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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

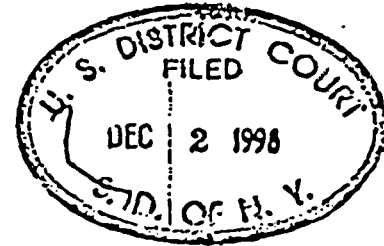
MARISOL A., by her next friends, Rev. Dr. James Alexander Forbes, Jr., and Raymunda Cruz;
LAWRENCE B., by his next friend, Dr. Vincent Bonagura;
THOMAS C., by his next friend, Dr. Margaret T. McHugh;
SHAUNA D., by her next friend, Nedda De Castro;
OZZIE E., by his next friends, Jill Chaifetz and Kim Hawkins;
DARREN F. and DAVID F., by their next friends, Juan A. Figueroa and Rev. Marvin J. Owens;
BILL G. and VICTORIA G., by their next friend, Sister Dolores Gartanutti; BRANDON H., by his next friend, Thomas J. Moloney; and STEVEN I., by his next friend, Kevin Ryan, on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

and

DANIELLE J., by her next friend, Angela Lloyd; and RICHARD and WALTER S., by their next friends, W.N. and N.N., on behalf of themselves and all others similarly situated,

Intervening Plaintiffs,



SETTLEMENT
AGREEMENT

95 CV 10533 (RJW)

- against -

RUDOLPH W. GIULIANI, Mayor of the City of New York;
JASON TURNER, Administrator of the Human Resources Administration and Commissioner of the Department of Social Services of the City of New York;
NICHOLAS SCOPPETTA, Commissioner of the New York City Administration for Children's Services;
GEORGE E. PATAKI, Governor of the State of New York;
and JOHN JOHNSON, Commissioner of the New York State Office of Children and Family Services,

Defendants.

WHEREAS, Plaintiffs brought this lawsuit by complaint styled Marisol A., et al. v. Rudolph W. Giuliani, et al. (the "Marisol Litigation"), filed December 13, 1995, seeking certification of a class and declaratory and injunctive relief against Rudolph W. Giuliani, Mayor

of the City of New York, Marva Livingston Hammons, Administrator of the Human Resources Administration and Commissioner of the Department of Social Services of the City of New York, and Kathryn Croft, Executive Deputy Commissioner of the City Child Welfare Administration in their official capacities (hereinafter collectively referred to as "the City"), and against certain defendant officials of the State of New York in their official capacities (hereinafter collectively referred to as "the State"); and

WHEREAS, Jason Turner subsequently replaced Marva Livingston Hammons as Administrator of the Human Resources Administration and Commissioner of the Department of Social Services of the City of New York and was substituted for her in his official capacity as a defendant herein by operation of law; and

WHEREAS, at the time this suit was filed, Mayor Rudolph W. Giuliani had already begun a review of the New York City Child Welfare Administration ("CWA"), and, being committed to reform of child welfare in New York City, thereafter determined to create a new agency to handle child welfare in New York City; and

WHEREAS, on January 15, 1996, Mayor Giuliani created the Administration for Children's Services ("ACS"), appointing Nicholas Scoppetta as its first Commissioner and Commissioner Scoppetta, in his official capacity, was subsequently substituted for Kathryn Croft as a defendant herein; and

WHEREAS, on December 19, 1996, Mayor Giuliani and Commissioner Scoppetta issued the document "Protecting the Children of New York: A Plan of Action for the Administration for Children's Services" (the "Reform Plan") to respond to significant problems in CWA's operation; and

WHEREAS, the Advisory Panel, referred to in paragraph 4, below, found that the Reform Plan, while "not a finished roadmap," "offers a thoughtful, coherent, broad and appropriately ambitious vision and framework to guide the design and implementation of the numerous . . . changes that will be required to dramatically improve the City's child welfare system [and] . . . could well serve as a durable foundation for focusing what will, by necessity, be several years of refinement and . . . implementation"; and

WHEREAS, the Court in this action, by order entered July 5, 1996, certified a class of "all children who are or will be in the custody of the New York City Administration for Children's Services ("ACS"), and those children who, while not in the custody of ACS, are or will be at risk of neglect or abuse and whose status is known or should be known to ACS" (hereinafter "Plaintiffs," which term includes both named representative Plaintiffs and the members of the Plaintiff class) and certification of that class was upheld on appeal by the United States Court of Appeals for the Second Circuit; and

WHEREAS, the City denies all wrongdoing alleged in this action and denies any liability whatsoever to Plaintiffs, and whereas the City asserts that it has meritorious defenses which it has asserted in this action, and asserts that it has entered into this Agreement solely for the purpose of settling and compromising the claims of the Plaintiffs, in order to avoid the expense and diversion of its personnel caused by protracted litigation, and to terminate the claims asserted against the City in the Marisol Litigation as provided herein; and

WHEREAS, a class of children subject to foster care placement by the City's child welfare agency had previously brought a lawsuit in this Court against the City captioned Wilder, et al. v. Bernstein, et al., 78 Civ. 957 ("Wilder"), which lawsuit was settled and the settlement

was ultimately approved by the Court and became effective in 1988; and

WHEREAS, the parties (references to "party" or "parties" herein shall mean the Plaintiffs and/or the City, who are the only parties to this Agreement) shall jointly apply to dismiss Wilder with prejudice in accordance with the terms of this Agreement, and the obligations created by Wilder shall be dealt with pursuant to the terms of this Agreement; and

WHEREAS, the City asserts that, beginning in November 1995 and continuing after the filing of the Marisol Litigation, the City has taken actions including the following: creating and restructuring ACS, promulgating the Reform Plan, and implementing key reforms to the child welfare system, including hiring over 1,250 new caseworkers who meet heightened eligibility standards; expanding the training program for new caseworkers and introducing the first-ever agency-wide supervisory training program; reducing the average child protective caseworker's caseload from 27 in June 1996 to 12.8 in August 1998; establishing Instant Response Teams composed of caseworkers, lawyers from the District Attorney's office, police officers, and staff from Child Advocacy Centers to respond in cases of severe child abuse or fatalities; completing 4,009 adoptions in Fiscal Year 1997, a 73% increase for New York City over the base year of Fiscal Year 1994 and 3,848 adoptions in Fiscal Year 1998, a 66% increase over 1994; and issuing a Request for Proposals for a neighborhood-based foster care system in the Bronx that is intended to be expanded to the other four boroughs; and

WHEREAS, the continued reform of the child welfare system and the best interests of the class will be substantially advanced by the settlement of the Marisol Litigation based on the novel and innovative resolution reflected in this Agreement, rather than by a trial on the merits,

NOW THEREFORE, in consideration of the covenants and undertakings set forth herein and intending to be legally bound thereby, it is stipulated and agreed by the Plaintiffs and the City, represented by their undersigned counsel, that all of Plaintiffs' claims for relief which were or could have been asserted in this action shall be resolved, on the following terms as set forth in this Settlement Agreement (the "Agreement"):

A. Jurisdiction and Authority of the Court

1. After notice of and an opportunity to comment on the Agreement has been provided to the Plaintiff class, the Court shall determine whether to approve this Agreement as being a fair, reasonable, and adequate settlement of the Marisol Litigation. Except as otherwise noted, the terms of this Agreement shall not take effect until the Court issues its order approving this Agreement and enters a judgment dismissing this action as against the City pursuant to paragraph 2.

2. At the time of the Court's approval of this Agreement, the Court will forthwith enter a judgment dismissing the City from the Marisol Litigation, with prejudice, except that the Court shall retain jurisdiction solely for the purposes of (a) enforcing the terms of this Agreement during its term; (b) adjudicating any proceeding pursuant to the provisions of Sections E or F of this Agreement brought prior to December 15, 2000, or which is pending on December 15, 2000, and providing relief if warranted; (c) adjudicating the Marisol Litigation and providing relief if warranted, in the event that this Agreement becomes null and void pursuant to Section K of this Agreement. The parties agree not to contest the jurisdiction of the Court under the circumstances described in (2)a through 2(c) above.

3. This binding and enforceable Agreement is not, nor shall it be construed as, a Consent Decree.

B. Advisory Panel: Composition

4. An Advisory Panel of experts in the child welfare field ("the Advisory Panel") has been selected and approved by the parties to undertake the various tasks specified in this Agreement. The Advisory Panel consists of the following members: Judith Goodhand, John Mattingly, Douglas Nelson and Paul Vincent. Other individuals may be added to the Advisory Panel at the recommendation of the Advisory Panel and upon the approval of both the City and the Plaintiffs, which approval shall not be unreasonably withheld. Any Advisory Panel recommendation pursuant to this paragraph must be upon written notice to the parties, and will be accepted unless disapproved by either party within ten (10) business days after receipt of such notice. The Advisory Panel may employ such staff as it deems appropriate or necessary to fulfill its purposes.

5. The parties have consented to the terms of this Agreement upon the understanding that Advisory Panel members have undertaken personally to carry out the functions described below during the term of this Agreement.

6. If during the term of this Agreement any Advisory Panel member named in paragraph 4, above, becomes unable to continue to act in his/her capacity as an Advisory Panel member, the remaining members of the Advisory Panel shall recommend a substitute member to the City and the Plaintiffs for their approval, which approval shall not be unreasonably withheld. Any Advisory Panel recommendation pursuant to this paragraph must be upon written notice to

the parties and will be accepted unless disapproved by either party within ten (10) business days after receipt of such notice.

C. Advisory Panel Tasks: Initial Reports

7. The Advisory Panel shall study the five areas of ACS's operation described below and shall produce a report ("Initial Report") in each area. In each Initial Report the Advisory Panel will present recommendations as to the additional or different steps, if any, that ACS should consider taking as part of ACS's efforts toward reform in that area.

8. The parties agree that the ACS Reform Plan, referred to above, will be the starting point for the Advisory Panel's review of the operational areas it will study; that is, the Advisory Panel will not attempt to suggest approaches that would differ from the Reform Plan's overall goals and principles, but will assess ACS's operations in any given area in line with those starting points.

9. ACS agrees, during the term of this Agreement and starting with the signing of this Agreement, to cooperate fully with the Advisory Panel's review processes, to consider fully each recommendation made by the Advisory Panel and to provide the Advisory Panel full access to information, documents and personnel as it may request.

10. The Advisory Panel's recommendations are not binding on ACS or the City but are purely advisory, intended to assist ACS in achieving the reform goals it has set in each area under review.

11. The areas to be reviewed by the Advisory Panel are:

a. The areas and issues discussed in the "Advisory Report on Permanency Issues in the New York City Child Welfare System", submitted to the

Plaintiffs and the City on September 4, 1998 (the "Permanency" subject matter area).

b. Placement and evaluation issues arising out of an agreed-upon set of existing legal obligations in Wilder set forth in paragraph 30.b, below ("Wilder Obligations").

c. Monitoring and improving the performance of private agencies that contract with the City to provide services, delegation of case management, enhancing on-site reviews, utilizing incentives for good performance, and creating standards and outcome-based objectives which better track contract agency performance ("Contract agencies").

d. The capacity to track front line practice at ACS as it relates to subject matter areas 11.a, 11.b, and 11.c above, so that ACS may better monitor, evaluate, and where necessary, improve the quality of such practice ("Front line practice").

e. The system for evaluating and improving the quality, qualifications, and performance at the supervisory level of ACS as it relates to subject matter areas 11.a, 11.b, 11.c and 11.d above ("Supervisory practice").

12. Notwithstanding the foregoing identification of the subject matter areas to be within the purview of the Advisory Panel, when in the course of performing its duties the Advisory Panel observes or learns about other activities or programs of ACS that directly affect subject matter areas 11.a, 11.b, or 11.c above, it shall be within the province of the Advisory Panel, at its sole discretion, to incorporate within its review of such subject matter areas, such activities or programs as may impact the subject matter areas under review.

13. If in the course of performing its duties, the Advisory Panel observes or learns about activities or programs that do not directly affect subject matter areas 11.a, 11.b, or 11.c above, but which in its judgment and expertise should be reviewed by ACS, the Advisory Panel may, at its discretion, give advice to ACS concerning such activities or programs; such advice will be informal, whether oral or written, and will not be included in any Advisory Panel report or review.

14. In accord with the Advisory Panel's procedure in creating its first Initial Report on Permanency, the Advisory Panel will provide a draft of each subsequent Initial Report to the parties, will receive and discuss with each party any comments that party wishes to make concerning the draft, and thereafter will issue the final version of that Initial Report.

15. The Initial Reports shall be provided to the parties and the Court, and may thereafter be released to the public.

16. Upon the parties' signing of this Agreement, the Advisory Panel shall commence its review of the areas described in paragraph 11.b-11.e, beginning with the area described in paragraph 11.b.

17. At the same time as it reviews the issues described above in paragraph 11.b, the Advisory Panel shall review the steps ACS has taken to fulfill the purpose of the Interim Stipulation and Order Concerning Overnights at Pre-Placement which was "so ordered" by this Court on July 17, 1997 (the "July 1997 order") and provide advice to ACS pursuant to paragraph 12 above. The parties agree that the obligations contained in the July 1997 order will expire and terminate upon the Court's approval of this Agreement; the parties further agree that these obligations should be suspended during the remaining period prior to their expiration and

termination. The parties agree that, upon the signing of this Agreement, they will seek forthwith, by an order to show cause with a proposed temporary restraining order, the Court's approval for such suspension.

18. Plaintiffs' counsel shall be provided with the following reports within a reasonable time, not to exceed twenty (20) business days after they are produced: Office of Management Development and Research "data book" reports, which include adoption timeliness reports and data reflecting pre-placement overnights; ACS "Updates;" 153-d sanction reports; final COPES reports or any reports that ACS substitutes for final COPES reports to measure agency/ACS performance and/or outcomes; and PTS reports on child evaluations.

D. Advisory Panel Tasks: Periodic Reports

19. After the Advisory Panel has completed its five Initial Reports, as specified in paragraphs 7, 11, and 14 above, it shall continue to review ACS's operations in the five areas studied, and shall produce periodic reports ("Periodic Reports") on these areas, which, when completed, shall be promptly provided to the parties and to the Court.

20. The focus of the Periodic Reports will be to determine whether or not, in the Advisory Panel's opinion, considering all of the applicable circumstances, ACS is acting in good faith in making efforts toward reform in the operational areas being reviewed.

21. The Advisory Panel will not determine ACS's "good faith" solely on the basis of whether ACS is implementing any or all of the Advisory Panel's recommendations, or whether such implementation is being done on any specific schedules proposed by the Advisory Panel, or whether any reform efforts are actually effective in bringing about reform, or whether

the City has given the Advisory Panel access to information, but the Advisory Panel may consider these, as well as other, factors.

22. In determining whether ACS is making good faith efforts toward reform in a particular area, the Advisory Panel must also consider the extent to which a variety of significant legal and operating constraints may have blocked or delayed implementation of reform. Such constraints may include limitations derived from the United States and New York State Constitutions, federal or state law or regulation, civil service laws or regulations, collective bargaining agreements, or diminution of funding.

23. Prior to issuing a Periodic Report, the Advisory Panel shall provide to the parties a draft Periodic Report containing an explanation of the basis for any finding as to whether or not ACS is operating in good faith in the area reviewed by the Advisory Panel, and the Advisory Panel shall convene a meeting with the appropriate ACS officials to give ACS an opportunity to discuss the Advisory Panel's tentative findings and conclusions. The Advisory Panel shall issue the final version of its Periodic Report no later than forty-five (45) days after issuing the draft version.

24. The Advisory Panel in its Periodic Reports will state its conclusions, separately for each area reviewed, as to whether or not ACS is operating in good faith in that area. If the Advisory Panel's draft Periodic Report contains a conclusion that ACS is not acting in good faith in a particular area, the subsequent final version of that Periodic Report, if it retains that conclusion after discussion with ACS as provided in paragraph 23, above, must also contain an explanation of the basis for that finding and a statement of what specific steps ACS should take to demonstrate good faith in that area of its operations.

25. The parties acknowledge that a purpose of this Agreement is to avoid further litigation and disputes between the parties and to further improvements in child welfare in New York City. In furtherance of this purpose, after the Advisory Panel releases an Initial Report in a subject matter area, it is agreed that the Advisory Panel has discretion to determine the extent to which it will consider arguments by the parties concerning its proposed findings of good faith. Nothing in this Agreement creates any rights for Plaintiffs to utilize the Advisory Panel as, in effect, arbitrators or administrative law judges with respect to any disputes Plaintiffs may have with ACS. Nothing contained in this paragraph shall limit the City's rights as provided in paragraph 23, above.

E. Consequences of a "Not in Good Faith" Finding in a Periodic Report

26. Only if the Advisory Panel finds in a given area that, considering all the applicable circumstances, ACS is not acting in good faith in making efforts toward reform in that area, may Plaintiffs move to bring the matter and the Advisory Panel's finding before the Court, pursuant to the jurisdiction retained in paragraph 2, above, and seek an adjudication that the City has violated the legal rights of the class in the area reviewed, and that Plaintiffs are entitled to relief. In such proceeding, the Advisory Panel's finding shall be prima facie evidence that ACS is not acting in good faith. The parties stipulate to the admissibility in evidence of the Advisory Panel's Initial and Periodic Reports and the testimony of the Advisory Panel members. The City reserves its right to contest the contents of such Reports and the testimony of the Advisory Panel members.

27. To prove that the City has violated the legal rights of the Plaintiffs in the area reviewed, the Plaintiffs must prove liability under the applicable laws identified in those

claims contained in the Complaint and Intervening Complaint in the Marisol Litigation which were not dismissed by the Court prior to the signing of this Agreement and which are related to the subject-matter areas for which the Advisory Panel has determined, pursuant to paragraphs 20-22, above, that ACS is not acting in good faith. The City may assert any and all applicable defenses on the issues of liability and of relief. The parties acknowledge that all prior legal rulings in this case are the "law of the case".

28. Plaintiffs shall have not more than thirty (30) days after the Advisory Panel's issuance of a final Periodic Report containing a not-in-good-faith finding to commence a proceeding under Sections E or F, unless otherwise agreed by the parties in writing.

29. The parties agree not to contest the finality of an adjudication pursuant to Sections E or F for the purpose of an appeal.

F. Special Provisions Applicable in the "Wilder" Subject Area

30. a. Whereas, the City and the Plaintiffs recognize that the following principles were established in Wilder ("Wilder Principles"), which is being dismissed with prejudice and finally terminated in accordance with the terms of this Agreement;

i. All children, whether placed with relatives or non-relatives, shall be placed on a first-come first-served basis in the best available agency program that is appropriate for the child's needs, regardless of the child's race or religion. All children placed in foster boarding homes shall be placed with foster boarding home families appropriate for their needs; and

ii. ACS and the contract agencies shall follow practices and policies that ensure that children in placement have the right to be free from the

imposition of religious practices and have the right to practice their own religion while in placement; and

iii. The City will continue its efforts to improve the quality of care available to all children in placement; therefore,

b. Pursuant to paragraph 11.b, above, the Advisory Panel shall examine, in light of the principles set forth in paragraph 30.a, immediately above, the following Wilder Obligations, and shall make an Initial Report which will include recommendations on whether to retain, modify, substitute for or eliminate any of the following obligations:

i. implement a classification system, to be developed by an outside consultant, that measures and classifies all placement agency programs by "meaningful differences in quality" within the various program categories;

ii. maintain accurate vacancy lists and establish waiting lists for certain programs, when appropriate;

iii. determine children's service needs, level of care, and program type by an evaluation performed by qualified personnel in accordance with good social work practice, so that an appropriate placement can be chosen for them; such evaluation shall be done prior to placement or not later than thirty (30) days after referral to ACS for placement or in the case of placement prior to evaluations, not longer than thirty (30) days after actually being placed;

iv. determine appropriateness of placements in certain cases by conducting a de novo review of the child's placement and of the child's needs within ten (10) days after the child's evaluation is completed;

v. employ two hundred (200) Child Evaluation Specialists (a title requiring the employees to hold at least an MSW degree) to conduct the evaluations and review the appropriateness of each child's placement;

vi. ensure that foster care agencies accept all children referred to them, except where the agency lodges a "therapeutic objection" subject to ACS's overruling, which the agency may challenge before an impartial arbiter; and

vii. ensure that foster care agencies conduct the required screening of kinship foster homes and training of kinship foster parents and provide required services to children in kinship foster care.

31. In accordance with Section D, the Advisory Panel will thereafter review ACS's activities in response to the Initial Report which sets forth the Advisory Panel's recommendations on the Wilder Obligations. If the Advisory Panel finds in a Periodic Report, considering all of the applicable circumstances, that ACS is not acting in good faith in its response to the Advisory Panel's report identified in paragraph 30.b, above, which finding shall be a required prerequisite to a proceeding under this paragraph 31, including subparagraphs a and b, Plaintiffs shall have the right to move for judicial enforcement of the Wilder Obligations, pursuant to the jurisdiction retained in paragraph 2, above, in the following manner:

a. With respect to any recommendation to retain a Wilder Obligation, Plaintiffs may bring the matter and the Advisory Panel's findings before the Court as prima facie evidence that the City is not acting in good faith. The Advisory Panel's findings shall also be prima facie evidence of a violation of such Wilder Obligation and the City agrees that in responding thereto, it shall not argue that there is no basis for any such Wilder Obligation.

b. To the extent that the Advisory Panel makes a recommendation to substantively modify a Wilder Obligation or to substitute some new or different mechanism therefor, Plaintiffs may bring the matter and the Advisory Panel's findings before the Court. Plaintiffs shall be required to prove that such modification or mechanism is consistent with the Wilder Principles and that the Wilder Obligation that the Advisory Panel has proposed be modified or replaced has been violated. The parties stipulate that the Advisory Panel's report and testimony of its members shall be admissible in evidence with respect to those issues.

32. In response to such a motion by Plaintiffs in either circumstance described in paragraph 31, above, the City retains the right to raise any and all defenses, including the defense that it has acted in good faith and/or that some or all of the recommendations of the Advisory Panel are not appropriate and should not be the subject of any court order, with the exception of the defense foreclosed in paragraph 31.a, above, which is being waived solely in the circumstances of paragraph 31.a, above.

33. Upon the parties' signing of this Agreement, the parties agree to suspend immediately the following Wilder-related activities: meetings and discussions between and among the City, Plaintiffs' counsel and various other parties; all discovery obligations of any kind; all obligations to provide information and data to Plaintiffs' counsel; and applications to the Court except as provided in this paragraph. The parties agree that the following additional activities should be suspended, and agree to jointly seek forthwith by an order to show cause with a proposed temporary restraining order the Court's approval for such suspension: court conferences and all activities of the Wilder settlement panel, including any audits or case reviews. Notwithstanding the foregoing, the City acknowledges the existence of the Wilder Obligations

identified in paragraph 30.b, above, and agrees to continue in good faith its efforts to comply with the Wilder Obligations pending the completion of the Advisory Panel's review in this area. The parties further agree that they will apply forthwith to the Court for a final judgment dismissing Wilder, together with all obligations created by or under the Stipulation settling that action and the orders issued by the Court in that litigation, on the ground that all remaining applicable rights of the parties to that litigation will be adequately protected through this Agreement, such dismissal to take effect upon the final approval of this Agreement by the Court, pursuant to paragraph 2, above.

34. The parties agree to take such steps as are necessary to adjourn the pending appeal in Wilder. Thereafter, upon the dismissal of Wilder, such appeal shall be withdrawn.

G. Payment of Attorneys' Fees and Costs and Advisory Panel's Expenses

35. a. The City agrees that Plaintiffs, based on the Agreement, are statutorily eligible for an award of attorneys' fees and costs incurred prior to the signing of the Agreement, which materially alters the legal relationship between the parties as sought by Plaintiffs in the Marisol Litigation in a way that directly benefits the Plaintiffs. The City reserves all rights to contest the amount, including the reasonableness, of such fees and costs.

b. Additionally, Plaintiffs reserve the right to argue in any fee application that they are entitled to fees and costs by reason of any outcome of the Marisol Litigation that is not based on the Agreement. The City reserves the right to oppose, on any and all grounds, any application, or part thereof, made pursuant to this sub-paragraph 35.b.

36. Plaintiffs' counsel shall be eligible for attorneys' fees and costs for any activities in which they may engage after signing this Agreement which are permitted by this

Agreement and may seek such fees only for an amount up to but not exceeding a combined total of twenty-five thousand dollars (\$25,000.00) for all such activities. However, if Plaintiffs are a prevailing party in a Section E or F proceeding, Plaintiffs' counsel may seek additional attorneys' fees and costs in connection with that proceeding which were incurred after the issuance of the not-in-good-faith finding that led to that proceeding. 42 U.S.C. 1988 shall provide the governing standard for the award of any such fees and costs in a Section E or F proceeding.

37. The expenses of the Advisory Panel will be paid by the Annie E. Casey Foundation; the City and the Plaintiffs express their gratitude for the generosity of the Annie E. Casey Foundation.

H. Exclusive Remedy

38. Upon the signing of this Agreement, there shall be no further legal proceedings in the Marisol Litigation except pursuant to paragraphs 1 and 17 and Sections E and F of this Agreement.

I. Duration of this Agreement

39. This Agreement shall expire and terminate on December 15, 2000. On that date, the Court's jurisdiction over this Agreement will cease, and the Court will enter a further judgment terminating any remaining jurisdiction over this Agreement and the parties, with prejudice, for all purposes, except as provided in sub-paragraphs 2.b and 2.c above, if the circumstances described in those sub-paragraphs arise.

J. Covenants Not to Sue

40. Plaintiffs agree that they will not sue, or bring or assign any cause of action in any court, for specific performance or enforcement of this Agreement, during or after

expiration of its term, except as otherwise provided in Sections E and F of this Agreement.

41. Plaintiffs agree that they will not sue, or bring or assign any cause of action, for systemic declaratory, injunctive, or other form of equitable relief against the City (as "City" is defined in the first "Whereas" clause, above), or any "releasee" (as defined in paragraph 47, below), in this or any other Court, based on events occurring prior to the signing of this Agreement and based on, arising out of, or relating to any claims that were or could have been asserted in the Complaint or Intervening Complaint in the Marisol Litigation, except as otherwise provided in Sections E and F of this Agreement.

42. a. In the interests of permitting the parties and the Advisory Panel to focus upon and achieve the objectives of this Agreement, Plaintiffs agree that they shall not commence any new action for systemic declaratory, injunctive or other form of equitable relief based on facts, events, actions or omissions by the City (as "City" is defined in the first "Whereas" clause, above) or any "releasee" (as defined in paragraph 47, below) which relate in any way to any claim raised in the Marisol Litigation, as described in Plaintiffs' Statement of Claims to be Tried, set forth in the Pre-Trial Order dated July 16, 1998, and which occur after the signing of this Agreement and prior to December 15, 2000.

b. Plaintiffs further agree to defer and not to commence before December 16, 2000, any new action for systemic declaratory, injunctive or other form of equitable relief based on facts, events, actions or omissions by the City (as "City" is defined in the first "Whereas" clause, above) or any "releasee" (as defined in paragraph 47, below) which relate to claims raised in the Marisol Complaint or Intervening Complaint which were not contained or described in Plaintiffs' Statement of Claims to be Tried, set forth in the Pre-Trial

Order dated July 16, 1998, and which occur after the signing of this Agreement and prior to December 15, 2000.

c. This paragraph shall not prevent an action, at any time, by an individual plaintiff for damages or equitable relief tailored solely to the specific circumstances of that individual plaintiff. Further, nothing in this paragraph shall prevent Plaintiffs in any action for systemic declaratory, injunctive or other form of equitable relief brought after December 15, 2000, and based on claims arising after December 15, 2000, from offering into evidence facts, events, actions or omissions which may have occurred prior to December 15, 2000.

K. Nullification of the Agreement

43. If, for any reason, the Court does not approve this Agreement as a fair, reasonable, and adequate settlement of the Marisol Litigation as between the Plaintiffs and the City, or if an order approving this Agreement is not upheld on appeal, if any, this Agreement shall be null and void. In addition, if the Plaintiffs do not enter into a settlement agreement with the State, or if for any reason, the Court does not approve any settlement agreement between the Plaintiffs and the State, or if an order approving the agreement between the Plaintiffs and the State is not upheld on appeal, if any, at the option of the City, this Agreement shall be null and void.

44. If the parties' application to suspend Wilder and its associated orders and mechanisms is not made within ten (10) business days of signing this Agreement, or if the parties' application to dismiss Wilder and its associated orders and mechanisms is not made within thirty (30) days of signing this Agreement, or if either of these applications is denied in

whole or in part, this Agreement, at the option of the City, shall be null and void.

45. If any member of the Advisory Panel named in paragraph 4, above, ceases to be a member of the Advisory Panel, the Advisory Panel shall continue to function so long as its membership includes at least three members named in paragraph 4, above. If any two members of the Advisory Panel named in paragraph 4, above, cease to be members of the Advisory Panel, then either party, at its option, may render this Agreement null and void.

46. In the event that this Agreement is nullified pursuant to paragraphs 43-45 above, the following provisions shall apply:

a. the Marisol Litigation shall be restored, in all respects, to its status prior to the signing of this Agreement, including with respect to attorneys' fees and costs as described in subparagraph (d) below.

b. Wilder shall not be reinstituted, but the Wilder Obligations and Principles contained in paragraph 30 of this Agreement shall be judicially enforceable in the Marisol Litigation in a manner and for a period of time to be determined by the Court. In making such determination, the Court shall consider all of the surrounding circumstances, including any relevant recommendations that were made by the Advisory Panel and any actions ACS has taken in response to such recommendations.

c. Notwithstanding subparagraph 46.b, above, immediately upon nullification, the Court shall enter in the Marisol Litigation its order, previously entered in Wilder, dated July 1, 1998 concerning the termination of the Wilder decree which was the original source of the Obligations and Principles contained in paragraph 30 of this Agreement. The intent of the parties in this paragraph is to permit the City, in the event

of nullification of this Agreement, to restore its appeal of the Court's ruling that the Wilder Stipulation had not expired by its terms, and the City's appellate rights shall be the same as they were at the time that appeal was taken, such appeal having been withdrawn pursuant to paragraph 34 of this Agreement upon approval of this Agreement. If it is finally determined that the Wilder Stipulation expired by its terms, then the Wilder Obligations and Principles contained in paragraph 30 shall not be judicially enforceable in the Marisol Litigation.

d. In the event the Agreement is nullified as provided in paragraphs 43-45, above, any Court award or approval of fees and costs made prior to nullification in the Marisol Litigation, other than as provided in the last sentence of this sub-paragraph, shall be redetermined by the Court. Plaintiffs' counsel shall retain all fees and costs paid to them by the City prior to nullification until such time as the Court issues an order, made upon motion by Plaintiffs' counsel within 30 days after such nullification became effective, determining whether and to what extent Plaintiffs' counsel may be required to repay such fees and costs to the City. On such a motion, Plaintiffs' counsel shall not be presumptively entitled to any portion of the attorneys' fees or costs awarded and paid prior to nullification of this Agreement, but may argue that they are entitled to all of the fees or costs paid, and the City may oppose the motion on any and all grounds. In the event that Plaintiffs' counsel do not make such a motion within 30 days, Plaintiffs' counsel shall pay the entire amount of the fees and costs received into an interest-bearing escrow account until a Court order has been obtained determining the appropriate allocation to be made of such escrowed funds. This subparagraph shall not apply to (a)

any Court award or portion of an award (or approval or portion of an approval) arising out of a Section E or F proceeding or (b) any defined amount of fees and costs expressly designated by the Court as justified on grounds other than the Agreement pursuant to paragraph 35.b, above.

L. Release

47. Upon the Court's approval of this Agreement, Plaintiffs, individually and on behalf of each member of the class, and on behalf of the respective heirs, executors, administrators, personal representatives, successors and assigns of each of themselves and each of the members of the class, hereby jointly and severally release and forever discharge, on the merits and with prejudice, the City, as defined in the first "Whereas" clause, above, including without limitation its present or former officers, employees, agents, attorneys, and consultants, and their respective heirs, executors, administrators, personal representatives, transferees, successors and assigns (collectively, "the releasees"), and each of them, of and from any and all manner of equitable claims, actions, costs, expenses and attorneys' and expert fees (except as provided in Section G above), whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or not accrued, direct or indirect, from the beginning of time through the date of Court approval of this Agreement, that the named Plaintiffs and the members of the class, and each of them, ever had, now has or have, or can, shall or may hereafter have against the releasees or any of them, either alone or in any combination with others, for, by reason of, involving, concerning, arising from or in any way relating to any equitable claim which is or could have been stated against the releasees in the Complaint and Intervening Complaint filed in this action,

other than a claim by an individual plaintiff for equitable relief tailored solely to the specific circumstances of that individual plaintiff.

48. Effective upon the expiration of the term of this Agreement on December 15, 2000, Plaintiffs, individually and on behalf of each member of the class, and on behalf of the respective heirs, executors, administrators, personal representatives, successors and assigns of each of themselves and each of the members of the class, hereby jointly and severally release and forever discharge, on the merits and with prejudice, the City, as defined in the first "Whereas" clause, above, including without limitation its present or former officers, employees, agents, attorneys, and consultants, and their respective heirs, executors, administrators, personal representatives, transferees, successors and assigns (collectively, "the releasees"), and each of them, of and from any and all manner of equitable claims, actions, costs, expenses and attorneys' and expert fees (except as provided in Section G above), whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or not accrued, direct or indirect, that the named Plaintiffs and the members of the class, and each of them, ever had, has or have on December 15, 2000, or can, shall or may thereafter have against the releasees or any of them, either alone or in any combination with others, for, by reason of, involving, concerning, arising from or in any way relating to any equitable claim which is or could have been stated against the releasees in the Marisol Litigation, as described in Plaintiffs' Statement of Claims to be Tried, set forth in the Pre-Trial Order dated July 16, 1998 and which claim is based on facts, events, actions or omissions by the City or any releasee which took place from the date of Court approval of this Agreement to December 15, 2000, other than a claim by an individual plaintiff for equitable relief tailored solely to the specific circumstances of that individual plaintiff.

M. No Admission of Liability

49. The City has expressly denied and continues to deny each and all of the claims and contentions alleged against it by the Plaintiffs in this action. This Agreement, anything contained herein, and any negotiations or proceedings hereunder shall not be construed as or deemed to be an admission, presumption, evidence of, or concession by the City of the truth of any fact alleged or the validity of any claim which has or could have been asserted in this action, or of the deficiency of any defense which has or could have been asserted in this action or of any wrongdoing or liability whatsoever.

50. Neither this Settlement Agreement nor the fact of its existence nor any terms hereof, nor any related document(s) created hereunder (including the Advisory Panel's Initial and/or Periodic Reports), shall be used as an admission against the City in any civil, criminal or administrative action or proceeding; nor shall these matters be offered or received in evidence against the City other than in any proceedings provided for in Sections E or F, or if the Marisol Litigation is restored to its prior status pursuant to Section K above.

N. Other Provisions

51. Nothing contained herein shall be deemed to constitute a custom, policy or practice of the City of New York.

52. This Agreement contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Agreement regarding the subject matter of this proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

53. Both parties to this Agreement have participated in its drafting and, consequently, any ambiguity shall not be construed for or against either party.

54. Each of the undersigned attorneys represents that he or she has been duly authorized to enter into this agreement.

55. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by both the City and the Plaintiffs.

56. The parties recognize and acknowledge that this Agreement must be approved by the Court pursuant to paragraph 1 above. The parties agree to cooperate in good faith in the creation of all papers submitted to the Court to secure such approval.

57. This Agreement shall inure to the benefit of and be binding upon the legal representatives and any successor of Plaintiffs and the City.

58. Notice, when due to Plaintiffs or the City, shall be given by delivering it, in person or by United States certified first-class mail, to the parties' counsel in the litigation as follows:

To the Plaintiffs: Marcia Robinson Lowry, Esq.
Children's Rights Inc.
404 Park Avenue South
New York, New York 10016

To the City: Gail Rubin, Esq.
Assistant Corporation Counsel
New York City Law Department
100 Church Street, Room 3-158
New York, New York 10007

Dated: New York, New York
December 1, 1998

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By: David M. Brodsky
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