UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

C.K. through his next friend P.K.; **C.W.** through her next friend P.W.; **C.X.** through her next friend P.X.; **C.Y.** through his next friend P.Y., for themselves and those similarly situated, **Plaintiffs,** **v.** **James V. McDonald,** in his official capacity as Commissioner of the New York State Department of Health; **Ann Marie T. Sullivan,** in her official capacity as Commissioner of the New York State Office of Mental Health, **Defendants.**	**Civil Action No. 2:22-cv-01791-NJC-JMW**

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF THE PARTIES' SETTLEMENT AGREEMENT AND THE PARTIES' PLAN TO PROVIDE NOTICE OF THE SETTLEMENT TO THE CLASSES

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I. Introduction

Following productive settlement negotiations, the Parties have executed a proposed Settlement Agreement addressing each of the areas in dispute. The Parties respectfully request that the Court preliminarily approve the proposed Settlement Agreement under Fed. R. Civ. P. 23(e), (h), approve the Parties' plan to provide notice of the Settlement Agreement to the plaintiff classes, and set a schedule for a final approval hearing.

II. Summary of the Litigation

Plaintiffs filed this class action lawsuit on March 31, 2022 on behalf of Medicaid-eligible children with mental health conditions who have been determined by a licensed practitioner to require intensive home and community-based mental health services in order to correct or ameliorate their conditions while remaining safely at home and in their communities. Plaintiffs' complaint seeks declaratory and injunctive relief on behalf of themselves and two classes of similarly-situated children against the Commissioners of the New York State Department of Health ("DOH") and the Office of Mental Health ("OMH") in their official capacities. On October 31, 2022, Plaintiffs filed an Amended Complaint adding additional children. (Dkt. No. 34.) The four "Named Plaintiffs" are C.K. through his next friend P.K.; C.W. through her next friend P.W.; C.X. through her next friend P.X.; and C.Y. through his next friend P.Y. (the next friends are referred to herein as the "Next Friends").

Plaintiffs' Amended Complaint alleges systemic violations of the Medicaid Act (specifically, the Early and Periodic Screening, Diagnostic, and Treatment Services ("EPSDT") and reasonable promptness provisions), Title II of the Americans with Disabilities Act (the "ADA"), and Section 504 of the Rehabilitation Act ("Section 504"). (Amended Complaint ¶¶ 4-5, 9-10, 212-37.) Plaintiffs allege that they were not timely receiving the intensive home and

community-based mental health services that they need to correct or ameliorate their mental health conditions. (*Id.* ¶¶ 18-82.) They further allege that because they were not receiving such services, each of the Named Plaintiffs has been previously institutionalized or was at risk of institutionalization. (*Id.*) The Parties began discovery efforts, and negotiated a Proposed Schedule (Dkt. No. 20), a Protective Order (Dkt. No. 25), an ESI Protocol (Dkt. No. 29), five revised discovery schedules, and appeared before Magistrate Wicks for the resolution of discovery disputes. Decl. of Daniele Gerard in Supp. of Joint Mot. for Prelim. Approval ("Gerard Decl.") ¶ 11.

After substantial discovery, including the production by both Parties of hundreds of thousands of pages of documents through initial and supplemental disclosures, requests for production, and interrogatories; the Court's resolution of several discovery disputes and motions; productions by Defendants of extensive data; and depositions of nine fact witnesses and four additional witnesses designated by Defendants under Rule 30(b)(6) conducted by Plaintiffs and three by Defendants (Gerard Decl. ¶ 11), Plaintiffs filed their motion for class certification, along with a memorandum of law in support, several supportive declarations, hundreds of pages of exhibits, and five expert reports by national leaders in their fields, on November 16, 2023 (Dkt. Nos. 52 to 55).

At a status conference before the Court on January 17, 2024, the Parties reported that (a) they were engaged in discussions concerning a proposed stipulation as to the definitions of Plaintiffs' proposed classes, (b) a stay of all discovery deadlines for several months would allow the Parties to engage in settlement negotiations, and (c) if the Court were to oversee such negotiations, neither Party would ask for the Court to recuse from adjudicating a bench trial on

the merits in the event negotiations did not fully resolve this matter. (Minute Order, Jan. 18, 2024.)

On February 8, 2024, the Parties filed a joint motion to certify Plaintiffs' proposed classes, extend litigation deadlines, stay litigation activity for the purpose of settlement discussions, and confirm that the Parties, with the Court's assistance, would work towards negotiating a settlement of the litigation. (Dkt. No. 71.) On February 22, 2024, the Court granted the motion and certified the case as a class action on behalf of two classes (hereinafter "the Classes," and members thereof, the "Class Members"):

1. The **"EPSDT Class**[,]**"** . . . defined as consisting of all current or future Medicaid-eligible children in New York State under the age of 21 (a) who have been diagnosed with a mental health or behavioral health condition, not attributable to an intellectual or developmental disability, and (b) for whom a licensed practitioner of the healing arts acting within the scope of practice under state law has recommended intensive home and community-based mental health services ("IHCB-EPSDT Services") to correct or ameliorate their conditions.

2. The **"ADA Class**[,]**"** . . . defined as consisting of all current or future Medicaid-eligible children in New York State under the age of 21 (a) who have been diagnosed with a mental health or behavioral health condition, not attributable to an intellectual or developmental disability, that substantially limits one or more major life activities, (b) for whom a licensed practitioner of the healing arts acting within the scope of practice under state law has recommended IHCB-EPSDT Services to correct or ameliorate their conditions or who have been determined eligible for HCBS Waiver Services (as defined in the Amended Complaint, ECF No. 34, ¶ 10), and (c) who are segregated, institutionalized, or at serious risk of becoming institutionalized due to their mental health or behavioral health condition.

(Dkt. No. 73.)

Over the course of many months and subsequent extensions and stays (5/20/22 Minute Order; Dkt. No. 36 and 11/03/22 Minute Order; Dkt. Nos. 49, 62-3, 73; 4/15/24 Minute Order), the Parties held frequent detailed meetings both on their own and before this Court, which acted as mediator, to discuss, draft, review, and negotiate the terms of the Settlement Agreement, attached as Exhibit 1. Gerard Decl. ¶¶ 14, 15. Before each of the 11 settlement conferences with

the Court, the Parties submitted separate or joint settlement statements, updating the Court on the status of negotiations and highlighting areas where the Court's input would be most helpful. Gerard Decl. ¶ 14.

Throughout all the settlement negotiations and court conferences, Plaintiffs have been represented by attorneys from Children's Rights, the National Health Law Program, Disability Rights New York, and Proskauer Rose LLP (collectively, "Class Counsel"). Class Counsel have extensive experience in the areas of Medicaid and disability law. The resulting final Settlement Agreement provides substantial benefits to the Classes while removing the delay, risk, and expense inherent in the trial of such a complex case. Under the Settlement Agreement, Defendants have committed to developing an implementation plan in the next 18 months, pursuant to which Defendants will provide Medicaid-eligible children in New York State with timely access to the intensive home and community-based mental and behavioral health services identified in Plaintiffs' Amended Complaint, and address the alleged deficiencies that are the basis for this litigation. The Settlement Agreement, if approved by this Court, resolves all claims in this lawsuit with Defendants' commitment to provide timely access to medically necessary services for Medicaid-eligible children and youth with mental and behavioral health conditions.

III. Summary of the Settlement Agreement

After more than a year of productive negotiations, the Parties executed a final Settlement Agreement on August 7, 2025. Gerard Decl. ¶ 15. The specific objective of the Settlement Agreement is the development and successful implementation of a multi-year plan to provide timely access to intensive home and community-based mental health services statewide to children in the Classes. As the Settlement Agreement makes clear, the Parties share a mutual interest in

seeing that Class Members receive timely access to these services, consistent with the Parties' shared Goals and Objectives outlined in Section I of the Settlement Agreement.

The Settlement Agreement requires that Defendants implement key commitments, described more fully below. These include the obligation to provide the following Medicaid-covered services to Class Members for whom such services are necessary to correct or ameliorate a behavioral or mental health condition: (1) Intensive Care Coordination, (2) Intensive Home-Based Behavioral Health Services, and (3) Mobile Crisis Services. (Mobile crisis services are particularly important in the decriminalization of mental health, as they result in decreased contacts with law enforcement.[1]) The Settlement Agreement also contains requirements to redesign the current Children and Family Treatment and Support Services ("CFTSS") program and the HCBS Waiver Services program to meet the needs of Class Members who are eligible for the services. This comprehensive intensive service array for the Classes is referred to as the "Relevant Services"; each service is defined in Appendix A to the Settlement Agreement (Exhibit 1, page 40).

The Settlement Agreement requires that Defendants: (a) execute the commitments and processes in the Unified Implementation and Improvement Plan for the Relevant Services (the "Implementation Plan"), including how the Relevant Services will be developed and rolled out; (b) ensure that the Relevant Services are available in a timely manner statewide to all Medicaid-enrolled children eligible to receive them; (c) identify eligibility criteria for each of the Relevant Services and identify and implement a standardized assessment process or processes to determine eligibility for the Relevant Services; and (d) develop data reporting and quality assurance processes

[1] *See* Cindy Mann & Pamela S. Hyde, *Joint CMCS and SAMHSA Informational Bulletin* 2, 5, (2013), https://www.medicaid.gov/federal-policy-guidance/downloads/cib-05-07-2013.pdf.

to ensure the Relevant Services are being provided on a timely basis in accordance with the terms of the Settlement Agreement.

Defendants have engaged Suzanne Fields, MSW, LICSW, a clinical social worker with decades of experience as a national behavioral health expert, as the "Independent Reviewer" in this matter to work with the Parties to develop the Implementation Plan, monitor Defendants' progress, and mediate disputes under the Settlement Agreement. Ms. Fields has extensive experience implementing state system changes in multiple areas including Medicaid, managed care, mental health and substance use, child and adult services, and child welfare. Gerard Decl. ¶ 15.

1. Redesign of the Relevant Services

Under the Settlement Agreement, Defendants have committed to substantially redesigning their mental and behavioral health service offerings to more specifically and appropriately address the needs of children in the Classes. The redesign will address all the Relevant Services, will take into account the concerns and criticisms that Plaintiffs have expressed, and will review and adapt effective practices from Washington, Massachusetts, Ohio, and California, four states that have implemented intensive home and community-based services in response to litigation or system reforms similar to this case. Defendants have also committed to ensuring provision of the Relevant Services in accordance with each child's needs in a timely manner and at the intensity (including frequency and duration) necessary to meet the individual needs of eligible children and their families. The Settlement Agreement provides that Defendants are obligated to ensure that sufficient numbers of providers are available to provide the Relevant Services to meet the needs of eligible children on a timely basis throughout New York State. Settlement Agreement Section III, ¶ 15.

2. The Implementation Plan

At the heart of the Settlement Agreement is the Implementation Plan, a blueprint for how Defendants will provide timely access to the Relevant Services to Medicaid-enrolled children in New York State. The Implementation Plan will be developed over the next 18 months by Defendants in cooperation with Plaintiffs and the Independent Reviewer (*Id.* Section IV and Appendix B), will include specific steps that Defendants will take to develop and deliver the Relevant Services to eligible children statewide, and will include:

a. detailed standards and requirements and eligibility criteria for each of the Relevant Services;

b. proposed reimbursement rates to be set at amounts to ensure that payments to providers are sufficient to enlist enough providers to meet the needs of eligible children on a timely basis throughout New York State, at least to the extent that they are available to the general population in the geographic area, and network adequacy requirements;

c. an initial quality improvement plan ("QIP") that will establish a system of data-driven quality improvement that reviews, measures, and reports on a set of performance indicators related to the Relevant Services; subsequent annual QIPs will report on these performance indicators (see below);

d. the targeted strategies Defendants will undertake for providing all Class Members with medically necessary mental or behavioral health services in the least restrictive setting appropriate to their needs; and

e. a description of how Defendants will inform eligible children and their families/caregivers, and educate and involve the provider community and relevant state and local public child-serving agencies, regarding availability and delivery of the Relevant Services.

Id. ¶¶ 20, 42, 47, 53-56, 62, 66-72.

3. The Quality Improvement Plan

On an annual basis following the initial QIP, the Settlement Agreement requires that Defendants issue an updated QIP developed in consultation with the Independent Reviewer,

Plaintiffs, and relevant stakeholders and state agencies as set forth in the Settlement Agreement. *Id.* ¶¶ 52, 64.

The updated QIPs will include performance indicators measuring the provision, timeliness, sufficiency, and effectiveness of the Relevant Services; benchmarks and interim utilization targets during the rollout; and quality improvement procedures. The quality improvement procedures will assess Defendants' progress toward providing the Relevant Services to Class Members with continuing improvement as necessary, and identify any need for appropriate corrective action. *Id.* ¶¶ 59, 66-79.

Defendants will also develop a publicly available and regularly updated data dashboard to provide transparency and track key statewide data points related to provision of the Relevant Services. *Id.* ¶ 46.

4. The Audit

The Settlement Agreement calls for Defendants to conduct annual audits of provision of the Relevant Services, during both the rollout period and afterwards, to evaluate whether Class Members are timely receiving the Relevant Services at the required intensity (including frequency and duration), and in the child's home or where the child is otherwise naturally located¸ and that recipients of the Relevant Services have received appropriate assessments related to such Services. *See generally id.* Section VI.

The purpose of the audit is also to allow the Independent Reviewer and the Parties to evaluate, among other things: (a) the performance indicators agreed upon in the QIP and to determine the extent to which Defendants have met any specified utilization targets; (b) whether providers are providing Relevant Services in accordance with the Standards and Requirements for the Services; (c) whether the Class Members receiving the Relevant Services are timely receiving

them at the required intensity (including frequency and duration); and d) whether corrective action is required under the quality improvement plan then in effect, or otherwise under the Settlement Agreement. *Id.* ¶ 81.

The Settlement Agreement further establishes clear exit criteria based on a post rollout audit evaluating the provision of the Relevant Services and consistent procedures and methodologies that provide objective measures to determine whether Defendants have achieved substantial compliance, which will then result in Defendants' exit from this Court's jurisdiction. *Id.* ¶ 106.

IV. The Settlement Agreement is Fair and Reasonable and Should Be Approved

Rule 23(e) of the Federal Rules of Civil Procedure states that a class action "may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). Whether a settlement is fair is a determination within the sound discretion of the court. *See Levitt v. Rodgers,* 257 Fed. App'x 450, 453 (2d Cir. 2007).

"Generally, approval of a class action settlement involves a two-step process: (1) the court preliminarily approves the proposed settlement by evaluating the written submissions and informal presentation of the settling parties and the negotiating process leading to the settlement," and (2) "the court holds a fairness hearing 'to determine whether the settlement's terms are fair, adequate, and reasonable.'" *Caballero by Tong v. Senior Health Partners, Inc.*, Nos. 16-CV-0326, 18-CV-2380, 2018 WL 4210136, at *10 (E.D.N.Y. Sept. 4, 2018) (citing to Fed. R. Civ. P. 23(e)(2) and granting preliminary approval in Rule 23(b)(2) Medicaid class action; other citations omitted); *see also Caballero v. Senior Health Partners, Inc.*, Nos. 16-CV-00326, 18-CV-02380, 2018 WL 6435900, at *3,*6 (E.D.N.Y. Dec. 7, 2018) (granting final approval in the same Medicaid class action); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720,

2024 WL 3236614, at *11 (E.D.N.Y. June 28, 2024); *Cymbalista v. JPMorgan Chase Bank, N.A.*, No. 20-CV-456, 2021 WL 7906584, at *4 (E.D.N.Y. May 25, 2021), *Report and Recommendation adopted*, Order dated Nov. 22, 2021.

At the preliminary approval stage, district courts must determine whether they are "'likely to be able' to grant final approval under Rule 23(e)(2)." *Caccavale v. Hewlett-Packard Co.*, No. 20-CV-0974, 2024 WL 4250337, at *8 (E.D.N.Y. Mar. 13, 2024) (Choudhury, J.) (quoting Fed. R. Civ. P. 23(e)(1))[2]; *see also Payment Card*, 2024 WL 3236614, at *12 ("During the preliminary approval stage, "a district court must consider whether the court '*will likely be able to*: [] approve the proposal under Rule 23(e)(2) . . . ." (emphasis in original) (citation omitted)).[3] The court makes preliminary determinations about the fairness of the settlement terms, approves the means of notifying class members, and sets a date for the final hearing. Federal Judicial Center, *Manual for Complex Litigation* § 21.632 (4th ed. 2004); *see* Fed. R. Civ. P. 23(e)(2).

"To guide the analysis during the preliminary approval stage in determining whether it is likely to approve a proposal under Rule 23(e)(2), the Court looks to the factors contained in the text of Rule 23(e)(2), which a court must consider when weighing final approval." *Payment Card*, 2024 WL 3236614, at *13. Courts in the Second Circuit also consider the nine *Grinnell* factors enumerated in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974), *abrogated on other grounds by*, *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). *See Moses v. New*

[2] In *Caccavale,* 2024 WL 4250337, this Court made clear the standards for preliminary approval and subsequently granted preliminary approval in *Caccavale v. Hewlett-Packard Co*., No. 20-CV-974, 2025 WL 882221, at *4 (E.D.N.Y. Mar. 21, 2025) (Choudhury, J.).

[3] Many cases frame the analysis as determining whether the court is likely to be able to: "(i) approve the proposal under Rule 23(e)(2); *and* (ii) certify the class for purposes of judgment on the proposal." (quoting Fed. R. Civ. P. 23(e)(1)(B)(i–ii) (emphasis added)). *See, e.g.*, *Payment Card*, 2024 WL 3236614, at *13; *Caccavale*, 2024 WL 4250337, at *8. In the instant case, the Parties' stipulated classes have already been certified by the Court. Dkt. No. 73.

York Times Co., 79 F.4th 235, 243 (2d Cir. 2023) (explaining that "revised Rule 23(e)(2) does not displace our traditional *Grinnell* factors, which remain a useful framework for considering the substantive fairness of a settlement"); *see also Caccavale*, 2024 WL 4250337, at *9 ("district courts 'must consider the four factors outlined in Rule 23(e)(2) holistically' in addition to the *Grinnell* factors when evaluating a proposed class action settlement") (quoting *Moses*, 79 F.4th at 243)).[4]

Under Rule 23(e)(2), a court must explicitly consider whether (1) "the class representatives and class counsel have adequately represented the class"; (2) "the proposal was negotiated at arm's length"; (3) "the relief provided for the class is adequate"; and (4) "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2); *see also Moses*, 79 F.4th at 242; *Caccavale*, 2024 WL 4250337, at *9. The Second Circuit has held that while the existence of "arm's-length . . . negotiations remain[s] a factor in favor of approving [a] settlement (one whose absence would count significantly against approval)," a court may not "*presume*[] that the proposed settlement [is] fair, reasonable, and adequate because it was reached in an arm's-length negotiation." *Moses*, 79 F.4th at 243 (emphasis in original).

Courts look to the nine "*Grinnell* factors to fill in any gaps and complete the analysis" when evaluating whether a proposed class action settlement is fair, reasonable, and adequate. *Amigon*, 2024 WL 5040436, at *3 (quoting *Cymbalista*, 2021 WL 7906584, at *5 (collecting cases)); *see also Moses*, 79 F.4th at 244.

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[4] The *Grinnell* factors are equally applicable to classes certified under Rule 23(b)(2) and (b)(3). *See, e.g.*, *In re Payment Card*., 2024 WL 3236614, at *13 ("[T]he Court considers both the Rule 23(e)(2) and *Grinnell* factors in its analysis of whether the Court is likely to find that the proposed [Rule 23(b)(2) class] settlement is fair, reasonable, and adequate, and is likely to grant final approval."); *Amigon v. Safeway Constr. Enters., LLC*, No. 20-CV-5222, 2024 WL 5040436, at *3, *10 (E.D.N.Y. Dec. 9, 2024) (granting motion for preliminary approval of Rule 23(b)(3) class settlement after considering Rule 23(e)(2) and *Grinnell* factors)

The *Grinnell* factors are:

1. the complexity, expense and likely duration of the litigation;
2. the reaction of the class to the settlement;
3. the stage of the proceedings and the amount of discovery completed;
4. the risks of establishing liability;
5. the risks of establishing damages;
6. the risks of maintaining the class action through the trial;
7. the ability of the defendants to withstand a greater judgment;
8. the range of reasonableness of the settlement fund in light of the best possible recovery; and
9. the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell Corp., 495 F.2d at 463.

Courts generally do not consider every one of the nine factors, just the ones that do not overlap with the Rule 23(e)(2) factors. *See Caccavale*, 2024 WL 4250337, at *9 ("Courts thus consider both the Rule 23(e) factors and the *Grinnell* factors – *to the extent that they differ* – in determining whether to approve the proposed settlement of class action claims.") (emphasis added)); *see also Payment Card*, 2024 WL 3236614, at *13 ("The Court first considers the Rule 23(e)(2) factors, and then considers additional *Grinnell* factors not otherwise addressed by the Rule 23(e)(2) factors."). In *Caccavale*, this Court explained:

> Courts have found that Rule 23(e)(2) does not otherwise address the following *Grinnell* factors: the ability of the defendants to withstand a greater judgment; the range of reasonableness of the settlement fund in light of the best possible recovery; and the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Caccavale, 2024 WL 4250337, at *9 (citing *Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 30 n.22 (E.D.N.Y. 2019)). In *Amigon*, however, the court listed two additional *Grinnell* factors not covered by Rule 23(e)(2): "reaction of the class to the

settlement [the second *Grinnell* factor and] the stage of the proceedings and the amount of discovery completed [the third *Grinnell* factor]." 2024 WL 5040436, at *6.

In cases seeking only injunctive relief, courts differ regarding which *Grinnell* factors they consider. "Some courts have decided that the range of reasonableness factors – along with several of the other *Grinnell* factors – do not apply where no monetary relief is sought." *Payment Card*, 2024 WL 3236614, at *26 (collecting cases); *see Caballero*, 2018 WL 4210136, at *12 ("The remaining *Grinnell* factors [including the range of reasonableness factors] are not particularly applicable here where the plaintiffs seek only injunctive relief and not damages").[5]

Other courts do consider these *Grinnell* factors in cases seeking only injunctive relief. *See Payment Card*, 2024 WL 3236614, at *26, *40 (collecting cases). But in civil rights cases such as this one, these factors either carry less weight or favor approval. In *Payment Card*, the court specifically explained that "[i]n [civil rights] cases, the ability of the defendant to withstand a greater judgment is essentially a non-issue because the defendant need only stop violating the law." *Id.* at *40; *see also Caballero*, 2018 WL 4210136, at *12. And in *United States v. New York,* the court held that "[w]hen, as here, '[t]he settlement offers the class members the most important, most tangible form of relief sought by plaintiffs,' these [range of reasonableness]

[5] *See also, e.g.*, *Newkirk v. Pierre*, No. 19-CV-4283, 2022 WL 20358182, at *5 (E.D.N.Y. Oct. 25, 2022) ("The *Grinnell* factors relating to monetary damages (factor 5) and the size of the judgment (*Grinnell* factors 7, 8, and 9) do not apply where, as here, Plaintiffs seek no monetary relief.") (citations omitted)); *Doe #1 v. New York City Dep't of Educ.*, No. 16-CV-1684, 2018 WL 3637962, at *12 (E.D.N.Y. July 31, 2018) ("The seventh [*Grinnell*] factor, the ability of the defendants to withstand a greater judgment, does not apply here because Plaintiffs seek only declaratory and injunctive relief.'" (quoting *United States v. New York*, Nos. 13-CV-4165, 13-CV-4166, 2014 WL 1028982, at *8)); *EB v. New York City Dep't of Educ.*, No. 02-CV-5118, 2015 WL 13707092, at *2 (E.D.N.Y. July 24, 2015) ("Clearly, since the case involves declaratory and injunctive relief, and does not have damages or a settlement fund, 'there is no need to examine the last three *Grinnell* factors.'" (quoting *Shepard v. Rhea*, No. 12-CV-7220, 2014 WL 5801415, at *8 (S.D.N.Y. Nov. 7, 2014)).

factors [8 and 9] weigh in favor of approval of the settlement." 2014 WL 1028982, at *8 (second alteration in original) (citation omitted). Indeed, "[s]ettlements in cases that seek injunctive relief and do not request damages, are routinely found fair, adequate, and reasonable, and are approved." *Newkirk*, 2022 WL 20358182, at *5 (citing, *inter alia*, *Marisol A. ex rel. Forbes v. Giuliani*, 185 F.R.D. 152 (S.D.N.Y. 1999), *aff'd sub nom. Joel A. v. Giuliani*, 218 F.3d 132 (2d Cir. 2000)).

Preliminary approval of the Settlement Agreement in this case is warranted. Each of the Rule 23(e)(2) and applicable *Grinnell* factors weighs in favor of approval.

A. The Class Representatives and Class Counsel Have Adequately Represented the Classes Throughout the Case

In assessing a proposed settlement agreement, courts may consider counsel's experience, counsel's knowledge of the applicable law, and the work counsel has done, as well as the settling parties' views as to the propriety of the settlement. *See Caballero*, 2018 WL 4210136, at *8. As the litigation history summarized above indicates, Class Counsel, the Named Plaintiffs, and the Next Friends have adequately represented the Classes throughout the more than three years that this case has been pending. *See, e.g.*, *Payment Card,* 2024 WL 3236614, at *19 (adequacy of representation prong weighed in favor of approval where "nothing cast doubt on Class Counsel's ability to adequately represent the Class" and Class Counsel had engaged in "extensive negotiations to reach this Settlement"). Here, Class Counsel have extensive experience litigating Medicaid, disability rights, and children's rights class action cases. Disability Rights New York is the federally designated protection and advocacy organization for individuals with disabilities in New York and routinely litigates on behalf of children and adults with disabilities. *See* Decl. of Brandy L.L. Tomlinson in Supp. of Joint Mot. for Prelim. Approval ("Tomlinson Decl.") ¶¶ 5, 6, 7. The National Health Law Program is a nationally recognized expert in Medicaid, the ADA, and

Section 504 of the Rehabilitation Act, and has extensive expertise in litigating and settling numerous similar class action cases throughout the country on behalf of children who need intensive home and community-based mental health services. *See* Decl. of Kimberly Lewis in Supp. of Joint Mot. for Prelim. Approval ("Lewis Decl.") ¶¶ 4, 5, 7, 9. Children's Rights is a national advocacy organization that represents children in impact litigation across the country under a variety of federal constitutional and statutory laws, including Medicaid and ADA law. *See* Gerard Decl. ¶ 3. Proskauer Rose LLP is a global law firm with a track record of pro bono work, including significant contributions to complex civil rights cases. *See* Decl. of Steven H. Holinstat in Supp. of Joint Mot. for Prelim. Approval ("Holinstat Decl.") ¶¶ 3, 4. In light of this experience, the opinion of counsel that the Settlement Agreement is fair, reasonable, and adequate weighs in favor of approval. *See, e.g.*, *Cymbalista*, 2021 WL 7906584, at *5 (adequacy of representation prong weighed in favor of approval because plaintiffs' attorneys had served as class counsel or settlement class counsel in several class actions). In addition, Class Counsel have discussed this case repeatedly over the years with the Next Friends, all of whom support the Settlement Agreement. *See* Gerard Decl. ¶¶ 15, 20.

B. The Proposed Settlement Agreement is the Result of Extensive Arm's-Length Negotiations and is Substantively Fair

The Settlement Agreement was negotiated at arm's length and is fair, reasonable, and adequate considering the *Grinnell* factors specified here and in the next section. *See Moses*, 79 F.4th at 242–44. The Parties engaged in extensive negotiations for over a year, and appeared before this Court acting as mediator 11 times. Gerard Decl. ¶ 14. In addition, the third *Grinnell* factor –

the stage of the proceedings and the amount of discovery completed – also favors approval of the Settlement Agreement. *See Amigon*, 2024 WL 5040436, at *6.[6]

The Parties completed extensive discovery prior to beginning settlement negotiations. Gerard Decl. ¶ 11. Before filing the original complaint in March 2022, Plaintiffs engaged in significant investigation efforts, including conducting research and outreach for more than a year and a half focused on New York State's mental and behavioral health services for Medicaid-eligible children and youth. Gerard Decl. ¶ 10; Tomlinson Decl. ¶ 15. Class Counsel reviewed publicly available data and reports on New York's mental and behavioral health system, including information received through public records requests, and interviewed local stakeholders to gather firsthand insights. Gerard Decl. ¶ 10; Tomlinson Decl. ¶ 15.

Following the filing of the Complaint, Class Counsel engaged in significant formal discovery efforts. The Parties exchanged hundreds of thousands of pages of documents through initial and supplemental disclosures, requests for production, and interrogatories, and participated in multiple discovery-related discussions. Gerard Decl. ¶ 11. Class Counsel conducted Rule 30(b)(6) depositions of DOH and OMH personnel and nine fact depositions of DOH and OMH personnel and a stakeholder psychiatrist. Gerard Decl. ¶ 11. Class Counsel also defended the depositions of three Next Friends. Gerard Decl. ¶ 11.

Class Counsel also submitted a class certification brief appending several hundred pages of exhibits, seven declarations from stakeholders and counsel, and five expert reports. (Dkt. Nos. 52 to 55.) The expert reports examined: (a) the extent to which New York's Medicaid-enrolled children are receiving mental health services, and the relevant policies and practices of DOH and

[6] As in *Caballero*, this Court need not consider the Classes' reaction to the proposed Settlement Agreement until after notice has been provided to the Class Members. 2018 WL 4210136, at *11.

OMH; (b) the effectiveness of intensive home and community-based services; (c) the implementation and assessment of New York's public mental health systems and programs; (d) the services provided to the four Named Plaintiffs; and (e) Defendants' data systems related to the provision of mental health services to Class Members. The declarations from Class Counsel attached here show that they have dedicated thousands of hours to pre-filing investigation and post-filing litigation and discovery work, ensuring strong and effective representation for the Classes. *See* Gerard Decl. ¶ 16; Lewis Decl. ¶ 13; Tomlinson Decl. ¶ 17; Holinstat Decl. ¶ 8. As a result, Class Counsel were fully informed about the facts and circumstances of this case when they entered settlement negotiations with Defendants. Gerard Decl. ¶ 16; Lewis Decl. ¶ 13; Tomlinson Decl. ¶ 19; Holinstat Decl. ¶ 9. *See Caballero,* 2018 WL 4210136, at *12 ("When counsel has sufficient information to appreciate the merits of the case, settlement is favored.") (citations omitted).

To avoid any conflict of interest, the Parties have not negotiated attorneys' fees as part of their negotiations on the Settlement Agreement. Plaintiffs' October 10, 2024 Settlement Statement at 2; *see* Gerard Decl. ¶ 17. After the Court rules on the Joint Motion for Preliminary Approval of the Settlement Agreement, Plaintiffs anticipate they will separately seek a reasonable award of attorneys' fees and costs. Gerard Decl. ¶ 17. This Court can "tak[e] into account . . . the terms of any proposed award of attorney's fees" prior to approving the final settlement. Fed. R. Civ. P. 23(e)(2)(C)(iii); *see also Moses*, 79 F.4th at 256. Accordingly, both Rule 23(e) and the *Grinnell* fairness factors weigh in favor of preliminary approval.

C. The Relief Provided to the Class Is Adequate and Effectively Addresses the Deficiencies Identified in Plaintiffs' Complaint

The costs, risks, and delay of trial and appeal specified in Rule 23(e)(2)(C)(i), "'subsume[] several *Grinnell* factors,' including the complexity, expense and likely duration of litigation, the

risks of establishing liability, . . . and the risks of maintaining the class through trial." *Amigon*, 2024 WL 5040436, at *4 (citations omitted); *see also Caballero*, 2018 WL 4210136, at *11 (discussing these factors). The benefits offered by settlement fully address these fairness factors.

Plaintiffs believe they have a strong case on the merits, but Plaintiffs also recognize that proceeding to trial would delay much-needed relief to Class Members, who continue to suffer without the mental and behavioral health services they need. *See* Lewis Decl. ¶ 8, 9; Gerard Decl. ¶ 19. As discussed above, the Settlement Agreement provides immediate, substantial, and enforceable commitments that address the violations that led Plaintiffs to file suit. Defendants may only exit from these commitments upon a finding that they have substantially complied with the settlement terms.

If this case does not settle now, the Parties would need to resume discovery and prepare for trial. Although the Parties have already exchanged a significant volume of discovery regarding New York's mental and behavioral health system for children and youth, this information is now stale. Resuming litigation would require renewed and extensive additional discovery efforts, and updated expert reports. The Parties agree that settling the case now serves their mutual interest in ensuring that the Relevant Services are delivered to all Class Members as expeditiously as possible, as opposed to the expense and uncertainty of continuing to litigate. *See* Gerard Decl. ¶¶ 18, 19.

D. The Proposed Settlement Treats Class Members Equitably

The terms of the Settlement Agreement provide substantial relief for the Classes and treat all Class Members equitably relative to each other in accordance with Fed. R. Civ. P. 23(e)(2)(D). Plaintiffs filed this case to ensure that Medicaid-eligible children under age 21 in New York State receive individualized intensive home and community-based mental and behavioral health services that are necessary and appropriate for their needs while remaining safely at home and in their

communities. (Amended Complaint ¶¶ 1-6.) The Settlement Agreement furthers Plaintiffs' efforts in fulfilling those litigation objectives.

As described in detail above, the Settlement Agreement and the Implementation Plan once implemented will result in a substantial overhaul of the Relevant Services available to Class Members throughout the State. The Settlement Agreement requires Defendants to improve care coordination through the development of Intensive Care Coordination services, Settlement Agreement ¶¶ 22-25; expand intensive home-based behavioral health services, *id.* ¶¶ 26-29; strengthen mobile crisis services, *id.* ¶¶ 30-31; standardize screening and assessment processes, *id.* ¶¶ 37-38; address provider capacity challenges, *id.* ¶¶ 53-55; develop a public set of data reporting, *id.* ¶ 46; and implement a robust quality improvement and accountability framework to ensure timely access to the Relevant Services across the State, *id.* Section V. In addition, the Settlement Agreement requires that the Independent Reviewer oversee the Settlement Agreement to ensure it is successfully implemented and enumerates exit criteria that Defendants must meet in order to exit from the Court's jurisdiction, *id.* Section VIII and ¶ 106. Because the relief outlined in the Settlement Agreement focuses on critical systemic change in how Defendants provide timely access to the Relevant Services, all Class Members benefit and are treated equitably across the Classes. *See Moses*, 79 F.4th at 245 (noting that "Rule 23(e)(2)(D) requires that class members be treated *equitably*, not identically.") (emphasis in original)); *Payment Card*, 2024 WL 3236614, at *36 (explaining that in a Rule 23(b)(2) class action, "different class members can benefit differently from an injunction – but no matter what, they *must* stand to benefit (it cannot be the case that some members receive no benefit while others receive some).") (emphasis in original; citation omitted)). Here, the Settlement does not grant preferential treatment to any Class Member or subset of Class Members.

V. The Proposed Form and Plan for Providing Notice to the Classes

In preliminarily approving a class action settlement, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). The notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (internal citations omitted). "[T]he court has virtually complete discretion as to the manner of giving notice to class members." *Caballero*, 2018 WL 4210136, at *13 (quoting *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 345 (E.D.N.Y. 2010). "Notice need not be perfect, but must be the best notice practicable under the circumstances, and each and every class member need not receive actual notice, so long as class counsel acted reasonably in choosing the means likely to inform potential Class Members." *Oladipo v. Cargo Airport Servs. USA, LLC*, No. 16-CV-6165, 2019 WL 2775785, at *10 (E.D.N.Y. July 2, 2019) (citation omitted).

The Proposed Class Notice, attached as Exhibit 2, adequately summarizes the litigation and describes the Settlement Agreement. It provides clear instructions on how to obtain more information about the Settlement Agreement, and how Class Members may provide objections to the proposed Settlement Agreement. *See id.* at *11 (approving notice that set forth options available to class members, including if a member objected to the settlement). This Notice meets Rule 23 requirements, and should be approved.

Likewise, the Proposed Class Action Notice Plan, attached as Exhibit 3, is reasonable and adequately meets the due process requirements of Fed. R. Civ. P. 23. The Proposed Notice Plan provides that both Parties will post copies of the Class Notice and the Settlement Agreement on their websites and in their offices. Exhibit 3. The Notice Plan describes the manner in which the

Parties will distribute the Notice, along with the Settlement Agreement, to a list of specified individuals, agencies, and organizations likely to work with Class Members and their families, so that these agencies may provide the Notice to potential Class Members. *Id.* These individuals and entities include, *inter alia*, managed care organizations, New York county mental hygiene directors and other county officials, community mental health providers, hospitals, institutional providers, legal organizations, and mental health advocacy organizations. *Id.* The Notice Plan also requires Plaintiffs to maintain dedicated lines of communication for Class Members to request further information or to ask questions or provide comments about the proposed Settlement Agreement. *Id.*

Individual notice to Class Members is not practicable here, where the individual Class Members have not yet been referred for the Relevant Services and are therefore not yet easily identified. Given the millions of Medicaid--enrolled children under age 21, individual notice would also be extremely expensive and would likely have to be effectuated by mail. Where individual Class Members cannot be easily identified, and "where individual notice would be burdensome or expensive," notice by publication is appropriate. *See MetLife*, 689 F. Supp. 2d at 345 (citations omitted).

VI. The Proposed Timeline

The Parties respectfully propose the following timelines for distribution of the Proposed Class Notice, and request that the Court set a schedule for a final approval hearing:

Event	**Date**
Court's Order on Preliminary Approval	TBD
Completion of Notice Plan and Distribution of Class Notice	60 days after Court's Order of Preliminary Approval

Objection Deadline	Five weeks after Completion of Notice Plan and Distribution of Class Notice
Motion for Final Settlement Approval	Two weeks before Final Approval Hearing
Plaintiffs to submit to Court under seal all submissions in support and objections to the settlement	Two weeks before Final Approval Hearing
Plaintiffs to submit to Court their application for fees and costs	Eight weeks before Final Approval Hearing
Final Approval Hearing	TBD

VII. Conclusion

For the foregoing reasons, the Parties respectfully request that the Court grant preliminary approval of the Settlement Agreement, approve the form and manner of the Proposed Class Notice, and set a schedule for a final hearing to decide whether to grant final approval of the Settlement Agreement.

SIGNATURE PAGE FOLLOWS

Dated: August 8, 2025

Respectfully submitted,

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