

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

FLORENCE WALLACE, ET AL.	:	CONSOLIDATED TO:
	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:09-cv-0286
	:	
v.	:	
	:	(JUDGE CAPUTO)
ROBERT J. POWELL, ET AL.	:	
	:	
Defendants.	:	

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

WILLIAM CONWAY, ET AL.	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:09-cv-0291
	:	
v.	:	
	:	(JUDGE CAPUTO)
MICHAEL T. CONAHAN, ET AL.	:	
	:	
Defendants.	:	

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

H.T., ET AL.	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:09-cv-0357
	:	
v.	:	
	:	(JUDGE CAPUTO)
MARK A. CIAVARELLA, ET AL.	:	
	:	
Defendants.	:	

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

SAMANTHA HUMANIK, :
 :
 :
 Plaintiffs, : CIVIL ACTION NO. 3:09-cv-0630
 :
 :
 v. :
 :
 : (JUDGE CAPUTO)
 MARK A. CIAVARELLA, JR., :
 ET AL. :
 :
 :
 Defendants. :

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**FINAL ORDER AND JUDGMENT AS TO THE
PROVIDER DEFENDANTS ONLY**

Based upon the submission of the Plaintiffs and PA Child Care, LLC; Western PA Child Care, LLC and Mid-Atlantic Youth Services, Corp., (“Provider Defendants”)(the “Parties”), including their oral presentations at the Fairness Hearing,

IT IS HEREBY ORDERED AND DECREED as follows:

1. Incorporation of Documents. This Order incorporates and makes a part hereof:

a. the Parties’ Master Settlement Agreement, filed October 16, 2013, including Exhibits A through D thereto¹ (collectively, the “MSA”), which sets forth the terms and conditions of the proposed settlement (the “Settlement”); and

b. the Court’s findings and conclusions contained in its November 27, 2013 Order Conditionally Certifying Settlement Class and Preliminarily Approving Proposed Settlement (the “Preliminary Approval Order”).

All capitalized terms in this Final Order and Judgment shall have the same meanings as in the MSA.

¹ The Exhibits to the MSA are as follows: Exhibit “A.1” (Legal Notice of Class Action Settlement); Exhibit “A.2” (Published Notice); Exhibit “B” (Proposed Order Conditionally Certifying Settlement Class and Preliminarily Approving Proposed Settlement); Exhibit “C” (Settlement Class Member Proof of Claim Form); and Exhibit “D” (Escrow Agreement).

2. Jurisdiction. The Court has personal jurisdiction over the Provider Defendants and the Plaintiffs (as defined below at paragraph 3) and has subject matter jurisdiction over this action, including, without limitation, jurisdiction to approve the Settlement, to settle and release all claims arising out of the transactions alleged in the Master Long Form Complaint for Individual Actions (“IC”) and the Master Complaint for Class Actions (“CAC”)(together, the “Complaints”) and denominated as Released Claims in the MSA, and to dismiss this action on the merits and with prejudice as to the Provider Defendants ONLY. All Class Members who have not excluded themselves from the Class have consented to the jurisdiction of this Court for purposes of this action and the partial settlement of this action.

3. The Class. The Class as defined in the Court’s Preliminary Approval Order, to which notice was directed, is hereby finally certified for settlement purposes. No person who previously requested exclusion from the class by timely opting out shall be a member of the class for purposes of Fed. R. Civ. P. 23(c)(3)(b), but all other persons within the class as defined in the Preliminary Approval Order shall be subject to this Final Order and Judgment.

4. Adequacy of Representation. Caroselli Beachler McTiernan & Conboy, LLC; Anapol Schwartz; Hanglely Aronchick Segal Pudlin & Schiller; and Juvenile Law Center (“Co-Lead Counsel” or “Class Counsel”) and other counsel of

record herein for the named Plaintiffs have fully and adequately represented the Class for purposes of entering into and implementing the Settlement and have satisfied the requirements of Fed. R. Civ. P. 23 and other applicable law. Caroselli Beachler McTiernan & Conboy, LLC; Anapol Schwartz; Hangley Aronchick Segal Pudlin & Schiller; and Juvenile Law Center shall continue as Co-Lead Counsel.

5. Class Notice. Mailed Notice was sent to each reasonably identifiable Class Member via first-class mail to his or her last known address, and Published Notice took place in the *Times Leader* and *Citizens Voice* in accordance with the Preliminary Approval Order. In addition, other materials were made available on a publicly available Internet site. The Court finds that this Notice:

- a. constituted the best practicable notice to Class Members under the circumstances of this action;
- b. was reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of this class action lawsuit, (ii) their right to exclude themselves from the Class, (iii) their right to object to any aspect of the proposed Settlement, the fairness, reasonableness or adequacy of the proposed Settlement, the adequacy of the representation of the Class Counsel, and/or the award of Common Benefit Attorneys' Fees and Expenses, (iv) their right to request to appear at the Fairness Hearing, personally or through counsel, if they did not exclude themselves from the

Class, and (v) the binding effect of the orders and judgment in this action, whether favorable or unfavorable, on all persons who do not request exclusion from the Class;

c. was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice;

d. complied with Fed. R. Civ. P. 23; and

e. fully satisfied the requirements of the United States Constitution (including the Due Process Clause) and all other applicable law and procedural rules.

6. Final Settlement Approval and Binding Effect. The terms and provisions of the Settlement have been entered into in good faith, and are fair, reasonable and adequate as to the Class Members, and are in full compliance with all applicable requirements of the United States Constitution (including the Due Process Clause) and all other applicable law and procedural rules. Therefore, the Settlement is approved pursuant to Fed. R. Civ. P. 23(e). The Settlement, and this Final Order and Judgment, shall be forever binding on the Plaintiffs and all other Class Members, as well as their heirs, executors and administrators, successors and assigns, and shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits, arbitrations or other proceedings maintained by or on behalf of any such persons, to the fullest extent allowed by law as against the

Released Parties ONLY. All of Plaintiffs' claims as against the Non-Released Parties shall remain pending and active. This Settlement shall have no binding effect whatsoever as against the Non-Released Parties.

7. Implementation of Settlement. The Parties are directed to implement the Settlement according to its terms and conditions.

8. Allocation Appeals. In order to properly fund the Allocation Appeal Process consistent with the MSA, 15% of the Cash Settlement Fund shall not be distributed, but instead shall remain held back in the Escrow Account for the benefit of any successful Allocation Appellants and the costs associated with the Allocation Appeal Process. Said hold back shall amount to a minimum of \$265,054.74. In the event this hold back is not fully depleted, it shall be returned to the Cash Settlement Fund and shall be distributed in accordance with the MSA.

9. Communications With Class Members. Class Counsel are hereby authorized to communicate with Class Members, as contemplated by and in accordance with the terms of the MSA and the Preliminary Approval Order, without requiring further approval of the Court.

10. Appeal. Any appeal from this Final Order and Judgment must be preceded by (i) a timely objection to the Settlement filed in accordance with the requirements of the MSA and Preliminary Approval Order or a request to intervene upon a representation of inadequacy of counsel, (ii) a request for a stay of

implementation of the Settlement, and (iii) posting of an appropriate bond. Absent satisfaction of all three of these requirements, the Parties are authorized, at their sole option and in their sole discretion, to proceed with implementation of the Settlement, even if such implementation would moot any appeal.

11. Post-Settlement Mailing. Pursuant to the MSA and Notice, Class Counsel are directed to mail to Class Members who made a claim against the Settlement Fund a proposed payment amount, if any, together with a written explanation of how that amount was determined postmarked not later than 45 days after the date of this Final Order and Judgment.

12. Release. Upon the entry of the Final Order and Judgment, all Released Claims against the Released Parties (but not the Non-Released Parties) shall be dismissed with prejudice and the Plaintiffs shall be deemed to have unconditionally, fully, finally, and forever, remised, released, relinquished, compromised and discharged all Released Claims whether or not any particular Plaintiff seeks or receives payment under the terms of the MSA.

13. Covenant Not To Sue, And Non-Solicitation. Settlement Class Members agree and covenant not to sue or to prosecute, institute or cooperate in the institution, commencement, filing, or prosecution of any lawsuit, appeal, arbitration or other proceeding relating to or based on any claim that concerns, arises out of or relates to any of the facts, actions, claims, allegations, events,

transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters alleged or referred to, or which could have been alleged or referred to in the Actions, with respect to the Released Parties.

Other than existing clients with whom Individual Plaintiffs' Counsel and/or Class Counsel currently have a representation agreement, Individual Plaintiffs' Counsel and Class Counsel agree not to initiate any communications for the purpose of seeking to represent any other Settlement Class Members against any Released Party, with regard to any matter which is the subject of the first paragraph immediately above, who has timely opted out of the Settlement.

Plaintiffs' Motion for Sanctions against Provider Defendants' (Doc. No. 1346) and accompanying Brief in Support (Doc. No. 1348) is deemed withdrawn with prejudice and the Motion is denied as moot.

14. Paragraph 18 of this Order covers, without limitation, any and all claims for attorneys' fees and expenses, and any costs or disbursements incurred by Class Counsel or other plaintiffs' counsel representing Plaintiffs or Class Members in this action, in connection with or related in any manner to the prosecution of this action as against the Released Parties ONLY, the settlement of this action as against the Released Parties ONLY, the administration of such settlement as against the Released Parties ONLY, and/or the Released Claims as to

the Released Parties ONLY, except to the extent otherwise specified in this Order and/or the MSA.

15. Bar Order. Any Settlement Class Member who did not submit a timely request to exclude themselves from the Settlement or did not otherwise comply with opt-out procedures approved by the Court in the Preliminary Approval Order shall be a Settlement Class Member and shall be bound by the terms of the MSA and this Final Order and Judgment.

In addition, any Settlement Class Member who did not submit a timely and properly completed Proof of Claim form² shall also be a Settlement Class Member and shall be bound by the terms of the MSA and this Final Order and Judgment, and shall have his or her claims against the Released Parties ONLY extinguished with prejudice, but shall not be eligible to participate in the Cash Settlement Fund.

16. Enforcement of Settlement. Nothing in this Final Order and Judgment shall preclude any action to enforce the terms of the MSA; nor shall anything in this Final Order and Judgment preclude the Plaintiffs or other Class Members from participating in the Allocation Appeal process described in the MSA, if they are entitled to do so under the terms of the MSA.

² This includes, but not limited to, any Proof of Claim Form submitted by a potential claimant which did not otherwise comply with procedures approved by the Court in the Preliminary Approval Order for relating to the proper completion and submission of said Proof of Claim Forms.

17. Minors' and Wrongful Death and Survival Compromises. On or before 45 days after the entry of this Final Order and Judgment, Class Counsel are directed to file with the Court Motions to Settle or a Compromise a Minor's, Wrongful Death and/or Survival Action (as may be appropriate) for all of those Settlement Class Members who have not reached the age of majority on or before May 31, 2014 and who will also receive monetary relief from the Cash Settlement Fund and/or the estates of any Class Members.

18. Attorneys' Fees and Expenses. Plaintiffs' Unopposed Motion for Award of Fees and Costs (filed separately) is hereby granted.

a. Counsel for Plaintiffs and the Class of record herein are hereby awarded combined common benefit attorneys' fees, disbursements, and costs in the amount of \$732,968.36 (29.3% of the gross Settlement Amount).

b. All costs, expenses, and disbursements shall be paid to each of the firms that incurred said costs, expenses and disbursements first, before the distribution of attorneys' fees. Thereafter, the remainder shall be considered the fee. Costs, expenses and disbursements totaling \$107,968.36, are approved. The Court will also permit payment of additional costs incurred and submitted by Co-Lead Counsel in the administration of the settlement out of the \$732,968.36 Holdback Fund upon later application.

c. The combined total of the attorneys' fees and reimbursement of disbursements of expenses, totaling \$732,968.36, plus interest from date the Escrow Account was funded, covers any and all claims for attorneys' fees and expenses incurred by any and all counsel for common benefit of Plaintiffs and the Class in connection with the Settlement and the administration of such Settlement.

d. The reimbursement of the expenses are to be deposited by the Escrow Agent into an account maintained by Co-Lead Counsel within five business days after entry of this Final Order and Judgment and then dispersed to the law firms in the amount each firm incurred and submitted.

e. The attorneys' fees shall remain in the original escrow account and shall be dispersed when the class members are paid their awards. The award of common benefit attorneys' fees shall be allocated among plaintiffs' counsel in a fashion which, in the opinion and sole discretion of Co-Lead Counsel, fairly compensates plaintiffs' counsel for their respective contributions in the prosecution of the Actions, Individual Actions and Class Actions.

19. Modification of Master Settlement Agreement. The Parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such amendments to, and modifications and expansions of, the MSA

as are not materially inconsistent with this Order and do not unreasonably limit the rights of the Plaintiffs and/or Class Members under the MSA.

20. Retention of Jurisdiction. The Court has jurisdiction to enter this Final Order and Judgment. Without in any way affecting the finality of this Final Order and Judgment, the Court expressly retains original and exclusive jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the MSA and of this Final Order and Judgment, and for any other necessary purpose, including, without limitation:

- a. enforcing the terms and conditions of the MSA and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the MSA, this Final Order and Judgment (including, without limitation, determining whether a person or entity is or is not a Class Member, and enforcing the Bar Order that is a part of this Final Order and Judgment) and determining whether claims or causes of action allegedly related to this case are or are not barred by this Final Order and Judgment;
- b. entering such additional orders as may be necessary or appropriate to protect or effectuate this Final Order and Judgment, or to ensure the fair and orderly administration of the Settlement; and
- c. entering any other necessary or appropriate orders to protect and effectuate the Court's retention of continuing jurisdiction; **provided**

however, nothing in this paragraph is intended to restrict the ability of the parties to exercise their rights under the MSA that are not in conflict with this Final Order and Judgment.

21. No Admissions. Neither this Final Order and Judgment, nor the MSA, nor any other document referred to herein or therein, nor any action taken to carry out this Final Order and Judgment is, may be construed as, or may be used as an admission or concession by or against the Released Parties of the validity of any claim or any actual or potential fault, wrongdoing or liability whatsoever. Entering into or carrying out the MSA, and any negotiations or proceedings relating to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to the Released Parties' denials or defenses, and shall not be offered or received in evidence in any action or proceeding against any party to the MSA in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the Settlement or to enforce the provisions of this Final Order and Judgment and the MSA; **provided however**, this Final Order and Judgment and the MSA may be filed in any action against or by Released Parties (as defined in the MSA) to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim to the extent allowed by law.

22. Dismissal of Action. All of the Actions, Individual Actions and putative Class Actions encompassed in this proceeding, and all claims asserted therein or otherwise presented thereby, are hereby dismissed on the merits and with prejudice as against the Provider Defendants **ONLY**, without fees or costs to any party except as otherwise provided in the MSA or this Final Order and Judgment.

IT IS SO ORDERED this _____ day of _____, 2014.

A. Richard Caputo
United States District Judge

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

FLORENCE WALLACE, ET AL.	:	CONSOLIDATED TO:
	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:09-cv-0286
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v.	:	
	:	(JUDGE CAPUTO)
ROBERT J. POWELL, ET AL.	:	
	:	
Defendants.	:	

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

WILLIAM CONWAY, ET AL.	:	
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Plaintiffs,	:	CIVIL ACTION NO. 3:09-cv-0291
	:	
v.	:	
	:	(JUDGE CAPUTO)
MICHAEL T. CONAHAN, ET AL.	:	
	:	
Defendants.	:	

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

H.T., ET AL.	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:09-cv-0357
	:	
v.	:	
	:	(JUDGE CAPUTO)
MARK A. CIAVARELLA, ET AL.	:	
	:	
Defendants.	:	

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

SAMANTHA HUMANIK,	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:09-cv-0630
	:	
v.	:	
	:	(JUDGE CAPUTO)
MARK A. CIAVARELLA, JR.,	:	
ET AL.	:	
	:	
Defendants.	:	

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**PLAINTIFFS’ UNOPPOSED MOTION FOR FINAL APPROVAL OF
SETTLEMENT AND CLASS CERTIFICATION**

Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs, through their undersigned counsel, move for certification of a settlement class and final approval of the partial settlement that fully resolves all of their claims against the Released Parties, as defined in the Master Settlement Agreement (“MSA” or “Settlement Agreement” or “Agreement”). For the reasons more fully set forth in Plaintiffs’ Memorandum of Law, the Motion should be granted.

1. Plaintiffs have now reached a settlement with the Pa Child Care, LLC, Western Pa Child Care, LLC and Mid-Atlantic Youth Services, Inc. (hereinafter the “Provider Defendants”), which received preliminary approval from this Court on November 27, 2013.

2. The MSA provides for a resolution of this litigation against the

Provider Defendants in exchange for benefits to the Class including the following:

The Provider Defendants established a settlement fund of \$2,500,000.00. The full amount of the settlement fund will be placed in escrow for the benefit of this settlement once it is approved pursuant to a schedule more fully described in the Master Settlement Agreement (“MSA”); and

The net settlement proceeds (after the payment of common benefit attorneys’ fees, common benefit litigation expenses, escrow fees and expenses, and any taxes or tax expenses related to the escrow account) shall be distributed pursuant to the plan of allocation previously preliminarily approved by this Court and discussed further below, to all qualifying Juvenile and Parent Plaintiff Class Members.

3. The proposed form of Notice (“Notice”) of the class action settlement and Proof of Claim form (“POC”) were also approved by this Court and were disseminated, in accordance with this Court’s Order, by first class mail directly to the last known addresses of all individuals in the Settlement Classes, defined below, along with published notice via publication in the *Times Leader* and the *Citizens Voice*. Finally, Notice was also disseminated by internet publication. This Notice regime complied with Rules 23(c)(2) and 23(e) and the Due Process Clause of the United States Constitution, because it constituted the best notice practicable under the circumstances.

4. There were no objections to the Settlement by any Class Member. In addition, only nine Class Members chose to exclude themselves from the Settlement by opting out.

5. The proposed Settlement Classes are:

a. all juveniles who appeared before former Luzerne County Court of Common Pleas Judge Mark A. Ciavarella between January 1, 2003 and May 28, 2008 who were adjudicated or placed by Ciavarella (the "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 between January 1, 2003 and May 28, 2008 and who, in connection with their child's adjudication or placement:

(i) made payments or had wages, social security or other entitlements garnished or withdrawn;

(ii) paid costs, fees, interest and/or penalties in their own names;

(iii) suffered any loss of companionship and/or familial integrity (the "Parent Settlement Class"), and

(iv) who were not fully reimbursed as a result of claims made in connection with the Mericle Settlement, defined in the MSA.

6. The proposed settlement is fair, reasonable and adequate and amply satisfies the required standards set forth in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975). Plaintiffs therefore respectfully request that the Court grant final approval to the Settlement.

7. The proposed Settlement Classes, clearly satisfy the four elements

of Rule 23(a), and the predominance and superiority requirements of Rule 23(b)(3). Finally, Plaintiffs' motion (filed separately) for a combined award of attorneys' fees and costs in the amount of \$732,968.36, should be approved as reasonable, considering the time expended by Class Counsel in litigating this case, and the superb result obtained for the Class.

8. Further support for this Motion is set forth, at length, in Plaintiffs' Brief in Support of Final Approval of Settlement and Class Certification.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant their Motion for Final Approval of Settlement and Class Certification.

Dated: May 30, 2014

Respectfully submitted,

By: /s/ David Senoff

David S. Senoff
Lauren C. Fantini
CAROSELLI BEACHLER
MCTIERNAN & CONBOY
1500 Walnut Street, Suite 507
Philadelphia, Pa 19102
(215) 609-1350

William R. Caroselli
CAROSELLI BEACHLER
MCTIERNAN & CONBOY
20 Stanwix Street, 7th Floor
Pittsburgh, Pa 19522
(412) 391-9860

Michael J. Cefalo

James J. Albert
CEFALO & ASSOCIATES
309 Wyoming Avenue
West Pittston, PA 18643
(570) 655-5555

Attorneys for Plaintiffs
Case No. 09-cv-0286

By: /s/ Sol Weiss

Sol Weiss
Joseph Fantini
ANAPOL SCHWARTZ
1710 Spruce Street
Philadelphia, Pa 19103
(215) 735-1130

Barry H. Dyller
DYLLER LAW FIRM
Gettysburg House
88 North Franklin Street
Wilkes-Barre, PA 18701
(570) 829-4860

Johanna L. Gelb
GELB LAW FIRM
538 Spruce Street, Suite 600
Scranton, PA 18503
(570) 343-6383

Attorneys for Plaintiffs
Case No. 09-cv-0291

By: /s/ Marsha Levick

Marsha L. Levick
Lourdes M. Rosado
Emily C. Keller

JUVENILE LAW CENTER
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551

Daniel Segal
Rebecca L. Santoro
HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER
One Logan Square, 27th Floor
Philadelphia, PA 19103
(215) 568-6200

Attorneys for Plaintiffs
Case No. 09-cv-0357

By: /s/ Daniel Kleiner

Daniel E. Kleiner
METZGER & KLEINER
Two Penn Center, Suite 1204
15th Street & JFK Boulevard
Philadelphia, PA 19102
(215) 567-6616

Richard G. Freeman
924 Cherry Street, 4th Floor
Philadelphia, PA 19107
(215) 574-8818

Attorneys for Plaintiff
Case No. 09-0630

**CERTIFICATION OF CONCURRENCE PURSUANT TO
LOCAL RULE 7.1**

I, David S. Senoff Esquire, do hereby certify that I sought concurrence for the within Motion from each and every party who has standing to object to this motion and all of said parties concur in this motion.

RESPECTFULLY SUBMITTED,

CAROSELLI BEACHLER
MCTIERNAN & CONBOY

BY: /s/ DAVID S. SENOFF

DAVID S. SENOFF, ESQUIRE
LAUREN C. FANTINI, ESQUIRE
1845 WALNUT STREET, 15TH FLOOR
PHILADELPHIA, PA 19103
T: (215) 609-1350
F: (215) 609-1351

Date: May 30, 2014

CERTIFICATE OF SERVICE

I, David S. Senoff, Esquire, hereby certify that, a true and correct copy of the Plaintiffs' Unopposed Motion for Final Approval of Settlements and Class Certification, was filed electronically on May 30, 2014 and is available for viewing electronically. Additionally, the foregoing Motion was served by First Class Mail upon the following *pro se* parties:

Mark Ciavarella 15008-067
Federal Correctional Institution
PO BOX 5000
Perkin, IL 61555-5000

Michael Conahan
Inmate # 15009-067
FCI Coleman Low
PO Box 1031
Coleman, FL 33521

CAROSELLI BEACHLER
MCTIERNAN & CONBOY

BY: /s/ DAVID S. SENOFF
DAVID S. SENOFF, ESQUIRE
LAUREN C. FANTINI, ESQUIRE
1845 WALNUT STREET, 15TH FLOOR
PHILADELPHIA, PA 19103
T: (215) 609-1350
F: (215) 609-1351