hawaii's foster care maintenance payments or components thereof are stayed pending the final Fairness Hearing and the issuance of the order of final approval and an order dismissing the Federal Lawsuit with prejudice. Other than the State Lawsuit, the Parties are not aware of the existence of other pending actions or proceedings.

In addition, pending the final Fairness Hearing and the issuance of a final order and dismissal with prejudice, all members of the Class are hereby preliminarily enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving benefits from any other lawsuit, arbitration or administrative, regulatory, or other proceeding or order in any jurisdiction arising out of or relating to the State of Hawaii's foster care maintenance payments or any component thereof or the claims at issue in this Federal Lawsuit, except that nothing in this paragraph shall affect the State Lawsuit.

Under the All Writs Act, the Court finds that issuance of this nationwide stay and injunction is necessary and appropriate in aid of the Court's jurisdiction

over this action. The Court finds that no bond is necessary for issuance of this injunction.

14. Effect of Settlement Agreement and Dismissal with Prejudice. Class Counsel, on behalf of the Class, and Defendant entered into the Federal Settlement Agreement solely for the purpose of compromising and settling the disputed claims. This Order shall be of no force and effect if the Settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability. The Federal Settlement Agreement, and this Order, are not, and should not in any event be (a) construed, deemed, offered or received as evidence of a presumption, concession or admission on the part of Plaintiffs, Defendant, or any member of the Class or any other person; or (b) offered or received as evidence of a presumption, concession, or admission by any person of any liability, fault, or wrongdoing, or that the claims in the Federal Lawsuit lack merit or that the relief requested is inappropriate, improper, or unavailable for any purpose in any judicial or administrative proceeding, whether in law or in equity.

15. Retaining Jurisdiction. This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Class.

16. Continuance of Hearing. The Court reserves the right to adjourn or continue the Fairness Hearing without further written notice.

17. The Court sets the following schedule for the Fairness Hearing and the actions which must precede it:

a. Plaintiffs or Defendant shall file a Motion for Final Approval of the Settlement by no later than _____, 2018.

b. Plaintiffs shall file their motion for attorneys' fees and costs, and/or the Motion for Service Awards by no later than _____, 2018.

c. Class Members must submit to the Court any objections to the Settlement and the motion for attorneys' fees and costs and/or the Motion for Service Awards postmarked no later than _____, 2018.

d. Class Members who intend to appear at the final Fairness Hearing must submit to the Court a Notice of Intention to Appear at the Final Fairness Hearing postmarked no later than _____, 2018.

e. Counsel for Defendant shall file: (i) the details outlining the scope, methods, and results of the notice program; and (ii) compliance with the obligation to give notice to each appropriate State and Federal official, as specified in 28 U.S.C. § 1715, and any other applicable statute, law, or rule, including, but not limited to the due process clause of the United States Constitution, by no later than _____, 2018.

f. Class Counsel and counsel for Defendant shall have the right to respond to any objection by no later than _____, 2018.

g. The Fairness Hearing will take place on _____, at _____, at the United States District Court for the District of Hawaii, in Courtroom Aha Nonoi.

SO ORDERED.

DATED: Honolulu, Hawai‘i, _____, 2018.

/s/ _____
LESLIE E. KOBAYASHI
United States District Judge

In the United States District Court for the District of Hawaii, *Sheehey, et al. v. Bhanot*, Civ. No. CV13-00663 LEK-KSC; Order Preliminarily Approving Amended Class Action Settlement, Approving Notice Plan, and Scheduling Date for Fairness Hearing.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

RAYNETTE AH CHONG, PATRICIA
SHEEHEY, PATRICK SHEEHEY,
individually and on behalf of the class of
licensed foster care providers in the state
of Hawai'i,

Plaintiffs,

vs.

PANKAJ BHANOT, in his official
capacity as the Director of the Hawai'i
Department of Human Services,

Defendant.

CIVIL NO. CV13-00663 LEK-KSC

ORDER PRELIMINARILY
APPROVING AMENDED CLASS
ACTION SETTLEMENT,
APPROVING NOTICE PLAN, AND
SCHEDULING DATE FOR
FAIRNESS HEARING

**ORDER PRELIMINARILY APPROVING AMENDED
CLASS ACTION SETTLEMENT, APPROVING NOTICE
PLAN, AND SCHEDULING DATE FOR FAIRNESS HEARING**

Upon consideration of the unopposed Motion for Preliminary Approval of Amended Settlement filed by Defendant, Dkt 386 (the "Motion"), the hearing before this Court on March 27, 2018, and the entire record herein, the Court grants preliminary approval of the Settlement embodied in the Amended Federal Lawsuit Class Action Settlement Agreement, Exhibit A to the Motion (hereinafter the "Federal Settlement Agreement"), upon the terms and conditions set forth in this Order. Capitalized terms and phrases in this Order shall have the same meaning as they have in the Federal Settlement Agreement.

Exhibit "C"

The Court makes the following FINDINGS OF FACT:

1. Defendant Pankaj Bhanot, in his official capacity as the Director of the Hawaii Department of Human Services (“DHS”), filed his unopposed motion for preliminary approval on March 23, 2018, with the consent of Plaintiffs.

2. Plaintiff Ah Chong filed the complaint herein against Defendant on December 3, 2013, in the United States District Court for the District of Hawaii (the “Federal Lawsuit”). On April 30, 2014, Plaintiffs Ah Chong and Patrick Sheehey and Patricia Sheehey filed a First Amended Complaint. Dkt 47.

3. Plaintiffs bring this case pursuant to 42 U.S.C. § 1983, seeking declaratory judgments and injunctive relief on the grounds that DHS’ foster care maintenance payments and adoption assistance payments are inadequate, which they allege violates the Child Welfare Act, Title IV-E of the Social Security Act, §§ 670-679c. Dkt 47, First Amended Complaint at ¶¶ 1-3.

4. By order entered August 17, 2015, this Court certified the following class:

[A]ll currently licensed foster care providers in Hawai‘i who are entitled to receive foster care maintenance payments pursuant to the Child Welfare Act when they have foster children placed in their homes – (“the Class”)[.]

Dkt 156 at 33.

5. Plaintiff Ah Chong was appointed as representative of the Class. Dkt 156 at 34.

6. The attorneys from Hawaii Appleseed Center for Law and Economic Justice; Alston, Hunt, Floyd & Ing; and Morrison & Foerster LLP who are the current attorneys of record for Plaintiffs were appointed as Class Counsel. Dkt 156 at 34.

7. The Court denied a request to certify an adoption assistance subclass, and all claims not prosecuted by the Class were ordered to be prosecuted on behalf of the Named Plaintiffs only. Dkt 156 at 33-34.

8. The Named Plaintiffs, along with other individuals, also filed a putative class action lawsuit in the Circuit Court of the First Circuit, State of Hawaii, titled *Sheehey, et al. v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC (the “State Lawsuit”). The State Lawsuit claims that the State did not pay enough for monthly foster care maintenance payments, permanency assistance, adoption assistance, and higher education payments. The plaintiffs in the State Lawsuit contend that they are entitled to damages equal to the shortfall between the amounts they claim DHS should have paid them, and the amounts DHS actually paid.

9. In this case, the Parties conducted an extensive and thorough investigation and evaluation of the relevant laws, facts and allegations to assess the merits of the potential claims to determine the strength of defenses and liability asserted by the Parties.

10. As part of their investigation, Class Counsel engaged in substantial discovery about the cost of caring for children in Hawaii, DHS' foster care maintenance payment rates, DHS' process for setting and increasing those rates, additional benefits and payments that are available for the benefit of children in foster care and how many resource caregivers actually request or receive these additional benefits and payments, and the number of people affected by DHS' foster care maintenance payment rates.

11. Class Counsel received over 10,000 pages of hard copy documents from DHS and electronic databases with hundreds of thousands of payments made by DHS to resource caregivers. Both the Class Representative and Plaintiff Patricia Sheehey were deposed. Named Plaintiffs responded to written discovery requests from DHS.

12. Class Counsel was advised by various consultants and experts, including individuals with expertise in Hawaii's cost of living, and with expertise in foster care maintenance payment costs, payment systems, and payment rates in other States. Numerous expert reports were generated in this case, and depositions of the Parties' experts were taken.

13. On August 26, 2016, the Parties placed the essential terms of a binding settlement of both the Federal Lawsuit and the State Lawsuit on the record before Magistrate Judge Kevin S.C. Chang. Dkt 327. The settlement was

subsequently memorialized in written settlement agreements filed with this Court on March 14, 2017 (referred to collectively as the “original settlement”). Dkt 340-3 and 340-4.

14. The original settlement was conditioned on funding of required settlement payments by the Hawaii Legislature by a deadline of June 30, 2017. The Parties reported to the Court that the Legislature did not appropriate the required funds by that date.

15. The Parties subsequently agreed to amend the terms of the settlement to extend the Legislative Enactment Deadline by one year; to reduce the amount of attorneys’ fees sought by Class Counsel; and to make other conforming changes to the dates and deadlines previously agreed upon.

16. On March 7, 2018, the Parties placed the essential terms of the amended settlement on the record before Magistrate Judge Kevin S.C. Chang. Dkt 384.

17. The Parties have now executed an Amended Federal Lawsuit Class Action Settlement Agreement (“Federal Settlement Agreement”), Exhibit A to the Motion, in which the Parties formally document the settlement, as amended, of this Federal Lawsuit, subject to the approval and determination by the Court as to the fairness, reasonableness, and adequacy of the Settlement, which, if approved, will result in dismissal of the Federal Lawsuit with prejudice. A copy of the Amended

State Lawsuit Class Action Settlement Agreement (“State Settlement Agreement”), Exhibit B to the Motion, was also provided to the Court.

18. Because the proposed Settlement is a global settlement of both this Federal Lawsuit and the State Lawsuit, the parties to the State Lawsuit are separately seeking the State Court’s consent to the settlement of the State Lawsuit.

19. Under the terms of the Settlement, unless both Lawsuits are finally settled and approved by the respective courts, neither Lawsuit will be settled.

20. Because the State of Hawaii, through its designated DHS official in this Federal Lawsuit and as party-Defendant in the State Lawsuit, must seek appropriations from the Hawaii Legislature to pay for certain of the payments provided for under the Federal Settlement Agreement and the State Settlement Agreement, this Lawsuit will not be settled if the described appropriations are not made.

The Court having reviewed the Federal Settlement Agreement, and being familiar with the prior proceedings herein, and having found good cause based on the record, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. Stay of the Action. All non-settlement-related proceedings in this Federal Lawsuit are hereby stayed and suspended until further order of the Court.
2. Class, Class Representative, Class Counsel. The Class previously certified by this Court shall continue to be the Class for purposes of the Settlement.

Raynette Ah Chong shall continue to serve as Class Representative. Previously appointed counsel shall continue to serve as Class Counsel.

3. Preliminary Settlement Approval. The Court preliminarily approves the Settlement set forth in the Federal Settlement Agreement (Exhibit A to the Motion) as being within the range of possible approval as fair, reasonable, and adequate within the meaning of Rule 23 and the Class Action Fairness Act of 2005, subject to final consideration at the Fairness Hearing provided for below.

Accordingly, the Federal Settlement Agreement is sufficient to warrant sending notice to the Class.

4. Jurisdiction. The Court has subject-matter jurisdiction over this action pursuant to 28 USC § 1331, and has personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 USC § 1391.

5. Fairness Hearing. A Fairness Hearing will be held on May 21, 2018, at 9:45 a.m., at the United States District Court for the District of Hawaii, 300 Ala Moana Boulevard, Honolulu, Hawaii, in Courtroom Aha Nonoi on the fourth floor, to determine, among other things: (a) whether the settlement of the Federal Lawsuit should be finally approved as fair, reasonable, and adequate pursuant to Rule 23(e); (b) whether the Federal Lawsuit should be dismissed with prejudice pursuant to the terms of the Federal Settlement Agreement; (c) whether Class Members should be bound by the releases set forth in the Federal Settlement

Agreement; (d) whether Class Members and related persons should be permanently enjoined from pursuing lawsuits based on the transactions and occurrences at issue in the Federal Lawsuit; (e) whether the request of Class Counsel for attorneys' fees and costs should be approved pursuant to Rule 23(h); and (f) whether the application of the Named Plaintiffs for a Service Award should be approved.

6. Administration. The Parties are authorized to establish the means necessary to administer the proposed Settlement in accordance with the Federal Settlement Agreement.

7. Class Notice. The proposed Class Notice and the notice methodology described in the Federal Settlement Agreement are hereby approved.

a. DHS is appointed Notice Administrator, meaning only that it is responsible for generating the mailing list of Class Members, based on its records, who are to be sent the Class Notice, and for mailing the approved Class Notice to Class Members. DHS may utilize the services of a copy/ mailing service to copy and mail the approved Class Notice, at its expense. The following persons shall be sent a copy of the Class Notice: DHS-licensed foster care providers in Hawaii who were licensed between August 17, 2015 (the date of entry of the order granting class certification) through March 15, 2018 (the date on which the mailing list was generated by DHS).

b. Class Counsel shall continue to maintain the internet website to inform Class Members of the terms of the Federal Settlement Agreement, their rights, dates and deadlines, and related information. The website shall include (but not be limited to), in Portable Document Format (“PDF”), materials agreed upon by the Parties and as further ordered by this Court. Class Counsel will also provide a telephone number that Class Members may call for information about the Settlement. Both the website and telephone number shall continue to be made available by Class Counsel through at least December 31, 2019.

c. Beginning not later than April 3, 2018, and subject to the requirements of this Order, and the Federal Settlement Agreement, DHS shall commence sending the Class Notice by U.S. mail to each Class Member described in paragraph 7.a., above, as identified through DHS’ records, at the Class Member’s last known address reflected in DHS’ records. DHS shall re-mail any Class Notices returned by the U.S. Postal Service with a forwarding address that are received by DHS within ten (10) days of receipt of the returned Class Notices that contain a forwarding address, and (b) by itself or using one or more address research firms, as soon as practicable following receipt of any returned Class Notices that do not include a forwarding address, research any such returned mail for better addresses and promptly mail copies of the Class Notices to the addresses so found.

d. Not later than April 23, 2018, counsel for DHS shall file with the Court details outlining the scope, methods, and results of the notice program, and compliance with the obligation to give notice to each appropriate State and Federal Official, as specified in 28 U.S.C. § 1715.

8. Findings Concerning Notice. The Court finds that the form, content, and method of giving notice to the Class as described in paragraph 7 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Federal Lawsuit, the terms of the proposed Settlement, including but not limited to the right to object to the proposed Settlement and other rights under the terms of the Federal Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the due process clause of the United States Constitution. The Court further finds that the Class Notice is written in simple terminology, is readily understandable by Class Members, and is materially consistent with the Federal Judicial Center's illustrative class action notices. Non-material changes and corrections may be made to the Class Notice as the Parties deem appropriate or necessary.

9. No Exclusion from Class. Class Members cannot exclude themselves from the Settlement. The Class was certified under Rule 23(b)(2), and both the relief sought by Plaintiffs, and the payments and other terms under the Federal Settlement Agreement, are prospective in nature. Exclusion of individual Class Members is not consistent with the prospective, injunctive nature of the relief to be provided.

10. Objections and Appearances. Any Class Member or counsel hired at any Class Member's own expense who complies with the requirements of this paragraph may object to any aspect of the proposed Settlement. Class Members may object either on their own or through an attorney retained at their own expense. Any Class Member who fails to comply with the provisions of this paragraph 10 shall waive and forfeit any and all rights he or she may have to object, and shall be bound by all terms of the Federal Settlement Agreement, this Order, and by all proceedings and orders, including but not limited to the release in the Federal Settlement Agreement.

a. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Federal Settlement Agreement, the proposed Settlement, the request for attorneys' fees and cost, or the proposed Service Awards to Plaintiffs, must submit the objection to the Court, with a postmarked

date of no later than May 3, 2018. The Court will provide copies of any such objection to counsel for the Parties.

b. The written objection must include: (i) the name and current address of the objector, and a caption or title that identifies it as “Objection to Class Settlement in *Ah Chong v. Bhanot*, Civil No. 13-00663 LEK-KSC”; (ii) a written statement of objections, as well as the specific reasons for each objection. It shall be the responsibility of DHS to verify for the Court that an objector is a Class Member.

c. Any Class Member, including Class Members who file and serve a written objection as described above, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member’s expense, to object to or comment on the fairness, reasonableness, or adequacy of the Federal Settlement Agreement or proposed Settlement, or to the request for attorneys’ fees and costs or the proposed Service Awards to the Plaintiffs. Class Members who intend to make an appearance at the Fairness Hearing must submit a “Notice of Intention to Appear” to the Court, listing the name, address, and phone number of the Class Member or the attorney, if any, who will appear, with a postmarked date of no later than May 3, 2018, or as the Court may otherwise direct.

d. Class Counsel and Defendant shall have the right to respond to any objections no later than May 3, 2018, or as the Court may otherwise direct.

The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objecting Class Member or to the individually-hired attorney for the objecting Class Member; to all Class Counsel; and to counsel for Defendant.

11. Disclosures. Counsel for the Parties shall promptly furnish to each other copies of any and all objections that might come into their possession.

12. Termination of Settlement. This Order shall become null and void and shall not prejudice the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the Settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Federal Settlement Agreement; or (b) the Settlement does not become effective as required by the terms of the Federal Settlement Agreement for any other reason. In such event, the Settlement and Federal Settlement Agreement shall become null and void and be of no further force and effect, and neither the Federal Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement, shall be used or referred to for any purpose.

13. Stay and Preliminary Injunction. Other than the State Lawsuit, which is not affected by this paragraph, effective immediately, any actions or proceedings pending in any state or federal court in the United States involving the State of

Hawaii's foster care maintenance payments or components thereof are stayed pending the final Fairness Hearing and the issuance of the order of final approval and an order dismissing the Federal Lawsuit with prejudice. Other than the State Lawsuit, the Parties are not aware of the existence of other pending actions or proceedings.

In addition, pending the final Fairness Hearing and the issuance of a final order and dismissal with prejudice, all members of the Class are hereby preliminarily enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving benefits from any other lawsuit, arbitration or administrative, regulatory, or other proceeding or order in any jurisdiction arising out of or relating to the State of Hawaii's foster care maintenance payments or any component thereof or the claims at issue in this Federal Lawsuit, except that nothing in this paragraph shall affect the State Lawsuit.

Under the All Writs Act, the Court finds that issuance of this nationwide stay and injunction is necessary and appropriate in aid of the Court's jurisdiction over this action. The Court finds that no bond is necessary for issuance of this injunction.

14. Effect of Settlement Agreement and Dismissal with Prejudice. Class Counsel, on behalf of the Class, and Defendant entered into the Federal Settlement

Agreement solely for the purpose of compromising and settling the disputed claims. This Order shall be of no force and effect if the Settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability. The Federal Settlement Agreement, and this Order, are not, and should not in any event be (a) construed, deemed, offered or received as evidence of a presumption, concession or admission on the part of Plaintiffs, Defendant, or any member of the Class or any other person; or (b) offered or received as evidence of a presumption, concession, or admission by any person of any liability, fault, or wrongdoing, or that the claims in the Federal Lawsuit lack merit or that the relief requested is inappropriate, improper, or unavailable for any purpose in any judicial or administrative proceeding, whether in law or in equity.

15. Retaining Jurisdiction. This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Class.

16. Continuance of Hearing. The Court reserves the right to adjourn or continue the Fairness Hearing without further written notice.

17. The Court sets the following schedule for the Fairness Hearing and the actions which must precede it:

a. Plaintiffs or Defendant shall file a Motion for Final Approval of the Settlement by no later than May 3, 2018.

b. Plaintiffs shall file their motion for attorneys' fees and costs, and/or the Motion for Service Awards by no later than March 30, 2018.

c. Class Members must submit to the Court any objections to the Settlement and the motion for attorneys' fees and costs and/or the Motion for Service Awards postmarked no later than May 3, 2018.

d. Class Members who intend to appear at the final Fairness Hearing must submit to the Court a Notice of Intention to Appear at the Final Fairness Hearing postmarked no later than May 3, 2018.

e. Counsel for Defendant shall file: (i) the details outlining the scope, methods, and results of the notice program; and (ii) compliance with the obligation to give notice to each appropriate State and Federal official, as specified in 28 U.S.C. § 1715, and any other applicable statute, law, or rule, including, but not limited to the due process clause of the United States Constitution, by no later than April 23, 2018.

f. Class Counsel and counsel for Defendant shall have the right to respond to any objection by no later than May 3, 2018.

g. The Fairness Hearing will take place on May 21, 2018, at 9:45 a.m., at the United States District Court for the District of Hawaii, in Courtroom Aha Nonoi.

SO ORDERED.

DATED: Honolulu, Hawai‘i, March 30, 2018.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

In the United States District Court for the District of Hawaii, *Ah Chong, et al. v. Bhanot*, Civ. No. CV13-00663 LEK-KSC; Order Preliminarily Approving Amended Class Action Settlement, Approving Notice Plan, and Scheduling Date for Fairness Hearing.

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U.S. District Court

District of Hawaii

Notice of Electronic Filing

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Case Name: Ah Chong v. Bhanot

Case Number: [1:13-cv-00663-LEK-KSC](#)

Filer:

Document Number: [389](#)

Docket Text:

ORDER PRELIMINARILY APPROVING AMENDED CLASS ACTION SETTLEMENT, APPROVING NOTICE PLAN, AND SCHEDULING DATE FOR FAIRNESS HEARING. Signed by JUDGE LESLIE E. KOBAYASHI on 3/30/2018. (afc)

1:13-cv-00663-LEK-KSC Notice has been electronically mailed to:

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99c365fb318fda0f0869791aa069a51541ad9f5a1f4f4215053a8ab7e67a1]]

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PATRICK SHEEHEY; PATRICIA
SHEEHEY; RAYNETTE NALANI AH
CHONG; SHERRY CAMPAGNA;
MICHAEL HOLM; and TIARE HOLM,
*individually, and on behalf of a class
of Hawai'i-licensed resource families;
B.S.; and T.B., a Minor, by her Next
Friend N.A., individually and on
behalf of a class of persons similarly
situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC
(Contract)
Civil Action; Class Action

**PLAINTIFFS' UNOPPOSED MOTION
TO CERTIFY SETTLEMENT
CLASSES AND FOR PRELIMINARY
APPROVAL OF PROPOSED CLASS
ACTION SETTLEMENT;**

MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF CLAIRE
WONG BLACK; EXHIBITS "A" - "B";
DECLARATION OF GAVIN
THORNTON; NOTICE OF HEARING;
APPENDICES "A"- "M"; CERTIFICATE
OF SERVICE

[caption continued to next page]

HEARING MOTION

JUDGE: The Honorable
Virginia L. Crandall
TRIAL DATE: None
HEARING DATE: March 24, 2017
HEARING TIME: 9:30 a.m.

**PLAINTIFFS' UNOPPOSED MOTION TO CERTIFY SETTLEMENT
CLASSES AND FOR PRELIMINARY APPROVAL OF PROPOSED
CLASS ACTION SETTLEMENT**

This class action lawsuit, filed on August 7, 2014, and a companion federal class action suit, filed December 2013, involve issues of vital importance: adequate resources to support families who care for children in Hawaii's Child Welfare System. These families have been shortchanged for decades by the State's insufficient Foster Care Maintenance Payment rates. The Parties in both lawsuits have reached a proposed settlement, which will provide for the relief Plaintiffs seek at the earliest practicable time—the State's next fiscal year (which begins July 1, 2017)—far sooner than any resolution that may be achieved through protracted litigation and the inevitable appeals.

Plaintiffs, as representatives of a class of similarly-situated persons seek preliminary approval of the settlement and certification of two settlement classes. Specifically, Plaintiffs' respectfully request that the Court:

- (1) certify a Parent Settlement Class and Higher Education Settlement Class for the purposes of settlement only;¹
- (2) appoint Named Plaintiffs Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sheryl Campagna, Michael Holm, and Tiare Holm as representatives of the Parent Settlement Class;
- (3) appoint Brittany Sakai as representative of the Higher Education Settlement Class;
- (4) appoint Plaintiffs' attorneys, Alston Hunt Floyd & Ing ("AHFI") and Hawai'i Appleseed Center for Law and

¹ The claims of T.B., asserted on behalf of a putative class of beneficiary foster and adoptive children and children in permanent custody will be dismissed.

Economic Justice (“Hawai`i Appleseed”) as Class Counsel;

- (5) grant preliminary approval of the settlement embodied in the State Settlement Agreement, and the Parties’ plan of allocation and distribution of settlement funds, as fair, reasonable, and adequate; and
- (6) approve the Parties’ jointly-drafted proposed Class Notices, including the opt-out provisions, and the plan to distribute the notices to class members.

The proposed settlement classes meet the requirements of HRCF Rules 23(a) and 23(b)(1). As set forth in the accompanying memorandum, the proposed class representatives and their counsel meet the requirements for appointment of class representatives and class counsel.

Plaintiffs are familiar with the strengths of this action, as well as the challenges faced if this case proceeds to trial, having, among other things, engaged in motions practice in this action and, in the federal action, extensive investigation and discovery on: (a) the cost of caring for children in Hawai`i; (b) the State’s foster care maintenance payment rates; (c) its process for reviewing and setting those rates; (d) additional resources made available by the State for the benefit of children in Hawaii’s Child Welfare System; and (e) the State’s process and criteria for approving and making payments to Resource Families—all of which is equally applicable to this action.

Plaintiffs’ counsel analyzed thousands of pages of documents and tens of thousands of individual foster care related payments made to Hawaii’s resource families; deposed numerous State witnesses and prepared Named Plaintiffs Raynette Ah Chong, Patrick and Patricia Sheehey, and Sherry Campagna for deposition and/or trial. Plaintiffs’ counsel consulted local and national experts on the sufficiency of Hawaii’s foster care maintenance payments as well as an appropriate framework for setting Hawai`i-specific foster care maintenance payment rates.


After extensive investigation into the factual and legal claims, the Parties have reached a settlement that is fair, reasonable, appropriate, and adequate to the members of the proposed classes based on the risks and

potential outcomes of litigation. The global settlement of this action and the parallel federal action concerning Hawaii's foster care maintenance payments provides immediate relief (or as close to immediate relief as the State can reasonably achieve, given required Legislative approval) to class members and reflects the risks associated with both Parties continuing to litigate in both this Court and federal court. It includes a comprehensive notice program, which is designed to effectively and efficiently provide direct notice of the settlement to class members, and which will allow each class member a full and fair opportunity to evaluate the settlement and decide whether to participate.

The settlement embodied in the State Settlement Agreement, class notice, and payment distribution plan should be preliminarily approved, settlement classes certified, and class counsel appointed as outlined in the accompanying memorandum and declarations in support; the exhibits and appendices thereto; and any other matters of which the Court may take notice; and arguments and evidence that may be presented at the hearing on this motion.

Defense counsel informed Plaintiffs that Defendant does not oppose preliminary approval of the proposed settlement, certification of the settlement classes for damages, or approval of the proposed schedule, form, and procedures for notice, class member opt-outs, and distribution of settlement payments. However, it does not agree, concede, or adopt Plaintiffs' description of the facts and issues presented, or the factual or procedural background. To the contrary, the State continues to assert that its conduct was lawful at all times.

DATED: Honolulu, Hawai'i, March 20, 2017.



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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

PATRICK SHEEHEY; PATRICIA SHEEHEY; RAYNETTE NALANI AH CHONG; SHERRY CAMPAGNA; MICHAEL HOLM; and TIARE HOLM, *individually, and on behalf of a class of Hawai`i-licensed resource families; B.S.; and T.B., a Minor, by her Next Friend N.A., individually and on behalf of a class of persons similarly situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC
(Contract)
Civil Action; Class Action

**MEMORANDUM IN SUPPORT
OF MOTION**

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MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

For over two decades, the State's monthly reimbursement to foster parents, permanent custodians/legal guardians, and adoptive parents of children with special needs ("Resource Families") remained unchanged at \$529 per month, per child despite the Hawaii's ever-increasing cost of living. In 2009, the State Legislature found that \$529 was "insufficient to raise a child because costs for food, housing, utilities, clothing, and other necessities have increased" and tasked the State's Department of Human Services ("DHS") to determine the feasibility of increasing the payment rate. Yet, for years, DHS made no move to increase the payments and was unable to support independent legislation to increase the payment rate because of fiscal concerns.

In December 2013, Plaintiffs Patricia Sheehey, Patrick Sheehey, and Raynette Nalani Ah Chong filed a putative class action against DHS for declaratory and injunctive relief in federal court based on federal law, which requires States to "cover the costs" of (and "costs of providing") certain basic necessities for children in the foster care system and to periodically review their payment rates in order to "assure their continuing appropriateness" (the "Federal Lawsuit"). Those Plaintiffs, along with Plaintiffs Sherry Campagna, Michael Holm, Tiare Holm, Brittany Sakai, and T.B. (a minor, whose claims will be dismissed pursuant to the settlement), also sued the State in this Court, seeking monetary damages equal to the shortfall in payments (the "State Lawsuit").

After three years of hard-fought litigation both in federal court and state court—during which time the State repeatedly disclaimed any obligation to increase the monthly reimbursement and asserted that they were, in fact, *overpaying*—the Parties reached an agreement on the eve of trial in the Federal Lawsuit. The global settlement agreement resolves both the Federal Lawsuit and the State Lawsuit. Importantly, the settlement provides for immediate

relief to Resource Families and addresses critical, long-running complaints about the insufficiency of the Foster Care Maintenance Payment rates. The global settlement:

- (1) provides a settlement fund of \$2,341,103.10, the net proceeds of which will be distributed to eligible Resource Families (members of the proposed Parent Settlement Class) and young adults who received higher education stipends (members of the proposed Higher Education Settlement Class) after notice and opportunity to object or opt out (Black Decl., Ex. A, State Settlement Agreement at Section IV);
- (2) will increase the monthly payment rate to *all* Resource Families going forward (Black Decl., Ex. B, Federal Settlement Agreement Section II);
- (3) takes into account Hawaii's higher cost of living as compared to other states (*id.*, Sections II.2, II.3, III.1-3); and
- (4) sets a benchmark for assessing rising costs and requires DHS, for the next decade, to initiate and support legislation to increase the monthly payments when the increase in those benchmark costs exceed 5% (*id.*).

The Court should certify the proposed settlement classes, appoint Named Plaintiffs as class representatives and Plaintiffs' counsel as class counsel; grant preliminary approval of the settlement and proposed distribution of settlement funds; and approve the proposed forms of class notice and manner of distributing the notice to the class.

II. FACTS AND PROCEDURAL HISTORY²

A. Hawaii's Child Welfare System

Hawaii's Resource Families open their homes to children who cannot remain with their own families because of neglect, abuse, or threatened harm. These families are the backbone of Hawaii's child welfare services programs: all day, every day, throughout the State, they shelter, feed, and care for Hawaii's most vulnerable children.

Both state and federal law require that resource families be provided reimbursement for the costs of caring for these children. Reimbursements to foster families are called "Foster Care Maintenance Payments"; those made to adoptive parents are called "Adoption Assistance Subsidies"; and those made to permanent guardians and custodians are called "Permanency Assistance Payments". Young adults ages 18-21 who "age out" of foster care (and adoption and guardianships) who attend institutions of higher learning may also qualify to receive payments (called "Higher Education Board Payments") (collectively, the Foster Care Maintenance Payments, Adoption Assistance Subsidies, Permanency Assistance Payments, and Higher Education Board Payments are referred to as the "Monthly Payments").

DHS administers the Monthly Payments on behalf of the State pursuant to regulations implementing applicable federal law. *See* FAC ¶ 17; *see also* H.A.R. Title 17, Subtitle 11, chapter 1617 (Foster Care Maintenance and Related Payments), chapter 1620 (Adoption Assistance and Reimbursement of Nonrecurring Adoption Expenses for Children with Special Needs), chapter 1621 (Permanency Assistance).

² The facts asserted here are based on allegations set forth in the complaints and discovery to date. The factual assertions in this section are neither stipulated to nor adopted by Defendant in the State Lawsuit or Federal Lawsuit.

B. Payments Required by Law

1. Federal Law

The Adoption Assistance and Child Welfare Act of 1980, Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679(b) (“Child Welfare Act” or “Title IV-E”) establishes a cooperative federal-state program that assists states, including Hawai‘i, in meeting the costs of providing child welfare services. The Child Welfare Act provides federal funding for monthly payments to eligible children. The State makes claims to the federal government to recover approximately 50% of the Monthly Payments made on behalf of those children who meet the low-income requirements of Title IV-E. The State is also eligible to recover up to 75% of “training” costs and up to 50% of the costs of administering its Title IV-E program (including administrative and training costs incurred by the state Judiciary in connection with Title IV-E claimable children). Federal Child Welfare Policy Manual at Sections 8.1F.4, 8.1F.5. *See also* Fed. Dkt. 120-12 (Class Certification Mtn, Ex. 8).

To become eligible for federal funding, the State must submit a plan for federal financial assistance (“State Plan”) to the Secretary of the U.S. Department of Health and Human Services (“DHHS”) for approval and must agree to administer its child welfare program pursuant to the Child Welfare Act, related regulations, and policies promulgated by DHHS’ Secretary.

As a condition to receiving federal funds, the Child Welfare Act requires the State to make Foster Care Maintenance Payments sufficient to “cover the cost of (and the cost of providing)”

- (1) food,
- (2) clothing,
- (3) shelter,
- (4) daily supervision,
- (5) school supplies,
- (6) a child’s personal incidentals,

- (7) liability insurance with respect to a child, and
- (8) reasonable travel to the child's home for visitation or to the school he or she attended at the time of placement with the resource family.

42 U.S.C. § 675(4)(A). The Ninth Circuit Court of appeals ruled in a similar case challenging California's Foster Care Maintenance Payments that the Child Welfare Act required *strict* compliance, stating that "substantial compliance will not be good enough." *California Alliance of Child & Family Servs. v. Allenby*, 589 F.3d 1017, 1023 (9th Cir. 2009). Specifically, the Court of Appeals found that covering 80% of the costs required under the Child Welfare Act "[wa]sn't even close". *Id.* ("The federal objective is for those costs to be covered ... 80 percent isn't even close.").

2. State Law

The State's administrative rules—which are explicitly based on the Child Welfare Act and its implementing regulations—state: "Foster care maintenance payments **shall be made** for the care and maintenance of eligible children." See H.A.R. § 17-1617-3(b)-(c) (citing 42 U.S.C. § 675, 45 C.F.R. §§ 1356.21(j), 1356.60, as authority for State regulation) (emphasis added). The State makes the payments pursuant to contracts with licensed resource caregivers ("Provider Agreements"). The State is required by the State Plan (which is a contract between the state and federal government), the Provider Agreements, and its own regulations (*e.g.*, H.A.R. §§ 17-1617-3 *et seq.*) to reimburse resource families each month for the goods and services they have expended caring for the children in their homes. Under state law, the Foster Care Maintenance Payments are intended to cover a *more* extensive list of items as compared to the federal Child Welfare Act:

- food, including lunches and milk;
- shelter, including utilities;
- use of household furnishings and supplies;
- expenses involved in household operations;

- personal essentials, including but not limited to toothbrush, soap, brush/comb, haircuts, hygienic supplies, and contact lens maintenance supplies;
- reading and educational materials/supplies
- recreational and community activities for the children, such as parties, picnics, movies, and excursions;
- transportation expenses for the foster parent to shop for the foster child or deliver the child to school events, church or other recreational activities;
- Medical chest supplies or first aid materials, Band-Aids, aspirin, cough syrup and antiseptics;
- age-appropriate allowances;
- baby supplies, including diapers and nutritional supplements and, for infants and toddlers, increased costs for utilities, furnishings, and maintenance operations, such as laundry and formula preparation.

H.A.R. § 17-1617-3(c). Under state law, monthly Adoption Assistance Subsidies and Permanency Assistance Payments cannot exceed the Foster Care Maintenance Payment amounts paid on behalf of children placed with foster families. Haw. Admin. R. § 17-1621-10(a)(8)(b) (Permanency Assistance); Haw. Admin. R. § 17-1620-12(a)(1) (Adoption Assistance Subsidy). As a matter of State policy, DHS pays to adoptive parents an amount equivalent to the maximum amount of the Foster Care Maintenance Payment in order to eliminate financial disincentives to adopting a child with special needs. See Exhibit “A”, State Settlement Agreement at 3 ¶ 2 (second “Whereas” on page 3). Similarly, the Higher Education Board Payments are set at the same amount as the monthly Foster Care Maintenance Payment rate for children ages 12 and over. *Id.*

C. The State’s Monthly Payments Remain Unchanged for Over Two Decades (1990 – 2014)

From 1990 – 2014, the Monthly Payments to resource families (made in arrears) was \$529 per month, per child and remained unchanged even as the cost of caring for children in Hawai‘i continued to increase. In 2009, the Legislature urged DHS to increase the Monthly Payments, finding

that the amounts were “insufficient to raise a child because costs for food, housing, utilities, clothing, and other necessities had increased”. See Appendix H at Fed. Dkt. 146-4 (House Resolution). DHS even admitted that the monthly payment was insufficient in its 2013 budget request to Governor Abercrombie, which sought funding for the 2014 increase to the Foster Care Maintenance Payment rates. Appendix M at SOH04834.

**FY 15 SUPPLEMENTAL BUDGET
OPERATING BUDGET ADJUSTMENT REQUEST
DEPARTMENT OF HUMAN SERVICES**

Date Prepared/Revised: 10/23/2013

JUSTIFICATION OF REQUEST

The Department of Human Services is cognizant that the current monthly foster care board rate of \$529 had not been raised since 1990, and is insufficient due to the increased costs for food, housing, utilities, clothing and other necessities in raising a child. To address this, the DHS contracted the University of Hawaii Public Policy Center to conduct a study to determine the best option for establishing appropriate basic monthly Foster Care board rates provided to resource caregivers (formerly called foster parents). The study analyzed costs associated with raising children, established rates of other states, and feedback received from stakeholders throughout Hawaii. The study found:

D. The State Increased Its Monthly Payments in 2014, But They Are Still Outdated and Insufficient

After Plaintiffs filed the federal lawsuit in December 2013, the State increased the Monthly Payments to resource families from \$529 per month, per child regardless of age to: \$576 for children ages 0-5; \$650 for children ages 6-11; and \$676 for children ages 12 and over. See DHS website, <http://humanservices.hawaii.gov/blog/resource-caregivers-receive-increased-board-payments-effective-july-2014/>.

In adopting these new Monthly Payment rates, DHS reviewed other states’ methodologies; retained consultants from the University of Hawaii’s College of Social Sciences, Public Policy Center to analyze other payment models and to conduct focus groups with Resource Families; and reviewed the U.S. Department of Agriculture’s annual report entitled Expenditures on Children by Families (“USDA Report”).

Ultimately, Plaintiffs believe (and noted Hawai`i economist Dr. Paul Brewbaker as well as national child welfare expert Dr. Mary Hansen both concluded) that DHS’s increased Monthly Payment rates (which are still in effect today) are insufficient because:

- (1) DHS calculated the **2014** rates using estimates from the **2011** USDA Report, which means they failed to account for

inflation and the data they relied on is now more than six years out of date;

(2) DHS arrived the 2014 Monthly Payment rates by averaging the sum of only **three** USDA expenditures—(a) food; (b) housing; and (c) miscellaneous personal expenses—rather than including amounts to cover the costs of the other items enumerated under the Child Welfare Act (*i.e.*, clothing; travel for home visits or to attend school and everyday travel; daily supervision; and school supplies);

(3) DHS relied on expenditures of families living in the “Urban West”³ region of the United States, which includes many states with a lower cost of living than Hawai‘i;

(4) DHS set the 2014 Monthly Payment rates at **95%** of the “Urban West” expenditures on children even though the cost of living in Hawai‘i is higher than every other U.S. Mainland state and more than 20% higher than in the United States national average.⁴

Appendix I, Fed. Dkt. 145, Plaintiffs’ Summary Judgment Brief pp.3-10.

E. The State’s Foster Care Maintenance Payments

1. Payments for Children Requiring Additional Care

The State’s Foster Care Maintenance Payment consists of (1) the age-tiered Monthly Payment; and, where appropriate, (2) difficulty of care (“DOC”) payments made for the care of children with special needs (which must be documented by a physician). DOC payments are calculated at \$4.75 per hour, for each hour of additional care above and beyond the needs of a typical child—but is limited to maximum of 120 hours of care per month, regardless of how many hours of care the child actually requires. The DOC rate was set decades ago, in 1982, at what was then the “currently established federal

³ These “Urban West” states are: Alaska, Arizona, California, Colorado, Hawai‘i, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming.

⁴ The U.S. Bureau of Economic Analysis issues a “Regional Price Parity” index, http://www.bea.gov/newreleases/regional/rpp/rpp_newsrelease.htm (showing Hawai‘i with the highest costs of any state in the country). The Regional Price Parity Index is an official United States Government publication that the Court may take judicial notice of under Haw. R. Evid. 201(b)(2).

minimum wage”. (Haw. Admin. R. § 17-834-6(b) – (6)(c) (Jan. 1982)). It was adjusted in 1996 to the current rate of \$4.75 and has remained unchanged for the last 20 years even as the federal minimum wage has increased to \$7.25 per hour. However, because federal guidance cautions that the Foster Care Maintenance Payment is “not intended to be in the nature of a salary,” the State firmly rejected Plaintiffs’ arguments that DOC rates should be updated—at a minimum—to the minimum wage.

2. Foster Care Related Benefits and Payments

In addition to the Monthly Payments, the State claims to make additional foster care related benefits and payments *available* to Resource Families. For example, foster children are eligible to receive free school lunches at local public schools, and A+ after school care. The State provides a liability insurance policy for foster parents. The State makes reimbursements available to Resource Families for mileage incurred in connection with certain types of travel, subject to DHS approval and adequate documentation.

The State makes available a \$600/year clothing stipend in the form of payment vouchers to K-Mart and Ross; P-Card purchases during pre-scheduled shopping visits accompanied by DHS employees; and, less often, reimbursements for documented purchases with prior authorization for the expenditures. Given the requirements of caring for foster children, including added logistical requirements (*e.g.*, scheduled home visits, doctors’ appointments for various therapies), Plaintiffs believe that a system that requires Resource Families to “hunt and peck” for reimbursements is overly burdensome and that the clothing reimbursement is particularly burdensome. See Appendix K, Fed. Dkt. 305-1 at Trial Testimony of Raynette Nalani Ah Chong ¶¶ 24-31. In addition to being burdensome, the \$600/year clothing stipend is insufficient to cover the cost of clothing for children in Hawai‘i. It is even less than the clothing expenditure estimates in the 2011 USDA Report that the State used to calculate its 2014 Monthly Payment rates:

Table 3. Estimated annual expenditures on a child by husband-wife families, urban West, 2011

Age of child	Total expense	Housing	Food	Transportation	Clothing	Health care	Child care and education ^a	Miscellaneous ^b
Before-tax income: \$58,890 to \$101,960 (Average = \$79,240)								
0 - 2	\$13,250	\$4,670	\$1,440	\$1,780	\$800	\$790	\$2,750	\$1,020
3 - 5	13,240	4,670	1,530	1,840	650	750	2,580	1,220
6 - 8	13,130	4,670	2,150	1,960	720	870	1,520	1,240
9 - 11	13,970	4,670	2,460	1,970	750	940	1,950	1,230
12 - 14	14,650	4,670	2,640	2,090	890	1,320	1,740	1,300
15 - 17	15,160	4,670	2,630	2,240	970	1,240	2,230	1,180
Total	\$250,200	\$84,060	\$38,550	\$35,640	\$14,340	\$17,730	\$38,310	\$21,570

Expenditure on Children by Families, available at the USDA's website: https://www.cnpp.usda.gov/sites/default/files/expenditures_on_children_by_families/CRC2011.pdf.

Most importantly, documents produced by DHS establish that Resource Families are unaware of the existence of additional payments and benefits. Appendix F Notes from DHS Meetings with Resource Families. Those few Resource Families who *are* aware of these payments do not understand that they are entitled to them under federal law. Discovery produced by DHS confirmed that the additional Foster Care Related Benefits and Payments are grossly under-utilized.

Without waiving these objections or the objections to the original interrogatory, Defendant responds as follows:

Based on information that is maintained by CWS in its database in the manner (the categories of payments) in which the information is maintained:

A) The percent of 4(A) who received additional payments, as described in your Response to Interrogatory No. 1, in addition to the monthly basic board rate:

- 76.35% received one or more additional payments of the following categories of payments: Difficulty of Care, Clothing, Activity Fees, Medical Supplies, Miles/Bus, Respite, Transportation, Other.
- The percentage by category of payment is as follows:
 - DOC: 31.70
 - Clothing: 70.95
 - Activity Fees: 3.14
 - Med. Supplies: 10.99
 - Miles/Bus: 26.30
 - Respite: 18.74
 - Transportation: 4.51
 - Other: 3.73

Appendix E DHS Supplemental Interrogatory Responses at p.8. As DHS's sworn statements demonstrate, only 4.51% of Resource Families applied for and received transportation reimbursements, and only 26.3% received a bus pass for the child's travel to school or mileage reimbursements even though *all* families must travel to purchase food and other necessities. Only 70.95% of Resource Families utilize any form of clothing stipend even though *all* children must wear clothes. *Id.*

F. Procedural Background of the State Lawsuit

Plaintiffs in this action sued in order to recover as damages the money they were entitled to receive by law as parties to, and beneficiaries of, the State's contracts and the governing law. The State Lawsuit advanced multiple independent theories: one grounded in the State Plan and the other grounded in the Provider Agreements; both are closely intertwined with the statutes and regulations that require the State to make payments sufficient to cover costs associated with caring for the beneficiaries of the State's programs.

The State enters into written agreements with resource parents regarding the Monthly Payments. But the Monthly Payment rates are far below

the cost of providing the items enumerated in the Child Welfare Act and HDHS's own regulations. See Second Amended Complaint ¶¶ 45-50.

In February 2015, the State moved to dismiss the State Lawsuit. This Court denied in part and granted in part the motion, concluding that Plaintiffs' contract claim based on the purported beneficiary class's status as third-party beneficiaries of the State Plan was foreclosed by *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378 (2015). See Order filed May 22, 2015. The Court denied the State's motion as to Plaintiffs' contract claims arising out of the Provider Agreements. *Id.* In June, 2015, Plaintiffs filed a Second Amended Complaint, asserting two breach of contract claims—one on behalf of the putative Parent Class (Resource Caregivers) and the other on behalf of the putative Beneficiary Class (foster and adoptive children, and young adults receiving Higher Education Board Payments)⁵—and five claims based on violation of “money-mandating” State administrative rules and regulations.

Garner v. State, 122 Hawai'i 150, 223 P.3d 215 (App. 2009), cert. denied, 2010 WL 3213006 (Aug. 16, 2010), directly supports Plaintiffs' claims, which are based upon both contract (the Provider Agreements and the State Plan) and the regulations that prescribe the expenses HDHS must cover. In *Garner*, the ICA explained that substitute teachers employed by the State were entitled to pursue back wages—defeating a claim of sovereign immunity—based upon **both** their employment agreement **and** the state law (H.R.S. § 302A-634(e)) that prescribed the proper rate of pay for their work. See 122 Hawai'i at 161-62, 223 P.2d at 226-27 (statutory language that State “shall pay”

⁵ The two putative classes identified in the Second Amended Complaint are: (1) a Parent Class of Hawai'i-licensed resource parents who, under contracts with the State, provided services to children entitled to foster care payments, adoption assistance, permanency assistance, and/or higher education board allowance payments sufficient to satisfy the requirements of the Child Welfare Act and State rules and regulations incorporating the Act's standards; and (2) a Beneficiary Class of children and young adults under the age of 20 when this action was commenced who were and/or are intended beneficiaries of the contracts described above. See SAC ¶¶ 1, 25-33.

substitute teachers according to a formula set forth in the statute was “money-mandating,” indicating State “clearly and unequivocally” waived sovereign immunity under H.R.S. § 661-1 for suits alleging violations of statute).

G. Relevant Rulings in the Federal Lawsuit

1. Plaintiffs Investigated Their Claims and Positions Through Extensive Discovery Applicable to Claims Asserted in Both the State and Federal Lawsuits

Plaintiffs’ counsel conducted a thorough investigation into the merits of the potential claims and defenses—including the damages to which class members were entitled. Among other things, Plaintiffs’ counsel:

- (1) obtained and reviewed thousands of communications regarding the Foster Care Maintenance Payments, including voluminous reports produced by the State detailing how the 2014 Monthly Payment rate was adopted;
- (2) obtained, reviewed, and analyzed data from DHS’ payment database reflecting tens of thousands of individual payments made to Resource Families
- (3) deposed numerous DHS administrators and line staff;
- (4) deposed three DHS experts who each produced multiple expert reports;
- (5) retained two experts to update the State’s existing Foster Care Maintenance Payment rates for inflation and cost of living; to analyze data reflecting tens of thousands of individual payments made by DHS to resource caregivers; and, separately, to calculate an appropriate Foster Care Maintenance Payment rate based on Hawai`i costs;
- (6) conducted multiple in-depth interviews of Named Plaintiffs and potential class members, and prepared their trial testimony (on direct affidavits);
- (7) obtained and reviewed documents from Named Plaintiffs, potential class members, and publicly-available sources; and

(8) prepared for trial in the Federal Lawsuit.

2. The Federal Court Certifies a Foster Parent Class and Appoints Class Counsel

In August 2015, after extensive discovery and depositions, the federal Plaintiffs moved for class certification. Appendix B, Motion for Class Certification. The federal court (Hon. Leslie E. Kobayashi, presiding) granted certification of a foster parent class,⁶ but denied certification of a subclass of resource caregivers receiving adoption assistance subsidies because the issues of fact and law were not *both* common *and* unique to the putative subclass of adoptive parents. In other words, although adoptive parents collectively experienced the common problem of insufficient monthly Permanency Assistance payments, those issues were similar to (not unique from) the insufficient Foster Care Maintenance Payment Rates experienced by foster parents.⁷ The federal court appointed Alston Hunt Floyd & Ing, Hawai'i Appleseed, and Morrison Foerster, LLP as class counsel. See Appendix C, Federal Dkt. 156 (Class Certification Order).

3. The Parties Move for Summary Judgment

DHS sought summary judgment on all federal claims. The federal plaintiffs also moved for summary judgment as to the inadequacy of the Foster Care Maintenance Payments and DHS's failure to conduct periodic reviews. The federal court denied in part and granted in part both motions. The federal court denied DHS's motion to the extent it claimed that the Foster Care Maintenance Payment "substantially complied" with the Child Welfare Act. The federal court also ruled, among other things, that:

⁶ The class was defined as "all currently licensed foster care providers in Hawai'i who are entitled to receive foster care maintenance payments pursuant to the Child Welfare Act when they have foster children placed in their homes". Appendix C, Federal Dkt. 156 at 33.

⁷ The Federal Lawsuit did not assert claims on behalf of resource caregivers who received Permanency Assistance and the federal Plaintiffs did not seek to certify a class of permanent guardians or custodians.

- (1) DHS's reliance on only (a) food; (b) housing, and (c) personal incidental expenses in setting Monthly Payments did not make the State's Monthly Payment rates insufficient as a matter of law;
- (2) DHS's reliance on 2011 USDA data in 2014 did not make the State's Monthly Payment rates insufficient as a matter of law;
- (3) DHS **could** rely on a system of multiple payments (i.e., the Monthly Payments plus assorted foster care related benefits and payments) to meet its payment obligations to Resource Families under the Child Welfare Act; but
- (4) DHS **could not** rely on foster care related payments that were not related the costs enumerated under Section 675(4)(A) of the Child Welfare Act to meet its payment obligation (for example, it could not credit payments for medical supplements or its per capita cost for Medicaid coverage toward the total amount of Foster Care Maintenance Payments because medical costs are expressly excluded from the federal definition of Foster Care Maintenance Payment); and
- (5) DHS **could not** "average" payments that are made to only some Resource Families across the entire class to inflate the alleged amount of Monthly Payments received by the class (for example, DHS's expert attempted to average the amount of DOC payments—which are only made to approximately 30% of Resource Families—across the entire class to increase the purported amount of Monthly Payments.

4. The Federal Court Rules, Effectively, That DHS's Foster Care Maintenance Payment Does Not Need To Put a Roof Over a Foster Child's Head.

The federal court made a critical ruling interpreting "shelter" under the Child Welfare Act. The court held that the Child Welfare Act's references to "shelter" costs did not require the State to pay a child's pro rata share of the Resource Family's rent, mortgage, or property tax expenses relating to the additional space needed to house a foster child. *See* Appendix D, Fed. Dkt. 194 at 36 (MSJ Order). The federal court speculated that:

A resource caregiver who takes in a foster child would be unlikely to rent or purchase a larger home to accommodate the foster child.

It concluded, therefore that Resource Families “would not incur additional rent, mortgage, or property tax expenses as a result of the placement” of a foster child. The federal court also reasoned that, because Hawaii’s licensing rules required Resource Families to be financially self-sufficient prior to receiving a foster child into their home, they did not need to be reimbursed for shelter costs. In other words, a potential foster family is required by the State to have enough income to cover the expenses of the expected foster child, therefore they do not need reimbursement for the expenses incurred to care for the child. *Id.*

This ruling significantly impacted the State’s expert analyses because, as anyone living in Hawai’i knows, housing costs are higher in Hawai’i than nearly anywhere else in the country and consume a larger portion of the income of a typical Hawai’i family. Indeed, based on the “shelter” ruling, the State’s experts concluded that, by including USDA “housing” costs into the 2014 Monthly Payment rates, the State was **overpaying foster families by as much as \$324 each month**. See Appendix K Fed. Dkt. 314-6 (Expert Trial Testimony of Jerald Udinsky, ¶ 18 excerpted below):

Table 1
Comparison of Actual Foster Care Payments to Benchmarks from USDA Report,
Excluding Medical-Related Items

	<u>USDA - Excluding Rent, Mortgage, and Vehicle Purchases</u>		
	Age 0-5	Age 6-11	Age 12+
I. Necessary Expenditures Indicated by Foster Care Payment Benchmark.	\$554	\$659	\$721
II. Actual Payments and Benefits to Hawaii Foster Care Providers:	\$750	\$984	\$1,034
III. Under (Over) Payment Relative to Benchmark:	\$197	(\$324)	(\$313)

In other words, DHS took the view that the **current** Foster Care Maintenance Payment should be *even less than* the circa-1990 payment rate of \$529. As one State expert testified, the Foster Care Maintenance Payment rate would not—and did not need to—put a roof over a foster child’s head:

Q: But all of those other things . . . alone or in the aggregate, **don’t get a roof over your head, right?**

A: **No.**

Q: Why not? Unless you own it, or you rent it, how do you provide shelter to a child?

A: Whether or not that should be included is a legal question, and whether or not it’s required under Title IV-E is a legal question. **I utilized the Judge’s order in this case, and clearly in order — I doubt that I will continue to have a home if I stop paying my mortgage.** But whether or not if I just decide to become a foster parent, I would, under Title IV-E be allowed to receive some payment for that mortgage payment, I don’t know the answer to that.

See Appendix L, Plaintiffs’ Trial Brief Exhibit 2 (Schmidt Deposition Excerpt).

5. National and Local Experts Conclude That Hawaii’s Foster Care Maintenance Payments Are Insufficient.

Plaintiffs retained national Child Welfare expert, Dr. Mary Hansen, to analyze actual payments made by DHS to resource families. Dr. Hansen is a professor of economics at American University. She has a Ph.D. in economics and has published dozens of peer-reviewed articles in academic journals regarding economics, foster care, and adoption assistance. She has extensive experience working with large datasets like the one produced by the State. Dr. Hansen reviewed and analyzed applicable state and federal regulations, DHS’s publicly-available documents, deposition testimony, and discovery responses, the database provided by the State of all payments made to Resource Families over a period of several years and a federal database of

foster care payment information culled from the State's reports to the federal government. She analyzed the value of the State's foster care related payments and benefits, and rebutted the State's expert reports, drawing upon decades of experience and knowledge in economics and research regarding foster care.

Dr. Hansen performed calculations to estimate the number of foster parents who incurred Child Welfare Act enumerated expenses and compared those calculations to DHS's data regarding the number of Resource Families that actually received reimbursements from the State. She concluded that the State's cumbersome system of requiring Resource Families to apply separately for foster care related benefits did not adequately ensure that benefits were being received by eligible beneficiaries. *See* Appendix J at Fed. Dkt. 305-6 (Hansen Direct Testimony).

Plaintiffs also retained leading Hawai'i economist, Dr. Paul Brewbaker to determine the cost of caring for children in Hawai'i in order to examine the sufficiency of both the \$529 Monthly Payment and the 2014 age-tiered Monthly Payment rates. Appendix J at Fed. Dkt. 305-7 (Brewbaker Direct Testimony). Dr. Brewbaker was affiliated with Bank of Hawai'i for more than 25 years, retiring as Senior Vice President and its Chief Economist. He was a member and chair of the Hawai'i Council on Revenues—Hawaii's independent revenue-forecasting body—for about twenty years, serving as chair for a period.

Dr. Brewbaker noted that from 1990 to 2014, Hawaii's Resource Families were paid \$529 with no adjustments for cost of living increases even though Honolulu consumer prices rose more than 85 percent. Adjusting the \$529 Monthly Payment to account for inflation would raise the Monthly Payment to \$973 per month (2013 dollars). Dr. Brewbaker also analyzed the State's methodology in setting its 2014 age-tiered Monthly Payment rates. Adjusting for Hawaii's higher cost of living and updating the 2011 USDA data to 2013 dollars, he concluded that the appropriate payment rates were \$983 to \$1,186 per month instead of the State's payments of \$576-\$676 per month. *Id.*

Both Plaintiffs' experts presented evidence regarding the implicit costs of providing shelter to additional family members, such as foster and adoptive children. The federal court disallowed this evidence on motion by DHS.

DHS retained three experts, Jerald Udinsky, Ph.D. (economics); Nicholas Schmidt (M.B.A.); and Brendan Burke, Ph.D. (mathematics). The State's experts analyzed both the Monthly Payments and foster care related payments and benefits, calculating average values for the payments received by Resource Families (*e.g.*, the clothing stipend, travel reimbursements) and imputing values for other services and benefits received by Resource Families (*e.g.*, free public school lunch, Medicaid coverage). The State's experts initially concluded that, in light of the value of Foster Care Related Payments and Benefits, in particular, the State's Medicaid capitation costs, the State's Monthly Payments were sufficient and did not need to be increased.

The federal court ruled on summary judgment that certain Foster Care Related Payments and Benefits (for example, Medicaid capitation, which was valued at several hundred dollars per month) could *not* be considered as Foster Care Maintenance Payments. However, the federal also ruled that, under the Child Welfare Act, "shelter" did not need to include rent, mortgage, property taxes, or similar types of shelter expenses. In light of the federal court's ruling on shelter costs, the State's experts revised their opinions and **concluded that the State was overpaying Resource Families by up to \$324 each month.**

H. Settlement Negotiations

Defendants in both the Federal Lawsuit and State Lawsuit made clear that the State was not interested in settlement because the case relate[d] to a policy determination by the State of Hawaii.

In July 2016, before pre-trial deadlines in the Federal Lawsuit, the parties engaged in two-day settlement discussions with federal Magistrate Judge Kevin S.C. Chang but were unable to settle. A few short days before trial in the Federal Lawsuit, the parties jointly requested a settlement conference. After three days of arms-length settlement negotiations, facilitated by the

persistence of Judge Chang, the parties reached the essential terms of a global settlement agreement that would resolve both the Federal Lawsuit and the State Lawsuit.

I. Terms of the Settlement

1. Global Settlement of Both Lawsuits

As a material condition to settlement, the State required that both the Federal Lawsuit and State Lawsuit be resolved or neither would be resolved. Both the State Settlement Agreement and Federal Settlement Agreement require approval from the respective courts pursuant to applicable court rules. The terms of the settlement are also subject to Legislative approval and appropriation of funds necessary to make the payments described below and in the settlement agreements (the Class Settlement Amount in the State Lawsuit and the agreed-upon attorneys' fee award in the Federal Lawsuit). Black Decl., Ex. A, State Settlement Agreement, Section III.

In other words, in order to effectuate settlement: (a) the Legislature must approve and appropriate all necessary funds (including the Class Settlement Amount in the State Lawsuit, the Budget Request to increase foster board rates in the Federal Lawsuit, and agreed-upon attorneys' fees and costs in the State and Federal Lawsuits); (b) the Federal Court must approve the Federal Settlement Agreement and related notices and notice procedures; and (c) this Court must approve the State Settlement Agreement, certify the settlement classes and appoint class counsel, and approve the related notices, notice procedures, settlement amounts, and amount disbursement procedures. If any of these conditions are not met, the settlement is void and the Parties immediately proceed to trial in the Federal Lawsuit. Black Decl., Ex. A, State Settlement Agreement at Sections II, III, IV.

2. Certification of Settlement Classes

As required by the State Settlement Agreement, Plaintiffs now seek certification of two settlement classes. The "Parent Settlement Class" shall consist of:

All licensed resource caregivers in Hawai'i (foster parents) who received Monthly Foster Care Maintenance Payments from DHS from August 7, 2012 (two years prior to the filing of the State Lawsuit) through February 9, 2017; and

All legal guardians and permanent custodians who received Monthly Permanency Assistance from DHS from August 7, 2012 through February 9, 2017; and

All adoptive parents of children with special needs who received Monthly Adoption Assistance Payments from DHS from August 7, 2012 through February 28, 2017.

The class representatives shall be Patrick Sheehey, Patricia Sheehey (who were foster and adoptive parents during the period); Raynette Nalani Ah Chong (an adoptive parent and permanent custodian during the period); Sherry Campagna (foster parent during the period), and Michael Holm, and Tiare Holm (permanent custodian/legal guardian during the period). Black Decl., Ex. A, State Settlement Agreement, II.1.

The "Higher Education Settlement Class" shall consist of all individuals who received monthly Higher Education Board Payments from DHS from August 7, 2012 to February 28, 2017. Black Decl., Ex. A, State Settlement Agreement, II.2. Claims asserted by Plaintiff T.B. on behalf of a putative class of beneficiaries will not be certified, and T.B.'s claim will be dismissed. Black Decl., Ex. A, State Settlement Agreement Section VIII.4.

3. Monetary Relief to State Lawsuit Class Members

Under the State Settlement Agreement, the State will provide a settlement fund totaling \$2,341,103.10 (the "Class Settlement Amount"). The Class Settlement Amount was calculated by multiplying the number of foster children, children in permanent custody/legal guardianship, adoptive children with special needs, and former foster youth receiving Higher Education Board Payments for whom DHS made monthly payments for the time period July 1, 2013 to June 30, 2014 (the State's fiscal year for the year prior to the filing of the State Lawsuit), by \$35.00 per month.

Under the terms of the settlement, members of both the Parent Settlement Class and the Higher Education Settlement Class will be eligible to receive payment (“Payment Recipients”) if they received a Monthly Payment during the time period from July 1, 2013 to June 30, 2014. This means that there may be members of the Settlement Classes who will not receive any payments under the terms of the settlement. Black Decl., Ex. A, State Settlement Agreement at IV.2.

The amount of each Class Member’s settlement payment will be determined by pro-rating the actual days of care provided by the Resource Family to a foster child, adoptive child, or child in permanent placement/legal custody (for the Parent Settlement Class) and the actual days a young adult received Higher Education Board Payments (for the Higher Education Settlement Class) using data in DHS’s payment database. Black Decl., Ex. A, State Settlement Agreement, IV.1.b. Plaintiffs understand from DHS that when children are placed with Resource Families, sometimes both adults in the household are designated under DHS’s internal data field “Facility Name” but only one adult is listed as the “Owner” and the “Owner” is the individual to whom Monthly Payments are made. Similarly, for the purposes of settlement payments the Payment Recipient shall be the “Owner” listed in DHS’s records for each Resource Family.

4. Increase to the Month Payments Beginning Next Fiscal Year (July 1, 2017)

DHS has requested appropriations from the Hawai`i Legislature in its budget for state fiscal year 2018 (July 1, 2017 to June 30, 2018) sufficient to fund an increase in the Monthly Payment rates from the current rates of \$576-\$676 to \$649-\$776. In addition to this increase, DHS will also increase the annual clothing stipend from \$600⁸ per year to \$810 to \$1,026 each year

⁸ The \$600 (equivalent of \$50 per month per child) has historically been disbursed in two semi-annual payments of \$300, when requested by a Resource Family. Resource Families may also be eligible for an amount up to \$125 for special circumstances such as proms, special events, or unexpected

depending upon the age of the child. Black Decl., Ex. B, Federal Settlement Agreement at Section II.B.

The increases in the Monthly Payments were calculated using the 2013 USDA Report, using national (“overall United States”) cost estimates rather than “Urban West” cost estimates for middle income families, and adjusted for inflation to January 2016 dollars (using changes to the CPI, or consumer price index) from the year of the USDA Report (2013). The base amount comprises 95% of national cost estimates for (a) food; (b) housing; and (c) personal incidental expenses, thus preserving some of the State’s pre-litigation rate increase methodology but not entirely discounting “housing” costs despite the federal court’s ruling. This represents a significant compromise by both Parties. The increase in the clothing stipend was calculated by using 100% of the 2013 USDA Report’s overall United States cost estimates for middle income families, with the same adjustment for inflation and cost of living as used to calculate the increase in Monthly Payments. Black Decl., Ex. B, Federal Settlement Agreement, II.

The increases also reflect Hawaii’s higher cost of living by adjusting the base amount using the Bureau of Economic Analysis’s (“BEA”) Regional Price Parity Index (“RPP”). The BEA’s RPP quantifies the price of living differential in a particular region by comparing it to national average costs (which are set at “100”). For example, New York City had a 2013 RPP of 122.3—which means that New York City is 22.3% more expensive than the national average. Urban Honolulu had an *even higher* RPP of 122.5—the most expensive “metro” area in the country.⁹ The specific RPP adjustment agreed to by the Parties (after extended negotiations and consultations by each Party

growth spurts, which amounts must be requested on a case-by-case basis, documented, and approved by a DHS caseworker before being incurred.

⁹ RPP data and methodology is available at the BEA’s website, https://www.bea.gov/regional/pdf/RPP2016_methodology.pdf.

with their experts) is an average of the most-recently-available RPP for Hawaii (116.8, statewide) and the Hawaii Metropolitan Statistical Area¹⁰ (118.5).

DHS requested \$7,013,627.00 to fund the proposed increase to Monthly Payments: \$4,558,858.00 in “A” or State funds and \$2,454,770.00 in “N” or federal funds.

5. Periodic Review of Monthly Payments, Including Clothing Stipend

The Federal Settlement Agreement requires DHS to conduct periodic reviews of the Monthly Payments (including the clothing stipend) using a methodology similar to the one used to calculate the increases in Section C, *supra*. DHS shall calculate benchmark rates using the same process outlined above: the sum of food, housing, and personal incidental expenses estimated for overall United States middle income families at 95%, adjusted for inflation using CPI, and adjusted for Hawaii cost of living using the average Hawaii/Hawaii MSA RPP. If the difference between the existing Monthly Payments and the benchmark rates is more than 5%, DHS will seek appropriations from the Legislature (with the support of Plaintiffs’ Counsel and Resources Families, if necessary or desired by DHS) to increase the Monthly Rates. This also represents a significant compromise: the Ninth Circuit court of appeals held that covering 80% of the foster care costs enumerated in the Child Welfare Act was “not even close” to substantial compliance. Plaintiffs’ position is that 95-97% constitutes substantial compliance. DHS disagreed and maintains that the 5% threshold agreed to for the purposes of settlement is not a proxy or admission or concession as to what it means to “substantially comply” with federal law. Black Decl., Ex. B, Federal Settlement Agreement, Part III.

¹⁰ The Hawaii Metropolitan Statistical Area comprises Oahu and Maui County. Plaintiffs position was that, because the majority of Resource Families live in Honolulu County, the Honolulu RPP (122.5) should be used. The State disagreed, relying on expert analysis regarding Resource Family zip codes to show that some Resource Families lived in less urban areas on Oahu.

6. Waiver of Cap for Determining Difficulty of Care Payments (DOC)

The federal court held that Plaintiffs' claims included a challenge to DHS's difficulty of care payments. DHS challenged this ruling, and would likely have challenged that ruling again on appeal if the Parties had gone to trial. DHS is in the process of making alterations to the DOC system (problems experienced by Resource Families are detailed in the trial declaration of Plaintiff Ah Chong). See Appendix J at Fed. Dkt. 305-1. Until DHS implements the new DOC process (which may require rulemaking) it has agreed to waive the currently practice of limiting DOC reimbursements to 120 hours of care each month, in appropriate circumstances (and pursuant to applicable DHS rules and regulations, which state that modification may be made in the best interests of the foster child and the Resource Family's other children). Black Decl., Ex. B Federal Settlement Agreement IV.1.

7. Dissemination of Information Regarding Foster Care Related Payments and Benefits to Resource Families

To address the concern that many Resource Families simply do not know that additional payments and benefits exist, or that they are entitled to have certain types of costs "covered" under the Child Welfare Act, the Parties have agreed to work cooperatively on providing a short, easy-to-understand summary of Foster Care Related Payments and Benefits to Resource Caregivers. The summary will be made available on at least a semi-annual basis, and to all newly-licensed Resource Families. Black Decl., Ex. B, Federal Settlement Agreement IV.2.

8. Court Enforcement, Releases, Dismissals

The federal court shall retain jurisdiction to enforce the terms of the Federal Settlement Agreement, and this Court will retain jurisdiction to enforce the State Settlement Agreement. Black Decl., Ex. B, Federal Settlement Agreement IV.3; *id.*, Ex. A, State Settlement Agreement, VII.9. Named Plaintiffs and Settlement Class Members agree to release the State and DHS from any and all claims that were alleged, sought, or litigated, or that could have been

alleged, sought or litigated against the State in the State Lawsuit, and against DHS in the Federal Lawsuit. Within 14 days after distribution of settlement funds, the Parties will submit a stipulated dismissal with prejudice of class claims, and a dismissal of Plaintiff T.B.'s individual claims. Plaintiff T.B.'s claims were asserted on behalf of a putative class of foster and adoptive children and permanent placements—beneficiaries of the State's maintenance payment contracts and related statutes, regulations, and policies. It is the State's position that the beneficiary children were unlikely to be able to prove damages (Plaintiffs dispute this contention) because Resource Families supplemented the shortfall in the inadequate payments from their own income in order to lessen the children's damages. Black Decl., Ex. A, State Settlement Agreement at 7.

9. Service Awards to Named Plaintiffs

Prior to the deadline for Class Members to object to the Settlement, Plaintiffs' Counsel will apply to the Court for a service award ("Service Award") to the Class Representatives in recognition for their services to the Class. This service award will be separate and apart from any other recovery to which Named Plaintiffs may be entitled under the Settlement as a Class Member. The service award is intended to recognize: (a) the time and effort that Named Plaintiffs expended on behalf of the Class, including the critical participation of Named Plaintiffs in a face-to-face meeting with then-DHS Director Wong during final settlement negotiations; (b) the consequent value conferred to the Class; and (c) the exposure and risk incurred by taking a leadership role in the litigation, which was considerable.

Any Service Award shall be deducted from the amount of attorneys' fees approved by the Court rather than the Net Settlement Amount. In other words, the Service Awards will reduce the amount of attorneys' fees recovered by Plaintiffs' Counsel, NOT the amount of payments to Class Members. Black Decl., Ex. A, State Settlement Agreement, VI.2. The State has agreed not to challenge the Service Awards because they will not be paid by the State. *Id.*

10. Attorneys' Fees and Costs Payment

In prosecuting this matter, Plaintiffs' Counsel performed substantial work advancing the rights of the Class Members, as explained above. Prior to the deadline for Class Members to object to the Settlement, Plaintiffs' Counsel will petition the Court for an award of attorneys' fees. Plaintiffs' Counsel's fee agreement allows them to petition the Court for up to 25% of any recovery on behalf of the Class Members. However, Class Counsel will voluntarily reduce the amount of the award it will petition the Court for—to not more than **20%** of the Class Settlement Amount.¹¹ In addition, any Service Award to Named Plaintiffs shall be deducted from the amount of attorneys' fees awarded by the Court rather than the Net Settlement Amount.

There are two forms of proposed Class Notices—one for Class Members who will receive payments under the terms of the settlement and another for Class Members who will not receive payments. The proposed Class Notices inform Class Members that, upon obtaining compensation for the class, Plaintiffs' Counsel—who have worked on a pure contingency basis—will ask the Court to award attorneys' fees equal to 20% of the fund awarded. Black Decl., Ex. A, State Settlement Agreement, VI.1. The proposed Class Notices further provide Class Members with an opportunity to opt out of their respective Classes, an opportunity to object to the settlement or to the request for award of attorneys' fees, and the opportunity to contact Plaintiffs' Counsel by email, mail, telephone with questions or concerns.

¹¹ The compensation sought for Plaintiffs' Counsel (of up to 20% of the fund created by their efforts) is consistent with applicable precedent in Hawai'i state and federal courts. *Garner v. State*, (awarding 25% of common benefit fund in attorneys' fees); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (25 percent of the common fund is the benchmark for an attorneys' fee award in class actions); *In re Omnivision Techs., Inc.*, 2007 WL 4293467, at *10 (N.D. Cal. Dec. 6, 2007) ("in most common fund cases, the award exceeds that [25%] benchmark"); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (collecting cases and concluding that nearly all common fund awards are in the 30% range).

11. Effectuation of Settlement: Preliminary and Final Approval, Notice, Objection, Opt-Out, Payment Distribution Procedures

The Parties have agreed to notice procedures that attempt to provide individual notice to each Class Member by mail. By definition, all Parent Settlement Class Members are Resource Caregivers who received some type of Monthly Payment from DHS between August 7, 2012 and February 28, 2017.¹² DHS's database, which as Plaintiffs learned through discovery, contains records of Monthly Payments made to each "Owner" within a Resource Family, so Class Members' are ascertainable and DHS maintains some form of contact information for each of them. Similarly all Higher Education Settlement Class Members received a Higher Education Board Payment within the same period and DHS will be able to identify Class Members for notice purposes through their database.

Under the terms of the State Settlement Agreement, within a reasonable time after Preliminary Approval, and by a Court-ordered deadline, DHS as Notice Administrator (or another mutually agreed-upon Notice Administrator) shall send the approved Class Notices to each Settlement Class Member by U.S. mail, postage prepaid in accordance with the terms of the Preliminary Approval Order. If DHS is not the Notice Administrator, it shall provide contact information (the "Class List") for all Settlement Class Members to the Notice Administrator and Class Counsel. Black Decl., Ex. A, State Settlement Agreement, VII.3. In order to most effectively reach Settlement Class Members, the Notice Administrator shall process the Class List against the National Change or Address Database maintained by the U.S. Postal Service (USPS). If a Notice is returned as undeliverable and a forwarding address is provided by USPS, the Notice Administrator shall mail the Notice to the forwarding address within three business days. *Id.* If no forwarding address is

¹² These timeframes correspond to the statute of limitations to claims by the Parent Group (two years prior to the filing of the Complaint) up through DHS's most recent payment to Resource Families.

available, the Notice Administrator will use skip tracing services (as agreed to by Class Counsel and defense counsel) to obtain updated contact information. Re-mailings of Notices shall be completed no later than 20 days before the Opt-Out deadline and shall only be re-mailed once. *Id.* Reasonable administrative costs of typesetting, printing, and mailing the Class Notice, processing the Class List, and performing skip tracing services shall be deducted from the Class Settlement Amount. *Id.*

The form of the Class Notice is attached to the State Settlement Agreement (Black Decl., Ex. A) as Exhibits 1 (Notice to Payment Recipients) and 2 (Notice to Class Members who are not Payment Recipients). The Class Notice informs Class Members about:

- the definition of the Settlement Classes,
- basic background information about the State and Federal Lawsuits ;
- the material terms of the State Settlement Agreement;
- attorneys' fees and Service Awards to Class Members;
- options available to Class Members to either object or opt out;
- procedures, deadlines, and effect of opting out; and
- this Preliminary Approval process, and the date of the final Fairness Hearing.

There are two forms of proposed notices: one identifies the recipient of the notice as a Payment Recipient under the settlement (questions 7 and 9); the other informs the recipient that they are *not* a Payment Recipient (same). Black Decl., Ex. A, State Settlement Agreement, VII.2; *id.*, Exhibits 1 and 2 (Notices) at questions 7 and 9. The notices prominently advise that they are notices of class action settlement and contain, at the bottom of each page, the address of a website to be created and maintained by Class Counsel, where more information can be obtained. *Id.*, VII.4; *id.*, Exhibit 1 Notice.

And, as contemplated in the settlement agreements, counsel for the parties discussed and counsel for the State obtained pricing quotes for

costs of the administrative expenses (including postage and addressing and printing the notices and envelopes)—\$18,357.14. See Ex. 1 to State Settlement Agreement at answer to question 16. This estimate includes a legend on the outside of the mailing envelope that advises that a class action settlement notice is contained within.

III. ARGUMENT

A. Class Certification is Appropriate

Plaintiffs move for certification under Rule 23(b)(1) of the Hawai'i Rules of Civil Procedure of the following settlement classes and appointment of Alston Hunt Floyd & Ing ("AHFI") and Hawai'i Appleseed Center for Law and Economic Justice ("Appleseed") as Class Counsel:

(1) A "Parent Settlement Class" consisting of:

All licensed resource caregivers in Hawai'i (foster parents) who received Monthly Foster Care Maintenance Payments from DHS from August 7, 2012 (two years prior to the filing of the State Lawsuit) through February 28, 2017; and

All legal guardians and permanent custodians who received Monthly Permanency Assistance from DHS from August 7, 2012 through February 28, 2017; and

All adoptive parents of children with special needs who received Monthly Adoption Assistance Payments from DHS from August 7, 2012 through February 28, 2017.

and

(2) A "Higher Education Settlement Class" consisting of all individuals who received Monthly Higher Education Payments from DHS from August 7, 2012 to February 28, 2017.

The class representatives for the Parent Settlement Class shall be Patrick Sheehey, Patricia Sheehey (who were foster and adoptive parents during the period); Raynette Nalani Ah Chong (an adoptive parent and permanent custodian during the period); Sherry Campagna (foster parent during the period), and Michael Holm, and Tiare Holm (permanent custodian/legal guardian during the period). The class representative for the Higher Education Settlement Class shall be Brittany Sakai, named in the Complaint as "B.S."

The class period commences on August 7, 2012, two years prior to the date of the filing of Plaintiffs' complaint (reflecting the statute of limitations for contract cases against the State). The class period ends on the last day through which DHS has made Monthly Payments to Class Members prior to the filing of this motion.

In order to certify a settlement class, Plaintiffs must meet the requirements of Rule 23(a) and one of the requirements of Rule 23(b). Haw. R. Civ. P. 23(a), (b). When certifying a settlement class, the court need not determine whether an action would be manageable if tried, "for the proposal is that there be no trial." *Amchem Prods, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Here, Named Plaintiffs, and the two Settlement Class satisfy the requirements of both Rule 23(a) (numerosity, commonality, typicality, and adequate) and 23(b)(3). Consequently, the Court should certify the settlement classes.

B. Plaintiffs Satisfy the requirements of Rule 23(a)

The proposed definitions of the Parent Settlement Class and Higher Education Settlement Class each satisfy the implicit requirement that a class definition provide a court with tangible and practicable standards for determining who is and who is not a member of the class. *See Crosby v. Social Sec. Admin.*, 796 F.2d 576, 580 (1st Cir. 1986); *Alliance to End Repression v. Rochford*, 565 F.2d 975, 977 (7th Cir. 1977) (class must be sufficiently definite to permit ascertainment of class members). Importantly, as noted above, DHS has determined that it is able to ascertain the members of the proposed classes for the purpose of providing Class Notice.

1. Numerosity

Plaintiffs easily satisfy the numerosity requirement because the two settlement classes are so large that joinder of all members is impractical. Haw. R. Civ. P. 23(a)(1); *see Jordan v. Los Angeles Cnty.*, 669 F.2d 1311, 1319 (9th Cir. 1982) ("Although the absolute number of class members is not the sole determining factor, where a class is large in numbers, joinder will usually be impracticable.").

According to DHS's Quarterly Financial Report to the United States Department of Health and Human Services, as of June 30, 2014, there were 1,131 children on whose behalf DHS made Foster Care Maintenance Payments (or incurred administrative costs); 3,379 children on whose behalf DHS made Adoption Assistance Payments; 760 children on whose behalf DHS made Guardianship Assistance Payments. See Appendix G, SOH04837 – 4843, DHS Quarterly Report to DHHS. According to DHS's 2015 annual report, there were 369 former foster youth who received Higher Education Board Payments. http://humanservices.hawaii.gov/wp-content/uploads/2016/01/2015-DHS-Annual-Report.FINAL_.pdf at page 44.

In light of these statistics, it is clear that both proposed classes are so numerous that joinder of all members is impracticable. Haw. R. Civ. P. 23(a)(1). The Parent Settlement Class comprises thousands of Resource Families; the Higher Education Settlement Class numbers in the hundreds. See *Baker v. Castle & Cooke Homes Haw., Inc.*, 2014 WL 1669158, at *13-14 (D. Haw. Apr. 28, 2014) (precise calculations and exact numbers not required when sufficient circumstantial evidence regarding the scope of the proposed class provided). This is more than sufficient to establish numerosity.

2. Commonality

This case involves resolution of issues of law and fact common to the Class. Plaintiffs' claims meet the commonality requirement, because they "depend upon a common contention . . . [that is] of such a nature that it is capable of classwide resolution." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011); see also, *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) ("Commonality exists where class members' situations share a common issue of law or fact, and are sufficiently parallel to insure a vigorous and full presentation of all claims for relief."); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) ("The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class.").

Here, the common core questions of law and fact are common all members of the proposed classes. Because the Adoption Assistance, Higher Education Board Payments, and Permanency Payments cannot exceed the amount of Foster Care Maintenance Payments, all Resource Families and Higher Education Board Payment recipients share a core common factual nexus: whether the Foster Care Maintenance Payment is insufficient (Plaintiffs assert it is; the State claims it is not) and the extent of the shortfall (Plaintiffs estimate that the shortfall is several hundred dollars each month; Defendant calculates that it is overpaying by as much as \$188 each month). Indeed the Parties spent the bulk of their discovery efforts and motions practice on these issues: sufficiency and extent of shortfall, and the settlement directly addresses the positions that each Party developed through those efforts.

3. Typicality

The considerations establishing commonality also demonstrate that Plaintiffs satisfy the typicality requirement. As the federal court for the District of Hawai'i recently noted, construing identical language of Fed. R. Civ. P. 23(a), "commonality and typicality requirements of FRCP 23(a) tend to merge." *Baker v. Castle & Cooke Homes Haw., Inc.*, 2014 WL 1669158, at *10 (citations omitted). Typicality requires that Plaintiffs' claims be "reasonably coextensive with those of absent class members" without the claims having to be "substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). "The representative plaintiff satisfies the typicality requirement when its injuries arise from the same events or course of conduct as the injuries of the class and when the plaintiff's claims and those of the class are based on the same legal theory." *In re Credit Suisse-AOL Secs. Litig.*, 253 F.R.D. 17, 23 (D. Mass 2008).

Here, Named Plaintiffs' claims are typical of the claims of the members of the proposed classes in that they have been denied adequate maintenance payments in violation of State law because of: the State's failure to raise the \$529 Monthly Payment between 1990 and 2014; the manner in which the State conducted (or failed to conduct) periodic assessments of the

Foster Care Maintenance Payments; and the manner in which the State calculated its 2014 rate increase. The same conduct by Defendant forms the basis for each class member's claim. Because Plaintiffs suffer the same the common injury suffered by the class, the typicality requirement is satisfied. *Baker v. Castle & Cooke Homes Haw., Inc.*, 2014 WL 1669158, at *10.

4. Adequacy

Finally, both Named Plaintiffs and their counsel "will fairly and adequately represent and protect the interests" of the class. Haw. R. Civ. P. 23(a)(4). Adequacy turns on whether the Named Plaintiffs and their counsel are free of any conflicts of interest with other class members and whether the Named Plaintiffs and their counsel will prosecute the action vigorously on behalf of the class. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Named Plaintiffs are free from conflicts with other class members because the amount of the settlement is calculated using a formula that does not distinguish between Class Representatives and Class Members. The formula is based on pro rata days of care provided to children during a time period that was determined without regard to Named Plaintiffs. In other words, Named Plaintiffs will recover their proportionate share of the Net Settlement Amount.

The Class Members are united in their interests in obtaining recovery from the State. And, any Service Award requested shall, by agreement of the Parties, be deducted from any Court-approved award of attorneys' fees and costs rather than from the Net Settlement Amount. Accordingly, no conflict exists between the Named Plaintiffs and members of the proposed classes. Adequate class representatives need only have a basic understanding of the claims and a willingness to participate in the case. *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 373 (1966). As the trial declarations of Named Plaintiffs Sheehy, Ah Chong, and Campagna amply demonstrate, Named Plaintiffs have a sufficient understanding of the claims and willingness to participate in the case. Appendix J at Fed. Dkt. 305-1 through 305-5 (Trial Testimony).

Plaintiffs' counsel satisfy the adequacy requirements of Rule 23. See Declaration of Gavin Thornton and Declaration of Claire Wong Black. And there are no conflicts of interest exist within the Class or between the Class and Plaintiffs' attorneys. The proposed settlement classes and subclasses are represented by two legal services providers who are experienced in federal civil rights litigation and class actions such as: *Felix v. Cayetano*, Civ. No. 93-00367 (DAE) (AHFI, lead class counsel); *Burns-Vidlak v. Chandler*, Civ. No. 95-00892 (AHFI, lead class counsel); *Pasatiempo v. Aizawa*, 103 F.3d 796 (9th Cir. 1996) (AHFI, lead class counsel); *Kihara v. Chandler*, Civ. No. 00-1-2847 (SSM) (AHFI, co-lead class counsel); *Waters v. Hous. And Cmty. Dev. Corp.*, Civ. No. 05-1-0815-05 EEH (AHFI and LEJ as class counsel); *Amone v. Aveiro*, CV04-00508 ACK/BMK (AHFI and LEJ as class counsel); *McMillon v. State*, CV08-00578 JMS/LEK (AHFI and LEJ with Legal Aid Society as class counsel). The federal court appointed AHFI and LEJ (along with mainland firm Morrison Foerster) as class counsel in the Federal Lawsuit. Plaintiffs and their counsel thoroughly explored the claims and positions and extensively litigated the facts and legal issues involved. They committed substantial resources to representing the putative class and prosecuting this matter, including hiring a national expert and the State's leading economist, incurring significant costs to do so.

C. The Proposed Settlement Class Satisfies Rule 23(b)(3)

Under Rule 23(b)(3), certification is appropriate where “questions of law or fact common to class members predominate over any questions affecting only individual members” and where class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Haw. R. Civ. P. 23(b)(3). There is one, common core question of fact that predominates over any question affecting individual members: the sufficiency of the Monthly Payments, each of which, under Hawaii's administrative rules, is equally limited by the amount of the Foster Care Maintenance Payment.

Any assessment of damages would have to be determined with reference to a baseline Monthly Payment amount that was adjudicated as—at

minimum—“sufficient” to cover the costs enumerated in the federal Child Welfare Act. And, adjudication as a class is far superior to other available methods for the fair and efficient adjudication of this action. As noted above, after extensive discovery (including protracted discovery disputes) DHS produced to Plaintiffs a large dataset of payments made by DHS to Resource Families to demonstrate that its Foster Care Related Benefits and Payments supplemented the Monthly Payments, making the overall package of payments and benefits sufficient under federal law. Plaintiffs retained national expert Dr. Mary Hansen to review and analyze the dataset. Even with her significant expertise in foster care datasets (including the federal AFCARS system), it took many hours to understand the data in the factual context of DHS’s payment system, and many more hours to analyze the data in order to arrive at conclusion regarding the sufficiency of the purported payments. An individual plaintiff, or counsel representing individual plaintiffs would not have the resources to adequately and rigorously challenge the State’s data and their experts’ conclusions. For this reason, class treatment is superior to litigating class members’ claims individually, and the Settlement Classes should be certified.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

HRCP Rule 23(e) provides that Court approval must be obtained before a class action is settled. The law favors settlement of class actions. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005) (quotations omitted). The approval of a proposed class action settlement is within the discretion of the trial court. The approval should be granted if the settlement is “fundamentally fair, adequate, and reasonable.” *Durkin v. Shea & Gould*, 92 F.3d 1510, 1512 n.6 (9th Cir. 1996). *See also Amantiad v. Odum*, 90 Haw. 152, 162-63, 977 P.2d 160, 170-71 (1999) (“Where the parties have voluntarily entered into a stipulation which appears fair and reasonable for the compromise and settlement of the issues of a pending cause . . . with the consent and approval of the court . . . the court may, thereafter, properly proceed to dispose of the case on the basis of the pleadings, the stipulations

and the admitted facts”) (internal citations omitted). The Court must consider the strengths of the plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; . . . the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; . . . and the reaction of the class members to the proposed settlement.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Each of these factors supports approval of this settlement.

1. Strengths of Plaintiffs’ Case

As described above, the federal court ruling was a significant—albeit potentially temporary—setback. Plaintiffs believe they would have prevailed at trial in the federal litigation, and then relied on the federal court’s determination of inadequacy of the Monthly Payment under federal law and the *minimum* benchmark for damages in this action. However, whether or not Plaintiffs prevailed in the Federal Lawsuit, appeals would be inevitable, delaying not only much-needed injunctive relief to class members but also delaying the State Lawsuit because the measure of damages depends, in part, on the existence and amount of the shortfall.

2. Risk, Expense, and Complexity of Further Litigation

Given the federal court’s rulings on shelter costs, the risk of further litigation is significant. The federal court’s ruled three times on the issue of shelter: first on summary judgment (concluding that “shelter” need not include mortgage, rent, and property taxes), again on Plaintiffs’ motion *in limine* (same), and again in response to Plaintiffs’ supplemental expert calculations (striking expert conclusions regarding implicit housing costs).

Plaintiffs’ position is that if the State had merely updated its \$529 Monthly Payment for inflation, the current Monthly Payment would be \$973 each month. However, as described above, as a result of the federal court’s ruling on summary judgment (which was subsequently reinforced on Plaintiffs’ and Defendants’ motion *in limine* on “housing” costs), the State’s position is that its current, age-tiered Month Payment rates result in an **overpayment to**

resource families of up to \$324 each month. Appendix K, Fed. Dkt. 314 at PageID#:9684. While Plaintiffs' Counsel and the Named Plaintiffs believe that the Federal Plaintiffs would prevail on the overall inadequacy of DHS's Foster Care Maintenance Payment rate either at trial or on appeal to the federal Court of Appeals for the Ninth Circuit, the State vehemently disagrees and takes the position that any monetary payment in the State Lawsuit is solely for the purposes of closure—to resolve both lawsuits without the further delay of the appeals process and to move on toward a more cooperative relationship with resource families.

DHS's response to the shelter ruling encapsulates the risk of continued litigation: the State's experts reexamined the Monthly Payments and determined that DHS was overpaying by as much as \$324 for each child, each month. As a result, the State believes strongly that they are not obligated to pay any amount and that the federal court ruling vindicated their claims that their system of Monthly Payment and Foster Care Related Payments and Benefits takes into account the individual needs of the child. Furthermore, DHS's position is that if it were to prevail in the federal case and maintained its victory on appeal, Plaintiffs would not be able to establish any damages in the State Lawsuit. Despite the federal court's ruling, and in order to resolve both lawsuits and move toward a more productive relationship between Resource Families and the State, the Parties were able to agree to a monetary payment to eligible Class Members. The Class Settlement Amount appropriately accounts for the Parties' diametrically opposed positions in light of litigation to date. This weighs in favor of settlement.

3. The Amount Offered in Settlement

Any monetary settlement represents a concession by the State in light of what they view as a strong likelihood of success in the federal lawsuit. Viewed in that context, the amount offered in settlement is significant: \$2,341,103.10. Avoiding the risk, expense, complexity, and delay of further litigation and obtaining early distribution of net sums (in addition to the increase in future Monthly Payment provided to all Resource Families in the

Federal Settlement Agreement) at no cost of the Class strongly favors settlement.

The structure of the settlement distribution maximizes distributions to the class. For example, any award amount that is not distributed (for example, because a Class Member who would otherwise be eligible to receive a payment opts out) will remain part of the Class Settlement Amount and will not be returned to the State. The structure of the settlement distribution fairly allocates the settlement fund: each Class Member who does not opt out of the Settlement and who is entitled to receive a payment will receive a pro rata share (based on actual days in care, or days of care provided during the period July 1, 2013 to June 30, 2014) of the Net Settlement Fund. The Net Settlement Fund is the remainder of the total Class Settlement Amount after deductions for: (1) Administration Costs associated with printing and mailing the Class Notice, processing requests to opt out, and to prepare and mail Settlement Payments to Payment Recipients; (2) Court-approved attorneys' fees, costs, and expenses for Plaintiffs' Counsel, which shall include any Court-approved service awards to Named Plaintiffs (*i.e.*, the Service Awards shall be deducted from the award of attorneys' fees, costs, and expenses and **not** deducted from the Net Settlement Amount to be distributed to the Class).

4. The Stage of Proceedings

Plaintiffs and counsel have litigated the facts at issue thoroughly, extensively, and tenaciously for over three years. The Parties conducted significant expert analyses for over two years, which analyses informed the monetary settlement reached here. Plaintiffs and their counsel are in a position to make a detailed, informed decision about settlement. Consequently, this factor weighs in favor of approval of the settlement.

5. Reaction of Class Members

Plaintiffs participated in the settlement negotiations and approved the settlement terms. Plaintiffs' counsel also spoke with Resource Families in the community, who expressed support for the settlement. Given the factors discussed above, this settlement is reasonable. Moreover, the proposed Class


Notices, which Plaintiffs request that the Court approve, provide information regarding the settlement and the opportunity to opt out of the settlement classes and/or object to the terms of the settlement.

V. CONCLUSION

For all the reasons discussed above, Plaintiffs respectfully request that the Court grant this motion and:

- (1) certify a Parent Settlement Class and Higher Education Settlement Class for the purposes of settlement only;
- (2) appoint Named Plaintiffs Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sheryl Campagna, Michael Holm, and Tiare Holm as representatives of the Parent Settlement Class;
- (3) appoint Brittany Sakai as representative of the Higher Education Settlement Class
- (4) appoint Plaintiffs' attorneys as Class Counsel;
- (5) grant preliminary approval of the Settlement and the Parties' plan of allocation of settlement funds as fair, reasonable, and adequate; and
- (6) approve the Parties' jointly-drafted proposed Class Notices, including the opt-out provisions, and the plan to distribute the notices to class members.

DATED: Honolulu, Hawai'i, March 20, 2017.



PAUL ALSTON
JOHN-ANDERSON L. MEYER
MICHELLE N. COMEAU
CLAIRE WONG BLACK
VICTOR GEMINIANI
GAVIN THORNTON
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PATRICK SHEEHEY; PATRICIA SHEEHEY; RAYNETTE NALANI AH CHONG; SHERRY CAMPAGNA; MICHAEL HOLM; and TIARE HOLM, *individually, and on behalf of a class of Hawai'i-licensed resource families; B.S.; and T.B., a Minor, by her Next Friend N.A., individually and on behalf of a class of persons similarly situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC
(Contract)
Civil Action; Class Action

**DECLARATION OF
CLAIRE WONG BLACK**

DECLARATION OF CLAIRE WONG BLACK

I, CLAIRE WONG BLACK, declare that:

1. I am an attorney at law licensed to practice before this Court and am one of the attorneys for the Named Plaintiffs in this matter.

2. I make this Declaration based on my personal knowledge and am competent to testify about the matters contained in this Declaration.

Exhibits and Appendices

3. Attached as Exhibit "A" is a true and correct copy of the State Lawsuit Class Action Settlement Agreement and proposed notices to class members, which are Exhibit 1 (notice to persons who are not payment recipients) and Exhibit 2 (notice to persons who are payment recipients).

4. Attached as Exhibit "B" is a true and correct copy of the fully executed Federal Lawsuit Class Action Settlement Agreement. The preliminary approval hearing for the Federal Settlement was March 17, 2017. The federal court's order preliminarily approving the federal settlement is forthcoming.

5. Attached as an Appendix are relevant pleadings, orders, and documents from the federal lawsuit:

- a. Appendix A, Federal Docket No. ("Fed. Dkt.") 47, First Amended Complaint, filed April 30, 2014;
- b. Appendix B, Fed. Dkt. 120, Plaintiffs' Motion for Class Certification, filed April 23, 2015;
- c. Appendix C, Fed. Dkt. 156, Class Certification Order, filed August 17, 2015;
- d. Appendix D, Fed. Dkt. 194, Summary Judgment Order, filed December 30, 2015;
- e. Appendix E, DHS Supplemental Interrogatory Responses, dated May 7, 2015;
- f. Appendix F, September 19, 2013, notes from DHS meetings with Resource Families, produced by the State as SOH01740-1753;
- g. Appendix G, SOH04837-4843, DHS Quarterly Report to U.S. DHHS, produced by the State as SOH04837-4843;
- h. Appendix H, Fed. Dkt. 146-4, House Resolution H.R. No. 209 and House Concurrent Resolution H.C.R. No. 240, produced by the State as SOH05446-5453;
- i. Appendix I, Fed. Dkt. 145, Plaintiffs' Summary Judgment Motion, filed August 7, 2015;
- j. Appendix J, Fed. Dkt. 305, Plaintiffs' Trial Testimony, filed August 12, 2016;
- k. Appendix K, Fed. Dkt. 314-6, DHS Trial Declaration of (State Expert) Jerald Udinsky, Ph.D., filed August 19, 2016;
- l. Appendix L, Fed. Dkt. 293-3, Excerpts from Deposition Testimony of (State Expert) Nicholas P. Schmidt, taken June 2, 2016;
- m. Appendix M, Department of Human Services FIB 13-15 Budget Request Form A, produced by the State as SOH04827-4831

Class Certification

6. The law firm of Alston Hunt Floyd & Ing has extensive experience in class actions and has been found to be qualified to act as class counsel in dozens of cases, many of them involving claims relating to federal

and state benefits. Mr. Alston, lead counsel for Plaintiffs in this action, has served as lead counsel in over 40 class actions.

7. Class actions in which Alston Hunt Floyd & Ing served as lead or co-lead class counsel include the following:

- a. In 1992, *Felix v. Cayetano*, Civil No. 93-00367 (DE) was brought on behalf of a Maui public school student whose guardian was compelled to sue the Governor and the State of Hawai'i because federally-guaranteed mental health and educational services were not being provided as required by law. The number in the class was approximately 13,000. Alston Hunt Floyd & Ing was co-lead counsel for the *Felix* plaintiffs.
- b. In 1995, Alston Hunt Floyd & Ing filed a class action lawsuit, *Burns-Vidlak v. Chandler*, Civil No. 95-00892, against the State of Hawai'i and the Department of Human Services for disability discrimination under section 504 of the Rehabilitation Act and the Americans with Disabilities Act. The U.S. District Court for the District of Hawai'i certified a class action. Summary judgment was entered against the State of Hawai'i on behalf of the class on the issue of liability for compensatory damages under Section 504 of the Rehabilitation Act. Subsequently, over 300 individual compensatory damage actions were filed. Alston Hunt Floyd & Ing was lead counsel for the *Burns-Vidlak* case.
- c. In 1998, Alston Hunt Floyd & Ing filed *Sterling v. Chandler* on behalf of a class of plaintiffs and against the Department of Human Services, State of Hawai'i, for discrimination in medical insurance coverage for disabled persons. The lawsuit was based on the State's continued discrimination against the disabled, for which *the Burns-Vidlak* class action was

filed. Summary judgment was entered on behalf of the class members. Alston Hunt Floyd & Ing was lead counsel for the Sterling plaintiffs.

- d. In *Pasatiempo by Pasatiempo v. Aizawa*, 103 F.3d 796 (9th Cir. 1996), parents and students brought a class action against the State of Hawai'i Department of Education alleging that the state failed to comport with the procedural requirements of the Individuals with Disabilities Education Act and the Rehabilitation Act in administering evaluation of students. The Ninth Circuit ruled in favor of the plaintiff class. Alston Hunt Floyd & Ing was lead counsel for the plaintiff class.
- e. In *Kihara v. Chandler*, Civil No. 00-1-2847-09 (SSM), Alston Hunt Floyd & Ing filed a class action lawsuit on behalf of a class of plaintiffs alleging that the State of Hawai'i Department of Human Services incorrectly reduced the General Assistance benefits to the plaintiffs' class. The suit sought reimbursement of GA benefits wrongfully withheld; general, special, and punitive damages against the defendant; and reimbursement of costs and expenses, including attorneys' fees. On April 29, 2002, the court approved a settlement for the class which including the establishment of a fund for the payment of claims to members of the class certified in Kihara in the amount of \$1,500,000.00. Alston Hunt Floyd & Ing was co-lead counsel for the plaintiff class.
- f. In *David Garner et al. v. State of Hawai'i, Department of Education*, Civil No. 03-1-000305, Alston Hunt Floyd & Ing filed four class action lawsuits in the First Circuit alleging that the Department of Education failed to pay substitute teachers properly according to law. Class certification has

been granted in all of these cases. Alston Hunt Floyd & Ing is co-lead counsel for the plaintiff class.

- g. In *Waters v. Housing and Community Development Corp. of Hawaii*, Civil No. 05-1-0815-05 EEH, Alston Hunt Floyd & Ing (along with Lawyers for Equal Justice) filed a class action lawsuit against the Housing and Community Development Corporation of Hawaii (“HCDC”) alleging that the HCDC had failed to update utility allowances for hundreds of tenants who had lived or were living in federally-subsidized housing managed by the HCDC. This firm and Lawyers for Equal Justice obtained a \$2.3 million settlement. This action and others filed by this firm and Lawyers for Equal Justice also caused the HCDC to finally update utility allowances and institute a process for keeping them updated in the future.
- h. In *Arnone v. Aveiro*, CV04-00508 ACK/BMK, Alston Hunt Floyd & Ing (along with Lawyers for Equal Justice) filed a class action lawsuit against the HCDC alleging that the HCDC had failed to provide supplemental utility allowances for disabled tenants who had lived or were living in federally-subsidized housing managed by the HCDC and who, because of their medical needs, consumed a greater amount of utilities than other tenants. This firm and Lawyers for Equal Justice obtained a permanent injunction in favor of the plaintiff class.
- i. In *McMillon v. State*, CVOS-00578 JMS/LEK, Alston Hunt Floyd & Ing (along with Lawyers for Equal Justice and the Legal Aid Society) filed a class action lawsuit against the State, Hawai'i Public Housing Authority, and Realty Laua LLC alleging violations of Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Fair Housing Act Amendments. Class certification was

granted, and the Court ultimately approved a class action settlement.

- j. In *E.R.K. v. Department of Education*, Civ. No. 10-00436 (SOM-KSC) Alston Hunt Floyd & Ing (along with Hawaii Disability Rights Center) filed suit in July 2010 challenging Act 163, a Hawai'i law that barred students from attending public school if they were at least twenty years old on the first day of school. Act 163 unfairly harmed special education students aged 20 and 21. Class certification was granted. In August 2013, the Ninth Circuit ruled that Act 163 violated the Individuals with Disabilities Education Act (IDEA).
- k. In the federal companion to the instant action, *Ah Chong v. McManaman*, Civ. No. 13-00663 LEK-KSC (D. Haw.), Alston Hunt Floyd & Ing (along with Hawai'i Appleseed and Morrison Foerster LLP) filed a class action lawsuit against the State of Hawai'i, Department of Human Services for violations of the Child Welfare Act. Class certification was granted and the Court indicated at the hearing on Defendant's unopposed motion to preliminarily approve the class action settlement that preliminary approval would be granted.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Honolulu, Hawai'i on March 20, 2017.



CLAIRE WONG BLACK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

PATRICK SHEEHEY; PATRICIA SHEEHEY; RAYNETTE NALANI AH CHONG; SHERRY CAMPAGNA; MICHAEL HOLM; and TIARE HOLM, *individually, and on behalf of a class of Hawai`i-licensed resource families; B.S.; and T.B., a Minor, by her Next Friend N.A., individually and on behalf of a class of persons similarly situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC
(Civil Action; Contract; Class Action)

SETTLEMENT AGREEMENT

HEARING ON PRELIMINARY
APPROVAL OF SETTLEMENT

JUDGE: Hon. Virginia L. Crandall

DATE: March 24, 2017

STATE LAWSUIT CLASS ACTION SETTLEMENT AGREEMENT

This State Lawsuit Class Action Settlement Agreement (“**State Settlement Agreement**”) is entered into by and between Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, Tiare Holm, B.S., and T.B., a minor by her next friend, N.A. (collectively, the “**Named Plaintiffs**”), on behalf of themselves and members of the Classes defined in this Agreement (collectively, “**Plaintiffs**”), on the one hand, and the State of Hawaii, including its departments, agencies, officials, and employees (collectively the “**State**”), on the other hand. Named Plaintiffs and the State are collectively referred to as the “**Parties.**”

Subject to Court approval as required by Rule 23 of the Hawai`i Rules of Civil Procedure (“**HRCP**”), the Parties hereby stipulate and agree that, in consideration of the mutual promises, covenants, and consideration set forth in this State Settlement Agreement, the above-captioned action (“**State Lawsuit**”) shall be settled and compromised in accordance with the terms herein.

The Parties acknowledge and agree that although this State Settlement Agreement sets forth the terms and conditions by which the State Lawsuit will be settled, this State Settlement Agreement is part of a larger settlement that includes the Federal Lawsuit (defined below), and that unless

both Lawsuits settle on the terms set forth in their respective settlement agreements, neither Lawsuit will be settled.

The Parties further acknowledge and agree that the settlement of the State Lawsuit and the Federal Lawsuit is contingent on the enactment of legislation by the Hawaii Legislature to authorize the appropriation of funds to make the payments described herein and in the Federal Settlement Agreement. If such legislation is not enacted on or before the Legislation Enactment Deadline as defined in this State Settlement Agreement and the Federal Settlement Agreement, unless such date is mutually agreed to be extended by the parties to both Agreements, this State Settlement Agreement shall automatically become null and void, trial in the Federal Lawsuit shall resume, and the State Lawsuit shall also proceed.

RECITALS

WHEREAS, on August 7, 2014, a Complaint for Damages against the State of Hawaii was filed in an action entitled *Sheehy, et al. v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC (the “State Lawsuit”), a First Amended Complaint for Damages was filed on February 6, 2015, and a Second Amended Complaint for Damages was filed on June 8, 2015; and

WHEREAS, the Second Amended Complaint in the State Lawsuit is pled as a class action lawsuit and asserts claims on behalf of three general categories of people:

- a. individuals who have taken in abused or neglected children by serving as resource caregivers (foster parents) for such children, by adopting such children (these children are referred to under the law as “children with special needs”), or by becoming the permanent custodians/legal guardians for such children, and who were entitled to receive foster care maintenance payments, adoption assistance, or permanency assistance under state or federal law (collectively, referred to herein as the “**Parent Group**”)¹;
- b. former foster youth who receive higher education board allowance payments from the Hawaii Department of Human Services (“**DHS**”) (collectively, the former foster youth are referred to herein as the “**Higher Education Group**”); and

¹ Because of the application of the statute of limitations to any claims by the Parent Group, the Parties acknowledge that the Court presiding over the State Lawsuit, if presented with the issue, would likely have limited the people in the Parent Group to those adults who have provided care to foster children, adoptive children with special needs, or children in permanent custody/legal guardianships on or after August 7, 2012.

c. foster children, adoptive children with special needs, and children in permanent custody/legal guardianships who were under the age of 20 on August 7, 2014 (collectively referred to herein as the “**Beneficiary Group**”); and

WHEREAS, the Second Amended Complaint alleges that the foster care maintenance payments paid by the State (through DHS) to members of the Parent Group who are resource caregivers were and are inadequate under state and federal law, and are flawed because they fail to take into account Hawaii’s cost of living; and further alleges that if the monthly payment rate set in 1990 (and not changed until 2014) had been adjusted to keep up with inflation, the required foster care maintenance payment at the time of the filing of the Complaint would exceed \$950 per month; and

WHEREAS, because by DHS policy the amount of the foster care basic board rate is also the amount paid by the State to adoptive parents of children with special needs, legal guardians/permanent custodians and former foster youth receiving higher education benefits, the Second Amended Complaint also alleges that the payments made to the remaining members of the Parent Group and payments made to the Higher Education Group are also inadequate²; and

WHEREAS, the Second Amended Complaint asserts seven claims for relief, based on the following allegations

a. failure to pay amounts required to be paid under written agreements entered into by the State and individual members of the Parent Group (which agreements require the State to make certain payments to these individuals), resulting in damages suffered by individual members of the Parent Group equal to the shortfall between the amounts required to be paid and the amounts actually paid;

b. failure to pay amounts required to be paid under written agreements entered into by the State and individual members of the Parent Group, resulting in damages to the Beneficiary Group (who are the intended beneficiaries of the written agreements described in the first claim for relief);

c. violation by the State of Chapter 17-1617 of the Hawaii Administrative Rules by failing to pay foster care maintenance payments sufficient to comply with its obligations under the Adoption Assistance and Child Welfare Act of 1980, as amended, codified as Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679c (the “**Child Welfare Act**”), resulting in damages to resource caregivers and foster children;

² Members of the Beneficiary Group do not directly receive maintenance payments from the State.

d. violation by the State of Chapter 17-1620 of the Hawaii Administrative Rules by failing to pay adequate monthly adoption assistance payments as a result of DHS' policy of limiting its adoption assistance payments to the amount of its foster care maintenance payment rates;

e. violation by the State of Chapter 17-1621 of the Hawaii Administrative Rules by failing to pay adequate permanency assistance payments as a result of DHS' policy of limiting permanency assistance payments to the amount of its foster care maintenance payment rates;

f. violation by the State of Haw. Rev. Stat. § 346-17.4 by failing to pay adequate higher education board payments as a result of DHS' policy and practice of limiting higher education board payments authorized by Section 346-17.4 to the amount of its foster care maintenance payment rates, resulting in damages to eligible members of the Higher Education Group equal to the shortfall in payments; and

g. failure by the State to assure the continuing appropriateness of its foster care maintenance payment rates by conducting periodic reviews but knowingly failing to establish adequate payment rates, resulting in the denial of Plaintiffs' rights under federal and state law; and

WHEREAS, the Second Amended Complaint seeks damages from the State for the alleged contract breaches and statutory and rules-based violations described therein; and

WHEREAS, Raynette Ah Chong, on behalf of a separate putative class of Hawaii-licensed foster care providers, filed a class action complaint for declaratory and permanent injunctive relief against Patricia McManaman,³ in her official capacity as the Director of the Hawaii Department of Human Services, in an action entitled *Ah Chong v. McManaman*, Civ. No. 13-00663 LEK-KSC, in the United States District Court for the District of Hawai'i (the "Federal Lawsuit"), on December 3, 2013, as amended on April 30, 2014; and

WHEREAS, some of the issues in this State Lawsuit overlap with the issues in the Federal Lawsuit (primarily, whether DHS provides foster care maintenance payments adequate to cover the cost of and the cost of providing basic necessities to children in Hawaii's foster care system and whether DHS' periodic review of the foster care maintenance payments result in the establishment of appropriate payment rates); and

WHEREAS, from approximately 1990 until June 2014, Hawaii's basic foster board rate was \$529 per child, per month for all foster children; and

³ Pankaj Bhanhot has been substituted as defendant in the Federal Lawsuit pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 25(d).

WHEREAS, effective July 1, 2014, DHS increased the basic foster care board rate (“Basic Board Rate”), based on the age of the foster child, to: \$576 (children ages 0-5); \$650 (children ages 6-11); and \$676 (children ages 12+); and

WHEREAS, in addition to the Basic Board Rate, there are additional payments and benefits available for the care of foster children (“Foster Care Related Payments and Benefits”), depending on the needs of the child; and

WHEREAS, DHS’ position is that its existing system of a Basic Board Rate plus Foster Care Related Payments and Benefits complies with the Child Welfare Act, and DHS also takes the position that having certain payments or benefits available only if the child needs them, and requiring resource caregivers (foster parents) to apply for certain payments and benefits complies with the Child Welfare Act; and

WHEREAS, Plaintiffs’ position is that the DHS’ Basic Board Rates are still inadequate because they were set in 2014 using a 2011 government (USDA) study on the cost of raising children across the United States (and used cost estimates for families living in the Urban West region rather than Hawai`i), and because the Basic Board Rates utilized less than 100% of the estimated costs of food; housing; and miscellaneous expenses rather than all eight items listed in the Child Welfare Act; and

WHEREAS, Plaintiffs position is that DHS’ system of providing Foster Care Related Payments and Benefits is inadequate because the payments and benefits (1) are not provided to all foster children, (2) are subject to eligibility requirements, (3) are subject to availability of funds, and (4) many foster families simply are not aware that these additional payments and benefits exist or that DHS is required to cover certain costs that DHS claims are covered through the Foster Care Related Payments and Benefits; and

WHEREAS, the Parties do not agree on (1) the extent of DHS’ obligations under the Child Welfare Act; (2) the sufficiency of the Basic Board Rate; (3) the value or adequacy of the Foster Care Related Payments and Benefits; (4) whether DHS provides adequate information to resource caregivers regarding the availability of the Foster Care Related Payments and Benefits; (5) whether DHS provides adequate opportunity for resource caregivers to apply for the Foster Care Related Payments and Benefits; and (6) whether DHS conducts periodic reviews that assure the continuing appropriateness of its foster care maintenance payment rates; and

WHEREAS, because of the overlapping issues in the State Lawsuit and the Federal Lawsuit, the State Lawsuit was placed on hold while the parties in the Federal Lawsuit extensively litigated the issue of the adequacy of DHS’ foster care maintenance payments (among other things, engaging in substantial

discovery, including production of thousands of pages of documents, depositions, and expert discovery); and

WHEREAS, in December 2015, the Federal Court ruled that federal law did not prohibit DHS' system of providing foster care maintenance payments through a Basic Board Rate plus additional Foster Care Related Payments and Benefits, and that the foster care maintenance payment system could possibly be sufficient if DHS provides resource caregivers with sufficient information about the Foster Care Related Payments and Benefits and sufficient opportunities to apply for them; and

WHEREAS, the Federal Court also ruled that the "shelter" expense in the Child Welfare Act's definition of "foster care maintenance payments" need not include mortgage payments, rent, property taxes, or other similar expenses;⁴ and

WHEREAS, the Federal Court did not rule on certain key issues, and saved them for trial in the Federal Lawsuit, including:

- (1) whether DHS adequately conducts periodic reviews of the foster care maintenance payments to assure their continuing appropriateness, as required by law;
- (2) whether DHS provided and provides adequate information to resource caregivers about the Foster Care Related Payments and Benefits;
- (3) whether DHS provided adequate opportunities to resources caregivers to apply for the Foster Care Related Payments and Benefits;

and, if the Court answered (2) and (3) in the affirmative, then

- (4) whether DHS' foster care maintenance payment system of Basic Board Rate-plus-Foster Care Related Payments and Benefits adequately covered the cost of (and the cost of providing) the basic necessities of children in Hawaii's foster care system, as required by the Child Welfare Act; and

WHEREAS, Plaintiffs in the Federal Lawsuit strenuously disagreed with the Federal Court's rulings and strongly believe that these rulings would be reversed on appeal; and

⁴It is Defendant's position that the Federal Court's ruling on "shelter expense" significantly lessened Plaintiffs' chances of prevailing on their assertion that DHS does not pay enough for the items enumerated in the Child Welfare Act because, while the ruling confirmed that DHS need not pay for rent, mortgage, or similar expenses, DHS' calculation of the Basic Board Rates in fact took such costs into account because a large portion of the "housing" category of the USDA report includes such costs.

WHEREAS, the State's position is that if Plaintiffs in the Federal Lawsuit could not show that the foster care maintenance payments were inadequate, then the Parent Group and Higher Education Group in the State Lawsuit also could not show that their respective payments were inadequate; and

WHEREAS, the State's position is that discovery in Federal Lawsuit indicated that even if resource caregivers could prove that the foster care maintenance payments were inadequate, the Beneficiary Group were unlikely to be able to prove damages separate from the resource caregivers (because resource caregivers likely supplemented the shortfall in the State's alleged inadequate foster care maintenance payments from their own income in order to lessen the damages suffered by their foster, adoptive, and permanency placements due to the alleged inadequate payments); and

WHEREAS, the State believes it has meritorious defenses, including sovereign immunity, failure of the Plaintiffs to state a claim upon which relief can be granted, statute of limitations, and lack of standing; and

WHEREAS, the ultimate outcome of the Federal Lawsuit was uncertain and the Parties disagree on the impact and effect of the Federal Court's rulings on the State Lawsuit; and

WHEREAS, shortly before trial in the Federal Lawsuit was scheduled to commence, the Parties engaged in settlement discussions through their respective counsel, with the assistance of the Honorable Kevin S.C. Chang, Magistrate Judge of the United States District Court for the District of Hawai'i; and

WHEREAS, the State insists that both the Federal Lawsuit and State Lawsuit must be resolved together; and

WHEREAS, the State denied and continues to deny any and all liability and damages to Plaintiffs with respect to the claims or causes of action asserted in the State Lawsuit and the Federal Lawsuit, but nonetheless acknowledges that bringing the cases to a close now through settlement—rather than after years of litigation and appeals, with uncertain outcomes and concomitant attorneys' fees and costs that would be incurred by both sides—would help move the Parties toward a better working relationship for the benefit of all children in Hawaii's foster care system, and the relief Defendant agrees to provide under this Federal Settlement Agreement is offered solely as a compromise, and not because Defendant believes DHS has any obligation to Plaintiffs to provide said relief; and

WHEREAS, in light of the Federal Court's rulings and their uncertain impact on the State Lawsuit, the opinions of the parties' experts, the attorneys' fees and costs that all Parties would continue to expend, and the interests of bringing these matters to a resolution, the Parties and counsel agree that a

limited, one-time payment to be made only to certain Settlement Class Members (the Payment Recipients), is an appropriate means of settling this case; and

WHEREAS, Plaintiffs and their counsel have analyzed, evaluated, and extensively litigated the merits of the claims made against Defendants in the State Lawsuit and the Federal Lawsuit and the impact of settlement (as well as the impact of not settling) on Plaintiffs, the members of the Federal Class, and members of the putative State Class and—recognizing the substantial risks of continued litigation, including the possibility that the Federal Lawsuit, if not settled now, might result in an outcome that is less favorable or that a fair and final judgment may not occur for several years—Plaintiffs and their counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interests of all the members of the putative class; and

WHEREAS, the Parties have reached a proposed comprehensive settlement of the State and Federal Lawsuits and, on August 26, 2016, the Parties in the State Lawsuit and the parties in the Federal Lawsuit agreed to the essential terms of a valid and binding settlement agreement, which was placed on the record before the Honorable Kevin S.C. Chang at a hearing held in the Federal Lawsuit;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this State Settlement Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the State Lawsuit on the following terms and conditions:

TERMS OF AGREEMENT

I. Definitions

A. In addition to the definitions contained in the foregoing Recitals, the following definitions shall apply:

1. **“Administration Costs”** shall mean only the reasonable cost to typeset, print, and mail the Class Notice to the Settlement Classes; the reasonable cost to process requests to opt-out of the Settlement Classes; and the reasonable cost to prepare and mail Settlement Payments to the Payment Recipients.

2. **“Amount Payable to Each Payment Recipient”** shall mean the amount prescribed in section IV.b. below.

3. **“Class Counsel”** shall mean:

Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800,
Honolulu, Hawaii 96813; and

Hawaii Appleseed Center for Law and Economic Justice, 119
Merchant Street, Suite 605, Honolulu, Hawaii 96813.

Plaintiffs' counsel shall request that the Court appoint them as class counsel pursuant to HRCF Rule 23 to represent the Settlement Classes for purposes of this State Settlement.

4. **"Class Notice"** shall mean a document substantially in the form of the Notice attached hereto as Exhibit 1 which has been agreed to by the Parties subject to Court approval and which the Notice Administrator will mail to each Settlement Class Member explaining the terms of the Settlement, and the opt-out and objection processes.

5. **"Class Settlement Amount"** shall mean an amount no greater than \$2,341,103.10. The Class Settlement Amount is based on \$35 per month per foster child, child in permanent custody/legal guardianship, adoptive child with special needs, and former foster youth in the higher education program, for whom DHS made monthly payments for the time period July 1, 2013 to June 30, 2014 (which is the State's 2014 fiscal year), pro rated for actual days in care. The Class Settlement Amount is the maximum amount the State is required to pay under this State Settlement Agreement.

6. **"Contact Information"** shall mean the most current information DHS then has available of a Settlement Class Member's name and mailing address.

7. **"Court"** shall mean the Circuit Court of the First Circuit, State of Hawaii, the Honorable Virginia L. Crandall, presiding (or her successor).

8. **"Day"** shall mean a calendar day.

9. **"Fairness Hearing"** shall mean the hearing on the Motion for Final Approval of Settlement, currently set for June 24, 2017.

10. **"Federal Settlement Agreement"** shall mean the Federal Lawsuit Class Action Settlement Agreement that embodies the terms of the settlement of the Federal Lawsuit.

11. **"Federal Court"** shall mean the United States District Court for the District of Hawaii. The presiding Judge in the Federal Lawsuit is the Honorable Leslie E. Kobayashi.

12. **"Final Approval"** shall mean the occurrence of the following:

Following the Fairness Hearing, the Court has issued an order approving the Settlement, and

- i. The time for appellate review and review by petition for certiorari has expired, and no notice of appeal has been filed; or
- ii. If appellate review or review by petition for certiorari is sought, after any and all avenues of appellate review have been exhausted, and the order approving settlement has not been modified, amended, or reversed in any way.

13. **“Legislation Enactment Deadline”** shall mean June 30, 2017, or such later time period as the Parties may agree to in writing.

14. **“Monthly Adoption Assistance Payments”** shall mean monthly subsidy payments made by DHS to adoptive parents of children with special needs under 42 U.S.C. § 673(a) and/or under Haw. Admin. R. § 17-1620-9.

15. **“Monthly Foster Care Maintenance Payments”** shall mean monthly payments made by DHS to licensed resource caregivers under 42 U.S.C. § 672 and/or under Haw. Admin. R. § 17-1617-3.

16. **“Monthly Higher Education Payments”** shall mean monthly payments made by DHS to or on behalf of eligible former foster youth under Haw. Rev. Stat. § 346-17.4

17. **“Monthly Permanency Assistance Payments”** shall mean monthly payments made by DHS to legal guardians or permanent custodians under 42 U.S.C. § 673(d) or Haw. Admin. R. § 17-1621-9.

18. **“Motion for Final Approval of Settlement”** shall mean the motion to be filed by Plaintiffs, the State, or the Parties jointly, seeking the Court’s final approval of the Settlement, which shall include a report on requests to opt-out of and on objections to the Settlement.

19. **“Named Plaintiffs”** shall mean the named plaintiffs in the State Lawsuit: Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, Tiare Holm, B.S., and T.B., a minor, by her Next Friend N.A.

20. **“Net Settlement Amount”** shall mean the Class Settlement Amount minus the combined total of any attorneys’ fees and costs approved by the Court and actual Administration Costs. The Net Settlement Amount is the amount that shall be distributed to Payment Recipients on a pro rata per child/per day basis pursuant to section IV, below.

21. **“Notice Administrator”** shall mean DHS (or, if DHS is unable or unwilling to perform the duties of the Notice Administrator, such other mutually agreed-upon entity). The Notice Administrator shall be responsible for sending the court-approved Class Notices to the Settlement Classes.

22. **“Opt-Out Letter”** refers to a written request to opt-out or exclude oneself from the Settlement sent by any Settlement Class Member who elects to be excluded from a Settlement Class. A Settlement Class Member must submit a valid and timely Opt-Out Letter to exclude himself or herself from the Settlement and from the release of claims pursuant to this Settlement.

23. **“Parties”** shall mean the Named Plaintiffs, Settlement Class Members, and the State.

24. **“Payment Administrator”** shall mean the Hawaii Department of Accounting and General Services, the agency that the Parties agree will issue checks for Settlement Payments to each Payment Recipient under this State Agreement (unless DAGS determines the funds should be distributed through some other entity)

25. **“Payment Recipients”** shall mean those Settlement Class Members who have not opted out of the Settlement and who are entitled to receive a payment pursuant to section IV below.

26. **“Preliminary Approval”** shall mean that the Court has entered a Preliminary Approval Order or orally granted Plaintiffs’ Motion for Preliminary Approval.

27. **“Preliminary Approval Order”** shall mean an order entered by the Court substantially in the form attached hereto as Exhibit 2 preliminarily approving the terms set forth in this State Agreement, including the manner and timing of providing notice to the Classes, the time period for opting out or for submitting objections, and the date, time and location for a Fairness Hearing.

28. **“Releasees”** shall mean the State of Hawaii, DHS, the Director of Human Services, other Hawaii departments, agencies, directors, officers, agents, employees, representatives, insurers, attorneys, administrators, and all other persons acting on behalf of the State of Hawaii.

29. **“Settlement”** shall mean the compromise and settlement of the State Lawsuit as contemplated by this State Agreement.

30. **“Settlement Classes”** shall mean the two classes identified for the purposes of this State Agreement: the Parent Settlement Class and the Higher Education Settlement Class, subject to class certification by this Court.

31. “**Settlement Class Members**” shall mean the members of the Settlement Classes.

32. “**Settlement Payment**” shall mean the pro rata portion of the Net Settlement Amount that is to be paid to each Payment Recipient pursuant to this State Agreement.

33. “**State Settlement Agreement**” shall mean this State Lawsuit Class Action Settlement Agreement.

II. Settlement Classes

There shall be two Settlement Classes: the Parent Settlement Class, and the Higher Education Settlement Class. Although the Second Amended Complaint does not set forth a Higher Education Class, the Higher Education class is separately established because the interests of the Higher Education Settlement Class are different from the interests of the putative class of beneficiaries pleaded in the Second Amended Complaint in that the Higher Education Settlement Class members are likely to be Payment Recipients.

1. Parent Settlement Class

The Parent Settlement Class shall consist of

(a) all licensed resource caregivers in Hawaii (foster parents) who received Monthly Foster Care Maintenance Payments from DHS from August 7, 2012 (two years prior to the filing of the State Lawsuit) through February 28, 2017; and

(b) all legal guardians and permanent custodians who received Monthly Permanency Assistance from DHS from August 7, 2012 through February 28, 2017; and

(c) all adoptive parents of children with special needs who received Monthly Adoption Assistance Payments from DHS from August 7, 2012 through February 28, 2017.

The representatives of the Parent Settlement Class shall be Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, and Tiare Holm. Plaintiffs’ counsel shall seek the Court’s appointment of these individuals to be the representatives of the Parent Settlement Class.

2. Higher Education Settlement Class

The Higher Education Settlement Class shall consist of all individuals who received Monthly Higher Education Payments from DHS from August 7, 2012 (two years prior to the filing of the State Lawsuit) February 28, 2017.

The representative of the Higher Education Settlement Class shall be Brittany Sakai, the individual identified in the Second Amended Complaint by the initials "B.S." Class Counsel shall seek the Court's appointment of Ms. Sakai to be the representative of the Higher Education Settlement Class.

The Parties and Class Counsel agree that, if approved, certification of the Settlement Classes is a conditional certification for settlement purposes only, and if for any reason the Court does not grant final approval of the Settlement, or if for any other reason the Settlement does not become effective, the certification of the Settlement Classes for settlement purposes shall be deemed null and void without further action by the Court or any of the Parties, each Party shall retain their respective rights and shall be returned to their relative legal positions as they existed prior to execution of this State Settlement Agreement, and neither this Agreement nor any of its accompanying exhibits or any orders entered by the Court in connection with this Agreement shall be admissible or used for any purpose in the State Lawsuit or the Federal Lawsuit.

The Parties and Class Counsel agree that, if approved, certification of the Settlement Classes for settlement purposes is in no way an admission by the State that class certification is proper in any other litigation against the State.

III. Legislation

The Parties agree that this State Agreement is contingent on the enactment of legislation by the Hawaii Legislature to authorize the appropriation of monies to fund the Class Settlement Amount in order to fund the Settlement Payments to the Payment Recipients pursuant to this State Agreement. The Parties agree that enactment of this legislation is material and essential to this Agreement and that if such legislation is not enacted into law by the Legislation Enactment Deadline, unless such date is mutually agreed by the Parties in writing to be extended, the global settlement of the State Lawsuit and the Federal Lawsuit shall automatically become null and void, trial in the Federal Lawsuit shall commence, and the State Lawsuit shall also proceed. In the event this State Settlement Agreement becomes null and void, nothing herein may be used against any Party for any purpose.

IV. Payments

1. Subject to other terms and conditions of this State Settlement Agreement, and in consideration of the releases and dismissals set forth in this Agreement, and subject to Court approval, the State agrees that the Class Settlement Amount shall be a maximum of \$2,341,103.10, which shall be paid as follows:

- a. Attorneys' fees and costs approved by the Court and Administration Costs shall first be deducted from the Class Settlement Amount to determine the Net Settlement Amount.

- b. The Net Settlement Amount shall be paid to the following individuals who have not validly and timely opted out of this Settlement in the following amounts: those members of the Parent Settlement Class and the Higher Education Settlement Class who received monthly foster care maintenance payments, monthly adoption assistance payments, monthly permanency assistance payments, or monthly higher education payments from DHS during the time period July 1, 2013 to June 30, 2014, prorated by actual days that the foster child, adoptive child, or child in permanent placement/legal custody was in care or a young adult was receiving higher education payments. The records of DHS shall be the source of information to determine which Settlement Class Members are eligible to receive payments under this State Agreement. The individuals eligible to receive payments pursuant to this sub-paragraph are referred to as the Payment Recipients. In the event a child was placed in the care of more than one person (e.g., a married couple) at a given time, nevertheless notice shall only be provided and any payments shall be made solely to the individual who is listed in DHS' records as the payee for that household (i.e., the person to whom checks are made when made to that household). Negotiation of the payment check by one shall constitute a full and final discharge of the State's responsibility to both persons in that household.
- c. Payment checks issued to Payment Recipients pursuant to this State Agreement shall remain negotiable for the amount of time stated on the check. Any checks not negotiated within the time stated on the check will be subject to DAGS' usual procedures for handling uncashed checks. Payment Recipients who fail to negotiate their check(s) in a timely fashion shall, like all Settlement Class Members who did not validly and timely opt out of the Settlement, remain subject to the terms of the Settlement, including the releases set forth herein.

2. Other than the Settlement Payments described in sub-paragraph IV.1.b, above, no other payments to Settlement Class Members shall be made. ***In other words, there are members of the Settlement Classes who will not receive any payments under the terms of this Settlement.***

V. Releases

The Plaintiffs, including all Settlement Class Members, hereby release, acquit, and discharge Releasees from any and all claims, causes of action, rights, obligations, liabilities, penalties, demands, damages, costs (other than those costs to be paid pursuant to this State Agreement), requests for

declaratory relief, or requests for injunctive relief of any and every kind that were alleged, sought, or litigated, or that could have been alleged sought, or litigated against the State in the State Lawsuit.

VI. Attorneys' Fees and Costs

1. No later than the date of the filing of the Motion for Preliminary Approval or by such date as the Court directs, Class Counsel may file a motion for an award of attorneys' fees and costs, which shall be paid from the Class Settlement Amount. Class Counsel may include the request for fees and costs within the Motion for Preliminary Approval. The State shall not oppose Class Counsel's application for an award of attorneys' fees and costs so long as it does not exceed 20% of the Class Settlement Amount, which amount is intended to cover all attorneys' fees and costs necessary to settle the State Lawsuit and administer this Settlement. The amount of attorneys' fees and costs that may be requested by Class Counsel is based on the agreement between Class Counsel and Plaintiffs ("**Retainer Agreement**"), a true and correct copy of which is attached as Exhibit 3, and does not exceed said agreement in that it reflects 20% of the Class Settlement Amount, whereas the Retainer Agreement expressly sets 25% of the total recovery as the presumptive "benchmark" against which the value of Class Counsel's services is to be evaluated. See Exhibit 3 at Statement of Client Service and Billing Policies in Contingency Litigation Matters at Section A.

2. Class Counsel agree that they are responsible for allocating the attorneys' fees and costs approved by the Court among themselves and any other counsel that may have any other agreement with them. Class Counsel warrant and represent that there are no liens on the amounts to be paid pursuant to the terms of this State Agreement and that no assignments of the claims to be released or the attorneys' fees and costs to be paid pursuant to this State Agreement have been made or attempted.

In addition to class member relief, Named Plaintiffs may request approval to be provided reasonable service awards for themselves and former named plaintiff T.B. in recognition of the services each rendered on behalf of the class ("Service Award"). These Service Awards are intended to recognize the Named Plaintiffs for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards will be deducted from the Court's award of attorneys' fees and costs to Class Counsel. In other words, the Service Awards will not reduce the Net Settlement Amount. Defendant will not in any way be responsible for making any service payments or other payments to the Named Plaintiffs.

3. In the event the Court does not approve in full the amount requested by Class Counsel for attorneys' fees and costs, that finding shall not

be a basis for rendering the entire Settlement or this State Settlement Agreement null, void, or unenforceable.

VII. Court Approval of Settlement; Processes for Settlement Class Members to Opt-Out of or Object to Settlement

1. **Motion for Preliminary Approval.** Plaintiffs shall file a motion for preliminary approval by the Court of the Settlement and this State Settlement Agreement at such time as the Court may direct, and attach a copy of this State Settlement Agreement and such other documents the Parties determine are necessary for the Court's consideration. The motion shall request preliminary approval of the Settlement, the State Settlement Agreement, and the Class Notice, and shall request that the Court certify the Settlement Classes, appoint the Class Representatives and Class Counsel, and specify the procedure required for the Court's final consideration of the Settlement, including the scheduling of the Fairness Hearing. The motion for preliminary approval may, but need not, include Class Counsel's request for attorneys' fees and costs.

Although Plaintiff is responsible for filing the motion, it is intended that the Defendant will have reviewed the motion in advance and that the motion will be unopposed.

2. **Class Notice.** Within a reasonable time after Preliminary Approval, the Notice Administrator, in cooperation with Class Counsel and defense counsel, shall send the approved Class Notices to each Settlement Class Member by U.S. mail postage prepaid in accordance with the terms of the Preliminary Approval Order. DHS shall provide the Notice Administrator (if not DHS) and Class Counsel with Contact Information for all Settlement Class Members in each Settlement Class (the "Class List").

DHS shall send to Payment Recipients and non-Payment Recipients a different form of Class Notice, depending on which category the Class Member falls into.

In the event a child was placed in the care of more than one person (e.g., a married couple) at a given time, Class Notice shall be sent to one address addressed to the person who is designated in DHS' records as the payee, i.e., the person to whom payments are made when checks are issued by DHS to that household. Notice to the one member of a two-person household shall constitute sufficient and adequate notice to the household.

The determination of who is within each Settlement Class (and therefore entitled to notice) shall be made by DHS based on the data kept by DHS in the ordinary course of its business. The Parties agree that the contents of the Class List are confidential and shall not be shared with third parties other than the Notice Administrator (if not DHS) and any vendor retained by DHS to

perform copying and mailing functions, and shall not be filed in Court unless the Court so orders.

Prior to mailing the Notices, the Notice Administrator shall process the Class List against the National Change of Address Database maintained by the United States Postal Service (“USPS”). If a Notice is returned as undeliverable, and if a forwarding address is provided by the USPS, the Notice Administrator shall re-mail the Notice within three (3) business days. If an undeliverable Notice is returned without a forwarding address, the Notice Administrator need attempt to obtain updated addresses only for Payment Recipients by using skip tracing services agreed to by Class Counsel and defense counsel. All re-mailings to skip traced Payment Recipients must be completed no later than 20 days prior to the Opt-Out deadline. Notices shall only be re-mailed once.

Reasonable Administrative Costs incurred in typesetting, printing, and mailing the Class Notice to Settlement Class Members, processing the Class List by USPS, and performing skip tracing services shall be deducted from the Class Settlement Amount.

3. **Content of Class Notice.** The Class Notice shall contain: the definitions of the certified Settlement Classes; a general description of the State Lawsuit and its claims, issues, and defenses; material terms of this proposed State Agreement including who will and will not be Payment Recipients; Class Counsel’s request for attorneys’ fees and costs; Service Awards; options available to Settlement Class Members, including the manner, time limits, forum and form of an objection to this Settlement; the right of any Settlement Class Member to enter an appearance *pro se* or through an attorney to object to the State Agreement or any of its terms; the manner, time limits, and forum and form of a request to opt out of this Settlement; the website address required to be maintained by Class Counsel; the date, time, and location of the Fairness Hearing; and the binding effect of the State Agreement on Settlement Class Members who do not opt out of the Settlement.

4. **Establishment of Website.** Class Counsel shall, at their own expense, publish information regarding the Settlement on a website, including information on how to object to or opt out of the Settlement of the State Lawsuit and the deadline to do so. The website shall also include a copy of this State Settlement Agreement, the motion for attorneys’ fees and costs including a copy of the agreement between Class Counsel and Plaintiffs, key pleadings, and information regarding the Federal Lawsuit and Federal Settlement Agreement. The web address for the website shall be included in the Class Notice. The website shall remain available starting 7 days after Preliminary Approval through December 31, 2018.

5. **Opt-Out Process.** A Settlement Class Member not wanting to participate in this Settlement and not wanting to release claims pursuant to this Settlement shall submit a valid and timely Opt-Out Letter.

a. To be valid, the Opt-Out Letter shall contain a statement which clearly conveys a request to be excluded from the Settlement Class, the individual's full name, mailing address, telephone number, and must be signed and dated.

b. To be timely, the Opt-Out Letter must be postmarked by the date indicated in the Notice, sixty (60) days after the Notice is first mailed to Settlement Class Members. However, those Settlement Class Members who are mailed a new Notice after their original Notice was returned to sender shall have until the later of 14 calendar days from the date that the new Notice was postmarked or the original opt-out deadline to submit an Opt-Out Letter. No Opt-Out Letter will be honored if postmarked after the deadline set forth in this paragraph.

All Opt-Out Letters shall be sent to Class Counsel, who shall compile a list of the persons who have validly and timely opted out and submit the list to the Court under seal prior to the Fairness Hearing, with a copy to counsel for the State. Opt-Out Letters shall be made available for inspection by Class Counsel or counsel for the State promptly upon request.

A Settlement Class Member who is entitled to a payment under this State Agreement because that person meets the definition of "Payment Recipient" but who submits an Opt-Out Letter shall not be paid, and forever waives their right to receive, a share of the Net Settlement Amount. In the event a child was placed in the care of more than one person (e.g., a married couple) at a given time, the submission of a valid and timely Opt-Out Letter by one of those persons shall constitute the submission of a valid and timely Opt-Out Letter by both persons, and both will be deemed to have waived their right to receive a share of the Net Settlement Amount.

No Opt-Out by any Settlement Class Member shall be the basis for rendering settlement of the State Lawsuit or Federal Lawsuit null and void.

6. **Objections to Settlement or to Request for Attorneys' Fees and Costs.** A Settlement Class Member who wishes to object to this State Agreement, the Settlement, to Class Counsel's request for attorneys' fees and costs, or to the Service Awards must timely file with the Clerk of the Court and serve on the Parties a statement of their objection, and whether the Settlement Class Member intends to appear at the Fairness Hearing. Settlement Class Members who are minors may submit their objections through Class Counsel, who shall file the objections under seal, and submit the substance of the objections (without identifying information) in a filed document.

Any Settlement Class Member may appear at the Fairness Hearing to object to any aspect of this State Agreement, the Settlement, or Class Counsel's motion for attorneys' fees and costs. Settlement Class Members may act either on their own or through counsel employed at their own expense.

To be considered timely, a Settlement Class Member's objection must be postmarked on or before the date that is 60 days after the Notice is first mailed to the Settlement Classes. Those Settlement Class Members who are mailed a new Notice after their original Notice was returned to sender shall have the later of 14 calendar days from the date that the new Notice was postmarked, or the original objections deadline, to submit their objections. Nothing in this paragraph requires the Notice Administrator to send a new Notice if the original Notice is returned to sender.

Settlement Class Members who fail to file and serve timely written objections or who do not appear at the Fairness Hearing and make objections shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

7. **Fairness Hearing.** On a date to be determined by the Court, the Court shall hold a Fairness Hearing. At the Fairness Hearing, the Parties will request that the Court:

- a. Consider any objections by Settlement Class Members;
- b. Give Final Approval to the Settlement as fair, reasonable, and adequate, and binding on those Settlement Class Members who did not validly and timely submit Opt-Out Letters.
- c. Determine the amount of the award of attorneys' fees and costs for Class Counsel;
- d. Determine the Net Settlement Amount to be distributed to Payment Recipients.

8. **Effect of Failure to Grant Final Approval.** In the event the Settlement and this State Settlement Agreement are not granted Final Approval, they shall be deemed null, void, and unenforceable and shall not be used or admissible in any subsequent proceedings against the State either in State Court or in any other judicial, arbitral, administrative, investigative, or other forum; trial in the Federal Lawsuit shall commence, and the State Lawsuit shall proceed. In the event the Settlement and this State Settlement Agreement are not approved by the Court, or otherwise fail to become effective and enforceable, the State will not be deemed to have waived, limited, or affected in any way its objections or defenses to the State Lawsuit.

9. **Court Enforcement:** The State Court retains jurisdiction to enforce the terms of this State Settlement Agreement.

VIII. Distribution Process

1. No claim form shall be required of Payment Recipients to be entitled to payments. Their entitlement to a settlement payment shall be based on DHS' records and eligibility under the definition of "Payment Recipients" set forth herein, provided they do not submit a valid and timely Opt-Out Letter.

2. Payments to Payment Recipients as provided in this State Settlement Agreement shall be dispersed by the State by check within a reasonable time after the funds are appropriated and allotted, if the funds to be paid under this State Agreement are appropriated, bearing in mind the overall number of checks that must be processed and the time of year, shortly after the start of the new state fiscal year. Payments may be processed in manageable batches, rather than all at once.

3. Likewise, payment to Class Counsel of attorneys' fees and costs that have been approved by the Court shall be dispersed by the State within a reasonable time after the funds have been appropriated, bearing in mind the overall number of checks to be processed for this Settlement and the time of year, shortly after the start of the new state fiscal year. Class Counsel shall deliver to counsel for the State written instructions signed by Class Counsel (by an authorized representative of each law firm) that describe to whom a check for attorneys' fees and costs shall be made payable, and a fully-executed Form W-9 with respect to the entity to whom the attorneys' fees and costs shall be paid (along with other documents or information the Department of Accounting and General Services may require to lawfully effectuate the payment). The State will issue to Class Counsel an IRS Form 1099 for such amounts paid for attorneys' fees and costs under this Settlement. If there is a reduction in the amount of attorneys' fees and/or costs sought by or awarded to Class Counsel, any such reduction shall revert to the Net Settlement Fund.

4. No later than 14 days after the Net Settlement Fund is distributed by the initial mailing of checks to Payment Recipients (whether or not the payment checks are received by or negotiated by Payment Recipients), the Parties will submit to the Court a stipulated dismissal with prejudice, which shall include a dismissal of Named Plaintiff T.B.'s claims, including any claims that are asserted on behalf of a putative class of beneficiaries, which class will not be certified.

5. No interest shall accrue on any payments to be made under this State Settlement Agreement.

IX. Additional Provisions

1. The rule of construction that an agreement is to be construed against the drafting party is not to be applied in interpreting this State Settlement Agreement. The Parties acknowledge that they have read this State Agreement, that they understand its meaning and intent, that they have executed it voluntarily and with opportunity to consult with legal counsel, and have participated and had an equal opportunity to participate in the drafting and approval of drafting of this State Settlement Agreement. No ambiguity shall be construed against any party based upon a claim that the party drafted the ambiguous language. This State Agreement contains all essential terms of the settlement the Parties have reached. While other documents may be prepared hereafter to further effectuate the provisions hereof, the Parties intend that this State Settlement Agreement is a valid, binding agreement, enforceable by the Court.

2. **Cooperation Between the Parties.** The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court’s approval of this State Settlement Agreement and all of its terms.

3. **No Third-Party Beneficiaries.** This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary of this State Settlement Agreement.

4. The respective signatories to this State Settlement Agreement each represent that they are fully authorized to enter into this State Agreement and bind the respective Parties to its terms and conditions. This Agreement may be executed in counterparts.

SIGNATURES

Wherefore, intending to be legally bound in accordance with the terms of this State Agreement, the Parties hereby execute this State Agreement, effective on _____, 2017, which is the date on which the last signatory signed this State Agreement.

FOR PLAINTIFFS:



Alston Hunt Floyd & Ing,
Class Counsel

FOR DEFENDANT:

Donna H. Kalama
Caron M. Inagaki
Deputy Attorneys General

Hawai'i Applesced,
Class Counsel

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2. **Cooperation Between the Parties.** The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's approval of this State Settlement Agreement and all of its terms.

3. **No Third-Party Beneficiaries.** This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary of this State Settlement Agreement.

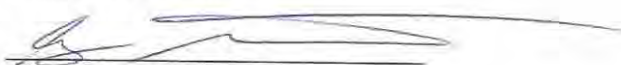
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FOR PLAINTIFFS:

Alston Hunt Floyd & Ing,
Class Counsel



Hawai'i Appleseed,
Class Counsel

FOR DEFENDANT:

Donna H. Kalama
Caron M. Inagaki
Deputy Attorneys General

FIRST CIRCUIT COURT FOR THE STATE OF HAWAII

A state court authorized this notice. This is not a solicitation from a lawyer.

NOTICE OF PROPOSED SETTLEMENT AND HEARING

If you received foster board payments, permanency assistance, adoption assistance, or higher education payments in the past, this class action settlement affects you.

- The proposed settlement resolves a lawsuit over how much the State of Hawaii has paid in the past for basic board payments for foster care, permanency assistance, adoption assistance, and higher education payments.
- The proposed settlement will provide a \$2.3 million fund that will be used in part to make payments to persons who were resource caregivers (foster parents), legal guardians/permanent custodians, adoptive parents of children with special needs, and former foster youth who received higher education payments between July 1, 2013 and June 30, 2014. The \$2.3 million fund will also be used to pay court-appointed lawyers fees for investigating the facts, litigating the case, and negotiating the settlement, and to pay certain costs to administer the settlement.
- There are some persons who are affected by the settlement but will not be receiving a payment. DHS' records identify you as one of those persons.
- The purpose of this notice is: (1) to tell you about the proposed settlement and the fairness hearing; (2) to tell you how to obtain more information, including a copy of the full proposed settlement agreement; and (3) to explain how you may object to the proposed settlement if you disagree with it, or exclude yourself from the settlement if you do not want to be part of it.
- There is a separate federal lawsuit that focuses on how much DHS should be paying for foster care and how and when DHS should increase foster care payments in the future. It has also settled. If you are affected by the federal lawsuit, you will receive a separate notice about your rights in that case.
- The Court in charge of this case must still decide whether to approve the proposed settlement. If you have concerns about the terms of the proposed settlement, you may submit objections to the Court. Your rights and options—**and the deadlines to exercise them**—are explained in this notice.

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS NOTICE CAREFULLY.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

Your Legal Rights and Options in this Settlement:	
DO NOTHING	If you do nothing, you will be part of the settlement, which means you are giving up any claims you could have brought against the State that were made part of this lawsuit.
EXCLUDE YOURSELF/OPT OUT	You may ask to be excluded from the settlement class. This is the only option that allows you to ever be part of any other lawsuit against the State about the legal claims made in this case.
OBJECT	Write to the Court about why you don't like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.

BASIC INFORMATION

1. Why did I get this notice?

You received this notice because you were either:

- A resource caregiver (foster parent), legal guardian/permanent custodian, or adoptive parent of an adoptive child with special needs receiving payments from DHS between August 7, 2012, and February 28, 2017; or
- A former foster youth receiving higher education payments from DHS between August 7, 2012, and February 28, 2017.

A Court authorized this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, **before** the Court decides whether to approve the settlement. If the Court approves it after any objections and appeals are resolved, the State will make the payments that the settlement allows if the funds are provided by the Hawaii Legislature. Not everyone affected by the settlement will receive payments.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

Judge Virginia Lea Crandall, of the First Circuit Court, State of Hawaii (the State Court), is currently overseeing this case. The case is known as *Sheehey v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC.

2. What is this lawsuit about?

Plaintiffs filed a lawsuit claiming that the State did not pay enough for monthly foster care maintenance payments, permanency assistance, adoption assistance, and higher education payments. They claimed that the payments were too low under federal law, under state law, under the Department of Human Services' administrative rules, and under the terms of agreements between resource caregivers and DHS. Plaintiffs believe they are entitled to payment for damages they suffered, equal to the shortfall between the amounts DHS should have paid, and the amounts DHS actually paid.

The State denies that its payments were inadequate or that it owes Plaintiffs any compensation.

3. Why is this a class action?

In a class action lawsuit, one or more people called Class Representatives sue on behalf of people who have similar claims. All the people with similar claims are called the Class and

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

are referred to individually as Class Members. The Court resolves the issues for everyone in the Class, except for those people who exclude themselves from the Class. There are two Classes in this case. They are described below. The Classes are represented by court-appointed lawyers called Class Counsel.

Because DHS' foster care maintenance payment rates affect a large group of people (foster parents, permanent custodians/legal guardians, parents who adopted children from foster care, young adults receiving higher education payments, and children in DHS' child welfare system), Raynette Ah Chong, Sherry Campagna, Michael Holm and Tiare Holm, Patrick Sheehey and Patricia Sheehey, Brittany Sakai, and T.B., a minor (collectively, the Named Plaintiffs) filed this case as a proposed class action.

4. Why is there a Settlement?

In any litigation, the outcome is uncertain. The Court did not decide the case in favor of Plaintiffs or DHS. However, there is a separate lawsuit in federal court that is related to this state court lawsuit. The federal lawsuit is also a class action, but it focuses on how much DHS **should pay** for foster care maintenance payments in the future, while this lawsuit focuses on how much DHS has **paid in the past** for foster care and other care. Although the two lawsuits focus on different time periods, there were overlapping issues such as, DHS' process for setting payments and making payments, and the different types of payments DHS makes. Because of the overlap, this state lawsuit was put on hold while the federal lawsuit was vigorously litigated by both sides.

The federal judge made some intermediate rulings that potentially impacted the state case. The federal court ruled that federal law did not prohibit DHS' system of providing foster care maintenance payments through a series of separate payments (the basic board rate, plus a clothing allowance, plus certain other payments and benefits). The federal court also ruled that the alleged requirement under federal law that DHS cover the cost of (and cost of providing) shelter does not mean that DHS must pay for mortgage payments, rent, property taxes, or other similar fixed costs that a resource family incurs even when they don't have a foster child in their home. Because rent and mortgage payments in Hawai'i can be higher than other areas in the United States, this ruling was not favorable for Plaintiffs' argument that DHS should have been paying increased basic board rates.

Plaintiffs in both cases believe their claims are valid, that DHS does not pay adequate foster board rates, that DHS has not increased the basic board rate even as the cost of living in Hawai'i has increased, and that the federal judge's ruling is wrong and would be reversed on appeal. The State believes strongly in its position that the federal judge was correct and the rulings would be upheld on appeal, and that none of the Plaintiffs would have won anything from a trial.

Because of the substantial risks and delays of continued litigation—including the possibility that the Lawsuits, if not settled now, might result in an outcome that is less favorable or that a fair and final judgment may not occur for several years—Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of all Class Members.

Information about the claims, the federal court's rulings, and the impact of those rulings on this case are described in a document titled State Lawsuit Class Action Settlement Agreement, which can be obtained from a website created and maintained by Class Counsel at <http://www.hawaii.classaction.com/fostercare>. Other documents from the State Lawsuit and Federal Lawsuit and updates about the Settlement are also available on that website.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaii.classaction.com/fostercare>

WHO IS IN THE SETTLEMENT

If you have received this notice, DHS' records indicate that you fall within at least one of the Classes and are therefore part of the settlement unless you take steps to opt out.

5. Who are the Members of the Settlement Classes?

Judge Crandall has decided that the people who fit these descriptions are Members of Settlement Class 1 and 2, respectively:

Settlement Class 1 – Parent Settlement Class: (a) all licensed resource caregivers in Hawaii (foster parents) who received monthly foster care maintenance payments from DHS from August 7, 2012 through February 28, 2017; and (b) all legal guardians and permanent custodians who received monthly permanency assistance from DHS from August 7, 2012 through February 28, 2017; and (c) all adoptive parents of children with special needs who received monthly adoption assistance payments from DHS from August 7, 2012 through February 28, 2017.

The Class Representatives of the Parent Settlement Class are Patrick Sheehy, Patricia Sheehy, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, and Tiare Holm.

Settlement Class 2 – Higher Education Settlement Class: all individuals who received monthly higher education payments from DHS from August 7, 2012 through February 28, 2017.

The Class Representative of the Higher Education Settlement Class is Brittany Sakai.

All Class Members will be bound by the settlement unless they exclude themselves. The process for excluding yourself from the settlement and the lawsuit, also called “opting out,” is described below (see Question 18). Not all Class Members will receive payments under this settlement.

6. What Class or Classes am I a member of?

If you were a resource caregiver (foster parent), an adoptive parent of a former foster child, or a legal guardian/permanent custodian, who received payments from DHS between August 7, 2012, and February 28, 2017, then you are a member of Settlement Class 1 – the Parent Settlement Class.

If you are a former foster youth who received higher education program benefits between August 7, 2012, and February 28, 2017, then you are a member of Settlement Class 2 – the Higher Education Settlement Class.

DHS' records show that you are a member of at least one of these classes. Therefore, if you received this notice, you will be part of the Settlement unless you opt out.

7. Who is entitled to payments under the settlement?

To be entitled to a monetary payment, a Class Member must be in Settlement Classes 1 or 2, **and** must have received one or more of these types of payments from DHS for the time period July 1, 2013 to June 30, 2014:

- monthly foster board payments for foster children in your care
- monthly adoption assistance for your adoptive children with special needs
- monthly permanency assistance for children in your legal guardianships/permanent custody
- monthly higher education board allowance (must have been an eligible former foster youth)

Settlement Class Members who are entitled to monetary benefits under the proposed settlement are referred to in the settlement as Payment Recipients.

THE SETTLEMENT BENEFITS

8. What does the Settlement provide?

The State has agreed to provide \$2,341,103.10 (Total Settlement Amount) to be divided among the Payment Recipients and to pay for Class Counsel's attorneys' fees and costs and the administrative costs for carrying out the settlement.

The \$2,341,103.10 is based on \$35 per month per foster child, child in permanent custody/legal guardianship, adoptive child with special needs, and former foster youth in the higher education program, for whom DHS made monthly payments for the time period July 1, 2013 to June 30, 2014 (which is the State's 2014 fiscal year), pro rated for actual days in care. The time period represents the period right before the foster board rates were raised in July 2014. The \$35 figure was negotiated in the settlement, and represents a compromise figure preliminarily agreed to by the Class Representatives and the State.

The amount that each Payment Recipient will receive will be calculated by subtracting the amount of the costs involved in administering this settlement (for example, copying and mailing this notice to, and locating Class Members) and the attorneys' fees and costs awarded by the Court from the Total Settlement Amount of \$2,341,103.10 to arrive at a Net Settlement Amount. This Net Settlement Amount will then be distributed to Payment Recipients based on the number of days each eligible child was in care between July 1, 2013 and June 30, 2014.

9. Will I receive a payment under the settlement?

Based on DHS' records, you do not meet the criteria in Question 7 and are NOT a Payment Recipient. Thus, you will not be receiving a payment under this settlement.

10. Why won't all Class Members receive a payment?

This settlement is a compromise between the Plaintiffs and the State. The State strongly believes it has no liability to any of the Class Members and does not owe any of them any money. The State believes its position is supported by the rulings of the federal court. But the State is willing to provide some money to some of the Plaintiffs as a way to bring an end

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to the case rather than continue to litigate. Plaintiffs strongly believe the State should be paying more to all of the Class Members, but also understand there are serious risks in continuing to litigate this case, including the possibility that none of the Class Members may get anything. Based on the federal court's rulings, and the risks inherent in any lawsuit, the Class Representatives and Class Counsel believe the compromise is fair.

Even if you are not a Payment Recipient, as a member of one or more Settlement Classes, you are bound by the settlement and give up the right to sue the State for the claims that are covered by the settlement and the lawsuit, unless you opt out of the settlement.

11. Are there any conditions to this Settlement?

This settlement will not become final until the Court approves this settlement, the federal court approves the settlement of the federal lawsuit, and the Hawaii Legislature approves the money that will be needed to pay for both settlements. If the Legislature does not approve the money needed to pay for both settlements, the settlement will not go forward, and the Plaintiffs in the Federal Lawsuit will go to trial.

BEING PART OF THE SETTLEMENT

12. Do I need to do anything to be a part of the settlement?

No. You do not have to do anything to be part of the Classes.

13. When will payments be made to Payment Recipients?

The Court will hold a hearing on March 24, 2017, to decide whether to preliminarily approve the settlement and a Fairness Hearing on June 23, 2017, to finalize the settlement. If the presiding Judge approves the settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them takes time, perhaps more than a year. The Hawaii legislature must also approve the funding for the payments. The legislative process lasts several months.

14. Do I give up anything if I am part of the settlement?

Yes. Unless you exclude yourself, you are staying in the Class and will be part of the settlement even if you don't get a payment, which means you can't sue, continue to sue, or be part of any other lawsuit against the State about the legal issues in *this* case. It also means that all of the Court's orders will apply to you and legally bind you.

THE LAWYERS REPRESENTING YOU

15. Do I have lawyers in the case?

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. Their names are:

Paul Alston Anderson Meyer Michelle Comeau Claire Wong Black Alston Hunt Floyd & Ing 1001 Bishop Street, Suite 1800 Honolulu, HI 96813	Victor Geminiani Gavin Thornton Hawaii Appleseed Center for Law and Economic Justice 119 Merchant Street, Suit 605 Honolulu, HI 96813
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You will not be charged personally for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own personal expense.

16. How will the lawyers be paid? Does the Class Representative get paid?

Class Counsel’s fee agreement allows them to ask for up to 25% of any recovery on behalf of the Class Members. However, Class Counsel will ask the Court to approve payment of 20% of the Total Settlement Amount to them for attorneys’ fees and costs. The fees and costs would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than these amounts. The attorneys’ fees and costs will be deducted from the \$2,341,103.10. The State has agreed not to oppose these fees and costs.

The Court is not bound by any agreed upon or requested amounts. You may object to Class Counsel’s request for attorneys’ fees and costs. After considering the objections of Class Members, the Court will determine the amount of attorneys’ fees and costs in accordance with controlling law.

The expenses to administer the settlement (for example, the cost to mail out this notice) will also be deducted from the \$2,341,103.10. It is estimated that the administrative expenses will be approximately \$18,357.14.

Class Counsel have reserved the right to provide Service Awards for the Named Plaintiffs. These Service Awards are intended to recognize the Named Plaintiffs for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards, if any, will be deducted from any award of attorneys’ fees and costs by the Court to Class Counsel. In other words, the Service Award will reduce the amount of money going to Class Counsel, **NOT** the amount of payments to Class Members.

OBJECTING TO THE SETTLEMENT

17. How can I object to the Settlement?

You may object to the settlement if you don’t like any part of it. This includes the attorneys’ fees and cost request for Class Counsel. The Court will consider your views.

To object, you must send a letter saying that you object to *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. Be sure to include your name, address, telephone number, your signature, the date, and the reasons you object to the settlement. Mail your objection to the following address postmarked no later than _____, **2017**:

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

Sheehey Objections

Honolulu, HI _____

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to be a part of this settlement, then you must take steps to exclude yourself from the settlement. This is sometimes referred to as "opting out" of the Settlement Class. Opting out means that you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue the State in the future.

18. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from or opt out of this case. Be sure to include your name, address, telephone number, your signature, and the date. Include the name of the case, *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. You must mail your exclusion letter postmarked no later than **Month 00, 2017** to:

Sheehey Exclusions

Honolulu, HI _____

If you ask to be excluded, you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue the State in the future.

19. If I don't exclude myself, can I sue the State for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the State for the claims that this settlement resolves. If you have a pending lawsuit that asserts the same or similar claims, speak to your lawyer immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **Month 00, 2017**.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing, called a Fairness Hearing, to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

20. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at 9:00 a.m. on June 23, 2017, at the Circuit Court for the First Circuit, 777 Punchbowl Street, Honolulu, Hawaii, in Courtroom _____. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing may be moved to a different date, time, or

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaii.classaction.com/fostercare>

courtroom without additional notice, so it is a good idea to visit <http://www.hawaiiclassaction.com/fostercare> for updates.

21. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer questions the Judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend on your behalf, but it's not necessary.

22. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than **Month 00, 2017**, and be sent to _____, Honolulu, HI, _____. You cannot speak at the hearing if you excluded yourself.

IF YOU DO NOTHING

23. What happens if I do nothing.

If you do nothing, you will be part of this lawsuit, and you won't be able to be part of any other lawsuit against the State about the legal issues in *this* case, ever again.

GETTING MORE INFORMATION

24. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in a State Lawsuit Class Action Settlement Agreement. You can get a copy of the Settlement Agreement at: <http://www.hawaiiclassaction.com/fostercare>. You may also send questions in writing to Class Counsel c/o Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai'i 96813.

25. How do I get more information?

You can call (808) 524-1800; write to Class Counsel at fostercare@ahfi.com or at Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai'i 96813; or visit the website: <http://www.hawaiiclassaction.com/fostercare> where you will find other information about the State Lawsuit, Federal Lawsuit, and the settlement.

PLEASE DO NOT CALL THE COURT WITH YOUR QUESTIONS

[DATE]

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

FIRST CIRCUIT COURT FOR THE STATE OF HAWAII

A state court authorized this notice. This is not a solicitation from a lawyer.

NOTICE OF PROPOSED SETTLEMENT AND HEARING

If you received foster board payments, permanency assistance, adoption assistance, or higher education payments in the past, you may be eligible for a payment from a class action settlement.

- The proposed settlement resolves a lawsuit over how much the State of Hawaii has paid in the past for basic board payments for foster care, permanency assistance, adoption assistance, and higher education payments.
- The proposed settlement will provide a \$2.3 million fund that will be used in part to make payments to persons who were resource caregivers (foster parents), legal guardians/permanent custodians, adoptive parents of children with special needs, and former foster youth who received higher education payments between July 1, 2013 and June 30, 2014. Other people are affected by this settlement but will not receive payments from the \$2.3 million fund. The \$2.3 million fund will also be used to pay court-appointed lawyers fees for investigating the facts, litigating the case, and negotiating the settlement, and to pay certain costs to administer the settlement.
- The payments proposed in the settlement will not be made unless the Court approves the settlement *and* the Hawaii legislature funds the payments.
- The purpose of this notice is: (1) to tell you about the proposed settlement and the fairness hearing; (2) to tell you how to obtain more information, including a copy of the full proposed settlement agreement; and (3) to explain how you may object to the proposed settlement if you disagree with it, or exclude yourself from the settlement if you do not want to be part of it.
- There is a separate federal lawsuit that focuses on how much DHS should be paying for foster care and how and when DHS should increase foster care payments in the future. It has also settled. If you are affected by the federal lawsuit, you will receive a separate notice about your rights in that case.
- The Court in charge of this case must still decide whether to approve the proposed settlement. If you have concerns about the terms of the proposed settlement, you may submit objections to the Court. Your rights and options—**and the deadlines to exercise them**—are explained in this notice.

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS NOTICE CAREFULLY.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaii.classaction.com/fostercare>

Your Legal Rights and Options in this Settlement:	
DO NOTHING	If you do nothing, you will be part of the settlement, which means you are giving up any claims you could have brought against the State that were made part of this lawsuit. If you fall within the category of people who are entitled to receive a payment, you will automatically receive a payment. You do not have to submit a claim.
EXCLUDE YOURSELF/OPT OUT	You may ask to be excluded from the settlement class. This is the only option that allows you to ever be part of any other lawsuit against the State about the legal claims made in this case. If you would have received a payment under the settlement, you will not receive that payment if you exclude yourself.
OBJECT	Write to the Court about why you don't like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.

BASIC INFORMATION

1. Why did I get this notice?

You received this notice because you were either:

- A resource caregiver (foster parent), legal guardian/permanent custodian, or adoptive parent of an adoptive child with special needs receiving payments from DHS between August 7, 2012, and February 28, 2017; or
- A former foster youth receiving higher education payments from DHS between August 7, 2012, and February 28, 2017.

A Court authorized this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, **before** the Court decides whether to approve the settlement. If the Court approves it after any objections and appeals are resolved, the State will make the payments that the settlement allows if the funds are provided by the Hawaii Legislature. Not everyone affected by the settlement will receive payments.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

Judge Virginia Lea Crandall, of the First Circuit Court, State of Hawaii (the State Court), is currently overseeing this case. The case is known as *Sheehey v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC.

2. What is this lawsuit about?

Plaintiffs filed a lawsuit claiming that the State did not pay enough for monthly foster care maintenance payments, permanency assistance, adoption assistance, and higher education payments. They claimed that the payments were too low under federal law, under state law, under the Department of Human Services' administrative rules, and under the terms of agreements between resource caregivers and DHS. Plaintiffs believe they are entitled to payment for damages they suffered, equal to the shortfall between the amounts DHS should have paid, and the amounts DHS actually paid.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

The State denies that its payments were inadequate or that it owes Plaintiffs any compensation.

3. Why is this a class action?

In a class action lawsuit, one or more people called Class Representatives sue on behalf of people who have similar claims. All the people with similar claims are called the Class and are referred to individually as Class Members. The Court resolves the issues for everyone in the Class, except for those people who exclude themselves from the Class. There are two Classes in this case. They are described below. The Classes are represented by court-appointed lawyers called Class Counsel.

Because DHS' foster care maintenance payment rates affect a large group of people (foster parents, permanent custodians/legal guardians, parents who adopted children from foster care, young adults receiving higher education payments, and children in DHS' child welfare system), Raynette Ah Chong, Sherry Campagna, Michael Holm and Tiare Holm, Patrick Sheehey and Patricia Sheehey, Brittany Sakai, and T.B., a minor (collectively, the Named Plaintiffs) filed this case as a proposed class action.

4. Why is there a Settlement?

In any litigation, the outcome is uncertain. The Court did not decide the case in favor of Plaintiffs or DHS. However, there is a separate lawsuit in federal court that is related to this state court lawsuit. The federal lawsuit is also a class action, but it focuses on how much DHS **should pay** for foster care maintenance payments in the future, while this lawsuit focuses on how much DHS has **paid in the past** for foster care and other care. Although the two lawsuits focus on different time periods, there were overlapping issues such as, DHS' process for setting payments and making payments, and the different types of payments DHS makes. Because of the overlap, this state lawsuit was put on hold while the federal lawsuit was vigorously litigated by both sides.

The federal judge made some intermediate rulings that potentially impacted the state case. The federal court ruled that federal law did not prohibit DHS' system of providing foster care maintenance payments through a series of separate payments (the basic board rate, plus a clothing allowance, plus certain other payments and benefits). The federal court also ruled that the alleged requirement under federal law that DHS cover the cost of (and cost of providing) shelter does not mean that DHS must pay for mortgage payments, rent, property taxes, or other similar fixed costs that a resource family incurs even when they don't have a foster child in their home. Because rent and mortgage payments in Hawai'i can be higher than other areas in the United States, this ruling was not favorable for Plaintiffs' argument that DHS should have been paying increased basic board rates.

Plaintiffs in both cases believe their claims are valid, that DHS does not pay adequate foster board rates, that DHS has not increased the basic board rate even as the cost of living in Hawai'i has increased, and that the federal judge's ruling is wrong and would be reversed on appeal. The State believes strongly in its position that the federal judge was correct and the rulings would be upheld on appeal, and that none of the Plaintiffs would have won anything from a trial.

Because of the substantial risks and delays of continued litigation—including the possibility that the Lawsuits, if not settled now, might result in an outcome that is less favorable or that a fair and final judgment may not occur for several years—Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of all Class Members.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

Information about the claims, the federal court's rulings, and the impact of those rulings on this case are described in a document titled State Lawsuit Class Action Settlement Agreement, which can be obtained from a website created and maintained by Class Counsel at <http://hawaii.classaction.com/fostercare>. Other documents from the State Lawsuit and Federal Lawsuit and updates about the Settlement are also available on that website.

WHO IS IN THE SETTLEMENT

If you have received this notice, DHS' records indicate that you fall within at least one of the Classes and are therefore part of the settlement unless you take steps to opt out.

5. Who are the Members of the Settlement Classes?

Judge Crandall has decided that the people who fit these descriptions are Members of Settlement Class 1 and 2, respectively:

Settlement Class 1 – Parent Settlement Class: (a) all licensed resource caregivers in Hawaii (foster parents) who received monthly foster care maintenance payments from DHS from August 7, 2012 through February 28, 2017; and (b) all legal guardians and permanent custodians who received monthly permanency assistance from DHS from August 7, 2012 through February 28, 2017; and (c) all adoptive parents of children with special needs who received monthly adoption assistance payments from DHS from August 7, 2012 through February 28, 2017.

The Class Representatives of the Parent Settlement Class are Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, and Tiare Holm.

Settlement Class 2 – Higher Education Settlement Class: all individuals who received monthly higher education payments from DHS from August 7, 2012 through February 28, 2017.

The Class Representative of the Higher Education Settlement Class is Brittany Sakai.

All Class Members will be bound by the settlement unless they exclude themselves. The process for excluding yourself from the settlement and the lawsuit, also called "opting out," is described below (see Question 18). Not all Class Members will receive payments under this settlement.

6. What Class or Classes am I a member of?

If you were a resource caregiver (foster parent), an adoptive parent of a former foster child, or a legal guardian/permanent custodian, who received payments from DHS between August 7, 2012, and February 28, 2017, then you are a member of Settlement Class 1 – the Parent Settlement Class.

If you are a former foster youth who received higher education program benefits between August 7, 2012, and February 28, 2017, then you are a member of Settlement Class 2 – the Higher Education Settlement Class.

DHS' records show that you are a member of at least one of these classes. Therefore, if you received this notice, you will be part of the Settlement unless you opt out.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaii.classaction.com/fostercare>

The Class Members who are also entitled to a payment are called Payment Recipients. To determine if you are a Payment Recipient, see Questions 7 and 9 below.

7. Who is entitled to payments under the settlement?

To be entitled to a monetary payment, you must be in Settlement Classes 1 or 2, **and** you must have received one or more of these types of payments from DHS for the time period July 1, 2013 to June 30, 2014:

- monthly foster board payments for foster children in your care
- monthly adoption assistance for your adoptive children with special needs
- monthly permanency assistance for children in your legal guardianships/permanent custody
- monthly higher education board allowance (must have been an eligible former foster youth)

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the Settlement provide?

The State has agreed to provide \$2,341,103.10 (Total Settlement Amount) to be divided among the Payment Recipients and to pay for Class Counsel's attorneys' fees and costs and the administrative costs for carrying out the settlement.

The \$2,341,103.10 is based on \$35 per month per foster child, child in permanent custody/legal guardianship, adoptive child with special needs, and former foster youth in the higher education program, for whom DHS made monthly payments for the time period July 1, 2013 to June 30, 2014 (which is the State's 2014 fiscal year), pro rated for actual days in care. The time period represents the period right before the foster board rates were raised in July 2014. The \$35 figure was negotiated in the settlement, and represents a compromise figure preliminarily agreed to by the Class Representatives and the State.

The amount that each Payment Recipient will receive will be calculated by subtracting the amount of the costs involved in administering this settlement (for example, copying and mailing this notice to, and locating Class Members) and the attorneys' fees and costs awarded by the Court from the Total Settlement Amount of \$2,341,103.10 to arrive at a Net Settlement Amount. This Net Settlement Amount will then be distributed to Payment Recipients based on the number of days each eligible child was in care between July 1, 2013 and June 30, 2014.

9. Will I receive a payment under the settlement?

Based on DHS' records, you are a Payment Recipient. We cannot estimate the actual payment amount to each Payment Recipient because the Administrative Costs and attorneys' fees have not yet been determined. The actual amount of your payment will be determined at a later time.

10. Why won't all Class Members receive a payment?

This settlement is a compromise between the Plaintiffs and the State. The State strongly believes it has no liability to any of the Class Members and does not owe any of them any

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

money. The State believes its position is supported by the rulings of the federal court. But the State is willing to provide some money to some of the Plaintiffs as a way to bring an end to the case rather than continue to litigate. Plaintiffs strongly believe the State should be paying more to all of the Class Members, but also understand there are serious risks in continuing to litigate this case, including the possibility that none of the Class Members may get anything. Based on the federal court's rulings, and the risks inherent in any lawsuit, the Class Representatives and Class Counsel believe the compromise is fair.

Even if you are not a Payment Recipient, as a member of one or more Settlement Classes, you are bound by the settlement and give up the right to sue the State for the claims that are covered by the settlement and the lawsuit, unless you opt out of the settlement.

11. Are there any conditions to this Settlement?

This settlement will not become final until the Court approves this settlement, the federal court approves the settlement of the federal lawsuit, and the Hawaii Legislature approves the money that will be needed to pay for both settlements. If the Legislature does not approve the money needed to pay for both settlements, the settlement will not go forward, and the Plaintiffs in the Federal Lawsuit will go to trial.

BEING PART OF THE SETTLEMENT

12. Do I need to do anything to be a part of the settlement?

No. You do not have to do anything to be part of the Classes or to get a payment if you are a Payment Recipient. If you are a Payment Recipient, your payment amount will be calculated for you and sent to you by mail. A claim form is not required.

13. If I am a Payment Recipient when will I get my payment?

The Court will hold a hearing on March 24, 2017, to decide whether to preliminarily approve the settlement and a Fairness Hearing on June 23, 2017, to finalize the settlement. If the presiding Judge approves the settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them takes time, perhaps more than a year. The Hawaii legislature must also approve the funding for the payments. The legislative process lasts several months. Please be patient.

14. Do I give up anything if I am part of the settlement?

Yes. Unless you exclude yourself, you are staying in the Class and will be part of the settlement even if you don't get a payment, which means you can't sue, continue to sue, or be part of any other lawsuit against the State about the legal issues in *this* case. It also means that all of the Court's orders will apply to you and legally bind you.

THE LAWYERS REPRESENTING YOU

15. Do I have lawyers in the case?

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. Their names are:

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

Paul Alston Anderson Meyer Michelle N. Comeau Claire Wong Black Alston Hunt Floyd & Ing 1001 Bishop Street, Suite 1800 Honolulu, HI 96813	Victor Geminiani Gavin Thornton Hawaii Appleseed Center for Law and Economic Justice 119 Merchant Street, Suit 605 Honolulu, HI 96813
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You will not be charged personally for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own personal expense.

16. How will the lawyers be paid? Does the Class Representative get paid?

Class Counsel’s fee agreement allows them to ask for up to 25% of any recovery on behalf of the Class Members. However, Class Counsel will ask the Court to approve payment of 20% of the Total Settlement Amount to them for attorneys’ fees and costs. The fees and costs would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than these amounts. The attorneys’ fees and costs will be deducted from the \$2,341,103.10. The State has agreed not to oppose these fees and costs.

The Court is not bound by any agreed upon or requested amounts. You may object to Class Counsel’s request for attorneys’ fees and costs. After considering the objections of Class Members, the Court will determine the amount of attorneys’ fees and costs in accordance with controlling law.

The expenses to administer the settlement (for example, the cost to mail out this notice) will also be deducted from the \$2,341,103.10. It is estimated that the administrative expenses will be approximately \$18,357.14.

Class Counsel have reserved the right to provide Service Awards for the Named Plaintiffs. These Service Awards are intended to recognize the Named Plaintiffs for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards, if any, will be deducted from any award of attorneys’ fees and costs by the Court to Class Counsel. In other words, the Service Award will reduce the amount of money going to Class Counsel, **NOT** the amount of payments to Class Members.

OBJECTING TO THE SETTLEMENT

17. How can I object to the Settlement?

You may object to the settlement if you don’t like any part of it. This includes the attorneys’ fees and cost request for Class Counsel. The Court will consider your views.

To object, you must send a letter saying that you object to *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. Be sure to include your name, address, telephone number, your signature, the date, and the reasons you object to the settlement. Mail your objection to the following address postmarked no later than **Month 00, 2017:**

Sheehey Objections

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

Honolulu, HI _____

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to be a part of this settlement, then you must take steps to exclude yourself from the settlement. This is sometimes referred to as "opting out" of the Settlement Class. Opting out means that you will not get any settlement payment even if you would be entitled to one if you stayed in the lawsuit. You also cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue the State in the future.

18. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from or opt out of this case. Be sure to include your name, address, telephone number, your signature, and the date. Include the name of the case, *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. You must mail your exclusion letter postmarked no later than **Month 00, 2017** to:

Sheehey Exclusions

Honolulu, HI _____

If you ask to be excluded, you will not get any settlement payment even if you would be entitled to one if you stayed in the lawsuit. You also cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue the State in the future.

19. If I don't exclude myself, can I sue the State for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the State for the claims that this settlement resolves. If you have a pending lawsuit that asserts the same or similar claims, speak to your lawyer immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **Month 00, 2017**.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing, called a Fairness Hearing, to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

20. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at 9:00 a.m. on June 23, 2017, at the Circuit Court for the First Circuit, 777 Punchbowl Street, Honolulu, Hawaii, in Courtroom _____. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing may be moved to a different date, time, or courtroom without additional notice, so it is a good idea to visit <http://www.hawaiiclassaction.com/fostercare> for updates.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

21. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer questions the Judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend on your behalf, but it's not necessary.

22. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than **Month 00, 2017**, and be sent to _____, Honolulu, HI, _____. You cannot speak at the hearing if you excluded yourself.

IF YOU DO NOTHING

23. What happens if I do nothing.

If you do nothing, you will be part of this lawsuit, and you won't be able to be part of any other lawsuit against the State about the legal issues in this case, ever again. As a Payment Recipient, you will be paid your share of the Net Settlement Payment, as calculated by DHS.

GETTING MORE INFORMATION

24. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in a State Lawsuit Class Action Settlement Agreement. You can get a copy of the Settlement Agreement at: <http://www.hawaiiclassaction.com/fostercare>. You may also send questions in writing to Class Counsel c/o Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai'i 96813.

25. How do I get more information?

You can call (808) 524-1800; write to Class Counsel at fostercare@ahfi.com or Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai'i 96813; or visit the website: <http://www.hawaiiclassaction.com/fostercare> where you will find other information about the State Lawsuit, Federal Lawsuit, and the settlement.

[DATE]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PATRICIA SHEEHEY, PATRICK SHEEHEY, RAYNETTE AH CHONG, individually and on behalf of the class of licensed foster care providers residing in the state of Hawai'i,

Plaintiffs,

vs.

PANKAJ BHANOT, in his official capacity as the Director of the Hawai'i Department of Human Services,

Defendant.

Case No. CV13-00663 LEK-KSC

FEDERAL LAWSUIT CLASS ACTION SETTLEMENT AGREEMENT

FEDERAL LAWSUIT CLASS ACTION SETTLEMENT AGREEMENT

This Federal Lawsuit Class Action Settlement Agreement (“**Federal Settlement Agreement**”) is entered into by and between Raynette Ah Chong (the “Named Plaintiff”), on behalf of herself and members of the class certified by the United States District Court for the District of Hawai'i, and Patrick Sheehey and Patricia Sheehey, on the one hand (collectively “**Plaintiffs**”), and Pankaj Bhanot, in his official capacity as the Director of the Hawaii Department of Human Services¹ (“**Defendant**”), on the other hand. Plaintiffs and Defendant are collectively referred to as the “**Parties.**”

Subject to Court approval as required by the Federal Rules of Civil Procedure (“FRCP”) Rule 23, the Parties hereby stipulate and agree that, in consideration of the mutual promises, covenants, and consideration set forth in this

¹ The Federal Lawsuit named Defendant Patricia McManaman, in her official capacity as the then-Director of the Hawai'i Department of Human Services. Pankaj Bhanot is the current Director of Human Services, and has been automatically substituted as Defendant pursuant to Fed. R. Civ. P. Rule 25(d).

Federal Settlement Agreement, the above-captioned action shall be settled and compromised in accordance with the terms herein.

The Parties acknowledge and agree that although this Federal Settlement Agreement sets forth the terms and conditions by which the Federal Lawsuit will be settled, this Federal Settlement Agreement is part of a larger settlement that includes the State Lawsuit (defined below), and that unless both Lawsuits settle on the terms set forth in their respective settlement agreements, neither lawsuit will be settled.

The Parties further acknowledge and agree that the settlement of the Federal Lawsuit and the State Lawsuit is contingent upon the appropriation of funds to make the payments described herein and in the State Settlement Agreement. If such legislation is not enacted on or before the Legislation Enactment Deadline as defined in this Federal Settlement Agreement and the State Settlement Agreement, unless such date is mutually agreed to be extended by the parties to both Agreements, this Federal Settlement Agreement shall automatically become null and void and trial in the Federal Lawsuit shall resume.

RECITALS

WHEREAS, on December 3, 2013, Plaintiff Raynette Ah Chong filed a class action complaint for declaratory and permanent injunctive relief against Patricia McManaman, in her official capacity as the Director of the Hawaii Department of Human Services, entitled *Ah Chong v. McManaman*, Civ. No. 13-00663 LEK-KSC, in the United States District Court for the District of Hawai'i (the "**Federal Lawsuit**"); and

WHEREAS, a First Amended Complaint was filed in the Federal Lawsuit on April 30, 2014, adding Patricia Sheehey and Patrick Sheehey as Plaintiffs; and

WHEREAS, the First Amended Complaint asserts a single claim under 42 U.S.C. § 1983, seeking a declaratory ruling that Defendant is failing to pay the proper amounts owed to resource caregivers (foster parents) in Hawai'i under the Adoption Assistance and Child Welfare Act of 1980, as amended, codified as Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679c (the "**Child Welfare Act**") and injunctive relief prohibiting Defendant from allegedly continuing to violate the rights of resource caregivers under the Child Welfare Act by (1) failing to make foster care maintenance payments adequate to cover the costs enumerated under the Child Welfare Act, (2) failing to set appropriate foster care maintenance

payment rates; and (3) failing to update the foster care maintenance payment rates to assure their continuing appropriateness; but does not seek damages, and

WHEREAS, Plaintiffs and others, on behalf of a separate putative class of Hawaii-licensed foster care providers and children, also filed a Complaint for Damages against the State of Hawaii in the First Circuit Court, State of Hawai'i, in an action entitled *Sheehey, et al. v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC (the "**State Lawsuit**"), asserting claims for damages on behalf of resource caregivers and children and young adults who were removed from their home and placed under DHS' care, based on alleged inadequate foster care maintenance payment rates under contract and state law; and

WHEREAS, some of the issues in the State Lawsuit overlap with the issues in the Federal Lawsuit (primarily, whether DHS provides foster care maintenance payments adequate to cover the cost of and the cost of providing basic necessities to children in Hawaii's foster care system); and

WHEREAS, the Child Welfare Act defines "foster care maintenance payments" as payments sufficient to "cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement" (42 U.S.C. § 675(4)(A)), and Plaintiffs contend that DHS is required by federal law to make sufficient foster care maintenance payments and conduct periodic reviews to assure the continuing appropriateness of foster care maintenance payment rates (42 U.S.C. § 671(a)(11)); and

WHEREAS, from approximately 1990 until June 2014, Hawaii's basic foster board rate was \$529 per child, per month for all foster children; and

WHEREAS, effective July 1, 2014, DHS increased the basic foster board rate ("**Basic Board Rate**"), based on the age of the foster child, to: \$576 (children ages 0-5); \$650 (children ages 6-11); and \$676 (children ages 12+); and

WHEREAS, in addition to the Basic Board Rate, there are additional payments and benefits available for the care of foster children ("**Foster Care Related Payments and Benefits**"), depending on the needs of the child; and

WHEREAS, DHS' position is that its existing system of a Basic Board Rate plus Foster Care Related Payments and Benefits complies with the Child Welfare Act, and DHS also takes the position that having certain payments or benefits available

only if the child needs them, and requiring resource caregivers (foster parents) to apply for certain payments and benefits complies with the Child Welfare Act; and

WHEREAS, Plaintiffs' position is that the DHS' Basic Board Rates are still inadequate because they were set in 2014 using a 2011 government study (USDA report) on the cost of raising children across the United States (and used cost estimates for families living in the Urban West region rather than Hawai'i), and because the Basic Board Rates utilized less than 100% of the estimated costs of food; housing; and miscellaneous expenses rather than all eight items listed in the Child Welfare Act; and

WHEREAS, Plaintiffs' position is that DHS' system of providing Foster Care Related Payments and Benefits is inadequate because the payments and benefits (1) are not provided to all foster children, (2) are subject to eligibility requirements, (3) are subject to availability of funds, and (4) many foster families simply are not aware that these additional payments and benefits exist or that DHS is required to cover certain costs that DHS claims are covered through the Foster Care Related Payments and Benefits; and

WHEREAS, the Parties to the Federal Lawsuit do not agree on (1) the extent of DHS' obligations under the Child Welfare Act; (2) the sufficiency of the Basic Board Rates; (3) the value or adequacy of the Foster Care Related Payments and Benefits; (4) whether DHS provides adequate information to resource caregivers regarding the availability of the Foster Care Related Payments and Benefits; (5) whether DHS provides adequate opportunity for resource caregivers to apply for the Foster Care Related Payments and Benefits; and (6) whether DHS conducts periodic reviews that assure the continuing appropriateness of its foster care maintenance payment rates; and

WHEREAS, the Parties have engaged in substantial discovery (including depositions, the production of thousands of pages of documents, as well as expert discovery); and

WHEREAS, in August 2015, the Federal Court certified a class of all currently licensed foster care providers in Hawai'i who are entitled to received foster care maintenance payments pursuant to the Child Welfare Act when they have foster children placed in their homes (the "**Class**")² and appointed the Hawai'i Appleaseed

² The Class was certified under Fed. R. Civ. P. 23(b)(2) and Class Counsel appointed by order filed August 17, 2015. Dkt. 156 at 24-25, 33-34. No notice of class certification was provided to class members at the time of certification, nor

Center for Law and Economic Justice, Alston Hunt Floyd & Ing, and Morrison & Foerster LLP as counsel for the class (“**Class Counsel**”); and

WHEREAS, in December 2015, the Federal Court ruled that federal law did not prohibit DHS’ system of providing foster care maintenance payments through a Basic Board Rate plus additional Foster Care Related Payments and Benefits, and that the foster care maintenance payment system could possibly be sufficient if DHS provides resource caregivers with sufficient information about the foster care related payments and benefits and sufficient opportunities to apply for them; and

WHEREAS, the Federal Court also ruled that the “shelter” expense in the Child Welfare Act’s definition of “foster care maintenance payments” need not include mortgage payments, rent, property taxes, or other similar expenses³; and

WHEREAS, the Federal Court did not rule on certain key issues, and saved them for trial, including:

- (1) whether DHS adequately conducts periodic reviews of the foster care maintenance payments to assure their continuing appropriateness;
- (2) whether DHS provides adequate information to resource caregivers about the Foster Care Related Payments and Benefits;
- (3) whether DHS provides adequate opportunities to resource caregivers to apply for the Foster Care Related Payments and Benefits;

and, if the Court answered (2) and (3) in the affirmative⁴, then

was notice required, because of the nature of the class and the relief sought, which is solely prospective injunctive relief.

³ It is Defendant’s position that the Federal Court’s ruling on “shelter expense” significantly lessened Plaintiffs’ chances of prevailing on their assertion that DHS does not pay enough for the items enumerated in the Child Welfare Act because, while the ruling confirmed that DHS need not pay for rent, mortgage, or similar expenses, DHS’ calculation of the Basic Board Rates in fact took such costs into account because a large portion of the “housing” category of the USDA report includes such costs.

(4) whether DHS' foster care maintenance payment system of Basic Board Rate-plus-Foster Care Related Payments and Benefits adequately covers the cost of (and the cost of providing) the items enumerated in the Child Welfare Act; and

WHEREAS, shortly before trial in the Federal Lawsuit was scheduled to commence, the Parties engaged in settlement discussions through their respective counsel, with the assistance of the Honorable Kevin S.C. Chang, Magistrate Judge of the United States District Court for the District of Hawai'i; and

WHEREAS, Defendant denied and continues to deny any and all liability and damages to Plaintiffs with respect to the claims or causes of action asserted in the Federal Lawsuit and the State Lawsuit, but nonetheless acknowledges that bringing the cases to a close now through settlement—rather than after years of litigation and appeals, with uncertain outcomes and concomitant attorneys' fees and costs that would be incurred by both sides—would help move the Parties toward a better working relationship for the benefit of all children in Hawaii's foster care system, and the relief Defendant agrees to provide under this Federal Settlement Agreement is offered solely as a compromise, and not because Defendant believes DHS has any obligation to Plaintiffs to provide said relief; and

WHEREAS, Plaintiffs and Class Counsel have analyzed, evaluated, and extensively litigated the merits of the claims made against Defendant in the Federal Lawsuit and the impact of settlement (as well as the impact of not settling) on Plaintiffs and the members of the Class, and, recognizing the substantial risks of continued litigation—including the possibility that the Federal Lawsuit, if not settled now, might result in an outcome that is less favorable or that a fair and final judgment may not occur for several years—Plaintiffs and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interests of the Class; and

WHEREAS, the Parties have reached a proposed comprehensive settlement of the State and Federal Lawsuits and, on August 26, 2016, the Parties in the Federal Lawsuit and the parties in the State Lawsuit agreed to the essential terms of a valid

⁴ If the Court found at trial that DHS did not provide all resource caregivers with sufficient information about and opportunities to apply for the Foster Care Related Payments and Benefits, then it is Plaintiffs' position that DHS would only be able to rely upon the Basic Board Rates, and not the Foster Care Related Payments and Benefits, to demonstrate the adequacy of its foster care maintenance payment rates.

and binding settlement agreement, which was placed on the record before the Honorable Kevin S.C. Chang; and

WHEREAS, the attorneys' fees sought by Class Counsel are based on their hourly records, summaries of which were provided to Defendant;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Federal Settlement Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Federal Lawsuit on the following terms and conditions:

TERMS OF AGREEMENT

I. Definitions

In addition to the definitions contained in the Recitals, the following definitions shall apply.

- A. **"Administration Costs"** shall mean the reasonable cost to typeset, print, and mail the Class Notice to the Class.
- B. **"Class Members"** shall mean the members of the Class.
- C. **"Class Notice"** shall mean a document substantially in the form of the Notice attached hereto as Exhibit 1 which has been agreed to by the Parties subject to Court approval and which the Notice Administrator will mail to each Class Member explaining the terms of the Settlement and the objection process.
- D. **"Class Representative"** shall mean Plaintiff Raynette Ah Chong. The Class Representative is also referred to as the **"Named Plaintiff."**
- E. **"Contact Information"** shall mean the most current information DHS then has available of a Class Member's name and mailing address.
- F. **"Day"** shall mean a calendar day.
- G. **"Fairness Hearing"** shall mean the hearing on the Motion for Final Approval of Settlement.
- H. **"Federal Court"** shall mean the United States District Court for the District of Hawaii, the Honorable Leslie E. Kobayashi, presiding.
- I. **"Final Approval"** shall mean the occurrence of the following:
Following the Fairness Hearing, the Federal Court has issued an order approving the Settlement, and

- i. The time for appellate review has expired, and no notice of appeal has been filed; or
 - ii. If appellate review is sought, after any and all avenues of appellate review have been exhausted, and the order approving settlement has not been modified, amended, or reversed in any way.
- J. “**Legislation Enactment Deadline**” shall mean June 30, 2017, or such later time period as the Parties may agree to in writing.
- K. “**Motion for Final Approval of Settlement**” shall mean the motion to be filed by Defendant seeking the Federal Court’s final approval of the Settlement.
- L. “**Notice Administrator**” shall mean DHS (or, if DHS is unable or unwilling to perform the duties of the Notice Administrator, such other mutually agreed-upon entity). The Notice Administrator shall be responsible for sending the court-approved Class Notice to the Class, and may utilize the services of a copy/ mailing vendor.
- M. “**Preliminary Approval**” shall mean that the Court has entered a Preliminary Approval Order.
- N. “**Preliminary Approval Order**” shall mean an order entered by the Federal Court substantially in the form attached hereto as Exhibit 2 preliminarily approving the terms set forth in this Federal Settlement Agreement, including the manner and timing of providing notice to the Class, the time period for objections, and the date, time and location for a Fairness Hearing.
- O. “**Releasees**” shall mean Defendant, DHS, the State of Hawai`i, other Hawaii departments, agencies, directors, officers, agents, employees, representatives, insurers, attorneys, administrators, and all other persons acting on behalf of the State of Hawaii.
- P. “**Resource caregiver**” shall mean an individual or couple licensed by the DHS as a resource caregiver or resource family pursuant to Hawaii Administrative Rules chapter 17-1625, as may be amended from time to time.
- Q. “**Settlement**” means the compromise and settlement of the Federal Lawsuit as contemplated by this Federal Settlement Agreement.

- R. “**USDA Report**” means the report periodically published by the United States Department of Agriculture titled Expenditures on Children by Families.
- S. “**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S., as reported by the Bureau of Labor Statistics, United States Department of Labor.

II. Payment Amounts Starting Next State Fiscal Year

1. The Federal Lawsuit shall be administratively closed⁵ (until the end of June 2017, or such later time as the Parties may agree to in writing) while DHS, with support and cooperation from the Class and Class Counsel, requests appropriations from the Hawaii Legislature in the DHS budget for state fiscal year 2018 (July 1, 2017 to June 30, 2018) sufficient to fund:

(a) an increase in the monthly basic foster care maintenance board rates (the “Basic Board Rates”) to the following amounts: \$649 for ages 0-5, \$742 for ages 6-11, and \$776 for ages 12+; and

(b) an increase in the annual clothing allowance to the following amounts: \$810 for ages 0-5, \$822 for ages 6-11, and \$1026 for ages 12+. These amounts are in lieu of the current clothing allowance of \$600 per year plus \$125 for special circumstances. At DHS’ option, it may choose to increase the clothing allowance without seeking an additional appropriation if it has determined that such an increase can be funded with its existing budget.

2. The increases in the Basic Board Rates were calculated by using 95% of the 2013 USDA report, overall United States, middle income category, expenditures on Food, Housing, and Miscellaneous, with an adjustment for inflation to January 2016 dollars using changes in the CPI⁶ from the year of the USDA report (2013), with an adjustment equal to the average of the most recently available Regional Price Parity Index (“**RPP**”), as reported by the Bureau of Economic Analysis,

⁵ The Parties understand that administrative closure may include dismissal of the case by the Court, with the ability to reopen the case if the Settlement is not completed.

⁶ The Housing CPI series was used to calculate the Housing adjustment. The Food CPI series was used to calculate the Food adjustment. An average of the Recreation and Personal Care CPI series was used to calculate the Miscellaneous adjustment.

United States Department of Commerce, for (a) Hawaii (“Hawaii RPP”) (116.8) and (b) Hawaii Metropolitan Statistical Area (“Hawaii-Metro”) (120.2), which is referred to herein as the “Average Hawaii RPP” (118.5).

3. The increases in the clothing allowance were calculated by using 100% of the 2013 USDA report, overall United States, middle income category, expenditures on Clothing, with an adjustment for inflation to January 2016 dollars using changes in the CPI⁷ from the year of the USDA report (2013), with an adjustment based on the current Average Hawaii RPP.

4. Collectively, paragraphs II.1(a) and II.1(b) are referred to herein as the “**Budget Request.**” DHS has exercised its option to increase the clothing allowance in State fiscal year 2018 without seeking an additional appropriation, having determined that such an increase can be funded with its existing budget. The amount necessary to fund the increase for the Basic Board Rates has been submitted to the 2017 Legislature as part of the Executive Budget.

5. DHS will take all reasonable steps available to it as an executive agency to recommend, promote, and endorse the Budget Request.

6. If DHS fails to submit a Budget Request in accordance with paragraph II.1, above, or if funds as requested in the Budget Request are not appropriated by the Legislation Enactment Deadline, Plaintiffs shall reopen the Federal Lawsuit, trial to commence immediately on a date set by Judge Kobayashi prior to the administrative closure. To the extent permitted by the Federal Court, the Parties agree that, prior to trial, they may update pre-trial submissions (including expert reports and written direct testimony statements) consistent with ongoing obligations under the Federal Rules of Civil Procedure and consistent with the Court’s existing pre-trial rulings, and as necessary to account for the passage of time and changes to the facts and law, if any.

7. If the Budget Request is appropriated, the Parties will submit to the Federal Court a stipulated dismissal with prejudice, which shall be filed no later than 14 days after DHS issues the first payments based on the newly-established Basic Board Rates described in paragraph II.1(a), above.

⁷The Apparel CPI series was used to calculate the Clothing adjustment.

III. Periodic Review

1. Defendant agrees that DHS will conduct periodic reviews of its Basic Board Rates and the annual clothing allowance, consistent with its administrative rules, using the following review process:

DHS shall calculate benchmark rates based on procedures outlined in paragraph II.2, above, using the most recent USDA report, with an adjustment for inflation based on changes in the CPI for the U.S. from the year of the USDA report to the most recently available month, and an adjustment using the most recent Average Hawaii RPP (“**Benchmark Rates**”).

DHS shall calculate a “**Benchmark Clothing Allowance**” rate based on procedures outlined in paragraph II.3, above, using the most recent USDA report, with an adjustment for inflation based on changes in the CPI for the U.S. from the year of the USDA report to the most recently available month, and an adjustment using the most recent Average Hawaii RPP.

2. DHS shall seek appropriations from the Hawaii Legislature sufficient to increase the Basic Board Rates to the Benchmark Rates if the difference between the then-existing Basic Board Rates and the Benchmark Rates is more than 5%. DHS shall notify Class Counsel of its intent to seek appropriations prior to the start of the legislative session to enable the Class to prepare testimony to the Legislature supporting DHS’ budget request.

3. Similarly, DHS shall seek appropriations from the Hawaii Legislature sufficient to increase the clothing allowance to the Benchmark Clothing Allowance rate if the difference between the then-existing clothing allowance and the Benchmark Clothing Allowance is more than 5%. DHS shall notify Class Counsel of its intent to seek appropriations prior to the start of the legislative session to enable the Class to prepare testimony to the Legislature supporting DHS’ budget request.

4. Defendant cannot and does not agree to raise the Basic Board Rates or the clothing allowance automatically when the 5% benchmark threshold is met. Moreover, the 5% threshold is a figure agreed upon for settlement purposes only. Nothing in this Federal Settlement Agreement constitutes an admission by Defendant that 5% represents the threshold for substantial compliance with the Child Welfare Act. In other words, by agreeing to seek an increase when the 5% threshold is met, Defendant in no way admits that should the Legislature choose

not to fund a requested increase, then Defendant is in violation of the Child Welfare Act. On the contrary, it is the Defendant's position that Defendant is in compliance with the Child Welfare Act, and that the payment increases agreed upon for purposes of this Settlement are not required by law.

IV. Other Terms

1. **Difficulty of Care ("DOC") Payments:** Subject to the promulgation of any required administrative rule and/or internal policy change, as of the date the Federal Court approves the Settlement Agreement, DHS agrees that the monthly DOC cap of 120 hours may be waived by DHS in appropriate circumstances until it implements planned changes to the current DOC system, which may require rulemaking. DHS agrees to take all reasonable steps necessary to implement this paragraph (including reasonable steps in advance of the Fairness Hearing). Any requests by resource caregivers to increase the number of hours over 120 per month will be subject to DHS procedures (other than the 120-hour cap) and can be approved only if it is in the best interest of the foster child and other children in the resource family home to do so. Nothing in this Federal Settlement Agreement shall impair the ability of DHS to impose conditions on the receipt of DOC payments that it deems appropriate for the protection of foster children or other children in a resource caregiver's home.

2. **Availability of Resources:** The Parties agree to work cooperatively on providing a short summary of the payments and benefits (including a mileage log reimbursement form, DOC calculation information, and information about foster parent liability insurance) available to resource caregivers, to be provided at least semi-annually and to all newly-licensed resource caregivers. The summary may be sent to resource caregivers by DHS' contractors and will be made available on Class Counsel's website.

3. **Court Enforcement:** The Federal Court retains jurisdiction to enforce the terms of this Federal Settlement Agreement. If a Class Member believes the Defendant to be in material breach of this Federal Agreement, the Class Member, through Class Counsel, will provide the Defendant notice and a reasonable opportunity to cure prior to enforcing the agreement in Federal Court. The Parties will agree on a time period for cure depending on the particular nature of the claimed breach.

4. **Termination of this Agreement:** This Federal Settlement Agreement will terminate 10 years from the effective date of this Agreement, at which time it will no longer be enforceable.

5. **No Admission of Liability.** This Federal Settlement Agreement is not an admission of liability or wrongdoing by Defendant. Nor is it an admission by the Class regarding the sufficiency or appropriateness of the payments and procedures agreed to for purposes of this Settlement.

Defendant asserts that he has meritorious defenses in response to Plaintiffs' allegations. Furthermore, nothing in this Federal Agreement shall be construed as an admission of liability under any legal or factual theory propounded by the Plaintiffs. Defendant enters into this Federal Agreement solely for the purposes of settling, compromising, and terminating Plaintiffs' claims, and avoiding the expense and diversion of resources caused by protracted litigation.

6. **Subject to Federal Law.** This Federal Agreement is subject to any changes in applicable federal law. The State is not required to do more than federal law mandates and may make adjustments to its payments, policies, or procedures consistent with federal law.

7. **Court Approval and Legislative Appropriations.** Settlement of the Federal Lawsuit and the State Lawsuit and the obligation of Defendant to make the payments provided for herein are conditioned on (1) approval of the Federal Agreement and the State Agreement by both the United States District Court for the District of Hawaii and the Circuit Court of the First Circuit, State of Hawaii, respectively, and (2) appropriation of funds by the Legislature of the State of Hawaii to fund the amounts required to be paid under the Federal Agreement and the State Agreement.

8. **Notice under CAFA.** Within 10 days of submission of the Motion for Preliminary Approval to the Federal Court, Defendant shall serve any notices to federal and state officials required under 28 U.S.C. § 1715.

V. **Releases**

1. The Plaintiffs, including all Class Members, hereby release, acquit, and discharge Releasees from any and all claims, causes of action, rights, obligations, liabilities, penalties, demands, damages, costs (other than those costs to be paid pursuant to this Federal Agreement), requests for declaratory relief, or requests for injunctive relief of any and every kind that were alleged, sought, or litigated, or that could have been alleged, sought, or litigated against Defendant in the Federal Lawsuit. The foregoing does not preclude any Class Member from enforcing this Federal Agreement in Federal Court (after notice and opportunity to cure as set forth in paragraph IV.3, above) or commencing any other litigation concerning the

claims alleged in the Federal Lawsuit after the termination of this Federal Settlement Agreement (paragraph IV.4, above).

VI. Attorneys' Fees and Costs

1. Class Counsel has provided defense counsel with materials supporting requested attorneys' fees and costs for review. The Parties have met and conferred in good faith and, subject to Federal Court approval, hereby agree that an award of \$1,100,000, inclusive of all attorneys' fees, costs, non-taxable expenses, and taxes, is reasonable and consistent with applicable law.

Plaintiffs shall seek the Federal Court's approval of such amounts by motion pursuant to FRCP Rule 23(h), which shall be filed no later than 7 days after the Motion for Preliminary Approval is filed or by such other date as the Court may direct. Notice shall be provided to the Class informing Class Members of the right to object. Such notice shall be given as part of the Class Notice described below. Defendant will not object to the motion so long as it does not seek attorneys' fees and costs in excess of the amounts set forth in this paragraph VI.1.

No separate award of attorneys' fees and costs shall be sought by or made to Plaintiffs or their counsel for claims not certified for class treatment in the Federal Lawsuit.

2. The amount of any attorneys' fees and costs approved by the Federal Court is subject to the Hawaii Legislature's appropriation process. No interest shall accrue on an award of attorneys' fees and costs. Any award of attorneys' fees and costs shall be paid within a reasonable time after the start of the state fiscal year following the legislative session during which the appropriation is made, in accordance with the State's policies and procedures for payments by the State of appropriated settlements.

3. Class Counsel agree that they are responsible for allocating the attorneys' fees and costs approved or awarded by the Federal Court among themselves and any other counsel that may have any other agreement with them. Class Counsel warrant and represent that there are no liens on the amounts to be paid pursuant to the terms of this Federal Settlement Agreement and that no assignments of the claims to be released or the attorneys' fees and costs to be paid pursuant to this Federal Settlement Agreement have been made or attempted.

Named Plaintiffs may seek the Court's permission to be paid a service award of up to \$5,000 each, provided that if any such payment is approved, it shall only come from any attorneys' fees and costs approved by the Court and appropriated by the

Legislature, and under no circumstances will Defendant or the State be responsible for paying any moneys whatsoever to Plaintiffs.

4. In the event the Federal Court approves the motion for attorneys' fees and costs in an amount less than the amount requested by Class Counsel, that shall not be a basis for rendering the entire Settlement or this Federal Agreement null, void, or unenforceable. If the Legislature refuses to appropriate Class Counsel's fees and costs as approved by the Federal Court, the Settlement shall be null and void.

VII. Court Approval of Settlement; Process for Objections by Class Members

1. **Motion for Preliminary Approval.** Defendant shall file a motion for preliminary approval of the Settlement and this Federal Settlement Agreement by the Federal Court and attach a copy of this Federal Settlement Agreement and such other documents Defendant determines are necessary for the Federal Court's consideration. The motion shall request preliminary approval of the Settlement and approval of the Class Notice and notice procedure, and shall request that the Federal Court specify the procedure required for the Federal Court's final consideration of the Settlement, including the scheduling of the Fairness Hearing. Although Defendant is responsible for filing the motion, it is intended that Plaintiffs will have reviewed the motion before it is filed and that the motion will be unopposed.

2. **Class Notice.** By such date as the Court shall direct, the Notice Administrator, in cooperation with Class Counsel and defense counsel, shall send the approved Class Notice to each Class Member by U.S. mail postage prepaid in accordance with the terms of the Preliminary Approval Order. DHS shall provide the Notice Administrator (if not DHS) and Class Counsel with Contact Information for each Class Member. DHS shall pay the Administrative Expenses incurred in copying and mailing the Class Notice to the Class Members. For purposes of generating the mailing list for the Class Notice, DHS will identify Hawaii licensed resource caregivers for the time period August 17, 2015 through March 5, 2017.

3. **Content of Class Notice.** The Class Notice shall contain: the definition of the certified Class; a general description of the Federal Lawsuit and its claims, issues, and defenses; material terms of this proposed Federal Settlement Agreement; Class Counsel's request for attorney's fees and costs; Plaintiffs' request for a Service Award; options available to Class Members, including the manner, time limits, forum and form of an objection to this Settlement; the right of any Class Member to enter an appearance *pro se* or through an attorney to object to

the Federal Agreement or any of its terms; the website address for the website required to be maintained by Class Counsel; the date, time, and location of the Fairness Hearing; a statement that Class Members cannot opt out of the Class; and the binding effect of the Federal Agreement on Class Members.

4. **Establishment of Website.** Class Counsel shall, at their own expense, publish information regarding the Settlement on a website, including information on how to object to the Settlement of the Federal Lawsuit and the deadline to do so. The website shall also include a copy of this Federal Agreement, the motion for attorneys' fees and costs, the motion for service award; key pleadings, and information regarding the State Lawsuit and State Agreement. The web address for the website shall be included in the Class Notice. The website shall remain available starting 7 days after Preliminary Approval through at least December 2018.

5. **Objections.** A Class Member who wishes to object to this Federal Settlement Agreement, the Settlement, Class Counsel's motion for attorneys' fees and costs, or the motion for service award must timely submit to Judge Kobayashi a statement of their objection, and whether the Class Member intends to appear at the Fairness Hearing.

Any Class Member may appear at the Fairness Hearing to object to any aspect of this Federal Agreement, the Settlement, Class Counsel's motion for attorneys' fees and costs, or the motion for service award.

Class Members may act either on their own or through counsel employed at their own expense.

To be considered timely, a Class Member's objection must be postmarked or received on or before the date determined by the Court.

Class Members who fail to submit timely written objections or who do not appear at the Fairness Hearing and make objections shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

6. **No Right to Opt Out.** Class members do not have the right to request exclusion from (opt out of) the Settlement. All Class members are bound by the Settlement and by this Federal Settlement Agreement if approved by the Federal Court and if the other conditions of this Federal Settlement Agreement are met.

7. **Fairness Hearing.** On a date to be determined by the Federal Court (currently scheduled for April 24, 2017), the Federal Court shall hold a Fairness Hearing. At the Fairness Hearing, the Parties will request that the Court:

- a. Consider any objections by Class Members;
- b. Give Final Approval to the Settlement as fair, reasonable, adequate, and binding on all Class Members;
- c. Determine whether to award reasonable attorneys' fees and costs for Class Counsel and/or service awards for Plaintiffs, and if so, the amount thereof.

Defendant shall file a Motion for Final Approval of Settlement no later than the date established by the Federal Court.

8. **Effect of Failure to Grant Final Approval.** In the event the Settlement and this Federal Settlement Agreement are not granted Final Approval, they shall be deemed null, void, and unenforceable and shall not be used or admissible in any subsequent proceedings against the Parties either in Federal Court or in any other judicial, arbitral, administrative, investigative, or other forum. In the event the Settlement and this Federal Agreement are not approved by the Federal Court, or otherwise fail to become effective and enforceable, the Parties will not be deemed to have waived, limited, or affected in any way their claims, objections, or defenses in the Federal Lawsuit.

VIII. Additional Provisions

1. The rule of construction that an agreement is to be construed against the drafting party is not to be applied in interpreting this Federal Settlement Agreement. The Class Representative, Plaintiffs, and Defendant acknowledge that they have each read this Federal Settlement Agreement, that they understand its meaning and intent, that they have executed it voluntarily and with opportunity to consult with legal counsel, and have participated and had an equal opportunity to participate in the drafting and approval of drafting of this Federal Settlement Agreement. No ambiguity shall be construed against any party based upon a claim that the party drafted the ambiguous language. This Federal Settlement Agreement contains all essential terms of the settlement the Parties have reached. While other documents may be prepared hereafter to further effectuate the provisions hereof, the Parties intend that this Federal Settlement Agreement is a valid, binding agreement, enforceable by the Court.

2. **Cooperation Between the Parties.** The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Federal Court's approval of this Federal Settlement Agreement and all of its terms.

3. **No Third-Party Beneficiaries.** This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary of this Agreement.

4. The respective signatories to this Federal Settlement Agreement each represent that they are fully authorized to enter into this Federal Settlement Agreement and bind the respective Parties to its terms and conditions. This Agreement may be executed in counterparts.

SIGNATURES

Wherefore, intending to be legally bound in accordance with the terms of this Agreement, the Parties hereby execute this Agreement, effective on March 14, 2017, which is the date on which the last signatory signed this Federal Agreement.


FOR PLAINTIFFS:

Alston Hunt Floyd & Ing,
Class Counsel

Appleseed Center for Law and
Economic Justice, Class Counsel

Morrison & Foerster,
Class Counsel

FOR DEFENDANT:



Donna H. Kalama
Caron M. Inagaki
Deputy Attorneys General

2. **Cooperation Between the Parties.** The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Federal Court's approval of this Federal Settlement Agreement and all of its terms.

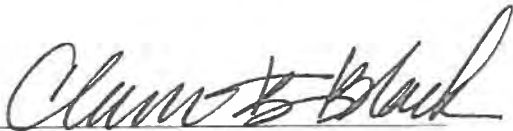
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Wherefore, intending to be legally bound in accordance with the terms of this Agreement, the Parties hereby execute this Agreement, effective on _____, 2017, which is the date on which the last signatory signed this Federal Agreement.

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Alston Hunt Floyd & Ing,
Class Counsel

Appleseed Center for Law and
Economic Justice, Class Counsel

Morrison & Foerster,
Class Counsel

FOR DEFENDANT:

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Caron M. Inagaki
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FOR DEFENDANT:

Alston Hunt Floyd & Ing,
Class Counsel



Appleseed Center for Law and
Economic Justice, Class Counsel

Morrison & Foerster,
Class Counsel

Donna H. Kalama
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Wherefore, intending to be legally bound in accordance with the terms of this Agreement, the Parties hereby execute this Agreement, effective on _____, 2017, which is the date on which the last signatory signed this Federal Agreement.


FOR PLAINTIFFS:

FOR DEFENDANT:

Alston Hunt Floyd & Ing,
Class Counsel

Donna H. Kalama
Caron M. Inagaki
Deputy Attorneys General

Appleseed Center for Law and
Economic Justice, Class Counsel



Morrison & Foerster,
Class Counsel

NOTICE OF PROPOSED SETTLEMENT AND HEARING IN CLASS ACTION ABOUT FOSTER CARE PAYMENTS

Because you are a Hawaii DHS-licensed resource caregiver (foster parent), the proposed settlement may affect you.

A proposed settlement has been reached in a federal class action lawsuit about how much the Department of Human Services for the State of Hawaii (DHS) pays to resource caregivers, also known as foster parents, for the care of foster children.

The purpose of this notice is: (1) to tell you about the proposed settlement and the fairness hearing; (2) to tell you how to obtain more information, including a copy of the full proposed settlement agreement; and (3) to explain how you may object to the proposed settlement if you disagree with it.

The proposed settlement accomplishes two main objectives:

- It increases the amounts to be paid to resource caregivers for the monthly basic board rates and for the annual clothing allowance starting July 1, 2017.
- It requires DHS, for a period of ten (10) years, to take into account increases in certain costs of living and to ask the Legislature for funds to increase the basic board rates when those costs increase 5% or more.

The settlement **does not**, however, require the Legislature to approve any proposed increases to the basic board rate. If the Legislature does not approve the July 1, 2017 increase, the lawsuit continues and the Parties go to trial.

The proposed settlement also provides for the payment of attorneys' fees and costs to court-appointed lawyers for investigating the facts, litigating the case, and negotiating the settlement. The State will separately pay for the fees and costs, subject to funding by the Legislature.

This federal lawsuit focuses on how much DHS should be paying for foster care and how and when DHS should increase foster care payments in the future. There is a separate lawsuit filed in state court that focuses on the adequacy of foster care payments made in the past. The state lawsuit has also settled. If you are also part of the state lawsuit, you will receive separate information about your rights in that case.

Your legal rights are affected whether or not you act. Read this notice carefully.

Summary of Your Legal Rights and Options in the Proposed Settlement	
DO NOTHING	If you do nothing, and the proposed settlement is approved, you will receive the increased board payments and, when applicable, the increased clothing allowance starting July 1, 2017, if you have eligible foster children placed in your care. You cannot opt out of (exclude yourself from) the settlement.
OBJECT TO THE SETTLEMENT BY APRIL __, 2017	You may write to the Court about any concerns you may have about the terms of the proposed settlement.
ATTEND THE FINAL APPROVAL HEARING ON APRIL __, 2017	You may ask to speak in Court about the fairness of the proposed settlement.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>

These rights and options—and the deadlines to exercise them—are explained in this notice.

The Court in charge of this federal case must still decide whether to approve the proposed settlement. The increases proposed in this settlement will not take effect unless the Court approves the Settlement and the Hawaii legislature funds the increases.

Further information about the lawsuit, proposed settlement, and this Notice is available at: <http://hawaii.classaction.com/fostercare>

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BACKGROUND INFORMATION

1. Why did I get this notice?

You received this notice because DHS’ records show that you were licensed as a resource caregiver between August 17, 2015, when the Court certified the federal lawsuit as a class action, and March 5, 2017, even if you don’t have any foster children in your care at this time.

The Court authorized this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the proposed settlement. If the Court approves the settlement after any objections and appeals are resolved, DHS will increase its board payments and clothing allowance starting no earlier than July 2017, but only if the funds for the increase are provided by the Hawaii Legislature.

This Notice explains the lawsuit, the proposed settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

Judge Leslie E. Kobayashi, of the United States District Court for the District of Hawaii (the Court), is currently overseeing this case. The case is known as *Ah Chong v. McManaman*, Civ. No. 13-00663 LEK-KSC.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://hawaii.classaction.com/fostercare>

2. What is this lawsuit about?

Plaintiffs argue that federal law requires DHS to pay foster care maintenance payments that cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. Plaintiffs also argue that federal law requires DHS to conduct periodic reviews of the foster care maintenance payment amounts to make sure that they are appropriate.

Plaintiffs filed a lawsuit claiming that DHS violates federal law because:

- The foster care maintenance payments paid by DHS to resource caregivers are too low;
- DHS does not conduct adequate periodic reviews of its foster care maintenance payments; and
- DHS does not provide enough information to resource caregivers about the kinds of additional payments and benefits that are available to support foster children.

Plaintiffs calculated that if DHS had increased its foster payments to keep up with inflation and Hawaii's cost of living, the payments would be over \$1,000 per month. Plaintiffs asked the Court for prospective relief (relief in the future) of (1) an increase in payments going forward; and (2) changes to the way DHS calculates its payments going forward.

DHS contends that the way Plaintiffs are calculating the amount of the payments is flawed. DHS believes it is complying with the law and has no legal obligation to increase the payments, change the way it periodically reviews the payments, or change the way it provides information to resource caregivers about payments and benefits for foster children.

3. Why is this a class action?

In a class action lawsuit, one or more people called Class Representatives sue on behalf of people who have similar claims. All the people with similar claims are called the Class and are referred to individually as Class Members. The Court resolves the issues for everyone in the Class.

Because the foster care maintenance payment rates affect a large group of people, Raynette Ah Chong, Patrick Sheehey and Patricia Sheehey (the Named Plaintiffs) filed this case as a proposed class action. The Court approved the Class, with Ms. Ah Chong acting as Class Representative, and appointed lawyers to represent the Class in this lawsuit. Those lawyers are called Class Counsel.

4. Why is there a Settlement?

In any litigation, the outcome is uncertain. The Court did not decide the case in favor of Plaintiffs or DHS, but did make some intermediate rulings that impacted the case.

This lawsuit was aggressively litigated. Class Counsel extensively investigated the allegations in this federal lawsuit. They engaged in substantial discovery about the cost of caring for children in Hawai'i, DHS' foster care maintenance payment rates, DHS' process for setting and increasing those rates, additional benefits and payments that are available for the benefit of children in foster care and how many resource caregivers actually request or receive these additional benefits and payments, and the number of people affected by DHS' foster care maintenance payment rates. Class Counsel received over 10,000 pages of hard copy documents from DHS and electronic databases with hundreds of thousands of payments made by DHS to resource caregivers. Both the Class Representative and Named Plaintiff Patricia Sheehey were deposed. Named Plaintiffs responded to written discovery requests from DHS.

The Plaintiffs think they could have won at trial, and DHS thinks Plaintiffs would not have won anything. On the one hand, continuing the case could result in a foster board payment that is more than the amounts in the proposed settlement. On the other hand, continuing the case could result in no increase to the foster board payment, or an increase that is less than the amount in the proposed settlement.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://hawaiiclassaction.com/fostercare>

Based on these factors, the Class Representative and Class Counsel have concluded that the proposed settlement is in the best interests of all members of the Class. The proposed settlement is the product of hard-fought, lengthy negotiations between Class Counsel, DHS and their counsel, and with assistance from federal Magistrate Judge Kevin Chang. Class Counsel was advised by various consultants and experts, including individuals with expertise in Hawaii's cost of living, and with expertise in foster care maintenance payment costs, payments systems, and payment rates in other States.

More details about the claims, and information about some of the rulings the Court made during the course of the case are described in a document titled Federal Lawsuit Class Action Settlement Agreement, which can be obtained from Class Counsel's website for this lawsuit: <http://hawaiiiclassaction.com/fostercare>.

5. Who are the Members of the Class?

Class Members are: all Hawaii-licensed resource caregivers licensed between August 17, 2015, and March 5, 2017, who were (or are) entitled to receive foster care maintenance payments under federal law when they have foster children placed in their homes. If you have received this notice, DHS's records indicate that you are a Class Member. The settlement will affect all Class Members.

6. What does the Settlement provide?

The settlement will do two main things:

- 1) In the State's next fiscal year (July 1, 2017) the basic board rate and clothing allowance paid to resource caregivers for the care of foster children will increase.

➤ The monthly basic board rates will increase as follows:

Ages	Current Amount	New Amount
0-5	\$576	\$649
6-11	\$650	\$742
12+	\$676	\$776

Board payments are paid in arrears. That means that they are paid after the month of care provided. In other words, the new increased board rate payments will begin with the payments that are made at the beginning of August 2017 for care provided in July 2017.

- The annual clothing allowance will increase from a single rate of \$600 per year plus \$125 for special circumstances for foster children of all ages to an age-tiered system as follows:

Ages	New Amount
0-5	\$810
6-11	\$822
12+	\$1026

The settlement does not change the ways that a clothing allowance can be obtained from DHS.

- 2) The proposed settlement also requires DHS to conduct periodic reviews of the basic board rates, and to ask the Legislature for additional money to increase the board rates if a comparison of the existing rates to certain indexes shows an increase of five percent or more. DHS will use these indexes for 10 years. However, the Legislature is not obligated to fund any increases that DHS requests.

Under the Settlement, DHS will work with the Class Representative and Class Counsel to provide more information to resource caregivers about the kinds of payments and benefits that are available to help support foster children.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>

Separate from this lawsuit, DHS has been looking into changing its difficulty of care (DOC) system. Until it implements the changes, DHS has agreed to consider on request a waiver of the current DOC payment cap of 120 hours per month in appropriate circumstances. Any requests by resource caregivers to increase the number of hours over 120 per month will be subject to current DHS procedures and can be approved only if it is in the best interest of the foster child and other children in the resource family home to do so.

7. Will I be paid any money under this Settlement for foster children currently in my care or for foster children I cared for in the past?

No. This settlement sets future monthly basic board rates and clothing allowances that will begin with the State's next fiscal year (July 1, 2017). It does not increase payments right now for foster children currently in your care, and does not provide any payments for foster children who were in your care in the past. This settlement provides for what is called prospective, or future, relief only.

There is a possibility that you may be entitled to a payment under the settlement of a state lawsuit that is being resolved along with this federal lawsuit. If you are part of the state lawsuit, you will receive separate information about the terms of that settlement, including whether you will or will not be entitled to a payment. Information about the state lawsuit is available at <http://hawaiiclassaction.com/fostercare>.

8. Are there any conditions to this Settlement?

This settlement will not become final until the Court approves this settlement, the state court approves the settlement of the state lawsuit, and the Hawaii Legislature approves the money that will be needed to pay for both settlements.

BEING PART OF THE SETTLEMENT

9. Do I need to do anything to get the benefits of the Settlement?

No. You do not have to do anything to be part of the Class or to get the benefits of the settlement of the federal lawsuit. If you have received this notice, you are part of the Class and automatically part of the settlement.

10. What if I don't want to be in the Settlement?

By law, you cannot exclude yourself from this settlement. But you can object to the settlement. If the Court approves this settlement, you will not be able to sue the State (including DHS) about the adequacy of the prior and current foster care maintenance payments, or the increased payments embodied in the Parties' settlement agreement, for the 10 years that this settlement remains in effect.

THE LAWYERS REPRESENTING THE CLASS

11. Do I have lawyers in the case?

Yes. The Court has appointed lawyers to represent you and other Class Members as Class Counsel. Currently, Class Counsel are:

Paul Alston J. Blaine Rogers Claire Wong Black Alston Hunt Floyd & Ing 1001 Bishop Street, Ste. 1800 Honolulu, HI 96813	Gavin Thornton Hawaii Appleseed Center for Law and Economic Justice 119 Merchant St., Ste. 605 Honolulu, HI 96813	Marc D. Peters James R. Hancock Alessa Hwang Morrison & Foerster LLP 755 Page Mill Road Palo Alto, CA 93404
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You will not be charged personally for these lawyers. If you want to be represented by another lawyer to object to the proposed settlement, you may hire one to appear in Court for you at your own personal expense.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://hawaiiclassaction.com/fostercare>

12. How will the lawyers be paid? Does the Class Representative get paid?

Class Counsel have not received any payment for their services in prosecuting the lawsuit on behalf of the Class, nor have Class Counsel been paid for their out-of-pocket expenses incurred to date. These attorneys' fees and out-of-pocket expenses total more than \$2.98 million.

After negotiation of the terms of the settlement, Class Counsel and DHS counsel engaged in an arm's-length negotiation regarding the attorneys' fees to be paid to Class Counsel. As a result of those negotiations, Plaintiffs intend to apply to the Court for an award of attorneys' fees, costs, and expenses (the "Fee Application") of not more than \$1,100,000.00, which shall be the sole fee application made in the federal lawsuit. Copies of the Fee Application will be made available online at a website to be created and maintained by Class Counsel at: <http://hawaiiclassaction.com/fostercare>.

You may object to the request for attorneys' fees and costs. After considering the objections of Class Members, the Court will determine the amount of attorneys' fees and costs in accordance with controlling law.

Neither you nor any other member of the Class is or will be personally liable for the Attorneys' Fee Award. The State will pay the amount awarded by the Court, if any. The Attorneys' Fee Award will be the only payment to Class Counsel for their efforts in the federal lawsuit and for their risk in undertaking this representation without prior or ongoing payment. Class Counsel have reserved the right to provide Service Awards for the Class Representative and Named Plaintiffs. These Service Awards are intended to recognize the Named Plaintiffs for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards, if any, will be deducted from any award of attorneys' fees and costs by the Court to Class Counsel.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

13. How can I object to the Settlement?

You may send a letter to the Court objecting to the settlement if you don't like any part of it. This includes the amount of the basic board rate increase, the clothing allowance increase, the Fee Application, or the Service Award for the Class Representative and Named Plaintiffs. The Court will consider your views.

Send objections to: The Honorable Leslie E. Kobayashi
United States District Court for the District of Hawai'i
300 Ala Moana Boulevard, Room C-338
Honolulu, HI 96850-0338

Be sure to include the following information:

Case Name: *Ah Chong v. McManaman*, Civil No. 13-00663 LEK-KSC

Title of Document: Objection to Class Settlement

Your Information: your name, address, telephone number, the date, and the reasons you object to the settlement.

Deadline: Please postmark your objection no later than April __, 2017

THE FAIRNESS HEARING

The Court will hold a hearing, called a Fairness Hearing, to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

14. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing on April 24, 2017, at 10:30 a.m. at the United States District Court for the District of Hawaii, 300 Ala Moana Boulevard, Honolulu, Hawaii, in Courtroom Aha Nonoi on the fourth

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://hawaiiclassaction.com/fostercare>

floor. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check Class Counsel's website (<http://hawaiiiclassaction.com/fostercare>) or the federal court's calendar (<http://www.hid.uscourts.gov/base.cfm?pid=0&mid=2>).

At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

15. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer questions the Judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend on your behalf, but it's not necessary.

16. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing, either in person or through a lawyer hired at your expense. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Ah Chong v. McManaman*, Civil No. 13-00663 LEK-KSC." Be sure to include your name, address, telephone number, and your signature, and if a lawyer will attend for you, also include your lawyer's name, address, and telephone number. Your Notice of Intention to Appear must be postmarked no later than **April __, 2017**, and should be sent to the Court at the address listed in Question 13, above.

GETTING MORE INFORMATION

17. How do I get more information?

This notice summarizes the proposed settlement. You can call Class Counsel at 524-1800; email Class Counsel at _____; or visit Class Counsel's website for this litigation at <http://hawaiiiclassaction.com/fostercare>, where you will find other information about the federal lawsuit and the proposed settlement.

PLEASE DO NOT CALL THE COURT WITH YOUR QUESTIONS.

[DATE]

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PATRICK SHEEHEY; PATRICIA SHEEHEY; RAYNETTE NALANI AH CHONG; SHERRY CAMPAGNA; MICHAEL HOLM; and TIARE HOLM, *individually, and on behalf of a class of Hawai'i-licensed resource families; B.S.; and T.B., a Minor, by her Next Friend N.A., individually and on behalf of a class of persons similarly situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC
(Contract)
Civil Action; Class Action

**DECLARATION OF
GAVIN THORNTON**

I, GAVIN THORNTON, declare that:

1. I am an attorney with the Hawai'i Appleseed Center for Law and Economic Justice (formerly Lawyers for Equal Justice). I am licensed to practice before this Court and I am one of the attorneys for Plaintiffs in this action.
2. I make this declaration based on my personal knowledge and am competent to testify to the matters discussed herein.
3. Hawai'i Appleseed has extensive experience in class actions and has been found to be qualified to act as class counsel in dozens of cases, involving claims asserted on behalf of low-income related to federal and state entitlements.
4. I have the following personal experience working on class actions involving the enforcement of federal rights of low-income or marginalized persons:

- a. *J.W. et al. v. Pierce County et al.*, Civil No. 3:09-cv-5430-RJB (W.D. Wa.)—served as lead counsel in a case filed on behalf of juveniles confined to jail and obtained class-wide settlement ensuring the provision of educational services for youth at the jail.
- b. *Jane Doe 1 et al. v. Harold Clarke, et al.*, Cause No. 07-2-01513-0 (Thurston Co. Superior Ct.)—filed suit for injunctive and declaratory relief and damages against the Washington State Department of Corrections relating to allegations of staff sexual misconduct against female inmates; with co-counsel obtaining a settlement providing \$1 million in damages to the suit’s named plaintiffs and overhauling the Department’s handling of sexual abuse allegations.
- c. *Kaleuati v. Tonda*, Civil No. 07-00504 HG LEK (D. Haw.)—obtained a preliminary injunction and class-wide settlement working with co-counsel on behalf of all homeless school aged children in Hawai`i against the Hawai`i Department of Education to remedy violations of the federal McKinney-Vento Act and the equal protection clause of the U.S. Constitution.
- d. *Waters v. Housing and Community Dev. Corp. of Hawai`i*, Civil No. 05-1-0815-05 EEH (Haw. Cir. Ct.)—obtained a settlement for damages and injunctive relief working with co-counsel Alston Hunt Floyd & Ing in a suit for breach of contract arising out of the State of Hawaii’s failure to comply with federal law and regulations regarding utility allowances in federally subsidized housing projects.
- e. *Smith v. Housing & Community Dev. Corp. of Hawai`i*, Civil No. 04-1-0069K (Haw. Cir. Ct.)—filed suit with co-counsel Alston Hunt Floyd & Ing on behalf of thousands of public housing residents for breach of contract arising out of the State of Hawaii’s failure to comply with federal law and regulations regarding utility

allowances in public housing; obtained a \$2.3 million settlement and caused the State to update utility allowances in compliance with federal law.


- f. *Arnone v. Housing & Community Dev. Corp. of Hawai'i*, Civil No. 04-508 ACK (D. Haw)—filed suit with co-counsel Alston Hunt Floyd & Ing and obtained a permanent injunction against the State of Hawai'i to remedy violations of 42 U.S.C. § 1983 and the Fair Housing Act related to utility overcharges assessed against disabled public housing residents.
5. In addition to my above experience, Hawai'i Appleseed attorneys have litigated with co-counsel the following class actions:
- a. *Blake v. Nishimua*, Civ. No. 08-00281 LEK (D. Haw.)—filed suit for breach of contract arising out of the City and County of Honolulu's failure to comply with federal law and regulations regarding utility allowances in subsidized housing resulting in a class settlement reimbursing tenants for rent overcharges.
 - b. *Shea v. Kahuku*, Civ. No. 09-00480 DAE LEK (D. Haw.)—filed suit for breach of contract arising out of the federally-subsidized Kahuku Elderly Housing project owner's failure to comply with federal law and regulations regarding utility allowances in subsidized housing resulting in a class settlement reimbursing tenants for rent overcharges.
 - c. *Korab v. Koller*, Civ. No. 10-00483 JMS/KSC (D. Haw.)—obtained a preliminary injunction on behalf of a class of persons residing in Hawai'i under the Compact of Free Association challenging the State of Hawaii's cuts to health insurance for immigrants in violation of the Equal Protection Clause of the Fourteenth Amendment.
 - d. *Bohn v. Koller*, Civ. No. 10-00680 DAE-LEK (D. Haw.)—obtained a preliminary injunction on behalf of low-income residents of Hawai'i

against the State of Hawai'i for its failure to timely process food stamp applications in accordance with federal law.

- e. *McMillon v. State of Hawai'i Public Housing Authority*, Civ. No 08-00578 JMS LEK (D. Haw.) and *Faletogo v. State of Hawai'i*, Civ. No. 08-1-2608-12 ECN (Haw. Cir. Ct.)—filed two class action lawsuits against the State of Hawai'i on behalf of thousands of tenants at Kuhio Park Terrace alleging violations of the Americans with Disabilities Act and tenants' lease provisions regarding the habitability of the rentals; obtained settlement agreements for injunctive relief and damages.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Honolulu, Hawai'i on March 17, 2017.



GAVIN THORNTON

Of Counsel:
ALSTON HUNT FLOYD & ING
Attorneys at Law, A Law Corporation

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HAWAII APPLESEED CENTER FOR
LAW AND ECONOMIC JUSTICE
VICTOR GEMINIANI 4354
GAVIN THORNTON 7922
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gavin@hiappleseed.org

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PATRICK SHEEHEY; PATRICIA
SHEEHEY; RAYNETTE NALANI AH
CHONG; SHERRY CAMPAGNA;
MICHAEL HOLM; and TIARE HOLM,
*individually, and on behalf of a class
of Hawai'i-licensed resource families;
B.S.; and T.B., a Minor, by her Next
Friend N.A., individually and on
behalf of a class of persons similarly
situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC
(Contract)
Civil Action; Class Action

NOTICE OF HEARING

HEARING MOTION

JUDGE: The Honorable
Virginia L. Crandall
TRIAL DATE: None
HEARING DATE: March 24, 2017
HEARING TIME: 9:30 a.m.

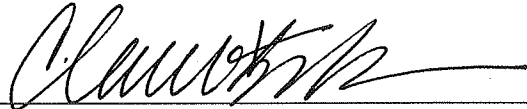
NOTICE OF HEARING OF MOTION

TO: CARON M. INAGAKI, ESQ.
DONNA H. KALAMA, ESQ.
Department of the Attorney General
State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813

Attorneys for Defendants
STATE OF HAWAII

NOTICE IS HEREBY GIVEN that the above-identified Motion To Certify Settlement Classes and for Preliminary Approval Of Proposed Class Action Settlement shall come on for hearing before the Honorable Virginia L. Crandall, Judge of the above-entitled Court, in her courtroom at Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813, at 9:30 o'clock a.m. on March 24, 2017, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawai'i, March 20, 2017.



PAUL ALSTON
JOHN-ANDERSON L. MEYER
MICHELLE N. COMEAU
CLAIRE WONG BLACK
VICTOR GEMINIANI
GAVIN THORNTON
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused a true and correct copy of the foregoing document to be served via hand delivery on the following parties at their last known addresses:

CARON M. INAGAKI, ESQ.
DONNA H. KALAMA, ESQ.
Department of the Attorney General
State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813

Attorneys for Defendants
STATE OF HAWAII

DATED: Honolulu, Hawai'i, March 20, 2017.



PAUL ALSTON
JOHN-ANDERSON L. MEYER
MICHELLE N. COMEAU
CLAIRE WONG BLACK
VICTOR GEMINIANI
GAVIN THORNTON
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PATRICK SHEEHEY, *et al.*,

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC
(Contract)
Civil Action; Class Action

**NOTICE OF HEARING OF MOTION
and CERTIFICATE OF SERVICE**

NOTICE OF HEARING OF MOTION

TO: CARON M. INAGAKI, ESQ.
DONNA H. KALAMA, ESQ.
Department of the Attorney General
State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813

Attorneys for Defendants
STATE OF HAWAII

NOTICE IS HEREBY GIVEN that the above-identified Motion for Preliminary Approval of Amended Class Action Settlement shall come on for hearing before the Honorable Virginia L. Crandall, Judge of the above-entitled Court, in her courtroom at Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813, at 1:00 o'clock p.m. on April 3, 2018, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawai'i, April 3, 2018.



PAUL ALSTON
JOHN-ANDERSON L. MEYER
CLAIRE WONG BLACK
VICTOR GEMINIANI
GAVIN THORNTON

Class Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion was duly served on the above identified parties at their respective addresses by hand delivery.

DATED: Honolulu, Hawai'i, April 3, 2018.



PAUL ALSTON
JOHN-ANDERSON L. MEYER
CLAIRE WONG BLACK
VICTOR GEMINIANI
GAVIN THORNTON

Class Counsel