

*Guerra, J.*

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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A.C. and H.C., by their Next Friend BARBARA WEINER,	: 07 Civ. 3308 (TPG)
	: (ECF Case)
Plaintiffs,	:
	:
- against -	:
	:
JOHN MATTINGLY, in his official capacity as Commissioner	: <b>STIPULATION</b>
of the New York City Administration for Children's Services,	: <b>AND ORDER OF</b>
and JOHN JOHNSON, in his official capacity as Commissioner	: <b>SETTLEMENT</b>
of the New York State Office of Children and Family Services,	: <b>AND OF</b>
	: <b>VOLUNTARY</b>
	: <b>DISMISSAL</b>
	: <b>OF CLAIMS</b>
Defendants.	: <b>AGAINST</b>
	: <b>STATE</b>
	: <b>DEFENDANT</b>
-----X	

WHEREAS, Norma Balbuena, individually and on behalf of A.C. and H.C., commenced an action by filing a complaint on March 18, 2005, against John Mattingly, individually and as Commissioner, H. Aurelia Jemmott, individually and as Reviewer, Rafael Ortiz, Jr., individually and as Borough Director, Veronica Chevrestt, individually and as caseworker, Carmen Del Valle, individually and as supervisor, Episcopal Social Services, Robert Gutheil, individually and as director, Carmen Santana, individually and a supervisor [sic], Lourdes Falcon, individually and as caseworker, Zoraida Negron, individually and as social worker, and City of New York, and John Johnson, as Commissioner (hereinafter, collectively, "defendants"), alleging that defendants' actions in removing infant plaintiffs A.C. and H.C. from the home of Norma Balbuena violated their rights under federal and state law; and

WHEREAS, The Legal Aid Society was appointed to represent the infant plaintiffs as counsel in this action on April 7, 2005; and

WHEREAS, plaintiffs A.C. and H.C. filed a Second Amended Class Action Complaint dated July 14, 2005 (Docket Entry "DE" #21), on behalf of themselves and all children in New

York City who are now, were on or after July 1, 2004, or will in the future be, residing in foster care with relatives who are within the second or third degree of consanguinity of their parents or stepparents, against John Mattingly, in his official capacity as Commissioner of the New York City Administration for Children's Services ("City defendant"), and John Johnson, in his official capacity as Commissioner of the New York State Office of Children and Family Services ("State defendant"); and

WHEREAS, by Order dated April 25, 2007 (DE #1), this Court directed the Clerk of Court to open a new civil docket number 07 Civ. 3308 with the above case caption to transfer listed documents from case number 05 Civ. 2986 (Balbuena v. Mattingly) to the new case, and to sever the two cases; and

WHEREAS, plaintiffs A.C. and H.C. moved for certification of a class and City and State defendants opposed the motion; and

WHEREAS, by consolidated Opinion dated March 21, 2008 (2008 WL 759348), docketed in 05 Civ. 2986, this Court denied plaintiffs' motion for class certification; and

WHEREAS, plaintiffs A.C. and H.C. moved for permission to appeal this Court's denial of their motion for class certification to the Second Circuit Court of Appeals and City and State defendants opposed the motion; and

WHEREAS, by mandate dated July 25, 2008 (DE #38) the Second Circuit denied permission to appeal; and

WHEREAS, plaintiff Norma Balbuena's Complaint was voluntarily dismissed by Stipulation and Order dated July 10, 2008; and

WHEREAS, plaintiffs A.C. and H.C. sought declaratory and injunctive relief against all defendants and monetary damages from City defendant; and

WHEREAS, the parties agree that the Court has jurisdiction over this action and the parties, and that the Court has the authority to order the relief set forth in this Stipulation; and

WHEREAS, the plaintiffs A.C. and H.C. now desire to resolve any remaining issues raised in this action, without further proceedings and without defendants admitting any fault or liability; and

WHEREAS, plaintiffs A.C. and H.C. are no longer foster children;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the parties as represented below as follows:

1. All claims brought on behalf of infant plaintiffs A.C. and H.C. against City and State defendants in the above-referenced action, including all claims for reasonable costs and attorneys' fees, are dismissed with prejudice.

2. City Defendant hereby agrees to pay infant plaintiffs A.C. and H.C. the sum of \$5,000 ("five thousand dollars") in full satisfaction of all claims that were or could have been raised in this case because of the removal of the plaintiffs from their aunt's care. The Legal Aid Society and Hughes, Hubbard & Reed LLP, attorneys for the plaintiffs, agree to forego all legal fees. In consideration for the payment of this sum, infant plaintiffs A.C. and H.C. agree to dismissal of all the claims against all defendants in this case and to release all defendants, the City of New York, any present or former employees, officials or agents of the Administration for Children's Services of the City of New York and their past, present or future officers, directors, agents, officials, servants, employees, affiliates, parents, subsidiaries, predecessors, successors, assigns, insurers, officials, attorneys, legal representatives, heirs, executors and administrators from any and all liability, claims, or rights of action, of any kind whatsoever arising from and

contained in the complaint in this action, inclusive of attorneys' fees and costs. The parties will agree on the form of the release to be used for this purpose.

3. City Defendant shall make the payment required by Paragraph 2 above to "Beatrice Padilla," the adoptive mother of A.C. and H.C., within 90 days from a fully executed, so ordered Stipulation and Order of Settlement and of Voluntary Dismissal. Plaintiffs' counsel and the next friend will deliver to Defendants all documents necessary to execute the settlement, including releases.

4. City Defendant agrees that, to the extent that it holds liens against infant plaintiffs A.C. and H.C. for public assistance or Medicaid, or for treatment at any New York City Health & Hospitals Corporation facility, such liens will not be asserted against the proceeds of this settlement.

5. Nothing contained herein shall be deemed to be an admission by defendants that they have in any manner or way violated infant plaintiffs A.C.'s or H.C.'s rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York or the City of New York. This Stipulation shall not be admissible in, nor is it related to, any other litigation or grievance procedure or settlement negotiations, except that this Stipulation is admissible in this Court for enforcement of its terms.

6. It is understood that the terms and conditions contained herein do not constitute an official policy or practice of defendants.

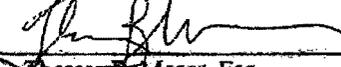
7. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of

the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

8. This Court shall retain jurisdiction and enforcement power over the terms and conditions of the settlement of this action.

Dated: New York, New York  
7/1, 2013

THE LEGAL AID SOCIETY  
Steven Banks, Attorney in Chief

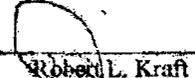
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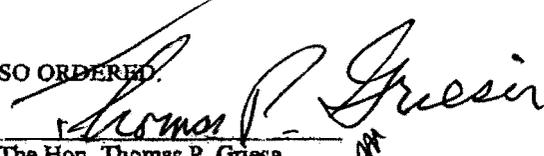
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SO ORDERED.

  
The Hon. Thomas P. Griesa  
U.S. District Judge

Sept. 30, 2013