

## NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**Attention: all children who are in the legal custody of the Arizona Department of Child Safety.** This notice concerns a proposed settlement of a class action lawsuit concerning the child welfare system operated by the Arizona Department of Child Safety. **If you are one of the children described above, or if you are responsible for one or more of these children, you should read this notice.** This is a court-authorized notice.

**Please read this notice carefully. Your rights may be affected by legal proceedings in this case.**

## NOTICE OF CLASS ACTION

The purpose of this notice is to inform you of a proposed settlement in a pending class action lawsuit brought on behalf of all children who are or will be in the legal custody of the Arizona Department of Child Safety. The class action settlement (“Settlement Agreement”), which must be approved by the United States District Court, was reached in the case entitled *B.K. ex rel. Tinsley, et al. v. Faust, et al.*, Case No. CV-15-00185-PHX-ROS, pending in the United States District Court for the District of Arizona.

On February 12, 2021, there will be a hearing before Judge Roslyn O. Silver of the United States District Court for the District of Arizona. Judge Silver will hear evidence and argument to decide whether the proposed settlement is fair, reasonable, and adequate, and whether the Court should approve it.

**You may attend the hearing to present to the court any positive or negative comments or any objections about the settlement agreement, and you may submit written comments or objections. You are not, however, required to come to the hearing or make any comments.**

**\*\*PLEASE DO NOT CALL JUDGE ROSLYN O. SILVER OR THE CLERK OF THE COURT ABOUT THE PROPOSED SETTLEMENT\*\*** Instead, you can get more information and ask questions by following the directions below.

## **I. What Is This Class Action Lawsuit?**

This lawsuit was filed on February 3, 2015, by ten children placed in the custody of the Arizona Department of Child Safety (“DCS”). The lawsuit claimed that children in the Arizona child welfare system do not receive the physical, mental, and behavioral health services that they are legally entitled to; that the child welfare system does not have an adequate number of family foster homes; and that investigations of reports that children have been maltreated while in foster care custody were not happening timely. Plaintiffs claim that because of these practices the Defendants are violating the federal rights of children in the Arizona child welfare system. Defendants deny that they are violating the federal rights of the children in the Arizona child welfare system. The lawsuit requests that the Court order Defendants to change these allegedly illegal practices. The lawsuit does not seek money damages for class members and none will be awarded. This means that no individual will receive any financial benefit.

## **II. Who Is Involved In This Lawsuit?**

In a class action, one or more people, called Class Representatives, sue on behalf of all people with similar legal claims. All of these people are members of a “class” or “classes.” One court resolves the legal issue for the entire class. The Class Representatives in this case represent a class of all children who are or will be in the legal custody of DCS due to a report or suspicion of abuse or neglect (called the “General Class”). The Class Representatives also represent two subgroups of children: all children in the General Class who are eligible for Medicaid (the “Medicaid Subclass”) and all children 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 (the “Non-Kinship Subclass”). Together these groups are called the “Plaintiffs.”

The lawsuit is against the Director of the Department of Child Safety (DCS) and the Director of the Arizona Health Care Cost Containment System (AHCCCS) in their official capacities. Together they are called the “Defendants.”

## **III. Why Am I Getting this Notice?**

The Court did not decide in favor of either Plaintiffs or the Defendants in this case. Instead, Plaintiffs and Defendants have negotiated a proposed settlement. Their written agreement is called the “Settlement Agreement.” The parties have asked the federal district court judge assigned to the case to approve the Settlement Agreement for the Class.

**YOU HAVE THE RIGHT TO REVIEW THE ENTIRE SETTLEMENT AGREEMENT IF YOU CHOOSE. YOU ALSO HAVE THE RIGHT TO EXPRESS WHAT YOU THINK ABOUT THE SETTLEMENT AGREEMENT BEFORE THE JUDGE DECIDES WHETHER TO APPROVE IT. YOU CAN DO THIS BY SUBMITTING WRITTEN COMMENTS, ATTENDING AND/OR TESTIFYING AT THE FINAL APPROVAL HEARING, OR BOTH.**

To get a copy of the Settlement Agreement, please follow the instructions below or visit <https://dcs.az.gov/settlement>. The Settlement Agreement is also available on the website of the

lawyers for the Classes on the Arizona Center for Law in the Public Interest website at <https://aclpi.org/settlement/>.

#### **IV. What Does the Settlement Agreement Do?**

The Settlement Agreement, if approved by the Court, will resolve this case without a trial. Under the Settlement Agreement, Defendants are required to implement certain changes and meet specific commitments to improve the foster care system. DCS must provide monthly information regarding progress under the agreement to Plaintiffs' Counsel, who will also monitor DCS's performance under the settlement agreement. The specific commitments in the agreement relate to:

**Mental and Behavioral Health** – The Settlement Agreement requires DCS to improve the ability to provide mental and behavioral health care to children in the child welfare system, including improved monitoring, performance measures, policies, and practices. The settlement requires DCS to undertake specified actions designed to ensure that appropriate behavioral health services are available and that children receive the services they need. The settlement also requires improvements and monitoring related to the Child and Family Team (CFT) process and the utilization and recruitment of therapeutic foster care. And DCS must create a plan to develop and sustain a network of qualified professionals sufficient to provide community-based behavioral health services to meet the needs of children in foster care.

**Physical Health** – The Settlement Agreement requires DCS to improve the monitoring and provision of medical and dental health care services for children in the child welfare system, including compliance with the EPSDT Periodicity Schedule and immunization schedule.

**Placement Array** – The Settlement Agreement requires DCS to improve its ability to place children in the Non-Kinship Subclass in family settings, including utilizing and augmenting tools to improve the placement process and the recruitment of family foster homes. The agreement further requires DCS to reduce the use of congregate care to agreed-upon benchmarks and to measure performance related to the utilization of congregate care.

**Caseworker Workloads** – The Settlement Agreement requires DCS to augment its monitoring of the workload of ongoing and investigative case managers, as well as metrics tracking the quality of the services provided to children in out of home care.

The lawsuit does not request any money damages, so the **Settlement Agreement does not include payment of any money damages to any class members**. It only requires changes to the practices and policies of the Arizona foster care system as summarized above and fully described in the Settlement Agreement.

The Settlement Agreement also provides Plaintiffs' lawyers an award of attorneys' fees and expenses, to be paid by Defendants. Plaintiffs will not ask for payment of attorneys' fees or expenses from Plaintiff children or their families, caregivers, or legal representatives. Members of the Classes will not owe money or costs or fees of any kind in connection with this lawsuit or the Settlement Agreement. The agreed upon attorneys' fees and expenses are more fully

described in the actual Settlement Agreement.

**V. How Do I Submit Comments, Objections, or Support to the Court and How Do I Request to Speak at the Hearing?**

You have the right to submit written comments, objections, or statements in support of the proposed Settlement Agreement. You must submit them by email or U.S. Mail to Class Counsel at either of the below addresses:

**ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST**

Attention: Anne C. Ronan  
352 E. Camelback Road, Suite 200  
Phoenix, AZ 85012  
aronan@aclpi.org

**CHILDREN'S RIGHTS, INC.**

Attention: Harry Frischer  
88 Pine Street, Suite 800  
New York, New York 10005  
hfrischer@childrensrights.org

**For the court to consider it, your email or letter must be received by class counsel on or before January 11, 2021.** You must sign your email or letter and also include your name, address, telephone number, and (if you have one) an email address.

You can also ask to speak at the hearing. If you would like to speak at the hearing, please include that request in your email or letter, including whether you would like to appear in person or by telephone, and briefly describe what you want to speak about. Again, if you want to speak to the Court at the hearing on February 12, 2021, your email or letter must state that you want to speak and it must be received by Class Counsel on or before January 11, 2021.

Class Counsel will share your email or letter with Defendants' counsel within five days of receiving it, and the parties will share all written submissions with the Court no later than January 25, 2021.

**UNLESS THE COURT DECIDES OTHERWISE, ANY CLASS MEMBER WHO DOES NOT MAKE OBJECTIONS AS DESCRIBED ABOVE WILL HAVE WAIVED ALL OBJECTIONS.** When an objection is waived, that means that the Court will not consider it.

## **VI. When and Where Will the Hearing Be Held?**

THE HEARING WILL BE BEFORE UNITED STATES DISTRICT COURT JUDGE ROSLYN O. SILVER ON FEBRUARY 12, 2021, AT 2:00 P.M., IN COURTROOM 605, AT THE SANDRA DAY O’CONNOR FEDERAL COURTHOUSE, 401 W. WASHINGTON ST., SUITE 130, SPC 1 PHOENIX, AZ 85003-2118.

Information on how to attend the hearing is available at <https://dcs.az.gov/settlement> and the Arizona Center for Law in the Public Interest website at <https://aclpi.org/settlement/>. Instructions will also be available on those websites for how to attend the hearing by telephone and from Class Counsel two to four weeks in advance. If the date, time, or location of the hearing changes, or if any other information about the hearing changes, the new date, time, location, or other information will be posted on the websites listed above, but you will not be sent further notice of the change.

## **VII. How Can I Receive More Information or Ask Questions?**

For a copy of the Settlement Agreement, go to <https://dcs.az.gov/settlement> or the Arizona Center for Law in the Public Interest website at <https://aclpi.org/settlement/>. If you do not have access to a computer, please call Class Counsel at Arizona Center for Law in the Public Interest at 602-258-8850 and ask Anne Ronan for a copy of the “B.K. v. Faust Settlement Agreement.” For any other questions, please contact Class Counsel by email at [aronan@aclpi.org](mailto:aronan@aclpi.org) or [hfrischer@childrensrights.org](mailto:hfrischer@childrensrights.org) or at the mailing addresses listed above.

**\*\*Please do not call Judge Roslyn O. Silver or the clerk of the Court\*\*** They will not be able to answer your questions about the lawsuit or the Settlement Agreement. You may, however, review any non-sealed materials that have been filed with the Court in this case by contacting the Office of the Clerk of the United States District Court for the District of Arizona at 401 W. Washington St., Suite 130, SPC 1 Phoenix, AZ 85003-2118. You can reach the Clerk’s customer service line at (602) 322-7200. You can also access the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.azd.uscourts.gov>. To review materials in the public record in this case, refer to Case No. CV-15-00185-PHX- ROS.