

Of Counsel:

**ALSTON, HUNT, FLOYD & ING**

PAUL ALSTON 1126  
J. BLAINE ROGERS 8606  
CLAIRE WONG BLACK 9645  
1001 Bishop Street, Suite 1800  
Honolulu, Hawai`i 96813  
Telephone: (808) 524-1800  
Facsimile: (808) 524-4591  
Email: palston@afhi.com  
brogers@ahfi.com  
cblack@ahfi.com

*Attorneys for Plaintiffs*

**MORRISON & FOERSTER LLP**

MARC D. PETERS, *Pro Hac Vice*  
ALESSA Y. HWANG, *Pro Hac Vice*  
JAMES R. HANCOCK, *Pro Hac Vice*  
755 Page Mill Road  
Palo Alto, California 94304  
Telephone: (650) 813-5600  
Facsimile: (650) 494-0792  
Email: mpeters@mofo.com  
ahwang@mofo.com  
jhancock@mofo.com

(See next page for additional counsel)

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  
(Class Action)

**ORDER GRANTING  
[390] RENEWED, UNOPPOSED  
MOTION FOR AWARD AND  
APPROVAL OF AMENDED  
SETTLEMENT REGARDING  
ATTORNEYS' FEES AND COSTS  
AND SERVICE AWARDS TO  
NAMED PLAINTIFFS AND  
[396] MOTION FOR FINAL  
APPROVAL OF AMENDED CLASS  
ACTION SETTLEMENT**

Final Fairness Hearing

Date: May 21, 2018, 9:45 a.m.

Judge: Hon. Leslie E. Kobayashi

**ADDITIONAL CLASS COUNSEL**

**HAWAII APPLESEED CENTER FOR  
LAW AND ECONOMIC JUSTICE**

VICTOR GEMINIANI 4354

GAVIN THORNTON 7922

119 Merchant Street, Suite 605

Honolulu, Hawai`i 96813

Telephone: (808) 587-7605

Email: victor@hiappleseed.org

gavin@hiappleseed.org

**ORDER GRANTING [390] RENEWED, UNOPPOSED MOTION FOR AWARD AND APPROVAL OF AMENDED SETTLEMENT REGARDING ATTORNEYS' FEES AND COSTS AND SERVICES AWARDS TO NAMED PLAINTIFFS AND [396] MOTION FOR FINAL APPROVAL OF AMENDED CLASS ACTION SETTLEMENT**

Before the Court are (1) Plaintiffs' Renewed, Unopposed Motion for Award and Approval of Amended Settlement Regarding Attorneys' Fees and Costs and Service Awards to Named Plaintiffs, Dkt. 390, and (2) Plaintiffs' Motion for Final Approval of Amended Class Action Settlement, Dkt. 396, to which Defendant filed no opposition (Dkts. 390 and 396 are referred to collectively as the Motions). The Court GRANTS the Motions for the reasons set forth below.

**BACKGROUND**

1. On December 3, 2013, Plaintiffs filed a class action complaint pursuant to 42 U.S.C. § 1983, alleging that Hawaii's Department of Human Services (DHS) violated the Child Welfare Act, Title IV-E of the Social Security Act, §§ 670-679(b) (CWA or Title IV-E). At the time Plaintiffs initiated this action, the foster care maintenance payment rate was \$529 per month per child, regardless of age and had not been increased since 1990. Plaintiffs allege that the foster care maintenance payment is insufficient due to the increased costs of food, housing, utilities, clothing, and other necessities and falls far short of covering the costs that foster care providers incur, in violation of the CWA.

2. On August 17, 2015, the Court granted Plaintiffs' motion for class certification, certifying a class of "all currently licensed foster care providers in Hawai'i who are entitled to receive foster care maintenance payments pursuant to the Child Welfare Act when they have foster children placed in their homes" (the Class), appointing Plaintiff Ah Chong as representative of the Class, and appointing Plaintiffs' counsel as Class Counsel. Dkt. 156.

3. After participating in numerous settlement conferences with United States Magistrate Judge Kevin S.C. Chang, the parties reached an agreement to resolve this action and parallel litigation in the First Circuit Court, State of Hawai'i, *Sheehey v. State of Hawai'i*, Civil No. 14-1-1709-08 VLC. Dkt. 327. The settlement was subsequently memorialized in written settlement agreements filed with this Court on March 14, 2017. Dkts. 340-3, 340-4.

4. The Court preliminarily approved the Federal Class Action Settlement Agreement (Original Settlement). Dkt. 345 (Amended Order Preliminarily Approving Class Action Settlement, Approving Notice Plan, and Scheduling Date for Fairness Hearing). Notices were disseminated to the Class Members. Dkt. 350 (Declaration of Donna Kalama regarding Class Action Notice). One Class Member requested to be excluded from the settlement, but did not object to the terms of the Original Settlement or the proposed request for attorneys' fees and service awards to named Plaintiffs. Dkt. 356 (Letter to Hon. Leslie E. Kobayashi).

5. The Original Settlement was conditioned on funding of required settlement payments by the Hawaii Legislature by a deadline of June 30, 2017. The Legislature refused to appropriate the required funds, causing the Original Settlement to fail. *See* Dkt. 353 (Joint Status Report).

6. On March 7, 2018, the Parties placed the essential terms of an amended settlement (the Amended Federal Settlement) on the record before Judge Chang, Dkt. 384, which was subsequently memorialized in the Amended Federal Lawsuit Class Action Settlement Agreement (Amended Federal Settlement Agreement), executed March 16, 2018. Dkt. 386-3. On March 30, 2018, the Court entered an order preliminarily approving the Amended Federal Settlement and authorizing dissemination of notices to class members. Dkt. 389 (Preliminary Approval Order).

7. Beginning on April 3, 2018, DHS sent the Court-approved notice to a list of 2,840 Class Members, setting forth the terms of the Amended Federal Settlement Agreement and Class Counsel's intent to seek \$850,000.00 in attorneys' fees and costs and service awards for named plaintiffs (to be paid from the award of attorney's fees) and informing Class Members of the right to object to the Amended Federal Settlement and the proposed request for attorneys' fees and service awards to named Plaintiffs. Dkt. 394. No Class Member objected to the settlement or the proposed request for attorneys' fees and service awards. Dkt. 395 (Court Order Regarding the Submission of Class Member Objections).

8. On May 21, 2018, the Court held a Final Fairness Hearing on the Amended Federal Settlement and the Motions. No Class Member appeared to voice objections.

### **Approval of the Amended Settlement**

9. Having considered the Motions, the declarations, evidence and arguments presented by the parties and the entire record in this case, for the reasons stated therein and stated on the record at the May 21, 2018 Final Fairness Hearing, and for good cause shown:

**10.** The Court hereby GRANTS the Motion for Final Approval and finally approves the Amended Federal Settlement as set forth in the Amended Federal Settlement Agreement under Rule 23 and CAFA. The settlement is fair, reasonable, and adequate. *See Churchill Vill., LLC v. Gen Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (setting forth seven factors courts must examine in approving class settlements); *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375-76 (9th Cir. 1993) (explaining that not all factors will apply to every class action settlement and one factor alone may prove determinative in finding sufficient grounds for final approval); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1988) (courts must consider the settlement as a whole in evaluating fairness).

11. The Amended Federal Settlement provides increased foster care maintenance payments to Class Members beginning in August 2018, and

prospective non-monetary relief enforceable by the Class for a period of ten years.

Dkt. 386-3 (Federal Settlement Agreement) at Sections IV.4, IV.5. Specifically,

pursuant to the Amended Federal Settlement Agreement, DHS will:

- a. increase the Basic Board Rate to all foster care providers to \$649 for children ages 0-5; \$742 for children ages 6-11; and \$776 for children and young adults ages 12+ (Amended Federal Settlement Agreement Section II.1(a));
- b. increase the annual Clothing Allowance made available to foster children from \$600 per child per year to \$810 for children ages 0-5; \$822 for children ages 6-11, and \$1026 for children and young adults ages 12+ (*id.*, Section II.1(b));
- c. conduct periodic reviews of its Basic Board Rate and Clothing Allowance by calculating benchmark Basic Board Rates and Clothing Allowances based on procedures and criteria set forth in Section II.2 and II.3 of the Amended Federal Settlement Agreement (*id.*, Section III.1);
- d. seek appropriations from the Hawaii Legislature sufficient to increase the Basic Board Rate and Clothing Allowance to the Benchmark Rates if the difference between the the-existing rates and Benchmark Rates is more than 5% (*id.*, Sections III.2, III.3);
- e. waive the current 120-hour limitation on Difficulty of Care of DOC payments in appropriate circumstances until it implements planned changes to the current DOC system (*id.*, Section IV.1);
- f. provide (in cooperation with Class Counsel) a short summary of the payments and benefits that are available to resource caregivers that will be provided to all newly-licensed resource caregivers and existing resource caregivers at least semi-annually (*id.*, Section IV.2);
- g. agree to an award of \$850,000.00, inclusive of all attorneys' fees, costs, non-taxable expenses, and taxes (*id.*, Section VI).

In exchange, the members of the Class agree to release Defendant in the federal action from claims that were alleged against him in this federal action. *Id.* Section V.

12. The Amended Federal Settlement provides significant and lasting benefits to the Class. While the full monetary value of the settlement cannot be calculated, the increases to the Basic Board Rate alone amount to more than \$7 million each year and the settlement will remain in effect for ten years. The Amended Federal Settlement also includes contingent monetary benefits (*e.g.*, periodic review of the sufficiency of the Basic Board Rate in accordance with agreed-upon cost of living and inflation benchmarks) and non-monetary benefits such as increased access to information.

13. Serious questions of law and fact exist such that these benefits outweigh the possibility of further relief after further litigation, trial, and protracted appeals.

14. In reaching this conclusion, the Court is satisfied that the Amended Federal Settlement was fairly and honestly negotiated and was not the product of fraud, overreaching, or collusion among the parties. The Amended Federal Settlement was the result of extensive, and at times contentious, arm's-length negotiations, conducted by capable counsel with significant experience litigating class actions, and presided over by United States Magistrate Judge Kevin S.C. Chang.



15. Despite being duly notified of the Original Settlement and Amended Federal Settlement, no Class Member submitted written objections to the Court regarding either settlement or to the proposed request for attorney's fees and costs and service awards to named Plaintiffs. No Class Member appeared at the Final Fairness Hearing to object. Furthermore, although one Class Member expressed that she did not wish to participate in the settlement, the Court notes that the Class Member did not express any objection to either the terms of the Original Settlement (or the Amended Federal Settlement) or the representation that counsel has provided to the Class. The Court therefore FINDS that no Class Member objects to the Amended Federal Settlement, and this is further support for the Court's conclusion that the settlement is fair, reasonable, and adequate.

#### **Dissemination of Notices**

16. Pursuant to this Court's Preliminary Approval Order, class notices were sent to DHS-licensed foster care providers who were licensed between August 17, 2015 (the date of entry of the order granting class certification) through March 15, 2018 (the date DHS generated the mailing list). *See* Dkt. 394 (Declaration of Deputy Attorney General Caron Inagaki, outlining methods, scope, and results of class notice program) at ¶¶ 8-10, 13-17.

17. At the Final Fairness Hearing, Defendant's counsel stated that, despite multiple efforts, there were 77 Class Members for whom no usable address could

be determined and that class notices were successfully sent to 2,763 of the 2,840 individuals on the mailing list.

18. The Court therefore FINDS that, as required by Fed. R. Civ. P. 23(e)(1), notice of the settlement was directed in a reasonable manner to all Class Members bound by the Amended Federal Settlement.

19. Notice was also provided to the appropriate State and Federal officials pursuant to 28 U.S.C. § 1715 (CAFA): notice of the proposed Amended Settlement and certain related documents were served upon the Attorney General of the United States, and the Attorneys General of each of the 44 states in which any Class Member resides. Dkt. 394 at ¶¶ 21-23. Defendant resent one returned CAFA notification, addressed to the Attorney General of Mississippi, and provided information via e-mail in response to an inquiry from the office of the South Dakota Attorney General. *Id.* at ¶¶ 24, 26.

#### **Award of Fees and Service Awards to Named Plaintiffs**

20. On August 17, 2015, the Court appointed attorneys from the Hawai'i Appleseed Center for Law and Economic Justice, Alston Hunt Floyd & Ing, and Morrison & Foerster LLP as Class Counsel because they met all of the requirements of Fed. R. Civ. P. 23(g). Dkt. 156 at 34.

21. Federal Rule of Civil Procedure 23(h) states: "In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are

authorized by law or by the parties' agreement." Thus, pursuant to Rule 23(h), the parties' Amended Federal Settlement Agreement alone is a sufficient basis for an award of reasonable attorneys' fees to Plaintiffs. However, the Court has independently reviewed the requested award for reasonableness and FINDS that the \$850,000.00 amount of attorney's fees agreed upon by the parties, which is inclusive of all costs incurred as well as Service Awards to named Plaintiffs, is manifestly reasonable.

22. Although Plaintiffs do not request a lodestar award of attorneys' fees in this case, this Court uses the fees that it could have awarded Plaintiffs under the lodestar analysis as a gauge of the reasonableness of the attorneys' fees provided for in the Amended Federal Settlement Agreement. *See, e.g., Villon, et al. v. Marriott Hotel Servs., Inc.*, CV 08-00529 LEK-RLP, Order Granting Final Approval of Class Action Settlement and Granting Pltfs.' Motion for Final Approval of Class Action Settlement, filed 5/30/14 (Dkt. 211), at 8 (using the lodestar method as a guide to review the agreed upon attorneys' fees); *Shea v. Kahuku Hous. Found., Inc.*, Civil No. 09-00480 LEK-RLP, 2011 WL 1261150, at \*6 (D. Hawai'i Mar. 31, 2011) (citation omitted) (using the lodestar analysis as a guide to evaluate the reasonableness of the agreed upon attorneys' fees in a settlement of action pursuant to Rule 23(h)).

23. Class Counsel did substantial work identifying, investigating, prosecuting, and settling Plaintiffs' and the Class Members' claims, including preparing for trial twice—in 2017, prior to the Original Settlement, and again in 2018 after the Original Settlement failed.

24. Class Counsel risked time and effort and advanced costs and expenses with no ultimate guarantee of compensation. Class Counsel committed substantial resources to prosecuting this case, including hiring experts and fronting all litigation costs, which amount to more than \$275,000.00. Dkt. 390-1 ¶ 11.

25. To gauge reasonableness, this Court has used a modified hourly calculation as supplied by Plaintiffs' counsel. Dkt. 390-1 (Black Decl.) at ¶ 13. Examining only hours worked by core timekeepers, up through the 2017 Settlement (*i.e.*, not including preparation for trial in 2018 and work negotiating, executing and effectuating the Amended Federal Settlement), at Hawai'i adjusted rates, Class Counsel produced a discounted lodestar of attorney's fees of \$1,417,965.19.

26. The Court has thoroughly reviewed the presentation of the fees and FINDS that, for purposes of the instant Motions, the hours that Class Counsel expended in this case would likely be compensable under the lodestar analysis and further FINDS that an award of \$850,000.00 is manifestly reasonable.

27. The Court also FINDS reasonable service awards of \$5,000.00 each to Raynette Ah Chong, Patrick Sheehey, and Patricia Sheehey. Service awards are

common in class action cases and are important to compensate Plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and other burdens. Pursuant to the Amended Federal Settlement Agreement, the Service Awards shall be paid from the award of attorney's fees.

### **CONCLUSION**

28. The Court FINDS that the requirements of Fed. R. Civ. P. 23(e) have been satisfied and that the Amended Federal Settlement is fair, reasonable, and adequate.

29. The Court therefore GRANTS final approval of the Amended Federal Settlement and GRANTS Plaintiffs' Renewed, Unopposed Motion for Award and Approval of Amended Settlement Regarding Attorneys' Fees and Costs and Service Awards to Named Plaintiffs.

30. The Court further ORDERS that:

- a. The award of attorneys' fees to Class Counsel shall be paid by check payable to Alston Hunt Floyd & Ing Client Trust Account, on an expedited basis, within a reasonable time after the Governor signs the budget bill;

- b. Service Awards of \$5,000.00 each to Raynette Ah Chong, Patrick Sheehey and Patricia Sheehey shall be paid from the award of attorney's fees;
- c. Within 14 days after DHS issues the first payments based on the newly-established Basic Board Rates, the parties will submit a stipulated dismissal with prejudice. *See* Amended Federal Settlement Agreement at Section II.7.

31. Upon submission of the stipulated dismissal with prejudice, the Class Members shall be barred from bringing claims covered by this lawsuit for a period of ten years from the effective date of the Amended Federal Settlement Agreement. *See* Amended Federal Settlement Agreement at Section V.

32. The Court RETAINS exclusive jurisdiction over the parties and Class Members to enforce the terms of the Amended Federal Settlement Agreement. *See* Amended Federal Settlement Agreement at Section IV.3.

SO ORDERED.

DATED: Honolulu Hawai'i May 25, 2018.



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

Ah Chong v. Bhanot, Civil No  
[390] RENEWED, UNOPPOSED MOTION FOR AWARD AND APPROVAL OF AMENDED SETTLEMENT REGARDING ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS TO NAMED PLAINTIFFS AND [396] MOTION FOR FINAL APPROVAL OF AMENDED CLASS ACTION SETTLEMENT

PROPOSED] ORDER GRANTING  
[390] RENEWED, UNOPPOSED MOTION FOR AWARD AND APPROVAL OF AMENDED SETTLEMENT REGARDING ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS TO NAMED PLAINTIFFS AND [396] MOTION FOR FINAL APPROVAL OF AMENDED CLASS ACTION SETTLEMENT

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**U.S. District Court**

**District of Hawaii**

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**ORDER GRANTING [390] RENEWED, UNOPPOSED MOTION FOR AWARD AND APPROVAL OF AMENDED SETTLEMENT REGARDING ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS TO NAMED PLAINTIFFS AND [396] MOTION FOR FINAL APPROVAL OF AMENDED CLASS ACTION SETTLEMENT.**

**Signed by JUDGE LESLIE E. KOBAYASHI on 05/25/2018.**

**(eps, )**

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Paul Alston palston@ahfi.com, notice@ahfi.com, rjkgp@ahfi.com

Caron M. Inagaki Caron.M.Inagaki@hawaii.gov, Derick.Y.Ikemoto@Hawaii.gov,  
Lavonne.M.Makaawaawa@Hawaii.gov

Gavin K. Thornton gavin@hiappleseed.org, gavinthornton@gmail.com

James B. Rogers brogers@ahfi.com, luehara@ahfi.com, msisiam@ahfi.com, notice@ahfi.com

M. Victor Geminiani Victor@lejehawaii.org

Skyler G. Cruz skyler.g.cruz@hawaii.gov, angelina.j.clifton@hawaii.gov, carol.l.nagata@hawaii.gov,  
caron.m.inagaki@hawaii.gov

Claire Wong Black cblack@ahfi.com, ccrawford@ahfi.com, notice@ahfi.com

James R. Hancock JHancock@mofo.com, frances-sagapolu9300@ecf.pacerpro.com,  
fsagapolu@mofo.com, james-hancock-5026@ecf.pacerpro.com

Alessa Y. Hwang ahwang@mofo.com

Marc David Peters mdpeters@mofo.com

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