

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re Flint Water Cases

No.5:16-cv-10444-JEL-MKM

HON. JUDITH E. LEVY

**MASTER GUARDIAN AD LITEM’S REPORT FOR JULY 12, 2021 HEARING ON
FINAL APPROVAL OF THE PROPOSED SETTLEMENT**

INTRODUCTION

Before the Court are Plaintiffs’ Motions for final approval of the Master Settlement Agreement, as Amended. (“MSA”)(ECF No. 1394-2).¹ Among other matters at the July 12, 2021 Final Approval and Fairness Hearing Related to the Partial Settlement, the Court called upon the Master GAL to provide a report. (ECF No. 1814).

Pursuant to the Order Appointing Guardian Ad Litem (ECF No. 1339), the Master GAL spoke at the Preliminary Fairness Hearing on the “fairness of processes and procedures for handling claims related to the minor and LII Claimants” as it relates to their best interests under the MSA. This report is submitted on the same subject matter for the Final Fairness Hearing.

This report also addresses matters subsequent to the Opinion and Order Granting Preliminary Approval (ECF No. 1399) that are relevant to the fairness and best interest inquiries for the Minors and Legally Incapacitated Individuals (“LIIs”).

For the reasons set forth below, the processes and procedures for handling claims relating to the Minors and LII Claimants set forth in the MSA are fair and in their best interests.

¹ Capitalized terms in this report have the same meaning set forth in the MSA.

I. Master Settlement Agreement

A. Next Friends

The Next Friend serves in an essential role on behalf of each Minor and LII. The MSA's processes and procedures facilitate appointment of Next Friends who will competently and responsibly carry out their functions under the supervision of the Genesee County Circuit Court or the Federal Court. (MSA ¶ 21.11). Judicial oversight significantly protects the interests of these individual claimants who lack the legal capacity to act on their own behalf as Minors, or due to physical or mental impairment, have been adjudicated to lack legal capacity as LIIs.

The MSA terms related to the selection and appointment of Next Friends are consistent with the protections of Michigan Court Rule 2.201 for Minors and LIIs. This Rule requires that a Next Friend be a "competent and responsible person." *See* MCR 2.201(E)(1)(b). The MSA is crafted to achieve that same result, without the necessity of each potential Next Friend filing individual petitions in the Genesee County Circuit Court which is burdensome, costly, and time consuming for the individual Claimants and the Court.

The Registration and Claim Forms (ECF No. 1319-2, incorporated by reference in MSA ¶ 1.69) identify those individuals who are eligible to act as "competent and responsible persons" based on their verified relationship(s) to a Minor or LII. These proposed Next Friend categories are intended to select an adult whose close familial or legal relationship with a Minor/LII Claimant fosters individualized, informed decisions throughout the registration and claims phases, determination of monetary awards, and selection of distribution options that are central to this proposed settlement. Such Next Friends are also optimally equipped with knowledge of each Minor's or LII's particular circumstances in order to execute Releases on an informed basis. (MSA Article XVI and ¶ 21.18). Alternatively, a knowledgeable Next Friend will ascertain whether it is

in a Minor's or LII's best interest to opt out of the settlement and proceed under a Case Management Order discussed in greater detail below. (MSA ¶ 21.27).

The MSA identifies Next Friend candidates as a spouse, parent (biological or adopted), stepparent, adult child, adult sibling (full, half, or step), grandparent, adult aunt, adult uncle, legal guardian or other court-appointed administrator, and estate administrator. (MSA Exhibit 2, § 2 and Exhibit 5, § 3).

To secure the most appropriate Next Friend for those Minors or LIIs who do not have suitable family members or legal representatives to act as Next Friend, the MSA provides for an "other" category. This ensures that no individual Minor or LII will be deprived of a capable representative if he or she does not have a person who falls neatly into a traditional Next Friend role. This provision conforms to Michigan Court Rule 2.201(E)(1)(b), authorizing a court to appoint a next friend where an individual is not otherwise competently represented in legal proceedings. The practical significance of this flexibility in serving the needs of all Minors is addressed below relating to the affected Flint foster children.

On January 25, 2021, the Honorable Joseph J. Farah of the Genesee County Circuit Court entered the Order Granting Plaintiff's Motion for the Appointment of Next Friends. ("Order Appointing Next Friends")(Case No. 17-108646-NO). This Order granted approval of the aforementioned relationship groups as potential Next Friends.² The Order requires any individual applying as a Next Friend to provide written notice to all other individuals within the relationship categories identified above. This notice requirement is consistent with Michigan's probate procedures in Michigan Court Rule 5.125 as well as Michigan Court Rule 2.420(A), applicable to settlements for minors and legally incapacitated individuals.

² Plaintiffs' Motion to Take Judicial Notice of the State Court's Appointment of Next Friends on Behalf of Each Minor and Legally Incapacitated or Incompetent Individual was filed in the Federal Court. (ECF No. 1365).

To eliminate inappropriate, ill-suited, multiple, or opportunistic Next Friends, the Registration and Claim Forms require each Next Friend to identify themselves as such for each individual Minor and LII, along with required document submissions. (MSA ¶ 21.3). Such documentation includes birth certificates (for a Claimant's grandparent, multiple birth certificates), marriage licenses, orders appointing legal guardians, conservators, or personal representatives, tax returns identifying dependents, or adoption certificates. The Order Appointing Next Friends likewise incorporates appropriate proof requirements to ensure that the Minors' and LIIs' interests are protected in the proposed settlement. Verification of a Next Friend's relationship to a Minor or LII clearly serves their best interests. The required Next Friend proofs were made available to all potential registrants for Minors and LIIs in the Notice Administrator's mailing in advance of the registration deadline pursuant to this Court's Opinion and Order Granting Plaintiff's Motion to Establish Settlement Claims. (ECF No. 1399). This process is fair, reasonable, and in the best interests of the Minors and LIIs.

The Order Appointing Next Friends establishes that:

[o]nly one Next Friend may act for any particular Minor or LII. For example, one parent can be appointed as Next Friend for a minor child or children, but both parents cannot be appointed as Next Friend for the same child or children. In this manner, the Court and Claims Administrator need only look to one person as Next Friend for any particular Minor or LII." (Order Appointing Next Friends, ¶ C).

This logical, procedurally fair term supports a consistent and predictable course throughout all stages of the proposed settlement.

However, despite best efforts in the MSA and by the Courts to have a single responsible adult appointed as Next Friend at the outset who will continue to settlement conclusion, fair procedures are in place for each Minor and LII to have the best available representative. In the event of a dispute between two or more individuals seeking to act as Next Friend for the same

Minor or LII, that dispute is referred to the Master GAL to secure consensual resolution. If consensual resolution is not achieved, the Master GAL refers the matter to the Special Master within 21 days, along with a report and recommendation. (MSA ¶ 21.14). The Special Master, whose decision is final and binding, shall then issue a determination of the appropriate Next Friend within 21 days. (MSA ¶ 21.15). Applicable deadlines are tolled during the dispute period. This efficient, fair, participatory, and cost-effective procedure safeguards the Minors and LIIs from potential Next Friends who, for whatever reason, should not be appointed or remain in this role.

The MSA provides for ongoing judicial supervision of Next Friends. The Genesee County Circuit Court retains jurisdiction over “all distribution or probate proceedings.” (MSA ¶ 21.7). Further, pursuant to Mich. Comp. Laws § 600.611, the Circuit Court is granted “jurisdiction and power to make any order proper to fully effectuate the circuit court’s jurisdiction and judgments” including the Order Appointing Next Friends. Thus, if it is learned during the course of settlement administration that a certain Next Friend is not a suitably responsible and competent adult, then application may be made to the Genesee County Circuit Court for appointment of a successor Next Friend.

The Genesee County Circuit Court has authority to establish an efficient and fair process, consistent with the terms and intent of the MSA, to remove a Next Friend and appoint a successor. Likewise, if a Next Friend becomes unavailable through death or disability, the Genesee County Circuit Court can readily appoint a successor so there is no interruption or delay for a Minor or LII.

The MSA defines “Minors” as an umbrella term encompassing the following subclassified age groups for purposes of calculating Monetary Awards. A Minor Child is defined as 6 years old

or younger; Minor Adolescents are ages 7-11; and Minor Teens are ages 12-17, all determined as of the date of first exposure. (MSA ¶¶ 1.44, 1.45, 1.46, and 1.47).

Within these Minor subclassifications is one group of affected children whose life circumstances present unique challenges in the proposed settlement. These are Flint's foster children (also referred to as "children in care" or "wards of the State").

Shortly after the Opinion and Order Granting Preliminary Approval (ECF No. 1399), the Federal Court and Genesee County Circuit Court initiated a special outreach effort for all eligible foster children to participate in the proposed settlement. According to data provided by the Michigan Department of Health and Human Services ("MDHHS"), the number of potential foster children claimants exceeds 2,500. These children may be temporary or permanent wards of the State, placed in a variety of protective residential settings, subject to the juvenile justice system, assigned to the Michigan Children's Institute, involved in parental rights terminations or adoption proceedings, or aged out of State custody. Children transition through a complex foster system. It is especially difficult to identify an appropriate Next Friend under these circumstances.

Pursuant to multiple court orders, with the assistance of a dedicated team at MDHHS and other State agencies, volunteer court-appointed Limited Next Friends registered every child identified by MDHHS for the proposed settlement on an expedited basis. (ECF Nos. 1457, 1459, 1468). Looking ahead to the commencement of the claims period, the Court issued a Joint Stipulated Order Appointing Counsel and Next Friends for Foster Children and Wards of the State for claims and distribution phases of the proposed settlement. (ECF No. 1780). This illustrates how, with the assistance of the Courts, attorneys of record, court-appointed personnel and state agencies, the steps set forth in the MSA have been implemented in a fair and favorable manner for these Minors.

B. Future Minor Claimants

The MSA extends its benefits to Future Minor Claimants, defined as those individuals who were younger than 18 years old at first exposure and met the MSA exposure criteria, but for any reason did not receive a Favorable Notice or did not register for the settlement prior to the MSA deadlines that otherwise apply. (MSA ¶ 1.29 and Article VI). A Future Minor Claimant must be less than 19 years old at the time of registering to participate in this proposed Settlement. A Sub-Qualified Settlement Fund of \$35,000,000 is established for the Future Minor Claimants. (MSA ¶ 5.2.4). This Sub-Qualified Fund is subject to the limitation that to the extent that these funds are exhausted or insufficient to pay all Monetary Awards sought by Future Minor Claimants, the Claims Administrator will be precluded from accepting any further claims. (MSA ¶ 6.10). Even with that reasonable limitation, this “safe harbor” for this defined group of minors adequately assures that the proposed settlement will be made as widely available as possible to children injured by toxic exposure. The procedures applicable to Minors and LIIs also apply to Future Minor Claimants so they too derive the benefit of the procedural protections of Article XXI outlined in this report.

C. Claims Procedures

MSA Article XXI incorporates significant procedural protections that benefit the Minor and LII Claimants throughout the claims and award distribution phases. This report is not intended to address each and every task involved in advancing a claim and disbursement of Monetary Awards. Rather it addresses those MSA terms relating to the fundamental processes and procedures for the Minors and LIIs.

1. Initial Approval Stage

No Claimants, including Minors and LIIs, are required to retain counsel to participate in the proposed settlement. However, in recognition of the potential need for counsel, MSA ¶ 21.9 authorizes Co-Liaison Counsel to “advise and assist any Minors [presumably LIIs as well] who have not retained counsel in the following manner...” with a detailed description of all the means in which Co-Liaison Counsel could assist this population. Indeed, even before a ruling on final approval, the Court entered an order appointing Co-Liaison and Co-Lead Class Counsel to act as counsel for the foster children. (ECF No. 1780). The Order expressly preserves the right of each foster child (through a Next Friend) to decline this appointment, select counsel of his/her own choosing, or proceed without counsel. This demonstrates how the MSA, coupled with periodic implementing court orders, allows for both independent decision-making and reasonable protections for the Minors and LIIs.

The multi-step claims process involves independent reviews by the Claims Administrator, with established oversight roles of the Special Master, Master GAL and Panel GALs, all of whom remain under supervision of the Courts. This structure, described in greater detail below, amply supports the conclusion that the MSA processes and procedures are fair and in the Minors’ and LIIs’ best interests.

Within 45 days of receipt of a Claim Form identifying a Next Friend for a Minor or LII, the Claims Administrator sends an Adverse Notice to any individual who has failed to submit the necessary proofs. The Claims Administrator is required to consult with the Special Master before issuing any such Adverse Notice. (MSA ¶ 21.12). This mandatory dual decision-making process substantially reduces the likelihood of an erroneous decision.

Nevertheless, errors do occur. The fairness question is whether recourse exists to correct potential errors. Under the MSA the answer is yes. A Next Friend applicant may seek reconsideration or appeal of an Adverse Notice within clearly defined deadlines. (MSA ¶ 21.13 and Article XIII).

There are two avenues by which a claim proceeds at the Second Stage Approval Process following either a Favorable or Unfavorable Notice. (MSA Article XXI §§ (C) and (D)).

2. Second Stage Approval - Favorable Notice

After the Claims Administrator has determined that a Minor or LII is eligible to participate in the settlement and before a Monetary Award is issued, the Claims Administrator is required to certify in a Favorable Notice that the Minor or LII is assigned a Settlement Category that results in the highest Monetary Award based on the Claims Materials submitted. (MSA ¶ 21.16). The mandatory highest monetary award categorization issued in a written communication is fair, beneficial, and transparent.

The MSA Settlement Categories are contained in the Required Proofs Grid (“Grid”). (MSA Exhibit 8)(ECF No. 1319-2, PageID.40789-40840). The Grid procedure promotes fairness inasmuch as it creates a systematic approach to remedial relief based on defined objective criteria such as age and specific clinical data. Particularized proofs are assigned to each Grid category with a corresponding mathematical formula to ascertain the damages award. Thus, individual Minors and LIIs whose proofs are comparable receive comparable awards. This procedure constitutes a fair and consistent approach for similarly situated Claimants.

A Next Friend may accept or reject the Favorable Notice within 15 days of receipt. (MSA ¶ 21.27). If the Favorable Notice is not timely accepted or is rejected, the Claims Administrator is required to send a second notice, which upon receipt by the Next Friend commences a second

14 day period in which to accept or reject. (MSA ¶ 21.19). This reminder second notice is intended to assist Next Friends who plausibly may be unfamiliar with case deadlines and their consequences.

A Next Friend is required to sign an additional release if a Favorable Notice is accepted. (MSA ¶ 21.18). The additional Release by a Next Friend (ECF No. 1319-2, PageID.41223-41227) will not be required until a Monetary Award is conclusively determined. The Release is clearly written and understandable. It is publicly available to Next Friends to determine whether it is in the best interest for a Minor or LII to agree to its terms in exchange for the benefit of this proposed settlement. The implementation and timing of executing the Release is currently under review by the Special Master, Master GAL, and Panel GALs in conjunction with the Claims Administrator. It will be designed to allow the Next Friends, in their representative capacities, to proceed in the most equitable manner on behalf of the Minors and LIIs.

Once a Favorable Notice is issued (unless a Next Friend elects a Structured Settlement or the Claimant receives a single or annual payment of less than \$5,000 during minority), the claim is randomly assigned to a court-appointed Panel GAL. (MSA ¶ 21.20). The Panel GAL independently evaluates whether the assigned Settlement Category, Monetary Award, and selected disbursement option are “fair, reasonable, adequate, and in the best interests of the particular Minor or LII.” (MSA ¶ 21.21). The Panel GAL’s evaluation is then submitted to the Genesee County Circuit Court for a second independent review utilizing the same standard. If the Panel GAL and Court agree on the proposed settlement after two independent fairness/adequacy reviews, the Settlement Category, Monetary Award and distribution option are approved and submitted to the Claims Administrator for implementation. (MSA ¶ 21.21).

If, however, the Panel GAL or Court (or both) conclude that the assigned Settlement Category, Monetary Award or option to receive settlement funds are “not fair, reasonable, adequate or in the best interests of the Minor or LII”, then the claim will be sent back to the Claims Administrator for re-evaluation, with this process repeated until the Panel GALs and Genesee County Circuit Court both agree and approve the settlement based on their individualized assessments for each Minor/LII Claimant. (MSA ¶ 21.22). The careful scrutiny over each applicable claim is protective, fair, and in the Minors’ and LIIs’ best interests.

3. Second Stage Approval – Unfavorable Notices, Reconsiderations, Appeals

In the event of an Unfavorable Notice, or if a Next Friend disagrees with the Settlement Category assigned by the Claims Administrator, there is an efficient, clearly defined process by which such determinations can be challenged. (MSA Article XXI § D).

A Next Friend may seek reconsideration, which is governed by MSA Article XIII. If the Reconsideration Request results in favor of the Minor/LII Claimant, or the Special Master finds that the Claims Administrator’s decisions are contrary to clear and convincing evidence, then the next step is disbursement of settlement funds. (MSA ¶¶ 21.24, 21.28-21.33).

Additional procedural safeguards pertain to those Minor and LII claimants who are unrepresented. If an unrepresented Minor or LII receives an Adverse Notice and a timely reconsideration request is not made, the Claims Administrator must forward the Adverse Notice to the Master GAL for a fairness review. (MSA ¶ 21.25). If the Adverse Notice is determined to be unfair or unreasonable, the Master GAL reports those findings and sends that particular claim back to the Claims Administrator for reevaluation. (MSA ¶ 21.25). If the Adverse Notice is determined to be fair and reasonable, the Master GAL’s written finding is submitted to the Genesee County Circuit Court for further independent review. The Court’s determination shall be final.

(MSA ¶ 21.26). Consistent with other aspects of the claims process under Article XXI, there are multiple independent reviews in arriving at a fair, reasonable, and appropriate result for Minors and LIIs.

The MSA eschews a “take it or leave it” approach. Instead, even for this significantly large group of Claimants, the proposed settlement provides an individualized evaluation of claims within the framework of the MSA, with multiple meaningful independent reviews throughout this phase of the proposed settlement.

4. Non-Participating Minors and LIIs

A Minor or LII who is an Individual Plaintiff is not required to participate in this settlement. For those who elect non-participation, the procedure is detailed in MSA ¶ 21.27.

A Next Friend must submit the Notice by Minor or Legally Incapacitated Individual (“LII”), who is an Individual Plaintiff, of non-participation as a Claimant in the Settlement Program. (MSA Exhibit 20). This Notice (Exhibit 20, ECF No. 1319-2, PageID.41246) was made publicly available during litigation, including posting on the Flint Water Official Settlement Website, Court Documents page, maintained by the Claims Administrator. (<https://www.officialflintwatersettlement.com/court-documents>).

The Next Friend must comply with one of the published Case Management Orders depending on whether the Individual Plaintiff is proceeding in the Michigan Court of Claims, Genesee County Circuit Court, or the United States District Court, Eastern District. (Exhibits 11, 11.1-11.2, ECF No. 1319-2, PageID.40848-40856, ECF No. 1319-2, PageID.40858-40866, and ECF No. 1319-240868-40876 respectively). The Case Management Orders thoroughly describe the next steps to be taken, including case deadlines, discovery requirements, and expert reports, all of which are set forth in plain language by which a non-participating Minor or LII must proceed

to preserve claims. Each Case Management Order is accompanied by a previously issued “Plaintiff’s Fact Sheet.” (Exhibit 11.2, ECF No. 1319-2, PageID.40878-40897). Plaintiff’s Fact Sheet contains clear instructions together with a Case Questionnaire that must be completed, with attached consent forms for disclosure of medical, academic, employment, and social security records.

Based on the publicly available MSA, Notice of Non-Participation, Case Management Orders, and Plaintiff’s Fact Sheet, together with the extensive public interest throughout the Flint Water crisis and litigation, Individual Plaintiffs contemplating participation versus non-participation in the proposed settlement have an opportunity to duly consider the costs and benefits of each path forward, and thus make an informed decision on how to proceed in the best interests of a particular Minor or LII.

D. Settlement Distribution Stage

MSA ¶¶ 21.28-21.33 prescribe the mechanism for disbursement of settlement funds to Minors and LIIs. These provisions protect the funds from dissipation or diversion to protect this group of Claimants who, through minority or incapacity, are unable to independently manage their finances. Such protections are essential, reasonable, fair, and incorporate Michigan law governing civil settlements for Minors and LIIs.

The proposed settlement not only preserves settlement funds for the Minors and LIIs, it simultaneously provides a meaningful opportunity for the selection of an individually suitable distribution option based on a cost-benefit analysis made available to Next Friends and their counsel. The Settlement Planning Administrator must “design educational materials regarding the Special Needs Trust, Settlement Preservation Trust, and Structured Settlement Options” that shall be made publicly available, including posting on the official Flint Water Settlement website.

(MSA ¶12.16.4).³ (*See also* MSA ¶ 21.29). An informed settlement distribution decision supports a best interest finding. All MSA-authorized financial education is subject to Federal Court approval. This too is reasonable, fair, and in the Minors' and LIIs' best interests.

1. Monetary Award of \$5,000 or Less

The MSA carves out a category of Monetary Awards that are \$5,000 or less (and \$5,000 or less annually) in accordance with Michigan Court Rule 2.420(4)(a) applicable to settlement for minors and legally incapacitated individuals. Under MSA ¶ 21.33 settlement proceeds for this group of Claimants may be payable to (a) a court-appointed conservator, or (b) an individual having the care and custody of the Minor or with whom the Minor resides, or a Minor's guardian under Mich. Comp. Laws § 700.5102. For an LII receiving SSI benefits, proceeds may be paid to a Michigan ABLE account (Mich. Comp. Laws § 206.987), which among other things, exempts these funds from creditors and garnishment proceedings. Preservation of the settlement for the benefit of a Minor/LII is always in his or her best interest.

2. Monetary Awards Greater Than \$5,000

For Monetary Awards exceeding \$5,000, the Next Friend has three distribution options, all equally available to Minors and LIIs based on each Next Friend's individualized assessment: (i) a Special Needs Trust, (ii) a Settlement Preservation Trust, or (iii) a Structured Settlement. (MSA ¶¶ 21.28.1, 21.28.2, 21.28.3). The Genesee County Circuit Court and Panel GAL must agree and approve the distribution option selected by a Next Friend as "fair, reasonable, adequate, or in the best interest of the Minor or LII." (MSA ¶21.21).

³ The Settlement Planning Administrator was appointed by the Court in its Opinion and Order Granting Preliminary Approval. (ECF No. 1399, PageID.54466). Its compensation primarily comes from commissions paid by insurance entities for the placement of Structured Settlements, which financially benefits the Claimants. All fees for services must be both reasonable and approved by the Federal Court. (MSA ¶ 12.17).

MSA ¶ 12.16.7 requires the Settlement Planning Administrator to coordinate and communicate with Next Friends, their financial advisors, the Master GAL, and trustees “to ensure a timely, efficient, and legally compliant funding of each trust account.” Analogous terms apply to Structured Settlements. (MSA ¶¶ 12.16.9, 12.16.10). This carefully developed collaborative process is intended to result in a safe, prudent, fair, and economically viable settlement resolution for the Minors and LIIs.

While each distribution option has its own distinct features, all three offer the Minors and LIIs sound financial protection whether from creditors, potential unintended disqualification from state and federal benefits programs, or spendthrift risks.

(i) Structured Settlements

Under the MSA, the Court-appointed Settlement Planning Administrator “may design and propose certain Structured Settlement options to be offered to Claimants, along with the option of a customized Structured Settlement Option.” The Structured Settlements are expressly subject to Federal Court approval. (MSA ¶ 12.16.3). Judicial oversight is an important consumer protection feature for Minors and LIIs. The Court may review fees, costs, benefits, experience and all other relevant aspects of a proposed structure, including the life insurance company managing it.

As an added layer of protection for the Minor/LII Claimants, the Settlement Planning Administrator must obtain the approval of the Master GAL or Special Master so “that each Structured Settlement offered to any settling Minor or LII is established in compliance with applicable law and regulations ... (citations omitted); that all documentation necessary for the proper procurement and funding of each Structured Settlement is completed.” (MSA ¶ 12.16.10). Thus, no single company or individual will have unfettered, unilateral input into structured settlements if this option is chosen. Notably, the MSA explicitly permits a Minor/LII to select any

qualified life insurance company. (MSA ¶ 12.16.11). Next Friends have economic choices for their charges, which is yet another material fairness component of the proposed settlement.

Structured settlement payments may be paid to one of the two Court-supervised Trusts that are expressly authorized by the MSA. In electing two of the three distribution options, a Minor or LII Claimant has the combined security of both a structured settlement and a trust. Alternatively, subject to the prior approval of the Panel GAL, structured settlement funds may be paid to “a competent adult with legal capacity, or their legal representative, in accordance with the structured settlement annuity contract terms. (MSA ¶ 21.31). The Panel GAL’s review and approval is an important safeguard in having the settlement funds placed in safe hands for the Minor or LII.

(ii) Settlement Preservation Trust

Both the Settlement Preservation and Special Needs Trusts are “pooled trusts” that will be administered by an approved court-supervised institutional trustee with the capacity and experience to handle large volumes of claims of significant value. A pooled trust is created by a master trust document, with trust subaccounts maintained for the benefit of each individual Minor or LII. Pooled trusts favor efficiency in management, lower overall trustee fees, and greater investment capacity. Trust distributions will be made to the Claimants based on a series of reasonable and acceptable criteria incorporated into final master trust instruments that must be approved by the Genesee County Circuit Court. (MSA ¶ 21.29). Except as provided below, a Minor or LII receiving greater than \$5,000 (or greater than \$5,000 annually) who does not elect a Structured Settlement will be a beneficiary of the pooled Settlement Preservation Trust.

a. Special Needs Trust

A Special Needs Trust will be established for those disabled Claimants receiving Supplemental Social Security, Medicaid, and potentially other governmental benefits. These programs impose qualification limits that could jeopardize a recipient's eligibility for future federal or state benefits in the event of a settlement of a particular magnitude. A pooled special needs trust, defined by 42 USC § 1396pd4(c), is a type of grantor trust established to benefit a disabled individual. This type of trust enables a disabled Claimant to hold unlimited resources in trust without negatively impacting his or her eligibility to receive means-tested government benefits, such as Supplemental Security Income ("SSI") and Medicaid. A special needs trust must be approved by the Social Security Administration. Once the federal requirements are satisfied and the trust instrument is approved by the Genesee County Circuit Court, the Special Needs Trust may hold and manage settlement assets for a disabled individual without disqualification from much needed governmental assistance.

3. Additional Financial Security Terms

The MSA extends financial protection to all Claimants. MSA ¶ 5.10 is an anti-hypothecation and anti-alienation provision that preserves settlement funds from any form of assignment, factoring, reduction, offset, garnishment, attachments, liens, and the like.

The process by which the Minors' and LIIs' settlements are disbursed and protected under the MSA is fair, reasonable, and in accordance with established Michigan law governing settlements for Minors and LIIs.

E. Programmatic Relief

The MSA dedicates significant settlement funds, 2% of the net funds in the FWC Qualified Settlement Fund, to Programmatic Relief. (MSA Article VII). Programmatic Relief will fund local school districts and public school academies within the Genesee Intermediate School District to provide special education services for qualifying students who resided in Flint during the Exposure Period. This remedial educational program is offered to all qualifying students regardless of his/her Monetary Award and irrespective of whether a student participates in the proposed Settlement. A comprehensive educational fund significantly benefits the minors who have been injured by lead exposure in Flint.

II. Events Following Preliminary Approval of MSA

Inevitably topics arose following preliminary approval of the MSA that warranted attention. Chief among these topics was how to fairly enable foster children to timely register for the settlement, followed by securing legal representation and appropriate Next Friends for future settlement administration. These efforts resulted in entry and implementation of the Stipulated Joint Order to Compel Production of Information Re: Foster Children and Other Wards of the State and to Authorize the Identification of Next Friends for Appointment of Such Individuals (ECF No. 1457), Stipulated Joint Order Regarding Limited Appointment of Next Friends for Foster Children and Other Wards of the State (ECF No. 1459), Supplemental Stipulated Joint Order Regarding Limited Appointment of Next Friends for Foster Children and Other Wards of the State (ECF No. 1468), and Joint Stipulated Order Appointing Counsel and Next Friends For Foster Children and Other Wards of the State. (ECF No. 1780).

Panel GALs have been appointed upon Co-Liaison's Motion. (ECF No. 1731). Ms. Glover-Hogan and Mr. Rizik bring vast experience in probate matters involving minors and incapacitated

individuals, including guardianships, conservatorships, fiduciaries, and as public administrators. The skill and knowledge they offer to the Minors and LIIs is invaluable.

Upon recommendation of the Special Master and Master GAL, it is contemplated that the Court will appoint independent Michigan trust counsel to review the draft Settlement Preservation Trust and Special Needs Trust prepared in accordance with MSA ¶ 12.16.2. Plaintiffs' and Defendants' Counsel have been advised and approve of this potential appointment. An independent review by experienced trust counsel enhances the fairness of the proposed settlement. It ensures that the Minors and LIIs have the secure financial compensation that the settlement is intended to provide.

CONCLUSION

For these reasons, the processes and procedures set forth in the Master Settlement Agreement for handling claims related to the Minor and LII claimants are fair and in their best interests.

Dated: July 15, 2021

Respectfully Submitted,

/s/ Miriam Z. Wolock

Miriam Z. Wolock (P49434)

Master Guardian Ad Litem

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CERTIFICATE OF SERVICE

I certify that on July 15, 2021 I electronically filed the foregoing document with the Clerk of Court using the Court's ECF system, which will send notification of such filing to attorneys of record.

Dated: July 15, 2021

Respectfully submitted,

/s/ Miriam Z. Wolock

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