**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 05-23037-CIV-JORDAN/O'SULLIVAN**

**FLORIDA PEDIATRIC SOCIETY/THE FLORIDA CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS; FLORIDA ACADEMY OF PEDIATRIC DENTISTRY, INC., et al.,**

**Plaintiffs,**

**vs.**

**ELIZABETH DUDEK, et al.,**

**Defendants.**
_____/

# PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

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April 15, 2016

Pursuant to Fed. R. Civ. P. 23(e), Plaintiffs hereby ask this Court to (1) preliminarily approve the Settlement Agreement attached hereto as Exhibit A; (2) schedule a final hearing to determine whether the Settlement Agreement is fair, reasonable, and adequate; and (3) approve the notice to the class in the form attached hereto as Exhibit B. This memorandum is submitted in support of the Motion.

## BACKGROUND

In 2005, this case was brought seeking declaratory and injunctive relief to bring the Florida Medicaid program into compliance with requirements of the Medicaid Act, 42 U.S.C. §1396 *et seq*. As the Court is aware, after exhaustive discovery, a trial of over 90 days duration was conducted. On December 30, 2014, this Court entered Findings of Fact and Conclusions of Law in which it found that the State was violating the Medicaid Act's EPSDT, Reasonable Promptness, and Outreach requirements. *See* D.E. 1294, Findings of Fact & Conclusions of Law; *see also* D.E. 1314, Amended Findings of Fact & Conclusions of Law. On November 12, 2015, the Court directed Magistrate Judge O'Sullivan to conduct an evidentiary hearing on Plaintiffs' request for remedies, along with the Defendants' argument that Plaintiffs' claims had been rendered moot and that the evidence was stale. *See* D.E. 1351 (Referral Order). The Court, at the same time, ordered mediation to be supervised by Magistrate Judge Chris McAliley. *See* D.E. 1350 (Mediation Order).

Mediation began on December 2, 2015, and continued for nearly three months, during which time eleven formal, court-supervised negotiating sessions were held with counsel and clients present. *See* D.E. 1366, 1373, 1383-88, 1390-92. Each of these sessions lasted for several hours, and most consumed the entire day. *Id.* The mediation efforts resulted in a comprehensive set of agreements memorialized in a settlement agreement that was signed on

April 5, 2016, a copy of which is attached as Exhibit A. As summarized below, the Settlement Agreement provides for a meaningful and comprehensive framework under which Florida's Medicaid program can continue to operate in a managed care environment, while requiring Defendants to meet national standards with respect to the provision of medical and dental care for Florida children. We set forth below the key elements of the settlement agreement.

## I. THE SETTLEMENT AGREEMENT REQUIRES AHCA AND DOH TO IMPROVE CHILDREN'S ACCESS TO MEDICAID SERVICES BY MEETING OBJECTIVE BENCHMARKS.

The Settlement Agreement requires AHCA[1] to improve children's access to Medicaid services. It does so by establishing clear, objective benchmarks that Defendants must meet and also by specifying particular corrective steps that AHCA and DOH must take if they fail to attain those benchmarks by predetermined dates. In addition, the Settlement Agreement transforms the parties' adversarial litigation posture into a collaborative relationship by requiring frequent meetings between Defendants and Plaintiffs' representatives, including the leadership of the Florida Chapter of the American Academy of Pediatrics and the Florida Academy of Pediatric Dentistry, to implement the Settlement Agreement.

***Medical Care.*** The Settlement Agreement provides a process to increase the reimbursement rates paid to physicians who treat children on Medicaid so as to improve access to care. AHCA will require the capitated Managed Medical Assistance (MMA) Plans to adopt an Incentive Plan under which Board-certified pediatricians treating children on Medicaid and obstetricians will have a reasonable opportunity to earn Medicare-equivalent reimbursement rates if they meet objective criteria, to be established by AHCA, for patient outcomes and access to care. *See id.* at 7-8. As savings generated from increased efficiencies associated with the

[1] We refer to AHCA because most of the obligations fall upon AHCA, which primarily administers Florida's Medicaid program. There are also obligations that affect the Department of Health with respect to the CMS program.

implementation and operation of the MMA plans allow, *see id.* at 7-8, that reasonable opportunity will be extended other Providers (as that term is defined in the agreement, *see id.* at 7-9) treating Medicaid recipient children enrolled with capitated MMA Plans. The Incentive Plans, which will be developed by each MMA Plan and AHCA in consultation with Plaintiffs' representatives, will be incorporated into AHCA's October 2016 contracts with the MMA Plans. *See id*. at 8. The rate increases contemplated under the incentive plans will be funded by program savings generated from increased efficiencies associated with the implementation and operation of the MMA plans. *See id*. at 7-8. The Settlement commits AHCA to devote all Program Savings (as that term is defined in the Settlement Agreement, *see id*. at 6) from Medicaid Managed Care Plans until at least September 2019 to increasing reimbursement for children's providers. If there are not sufficient cost savings to fund such an Incentive Plan for Board-certified pediatricians, AHCA will take necessary action to increase capitation rates so that the Incentive Plan can be implemented on an actuarially sound basis, including seeking additional funding. *See id.* at 9.

Second, the parties have agreed upon three benchmarks against which the performance of the Incentive Plans will be evaluated: (1) achievement of a participation ratio on line 10 of the CMS-416 report, which is at least equal to the national mean; (2) achievement on line 10 of the CMS-416 report of a participation ratio of at least 75 percent for all aggregate age groups below the age of 10, on a weighted average basis; and (3) achievement of at least the national Medicaid mean for at least eight of nine specified HEDIS measures, including well-care visits in the first 15 months of life and in the third, fourth, five and sixth years of life, children's access to primary care practitioners between the ages of 12 and 24 months, and the frequency of lead blood

screening in children. *See id*. at 9-10. These benchmarks will be used to evaluate both Medicaid managed care plans on an individual basis and the system on a statewide basis.

Plans that do not meet these benchmarks will be required to take corrective action. If the State fails to meet the benchmarks set forth above within 30 months of the implementation of the Incentive Plans, then additional reimbursement increases are required to provide all pediatricians and pediatric specialists and pediatric sub-specialists the opportunity to earn Medicare FFS rates, and the Plans will be prohibited from using the Medicaid FFS schedule as a baseline to set rates effective as of the 2019 contract year. *See id*. at 11 – 12. And if necessary, AHCA must seek legislative approvals to increase capitation rates to the extent necessary to accommodate these rate increases on an actuarially sound basis. *See id*.

***Dental Care.*** The Settlement Agreement provides a similar process to improve children's access to Medicaid dental services. AHCA, in collaboration with the MMA Plans and Plaintiffs' representatives, will conduct a robust network adequacy study to assess geographic accessibility, travel times, and other issues. *See id*. at 12-13. AHCA will incorporate into its October 2016 contracts any network adequacy enhancements that are determined appropriate by the study. *See id*.

Benchmarks to measure progress toward national norms include: (1) meeting the 2014 national Medicaid mean for the HEDIS annual dental visit measure; (2) meeting the 2014 national average for the Child Core Set PDENT score which measures preventative care visits; and (3) meeting the 2014 national average for the CMS-416 Dental Treatment Service measure. *See id.* at 13. As with medical care, these measures will be enforced on both a plan-specific and statewide basis.

There are both final objectives, at the national norm level, to be attained by 2021, and interim benchmarks that must be attained by 2019. If Florida fails to meet the applicable interim benchmarks by 2019, then dental providers will be able to earn reimbursements at least at the 50th percentile of commercial dental insurance rates for pediatric dental services in Florida. *See id*. at 14-15. AHCA must seek increased funds if necessary to have actuarially sound capitation rates, while providing dentists with an opportunity to earn increased payment for their services. Even if AHCA meets the applicable interim benchmarks by 2019, it must also meet the higher interim benchmarks in 2020 as well.

If Defendants materially breach the requirements of this Settlement Agreement, or if the Legislature fails to approve action that AHCA is required to request under certain circumstances under the Settlement Agreement, plaintiffs, after providing notice and an appropriate opportunity to cure to AHCA, may seek declaratory and injunctive relief in Court to enforce violations of the Medicaid Act, essentially picking up with the request for such relief currently pending before the Court.

## II. THE SETTLEMENT AGREEMENT REQUIRES DCF TO CONTINUE IMPROVING CHILDREN'S ACCESS TO MEDICAID SERVICES BY RESOLVING PROBLEMS WITH THE MEDICAID ELIGIBILITY PROCESS.

The Settlement Agreement requires DCF to continue to improve the Medicaid eligibility process for the members of the class. Plaintiffs recognize that DCF has made progress since the trial, and the settlement provides for continuation and enhancement of this progress. As is the case with the settlement of the AHCA and DOH claims, the settlement of the DCF claims transforms the parties' posture from one of adversarial litigation to one of collaborative resolution.

As to DCF, [2] the Settlement Agreement focuses on resolving three issues with the Medicaid eligibility process: improper terminations of children's Medicaid eligibility, difficulties with the "baby of" process for immediately establishing presumptively eligible newborns' Medicaid eligibility, and the application process. A series of regular review and meetings with Plaintiffs' representatives will seek to address each of these problems, with Plaintiffs obligated to provide exemplars of problems, and DCF obligated to implement reasonable measures to further address these issues. Under the Settlement Agreement, Plaintiffs are to provide exemplars of problems or deficiencies which Plaintiffs believe show systematic issues, and DCF is required to investigate to determine whether there is indeed a systematic problem and if so, its cause. The Settlement Agreement further requires DCF to meet at least quarterly with Plaintiffs' representatives through June 2018 for monitoring and improvement of any systemic deficiencies as required by the Settlement Agreement, and as part of that monitoring, to provide specific reporting to Plaintiffs to help them measure the success of DCF's initiatives. Finally, if prior to June 30, 2018, Plaintiffs believe DCF has failed without reasonable justification to meet the goals of this Settlement Agreement, plaintiffs can return to Court in this action and seek declaratory or injunctive relief to enforce violations of the Medicaid Act.

[2] We refer to DCF because most of the obligations fall upon DCF, which primarily administers the Medicaid eligibility process for Florida's Medicaid program. There are also obligations that affect AHCA especially regarding activation of a newborn's Medicaid number and making all reasonable efforts to avoid reassignment of a child from one MMA plan to another or from one primary care provider to another, without notice or consent of the child's parent or guardian. *See* Settlement Agreement at 16-17.

## III. SETTLEMENT PROVIDES FOR STAYING LITIGATION, NOTICE AND OPPORTUNITY TO CURE, ENFORCEMENT AND AN APPROPRIATE AWARD OF FEES TO COUNSEL.

The Settlement Agreement calls for staying or abating this action until no later than September 30, 2022. Provided Defendants comply with the terms of the settlement agreement, jurisdiction over the action will be released by that date.

If Plaintiffs believe that a triggering event has occurred with respect to AHCA, Plaintiffs will provide AHCA with written notice and an opportunity to cure. *Id.* at 22. A triggering event is defined as a material breach by AHCA or the failure by the Florida legislature to approve action that AHCA is required to request pursuant to this Agreement. *Id.* at 7. If 45 days after providing such notice, Plaintiffs believe any breach has not been cured, Plaintiffs' exclusive remedy is to file a motion in district court, and upon establishing that such a material breach or other triggering even has occurred, Plaintiffs may seek declaratory or injunctive relief to remedy violations of the Medicaid Act, consistent with the procedural posture of this action immediately prior to the entry into this settlement agreement. *Id.* at 22. The procedure set forth above regarding a triggering event with respect to AHCA also applies if Plaintiffs believe there is a triggering event with respect to DOH. *Id.* at 23.

The procedure is somewhat different as to DCF. If Plaintiffs believe that prior to June 30, 2018, DCF has failed, without reasonable justification, to meet the goals set forth in the Settlement Agreement, by failing to implement available measures to achieve those objectives, Plaintiffs must give DCF written notice and an opportunity to cure for 30 days. If Plaintiffs believe DCF is still in breach, the Court will lift the stay and Plaintiffs may seek declaratory and injunctive relief to remedy violations of the Medicaid Act, consistent with the procedural posture of this action immediately prior to the entry into this settlement agreement. *Id.* at 23.

In the event that Plaintiffs seek relief from this Court, following a notice of breach and an opportunity to cure, the Court will retain jurisdiction over this matter until those proceedings are fully resolved.

The agreement further specifies that Defendants agree to pay and Plaintiffs agree to accept $12 million in full settlement of any entitlement to attorneys' fees and costs incurred by Plaintiffs and their counsel from the inception of this action until the date on which this settlement agreement was executed. *Id.* at 25. That agreement covers the fees of Boies, Schiller & Flexner LLP, the Public Interest Law Center, f/k/a the Public Interest Law Center of Philadelphia, and Louis Bullock, and represents about 60% of Plaintiffs' counsel fees in this action, at counsel's normal rates. The State's Chief Financial Officer will confirm that Plaintiffs' counsel have submitted sufficient documentation to corroborate the incurring of fees to support the payment of the settlement amount to Plaintiffs' counsel. *Id.* at 25-26.

## ARGUMENT

"[I]t has been repeatedly recognized that settlements are 'highly favored in the law and will be upheld whenever possible because they are means of amicably resolving doubts and preventing lawsuits.'" *Bennett v. Behring Corp*., 96 F.R.D. 343, 348 (S.D. Fla. 1982) (quoting *Miller v. Rep. Nat. Life Ins. Co.*, 559 F.2d 426, 428 (5th Cir.1977)). This is true as well "in class action suits, [where] there is an overriding public interest in favor of settling." *Fresco v. Automotive Directions, Inc*., No. 03–CIV–61063, 2009 WL 9054828, *3 (S.D. Fla. Jan. 20, 2009).

Rule 23(e) of the Federal Rules of Civil Procedure governs the procedure for court approval of class action settlements, like that at issue here. *See* Fed. R. Civ. P. 23(e) ("The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or

compromised only with the court's approval."). Pursuant to Rule 23(e), the first steps in the settlement approval process require the court to preliminarily approve the Settlement Agreement as fair, reasonable and adequate, to "direct notice to the class in a reasonable manner to all class members who would be bound by the proposal," Fed. R. Civ. P. 23(e)(1), and to schedule a hearing for final approval of the Settlement Agreement. Fed. R. Civ. P. 23(e)(2). The Court should take these steps now.

## IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT AGREEMENT AND SCHEDULE A HEARING TO DETERMINE WHETHER IT IS FAIR, REASONABLE, AND ADEQUATE.

"At the preliminary approval stage, the Court's task is to evaluate whether the Settlement is within the 'range of reasonableness.'" *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 661 (S.D. Fla., 2011) (quoting 4 Newberg § 11.26). "Where, as here, the proposed settlement is the result of serious, arms'-length negotiations between the parties, has no obvious deficiencies, falls within the range of possible approval and does not grant preferential treatment to plaintiff or other segments of the class, courts generally grant preliminary approval and direct that notice of a formal final approval hearing be given to class members." *Diakos v. HSS Systems, LLC*, No. 14-61784, 2015 WL 5921585 (S.D. Fla., Sep. 29, 2015). "A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *See In re Checking Account Overdraft Litig.*, 275 F.R.D. at 661 (citing Manual for Complex Litigation, Third, § 30.42 (West 1995); *see also Greco v. Ginn Dev. Co., LLC*, No. 14-11443, 2015 WL 7755673, at *3 (11th Cir. Dec. 2, 2015) ("[A] district court may also rely upon the judgment of experienced counsel for the parties. . . . Indeed, absent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel.").

There can be no serious question that the Settlement Agreement meets the bar for preliminary approval. As described above, the Settlement Agreement follows a decade of litigation, including a hard-fought trial that spanned more than two years during which the parties put on dozens of witnesses and submitted hundreds of exhibits. Moreover, the Settlement Agreement resulted from arm's-length negotiations between the parties, represented by their respective counsel, over the course of more than 80 hours of court-supervised and intensive negotiations. The Settlement Agreement is not just free of "obvious deficiencies," it includes obvious benefits to Plaintiffs, including clear benchmarks that Defendants must meet to demonstrate that children are receiving access to care, along with concrete corrective actions that will be taken otherwise. Under such circumstances, courts routinely grant motions for preliminary or final approval, particularly in civil-rights class actions such as the present case. *E.g.*, *Melanie K. v. Horton*, No. 1:14-CV-710-WSD, 2015 WL 1799808, at *2 (N.D. Ga. Apr. 15, 2015) (granting preliminary approval in case alleging unlawful denial or delay of applications for food stamps, where "the Settlement was the product of arm's-length negotiation over a period of many months and with the advice of experienced and qualified counsel"); *Henderson v. Thomas*, No. 2:11CV224-MHT, 2013 WL 5493197, at *10 (M.D. Ala. Sept. 30, 2013) (granting final approval in HIV discrimination case, where a magistrate judge "ably shepherded the parties through the development of these agreements" and where "[t]hese agreements are clearly the result of careful and arduous negotiation"); *Ass'n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) (granting final approval of settlement in Americans with Disabilities Act case, and noting that "[t]here is an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex").

The Settlement Agreement also falls squarely within the range of reasonableness. Courts generally consider six factors when determining whether a class action settlement is reasonable, *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984), each of which weighs in favor of preliminary approval here.

First, courts consider the likelihood of success at trial. *Id.* Here, although Plaintiffs already succeeded at trial, the Court has not yet awarded declaratory or injunctive relief, waiting instead to receive a Report and Recommendation following a weeklong evidentiary hearing in April regarding whether the case is moot, whether the evidence is stale and, if not, what remedies are appropriate. The Settlement Agreement insulates Plaintiffs from any risks attendant with that hearing, Magistrate Judge O'Sullivan's Report and Recommendation, any objections filed with the District Court, and any subsequent appeals.

Second and third, courts consider the range of possible recovery and the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable. *Id.* Plaintiffs do not seek monetary damages but rather declaratory and injunctive relief. The remedies obtained in the Settlement Agreement closely approximate those Plaintiffs sought in the litigation. Each of the issues identified by Plaintiff in the trial and upon which findings of fact were made by the Court is addressed by the Settlement Agreement.

- Problems in reasonably prompt access are addressed by providing for pediatricians to participate in incentive programs which will offer reasonable opportunities to earn Medicare equivalent rates, the level which Plaintiffs advocated at trial and that is supported by this Court's findings.

- Specialist access issues are addressed both by enforcement of reasonable time and distance standards, and by extension of the above incentives to other providers of medical services to children in subsequent years.
- Lead blood screening is one of the HEDIS measures on which performance is evaluated.
- Dental access is addressed by a multi-faceted approach, and if interim benchmarks are not met by 2019, by requiring the increase in reimbursement rates to the 50$^{th}$ percentile of ordinary and customary payments to dentists treating children in Florida, the precise level advocated at trial by Plaintiffs' expert.
- CMS children will receive benefits of similar incentive plans to the Medicaid population at large upon Florida's contemplated move to at-risk managed care plan for that population.
- DCF commits to adopt reasonable measures to continue making improvement in minimizing improper terminations, ensuring the timely creation of "unborn baby" files, and the Medicaid application process. AHCA also agrees to work on these areas within its responsibility, and to make all reasonable efforts to minimize switching.
- There is a commitment to improve outreach both to enrolled children and to eligible but unenrolled children.

The Settlement Agreement provides for evaluation of progress through interim benchmarks toward meeting national standards, and provides for appropriate additional steps should either individual managed care plans or the State as a whole fall short of these targets. In short, the Settlement Agreement requires the State to show demonstrable and significant

improvements to children's access to care, and it will require AHCA to seek increases in capitation rates, including by legislative action if necessary, in order to increase provider reimbursement rates on an actuarially sound basis if AHCA fails to meet those objective measures of improved care.

Fourth and fifth, courts consider the complexity, expense and duration of litigation and the state of proceedings at which the settlement was achieved. *Id*. The Court is well aware of the complexity and length of these proceedings. The time of settlement allows the parties to enter into an agreement informed by extensive discovery, the trial, and the findings of fact and conclusion of law made by this Court. At the same time, the timing of the settlement allows the parties to avoid the continuation of the current proceedings through the remedy phase with a hearing before the Magistrate Judge and further proceedings in the district court, and on appeal. The Settlement Agreement makes it unnecessary to continue the litigation, and it will allow Plaintiffs and Defendants to work cooperatively toward a common goal going forward.

Finally, courts consider the substance and amount of opposition to the settlement, *id*., a factor which can be evaluated only after notice has been issued. Plaintiffs, however, do not anticipate serious opposition to the Settlement Agreement in light of the results achieved.

## V. THE COURT SHOULD DIRECT THE PROPOSED FORM OF NOTICE TO THE CLASS.

"The court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). "In a Rule 23(b)(2) class action, mechanics of the notice process are left to the discretion of the district court subject only to the broad 'reasonableness' standards imposed by due process." *Fowler v. Birmingham News Co.*, 608 F.2d 1055, 1059 (5th Cir. 1979). This case involves a class currently numbering over 2 million members, many of whom are enrolled in Medicaid, and many others of whom are eligible for

Medicaid but not enrolled. Under Rule 23(b)(2) individualized notice to class members is not required. *See, e.g.*, *United States v. Alabama*, 271 F. App'x 896, 901 (11th Cir. 2008) (approving notice by publication); *Handschu v. Special Services Div.*, 787 F.2d 828, 832-33 (2d Cir. 1986) (same); *Ass'n For Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) (same). Given the large size of the class and the fact that the identities of many class members are unknown to the parties, the most reasonable manner of notifying class members of the settlement would be publication of a notice, in English and in certain publications in Spanish, in newspapers across the state and on the parties' websites.

Plaintiffs' proposed notice for publication is attached hereto as Exhibit B. Plaintiffs propose that the legal notice be published in the following 11 newspapers, twice in each, at one week intervals: The Miami Herald, The Sun Sentinel, The Palm Beach Post, The Sarasota Herald Tribune, The Orlando Sentinel, The Tampa Bay Times, The Tampa Tribune, Daytona Beach News Journal, The Tallahassee Democrat, The Jacksonville Times-Union, and The Pensacola News Journal. Plaintiffs further propose that a longer notice be prominently posted, through the date of the fairness hearing, on the websites of AHCA, FCAPP, and Plaintiffs' firms. *See generally United States v. Alabama*, 271 F. App'x 896, 901 (11th Cir. 2008) (approving a similar means of notice in a Rule 23(b)(2) civil-rights settlement). Plaintiffs' proposed longer notice is attached hereto as Exhibit C. The form and type of proposed of notice tracks that approved by Judge Gold in a Medicaid case in which the court certified a class of all Medicaid beneficiaries who have or will have their prescription drug coverage denied, delayed, terminated or reduced without adequate notice and the opportunity for a fairness hearing. Plaintiffs alleged that the Defendant's conduct violated the Medicaid Act and the Due Process Clause of the Fourteenth Amendment. *See* Exh. D, *Hernandez v. Medows*, No. 02-20964 CIV-

GOLD/SIMONTON, D.E. 183 (S.D. Fla) (order approving notice plan). Pursuant to the settlement agreement, costs for the newspaper publication will be paid from the agreed-upon award for costs and fees. *See* Exh. A., Settlement Agreement at 26.

## VI. THE SETTLEMENT AGREEMENT INCLUDES AN APPROPRIATE ATTORNEYS' FEES AWARD.

Had this case proceeded to the entry of a final judgment in Plaintiffs' favor, Plaintiffs would have been entitled as the prevailing parties to recover their costs of litigation, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988(b). Instead, as part of the Settlement Agreement, Plaintiffs will accept payment of $12 million as full settlement of any entitlement to attorneys' fees and costs they have incurred from the inception of this lawsuit through the date of the Settlement Agreement. This negotiated figure represents a substantial reduction, on the order of forty percent, from the full amount of Plaintiffs' attorneys' fees and costs, of approximately $20,000,000.

Because all of the class relief sought in this case and obtained via the Settlement Agreement is equitable, the payment of attorneys' fees and costs will in no way diminish the relief obtained by the class members. The parties, with the assistance of Magistrate Judge McAliley, reached agreement on all other components of the Settlement Agreement before beginning to negotiate the payment of attorneys' fees and costs. The settlement regarding attorneys' fees is reasonable in light of time incurred by Plaintiffs' firms in prosecuting this ten-year matter through trial. *See generally ACLU v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999) ("A reasonable attorney fees award under 42 U.S.C. § 1988 is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." (internal quotation marks and citations omitted)).

Plaintiffs also request that the Court approve the payment of incentive awards in the amount of $2,500.00 to each of the seven individually named plaintiff-households.[3] These awards would be paid from the $12,000,000 fees and costs fund. Such awards are appropriate here to recognize the time and efforts of parents and guardians in serving as class representatives. The payment of incentive awards from the attorneys' fees and costs fund is fair, adequate, and reasonable. *See, e.g., Pinto v. Princess Cruise Lines*, 513 F. Supp. 2d 1334, 1344 (S.D. Fla. 2007). Here, the next friends of the named plaintiffs all testified both in deposition and at trial, and responded to requests for production and two sets of interrogatories. *See Allapattah Servs. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006) ("Incentive awards serve an important function, particularly where the named plaintiffs participated actively in the litigation.").

## CONCLUSION

The Court should preliminarily approve the Settlement Agreement, direct issuance of the proposed form of notice, and schedule a fairness hearing.

Dated: April 15, 2016

Respectfully Submitted,

By: /s/ Stuart H. Singer

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[3] The individual named plaintiffs are A.D., as the next friend of K.K.; R.G. and L.G. as the next friends of N.G.; E.W., as the next friend of J.W.; K.V., as the next friend of N.V.; S.B., as the next friend of S.M.; K.S., as the next friend of J.S.; and S.C., as the next friend of L.C.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 15, 2016, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system and that the foregoing document is being served this day on all counsel of record identified below via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Stuart H. Singer
Stuart H. Singer

**SERVICE LIST**

**Florida Pediatric Society/The Florida Chapter of The American Academy of Pediatrics; Florida Academy of Pediatric Dentistry, Inc., et al. v. Elizabeth Dudek in her official capacity as Secretary of the Florida Agency for Health Care Administration, et al.**

**Case No. 05-23037-CIV-JORDAN/BANDSTRA**
**United States District Court, Southern District of Florida**

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