

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**

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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 Services<sup>1</sup> (“**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

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<sup>1</sup> 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**")<sup>2</sup> and appointed the Hawai'i Appleaseed

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<sup>2</sup> 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 expenses<sup>3</sup>; 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 affirmative<sup>4</sup>, then

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was notice required, because of the nature of the class and the relief sought, which is solely prospective injunctive relief.

<sup>3</sup> 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

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<sup>4</sup> 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 closed<sup>5</sup> (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 CPI<sup>6</sup> 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,

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<sup>5</sup> 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.

<sup>6</sup> 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 CPI<sup>7</sup> 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.

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<sup>7</sup>The 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:

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Alston Hunt Floyd & Ing,  
Class Counsel

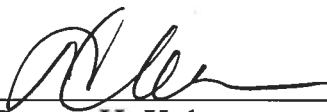
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Appleseed Center for Law and  
Economic Justice, Class Counsel

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Morrison & Foerster,  
Class Counsel

#### FOR DEFENDANT:



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Donna H. Kalama  
Caron M. Inagaki  
Deputy Attorneys General

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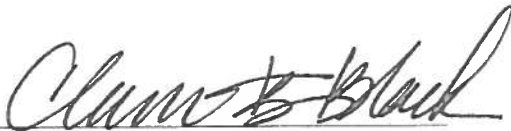
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Alston Hunt Floyd & Ing,  
Class Counsel

Appleseed Center for Law and  
Economic Justice, Class Counsel

Morrison & Foerster,  
Class Counsel

#### FOR DEFENDANT:

Donna H. Kalama  
Caron M. Inagaki  
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**FOR PLAINTIFFS:**

**FOR DEFENDANT:**

\_\_\_\_\_  
Alston Hunt Floyd & Ing,  
Class Counsel



\_\_\_\_\_  
Appleseed Center for Law and  
Economic Justice, Class Counsel

\_\_\_\_\_  
Morrison & Foerster,  
Class Counsel

\_\_\_\_\_  
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**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	
<b>DO NOTHING</b>	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.
<b>OBJECT TO THE SETTLEMENT BY APRIL __, 2017</b>	You may write to the Court about any concerns you may have about the terms of the proposed settlement.
<b>ATTEND THE FINAL APPROVAL HEARING ON APRIL __, 2017</b>	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://hawaiiclassaction.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://hawaiiclassaction.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 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 CLASS ACTION  
SETTLEMENT, APPROVING  
NOTICE PLAN, AND SCHEDULING  
DATE FOR FAIRNESS HEARING

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

Upon consideration of the unopposed Motion for Preliminary Approval of Settlement filed by Defendant (the “Motion”), the hearing before this Court on March 17, 2017, and the entire record herein, the Court grants preliminary approval of the Settlement contained in 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 his unopposed motion for preliminary approval on March 13, 2017, 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.



14. The Parties have now executed a Federal Lawsuit Class Action Settlement Agreement (“Federal Settlement Agreement”), Exhibit A to the Motion, in which the Parties formally document the settlement 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 State Lawsuit Class Action Settlement Agreement (“State Settlement Agreement”), Exhibit B to the Motion, was also provided to the Court.

15. 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.

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

17. 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.

18. Deadlines in this case, including trial deadlines, were previously vacated. Dkt 327.

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 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 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 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 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 5, 2017 (the date on which the mailing list was generated by DHS).

b. Class Counsel will establish an 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, 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, 2018.

c. Beginning not later than \_\_\_\_\_ days after the entry of the Preliminary Approval Order, and subject to the requirements of the Preliminary Approval 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 \_\_\_ calendar days before the date of the Fairness Hearing, 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.

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 file the objection with the Court, no later than \_\_\_\_\_, 2017. 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 file a “Notice of Intention to Appear” with the Court, listing the name, address, and phone number of the attorney, if any, who will appear, 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 \_\_\_\_\_, 2017, 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 \_\_\_\_\_, 2017.

b. Plaintiffs shall file their motion for attorneys' fees and costs, and/or the Motion for Service Awards by no later than \_\_\_\_\_, 2017.

c. Class Members must file any objections to the Settlement and the motion for attorneys' fees and costs and/or the Motion for Service Awards by no later than \_\_\_\_\_, 2017.

d. Class Members who intend to appear at the final Fairness Hearing must file a Notice of Intention to Appear at the Final Fairness Hearing by no later than \_\_\_\_\_, 2017.

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 \_\_\_\_\_, 2017.

f. Class Counsel and counsel for Defendant shall have the right to respond to any objection by no later than \_\_\_\_\_, 2017.

g. The Fairness Hearing will take place on April 24, 2017, at 10:30 a.m., at the United States District Court for the District of Hawaii, in Courtroom Aha Nonoi.

SO ORDERED.

DATED: Honolulu, Hawai‘i, \_\_\_\_\_, 2017.

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

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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 Class Action Settlement, Approving Notice Plan, and Scheduling Date for Fairness Hearing.