NOTICE OF SETTLEMENT OF CLASS ACTION LAWSUIT

United States District Court Southern District of New York
Elisa W. v. The City of New York
Case No. 15-cv-5273 (LTS) (HBP).

IMPORTANT NOTICE: This notice concerns a settlement that may affect your rights. Please read it carefully.

ATTENTION: To all children who are or will be in the New York City foster care system in the custody of the Commissioner of the Administration for Children's Services ("ACS"), and their legal guardians.

Are you a child in foster care in New York City?

If so, you are a member of the plaintiff class in a lawsuit against the State of New York, the New York State Office of Children and Family Services ("OCFS"), the Commissioner of OCFS, Sheila Poole, in her official capacity, and the City of New York, the Administration for Children's Services ("ACS") and the Commissioner of ACS, Gladys Carrión, in her official capacity.

PURPOSE OF THIS NOTICE

This notice is to inform you of the proposed settlement in a class action lawsuit called, Elisa W. v. The City of New York, Case No. 15-cv-5273 (LTS) (HBP). The settlement is between the plaintiffs, all children who are now or will be in foster care in New York City, and the Public Advocate for the City of New York, Letitia James, and the defendants, the State of New York, OCFS and the Commissioner of OCFS. A federal court in New York City is now considering approving the settlement and has approved this notice.

This notice describes the case and what the Commissioner of OCFS has agreed to do to improve the foster care system of New York City. Please read the detailed notice for more information.

QUESTIONS OR MORE INFORMATION

If you have questions after reading this notice, or you would like a copy of the settlement agreement (called the Consent Decree), call the lawyers who represent the children in this lawsuit:

Cravath, Swaine & Moore LLP
(212) 474-2100

BRIEF DESCRIPTION OF THE LAWSUIT

The named plaintiffs in this case are 19 children in the New York City foster care system and the New York City Public Advocate, Letitia James, (the "Plaintiffs"). The children are represented by their legal representatives (called "next friends"). In July 2015, the Named Plaintiff Children on behalf of themselves and children in similar situations (the "class members"), along with the Public Advocate filed a lawsuit against defendants, the City of New York, the New York City Administration for Children's Services ("ACS"), the State of New York, the New York State Office for Children and Family Services ("OCFS"), and the respective Commissioners of ACS and OCFS in their official capacities (the "Defendants").

Named Plaintiff Children filed this lawsuit on behalf of themselves and the other class members in federal court in New York City seeking to improve alleged failures of New York City's foster care system. ACS has custody of all children in foster care in New York City. OCFS oversees ACS' operation of the foster care system. ACS has contracts with private foster care agencies that handle the day-to-day care of children in foster care in New York City. The lawsuit claims that the Defendants have failed to protect children in foster care from harm and, in failing to do so, have violated the children's rights. The lawsuit also alleges that the Defendants have violated federal and state law that requires them to create plans to make sure children have safe and permanent homes and are provided with needed services. By filing this lawsuit, the Plaintiffs sought a court order that would require the State and City defendants to act in certain ways to protect children in foster care. Plaintiffs do not seek any money from the Defendants.

THE CLASS

The class includes: All children who are now or who will be in the foster care custody of the Commissioner of ACS during the time period that this settlement is in effect. This means that if you are currently in foster care you are a member of the class.

THE PROPOSED SETTLEMENT

The State of New York, OCFS and the Commissioner of OCFS have agreed to settle this lawsuit and to take steps now to improve the foster care system in New York City. By settling, the State, OCFS and the Commissioner of OCFS do not admit to any wrongdoing and this settlement should not be viewed as confirming the truth of any claims made in the lawsuit. It is important to note that the City of New York, ACS and the Commissioner of ACS are not part of the settlement agreement and that the lawsuit against them remains open.

The proposed settlement must be approved by the Court before it can be final. The Court has approved this notice only to provide this information to the class of children and their legal guardians and representatives. If the Court gives final approval to the proposed settlement, all of the terms of the settlement will apply to everyone in the class of children. This settlement was negotiated in many sessions, between the children's lawyers (Julie A. North of Cravath, Swaine & Moore LLP and Marcia Robinson Lowry of A Better Childhood), the attorney for Letitia James, Public Advocate for the City of New York, and lawyers for the State of New York.

SUMMARY OF THE PROPOSED SETTLEMENT

The settlement agreement will last for seven years from the date the Court approves it, and may continue for longer if the class of children argues to the Court that the Commissioner of OCFS is not doing what she is required to do under the settlement agreement. If there are such claims, the settlement agreement will continue until the Court decides either that those claims are incorrect or until the Commissioner of OCFS completes what she must do to fix the problems. While the settlement agreement is in effect, members of the class of children and their representatives will not be able to bring new class-wide claims for systemwide court orders against the State that raise similar claims to those in Plaintiffs' Amended Complaint. However, individual children can bring lawsuits on claims on their own behalf regarding their own treatment in foster care and/or for money damages. It does not limit any claims that children or their parents or guardians may make or any actions they may seek in the Family Court.

For the settlement, the Commissioner of OCFS has agreed to take the following steps now to improve oversight of the foster care system in New York City, including:

- **Committing to reform**: Under the agreement, the Plaintiffs and the Commissioner of OCFS agree that children in the New York City foster care system should be protected from physical, mental and emotional harm ("maltreatment"), provided with permanent homes and families within a reasonable time, and provided with foster care placements and services that promote their well-being. The agreement aims to achieve these goals.

- **Designating a Monitor**: The Commissioner of OCFS will hire a Monitor who will be employed for at least three years.

  - The Monitor will observe, review, report findings, and make recommendations about the safety, permanency and well-being of foster children in the foster care system in New York City.

  - The Monitor will create reports four times a year ("quarterly") that evaluate:

    1. the foster care placement process in New York City;

    2. any potential causes of maltreatment of children in foster care in New York City and ways to prevent maltreatment;

    3. whether services in the foster care system in New York City are available and appropriate; and

    4. the recruitment of an appropriate and acceptable number and type of placements, including potential permanent families, for children.

- **Hiring a NYC Research Expert**: The Commissioner of OCFS will require ACS to hire a research expert for at least two years.
    - The Research Expert will confidentially review case records of children in the custody of ACS to determine if the records comply with state and federal laws, regulations and policies.
    - The Research Expert will evaluate the safety, permanency and well-being of the foster children.
    - The Research Expert will produce confidential reports about individual cases and will produce aggregate reports about all findings from the reviews twice a year ("bi-annually"). These reports will be used to determine if ACS or the foster care agencies are not substantially following federal and state law.
- **Put into Action Corrective Action Plans**: If the Monitor or the Research Expert finds that ACS or the contract agencies are not substantially following the applicable laws, regulations or policies, either the Commissioner of OCFS directly or ACS under the oversight of the Commissioner of OCFS, will decide whether any steps are necessary to correct the problems. This is called taking "Corrective Action".
    - If Corrective Action is necessary, the Commissioner of OCFS will require that ACS or the foster care agencies carry out corrective action plans to fix the problem.
    - Plaintiffs will be able to comment on any corrective action plans that OCFS creates as a result of the Monitor's or Research Expert's reports.

HOW TO OBJECT TO THE SETTLEMENT

The settlement agreement is not final yet. The agreement will only become final if the Court approves it after holding a Fairness Hearing where the Judge will consider objections from class members. The Fairness Hearing is a public hearing at which the Judge will hear testimony about whether the proposed settlement is fair, reasonable and adequate. The Court will hold this hearing to consider the proposed settlement on August 5, 2016 at 10:30a.m., in the United States Courthouse at 500 Pearl Street, New York, NY 10007.

Before the Fairness Hearing, members of the class can let the Court know whether they agree or disagree with the proposed settlement. If you are currently a child in foster care, you are a member of the class and have a right to tell the Court whether you agree or disagree with the proposed settlement. You can do this directly or through your legal guardian or representative, as explained on the next page. If the Court approves the settlement, you and all other class members will be bound by the settlement.

If you agree with the proposed settlement, you do not need to take any action. Class members do not need to come to the Court for the Fairness Hearing, but you may if you wish.

If you would like to object to the proposed settlement, you must object in writing. Your letter must be signed by you and it must include the following information.

- **The name and number of the lawsuit: Elisa W. v. The City of New York, Case No. 15-cv-5273;**
- **Your full name and contact information;**
- **Your legal guardian or representative's name and contact information, if they are submitting an objection on your behalf**
- **Your objection(s) and the reason for each objection(s); and**
- **Your signature.**
- **You do not need to come to the Fairness Hearing or speak at the Fairness Hearing. However, if you wish to speak at the hearing or have your guardian or representative speak on your behalf, please include a sentence in your letter to tell the Court that you wish to speak.**

You must mail your letter to the following address by June 21, 2016 so that the class members' lawyers can file the objection with the Court:

Julie A. North
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

OBTAINING ADDITIONAL INFORMATION

A complete version of the settlement agreement (called a "Consent Decree") can be found on the website for the Public Advocate of the City of New York: http://pubadvocate.nyc.gov/, the website for the New York State Office of Children and Family Services: http://ocfs.ny.gov/ , and by requesting it from plaintiffs' attorneys by calling (212) 474-2100.

If you have questions after reading this notice, or you would like a copy of the full settlement agreement, call the lawyers who represent the children:

Cravath, Swaine & Moore LLP
(212) 474-2100

Dated: New York, NY
April 22, 2016