

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<p>FLORENCE WALLACE, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>ROBERT J. POWELL, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>CIVIL ACTION</p> <p>NO. 3:09-cv-0286</p> <p>The Honorable A. Richard Caputo</p>
<p>WILLIAM CONWAY, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MICHAEL T. CONAHAN, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>CIVIL ACTION</p> <p>NO. 3:09-cv-0291</p> <p>The Honorable A. Richard Caputo</p>
<p>H.T., et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MARK A. CIAVARELLA, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>CIVIL ACTION</p> <p>NO. 3:09-cv-0357</p> <p>The Honorable A. Richard Caputo</p>

<p>SAMANTHA HUMANIK.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>MARK A. CIAVARELLA, JR, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>CIVIL ACTION</p> <p>NO. 3:09-cv-0286</p> <p>The Honorable A. Richard Caputo</p>
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**JOINT MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT BETWEEN
PLAINTIFFS AND PROVIDER PARTIES**

Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs, together with Defendants PA Child Care, LLC (“PACC”), Western PA Child Care, LLC (“WPACC”), and Mid-Atlantic Youth Services, Inc. (“MAYS” and, together with PACC and WPACC, “Provider Defendants”), through their undersigned counsel, jointly move for an order certifying a settlement class pursuant to Federal Rule of Civil Procedure 23(b)(3) and preliminarily approving a partial settlement that, upon final judicial approval, shall fully resolve all of Plaintiffs’ claims against the Released Parties, as defined in the Master Settlement Agreement (“MSA” or “Settlement Agreement” or “Agreement”), attached hereto as Exhibit 1; and, in connection therewith, the Plaintiffs and Provider Defendants (together, the “Parties”) seek an order to:

1. Certify the Settlement Classes defined herein for settlement purposes only;
2. Appoint counsel to represent all proposed Settlement Class Members (“Settlement Class Counsel”) solely for the purposes of the implementation, approval and consummation of this Settlement;
3. Appoint Representative Plaintiffs solely for the purposes of the implementation, approval and consummation of this Settlement;
4. Grant preliminary approval of this Settlement Agreement and schedule deadlines for Settlement Class Members to participate in the Settlement, opt out of the Settlement, or object to the settlement.
5. Authorize notice of this Settlement Agreement in the form attached to the Motion;
6. Schedule a hearing to review any potential comments concerning this Agreement, to consider its fairness, reasonableness and adequacy, and to determine whether to enter a Final Order approving the Settlement as proposed by the Parties (“Final Settlement Hearing”); and

7. Require non-binding mediation for any Settlement Class Member who properly and timely opts out and intends to pursue a separate claim against the Released Parties.

For the reasons set forth below, and in Plaintiffs' Memorandum of Law,¹ the Motion should be granted.

BACKGROUND

1. The first of these consolidated cases, *Wallace v. Powell*, No. 09-0286, was filed on February 13, 2009 on behalf of plaintiffs represented by Caroselli, Beachler, McTiernan & Conboy, LLC ("Caroselli Beachler") against a number of defendants, including the Provider Defendants.

2. Two putative class actions, *Conway v. Conahan*, No. 09-0291, filed by Anapol Schwartz, and *H.T. v. Ciavarella*, No. 09-0357, filed by Hangleby Aronchick Segal Pudlin & Schiller ("Hangleby Aronchick") and Juvenile Law Center ("JLC"), were filed shortly thereafter, again naming as defendants, among others, the Provider Defendants.

3. In addition, presently pending before this Court are the following related civil actions against the Provider Defendants:

(a) *Humanik v. Ciavarella*, No. 09-630

¹ Plaintiffs will file their supporting Memorandum of Law within fourteen days of the date of this Motion, pursuant to Local Rule 7.5.

(b) *Clark v. Ciavarella*, No. 09-2535

(c) *Dawn v. Conahan*, No. 10-797

(d) *Belanger v. Ciavarella*, No. 10-1405

(e) *Elia v. Powell*, Nos. 11-0465, 11-0466

(f) *Gillette v. Ciavarella*, No. 11-658

These cases, together with *Wallace*, *Conway*, and *H.T.*, are referred to collectively herein as the “Civil Actions.”²

4. Three of the Civil Actions, *Conway*, *H.T.*, and *Belanger*, are class actions. The *Conway* and *H.T.* plaintiffs filed a Master Complaint for Class Actions (“CAC”) in June 2009.

5. The remaining Civil Actions were filed on behalf of individual plaintiffs. Contemporaneously with the filing of the Master Complaint for Class Actions, the *Wallace* and *Humanik* plaintiffs filed a Master Long Form Complaint for individual actions (“IC”).

6. The Civil Actions assert a number of causes of actions against the Provider Defendants, including: (1) claims under 42 U.S.C. § 1983 (IC Count III, V; CAC Counts II, IV); (2) claims alleging violations of 18 U.S.C. §§ 1961 *et seq.* (IC Count I; CAC Counts V, VI); (3) claims alleging conspiracy to violate 18

² The term Civil Actions is different from the term “Actions.” Actions only refers to the lawsuits included in this Settlement and does not include the *Belanger* or the *Clark* cases.

U.S.C. § 1962(d) (IC Count II; CAC Count VII); and (4) a claim alleging state-law civil conspiracy (IC Count VIII).

7. On August 24, 2010, the Court's ruling on motions to dismiss filed in the *Wallace, Conway, H.T.*, and *Humanik* cases allowed said cases, in large part, to proceed. (*See* Doc. No. 573.)

8. In 2011, following extensive arms-length negotiations, Plaintiffs in the Actions reached a settlement (the "Mericle Settlement") with Defendants Robert K. Mericle and Mericle Construction, Inc. (collectively the "Mericle Parties") on December 16, 2011. The Court conditionally approved the Mericle Settlement on February 28, 2012 and appointed the law firms of Hangley Aronchick; Caroselli Beachler; Anapol Schwartz; and JLC as acting Class Counsel on a preliminary basis. (*See* Doc. No. 1084.)

9. Class Counsel noticed, processed, and administered the Mericle Settlement for the next eight months. A final approval hearing for the Mericle Settlement was held on November 19, 2012. Thereafter, the Court granted final approval of the Mericle Settlement and final certification of the Mericle Settlement Classes for settlement purposes. Additionally, the Court found that Class Counsel adequately represented the Classes for purposes of entering and implementing the Mericle Settlement and satisfied the requirements of Rule 23 of the Federal Rules

of Civil Procedure. The Court also dismissed the claims against the Mericle Parties with prejudice. (*See* Doc. No. 1268.)

10. Apart from the Mericle Settlement, the litigation proceeded against the Provider Defendants and other defendants, including former judges Michael Conahan and Mark Ciavarella, Robert Powell, and Vision Holdings. Discovery has been ongoing. Documents have been produced by Plaintiffs, by the Provider Defendants, and by other defendants in the Civil Actions and depositions have been taken.

11. On May 14, 2013, the Court granted Class Plaintiffs' Motion for Class Certification as to All Issues of Defendants' Liability to Plaintiffs and certified litigation classes pursuant to Federal Rule of Civil Procedure 23(b)(3). (*See* Doc. No. 1410.)

12. Also in 2013, the Parties entered into settlement discussions. Following extensive arms-length negotiations and due diligence, the Parties to the Actions reached a settlement of Plaintiffs' claims against the Provider Defendants. The terms and conditions of the Settlement are set forth in the MSA attached as Exhibit 1.

13. Despite the Parties' strong belief in their respective positions, the Parties recognize that there are substantial uncertainties and significant litigation costs with respect to the Actions and their potential outcomes if they were taken to

trial. Having thoroughly considered their investigations and analyses of the facts and their evaluations of the law relating to the matters set forth in the Complaints, they have each determined that settlement of the Plaintiffs' claims and allegations, as set forth in the MSA, is a fair and reasonable result for the Settlement Class Members.

14. The delay inherent in complex litigation may eliminate or diminish the chance for any meaningful recovery from the Provider Defendants. For that reason and for the reasons outlined above and more fully set forth in Plaintiffs' Memorandum of Law, Plaintiffs thus desire to proceed promptly to finalize and implement their settlement with the Provider Defendants.

15. While denying any liability, the Provider Defendants also consider it desirable that the Actions be settled and ended so as to halt the substantial expense of litigation.

16. After this settlement, additional claims will remain in the litigation, including Plaintiffs' claims against the Non-Released Parties, as defined in the MSA.

17. For these reasons, both Plaintiffs and the Provider Defendants believe it is in their best interests, and in the best interest of the members of the Settlement Class, to settle the Actions under the terms presented.

BASIC TERMS OF THE SETTLEMENT

The Settlement Class

18. Pursuant to Paragraph I.A. of the Settlement Agreement, the proposed Settlement Classes, divided into a Juvenile Settlement Class and a Parent Settlement Class, are defined as follows:

- A. All juveniles who appeared before former Luzerne County Court of Common Pleas Judge Mark A. Ciavarella Jr. between January 1, 2003 and May 28, 2008 who were adjudicated or placed by Ciavarella (“Juvenile Settlement Class”); and
- B. All parents and/or guardians of all juveniles who appeared before former Luzerne County Court of Common Pleas Judge Mark A. Ciavarella Jr. between January 1, 2003 and May 28, 2008 and who, in connection with their child’s appearance: (i) made payments in their own names or had wages, social security or other entitlements in their own names garnished or withdrawn; (ii) paid costs, fees, interest and/or penalties in their own names; (iii) suffered any loss of companionship and/or financial integrity (“Parent Settlement Class”), and who were not fully reimbursed as a result of claims made in connection with the Mericle Settlement, defined in the MSA.

The Released Parties

19. Paragraph I.B.36 of the MSA defines the Released Parties, which include the “Provider Parties” and the “Zappala Parties” as defined in Paragraphs I.B.33 and I.B.42 of the MSA. The Provider Defendants have agreed to settle for the benefit of all Released Parties.

The Cash Settlement Fund

20. In final settlement of the obligations of the Released Parties to the Settlement Class Members, and in return for full and unconditional releases of the claims of the Settlement Class Members against the Provider Defendants, the Provider Defendants have agreed to pay a total of \$2,500,000.00 (the “Settlement Amount”) into an escrow account at PNC Bank (“Escrow Account”).³ The Settlement Amount will be deposited into the Escrow Account in three transactions:

- (1) Subsequent to the Court’s entry of an order conditionally approving the Settlement, but no later than June 1, 2014, the Provider Defendants will transfer \$600,000.00 into the Escrow Account (the “First Escrow Payment);
- (2) No later than June 1, 2015, the Provider Defendants will transfer \$1,000,000.00 into the Escrow Account (the “Second Escrow Payment”); and
- (3) No later than December 21, 2015, the Provider Defendants will transfer \$900,000.00 into the Escrow Account (the “Third Escrow Payment”).

21. The settlement proceeds described above comprise the “Cash Settlement Fund” and shall be applied as follows:

³The Escrow Agreement is to be attached as Exhibit D to the MSA. It will be filed with the Court upon finalization with PNC Bank.

- (1) Common benefit attorneys' fees and costs awarded by the Court upon application by Settlement Class Counsel pursuant to Paragraph II.C of the Settlement Agreement;
- (2) All settlement administration costs and costs of notice related to the settlement; and
- (3) Distribution of all remaining funds to the Settlement Class Members who properly and timely submit the required Proof of Claim Form and any required additional documentation, as described in Paragraph II.D of the Settlement Agreement and in the Notice.

The Plan of Allocation

22. Under the Plan of Allocation, the amount remaining in the Cash Settlement Fund after payment of the attorneys' fees and cost will be distributed as described in the Notice of the Proposed Settlement, attached as Exhibit A to the MSA. Exhibit A includes the "Legal Notice" of the proposed Settlement and an abbreviated version of the Legal Notice, referred to as the "Published Notice."

Notice

23. As described generally in Paragraph IV.A of the Settlement Agreement, adequate notice will be provided to Settlement Class members.

24. Upon approval by the Court, the Legal Notice of Proposed Settlement will be mailed via first class mail to the last known address of each Settlement Class Member for whom Settlement Class Counsel have an address, advising Settlement Class Members of the Settlement Agreement; of the procedure for filing

a Proof of Claim Form, opting out and/or objecting to the Settlement; and of the applicable deadlines.

25. The Legal Notice will also be available on the settlement website, www.kidswinsettlement.com, the same date on which it is mailed to the Settlement Class Members. This website is the same website accessed by Settlement Class Members for information about the Mericle Settlement.

26. Upon approval by the Court, the Published Notice will be published in the *Citizens Voice* and the *Times Leader* the same week the Legal Notice is mailed to Settlement Class Members. The Proof of Claim deadline, which will be assigned by the Court in the Preliminary Approval Order, will be inserted into the Published Notice before publication.⁴

Opt-Outs and Objections

27. Pursuant to Paragraph IV.C of the Settlement Agreement, Settlement Class Members will have the right to exclude themselves from the Settlement (“Opt-Out”) by returning a Proof of Claim Form indicating their Opt-Out election no later than the Proof of Claim Deadline (also, the “Opt-Out Deadline”).

⁴ The Proof of Claim deadline assigned by the Court in the Preliminary Approval Order will be no later than 60 days after the Court has entered its Preliminary Approval Order and shall be consistent with Fed. R. Civ. Pro. 6(a), meaning that the deadline will not fall on a weekend or legal holiday.

28. Pursuant to Paragraph IV.E of the Settlement Agreement, Settlement Class Members will also have the right to object to the Settlement no later than the Proof of Claim Deadline (also, the “Objection Deadline”). In order to object to the Settlement, Settlement Class Members shall deliver to the Claims Committee a written statement of any objection(s) as described in Paragraph V of the MSA.

29. In order for an Opt-Out or Objection to be timely, the completed form or written objection must be either (1) physically received by the Claims Committee by the Proof of Claim Deadline (which is the same as the Opt-Out Deadline and the Objection Deadline),⁵ or (2) clearly postmarked by the United States Postal Services or a commercial mail carrier no later than the Proof of Claim Deadline.

30. Settlement Class Members who do not timely Opt-Out shall automatically be included in the settlement as Settlement Class Members, as described in Paragraph IV.D of the Agreement.

31. Settlement Class Members who elect to opt out of the Settlement (the “Opt-Out Plaintiffs”) and who intend to pursue claims against the Provider Defendants will, pursuant to Paragraph VII.A of the Agreement, be required to participate in confidential non-binding mediation with the Provider Defendants.

⁵ The Proof of Claim Deadline, which is the same date as the Opt-Out Deadline and the Objection Deadline, will be designated in the Court’s order conditionally approving the settlement.

32. Pursuant to Paragraph VII.B of the Agreement, if Settlement Class Members Opt-Out of the Settlement, the Settlement Amount shall be reduced by an amount equal to the aggregate value of the Opt-Out Plaintiffs' claims under the Plan of Allocation.

The Claims Committee

33. The Claims Committee, as further described in Paragraph V of the MSA, shall consist of four attorneys, including one representative from each of the following firms: (1) Hangley Aronchick; (2) Anapol Schwartz; (3) Caroselli Beachler; and (4) JLC. The Provider Defendants shall have no liability for the administration and processing of claims. The Claims Committee shall be responsible for: (1) reviewing the Proof of Claims Forms returned by the Proof of Claim Deadline; (2) determining which Settlement Class Members have elected to Opt-Out; (3) notifying the Court and Provider Defendant Counsel of any objections to the Settlement; and (4) pursuant to the Plan of Allocation, calculating the amount of the Cash Settlement Fund to be paid to each Settlement Class Member who participates in the Settlement.

34. The Claims Committee will maintain a toll-free number (1-866-510-3030) and a website (www.kidswinsettlement.com) for Settlement Class Members. The toll-free number and website address will be printed in the Legal Notice and the Published Notice. The Claims Committee shall make itself available for

consultations with Settlement Class Members as reasonably necessary to assist any Settlement Class Member in evaluating and asserting his or her rights under the Settlement Agreement and Plan of Allocation.

35. As required by Paragraph V of the Settlement Agreement, the Claims Committee will report to the Court the number of: (a) individuals who participating in the Settlement; (b) Settlement Class Members who qualifying for payment under the terms of the Settlement, (c) Settlement Class Members who opt out of the Settlement, and (d) Settlement Class Members who submit objections to the Settlement.

36. If the Court gives final approval to the Settlement at or following the Final Settlement Hearing, the Claims Committee will coordinate the payment to Settlement Class Members pursuant to the Plan of Allocation.

Appeals from Allocation Determinations

37. Pursuant to Paragraph IV.F of the Settlement Agreement, the Parties request that the Court approve Judge Marina Corodemus (Ret.) as the Special Master for Allocation Appeals, to resolve the claims of each Settlement Class Member who disputes the award made to him or her by the Claims Committee.

38. Judge Corodemus was appointed and served with distinction as the Special Master for Allocation Appeals for the Mericle Settlement (*see* Doc. No. 1268), and is therefore familiar with this litigation.

Opt-Out Termination Right

39. Pursuant to Paragraph VII.A of the MSA, the Provider Defendants may terminate the MSA, in their sole discretion, if seventy (70) or more of the potential members of the Juvenile Settlement Class timely and properly opt out of the Settlement (“Opt-Out Termination Right”).

40. Within sixty (60) days of the Opt-Out Deadline, the Provider Defendants shall notify Settlement Class Counsel in writing of their intention to withdraw from and terminate the MSA (“Opt-Out Termination Deadline”) or to remain bound by the MSA and proceed with the Settlement.

41. Pursuant to Paragraph VII.B of the MSA, if the Provider Defendants choose not to exercise their Opt-Out Termination Right, then the First Escrow Payment shall be reduced by an amount equal to the aggregate value of the Opt-Out Plaintiffs’ claims under the Plan of Allocation consistent with Paragraph II.A, and such amount shall be returned to the Provider Defendants.

THE SETTLEMENT CLASS SHOULD BE PRELIMINARY CERTIFIED

42. The Parties jointly seek certification of this Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3). Rule 23 provides for class treatment when the elements of Rule 23(a) are met and “questions of law or fact common to class members predominate over any questions affecting only individual members,

and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”

43. This Court has previously certified a litigation class under Rule 23 applying the same factors as required to certify a class for the purposes of the Provider Defendant Settlement.

44. As set forth below, the following elements of Rule 23(a) are established: (1) the settlement class is so numerous that separate joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Numerosity

45. According to daily case lists maintained by the Juvenile Probation Department and reviewed by Settlement Class Counsel and the Claims Committee for the Mericle Settlement, the Juvenile Settlement Class consists of at least 2,400 individuals who were adjudicated delinquent or referred to placement by Ciavarella between January 1, 2003 and May 28, 2008. The Parent Settlement Class is at least as large; based on the information reviewed by the same. For purposes of this Settlement, however, the Cash Settlement Fund will only be used

to reimburse Parent Settlement Class Members who were not fully reimbursed for eligible payments by the Mericle Settlement. (*See* Doc. No. 1409, at 9.)

Commonality

46. The claims set forth in the Master Complaints raise many questions of law or fact common to the Settlement Class Members. “When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more elements of that causes of action will be common to all of the persons affected.” Newberg § 3:20 (5th ed. 2011). This element is satisfied. (*See* Doc. No. 1409, at 9-12.)

Typicality

47. The claims of the Class Representatives are typical of the claims of the class. (*See* Doc. No. 1409, at 13-14.)

48. As described in additional detail in Plaintiffs’ Memorandum of Law, the proposed Juvenile Settlement Class representatives assert the same facts and claims against the Defendants as are asserted on behalf of the classes they represent.

49. Alexandra Fahey and Dezare Dunbar, like the other Settlement Class Members who will be paid from the Probation Only Benefit Fund, as described in the Notice, were adjudicated delinquent by Ciavarella during the class period, but spent no time in out-of-home placements.

50. H.T. and Jessica Van Reeth, like the other Settlement Class Members who will be paid from the Non-PACC/WPACC Benefit Fund, as described in the Notice, were adjudicated delinquent by Ciavarella during the class period, and were sent to out-of-home placements by Ciavarella, but spent no time in either the PACC or the WPACC facility.

51. Elizabeth Habel and Angelia Karsko, like the other Settlement Class members who will be paid from the PACC/WPACC Benefit Fund, as described in the Notice, were adjudicated delinquent by Ciavarella during the class period and were sent by him to out-of-home placements at either the PACC or WPACC facilities.

52. Jack Van Reeth, the father of Jessica Van Reeth, is the proposed representative of the Parent Settlement Class. Like all other members of the Parent Settlement Class, he asserts RICO claims based on Defendants' alleged conspiratorial conduct resulting in payments of court fees, fines, interest and/or penalties. As a result of Jessica's adjudication and place by Ciavarella, Mr. Van Reeth made payment and had costs and fees assessed against him, which were not reimbursed through the Mericle Settlement.

Adequacy of Representation

53. Finally, with respect to Rule 23(a) elements, the representative parties will fairly and adequately protect the interest of the class. The Class

Representatives were previously approved as adequate representatives of the settlement classes under the Mericle Settlement (Doc. No. 1268) and as adequate representatives of the litigation classes approved by this Court as to all issues of Defendants' Liability to Plaintiffs (Doc. No. 1410). The Class Representatives' interests are aligned with those of the class represented, as they have asserted the same claims as the class represented. (*See* Doc. No. 1409, at 17.)

54. Additionally, Plaintiffs are represented by counsel with extensive experience with complex litigation, class actions, and juvenile-justice in general. More significantly, Anapol Schwartz, Caroselli Beachler, Hangley Aronchick, and JLC were previously appointed as Settlement Class Counsel for the Mericle Settlement and found to "have fully and adequately represented the Classes for purposes of entering and implementing the Settlement and have satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and applicable law." (*See* Doc. No. 1268.) This Court also appointed these firms as Class Counsel for the certified litigation classes as to all issues of Defendants' Liability. (*See* Doc. No. 1410; *see also* Doc. No. 1409, at 15-16.) The proposed Class Counsel have demonstrated their full commitment to the continued prosecution of this litigation, and they possess the skill, experience, and resources to do so. *See* Exhibit 2 (attaching biographies).

Rule 23(b)(3) Factors: Predominance and Superiority

55. Plaintiffs' claims satisfy the requirements of Rule 23(b)(3) insofar as such requirements are relevant in the content of the proposed Settlement Class. (See Doc. No. 1409, at 20-31 (analyzing predominance in the context of certifying a litigation class).)

56. Courts have recognized that, where the focus is on liability-imposing conduct of defendants that is identical as to all putative plaintiffs, the predominance element may be satisfied. See, e.g., *Harrington v. City of Albuquerque*, 222 F.R.D. 505 (D.N.M. 2004). Additionally, there is no indication that Settlement Class Members have an interest in the individual prosecution of their actions, particularly in light of the fact that the Actions were all consolidated and settled with the Mericle Parties, with very few opt-outs and no objectors. Additionally, pending approval of this Settlement, the Actions will be settled against the Provider Parties as well. This forum is the most efficient and desirable location in which to resolve this lawsuit.

THE SETTLEMENT AGREEMENT IS WITHIN THE RANGE OF FAIR AND REASONABLE SETTLEMENT

57. At this stage, the Court is not being asked to finally approve the settlement; final approval may take place only after the Final Settlement Hearing.

Instead, the Court is being asked simply to preliminarily approve the Settlement and authorize the dissemination of Notice.

58. Approving dissemination of notice “is at most a determination that there is what might be termed ‘probable cause’ to submit the proposed to class members and hold a full-scale hearing as its fairness.” *In re Traffic Exec. Ass’n-Eastern R.R.s*, 627 F.2d 631, 634 (2d Cir. 1980).

59. Moreover, a “presumption of correctness” should attach to this settlement, which was reached in “arm’s-length negotiations between experienced, capable counsel after meaningful discovery.” *In re Linerboards Antitrust Litig.*, 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) (quoting *Hanrahan v. Britt*, 174 F.R.D. 356, 366 (E.D. Pa. 1997)).

60. The MSA between the Parties is the product of lengthy arms’-length negotiations undertaken in good faith. Furthermore, the Settlement was negotiated by counsel with extensive experience in complex litigation who zealously advocated their clients’ interest and positions. Through motions, briefs, and discovery, the Parties, through counsel, carefully considered and evaluated the relevant legal authorities to support the claims asserted against the Provider Defendants, the likelihood of prevailing on these claims, and the risk, expense and duration of continued litigation.

61. The proposed Settlement falls well within the range of possible approval. *See Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 117-20 (3d Cir. 1990).

WHEREFORE, for the reason set forth herein, the Parties respectfully request that the Court enter the proposed Order attached hereto.

Dated: October 16, 2013

**PA Child Care, LLC,
Western PA Child Care, LLC, and
Mid-Atlantic Youth Services Corp.**

By: /s/ James Schwartzman
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Daniel B. Huyett, Esquire
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H.T. Class Plaintiffs

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By: /s/ Daniel Segal
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Conway Class Plaintiffs

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Wallace Individual Plaintiffs

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CERTIFICATE OF CONCURRENCE OR NONCONCURRENCE

I, Sol H. Weiss, hereby certify that pursuant to Local Rule 7.1, that counsel for all represented parties was contacted for purposes of seeking concurrence in the foregoing Motion on October 16, 2013. Counsel for Provider Parties concur with the instant Motion. Counsel for the other parties did not respond.

/s/ Sol H. Weiss
Sol Weiss, Esquire

CERTIFICATE OF SERVICE

I, Sol H. Weiss, Esquire, hereby certify that, a true and correct copy of Joint Motion for Preliminary Approval of Class Action Settlement Between Plaintiffs and Provider Parties was filed electronically on October 16, 2013 and is available to all parties for viewing electronically. Additionally, the foregoing Motion was served via First Class Mail upon the following *pro se* parties:

Mark A. Ciaverella, 15008-67
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Michael T. Conahan
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FCI Coleman Low
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Dated: October 16, 2013

/s/ Sol Weiss
Sol Weiss