

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

L.P., *et al.*,)
)
 Plaintiffs,)
)
 v.) No. 1:10-CV-01309 TWP-TAB
)
 COMMISSIONER, INDIANA STATE)
 DEPARTMENT OF HEALTH, *et al.*,)
)
 Defendant.)

FINAL JUDGMENT APPROVING PARTIES' STIPULATION

This cause comes before the Court after the filing of the parties' Stipulation to Enter Agreed Order for Final Judgment Contingent on Notice to the Class and Approval of the Court. On January 3, 2012, this Court held a fairness hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to determine whether the proposed settlement is a fair, reasonable, and adequate resolution of this matters. The parties appeared by counsel at the hearing.

Having considered the parties' Stipulation and the Report of Class Counsel Following Notice to the Class, as well as the arguments of counsel at the fairness hearing, as well as the record in this matter,

IT IS HEREBY FOUND that:

1. This action was filed on October 19, 2010, and alleged that the then-defendants, the Health and Hospital Corporation of Marion County, violated the United States Constitution to the extent that children whose parents did not have Social Security numbers, could not be legitimated through the simple paternity affidavit procedure established by Indiana Code § 16-37-2-2.1.

2. On October 29, 2010, an amended complaint (Doc. No. 14) was filed adding the Commissioner of the Indiana Department of Health as an additional defendant.

3. On December 10, 2010, the Health and Hospital Corporation of Marion County was dismissed as a party (Doc. No. 40) pursuant to stipulation by the parties. (Doc. No. 38).

4. On December 13, 2010, this Court certified this case as a class action with the class defined as:

all persons born in Indiana, or who will be born in Indiana, to unmarried parents and whose paternity has not been established, or will not be able to be established, through the affidavit procedure established in Indiana Code § 16-37-2-2.1 for the sole reason that their parents do not have Social Security numbers as a result of their immigration status.

(Doc. No. 43).

5. On January 27, 2011, this Court, following a hearing, granted plaintiffs a preliminary injunction and specifically ordered that the defendant “Commissioner is required to reverse course and employ its former interpretation of the Statute [Indiana Code § 16-37-2-21.1] utilized prior to July 10, 2010.” (Doc. No. 62). This had the effect of allowing children born in Indiana to be legitimated through the paternity affidavit procedure established by the statute, even though their parents, because of their immigration status, did not have Social Security numbers.

6. The Court finds that the parties’ proposed final Judgment as set out in their Stipulation does nothing more than convert this Court’s preliminary injunction into a final injunction as to the plaintiffs and the certified class and also that the proposed final Judgment provides for a resolution of any claim for attorneys’ fees and costs possessed by plaintiffs.

7. This Court has jurisdiction over the subject matter of this cause and over all the parties, including the members of the certified class.

8. The class has been given proper and adequate notice of the proposed resolution of this case. This notice was given as required by the October 6, 2011, Order of this Court. (Doc. No. 76).

9. The notice invited class members to notify class counsel as to any objections to, or comments on, the proposed final judgment. The notice provided valid, due, and sufficient notice of these proceedings and the proposed judgment and included information regarding the procedures for making any objections to the proposed judgment.

10. The notice given to the class fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

11. The Court notes that no comments concerning the proposed settlement were received by class counsel.

12. Following the standards established by *Synfuel Technologies, Inc. v. DHL Express, Inc.*, 463 F.3d 646, 653 (7th Cir. 2006), the Court finds that the settlement of this case as set out in the parties' Stipulation to Enter Agreed Order for Final Judgment is fair, reasonable, and adequate for the following reasons.

a. The sole purpose of this litigation was to require the defendant Commissioner to cease his practice and policy of refusing to allow persons born in Indiana to be legitimated through the simple procedure established in Indiana Code § 16-37-2-2.1, merely because their parents do not have Social Security numbers because of their immigration status. The settlement does exactly that. Therefore, looking at the first *Synfuel* factor, which requires a comparison of the strength of the case with the offered settlement, the Court concludes that although the strength of the case is strong – as is demonstrated by the grant of a preliminary injunction – the offered settlement grants to

plaintiffs and the class everything they asked for and could hope to receive through litigation.

b. The complexity, length and expense of continued litigation weighs in favor of finding that the proposed settlement and Judgment is fair, reasonable, and adequate. Given that further litigation would not result in anything more favorable than the pending settlement, it would be unnecessarily expensive and time consuming to proceed further.

c. There has been no opposition to the settlement expressed by plaintiffs or the class.

d. There is no evidence of any collusion between the parties in entering into this settlement and the Court is satisfied that the proposed Judgment is the result of an arms-length negotiation.

e. The ACLU of Indiana and its counsel are experienced in class action litigation of this type and the Court credits counsel's opinion that the settlement is fair, reasonable and adequate.

f. The stage of the proceedings and amount of discovery weigh in favor of finding that the proposed Judgment is fair, reasonable, and adequate. A preliminary injunction hearing has already been held in this matter and the Court does not perceive how further discovery would be efficacious or would alter the terms of any settlement.

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For the foregoing reasons, the Court finds that the parties' Stipulation to Enter Agreed Order for Final Judgment Contingent on Notice to the Class and Approval of the Court is a fair, reasonable, and adequate resolution of this matter.

IT IS THEREFORE ORDERED that, pursuant to the parties' Stipulation that this Court enters the following JUDGMENT.

1. The Commissioner is permanently enjoined to accept paternity affidavits, filed pursuant to Indiana Code § 17-37-2-2.1, submitted by parents of children born in Indiana where one or both parents do not have a Social Security number and cannot obtain a Social Security number as a result of their immigration status.

2. The plaintiffs are to be paid the sum of \$ 55,000 in full satisfaction of all attorneys' fees and costs owing as of this date.

3. In the event of any future disputes as to compliance with this Judgment, the parties shall abide by the procedures set out in paragraph 13-15 of the Stipulation to Enter Agreed Judgment prior to seeking relief in this Court.

IT IS SO FOUND AND ORDERED on this _____ day of _____, 2012.

Judge, United States District Court

cc:

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