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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 B.K. by her next friend Margaret Tinsley, et  
10 al.,

11 Plaintiffs,

12 v.

13 Michael Faust, et al.,

14 Defendants.

No. CV-15-00185-PHX-ROS

**FINAL APPROVAL ORDER**

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16 This matter comes before the Court on the Joint Motion for Final Approval of the  
17 Settlement Agreement and Attorneys' Fees (Doc. 533). This lawsuit was initiated by  
18 Plaintiffs on behalf of children in Arizona state foster care custody in February 2015.  
19 Defendants are the Director of the Arizona Department of Child Safety ("DCS") and the  
20 Director of the Arizona Health Care Cost Containment System ("AHCCCS"), in their  
21 official capacities. Plaintiffs "alleged systemic failures with respect to behavioral health  
22 services, physical and dental health services, the availability of appropriate family  
23 placements, and the timeliness of investigations of abuse and neglect exposed foster  
24 children to an unreasonable risk of harm and violated their federal statutory rights." (Doc.  
25 529 at 1). Plaintiffs sought class certification and declaratory and injunctive relief under 42  
26 U.S.C. § 1983.  
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1 In September 2017, the Court certified the General Class,<sup>1</sup> the Non-Kinship  
2 Subclass,<sup>2</sup> and the Medicaid Subclass.<sup>3</sup> (Doc. 363). Defendants appealed class certification,  
3 and the Ninth Circuit stayed discovery for over 15 months and affirmed the certification of  
4 the General Class and the Non-Kinship Subclass but reversed the certification of the  
5 Medicaid Subclass. (Doc. 418). Defendants petitioned for certiorari, which was denied.  
6 (Doc. 492). On remand, the Court recertified the Medicaid Subclass in October 2019. (Doc.  
7 461). Defendants petitioned the Ninth Circuit for permission to file a second interlocutory  
8 appeal but were denied. (Doc. 493).

9 Over the course of the litigation, the parties engaged in extensive discovery and  
10 multiple rounds of expert discovery. After producing and analyzing over 1.5 million  
11 documents and 48 expert reports, the parties were prepared to use over 1400 exhibits, 13  
12 expert witnesses, and dozens of other witnesses at trial. (Docs. 529 at 3–4; 529-3 at ¶ 10;  
13 514). Two weeks before trial, the parties reached a settlement. (Doc. 521).

14 On October 9, 2020, this Court granted preliminary approval of the Settlement  
15 Agreement, approved the notice to be provided to class members, approved an appropriate  
16 notice plan, and set a date for the final hearing on the settlement agreement. (Doc. 530).  
17 The Court finds that the parties completed the notice plan as ordered.

18 Since granting preliminary approval of the settlement agreement the Court has  
19 received comments from more than 80 stakeholders. (Docs. 535-1 to -5; 544-1). Those  
20 comments and the parties' responses to those comments are summarized in Exhibit 1 to  
21 this order. The Court also heard from the parties and some stakeholders at the final approval  
22 hearing on February 12, 2021. Several comments expressed support for the settlement.  
23 Others contained suggestions for implementation of the settlement. The vast majority of  
24 comments addressed DCS-involved families' experiences and challenges within the foster  
25 care system. A very small number of comments were critical of or objected to the

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26 <sup>1</sup> All children who are or will be in the legal custody of DCS due to a report or suspicion  
27 of abuse or neglect.

28 <sup>2</sup> All members in the General Class who are not placed in the care of an adult relative or  
person who has a significant relationship with the child.

<sup>3</sup> All members of the General Class who are entitled to early and periodic screening,  
diagnostic, and treatment services under the federal Medicaid statute.

1 settlement. In evaluating the proposed settlement, the Court considered every comment.  
2 The comments made especially clear the great need for improvements in the services  
3 provided to DCS-involved children. The settlement will improve many of the current  
4 deficiencies addressed in the comments, including the critical areas of behavioral health,  
5 physical health, placement array, and case manager workload.

6 As initially discussed in the Preliminary Approval Order (Doc. 530), the Court finds  
7 the final settlement and award of attorney's fees and costs are fair, reasonable, and adequate  
8 within the meaning of Rule 23 of the Federal Rules of Civil Procedure. The motion will be  
9 granted.

10 Accordingly,

11 **IT IS ORDERED** the Joint Motion for Final Approval of the Settlement Agreement  
12 and Attorneys' Fees (Doc. 533) is **GRANTED**.

13 **IT IS FURTHER ORDERED AS FOLLOWS:**

14 1. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the  
15 Settlement Agreement, as set forth in the Revised Settlement Agreement (Doc. 529-1) is,  
16 in all respects, fair, reasonable, adequate, and in the best interest of the General Class, Non-  
17 Kinship Subclass, and Medicaid Subclass. The Settlement Agreement, reached after  
18 extensive litigation and arms-length negotiation, requires considerable improvements in  
19 the areas giving rise to Plaintiffs' complaint and will cure the alleged deficiencies giving  
20 rise to Plaintiffs' claims. It requires DCS to meet significant benchmarks demonstrating  
21 improvement; contains meaningful mechanisms to monitor DCS compliance; and provides  
22 for strong enforcement remedies in the event of non-compliance. At the same time, the  
23 Settlement Agreement also provides DCS with sufficient flexibility to determine how it  
24 will implement the required improvements. The Court therefore **GRANTS** final approval  
25 of the Settlement Agreement under Rule 23(e).

26 2. The Court finds the Settlement Agreement's attorneys' fees provision in  
27 section 8.1 of the Settlement Agreement to be fair and reasonable under the facts of this  
28 case and the relevant law, and **GRANTS** final approval of the attorneys' fees. This was a

1 labor-intensive, complex case that included two Ninth Circuit appeals and a Supreme Court  
2 certiorari petition. Furthermore, the negotiated agreement, reached through arms-length  
3 negotiations, to settle Plaintiffs' claims for accrued attorneys' fees and expenses is a  
4 reduction of approximately 50% from the total fees and costs accrued and is consistent  
5 with recent fee awards in analogous foster care reform class actions. The Settlement  
6 Agreement's cap on fees accrued in monitoring and validating Defendants' compliance  
7 with the settlement agreement is also fair and reasonable.

8 3. The Court incorporates the express terms of the Settlement Agreement (Doc.  
9 529-1) into this order, enters it as a final judgment and order of the Court, adopts the  
10 Settlement Agreement as an injunctive order under Fed. R. Civ. P. 65(d), and orders the  
11 parties to comply with its terms.

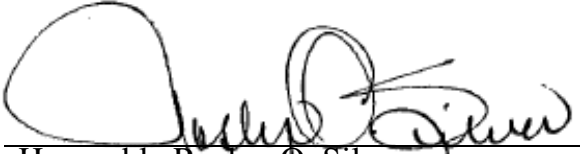
12 4. By agreeing to settle this lawsuit, Defendants do not admit, and specifically  
13 deny, any and all liability in this lawsuit.

14 5. Defendants are ordered to pay Class Counsel's attorney's fees in the amount  
15 of \$6,500,000.

16 6. The trial previously set for three weeks after the date of the Final Approval  
17 Hearing (Doc. 527) is **VACATED**.

18 7. This action is **DISMISSED WITH PREJUDICE**; however, the Court  
19 **RETAINS JURISDICTION** over this action to enforce the Settlement Agreement and  
20 consider all matters arising under it.

21 Dated this 12th day of February, 2021.

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25 Honorable Roslyn O. Silver  
26 Senior United States District Judge  
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