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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
C.A. NO. 16cv3768-D**

**ROSANNA GARCIA, et al.,
individually and on behalf of a class of individuals
similarly situated,
Plaintiffs,
v.**

**THE MASSACHUSETTS DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT,
Defendant.**

**MEMORANDUM OF DECISION AND
ORDER APPROVING CLASS ACTION SETTLEMENT**

The parties have submitted to the Court a Joint Motion for Final Approval of Partial Settlement Agreement (the “Motion”). The Motion seeks final approval pursuant to Mass. R. Civ. P. 23(c) of the parties’ Partial Settlement Agreement (the “Settlement Agreement,” “Settlement,” or “Agreement”), including an agreement regarding attorneys’ fees and costs.

On February 3, 2023, this Court preliminarily approved the Settlement Agreement as fair and reasonable, amended the class definition for settlement purposes, consisting of the Settlement Class Members, approved the issuance of notice of the Settlement to Class Members, and scheduled a hearing on final approval for March 28, 2023 (the “Preliminary Approval Order”). Notice was sent pursuant to the terms of the Preliminary Approval Order. The court later extended the time for filing written comments. By this order, the court again extends the written comment deadline so that it may consider the post-hearing comments submitted by five class members on or before April 7, 2023.

On March 28 at 2:00 P.M., the Court held a hearing (“Fairness Hearing”) in-person and by zoom to consider the fairness, reasonableness and adequacy of the proposed settlement. In addition to attorneys for the parties, two class members appeared by zoom and provided their comments and objections. After considering all the oral and written submissions, the Motion is ALLOWED.

BACKGROUND

The Court has reviewed the Motion, and the exhibits thereto, including the Settlement Agreement. It has also reviewed the memoranda and arguments submitted on behalf of the parties as well as written and oral comments by class members.

The Agreement results from arm’s-length negotiations, taken place in good faith between class counsel and DHCD counsel. Based on the papers filed with the Court, and the presentations made to the Court, the Court finds that the Settlement Agreement is fair, adequate, and reasonable.

At the fairness hearing, the court learned from one class member, Terence Moore, that he had not been notified of the settlement or the hearing and learned of the hearing only by chance word of mouth. The court asked counsel to investigate the possible need for additional outreach. As a result, counsel reported that DHCD learned after the hearing that shelter provider Centerboard did not post the settlement notice as instructed at one of its shelter locations in Lynn. Upon learning of this omission, Centerboard posted the settlement notice at the Lynn site on March 29, 2023. That resulted in post-hearing written comments from additional class members, bringing the total of class member commenters to five. Additionally, on February 23, 2023, Centerboard sent electronic notice of the settlement to 292 of its 341 EA families across all of its locations, excluding only the 49 families (including the family of Mr. Moore) who had

opted out of Centerboard's messaging system. According to Centerboard's executive director, every other Centerboard site displayed the settlement notice and notified residents by email, phone, and/or hard copy as instructed by DHCD. DHCD also has contacted the 45 other EA shelters providers and learned that each of them one displayed the settlement notice and distributed hard copies of the Settlement Notice. With this assurance and the corrective action by the Lynn Centerboard shelter, the court is satisfied that the notice process, as conducted, was thorough, fully comply with statutory, regulatory and constitutional requirements, and reflected even more diligence than the law requires.

At and after the fairness hearing, the court received oral and written comments from five class members who object to the settlement. The comments raise objections based upon conditions at particular shelters, infringement upon privacy, civil rights concerns and racial discrimination, including "a history of [EA shelters in Lynn] discriminating against people of color who advocate for their children" or who speak out about safety issues. The court welcomes those comments, which are in the spirit of the hearing process.

While the objecting class members have expressed serious concerns, part of a "fair, adequate and reasonable" reasonable settlement must be compromise. Otherwise, no agreement would likely exist.

"[T]he essence of a settlement is compromise . . . Because settlement of a class action, like settlement of any litigation, is basically a bargained exchange between the litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public. Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel."

Sniffin v. The Prudential Insurance Company of America, 395 Mass. 415, 421 (1985) (citations omitted).

The court has considered the parties' likely prospects if it denied approval of the settlement and the plaintiffs had to litigate this case. This class action is complex with many intricate factual and legal issues and the results of litigation, including this one, cannot be predicted with certainty. Based upon previous experience in this very case, the court is acutely aware of the limits upon judicial power to order changes to the EA program. See Garcia v. DHCD, 487 Mass. 436 (2018) (Vacating preliminary injunction requiring DHCD to provide shelter in a hotel (if available) for ADA-eligible EA applicants if there was no other way to accommodate those applicants' disabilities). There is every reason to believe that the plaintiffs are receiving at least as much in the Settlement Agreement as they could achieve even if very successful in contesting the merits of this case.

The court also notes that this settlement resolves this case, which focuses upon certain aspects of the EA program, but not upon others. The Settlement Agreement addresses improvements in many areas including the EA application process, eligibility, linguistic and other types of access, placement and transfer practices and accommodation for disability, educational needs of schoolchildren and home community. It also addresses the "portfolio of available EA shelter placements" to improve the match with the needs of EA families. It addresses improved communication (e.g., use of scripts and plain language) and better use of technology, recordkeeping, monitoring and communication with plaintiff's counsel.¹ Among the areas left open are many aspects of the physical conditions at specific shelters, many practices of individual providers or their employees, and allegations of racial, ethnic, gender or religious discrimination and civil rights violations and invasion of privacy. Nor does the Settlement Agreement affect non-parties. To the extent that the objectors' concerns fall outside the scope of

¹ Given the length and breadth of the Settlement, this discussion is obviously only a summary and is in no way intended to Affect the terms of the Settlement Agreement itself.

this lawsuit and the release set forth in the Agreement, the objectors likely retain their legal rights. In addition, as the executive agency overseeing the EA program, DHCD may have authority to respond in a meaningful way to any management issues evidenced or revealed by (1) Lynn Centerboard's documented and apparently unexcused failure to comply with instructions regarding notification in this case or (2) by the objectors' allegations in this case, many of which were uncovered as a result of belated notification by that provider.

Class counsel have concluded that the proposed settlement is fair, reasonable and adequate. The court agrees. In approving the Agreement, the Court has considered: (1) whether the proposed settlement was fairly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of the proposed settlement outweighs the mere possibility of future relief after protracted and expensive litigation; (4) the judgment of the parties that the proposed settlement is fair and reasonable and (5) the comments of the class members submitted orally and in writing at and after the fairness hearing. On balance, these considerations weigh strongly in favor of approval. In this challenging litigation, the Settlement Agreement cannot accomplish everything, but it will accomplish a lot. It is certainly superior to continuing this litigation and, very possibly, losing the substantial benefits that the parties have negotiated.

ORDER

Accordingly, **THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES:**

1. The Court has jurisdiction over the subject matter of this action, the named Plaintiffs, the Defendant, and all Class Members.
2. The class members in this case include all Potential Applicants, Applicants, and Participants who (1) applied or attempted to apply for EA Shelter from December 9,

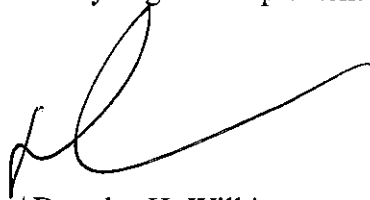
2016, to the date on which the Agreement expires, where that application or attempt to apply has not been finally denied, or (2) were residing in the EA Shelter system (or had been granted a Temporary Emergency Shelter Interruption (TESI)) at any time from December 9, 2016, to the date on which the Agreement expires. For Counts 3 and 4, the subclass members include families who include a qualified person with a disability or a handicap. For purposes of class definition:

- An application is “finally denied” only after all administrative and judicial remedies have been exhausted and all appeal periods have run.
 - A family is a class member if at least one of its applications has not been finally denied, even if it had submitted multiple applications, one or more of which was finally denied.
 - A “qualified person with a disability or a handicap” shall have the same meaning as in Title II of Americans with Disabilities Act, 42 U.S.C. § 12131 et seq.; the Rehabilitation Act, 29 U.S.C. § 701 et seq.; the Fair Housing Act, 42 U.S.C. §§ 3604(f), 12705 and 1437.
3. The form and method of notice given to the class complied with the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure, satisfied the requirements of due process, is the best notice practicable under the circumstances, and constitutes due and sufficient notice of the Agreement, the fairness hearing, and other matters referred to in the notice to all persons entitled to receive such notice. The parties took additional steps to reach out to and notify the class, beyond what this court’s order of notice required, as reported by the parties on April 6, 2023, and as documented by previously-filed affidavits.

4. The court hereby finally approves the Agreement pursuant to Mass. R. Civ. P. 23(c) as fair, reasonable and adequate. The Agreement shall be consummated in accordance with its terms and provisions.
5. The class members, all and each of them (including Plaintiffs), are hereby bound by the terms of the Agreement.
6. The class members are deemed to have released and forever discharged DHCD with respect to the claims that are released in Part 14(VII)(C) of the Agreement, which is incorporated by reference into this Order.
7. The class members are hereby permanently barred and enjoined from instituting or prosecuting, either directly, representatively, derivatively or in any other capacity, any action against DHCD asserting any of the claims released by them in the Agreement.
8. The Court approves the parties' compromise and settlement regarding attorneys' fees and litigation costs, as set forth in Part 15(I)(A)-(D) of the Agreement, under which DHCD shall pay to the Plaintiffs, by their counsel, an aggregate sum of one and a half million dollars (\$1.5 million) to settle the Plaintiffs' claims for attorneys' fees and litigation costs (including, without limitation, expert fees and costs).
9. Without affecting the finality of this Order on Final Approval in any way, and notwithstanding any ultimate disposition of the claims in the above-captioned action, the Court (but not the undersigned Justice) retains jurisdiction to hear and adjudicate noncompliance motions filed in accordance with the Settlement Agreement.
10. Excluded from the Settlement is one issue upon which the parties have filed Cross-Motions for Summary Judgment, to be heard on April 11, 2023. Final Judgment shall

enter after resolution of those cross-motions. However, approval of the settlement is effective immediately, so that the parties may begin to implement it.

SO ORDERED:

A handwritten signature in black ink, appearing to be 'D. Wilkins', written over a horizontal line.

s/ Douglas H. Wilkins

Dated: April 10, 2023

Douglas H. Wilkins,
Associate Justice, Superior Court

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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**THE MASSACHUSETTS DEPARTMENT OF HOUSING
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Defendant.**

**ORDER EXTENDING TIME FOR COMMENT
ON CLASS ACTION SETTLEMENT AND SETTING
TIME TO REQUEST IMPOUNDMENT**

The parties have submitted to the Court a Joint Motion for Final Approval of Partial Settlement Agreement pursuant to Mass. R. Civ. P. 23(c) of the parties' Partial Settlement Agreement. On March 28 at 2:00 P.M., the Court held a hearing in-person and by zoom to consider the fairness, reasonableness and adequacy of the proposed settlement. The court has received post-hearing written comments from additional class members, bringing the total of class member commenters to five. The court ORDERS:

1. The written comments from the five additional class members, received (by email) on or before April 7, 2023, shall be docketed and deemed timely submitted;
2. Any commenter who wishes their comments to be kept out of the public file (impounded) in whole or part shall submit a request by April 24, 2023, along with a very brief explanation why the information should be kept private (for instance,

"the information contains personal and private medical information, residence or information about public benefit status").

3. The parties shall provide a copy of this order to the class members who commented so that they may decide whether or not to seek impoundment.


s/ Douglas H. Wilkins

Dated: April 10, 2023

Douglas H. Wilkins,
Associate Justice, Superior Court