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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

K.J., T.J. and M.J., by their
Guardian Ad Litem,
MARCIA ROBINSON LOWRY,

Plaintiffs,

v.

DIVISION OF YOUTH AND FAMILY
SERVICES, DEPARTMENT OF HUMAN
SERVICES, STATE OF NEW JERSEY
PATRICIA BELASCO-BARR,
MICHELE GUHL, CHARLES VENTI,
DORIS JONES, MANAGERIAL DOES
1-10, SUPERVISORY DOES 1-10,
and CASEWORK DOES 1-10,

Defendants.

Civil Action No. 04-3553 (JBR)

**ORDER APPROVING SETTLEMENT
AGREEMENT AND AUTHORIZING
DISTRIBUTIONS**

THIS MATTER having been opened to the Court on October 21, 2005 upon the application of the three Plaintiff children, by their guardian ad litem, Marcia Robinson Lowry, Esquire, for an order approving the terms of a settlement reached among the Plaintiff children and all Defendants and the distributions to be made pursuant thereto, and the Court having considered the submissions of the parties in support of and in opposition to, if any, the granting of the relief sought, and the Court having reviewed the proposed Settlement Agreement and related Trusts, and having been advised by its appointed expert(s) concerning same, and having conducted a hearing on the application, it is on this 30 day of November, 2005, for the reasons stated in the Court's bench rulings of November 16, 2005,

ORDERED:

1. The guardian ad litem is hereby authorized to enter into, on behalf of the three Plaintiff children, a settlement with the Defendant State of New Jersey, on behalf of all Defendants, encompassing all claims asserted in this action in consideration of a payment in the amount of seven and one half million dollars (\$7,500,000.00), base gross cost, as described more fully in the parties' Settlement Agreement dated September 30, 2005 (hereinafter the "Settlement Agreement").
2. Defendant State of New Jersey shall forward all funds to Plaintiffs' counsel (other than funds used to purchase annuity contracts pursuant to Paragraphs 8(d), 8(e), and 8(f) hereof) for proper distribution.
3. The settlement proceeds shall be distributed equally among the three Plaintiff children, as described more fully in the Settlement Agreement.

4. The Court finds that each of the terms of the Settlement Agreement is fair and reasonable and is in the best interests of each of the Plaintiff children, and the Court hereby approves the Settlement Agreement in its entirety. The terms of the Settlement Agreement are hereby incorporated by reference into this Order and made a part hereof.

5. The Court finds that the terms of each of the Trusts to be established under and pursuant to the Settlement Agreement are fair, reasonable and in the best interests of each of the Plaintiff children, and the Court hereby approves each of the Trusts in its entirety. The terms of each of the Trusts are hereby incorporated by reference into this Order and made a part hereof.

6. The Individual Trustee of each of the Trusts shall receive, as compensation for her services as such, the sum of four thousand dollars (\$4,000.00) per year from each of the Trusts. The Individual Trustee may petition the Court to modify this annual compensation as future circumstances may warrant.

7. This Court shall retain jurisdiction over the administration of the Settlement Agreement and the Trusts and over the enforcement of and compliance with the terms of this Order.

8. The settlement proceeds shall be distributed as follows:

(a) Nine hundred thirty-seven thousand five hundred dollars (\$937,500.00) shall be paid to the Trust to be established for the benefit of Plaintiff K.J.;

(b) Nine hundred thirty-seven thousand five hundred dollars (\$937,500.00) shall be paid to the Trust to be established for the benefit of Plaintiff T.J.;

(c) Nine hundred thirty-seven thousand five hundred dollars (\$937,500.00) shall be paid to the Trust to be established for the benefit of Plaintiff M.J.;

(d) Nine hundred thirty-seven thousand five hundred dollars (\$937,500.00) shall be paid to American General Life (rated A+ by A.M. Best and AA+ by Standard & Poor's) fully guaranteed by AGC Life Insurance Co., for the purchase of a tax-free structured settlement annuity which shall make the following payments for the benefit of Plaintiff K.J.: \$ 4,414.98 per month for 30 years guaranteed and for his life thereafter, commencing on October 11, 2014, increasing at 3% compounded annually;

(e) Nine hundred thirty-seven thousand five hundred dollars (\$937,500.00) shall be paid to American General Life (rated A+ by A.M. Best and AA+ by Standard & Poor's) fully guaranteed by AGC Life Insurance Co., for the purchase of a tax-free structured settlement annuity which shall make the following payments for the benefit of Plaintiff T.J.: \$ 4,373.93 per month for 30 years guaranteed and for his life thereafter, commencing on October 14, 2014, increasing at 3% compounded annually;

(f) Nine hundred thirty-seven thousand five hundred dollars (\$937,500.00) shall be paid to American General Life (rated A+ by A.M. Best and AA+ by Standard & Poor's) fully guaranteed by AGC Life Insurance Co., for the purchase of a tax-free structured settlement annuity which shall make the following payments for the benefit of Plaintiff M.J.: \$4,335.94 per month for 30 years guaranteed and for his life thereafter, commencing on March 26, 2015, increasing at 3% compounded annually; and

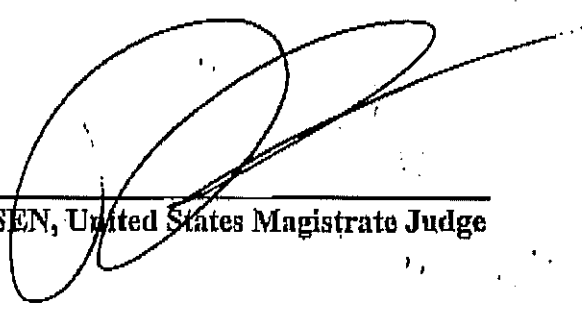
(g) One million eight hundred seventy-five thousand dollars (\$1,875,000.00), representing the Differential Amount pursuant to Paragraphs 7 and 9 of the Settlement Agreement, shall be temporarily withheld by Defendant State of New Jersey pending the further

Order of this Court regarding the amount of attorney's fees and costs to be received by counsel for Plaintiffs.

9. Until each of the Plaintiff children reaches age thirty-five, or until such time as his Trust is amended by approval of the Court, the structured settlement payments referred to in Paragraphs 8(d), 8(e), and 8(f) hereof shall be made to that child's Trust. After each of the Plaintiff children reaches age thirty-five, such child may seek an Order from the Court directing the owner of the annuity contract to make such payments directly to the child, following a determination that the child possesses the appropriate mental capacity to manage such funds and that he is free from undue influence; in the event that no such determination is made, the structured settlement payments shall continue to be paid to the child's Trust.

10. If any of the Plaintiff children dies before receiving all guaranteed structured settlement payments, any remaining payments with respect to that child shall be paid to the beneficiary or beneficiaries designated in writing by the child in accordance with the procedures established by the owner of the annuity contract, provided that the child may make such designation only upon attaining the age of majority. If any of the Plaintiff children dies before the age of majority, or if he makes no such valid beneficiary designation, then any such remaining guaranteed payments shall be made to his estate.

11. Counsel for Plaintiffs shall cause a copy of the fully-executed trust agreement for each of the Plaintiff children to be filed with the Court within thirty (30) days of the date of entry of this Order.



JOEL B. ROSEN, United States Magistrate Judge

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") is made and entered into as of this 30th day of September, 2005, by and between the State of New Jersey (the "State") and Marcia Robinson Lowry (the "GAL") in her capacity as guardian ad litem to K.J., T.J., and M.J. (collectively the "Jackson Children"). (The term "GAL" shall include Marcia Robinson Lowry, regardless of whether she is acting as guardian ad litem to the Jackson Children or as a trustee of a trust established for the benefit of any of the Jackson Children.) The State and the GAL shall be referred to hereinafter collectively as the "Parties."

WHEREAS, by order dated June 17, 2004, the GAL was duly appointed by the Superior Court of New Jersey as guardian ad litem to represent the Jackson Children; and

WHEREAS, the GAL commenced a lawsuit on behalf of the Jackson Children in the Superior Court of New Jersey, Camden County (No. L002895-04) against the State, the New Jersey Division of Youth and Family Services, the New Jersey Department of Human Services, and various current and former individual state employees ("the Action"); and

WHEREAS, the State removed the Action to federal court, where it was assigned case number 04-CV-3553; and

WHEREAS, the Parties mutually desire to resolve the Action amicably without further litigation; and

WHEREAS, this Settlement Agreement is made without any admission of liability by any party;

NOW, THEREFORE, in consideration of these promises and the mutual covenants hereinafter set forth, the Parties agree as follows:

1. **Settlement Amount.** The Parties agree that the settlement amount ("Settlement Amount") shall be seven and one half million dollars (\$7,500,000.00), structured as set forth in Paragraph 7 hereof.

2. **Education.**

(A) Promptly upon the execution of this Settlement Agreement, the GAL shall attempt to obtain on behalf of each of the Jackson Children the following educational services from the children's local school districts: ten hours per month of cognitive remediation therapy, one hour per week of vocational therapy, one hour per week of occupational therapy, and four hours per week of one-on-one academic tutoring.

(B) If, during the first year after the execution of this Settlement Agreement, any of the local school districts are unwilling to provide the Jackson Children with the services enumerated in the previous subparagraph, the GAL shall pursue any reasonable legal option

available to compel such local school district(s) to provide such services (whether under the Individuals with Disabilities Education Act, the New Jersey Constitution, or any other federal or state law or regulation), up to and including bringing the matter before the United States District Court of New Jersey as provided by statute, but not including an appeal to the United States Circuit Court or the United States Supreme Court.

(C) If, at any time following the first year after the execution of this Settlement Agreement, any of the local school districts are unwilling to provide the Jackson Children with the services recommended by the GAL's education expert, the GAL shall use her best efforts to negotiate the provision of such services with such local school district(s), but the GAL shall not be obligated to take any legal action against such local school district(s) if such local school district(s) refuse to provide such services.

(D) To the extent that any of the local school districts fail to provide the Jackson Children with the services recommended by the GAL's education expert – either because, for the first year, the District Court declines to order the local school district(s) to do so, or, for any subsequent year, the GAL is not successful in persuading the local school district(s) to do so – then the State shall pay for (in addition to the amounts set forth in paragraphs 1 and 7 hereof) any such services except as set forth below:

(i) In no event shall the State pay more than a total of \$185,000.00 for the provision of educational services to the Jackson Children;

(ii) In no event shall the State be required to pay for any education services other than cognitive remediation therapy, vocational therapy, occupational therapy, and private one-on-one academic tutoring; and

(iii) In no event shall the State be required to pay for any education services in excess of the difference between the services provided by the local school district and ten hours per month of cognitive remediation therapy, one hour per week of vocational therapy, and one hour per week of occupational therapy; provided, however, that no such limitation on hours shall apply to private one-on-one academic tutoring.

(E) With respect to the timing of the payments contemplated under this paragraph, the State shall make no payment with regard to the services sought in the first year until after the GAL has been unsuccessful in the United States District Court in obtaining all services sought as set forth above. After the first year, the State shall make the payments for which they are responsible as set forth above at the time the local school district(s) decline to provide such services.

(F) If, after the first year, the State believes that the services recommended by the GAL's education expert are unreasonable, it may seek binding arbitration with Magistrate Judge Joel Rosen (or such other judge as the District Court may direct).

3. Ongoing Information Regarding the Status of the Children.

(A) Until such time as the Jackson Children are no longer in the custody of DYFS, the State shall provide the GAL, on a bi-monthly basis, with updated records regarding each of the Jackson Children, including updates of all case records and updates of all medical, psychological, and educational records. DYFS shall produce to the GAL, on or before the 14th day of every other month, all such records created, generated, or received by the State during the previous two months.

(B) Until such time as the Jackson Children are no longer in the custody of DYFS, DYFS shall promptly (and in all events within three days) notify the GAL of any significant events or developments concerning any of the Jackson Children, including but not limited to any change in placement, services, permanency goal, or permanency plans; any legal proceeding involving any of the Jackson Children; any allegation of abuse or neglect involving any of the Jackson Children or occurring at the placement where any of the Jackson Children are placed; and any critical incident (i.e., any incident requiring generation of a critical incident report as defined in the policy of the Division of Youth and Family Services that exists on the date of the execution of this Settlement Agreement) involving any of the Jackson Children or occurring at the placement where any of the Jackson Children reside.

(C) Until such time as the Jackson Children are no longer in the custody of DYFS, DYFS shall meet and confer with the GAL on a bi-monthly basis (and/or within three days of any significant event or development) regarding the case plans, placements, programs, and services being provided to each of the Jackson Children. During these meet and confer sessions, the Parties shall discuss and attempt in good faith to agree on appropriate case plans, placements, programs, and services for each of the Jackson Children. The Parties agree that Judy Meltzer shall serve as a neutral facilitator during such meet and confer sessions, and that the Parties shall work with Ms. Meltzer in good faith to resolve any disagreements that may arise regarding appropriate case plans, placements, programs, or services for the Jackson Children; provided, however, that in no event shall the State be under any obligation to adopt or incorporate any of the suggestions made by the GAL or by the neutral facilitator. In the event that Ms. Meltzer is unable or unwilling to serve as such a neutral facilitator, the Parties shall endeavor in good faith to agree on a different neutral facilitator with similar expert qualifications to Ms. Meltzer, and if the Parties are unable to so agree, a neutral facilitator shall be appointed by Judge Rosen.

(D) The State agrees that it shall not oppose any application or motion made by the GAL to intervene in any legal proceeding (including without limitation any proceeding before the Family Part of the Superior Court of New Jersey) relating to any of the Jackson Children. By waiving its right to oppose any application or motion to intervene made by the GAL, the State reserves and does not waive its right to oppose the substance of whatever position the GAL may assert.

4. Existing Medicaid Liens and Continuing Medicaid Benefits.

(A) The State shall waive any and all Medicaid liens and rights of reimbursement with respect to any Medicaid benefits provided to any of the Jackson Children at any time prior to the execution of this Settlement Agreement.

(B) From the date of this Settlement Agreement until each of the Jackson Children reaches age twenty-one, the State shall provide each of the Jackson Children with a Medicaid card entitling them to benefits under Medicaid "Family Care Plan A," regardless of whether the Jackson Children remain in foster care or are adopted, and the State shall not impose a lien or seek reimbursement of any such benefits. Should any or all of the Jackson Children take up residence in another state prior to age 21, the State shall negotiate with officials in the new state to have the new state provide the Medicaid benefits set forth above. Should such new state decline, the State shall use its best efforts to persuade appropriate medical providers in the new state to become New Jersey Medicaid providers such that such medical providers are eligible to be reimbursed by the State for medical care provided to the Jackson Children.

5. Confidentiality. The GAL may file a motion with the Court seeking to seal portions of this Settlement Agreement and the exhibits appended hereto. The State may, but is not required to, join the GAL in such motion.

6. Agreement Contingent Upon Court Approval. The Parties agree that their willingness to enter into this Settlement Agreement is contingent upon the approval of Magistrate Judge Joel Rosen (before whom the Parties have consented to proceed pursuant to 28 U.S.C. § 636(c) and F.R.C.P. 73), following a hearing conducted in a manner akin to a "friendly" hearing conducted pursuant to N.J. Court Rule 4:44-3, of each and every provision of this Settlement Agreement (except the issue of whether the 25% contingency fee agreed to by GAL and her attorneys should be modified). In the event that Magistrate Judge Joel Rosen declines to approve any of the provisions of this Settlement Agreement (other than the issue of whether the 25% contingency fee agreed to by GAL and her attorneys should be modified) or declines to approve any of the terms of the trusts as set forth in Exhibit A, this entire Settlement Agreement shall be null and void (unless the Parties expressly agree otherwise in a writing).

7. Funding of Trusts and Annuities. The Settlement Amount set forth in Paragraph 1 hereof shall be structured as follows:

(A) The "Initial Funding Amount" shall consist of the Settlement Amount less the attorneys' fees and costs that the GAL's attorneys seek to have approved pursuant to Paragraph 9 hereof.

(B) Immediately upon the approval of this Settlement Agreement under Paragraph 6 hereof, the State shall pay one sixth of the Initial Funding Amount to each of three separate trusts, one for the benefit of each of the three Jackson Children (the "Trusts"), in the form attached hereto as Exhibit A.

(C) Immediately upon the approval of this Settlement Agreement under Paragraph 6 hereof, the State shall pay or arrange to have paid periodic income-tax-free structured settlement payments for the benefit of each of the Jackson Children as set forth in the schedule attached hereto as Exhibit B. These payments shall have a cost equal to the remaining half of the Initial Funding Amount. The obligation to make the periodic income-tax-free structured settlement payments described in Exhibit B may be assigned to an assignment company or companies and funded by an annuity contract issued by a life insurance company or companies as more fully set forth in Exhibit B. All sums funding the periodic structured settlement payments described in Exhibit B constitute damages on account of personal injuries or sickness within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended. Until each of the Jackson Children reaches age thirty-five, or until such time as the trust attached hereto as Exhibit A is otherwise amended by approval of the Court, the structured settlement payments set forth in the schedule attached hereto as Exhibit B shall be made to that child's Trust. After each of the Jackson Children reaches age thirty-five, such child may receive the structured settlement payments directly by providing the owner of the annuity contract with an order from the court having jurisdiction of this settlement directing such payments to be made to him following a determination that the child possesses the appropriate mental capacity to manage such funds and that he is free from undue influence; in the event that no such determination is made, the structured settlement payments shall continue to be paid to the children's trusts. If any of the Jackson Children dies before receiving all guaranteed structured settlement payments as set forth in the schedule attached hereto as Exhibit B, any remaining payments with respect to that child shall be paid to the beneficiary or beneficiaries designated in writing by the child in accordance with the procedures established by the owner of the annuity contract, provided that the child may make such designation only upon attaining the age of majority. If any of the Jackson Children dies before the age of majority, or if he makes no such valid beneficiary designation, then any such remaining guaranteed payments shall be made to his estate.

(D) The Parties agree that the specific terms of the Trusts and the schedule setting forth the periodic income-tax-free structured settlement payments are material to the Parties' willingness to enter into this Settlement Agreement.

(E) The "Differential Amount" shall be the difference between the Settlement Amount and the Initial Funding Amount (which is equivalent to the attorneys' fees and costs that the GAL's attorneys will seek to have approved pursuant to Paragraph 9 hereof). Upon the approval of this Settlement Agreement under Paragraph 6 hereof, the State shall withhold the Differential Amount pending the resolution of any dispute regarding attorneys' fees under Paragraph 9 hereof.

(F) The "Subsequent Funding Amount" shall be (i) the difference, if any, between the Differential Amount and the fees and costs prescribed in Judge Rosen's decision under Paragraph 9 hereof (if such decision is not appealed) or the fees and costs prescribed by the United States Court of Appeals for the Third Circuit (if Judge Rosen's decision is appealed); plus (ii) simple interest on the amount calculated in Paragraph 7(F)(i) hereof, calculated at the rate of

six percent per annum and accruing from the date of the approval by the Court of this Settlement Agreement until any appeal is exhausted and payment is made.

(G) The Subsequent Funding Amount shall be disposed of by paying one sixth of such sum to each of the three Trusts, and by using the remaining half of the Subsequent Funding Amount to purchase additional annuity contracts for each of the Jackson Children, subject to the terms of Paragraph 7(C) of this Settlement Agreement (other than Exhibit B hereto). The GAL shall have discretion to determine which annuity contracts should be purchased and which life company or companies to purchase them from; provided, however, that the GAL shall exercise her discretion in a manner that maximizes the rate of return for each of the Jackson Children.

8. **Assumption of Income Tax Liability.** The State unconditionally guarantees that neither the potential existence of the Subsequent Funding Amount, the actual existence of the Subsequent Funding Amount, or the manner in which the Subsequent Funding Amount is paid shall cause any of the periodic structured settlement payments contemplated in this Settlement Agreement to be subject to any income taxation. The State agrees that if any of the Jackson Children or their respective trusts are ever required by any taxing authority (including without limitation the United States Internal Revenue Service) to pay any income tax on any of the periodic structured settlement payments contemplated in this Settlement Agreement, then the State shall make whole the Jackson Children and/or their respective trusts by reimbursing the Jackson Children and/or their respective trusts for the full and entire amount of (i) any and all income tax liability relating to the periodic structured settlement payments contemplated in this Settlement Agreement arising from the potential existence of the Subsequent Funding Amount, the actual existence of the Subsequent Funding Amount, or the manner in which the Subsequent Funding Amount is paid; (ii) any and all tax liability relating to any payments made pursuant to this paragraph; and (iii) any and all costs incurred by the Jackson Children and/or their respective trusts relating to any inquiry, audit, litigation, or other proceeding by any taxing authority relating to the periodic structured settlement payments contemplated in this Settlement Agreement, including without limitation attorneys' fees, accountants' fees, audit expenses, and litigation expenses.

9. **Attorneys' Fees.**

(A) The Parties agree that subject to the exception set forth in Paragraph 9(B) hereof, the Settlement Amount set forth in Paragraph 1 of this Settlement Agreement is inclusive of attorneys' fees and neither the GAL nor her attorneys will pursue a separate attorneys' fees award from the State pursuant to 42 U.S.C. § 1988 or otherwise.

(B) The State reserves the right to argue to Magistrate Judge Joel Rosen (before whom the Parties have consented to proceed pursuant to 28 U.S.C. § 636(c) and F.R.C.P. 73) at the settlement approval hearing described in Paragraph 6 of this Settlement Agreement that the 25% contingency fee provided for in the retainer agreement between the GAL and her attorneys should be modified. The Parties agree to submit such attorneys' fees dispute to, and for

resolution by, Magistrate Judge Joel Rosen in lieu of submitting such attorneys' fees dispute to, and for resolution by, a United States District Judge. Each of the Parties reserves the right to appeal directly to the United States Court of Appeals for the Third Circuit (but not to a United States District Judge) any decision rendered by Magistrate Judge Joel Rosen with respect to attorneys' fees. If either Party appeals to the United States Court of Appeals for the Third Circuit, and if the State does not prevail in such appeal, then the GAL shall be entitled to seek an award of attorneys' fees and costs with respect to such appeal pursuant to 42 U.S.C. § 1988.

(C) During the settlement approval hearing described in Paragraph 6 hereof (and in whatever papers the State may submit to Magistrate Judge Joel Rosen in advance thereof), the State shall take a position regarding the fees to which the State contends the GAL's attorneys are entitled to collect. The fees to which the State contends the GAL's attorneys are entitled to collect shall constitute the "Undisputed Fees." The "Disputed Fees" shall be the difference between (i) the total fees and costs sought by the GAL's attorneys and (ii) the Undisputed Fees.

(D) Upon the issuance of a decision by Judge Magistrate Judge Joel Rosen regarding the fees and costs to which the GAL's attorneys are entitled, the State and the GAL's attorneys shall, within the allowable period for filing a notice of appeal of such decision pursuant to the Federal Rules of Civil Procedure, inform each other whether they intend to appeal such decision to the United States Court of Appeals for the Third Circuit.

(E) In the event that neither the State nor the GAL's attorneys choose to appeal Judge Rosen's decision to the United States Court of Appeals for the Third Circuit, then (i) the GAL's attorneys shall be entitled to promptly collect from the State the fees and costs prescribed in Judge Rosen's decision; and (ii) the difference, if any, between the Differential Amount and the fees and costs prescribed in Judge Rosen's decision (together with interest thereon) shall be deemed the Subsequent Funding Amount pursuant to Paragraph 7(F) hereof and shall be disposed of pursuant to Paragraph 7(G) hereof.

(F) In the event that either the State or the GAL's attorneys (or both) choose to appeal Judge Rosen's decision to the United States Court of Appeals for the Third Circuit, then (i) the GAL's attorneys shall be entitled to promptly collect the Undisputed Fees from the Differential Amount; and (ii) the Disputed Fees shall remain withheld by the State pending final resolution of the fee dispute by the United States Court of Appeals for the Third Circuit. Upon final resolution of the fee dispute, then (i) the GAL's attorneys shall be entitled to promptly collect from the State the sum of (a) the fees and costs prescribed by the United States Court of Appeals for the Third Circuit and (b) simple interest on such amount calculated at the rate of six percent per annum and accruing from the date Magistrate Judge Joel Rosen renders a decision regarding the fees and costs to which the GAL's attorneys are entitled until any appeal is exhausted and payment is made; and (ii) the difference between the Differential amount and the fees and costs prescribed by the United States Court of Appeals for the Third Circuit (together with interest on that difference) shall be deemed the Subsequent Funding Amount pursuant to Paragraph 7(F) hereof and shall be disposed of pursuant to Paragraph 7(G) hereof.

10. **Adoption Subsidies.** The State agrees that each of the Jackson Children is a "hard-to-place child" within the meaning of N.J.A.C. 10:121-2.1, and that upon the adoption of any of the Jackson Children, the State shall provide the adoptive parent(s) of such child with a monthly adoption subsidy payment pursuant to N.J.A.C. 10:121-2.2.

11. **Limited Releases.** The Parties agree to execute, simultaneously with the execution of this Settlement Agreement, the limited releases attached hereto as Exhibit C.

12. **Entire Agreement.** This Settlement Agreement constitutes and embodies the entire agreement of the Parties with respect to the settlement of this dispute. There are no other agreements of any nature concerning the subject matter of the Action among or between the Parties hereto and there are no prior or contemporaneous understandings or representations relied upon by any Party in entering into this Settlement Agreement that are not stated herein. Modification of this Settlement Agreement must be in a writing that is signed by all Parties; this requirement may not be waived or modified by oral agreement.

13. **Authority.** This Settlement Agreement has been executed freely, knowingly, and voluntarily by all Parties without duress, coercion, or undue influence, with a full and free understanding of its terms. Each Party has discussed this Settlement Agreement with her or its attorneys in detail, and each Party understands its terms.

14. **Execution.** This Settlement Agreement may be executed in any number of counterparts, all of which together shall constitute one agreement.

15. **Choice of Law.** This Settlement Agreement shall be governed by and construed in accordance with the internal laws of the State of New Jersey and/or the laws of the United States of America.

16. **Continuing Jurisdiction; Exclusive Forum.** The Parties agree that the United States District Court for the District of New Jersey (the "DNJ") shall retain jurisdiction over the Action and shall continue to be empowered to compel compliance with the terms and provisions of this Settlement Agreement. The Parties agree that the DNJ shall be the sole and exclusive forum for any proceeding to enforce this Settlement Agreement and acknowledge that they have previously consented (pursuant to 28 U.S.C. § 636(c) and F.R.C.P. 73) to the disposition of any such proceeding by Magistrate Judge Joel Rosen. The prevailing party in any proceeding to enforce this Settlement Agreement shall be entitled to an award of reasonable attorneys' fees, litigation expenses, and court costs against the non-prevailing party.

17. **Execution By Facsimile/Counterparts.** This Settlement Agreement may be executed in counterparts and/or by facsimile.

Executed as of the date first set forth above:

By: Marcia Robinson Lowry
Marcia Robinson Lowry
Guardian Ad Litem

By: Jim Davy
James M. Davy
Commissioner, Department of Human Services

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Defendants

By: Howard J. McCaugh
Howard J. McCaugh
Assistant Attorney General

EXHIBIT A

EXHIBIT B

EXHIBIT B

1.0 Payments Funded Upon Execution of Release

1.1 To Keith Jackson "Payee":

Four Thousand Four Hundred Fourteen Dollars and Ninety-Eight Cents (\$4,414.98) monthly beginning on October 11, 2014, guaranteed for 30 years (360 payments) with the last guaranteed payment being made on September 11, 2044 and then continuing for the life of this Payee. Payments shall increase by 3% annually.

1.2 To Tyrone Jackson "Payee":

Four Thousand Three Hundred Seventy-Three Dollars and Ninety-Three Cents (\$4,373.93) monthly beginning on October 14, 2014, guaranteed for 30 years (360 payments) with the last guaranteed payment being made on September 14, 2044 and then continuing for the life of this Payee. Payments shall increase by 3% annually.

1.3 To Michael Jackson "Payee":

Four Thousand Three Hundred Thirty-Five Dollars and Ninety-Four Cents (\$4,335.94) monthly beginning on March 26, 2015, guaranteed for 30 years (360 payments) with the last guaranteed payment being made on February 26, 2045 and then continuing for the life of this Payee. Payments shall increase by 3% annually.

2.0 Payees' Right to Payments

Plaintiffs acknowledge that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the Plaintiffs; nor shall the Plaintiffs or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

3.0 Consent to Qualified Assignment

3.1 Plaintiffs acknowledge and agree that the State of New Jersey ("State") may make a "qualified assignment", within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the State's liability to make the Periodic Payments set forth in Section 1.1, 1.2, and 1.3 to American General Annuity Service Corporation ("the Assignee").

3.2 Any such assignment, if made, shall be accepted by the Plaintiffs without right of rejection and shall completely release and discharge the State from the Periodic Payments obligation assigned to the Assignee. The Plaintiffs recognize that, in the event of such an assignment,

the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the State thereupon become final, irrevocable and absolute.

4.0 Right to Purchase an Annuity

The State, itself or through its Assignee, reserves the right to fund the liability to make the Periodic Payments through the purchase of an annuity policy from American General Life Insurance Company. The State or the Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The State or the Assignee may have American General Life Insurance Company mail payments directly to the Payees. The Plaintiffs shall be responsible for maintaining a current mailing address for Payees with American General Life Insurance Company.

5.0 Discharge of Obligation

The obligation of the State and/or Assignee to make each Periodic Payment shall be discharged upon the mailing of a valid check or wire transfer/Electronic Funds Transfer in the amount of such payment to the designated address of the Payees named in Section 1.1, 1.2, and 1.3 of this Settlement Agreement.

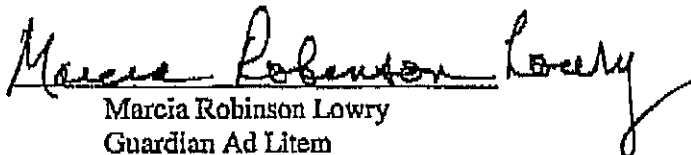
EXHIBIT C

LIMITED RELEASE

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT, contingent on court approval of the Settlement Agreement dated September 30, 2005, and in consideration for the payments and covenants set forth therein, Marcia Robinson Lowry, guardian ad litem to Keith Jackson, Tyrone Jackson, and Michael Jackson (collectively the "Jackson Children"), hereby **RELEASES AND DISCHARGES** the State of New Jersey, together with its insurers, agents, employees, heirs, executors, personal representatives and assigns from all claims, demands, damages, causes of action, or suits which have been, could have been, or might have been made or prosecuted on account of any conduct of any party occurring at any time with respect to the events, information and disputes giving rise to the lawsuit entitled *K.J. et al. v. Division of Youth and Family Services et al.*, No. 04-CV-3553, including but not limited to any claim for payment of counsel fees and costs.

This LIMITED RELEASE may not be amended or modified orally.

Executed as of this 30th day of September, 2005


Marcia Robinson Lowry
Guardian Ad Litem

Sworn to before me this
30th day of September, 2005



Notary Public

WILLIAM J. BISHOP
Notary Public, State of New York
No. 02916032875
Qualified in Kings County
Commission Expires Nov 1, 06

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