

REISMAN CAROLLA GRAN & ZUBA LLP
Catherine Merino Reisman
19 Chestnut Street
Haddonfield, New Jersey 08033
856.354.0071
catherine@rcglawoffices.com

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

C.P., individually and on behalf of
F.P., a minor child; D.O. individually
and on behalf of M.O., a minor child;
S.B.C., individually and on behalf of
C.C., a minor child; A.S., individually
and on behalf of A.A.S., a minor child;
M.S., individually and on behalf of her
minor child, H.S.; Y.H.S., individually
and on behalf of his minor child,
C.H.S.; E.M. on behalf of her minor
child, C.M.; M.M., individually and on
behalf of K.M.; L.G., individually and
on behalf of her minor child, T.M.;
E.P., individually and on behalf of her
minor child, Ea.P.; and on behalf of
ALL OTHERS SIMILARLY
SITUATED,

Plaintiffs,

v.

NEW JERSEY DEPARTMENT OF
EDUCATION; ANGELICA ALLEN-
McMILLAN, Acting Commissioner of
Education, in her official capacity,
Defendants.

Civil Action No. 19-cv-12807-NLH-MJS

Noel L. Hillman, U.S.D.J.

Matthew J. Skahill, U.S.M.J.

**MOTION FOR APPOINTMENT AS
SUBSTITUTE CLASS COUNSEL
AND APPROVAL OF PROPOSED
CLASS COUNSEL PLAN**

Pursuant to the Court’s Order dated August 23, 2023 (ECF No. 504 at 4-5), Reisman Carolla Gran and Zuba LLP (RCGZ), Law Office of David R. Giles (Giles), Education Law Center (ELC), Law Office of Denise Lanchantin Dwyer LLC (Dwyer), Thurston Law Offices LLC (Thurston), and Wasserman Legal LLC (Wasserman) (collectively “Movants”) move to be appointed as substitute class counsel and for approval of their proposed Plan for Class Counsel. In support, Movants hereby state as follows:

I. Proposed Class Counsel

Movants propose that RCGZ, Giles, and ELC will act as the steering committee, with Dwyer, Thurston and Wasserman providing assistance at the direction of the steering committee. In determining whether to appoint class counsel, courts consider (1) the work counsel has done in investigating and identifying the claims in the action; (2) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted; (c) counsel’s knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. *See* Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv). To assess the adequacy of proposed class counsel, “courts have looked to evidence such as certifications and declarations of counsel indicating availability and willingness to commit necessary resources to a case, counsel’s breadth of experience with class actions and similar claims, and work already performed.” *Rieger v. Volkswagen*

Grp. of Am., Inc., No. 21-10546, 2023 U.S. Dist. LEXIS 78785, at *63-64, 2023 WL 3271116 (D.N.J. May 4, 2023) (citing *Jane v. Rodriguez*, No. 20-5922, 2020 U.S. Dist. LEXIS 218869, 2020 WL 6867169, at *12 (D.N.J. Nov. 23, 2020)); *Schultz v. Midland Credit Mgmt. Inc.*, No. 16-4415, 2020 U.S. Dist. LEXIS 98824, 2020 WL 3026531, at *6 (D.N.J. June 5, 2020)).

As discussed below, the proposed firms have done extensive work identifying and investigating the claims in this action, possess considerable experience handling class actions, other complex litigation, and/or the types of claims asserted here, as well as demonstrable knowledge of the applicable law, and have committed significant resources to representing the Classes. In addition, the firms have agreed upon a method of managing the litigation through final approval and during implementation and enforcement, through use of a steering committee.

RCGZ

The attorneys at RCGZ have been practicing in the area of special education law for decades. Founding Partner Catherine Merino Reisman, a 1989 graduate of Yale Law School, has been practicing in the area of civil rights since 1991 and Special Education law since 1999. ECF No. 487-3 ¶¶ 4, 5, 6, 7. She served as co-chair of the Special Education practice group at her former firm, Montgomery McCracken Walker & Rhoads, LLP, for several years before starting her own firm in 2008, where more than 90% of her practice has been in

the area of representing individuals with disabilities in cases related to special education and civil rights, ECF No. 487-3 ¶¶ 7, 8. Ms. Reisman has represented families from Individualized Education Program meetings through hearings in New Jersey, Pennsylvania and elsewhere, and appeals in the federal District Courts and Courts of Appeals. ECF No. 487-3 ¶ 9. She is also active in the Council of Parent Attorneys and Advocates (COPAA), www.copaa.org, a national non-profit 501(c)(3) organization of attorneys, advocates, parents and professionals dedicated to protecting the special education and civil rights of children with disabilities throughout the United States. She served as a member of the COPAA Board of Directors from 2008-2021, Chair of the Board from 2011-2012, Vice Chair from 2010-2011, and Treasurer from 2009-2010. *Id.* ¶ 10. Since March 2008, Ms. Reisman has served as Co-Chair of the COPAA Amicus Committee in which capacity she is responsible for overseeing COPAA's extensive practice as *amicus curiae* in cases in the United States Courts of Appeals and the United States Supreme Court. Indeed, in her capacity as co-chair of the Amicus Committee, Ms. Reisman has participated in the drafting and filing of *amicus* briefs in all but two of the federal Courts of Appeal. *Id.* ¶ 11.

Judith Gran, a 1983 graduate of Temple University Law School, has an unparalleled career, of 40 years, committed to the protection of disability rights. ECF No. 31-4 ¶ 4; ECF No. 469-4 at p.5. Prior to joining RCGZ, Ms. Gran

worked at the Public Interest Law Center of Philadelphia, serving as its Director of Disability Projects from February, 1998 to November, 2009. ECF No. 31-4 ¶

5. She has served as lead counsel and co-counsel in class action lawsuits recounted in her Certification and Curriculum Vitae, on behalf of children and adults with disabilities, including complex cases on behalf of institutionalized persons with intellectual and developmental disabilities, that resulted in systemic change. Those cases include, but are not limited to:

- *People First of Tennessee v. Clover Bottom Developmental Ctr.*, No. 3-95-1227 (M.D. Tenn.)
- *United States of America and People First of Tennessee v. State of Tennessee*, No. 92-2062 (W.D. Tenn.)
- *People First of Tennessee v. Arlington Developmental Ctr.*, 1998 U.S. App. LEXIS 9537 (6th Cir.), *cert. denied*, 525 U.S. 1001 (1998)
- *Messier v. Southbury Training Sch.*, No. 3:94-cv-01706-EBB (D. Conn.)
- *Gaskin v. Comm. of Pa.*, No. 94-4048 (E.D. Pa.)
- *Sanchez v. Johnson*, 416 F.3d 1051 (9th Cir. 2004)
- *Nelson v. Snider*, No. 94-cv-440 (E.D. Pa.)
- *Halderman v. Pennhurst State Sch. & Hosp.*, No. 74-1345 (E.D. Pa.)
- *Richard C. v. Snider*, No. 2:89-cv-2038 -WLS (W.D. Pa.)

- *Jackson v. Fort Stanton Hosp. & Training Sch.*, 757 F. Supp. 1243 (D.N.M.), *rev'd in part, appeal dismissed in part*, 964 F.2d 980 (10th Cir. 1992)

ECF No. 469-4 ¶¶ 6, 7 & pp. 6-15.

Ms. Gran was lead class counsel in *Gaskin v. Commonwealth*, Civil Action No. 94-4048 (E.D. Pa.), representing a statewide class of approximately 280,000 school children with disabilities in Pennsylvania in a challenge to the failure by the Pennsylvania Department of Education to implement IDEA's integration or least restrictive environment mandate, 20 U.S.C. § 1412(a)(5). The plaintiffs were twelve individual students with disabilities from all over the state and six statewide advocacy organizations. Before joining RCGZ, she served as lead plaintiffs' counsel from the time she began to develop the case by exhausting individual plaintiffs' administrative remedies in the early 1990s through discovery, filing of dispositive motions, and settlement. She was responsible for extensive discovery and motion practice in the litigation. ECF No. 487-4 ¶¶ 8-13.

The case was finally settled in 2005, after two previous rounds of settlement discussions had failed, and the settlement was implemented over a five-year period. *Id.* ¶6. Ms. Gran took the lead in the proceeding on settlement approval and implementation of the settlement. *Id.* ¶¶ 14-19. By the end of the settlement period, a review of implementation revealed that the state not only had complied but had gone beyond compliance. *Id.* ¶ 20.

RCGZ's efforts have been integral to getting this litigation to the place where it is today. Catherine Reisman took the lead on all major briefing, including the motion for summary judgment, opposition to the Defendants' motion for summary judgment, the motions for class certification, and the pre-trial order. Ms. Reisman also took the lead, with Gregory Little, on negotiating the settlement through mediation with Judge Schneider. ECF No. 487-3 ¶ 34. Judith Gran assisted with the briefing and provided guidance on the conduct of the litigation based on her decades of experience in disability rights and class action litigation.

Since being appointed interim class counsel, RCGZ has met with counsel for *Amici* and Defendants to discuss the concerns raised by the *Amici* in the correspondence dated June 23, 2023, docketed at ECF No. 464. Based on those discussions, RCGZ will provide a proposed revised draft Consent Order and Settlement Agreement to Defendants for their consideration early next week.

Giles

Mr. Giles opened his own firm in New Jersey in 2003 after more than a decade working in the public interest and advocating for the protection of the civil rights of students and their parents. ECF No. 31-3 ¶¶ 8-13. Throughout his legal career of almost 35 years, his practice has been focused in the areas of

civil rights and education law and he has substantial experience particularly in the area of special education law. ECF No. 31-3 ¶¶ 8- 14.

Upon graduation from Stanford Law School in 1989, Mr. Giles was awarded a Skadden Fellowship through which he worked as an attorney at California Rural Legal Assistance until 1991. ECF No. 31-3 ¶ 8. For the next seven years, he worked as a Supervising Attorney at the East Palo Alto Community Law Project in East Palo Alto, California, where he worked on cases and supervised Stanford law students. ECF No. 31-3 ¶ 9. He then moved to the United States Department of Education, where he worked in their Office for Civil Rights, in San Francisco and New York. ECF No. 31-3 ¶ 10.

From 2001 to 2003, Mr. Giles worked as a Senior Attorney on a full-time basis at ELC in Newark. ECF No. 31-3 ¶ 11. In 2003, he continued working for ELC on a part-time basis through 2009; and after a break, in 2015, he began again doing a limited amount of work for ELC on a regular basis. ECF 31-3 ¶ 12. Since 2003, Mr. Giles has maintained a private practice in New Jersey, specializing in education law, representing parents and students. ECF No. 31-3 ¶ 13. Altogether, he has practiced in the area of special education law, representing parents, for the entire 35 years of his legal career, and has substantial experience representing parents, students and children in education and other children's law-related matters before school district and state boards

of education, state administrative tribunals, including the Office of Administrative Law (OAL), and state and federal trial and appellate courts in California and New Jersey. ECF No. 31-3 ¶¶ 14-17.

Mr. Giles spent over 150 hours on this matter prior to February 2023. He contributed to briefing on all motions, participated in discovery planning, responded to discovery directed to plaintiff M.M., and reviewed and revised briefs relating to injunctive relief, class certifications, and summary judgment. He also participated in calls and meetings regarding important decisions and strategy. ECF No. 487-5 ¶ 4.

ELC

ELC is a nonprofit organization that engages in legal and policy advocacy on behalf of public school children in New Jersey and across the United States. ELC promotes educational equity through coalition building, policy initiatives, communications, research, and litigation at the state and federal levels. Certification of Gregory G. Little (*Little Cert.*), filed herewith, ¶ 2. Mr. Little, ELC's Chief Trial Counsel and Chairman of ELC's Board, is the sole ELC attorney who has represented Plaintiffs to date. *Little Cert.* ¶¶ 1, 3. Elizabeth Athos has served on behalf of ELC as an *amicus curiae* supporting Plaintiffs in this case. ELC now supports the pending Proposed Class Counsel Plan in this matter and proposes to commit ELC to work as part of the Class Counsel Team to seek

approval of the settlement between the parties, to consult on monitoring efforts, and to take an active role in trial and/or enforcement efforts, should either of those become necessary. The ELC attorneys who will work on this matter as part of the new Class Counsel Team are Jessica Levin, Elizabeth Athos, and Gregory Little, with the understanding that ELC will withdraw from any further role as *amicus curiae*. *Little Cert.* ¶ 3. ELC also plans to bring in a *pro bono* law firm, as necessary, particularly if enforcement of the settlement agreement is required. ELC regularly partners with a number of large law firms that are willing to work *pro bono* on ELC cases. *Little Cert.* ¶ 4.

ELC has substantial experience in special education law, including representation at New Jersey's OAL, as well as significant impact litigation and class action experience in both state and federal courts, and is capable of fairly and adequately representing the class in this matter as part of the Class Counsel Team. In state court, ELC has been the sole class counsel throughout more than forty years and twenty-three decisions in the groundbreaking *Abbott v. Burke* school equity litigation. As a direct result of ELC's litigation in this landmark case, the State of New Jersey has appropriated billions of dollars to construct new schools in urban districts, ensuring thousands of low-income students are educated in safe and modern facilities, and has also provided universal preschool to tens of thousands of

low-income three- and four-year-old students in New Jersey's major urban school districts. *Little Cert.* ¶ 5.

In federal court, ELC has served as class counsel in two special education class action lawsuits. In New Jersey, ELC, along with the Gibbons law firm, has represented the plaintiff class in *M.A. v. Newark Public Schools* from inception of the lawsuit, through motions, appeal to the Third Circuit, discovery, entry into a settlement agreement, and monitoring of settlement implementation that continues until this day. The complaint in that case alleged serious violations on the part of the school district and the State in identifying and evaluating students with disabilities and timely providing special education and related services to eligible students. In the years since the settlement was entered, compliance rates have increased from a low of 32% to nearly achieving the district-wide 95% compliance required by the settlement agreement. *Little Cert.* ¶ 6.

The second special education lawsuit in which ELC continues to serve as class counsel, along with the White & Case law firm and the ACLU of Michigan, is *D.R. v. Michigan Department of Education*. In that case, settlement agreements have been reached requiring the State to contribute \$4 million to support a Neurodevelopmental Center of Excellence (NCE) available to evaluate the lead-exposed students of Flint, Michigan and another \$9 million for a Special Education Fund (SEF) to provide services to those students. ELC is in the process of

enforcing the contingencies for creation of the SEF and expects to monitor both NCE and SEF implementation in the years ahead to ensure that Flint students are appropriately served. *Little Cert.* ¶ 7.

In addition to this class action work, ELC has served as counsel or co-counsel in dozens of special education cases, both individual and systemic, served as *amicus curiae* in at least ten special education cases, and, for the past twenty-five years, has provided legal advice, referrals, and other brief service to hundreds of New Jersey public school parents per year in special education cases. *Little Cert.* ¶ 8.

The attorneys from ELC responsible for this matter will be Jessica Levin, Elizabeth Athos, and Gregory Little. Ms. Levin is ELC's acting litigation director and director of its Public Funds Public Schools project. She has experience representing students with disabilities in both individual and systemic litigation, including the *D.R.* case mentioned above, and litigating education lawsuits in administrative, state, and federal courts. She graduated from Harvard Law School in 2013. Ms. Levin is admitted to the bars of the States of New Jersey, New York, and California, as well as the U.S. District Court for the Eastern District of Michigan, the U.S. Court of Appeals for the Tenth Circuit, and the U.S. Supreme Court. She plans to submit her application for admission to the bar of the U.S. District Court for the District of New Jersey as soon as possible. *Little Cert.* ¶ 9.

Ms. Athos received her law degree in 1983 from Harvard Law School and has practiced law in New Jersey since her admission to the bar in December of that year. In addition to the New Jersey bar, she has been admitted to the bars of the U.S. District Court for the District of New Jersey, and the U.S. Courts of Appeals for the Third and Fourth Circuits. *Little Cert.* ¶ 10. Ms. Athos has handled education law cases, including special education cases, since September 1991, when she developed an education law practice as a staff attorney at Hudson County Legal Services in Jersey City, New Jersey. *Little Cert.* ¶ 11. Since May 1997, she has been employed as a senior attorney at ELC, where she has specialized in education law. *Little Cert.* ¶ 12.

During her time at ELC, Ms. Athos has worked on *Abbott* and the firm's other student rights cases. On behalf of ELC, over the past 26 years, she has represented clients before Boards of Education, in the Office of Administrative Law, in the New Jersey Superior Court, Appellate Division, in the New Jersey Supreme Court, in federal district court, and in the United States Court of Appeals for the Third Circuit. *Little Cert.* ¶ 13. She also supervises ELC's intake, through which hundreds of New Jersey parents apply for legal assistance each year. ELC accepts applications from low-income parents in various types of student rights' cases; the vast majority of ELC's intakes involve special education issues. *Little Cert.* ¶ 14.

In addition to representing clients and supervising intake, Ms. Athos contributes to ELC's publications on education law, prepares and presents comments on proposed education regulations to the New Jersey State Board of Education, and has lectured on various aspects of education law at seminars sponsored by the Institute for Continuing Legal Education, Volunteer Lawyers for Justice, and other organizations, including parent and advocacy groups. One of the publications authored by ELC, "The Right to Special Education in New Jersey: A Guide for Advocates," © 2008, is used by parents and lawyers alike as a go-to advocacy guide. *Little Cert.* ¶ 15. On behalf of ELC, Ms. Athos has served as a longstanding member of the New Jersey State Bar Association's School Law Committee and currently serves as facilitator of a professional group dedicated to representing parents and students in special education cases: New Jersey Special Education Practitioners (NJSEP). *Little Cert.* ¶ 16.

In this lawsuit, Mr. Little served as lead trial counsel for the past 18 months. In that capacity, he has committed to preparing for cross-examining and presenting witnesses, if necessary, at the fairness hearing in this case. *Little Cert.* ¶ 20.

In 41 years, Mr. Little has led trial teams in more than fifty trials in state and federal courts nationwide. While working at the U.S. Securities and Exchange Commission (SEC), he was Chief Trial Counsel for the Southeast Region of the

United States. In that role, he was responsible for all SEC litigation throughout the Southeast of the United States, and was involved in obtaining and enforcing injunctions secured at trial and in settlements. As Associate General Counsel for Phillip Morris, he managed scores of outside counsel in defending (i) a plethora of tobacco class actions at all stages of litigation including, especially relevant here, class action trials across the country, (ii) State Attorney General litigation in all 50 states, and (iii) related securities litigation matters that arose during his tenure. As a litigation partner with White & Case, he represented numerous Fortune 100 companies domestically and internationally. It was at White & Case that he began to work (*pro bono*) on education litigation matters, first assisting ELC in *Abbott v. Burke* in 2011 (*Abbott XXI*), in a remand by the New Jersey Supreme Court to the Honorable Peter Doyne, A.S.C.J. (now retired) for a full evidentiary hearing, for findings of fact regarding the impact of state funding on the quality of public education across New Jersey. *Little Cert.* ¶ 17.

In the decade since the remand in *Abbott XXI*, Mr. Little has had extensive experience in education litigation, especially at the trial stage. In his role as Chief Trial Counsel for ELC, he was (i) lead trial counsel in an ultimately successful two month trial against the State of New York on behalf of children from eight small city school districts, (ii) lead trial counsel in litigation on behalf of children in Schenectady against the State of New York where the plaintiffs ultimately obtained

the return of over 4 billion dollars to the education budget and (iii) trial counsel against New York City and the State of New York on behalf of children who were denied access to resources necessary to participate in virtual classrooms. *Little Cert.* ¶ 18.

Mr. Little recently served as lead trial counsel in the *D.R.* case, an IDEA class action on behalf of all public school children in Flint, Michigan who were exposed to lead in their water. The case resulted in an unprecedented agreement (i) providing the children of Flint public schools with universal screenings for learning disabilities and (ii) creating a neurodevelopmental center where deeper assessments can be done. *Little Cert.* ¶ 19.

Dwyer

Denise Lanchantin Dwyer, a graduate of New York Law School, has maintained a solo practice in education law since 2006, representing individuals and families of students with disabilities, as well as general education students in disciplinary matters from preschool through graduate school. ECF No. 31-2 ¶4. Ms. Dwyer is also an experienced trial attorney, having started her career as an Assistant District Attorney in Kings County, Brooklyn, New York in 1984, leaving as a supervisor, and then moving to civil trial work. ECF No. 31-3 ¶5. Ms. Dwyer currently practices primarily in the area of special education, and routinely represents clients in mediations conducted by New Jersey Department of

Education, hearings at the OAL, and appeals to this Court and the Third Circuit Court of Appeals. ECF No. 31-3 ¶6. She has also successfully pursued cases before the New Jersey Division on Civil Rights, and the United States Department of Education’s Office for Civil Rights. ECF No. 31-3 ¶ 7.

Ms. Dwyer used her investigatory and trial experience in this case. ECF No. 487-6 ¶¶ 13-14. During discovery, she worked closely with Thomas O’Leary, of Walsh Pizzi O’Reilly & Falanga LLP, in analyzing documents produced, and determining whom to depose and what testimony to elicit. She took key depositions and through OPRA requests, secured critical documents. She also assisted Mr. O’Leary and Robert C. Thurston in preparing for depositions of other witnesses and attended those depositions as support. *Id.* ¶ 15. She was co-lead trial counsel with Mr. O’Leary in 2021, until Mr. Little joined the team in January 2022. *Id.* ¶ 16.

Thurston

Robert C. Thurston, a 1987 graduate of Ohio State College of Law, opened Thurston Law Offices LLC in 2005. Mr. Thurston has represented dozens of clients in special education administrative disputes in both Pennsylvania and New Jersey. Thurston Law Offices LLC, on behalf of several plaintiffs, filed the first “45 Day Rule” class action complaint in the

U.S. District Court for New Jersey, captioned *J.A., et al. v. Monroe Twp. Bd. of Educ., et al.*, Civil Action No. 18-cv- 09580.

He has also been brought in as *pro hac vice* counsel in cases in the U.S. Virgin Islands, Hawaii, and Tennessee. In addition to due process administrative cases, Mr. Thurston has been counsel in numerous federal special education cases, including appeals to the United States Courts of Appeals for the Third, Sixth and Ninth Circuits. In 2016, Mr. Thurston wrote and self-published *SchoolKidsLawyer's Step-By-Step Guide to Special Education Law for Parents* which is now in its second edition. He has also lectured widely and written other special education law guides for parents. ECF 469-2 at 31-41.

Because of Mr. Thurston's role in the *J.A.* case, with substantial overlap with this case, he was consulted frequently regarding the legal strategy in *C.P.*, He conducted substantial discovery, including preparation of Requests for Admissions, drafting other discovery requests, taking depositions, organization of documents and exhibits, as well as involvement in drafting various motions. He prepared to present and cross-examine witnesses at trial. ECF No. 487-1 ¶ 5.

Wasserman

Jeffrey Wasserman, a 1999 graduate of Fordham University School of Law, is the Principal of Wasserman Legal, which he opened in 2016. ECF No. 30-9 ¶¶ 2, 4, 7. For the last twenty years, Mr. Wasserman has practiced in the area of commercial litigation and, in the last three years, has expanded his practice to include special education law. ECF No. 30-9 ¶¶ 6-7.

Before opening his firm, Mr. Wasserman gained extensive experience as a commercial litigator. Mr. Wasserman began his career as an associate at Pillsbury Winthrop Shaw & Pittman, where he worked from 1999 to 2001. ECF No. 30-9 ¶6. From 2001 to 2005, he was an associate at Chadbourne & Parke, and returned there as a partner in 2010. *Id.* From 2005 to 2010, he was an associate, and then partner, at Bracewell & Giuliani, and from 2012 to 2016, he was a partner at Herrick, Feinstein. *Id.* Throughout this time, he practiced in the area of complex commercial litigation. *Id.* Since opening his firm in 2016, he has continued to practice commercial litigation, but has also practiced in the area of special education law, representing parents. ECF No. 30-9 ¶6.

II. Class Counsel Plan

A. Through Final Approval

i. Amended Motion for Preliminary Approval

Pursuant to the Court's Order dated August 31, 2023 (ECF No. 511), RCGZ, interim class counsel, has started drafting an amended Motion for Preliminary

Approval. Catherine Reisman has already begun working with *Amici* and the State to revise the Settlement Agreement and Consent Order and the Notice to be sent to the Class to address concerns of *Amici*.

Ms. Reisman will seek input from Team members on revisions proposed to address *Amici*'s concerns. Once the Consent Order and Settlement Agreement and Notice are completed, RCGZ will be responsible for filing the Amended Motion for Preliminary Approval.

ii. Interviewing Monitors for the Compliance Phase

In the spring, Judith Gran and Catherine Reisman participated, with a representative from *Amici*, in interviewing potential monitors for the compliance phase. Judith Gran will coordinate with *Amici* to interview the State's proposed monitor(s). After the interviews, she will report back to the Team regarding her recommendations. As required by the Settlement Agreement, she will negotiate with the State regarding the choice of monitor. If the parties cannot agree on a monitor, Ms. Gran will, with the Team's support, prepare a submission to the Court advocating for the monitor the Class would prefer.

iii. Establishment of the Class Action Website

Robert Thurston has secured the domain www.nj45dayclassaction.com. Before the Notices are sent out, that website must be finalized. Mr. Thurston will assume the responsibility to ensure that the following documents are posted to the

website: the Second Amended Complaint, the Opinion on the Motion to Dismiss the Second Amended Complaint, the Opinion and Order granting Class Certification, the Opinion on Summary Judgment, the Proposed Consent Order and Settlement Agreement, Notices to the Class, the Proposed Class Counsel Plan and Order on the Proposed Plan, the Motion for Preliminary Approval, and the Motion for Final Approval. The website will also include a form to contact class counsel. Mr. Thurston and Mr. Giles are developing FAQs for the website.

Mr. Thurston will be responsible for setting up the email, info@nj45dayclassaction.com and ensuring that emails will be forwarded to a legal assistant at RCGZ. Prior to final approval of the Proposed Consent Order and Settlement Agreement, the legal assistant will keep a record of all inquiries and forward inquiries to the steering committee. The steering committee, after review of the inquiry, will determine whether the Team needs to be involved in responding to the inquiry. The steering committee will ensure that someone responds to the inquiry and inform the legal assistant of the action taken on the inquiry (so there will be a record of inquiries received and actions taken in response). After approval, inquiries will be forwarded to Team members on a rotating basis. The Team member responding to the inquiry will inform the legal assistant of the action taken on or outcome of the inquiry.

iv. Reviewing and Analyzing Possible Objections

If any objections are received after filing of the Motion for Preliminary Approval, the steering committee will be responsible for ensuring that the objections are reviewed and analyzed. If necessary, they will call on Team members for support. The steering committee, working with Team members, will ensure that Gregory Little, of ELC, who will be handling the fairness hearing, has a complete review and analysis of any objections.

v. Motion for Final Approval of Settlement Agreement, Award of Attorney's Fees and Costs, and Incentive Awards

Team members will work together on the Motion for Final Approval of Settlement Agreement, Award of Attorney's Fees and Costs, and Incentive Awards. RCGZ will supervise this effort and have responsibility for filing the Motion for Final Approval, Award of Attorney's Fees and Costs, and Incentive Awards.

vi. Fairness Hearing

Gregory Little will be lead counsel for the Team at the fairness hearing and present and/or cross-examine witnesses to establish that the settlement is reasonable, fair, and appropriate. Catherine Reisman will present arguments to the Court. The Team will assist with preparation for the fairness hearing, including identifying witnesses who will testify at the hearing and drafting, if requested by the Court, pre- and post-hearing findings of fact.

B. Implementation/Enforcement

i. Decision Making

The steering committee will be responsible for decision making during implementation and enforcement of the settlement agreement. The steering committee will seek to ascertain the consensus of Team members in making decisions. Ultimately, all decisions will be made by majority vote of the steering committee, taking into account the views of various Team members and based on the best interests of the Class.

ii. Maintenance of Class Action Website and Email

Robert Thurston will remain responsible for maintaining the www.nj45dayclassaction.com website and ensure that the Class continues to be able to submit inquiries via the email info@nj45dayclassaction.com or a form on the website.

iii. Responses to Inquiries from Class Members

Inquiries from Class members will be directed to a legal assistant at RCGZ who will forward inquiries for response on a rotating basis to Dwyer, Giles, Thurston, and Wasserman. The Team member responding to the inquiry will copy steering committee members and the RCGZ legal assistant on responses. RCGZ's legal assistant will be responsible for keeping track of the disposition of inquiries from Class members.

The steering committee will analyze the inquiries to see if there appear to be systemic issues that need to be addressed. When the Team meets periodically, the members will discuss any systemic issues, talk about potential solutions, and discuss presentation of the issues to the State and/or the Monitor.

iv. Monitoring Reports and Meetings with the State, the Monitor, and *Amici*

The settlement agreement provides that two weeks prior to issuing a draft report, the Monitor will convene a meeting with the parties to discuss the contents of the report. At least two steering committee members will attend that meeting, with other Team members as needed. For example, the Team members who have been responding to inquiries from the Class may have valuable information to share. After the Monitor issues a draft report to the parties (within fourteen (14) days of the meeting), the Team will determine whether to submit any comments/objections to the Monitor. After receiving the final report, the Team will determine how to address any issues or concerns raised in the report at the post-report meeting with the Monitor. At least two steering committee members, with other Team members as needed, will attend the post-report meeting and report back to the entire Team.

There may be other meetings with the State, the Monitor, and/or representatives of *Amici Curiae*, including but not limited to meetings to discuss compliance plans, data collection, or other topics that arise. As needed, the steering

committee will assign Team members who express willingness to attend such additional meetings with the State and stakeholders.

v. Post-Judgment Fees

Pursuant to the Consent Order and Settlement Agreement, after each reporting period, class counsel shall make a fee demand to the State for work performed during that reporting period. The steering committee shall have final authority to determine the amount of reasonable and necessary fees to be sought from the State. Thurston shall be Fee Counsel.

Within two weeks after issuance of a monitoring report, each firm Team member shall provide to Thurston the amount requested for that firm's services, along with all proofs supporting the request, including billing records demonstrating the date of service, the hourly rate, the time spent on the work, and a description of the nature of the work performed. Thurston shall be responsible for collating the information and providing it to the steering committee.

The steering committee will review the information provided by each firm. The steering committee has final authority to determine the reasonable attorneys' fees claimed (reasonable hours expended times reasonable hourly rate) by each Co-Counsel office and final authority to negotiate recovery of fees. If fees cannot be negotiated with Defendants, the steering committee will have final authority to determine the amount of reasonable attorneys' fees

claimed (reasonable hours expended times reasonable hourly rate) in any fee petition submitted to the Court for reimbursement.

vi. Enforcement After Eighteen Months

If it appears that, pursuant to the Settlement Agreement, the Class will need to seek an order of contempt, ELC will take the lead, securing *pro bono* counsel to work on enforcement efforts, with the support of the Team. ELC shall follow the procedures set forth in the Consent Order and Settlement Agreement with respect to any filing seeking an order of contempt.

WHEREFORE, based on the foregoing, Movants RCGZ, Giles, ELC, Dwyer, Thurston, and Wasserman respectfully request that the Court grant this Motion and enter an Order in the form attached hereto.

Dated: September 8, 2023

Respectfully submitted,
/s/ Catherine Merino Reisman
Catherine Merino Reisman
Judith A. Gran (admitted *pro hac vice*)
Reisman Carolla Gran & Zuba LLP
19 Chestnut Street
Haddonfield, New Jersey 08033
856.354.0071
catherine@rcglawoffices.com

/s/ David R. Giles
David R. Giles
Law Office of David R. Giles
34 Rynda Road
South Orange, New Jersey 07079
973.763.1500
davidgiles@davidgileslaw.com

/s/ Gregory G. Little
Gregory G. Little (admitted *pro hac vice*)
Education Law Center
60 Park Place, Suite 300
Newark, New Jersey 07102
973.624.1815

/s/ Denise Lanchantin Dwyer
Denise Lanchantin Dwyer
Law Office of Denise Lanchantin Dwyer LLC
5 Duxbury Court
Princeton Junction, New Jersey 08550
609.632.0475
denise@dldwyerlaw.com

/s/ Robert C. Thurston
Robert C. Thurston
Thurston Law Offices LLC
433 River Road
Suite 1315
Highland Park, NJ 08904-1951
856.335.5291
rthurston@schoolkidslawyer.com

/s/ Jeffrey I. Wasserman
Jeffrey I. Wasserman
1200 Route 22 East
Suite 2000, # 2238
Bridgewater, New Jersey 08807
973.486.4801
jwasserman@wasslegal.com

CERTIFICATE OF SERVICE

I, Catherine Merino Reisman, certify that I served the foregoing Motion for Appointment as Substitute Class Counsel and Approval of Proposed Plan for Class Counsel on all parties and counsel of record by filing it through the Court's ECF system.

Dated: September 8, 2023

/s/ Catherine Merino Reisman
Catherine Merino Reisman