

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>PATRICIA PHILLIPS, et al.,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiffs,</b>	:	
	:	
v.	:	
	:	
<b>PHILADELPHIA HOUSING AUTH.,</b>	:	<b>No. 00-4275</b>
<b>CARL GREENE, JACQUELINE</b>	:	
<b>MCDOWELL, PAMELA DUNBAR,</b>	:	
<b>JENELLE LAWSON,</b>	:	
<b>Defendants.</b>	:	
	:	

**MEMORANDUM AND ORDER**

**Schiller, J.**

**May 2, 2005**

On August 21, 2000, Plaintiff Patricia Phillips filed this 42 U.S.C. § 1983 action in her individual capacity and as the class representative of former, current, and future Philadelphia Housing Authority (“PHA”) tenants. Plaintiffs allege, inter alia, that PHA, PHA’s Executive Director, and three PHA management employees (collectively “Defendants”) failed to comply with the federally-mandated “welfare-to-work exclusion,” which requires PHA to exclude certain increases in household income when determining a tenant’s monthly rent. Presently before the Court is the parties’ proposed settlement agreement (the “Agreement”), preliminary approval of which has already been granted. Following a hearing on April 4, 2004, and for the reasons set forth below, the Court finds that the Agreement is fair, reasonable, and adequate. Accordingly, final approval of the Agreement is granted, subject to a reasonableness assessment of attorneys’ fees incurred by Plaintiffs through September 16, 2003.

## **I. BACKGROUND**

This action arose from Defendants' alleged violations of the welfare-to-work exclusion, a law designed to give public housing residents an incentive to enter employment training programs. Plaintiffs contend that, at all relevant times, the welfare-to-work exclusion required Defendants to exclude income from specified training programs when making monthly rent assessments based on household income.<sup>1</sup> *See* 42 U.S.C. § 1437(a), *as amended* in 1990; *see also* Quality Housing and Work Responsibility Act of 1998. Plaintiffs estimate that 700 former PHA tenants and 2,500 current PHA tenants failed to receive an Earned Income Disregard or Earned Income Disallowance ("EID") for which they may have been eligible. (Pls.' Mem. in Supp. of Ct. Approval of Proposed Class Action Agreement at 2 [hereinafter "Pls.' Mem."].) On January 29, 2002, the Court, pursuant to Federal Rule of Civil Procedure 23(b)(3), certified a class consisting of "all current, former or future PHA tenants whose monthly rent has not been or will not be calculated correctly because Defendants have failed to apply the welfare-to-work exclusion." (Mem. & Order of Jan. 29, 2002 at 9-10.)

### **A. Terms of the Proposed Settlement**

Following class certification, the parties engaged in extensive settlement negotiations and drafted an Agreement that releases Defendants from all claims. (Agreement ¶ A.) The Agreement proposes that the certified class be modified to create two classes for settlement purposes, namely:

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<sup>1</sup> Specifically, Plaintiffs aver that up until September 30, 1999, Defendants were required to exclude any such increase for eighteen months. 24 C.F.R. § 5.609(c)(13). Plaintiffs further aver that as of October 1, 1999, Defendants were required to exclude any such increase for twelve months and one-half of any such increase for months thirteen through twenty-four if the increase resulted from: (1) new employment of a person previously unemployed for over a year; (2) increased earnings during participation in an economic self-sufficiency or other job training program; or (3) new employment or increased earnings during or within six months after receiving benefits through a state temporary assistance program. *Id.* § 960.255.

(a) *Conditional Current Resident Agreement Class*: Current heads of household of PHA-owned housing in which one or more members of the household received earned income (as defined by HUD regulations issued pursuant to the statutes cited below) since August 21, 1996, where the head of household experienced a rent increase based upon such earned income, and where PHA failed to apply properly the earned income disregard available to qualified public housing residents pursuant to 42 U.S.C. § 1437a, *as amended* in 1990, and the Quality Housing and Work Responsibility Act of 1998, Pub. L. 105-276, effective October 1, 1999, and their implementing regulations, namely 24 C.F.R. §§ 5.609(8), (13) and 960.255.

(b) *Conditional Former Resident Agreement Class*: Heads of household of PHA-owned housing in which one or more members of the household received earned income (as defined by HUD regulations issued pursuant to the statutes cited below) since August 21, 1996, where the head of household experienced a rent increase based upon such earned income, and where PHA failed to apply properly the earned income disregard available to qualified public housing residents pursuant to 42 U.S.C. § 1437a, *as amended* in 1990, and the Quality Housing and Work Responsibility Act of 1998, Pub. L. 105-276, effective October 1, 1999, and their implementing regulations, namely 24 C.F.R. §§ 5.609(8), (13) and 960.255, and where the head of household is no longer a PHA-owned housing resident.

(*Id.* ¶ D.)

Under the Agreement, Defendants have agreed to conduct reviews to determine whether tenants falling within these two classes (i.e., “Current Residents” and “Former Residents”) did not receive EIDs. PHA will automatically send each Current Resident a letter containing instructions for scheduling an EID Examination (an “Examination”), during which PHA will evaluate whether that tenant is eligible to receive a rent credit. (*Id.* ¶ B(4).) The letter will also describe the information that the tenant should bring to the Examination. (*Id.*) Although Former Residents will not be sent this letter automatically, they will receive postcards which they may complete and return to Plaintiffs’ counsel if they believe they may qualify for relief. (*Id.* ¶ C(4).) Each Former Resident who returns a completed postcard will subsequently receive the letter containing more detailed instructions. (*Id.*) At each Examination, PHA will review all documents submitted by the tenant,

as well as all documents contained in PHA's files and computer database, concerning the tenant's work history, rent payments and training programs during the relevant time period. (*Id.* ¶¶ B(6), C(5).) A tenant who fails to submit adequate documentation will be given several additional notices and an opportunity to obtain and submit any needed documentation. (*Id.* ¶¶ B(7), C(6).)

PHA will conduct Examinations using EID rent calculation forms ("Calculation Forms") that are designed to assist in determining the application and amount of the EIDs. (*Id.* ¶¶ B(5), C(5).) The Calculation Forms have been subjected to extensive testing. (Pls.' Mem. at 3; Defs.' Mem. in Supp. of Approval of Proposed Agreement at 2 [hereinafter "Defs.' Mem."].) If the Calculation Forms show that a Current Resident was eligible for an EID since August 1996, did not receive the EID, and was overcharged as a result, PHA will provide a rent credit to the Current Resident for the amount of any overcharge. (Agreement ¶ B(8).) If the Calculation Forms show that a Former Resident was eligible for an EID since August 1996, did not receive the EID, and was overcharged as a result, PHA will provide a check to the Former Resident for the amount of any overcharge. (*Id.* ¶ C(7).) PHA will determine a tenant's eligibility for a rent credit or refund no later than thirty days after the date of that tenant's Examination, and will provide written notification to the tenant of this determination. (*Id.* ¶¶ B(9), B(12), C(9).)

Any disputes that arise concerning PHA's assessment of a tenant's eligibility for a rent credit or payment are to be submitted to a Special Master, who is to be selected by mutual agreement of the parties, or, if no agreement is reached, appointed by the Court. (*Id.* ¶ E(1).) A tenant may appeal to the Special Master by mailing that person a request for appeal, which must be postmarked no later than thirty days after the date on PHA's notice of determination. (*Id.* ¶ E(2).) The Special Master's decision, which must be based upon credible documentary evidence, will be binding. (*Id.* ¶ E(1),

E(5).) PHA will pay the Special Master a reasonable hourly fee for his or her services. (*Id.* ¶ E(8).)

The Agreement also grants Plaintiffs various types of non-monetary relief. For instance, PHA has agreed to prospectively comply with federal EID mandates and to provide EID training to all employees involved in rent calculations. (*Id.* ¶¶ F, G.) PHA has further agreed to provide class counsel with reports every four months regarding the implementation and status of the provision of relief to class members. (*Id.* ¶ R.)

### **B. Preliminary Approval and Notice to the Class**

On August 17, 2004, the Court certified the class as modified for settlement purposes, granted preliminary approval of the Agreement, and ordered that the Agreement be submitted to the class members for their consideration and for a fairness hearing. (*See* Order of Aug. 17, 2004.) The Court also established procedures by which class members could object to the Agreement and directed Defendants to notify the class of the Agreement by: (1) posting a notice in all PHA management offices; (2) publishing a notice in two newspapers, the *Philadelphia Daily News* and *Al Dia* and (3) mailing a notice by first class mail postage prepaid to the last known address of all class members. (*Id.* at 2-4.) Defendants have since complied with these notice requirements. (*See* Def. PHA's Report to the Ct. on Class Notice of Mar. 21, 2005.) Plaintiffs agree that Defendants' compliance with the Court's directives ensures that due notice has been given. (Pls.' Mem. at 6.)

Plaintiffs claim that, to date, hundreds of class members have contacted class counsel for further advice and information regarding the proposed settlement. (*Id.* at 10.) Nevertheless, no objections to the proposed settlement have been filed. In fact, approximately one-hundred Former Tenants have returned postcards requesting an Examination. (*Id.* at 6.)

## II. DISCUSSION

### A. Fairness, Reasonableness, and Adequacy

“The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tanks Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) [hereinafter “*GM Trucks*”]. Nonetheless, “the court has an obligation to ensure that class members’ interests have been protected.” *In re Ikon Office Solutions, Inc. Sec. Litig.*, 209 F.R.D. 94, 100 (E.D. Pa. 2002). Federal Rule of Civil Procedure 23(e) thus requires district courts to approve any settlement of a class action. FED. R. CIV. P. 23(e) (2005). A court may only give such approval after a hearing and a determination that the settlement is fair, reasonable, and adequate.<sup>2</sup> *Id.* Moreover, if the court concludes that the settlement should be approved, it must sufficiently outline its rationale so as to

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<sup>2</sup> Before approving a proposed settlement, a court must also ensure that there has been compliance with Rule 23’s provisions regarding class certification and adequate notice to class members. *See In re Ikon*, 209 F.R.D. at 100. In this case, however, the issues of certification and notice have already been addressed. First, in 2002, the Court conducted a detailed inquiry under Rule 23(b)(3) and certified a class of “all current, former or future PHA tenants whose monthly rent has not been or will not be calculated correctly because Defendants have failed to apply the welfare-to-work exclusion.” (Mem. & Order of Jan. 29, 2002 at 9-10.) The parties have since agreed to a modified version of that class, which the Court has certified for settlement purposes. (*See* Order of Aug. 17, 2004.)

Second, following the 2002 class certification, the Court found that the proposed form of notice to the class of the lawsuit met the requirements of Rule 23(c)(2). (*See* Order of Apr. 23, 2002 (directing Defendants to mail notice to the current address of current PHA tenants and to the address furnished by a locator service for former PHA tenants)); *see also* FED. R. CIV. P. 23(c)(2) (“[f]or any class certified under Rule 23(b)(3), the court must direct to class members the best notice practicable under the circumstances”). The Court subsequently set forth additional requirements for notifying the modified class of the proposed settlement, so as to comply with Rule 23(e). (*See* Order of Aug. 17, 2004 ¶ 5 (directing Defendants to give notice by mail, posting, and publication)); *see also* FED. R. CIV. P. 23(e)(1)(B) (“The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.”). As Defendants have fully complied with these requirements, the Court holds that adequate notice has been given.

provide for meaningful appellate review. *Eichenholtz v. Brennan*, 52 F.3d 478, 488-89 (3d Cir. 1995) (citations omitted).

The district court has considerable discretion in determining whether a settlement is fair, reasonable, and adequate, and its determination will be reversed only for abuse of discretion. *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 804 (3d Cir. 1974). The Third Circuit has outlined several factors to assist courts in conducting the fairness inquiry: (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 in light of all the attendant risks of litigation. *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). The proponents of the settlement bear the burden of proving that these factors weigh in favor of its approval. *GM Trucks*, 55 F.3d at 785. Applying each of these factors to this case, the Court holds that the Agreement is indeed fair, reasonable and adequate.

1. *The Complexity, Expense and Likely Duration of the Litigation*

The first factor “captures the probable costs, in both time and money, of continued litigation.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535-36 (3d Cir. 2004). In general, settlement provides immediate benefits to the parties and avoids delays and expenses caused by “lengthy discovery and ardent opposition from [the] defendant.” *GM Trucks*, 55 F.3d at 812. The instant litigation has been ongoing for over four years. Nevertheless, this case would likely require considerable additional time and resources should the Agreement be rejected. Plaintiffs contend that

they would conduct further formal discovery and file a motion for summary judgment. (Pls.' Mem. at 9.) Defendants, in turn, state that they would "pursue all available procedural and substantive defenses, including potentially lengthy dispositive motions practice." (Defs.' Mem. at 3-4.) If neither side prevailed on dispositive motions, the case would have to be prepared for a trial that would be both complicated and time-consuming, given the nuanced nature of EID calculations and the factual variations between class members. (Pls.' Mem. at 9; Defs.' Mem. at 4.) A settlement, by contrast, would provide "immediate benefits to both sides with less costs." *Orloff v. Syndicated Office Sys., Inc.*, Civ. A. No. 00-CV-5355, 2004 WL 870691, at \*6, 2004 U.S. Dist. LEXIS 7151, at \*16 (E.D. Pa. Apr. 22, 2004). Thus, this factor weighs in favor of the proposed settlement.

## 2. *The Reaction of the Class to the Agreement*

The second factor "attempts to gauge whether members of the class support the settlement." *In Re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 318 (3d Cir. 1998). "Generally, if the class members do not oppose the class settlement, the court is justified in concluding that they consider it fair and reasonable." *Lachance v. Harrington*, 965 F. Supp. 630, 645 (E.D. Pa. 1997) (citations omitted) (noting that, despite the more than adequate notice that was sent out to class members, none had either opted out or objected to the proposed settlement). Here, no objections to the proposed settlement have been filed or voiced by any class members. There is no indication that the lack of objections reflects a lack of knowledge or understanding about these proceedings, as class members were notified of the Agreement in several different ways. (Def. PHA's Report to the Ct. on Class Notice (indicating that notification was mailed to class members, posted in PHA offices, and published in two newspapers).) The notification form explained the Agreement in clear language and advised the class members of their right to contact class counsel

for further information. Hundreds of class members did, in fact, contact class counsel as suggested. (Pls.' Mem. at 10.) Therefore, the fact that no objections have been filed supports granting approval of the Agreement.

3. *The Stage of the Proceedings and the Amount of Discovery Completed*

A court must examine the “degree of case development that class counsel have accomplished prior to settlement” so as to determine “whether counsel had an adequate appreciation of the merits of the case before negotiating.” *GM Trucks*, 55 F.3d at 813. As noted above, extensive discovery has been conducted in this case and the parties have engaged in lengthy settlement negotiations. Plaintiffs claim that the parties, who have been involved in this litigation for over four years, are in an excellent position to determine the respective merits of their claims or defenses as well as the size and make-up of the class. (Pls.' Mem. at 10.) The Court agrees. Moreover, there is no reason to believe that the parties' assessment of these claims and defenses is a product of collusion, as the docket reflects that the settlement negotiations were conducted at arms length. (*See, e.g.*, Order of Nov. 19, 2002 (scheduling settlement conference before Magistrate Judge Jacob Hart).) The Court should thus defer to the attorneys' views as to the merits of settlement. *See, e.g., Bonett v. Educ. Debt Servs., Inc.*, Civ. A. No. 01-6528, 2003 WL 21658267, at \*6, 2003 U.S. Dist. LEXIS 9757, at \*17-18 (E.D. Pa. May 9, 2003) (affording considerable weight to views of counsel where parties reached arms-length settlement after thorough round of document discovery and depositions); *Saunders v. Berks Credit & Collections, Inc.*, Civ. A. No. 00-3477, 2002 WL 1497374, at \*10, 2002 U.S. Dist. LEXIS 12718, at \*28 (E.D. Pa. July 11, 2002) (deferring to reasoned judgment of well-informed attorneys who had conducted sufficient investigation and discovery before reaching arms-length settlement).

4. *The Risks of Establishing Liability and Damages*

“These factors survey the potential risks and rewards of proceeding to litigation in order to weigh the likelihood of success against the benefits of an immediate settlement.” *In re Warfarin*, 391 F.3d at 537 (citations omitted). Plaintiffs suggest that, in the instant action, if the settlement is rejected and the class is decertified, certain class members might be barred from obtaining relief on statute of limitations grounds. (Pls.’ Mem. at 11.) Moreover, Defendants observe that Plaintiffs would have difficulty establishing precise damages through litigation because of the complexities involved in EID calculations. (Defs.’ Mem. at 5.) Considering these risks, settlement is a better option for class members than proceeding to trial. *See, e.g., Orloff*, 2004 WL 870691, at \*6 (finding that potential difficulties in establishing liability and damages weighed in favor of approving settlement).

5. *The Risks of Maintaining the Class Action Through Trial*

Class certification is always conditional and the district court may decertify at any time if the class proves to be unmanageable. *Id.* at \*7; *see also In re Prudential*, 148 F.3d at 321. On January 29, 2002, the Court found that this case could proceed as a class action for purposes of litigation pursuant to Rule 23(b)(3). (Mem. & Order of Jan. 29, 2002.) Yet, the Court also recognized that the need to conduct individual damages assessments presented a hurdle to class certification. (*Id.* at 5-6.) While the Court ultimately certified the class because, at that time, common issues of liability predominated over individual issues of damages (*id.* at 6), this calculation could change in the future upon the completion of further discovery. Defendants have already indicated their intent to pursue a motion to decertify the class should the Agreement be rejected. (Defs.’ Mem. at 5.) There is thus a risk of decertification here that weighs in favor of approving the Agreement. *See*

*Bonett*, 2003 WL 21658267, at \*6 (“There is always a perpetual risk of maintaining the class throughout the trial and on appeal, and the Class has sufficiently eliminated this risk by entering into settlement with the Defendants.”).

6. *The Ability of Defendants to Withstand a Greater Judgment*

A court should also consider whether the defendant(s) could “withstand a judgment for an amount significantly greater than the Agreement.” *In re Cendant Corp. Litig.*, 264 F.3d 201, 240 (3d Cir. 2001). Here, there is no evidence in the record regarding Defendants’ financial situation and nothing to indicate that this consideration factored into settlement negotiations. *See In re Warfarin*, 391 F.3d at 538. Indeed, Defendants’ potential ability to pay more is irrelevant, for the proposed settlement grants the class members essentially all of the relief they seek. As a result, this factor neither weighs in favor of nor against approval of the Agreement. *See, e.g., Galloway v. Southwark Plaza Ltd. P’ship*, Civ. A. No. 01-835, 2003 WL 22657200, at \*7, 2003 U.S. Dist. LEXIS 20212, at \*24 (E.D. Pa. Oct. 27, 2003) (concluding that because proposed settlement granted class members virtually all relief sought, ability of defendants to withstand greater judgment did not weigh against approval of settlement).

7. *Range of Reasonableness*

“The last two *Girsh* factors ask whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial.” *In re Prudential*, 148 F.3d at 322. As Plaintiffs point out, the Agreement provides the class members with nearly all the relief they could obtain through successful litigation: “Class members will receive, prospectively, the correct calculation of their public housing rents. Retroactively, class members will receive all of the EID rent adjustments that they should have received as public housing tenants.” (Pls.’ Mem.

at 12-13.) The Agreement, therefore, is well within the range of reasonableness. *See, e.g., Galloway*, 2003 WL 22657200, at \*7 (analyzing range of reasonableness and finding that class members' receipt of virtually all relief requested weighed strongly in favor of approving settlement).

Accordingly, the parties have satisfied their burden of demonstrating that the Agreement is fair, reasonable, and adequate.

### **B. Attorneys' Fees**

A thorough judicial review of fee applications is required in all class action settlements. *GM Trucks*, 55 F.3d at 819; *see also Smith v. First Union Mortgage Corp.*, Civ. A. No. 98-CV-5360, 1999 WL 1081362, at \*2, 1999 U.S. Dist. LEXIS 18299, at \*4 (E.D. Pa. Dec. 1, 1999) ("The court has an obligation to review the reasonableness of attorney fees in class action settlements even in the absence of any objection and whether they come from a common fund or will otherwise be paid."); FED. R. CIV. P. 23(h) ("In an action certified as a class action, the court may award reasonable attorney fees and nontaxable costs authorized by law."). In this case, Plaintiffs have not provided the Court with sufficient information to calculate the reasonableness of their requested attorneys' fees. Under Paragraph S of the Agreement, the parties plan to submit a "supplemental petition" to the Court for reasonable attorneys' fees and costs incurred from September 17, 2003 onward. (Agreement ¶ S.) Paragraph S also proposes, however, that PHA pay Plaintiffs' counsel a flat sum of \$230,000 for fees and costs incurred from the commencement of this action through September 16, 2003. (*Id.*) Plaintiffs have not submitted any proof that the \$230,000 figure is reasonable. Even though Defendants do not object to this sum, the Court cannot authorize such a payment until Plaintiffs submit billing records and/or affidavits from which an independent assessment of reasonableness can be made. *See, e.g., Orloff*, 2004 WL 870691, at \*7 (relying on affidavits

submitted by class counsel to conduct independent assessment of \$67,500 fee request even though defendants had already agreed to pay that amount).

Thus, Plaintiffs must submit documentation in support of their request for attorneys' fees and costs incurred from the commencement of this action through September 16, 2003. The Court will then conduct an independent assessment of the reasonableness of the requested fees and issue an order accordingly.

### **III. CONCLUSION**

For the reasons stated above, final approval of the Agreement is granted, subject to a reasonableness assessment of attorneys' fees incurred through September 16, 2003. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>PATRICIA PHILLIPS, et al.,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiffs,</b>	:	
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v.	:	
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<b>PHILADELPHIA HOUSING AUTH.,</b>	:	<b>No. 00-4275</b>
<b>CARL GREENE, JACQUELINE</b>	:	
<b>MCDOWELL, PAMELA DUNBAR,</b>	:	
<b>JENELLE LAWSON,</b>	:	
<b>Defendants.</b>	:	
	:	

**ORDER**

AND NOW, this 2<sup>nd</sup> day of May, 2005, upon consideration of the Settlement Agreement dated August 6, 2004, including the exhibits annexed thereto (collectively, the "Agreement"), following a fairness hearing on April 4, 2005, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Notice has been given to all class members known and reasonably identifiable in satisfaction of the requirements of Federal Rule of Civil Procedure 23 and due process.
2. The terms of the Agreement are **APPROVED** as fair, reasonable, and adequate, subject to a reasonableness assessment of attorneys' fees incurred by Plaintiffs through September 16, 2003. The matter of attorneys' fees shall be resolved as follows:
  - a. Defendants shall not pay \$230,000 in attorneys' fees within three days of the

Effective Date of the Agreement.<sup>1</sup> Rather, by **May 16, 2005**, Plaintiffs shall file a petition for fees and costs incurred from the commencement of this action through September 16, 2003. The Court shall evaluate that petition and determine the appropriate fee.

b. Plaintiffs' request for attorneys' fees from September 17, 2003 onward shall be addressed as set forth in Paragraph S of the Agreement.

c. Defendants shall pay attorneys' fees within three days of the date on which any order of this Court awarding attorneys' fees becomes a final, non-appealable order.

3. This action is **DISMISSED with prejudice**, on the condition that the parties comply with all terms of the Agreement. In accordance with *Kokkenen v. Guardian Life Insurance Company of America*, 511 U.S. 375 (1994), the Court retains jurisdiction to enforce the terms of the Agreement. Defendants shall be released and discharged from all claims as set forth in Paragraph A of the Agreement. Nothing contained in the Agreement or in this Order shall be deemed an admission or finding by or with respect to any party.

**BY THE COURT:**

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**Berle M. Schiller, J.**

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<sup>1</sup> "Effective Date" is defined in Paragraph L of the Agreement.