

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LASHAWN A., *et al.*,

Plaintiffs,

v.

MURIEL BOWSER, *et al.*,

Defendants.

Civil Action No. 89-1754 (TFH)

FINAL ORDER OF APPROVAL OF SETTLEMENT

The Court, having held a duly-noticed Fairness Hearing on June 1, 2021, having considered all matters submitted to it at the Fairness Hearing and otherwise, having received no objections by Class Members to the proposed settlement, and finding no just reason for delay in entry of this Order and good cause appearing therefor, it is hereby **ORDERED**:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms here shall have the same meanings set forth in the Settlement Agreement. The Settlement Agreement was preliminarily approved by the Court's Order Preliminarily Approving Class Action Settlement, Approving Notice Plan, and Scheduling Fairness Hearing, entered on August 20, 2020. [ECF 1217] (Preliminary Approval Order). The Court approves the Parties' Addendum, submitted with the Joint Motion for Final Order of Approval.

2. The terms of the Court's Preliminary Approval Order are incorporated by reference in this Order.

3. The Court has jurisdiction over the subject matter of the Lawsuit, the Parties, and all members of the Class and will retain jurisdiction according to the Settlement Agreement to enforce the terms of that agreement.

4. Class Counsel adequately represented the Class for the purpose of entering into and implementing the Settlement Agreement. In the absence of consultations with the original named plaintiffs who cannot be located or who are deceased, Class Counsel has made reasonable efforts to consult with members of the class, including seeking input from such secondary sources as public interest organizations and caregivers who have day-to-day contact with class members.

5. This Court certified a Class by Order dated January 22, 1990; the Class consists of

All children who, as the result of alleged or suspected abuse or neglect, are in the legal and/or physical custody of the District of Columbia Department of Human Services; and the presently-identifiable children who are not in the Department's legal or physical custody but who have been the victims, or are at risk, of neglect or abuse of which the Department knows or should know as a result of notice to or filings with the Department; not including, however, any member of the class certified in *Bobby D. v. Barry*, Civil Action Misc. No. 16-77 (D.C. Super. Ct. July 7, 1980), who remains in the foster-care custody of the Department of Human Services, with respect to those issues addressed by the judgment entered in that action.

LaShawn A. v. Dixon, [762 F. Supp. 959, 994 n.28](#) (D.D.C. 1991) (quoting *LaShawn A. v. Barry*, Civil Action No. 89-1754, Order Granting Class Certification (Jan. 22, 1990)).

Settlement Agreement is Fair, Adequate, and Reasonable

6. The Court hereby finds that the Settlement Agreement (including the Addendum) and the settlement contemplated thereby are the product of arm's length, good faith settlement negotiations between the defendants and Class Counsel.

7. The Settlement Agreement [ECF 1215-1] and the settlement set forth herein are hereby approved and found to be fair, adequate and reasonable, in the best interest of the Class as a whole, and in satisfaction of Rule 23 of the Federal Rules of Civil Procedure and due process requirements.

8. The Court hereby finds and concludes that class notice was disseminated to members of the Class in accordance with the terms set forth in the Settlement Agreement and in compliance with this Court's Preliminary Approval Order. The Court further finds and concludes that the notice fully satisfied Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, was the best notice practicable under the circumstances, and supports the Court's exercise of jurisdiction over the Class as contemplated by the Settlement Agreement and this Order.

9. The Court hereby finally approves the Settlement Agreement and the settlement contemplated thereby, and finds that the terms constitute, in all respects, a fair, reasonable, and adequate settlement in accordance with Rule 23 of the Federal Rules of Civil Procedure, and directs consummation of the settlement pursuant to the terms and conditions of the Settlement Agreement.

10. The fairness and adequacy of the settlement is reflected in the Class's satisfaction with the settlement. The Child and Family Services Agency (CFSA) mailed approximately 2,300 notices of the Settlement to class members and others; there was not a single objection. Thus, not a single class member expressed any type of dissatisfaction with any aspect of the Settlement. This is a highly favorable reaction by the class to the settlement. *See, e.g., Vista Healthplan, Inc. v. Warner Holdings Co. III, Ltd.*, 246 F.R.D. 349, 362 (D.D.C. 2007) (50 opt outs and one objection out of 41,561 notices sent; the few number of opt outs and "existence of even a relatively few objections certainly counsels in favor of approval"); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 398–99 (D.D.C. 2002) (13 objectors and 14 opt outs from class in which over 13,000 copies of the class notice were sent; "[t]he fact that such an overwhelming majority of class members elected to stay in the class evidences a favorable reaction by the class to the settlement" and objections were not well taken and relatively low in numbers). These indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23 under any measure.

Notice

11. As required by the Court in its Preliminary Approval Order:
 - a. Notice to Class Members of Proposed Settlement Agreement was mailed to all potential class members or their representatives whose addresses could be obtained with reasonable diligence; and

- b. Notices of the proposed settlement were published as provided for in the Settlement Agreement and Preliminary Approval Order.

12. The notice given to the class is hereby determined to be fully in compliance with both the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process. The notice given is further found to be the best notice practicable under the circumstances and therefore, constitutes due and sufficient notice to all parties. Additionally, the defendants caused notice of the proposed settlement (and the scheduled fairness hearing) to be published in the April 20, 21, 26, and 28 editions of *The Washington Post*; the April 21 and 28 editions of *Street Sense*, and the April 23 and 30, 2021 editions of *The Washington Hispanic* (in Spanish). Notice was also mailed to the directors of the Children's Law Center, the Foster and Adoptive Parent Advocacy Center, and University Legal Services. Notice was also posted on the CFSA website.

13. Due and adequate notice of the proceedings having been given to the Class and a full opportunity having been offered to the Class to participate in the hearing, it is hereby determined that all Class Members are bound by this Final Order of Approval of Settlement. All Class Members shall be bound by all determinations and judgments concerning the Settlement Agreement and the settlement contemplated thereby.

Class Counsel

14. The Court reaffirms appointment of Marcia Lowry as Class Counsel.

Final Approval of Settlement

15. The Court incorporates herein by reference and ratifies its prior order preliminarily approving the settlement [ECF 1217].

16. The Addendum signed by the Parties on April 22, 2021 is fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and a product of informed, arm's length negotiation by counsel. The Court approves the Addendum, which is to be considered part of the Settlement Agreement [1215-1] in this matter previously preliminarily approved by the Court. [ECF 1217].

17. The Court finds that the parties satisfied the notice provisions set forth in the Preliminary Approval Order.

18. The settlement received a favorable reaction from the class. There were no objections.

19. The Parties had previously agreed (in November 2000) on a method for resolving plaintiffs' counsel's periodic claims for fees. That method is incorporated herein and will govern all remaining fees incurred by plaintiffs' counsel through the expiration of the Settlement.

20. The Court hereby dismisses this Lawsuit, with prejudice, and without fees or costs to any party except as otherwise expressly provided herein. The Court retains jurisdiction over this matter and the Parties for the purpose of enforcing the terms of the Settlement.

21. This Order shall constitute a final order and have *res judicata* and collateral effect against all class members.

SO ORDERED.

June 1, 2021




THE HONORABLE THOMAS F. HOGAN
Judge, United States District Court
for the District of Columbia