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10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 JONATHAN MCNEAL, a minor, by and through  
13 his natural parents, Tammie McNeal and Kevin  
14 McNeal,

15 Plaintiff,

16 v.

17 NYE COUNTY SCHOOL DISTRICT, a political  
18 subdivision of the State of Nevada; SARAH  
19 HOPKINS, individually; HOLLY LEPISTO,  
20 individually; PHYLLIS DUSHANE, individually;  
21 KATHRYN CUMMINGS, individually;

22 Defendants.

CASE NO: 2:12-cv-01717-JAD-CWH  
(Base Case)

2:12-cv-02011-JAD-CWH

**ORDER GRANTING PLAINTIFFS' PETITION FOR MINORS' COMPROMISE,  
PAYMENT OF ATTORNEY FEES AND COSTS, FOR THE CREATION OF THE JM  
SPECIAL NEEDS TRUST, AND FOR THE CREATION OF THE BLOCKED TRUST  
ACCOUNTS FOR LOGAN COLEMAN AND COLLIN COLEMAN**

23 THIS MATTER came before the Court upon the verified Petition of Plaintiffs, JONATHAN  
24 MCNEAL, a minor, by and through his parents, Kevin McNeal and Tammie McNeal, LOGAN  
25 COLEMAN and COLLIN COLEMAN, minors, by and through their parents, Michael Coleman and  
26 Ronda Coleman, both of whom appear through their counsel of record, Andre M. Lagomarsino,  
27 Esq., of the law firm of Parker Scheer Lagomarsino, pursuant to their *Petition for authority to accept  
28 the compromise of the claims of minors, JONATHAN MCNEAL, LOGAN COLEMAN, and COLLIN  
COLEMAN, in accordance with Nevada Revised Statute §41.200 and create the JM Special Needs*

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1 Trust pursuant to Title 42 of the U.S.C. §1396p(d)(4)(A), (in lieu of a blocked account), and create  
2 blocked trust accounts for LOGAN COLEMAN and COLLIN COLEMAN, and the Court having fully  
3 considered the matter and being fully familiar with the pleadings and papers on file herein, the Court  
4 finds as follows:

5  
6 1. That KEVIN AND TAMMIE MCNEAL are JONATHAN's parents and are legally  
7 permitted to bring this Petition on JONATHAN'S behalf pursuant to NRS § 12.080.

8 2. Plaintiff, JONATHAN MCNEAL ("JONATHAN") is a child who suffers from  
9 cerebral palsy, stroke in utero, hydrocephalus, and is predominantly non-verbal and is thus largely  
10 unable to communicate with words.

11 3. As a result of the terms of the Settlement Agreement, JONATHAN MCNEAL is  
12 about to receive funds that exceed the resource limits for the means-tested government programs he  
13 now qualifies for, however JONATHAN MCNEAL is disabled as defined in section 1614(a)(3) of  
14 the Social Security Act and therefore the Agreement proceeds may be directed to a Special Needs  
15 Trust for the sole benefit of JONATHAN MCNEAL pursuant to Title 42 of the U.S.C.  
16 §1396p(d)(4)(A), as amended on August 10, 1993, by the Omnibus reconciliation Act.

17  
18 4. That MICHAEL AND RONDA COLEMAN are LOGAN and COLLIN'S parents  
19 and are legally permitted to bring this Petition on LOGAN and COLLIN'S behalf pursuant to NRS §  
20 12.080.

21  
22 5. Plaintiffs, LOGAN COLEMAN AND COLLIN COLEMAN ("LOGAN and  
23 COLLIN") are autistic and are moderately to severely impaired with respect to language skills,  
24 among other mental faculties.

25 6. The court has an inherent duty to protect the interests of minors and incompetents  
26 who appear before it. See *Keith v. Jackson*, 855 F. Supp 765, 775 (E.D. Pa. 1994) (citing *Dacanay v.*  
27 *Mendoza*, 573 F.2d 1075, 1079 (9th Cir. 1978)). As part of that duty, the court must determine the  
28

1 fairness of any settlement agreement and the reasonableness of any attorneys' fees to be paid from the  
2 settlement amount in a suit brought on behalf of a minor or incompetent.

3 7. Federal courts have held that it is appropriate to apply the rules prescribed by state  
4 law in determining the fairness of a minor's compromise and the reasonableness of any attorneys' fees  
5 allocated from that settlement in both federal question and diversity cases.<sup>1</sup> For example, see *Erie*  
6 *R.R. v. Tompkins*, 304 U.S. 64 (1938), and *Stecyk v. Bell Helicopter Textron, Inc.*, 53 F. Supp.2d  
7 794,801 (E.D. Pa. 1999).

8  
9 8. In approving the Settlement, the court must also assess the reasonableness of the  
10 requested counsel fees. In doing so, the court must "strike a balance between being a 'passive pro  
11 forma rubber stamp' ... and being too intrusive in its consideration of the fairness of counsel fees."<sup>2</sup>

12 **NOW THEREFORE,**

13  
14 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Court grants the  
15 Plaintiffs the authority to compromise the claims of the minors, LOGAN COLEMAN and COLLIN  
16 COLEMAN, and accept the proposed Settlement in accordance with Nevada Revised Statute  
17 §41.200, and create blocked accounts.

18 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Court grants the  
19 Plaintiffs the authority to compromise the claims of the minor, JONATHAN MCNEAL, and accept the  
20 proposed Settlement in accordance with Nevada Revised Statute §41.200, and create the JM Special  
21 Needs Trust pursuant to Title 42 of the U.S.C. § 1396p( d)( 4)(A) (in lieu of a blocked account).

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23  
24  
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26  
27 <sup>1</sup> Local district courts are authorized to adopt rules of procedure. See 28 U.S.C. § 2071. The local rules, however, must  
28 be consistent with the national rules. See Fed. R. Civ. P. 83(a) ("A local rule shall be consistent with--but not duplicative  
of -- Acts of Congress and [the national] rules .... "). Once adopted, the local rule has the force of law. See *Tarkett, Inc.*  
*v. Congoleum Corp.*, 144 F.R.D. 282, 284 (E.D. Pa. 1992) (citing *Baylson v. Disciplinary Bd. Of the Supreme Court of*  
*Pa.*, 764 F. Supp. 328, 348 (E.D. Pa. 1991), aff'd, 975 F.2d 102 (3d Cir. 1992)).

<sup>2</sup> *Stecyk*, 53 F. Supp.2d at 800-01 (quoting *Gilmore v. Dondero*, 582 A.2d 1106, 1109 (Pa. Super. Ct. 1990)).

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1           **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Court finds that  
2 the settlement amount of \$800,000.00 is hereby approved. This amount shall be disbursed as set  
3 forth below.

4           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** KEVIN AND TAMMIE  
5 MCNEAL, are ready, willing and able to act as Co-Trustees of the JM SPECIAL NEEDS TRUST.

6           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the JM SPECIAL  
7 NEEDS TRUST is hereby confirmed by this Order of the Court, with said Order to be incorporated  
8 and made a part of the Trust.

9           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the remaining proceeds of  
10 the Settlement Agreement are awarded first towards adjudicated attorney fees, costs, and relevant  
11 legal expenses necessary to prevent the termination of JONATHAN MCNEAL'S government  
12 benefits due to excess resources.

13           **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the BLOCKED  
14 TRUST ACCOUNTS for LOGAN COLEMAN, and COLLIN COLEMAN are hereby confirmed by  
15 this Order of the Court.

16           **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that proper notice was  
17 given to all parties in this matter; and that the binding settlement is hereby confirmed by the Court as  
18 the final settlement of the matter between JONATHAN MCNEAL, LOGAN COLEMAN, AND  
19 COLLIN COLEMAN in this case: *JONATHAN MCNEAL, a minor, by and through his parents,*  
20 *KEVIN MCNEAL and TAMMIE MCNEAL, Plaintiff, vs. NYE COUNTY SCHOOL DISTRICT,*  
21 *apolitical subdivision of the State of Nevada; SARAH HOPKINS, individually, HOLLY LEPISTO,*  
22 *individually, PHYLLIS DUSHANE, individually, KATHRYN CUMMINGS, individually; Defendants;*  
23 *Case No. 2:12-cv-01717-JAD-CWH. LOGAN COLEMAN and COLLIN COLEMAN, minors, by*  
24 *and through their parents, MICHAEL COLEMAN and RONDA COLEMAN, Plaintiffs, vs. NYE*  
25 *COUNTY SCHOOL DISTRICT, apolitical subdivision of the State of Nevada; SARAH HOPKINS,*  
26  
27  
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1 *individually, HOLLY LEPISTO, individually, PHYLLIS DUSHANE, individually, KATHRYN*  
2 *CUMMINGS, individually; Defendants; Case No. 2:12-cv-02011-JAD-CWH.*

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court confirms  
4 KEVIN AND TAMMIE MCNEAL, as Co-Trustees of the JM SPECIAL NEEDS TRUST by this  
5 Court Order.

6  
7 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the proceeds of the  
8 agreement shall be made payable as follows: \$100,000.00 to the JM SPECIAL NEEDS TRUST;  
9 \$100,000.00 to the LOGAN COLEMAN BLOCKED TRUST ACCOUNT; \$100,000.00 to the  
10 COLLIN COLEMAN BLOCKED TRUST ACCOUNT; \$212,787.92 as attorneys' fees to Parker  
11 Scheer Lagomarsino and \$287,212.08 as costs to Parker Scheer Lagomarsino.

12 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all settlement money  
13 shall be paid as set forth above within 30 calendar days from the date of this Order.

14  
15 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Co-Trustees, KEVIN  
16 AND TAMMIE MCNEAL, are hereby directed and authorized to deposit the amounts received by it  
17 (namely \$100,000.00) into a Trust account for the sole benefit of JONATHAN MCNEAL in the name of  
18 the JM SPECIAL NEEDS TRUST.

19 **IT IS FURTHER ORDERED AND DECREED** that the Co-Trustees KEVIN AND TAMMIE  
20 MCNEAL, as the Trustees, are hereby authorized to do and perform all acts and to execute and deliver  
21 all papers, documents and instruments necessary to consummate the proposed transactions.

22 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court approves  
23 the opening of a blocked trust accounts by the Petitioners, RONDA COLEMAN and MICHAEL  
24 COLEMAN, for the benefit of the minor children, LOGAN COLEMAN AND COLLIN  
25 COLEMAN.  
26 COLEMAN.

27 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that \$100,000.00 shall be  
28 deposited into a blocked trust account for the benefit of the minor child, LOGAN COLEMAN.

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1           **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that \$100,000.00 shall be  
2 deposited into a blocked trust account for the benefit of the minor child, COLLIN COLEMAN.

3           MICHAEL COLEMAN and RONDA COLEMAN, shall establish a blocked trust account as  
4 provided by NRS 41.200 (5) and 41.200 (8), at Wells Fargo Bank, a Federal Insured Bank in the  
5 State of Nevada, located at 520 South Highway 160, Pahrump, NV 89048.

6           Authorization to establish blocked trust accounts for the benefit LOGAN COLEMAN AND  
7 COLLIN COLEMAN is hereby given to Petitioners, MICHAEL COLEMAN and RONDA  
8 COLEMAN, parents of said minors, LOGAN COLEMAN AND COLLIN COLEMAN.

9           Funds deposited in the blocked trust account shall not be liquidated or diminished prior to  
10 the minor reaching the age of eighteen (18) years without Court approval upon a showing that the  
11 withdrawal is in the best interest of the minor child. A final accounting will be made prior to the  
12 release of the funds upon the eighteenth birthday of the child.

13           Petitioners and Andre M. Lagomarsino, Esq. shall cause, within sixty (60) days of the date of  
14 this Order, proof to be filed with this Court that the blocked trust accounts have been established.

15           A status check before this Court is set for the 23<sup>RD</sup> day of April, 2015, at 10 a.m.  
16 to show compliance with this Order. In the event the proof of compliance has been filed with this  
17 Court, it shall not be necessary for the Petitioners, MICHAEL COLEMAN and RONDA  
18 COLEMAN, or Andre M. Lagomarsino, Esq., to attend this status check hearing.

19           **IT IS HEREBY ORDERED, ADJUDGED and DECREED** that the petitioners shall be  
20 ordered by this Court to file periodic verified annual reports, should the court deem it appropriate, in  
21 order to detail the activities of the blocked trust account during the previous twelve (12) months,  
22 pursuant to NRS 41.200(5).  
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27  
28

1 **IT IS HEREBY ORDERED, ADJUDGED and DECREED** that Petitioners, MICHAEL  
2 COLEMAN and RONDA COLEMAN, parents of said minors, LOGAN COLEMAN and COLLIN  
3 COLEMAN, are hereby allowed to continue to serve as Guardian *Ad Litem* for the minor children,  
4 without bond, for the limited purpose of administering the funds of the minor children, as provided  
5 herein.

7 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court approves  
8 the opening of the blocked trust accounts by the Petitioners, RONDA COLEMAN and MICHAEL  
9 COLEMAN, for the benefit of the minor children, LOGAN COLEMAN AND COLLIN  
10 COLEMAN.

The clerk of Court is Directed to close Cases 2:12cv1717-JAD-CWH  
and 2:12cv2011-JAD-CWH.

DATED this 23<sup>RD</sup> day of February, 2015.

  
U.S. DISTRICT COURT MAGISTRATE  
JUDGE

16 Respectfully submitted by:

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