

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

JOSEPH BASEY and LISA BASEY,
as parents and natural guardians of
Samantha Basey, a minor, individually, and
on behalf of all those similarly situated,
MAGDALENA RODRIGUEZ, a single
woman, as parent and natural guardian of
Noemi Rodriguez, a minor, individually and
on behalf of all those similarly situated, and
the **STATE OF FLORIDA** on the relation of
all such persons,

Plaintiffs,

vs.

**FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY
COMPENSATION ASSOCIATION,**

Defendant.

CLASS REPRESENTATION

Case No. 06-CA-004603

Division A

**ORDER GRANTING PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AGREEMENT**

THIS CAUSE came before the Court on Sept. 18, 2012, upon the "Joint Motion for Preliminary Approval of Class Action Settlement Agreement," filed by the Plaintiffs, Joseph Basey and Lisa Basey, as parents and natural guardians of Samantha Basey, a minor, individually, and on behalf of all those similarly situated, Magdalena Rodriguez, a single woman, as parent and natural guardian of Noemi Rodriguez, a minor, individually and on behalf of all those similarly situated, and the State of Florida on the relation of all such persons, and the Defendant, Florida Birth-Related Neurological Injury Compensation Association ("NICA"). The Court, having reviewed the motion, the record, considering the arguments of counsel, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

Introduction and Preliminary Matters

1. A copy of the proposed "Class Action Settlement Agreement and Release" (the "**Settlement Agreement**") is attached hereto as "**Attachment 1.**"

2. The Joint Motion for Preliminary Approval of Class Action Settlement Agreement is hereby **GRANTED** and the proposed Settlement Agreement is preliminarily approved, subject to the terms and conditions of this Order.

3. Pursuant to the "Order on Plaintiffs' Amended Motion for Class Certification Seeking Certification of Fla.R.Civ.P. 1.220(b)(2) Class" dated August 28, 2008, this Court previously certified the following class:

All parents or guardians of a child born with a "birth-related neurological injury" in the State of Florida during the time period of January 1, 1989 through June 6, 2002, who obtained a final order which imposed upon NICA the "continuing obligation under the provisions of Section 766.31, Florida Statutes, to pay future expenses as incurred," or other substantially similar words to that effect, and after issuance of the final order, provided any "residential and custodial care and services" to that child without receiving full payment from NICA for such care and services, and/or who intend to provide such care and services to that child in the future.

In that class certification order, this Court concluded that the requirements of Rule 1.220(a) and (b)(2) were satisfied. The Florida Second District Court of Appeal affirmed that class certification order by decision issued on July 8, 2009 and mandate issued on October 12, 2009.

4. Based on its review of the Settlement Agreement and based on the arguments of counsel, the Court hereby preliminarily approves the proposed settlement, and finds that: (a) the proposed settlement resulted from extensive arm's-length negotiations and Class Counsel's appropriate investigation of the claims; (b) the proposed settlement makes available valuable consideration commensurate with the alleged harm; and (c) the proposed settlement is sufficiently fair, reasonable and adequate to warrant sending notice of this action and the

proposed settlement to the Class Members and conducting a final fairness hearing on the proposed settlement.

Class Administrator

5. As contemplated by the Settlement Agreement, NICA is hereby approved to perform the role of Class Administrator, and in that capacity shall engage in the activities contemplated by the Settlement Agreement and this Order, including but not limited to timely sending the class notice, processing claims, and providing status reports to the Court and Class Counsel.

6. Alternatively, NICA may propose to retain a third party to serve as Class Administrator. If so, any third party Class Administrator proposed by NICA must be approved by Class Counsel, or if Class Counsel objects, by the Court.

7. Within 15 days of the date of this Order, NICA (or the Class Administrator) shall post a copy of this Order to NICA's internet website at www.nica.org.

Fairness Hearing

8. A 4-hour hearing (the “**Final Fairness Hearing**”) shall be conducted on November 26, 2012 at 1:00 p.m., in the George Edgecomb Courthouse, 800 E. Twiggs Street, Room 525, Tampa, Florida 33602 to determine matters which include but are not limited to:

(a) Whether the proposed settlement of this action should be approved as fair, reasonable and adequate.

(b) Whether this action and any claims asserted herein should be dismissed pursuant to the terms of the proposed settlement.

(c) Whether the Plaintiffs and the Class Members should be bound by the release set forth in the proposed settlement.

(d) Whether Class Counsel's application for an award of attorneys' fees and expenses should be approved.

Class Notice

9. The Court hereby approves the proposed form and method of the providing class notice as fair, adequate, reasonable, and in compliance with due process, Florida Rule of Civil Procedure 1.220, and any other applicable laws.

10. The Court has considered, among other factors, the cost of giving notice by various methods, the resources of the parties, the stake of each Class Member, and the possibility that certain Class Members might desire to exclude themselves from the proposed settlement or appear individually, and finds that the notice required by this Order is the best practicable notice and is reasonably calculated, under the circumstances, to apprise the Class Members (a) of the pendency of this action, (b) of their right to exclude themselves from the Class and the proposed settlement, (c) that the proposed settlement and final judgment will bind all Class Members who do not request exclusion, and (d) that any Class Member who does not request exclusion may object to the settlement and, if he or she desires, enter an appearance personally or through counsel retained at his or her own expense. The Court further finds that the class notice form is written in plain English and should be readily understandable by Class Members. Alternatively, the Class Notice indicates that Class Members may contact Class Counsel for clarification.

11. In sum, the Court finds that the proposed notice is reasonable, constitutes due, adequate and sufficient notice to all persons entitled to be provided with notice, and meets the requirements of due process, the Florida Rules of Civil Procedure, the Constitutions of the United States and Florida, and any other applicable rules or law.

12. As contemplated by the Settlement Agreement, NICA (or the Class Administrator, if any) shall comply with the following requirements:

(a) **Class List** - Within 7 days of the date of this Order, NICA shall generate and serve on Class Counsel a "Class List" identifying the name, address, and DOAH case numbers of all Class Members who are entitled to receive the class notice and eligible to participate in the proposed settlement, and shall serve that Class List on Class Counsel.

(b) **Class Notice** - Within 15 days of the date of this Order, NICA shall send by Federal Express, UPS, certified U.S. mail, or any other receipted mail service, the class notice, substantially in the form attached to the Settlement Agreement, to all persons set forth on the Class List, and shall post a copy of this Order and the class notice on NICA's internet website (www.nica.org).

1. **Re-mailing and Additional Notice** - To the extent the Class Notice is returned as "undeliverable," NICA or the Class Administrator will make a reasonable good faith attempt to locate the intended recipient, and redeliver the Class Notice.

2. **Proof of Mailing** - At least 7 days before the Fairness Hearing, NICA or the Class Administrator shall file with the Court an affidavit providing proof of timely mailing the class notice.

(c) **Status Report** - In accordance with Section 16(a) of the Settlement Agreement, within 30 day after the date of this Order, NICA shall file and serve a status report addressing service of Class Notice and any inability to deliver Class Notice to any Class Member.

Exclusion from the Class

13. Any Class Member, other than the Class Representatives, who wishes to opt-out and be excluded from the Class must timely submit a written opt-out exclusion request in the manner set forth below:

(a) To opt-out of the Class, the Class Member must (1) fill out and sign the "Opt-out of the Class Form," attached to the Class Notice, and (2) return the filled out "Opt-out of the Class Form," postmarked by no later than 30 days after the date the Class Notice is mailed to Class Members, to the following addresses:

NICA's Counsel: c/o Gregg D. Thomas, Esquire, Thomas & LoCicero PL,
400 N. Ashley Drive, Suite 1100, Tampa, Florida 33602.

Any person who timely and validly opts-out of the Class shall have no rights or obligations under the Settlement Agreement, and NICA shall have no rights or obligation under the Settlement Agreement with respect to such persons.

(b) Within 45 days after the date that the Class Notice is mailed to Class Members, NICA will file with the Court and serve on Class Counsel a copy of all filled out Opt-out of the Class Forms received by NICA.

(c) Any Class Member who does not timely return a filled out Opt-out of the Class Form shall be a Class Member for purposes of the Class Action Case and shall be bound by the Settlement Agreement, if approved.

Objections and Other Appearances

14. Any Class Member who has not timely opted-out of the Class, and wishes to object to the proposed Settlement Agreement, must serve on Class Counsel and NICA's counsel and file with the Clerk of Court, no later than 30 days after the date the Class Notice is mailed to Class Members, a written statement of the objection, as well as the specific reasons, if any, for each objection.

(a) Said objections shall be filed and/or served at the following addresses:

(1) Office of the Circuit Clerk, Circuit Court Civil Division,
Hillsborough County Courthouse, 800 E. Twiggs Street, Tampa, Florida 33602;

(2) Class Counsel: c/o J. Daniel Clark, Esquire, Clark & Martino, P.A., 3407 West Kennedy Blvd., Tampa, Florida 33609;

(3) NICA's Counsel: c/o Gregg D. Thomas, Esquire, Thomas & LoCicero PL, 400 N. Ashley Drive, Suite 1100, Tampa, Florida 33602.

(b) Any objections or any petition to intervene by a Class Member must be in writing, and must include: (1) proof that the objector or intervener is a Class Member as defined in the Settlement Agreement; (2) a statement of each objection being made; (3) a detailed description of the facts underlying each objection; (4) a detailed description of the legal authorities underlying each objection, if any; (5) a list of witnesses who may be called to testify at the Fairness Hearing, either live or by depositions or by affidavit, if any, and (6) a list of exhibits, along with copies of the exhibits, that the objector may offer during the Fairness Hearing, if any. All these documents must be both filed with the Court and delivered to Class Counsel and NICA's counsel no later than 30 days after the Class Notice is mailed.

(c) Class Members may so object on their own or through any attorney retained at their own expense.

(d) If a Class Member retains an attorney to represent him or her, the attorney must, no later 30 days after the date the Class Notice is sent to Class Members: (1) file a Notice of Appearance with the Clerk of the Court, and (b) serve copies of same on Class Counsel and NICA's Counsel.

(e) Any Class Member who timely files and serves a written objection may appear at the Fairness Hearing, either in person or through an attorney retained at the Class Member's expense. Class Members or their attorneys intending to make an appearance at the Fairness Hearing must serve on Class Counsel and NICA's Counsel

and file with the Court, no later than 30 days after the date the Class Notice is mailed to Class Members, a Notice of Intention to Appear at the Fairness Hearing.

(f) No person shall be entitled in any way to contest the approval of the terms and conditions of the Settlement Agreement or the final order to be entered thereon, except by filing and serving written objections in accordance with the provisions of this Order. Any Class Member who fails to opt-out or object in the manner prescribed in this Order or otherwise fails to comply with this Order shall waive and forfeit all rights that he or she may have to appear separately and/or to object, shall be bound by the terms of the Settlement Agreement (if approved) and by all proceedings, orders and judgments in this case, and shall be forever foreclosed from asserting claims released by the Settlement Agreement (if approved).

Other Provisions

15. Capitalized terms used in this Order that are not otherwise defined in this Order have the meanings assigned to them in the Settlement Agreement.

16. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (a) the proposed settlement is not finally approved by the Court, or does not become final pursuant to the terms of the Settlement Agreement; or (b) the proposed settlement is terminated in accordance with the Settlement Agreement or does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the proposed settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's Orders, including this Order, shall be used or referred to for any purpose whatsoever in this or any other action or proceeding.

17. This Order shall not be construed or used as an admission, concession, declaration or finding by or against NICA of any fault, wrongdoing, breach or liability. Moreover, this Order shall not be construed or used as an admission, concession, declaration or finding by or against the Plaintiffs or the Class Members that their claims lack merit or that the relief requested in their pleadings is inappropriate, improper or unavailable, or as a waiver by any party of any defenses or claims he, she or it may have. Other than for purposes of enforcing this Order or the Settlement Agreement, if finally approved, neither this Order, nor the Settlement Agreement (or any communications or proceedings in connection therewith), shall be offered or received in evidence in this action or any other action or proceeding, or be used or asserted in any way as an admission, concession or evidence of any matter whatsoever.

18. The Court may continue the Final Fairness Hearing without further written notice.

DONE AND ORDERED, in chambers, in Tampa, Hillsborough County, Florida, this _____ day of _____, 20____,

Honorable Sam D. Pendino
Circuit Court Judge

ORIGINAL SIGNED
CONFORMED COPY

SEP 18 2012

SAM D. PENDINO
CIRCUIT JUDGE

Conformed copies to:

Class Counsel: Richard A. Gilbert, Esquire and David M. Caldevilla, Esquire, de la Parte & Gilbert, P.A., 101 E. Kennedy Blvd., Suite 2000, Tampa, FL 33602; and J. Daniel Clark, Esquire, Clark & Martino, P.A., 3407 W. Kennedy Blvd., Tampa, FL 33609.

NICA's Counsel: Guy W. Spicola, Esquire, Law Offices of Guy W. Spicola, 3030 North Rocky Point West, Suite 150, Tampa, FL 33607; Stephen A. Ecenia, Esquire, Rutledge, Ecenia & Purnell, P.A., 119 South Monroe Street, Suite 202, Tallahassee, FL 32302; and Gregg D. Thomas, Esquire and James J. McGuire, Esquire, Thomas & Locicero PL, Ashley Drive, Suite 1100, Tampa, FL 33602.

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the "**Agreement**") is entered into by and between JOSEPH BASEY and LISA BASEY, as parents and natural guardians of Samantha Basey, a minor, and on behalf of all those similarly situated, and MAGDALENA RODRIGUEZ, as parent and natural guardian of Noemi Rodriguez, a minor, and on behalf of all those similarly situated, and the STATE OF FLORIDA on the relation of all such persons, and FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION ("**NICA**") (collectively the "**Parties**").

RECITALS

WHEREAS, there is now pending in the Circuit Court for the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida, a class action lawsuit titled Joseph Basey and Lisa Basey, as parents and natural guardians of Samantha Basey, a minor, and on behalf of all those similarly situated, and Magdalena Rodriguez, a single woman, as parent and natural guardian of Noemi Rodriguez, a minor, and on behalf of all those similarly situated, and the State of Florida on the relation of all such persons v. Florida Birth-Related Neurological Injury Compensation Association, Hillsborough County Circuit Court Case No: 06-CA-004603 (the "**Class Action Case**");

WHEREAS, the Circuit Court for the Thirteenth Judicial Circuit has certified a plaintiff class which shall consist of the following individuals (the "**Class Members**"):

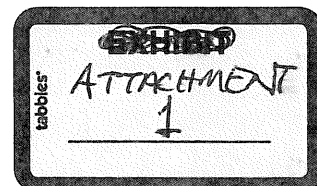
All parents or guardians of a child born with a "birth-related neurological injury" in the State of Florida during the time period of January 1, 1989 through June 6, 2002, who obtained a Final Order which imposed upon NICA the "continuing obligation under the provisions of Section 766.31, Florida Statutes, to pay future expenses as incurred," or other substantially similar words to that effect, and after issuance of the Final Order, provided any "residential and custodial care and services" to that child without receiving full payment from NICA for such care and services, and/or who intend to provide such care and services to that child in the future.

WHEREAS, the Third Amended Complaint in the Class Action Case asserts claims, both as class representatives and individually, against NICA for alleged violations of Florida Statutes 766.301. *et seq.*, Florida Statutes Section 120.69, and Florida Statutes Chapter 501, Part II;

WHEREAS, NICA denies that it has violated Florida Statutes Section 766.301, *et seq.*, Florida Statutes Section 120.69, and Florida Statutes Chapter 501, Part II;

WHEREAS, the Plaintiffs agree to voluntarily dismiss their claims against NICA under Florida Statutes Chapter 501, Part II, and the Parties agree that no damages or legal expenses shall be paid by NICA concerning such claims;

WHEREAS, to avoid the cost and risks associated with litigating the claims and disputes between the Parties in the Class Action Case, and to settle, compromise and forever discharge any and all class-wide matters between the Parties arising from the Class Action Case, the Parties have agreed to enter into this Agreement;



WHEREAS, the Parties intend and agree that all claims in the Third Amended Complaint seeking individual relief shall be dismissed, and that the Class-wide relief provided in this Agreement relates solely to claims asserted in Counts I and II of the Third Amended Complaint; and

WHEREAS, the Parties agree that the proposed class action settlement set forth in this Agreement provides equitable relief that is reasonable and in the best interest of the Class;

NOW THEREFORE, in consideration of the terms and conditions set forth below, which the Parties acknowledge are good and sufficient consideration for this agreement, the Parties hereto agree as follows:

1. DEFINITIONS

As used in this Agreement and all Exhibits attached hereto, the following definitions shall apply:

- (a) **"Agreement"** means this Agreement, including all exhibits attached hereto.
- (b) **"Birth-related neurological injury"** means the same thing as that term is defined in Section 766.302(2), Florida Statutes (Supp. 1988-2001).
- (c) **"Class"** means the class that was certified in Class Action Case pursuant to the Court's "Order on Plaintiffs' Amended Motion for Class Certification Seeking Certification on Fla.R.Civ.P. 1.220(b)(2) Class" dated August 28, 2008, as follows:

All parents and/or legal guardians of children born with a "birth-related neurological injury" in the State of Florida during the time period of January 1, 1989 through June 6, 2002, who obtained a Final Order which imposed upon NICA the "continuing obligation under the provisions of Section 766.31, Florida Statutes, to pay future expenses as incurred," or other substantially similar words to that effect, and after issuance of the Final Order, provided any "residential and custodial care and services" to that child without receiving full payment from NICA for such care and services; and/or who intend to provide such care and services to that child in the future.
- (d) **"Claim For Custodial Care Benefits Form"** means the form, attached hereto as Exhibit A, that Class Members must submit to NICA in order to make a claim for Monetary Payment for providing medically necessary and reasonable residential and custodial care and benefits to a NICA Child.
- (e) **"Class Action Case"** means the lawsuit titled Joseph Basey and Lisa Basey, as parents and natural guardians of Samantha Basey, a minor, individually, and on behalf of all those similarly situated, and Magdalena Rodriguez, a single woman, as parent and natural guardian of Noemi Rodriguez, a minor, individually, and on behalf of all those similarly situated, and the State of Florida on the relation of all such persons v.

Florida Birth-Related Neurological Injury Compensation Association, Hillsborough County Circuit Court Case No: 06-CA-004603.

(f) "**Class Counsel**" means the following attorneys: (1) de la Parte & Gilbert, P.A., 101 E. Kennedy Boulevard, Suite 2000, Tampa, Florida 33601, and (2) Clark & Martino, P.A., 3407 West Kennedy Blvd., Tampa, Florida 33609.

(g) "**Class List**" means a list, to be prepared by NICA and approved by Class Counsel and the Court, of Class Members who are entitled to receive notice of this Agreement and eligible to participate in the settlement described herein.

(h) "**Class Members**" means all persons that fall within the definition of the Class, who have not timely and validly exercised their right to opt out of the settlement proposed by this Agreement, and who are, therefore, bound by the terms of this Agreement.

(i) "**Class Notice**" means the notice provided to the Class pursuant to Section 13 of this Agreement, substantially in the form attached hereto as "**Exhibit C.**"

(j) "**Court**," unless otherwise stated, shall mean the Hillsborough County Circuit Court presiding in the Class Action Case.

(k) "**Effective Date**" means the date on which the Court approves and issues the proposed Order Preliminarily Approving Settlement, substantially in the form attached hereto as "**Exhibit E.**"

(l) "**Fairness Hearing**" means a final hearing held by the Court pursuant to Florida Rule of Civil Procedure 1.220, to determine whether to approve the settlement proposed in the Agreement as fair, reasonable, and adequate, to determine any timely and proper objections, and to determine whether to enter the Final Judgment.

(m) "**Final Order**" means a final order entered by an administrative law judge or judge of compensation claims in an administrative proceeding involving a Class Member and NICA.

(n) "**Final Judgment**" means the Court's final judgment approving this Agreement, substantially in the form attached hereto as "**Exhibit F.**"

(o) "**Monetary Payment**" means the money, if any, that an eligible Class Member may be entitled to receive from NICA after submitting to NICA a Claim For Custodial Care Benefits Form.

(p) "**NICA Child**" means a child born in the State of Florida with a "birth-related neurological injury," as that term is defined in Section 766.302(2), Florida Statutes (Supp. 1988-2001), during the time period of January 1, 1989 through June 6, 2002.

(q) "**Party**" or "**Parties**" mean and refer to the parties to this Agreement.

(r) "Plaintiffs" or "Class Representatives" mean and refer to Joseph Basey and Lisa Basey, as parents and natural guardians of Samantha Basey, a minor, and on behalf of all those similarly situated, and Magdalena Rodriguez, a single woman, as parent and natural guardian of Noemi Rodriguez, a minor, and on behalf of all those similarly situated, and the State of Florida on the relation of all such persons.

(s) "2002 Amendments" means the amendments to Sections 766.302 and 766.31, Florida Statutes, enacted by the Florida Legislature in Ch. 2002-401, Laws of Florida (2002), which took effect as of June 7, 2002.

2. PROPOSED CLASS ACTION SETTLEMENT OF DISPUTED CLAIMS; NO ADMISSION OF LIABILITY

This Agreement and the proposed settlement described herein are subject to and contingent upon the Court's approval pursuant to Florida Rule of Civil Procedure 1.220. This Agreement is intended to resolve claims that are disputed, contested, and denied. The existence of and/or compliance with this Agreement does not and shall not constitute an admission, adjudication or finding on the merits of any claim asserted in the Class Action Case.

3. EFFECTIVE DATE

This Agreement shall be effective as of the date on which the Court approves and issues the proposed Order Preliminarily Approving Settlement, substantially in the form attached hereto as "Exhibit E" (the "Effective Date").

4. ELIGIBILITY FOR MONETARY PAYMENT TO CLASS MEMBERS

A Class Member shall be eligible to receive Monetary Payment from NICA for providing residential and custodial care and services to a NICA Child if, and only if, the Class Member demonstrates that all of the following criteria are satisfied:

(a) The residential and custodial care and services are medically necessary and reasonable;

(b) The residential and custodial care and services were/are actually provided by the Class Member to a NICA Child;

(c) The residential and custodial care and services are of the type normally rendered by a trained professional attendant which is beyond the scope of child care and services normally and gratuitously provided by family members or guardians; and

(d) The residential and custodial care and services were/are performed at the direction and control of a physician.

5. RESIDENTIAL AND CUSTODIAL CARE AND SERVICES FOR WHICH NICA WILL NOT MAKE A MONETARY PAYMENT

Irrespective of whether the criteria listed in Section 4 and its subparts are satisfied, NICA will not be required to pay any Class Member for the following:

(a) Residential and custodial care and services for which NICA or any other person or entity has already paid the Class Member or paid anyone on behalf of the Class Member, or for which the Class Member's NICA Child has received, or is entitled to receive, care or reimbursement from any other source;

(b) Residential and custodial care and services the NICA Child receives or is entitled to receive under the laws of any state or the federal government, except to the extent such exclusion is prohibited by federal law;

(c) Residential and custodial care and services that the NICA Child has received or is contractually entitled to receive from any prepaid health plan, health maintenance organization, or other private insuring entity;

(d) Expenses for which the NICA Child has received reimbursement, or for which the NICA Child is entitled to receive reimbursement, under the laws of any state or the federal government, except to the extent such exclusion may be prohibited by federal law;

(e) Expenses for which the NICA Child has received reimbursement, or for which the NICA Child is contractually entitled to receive reimbursement, pursuant to the provisions of any health or sickness insurance policy or other private insurance program; or

(f) Residential and custodial care and services that are not medically necessary and reasonable.

Medically necessary and reasonable residential and custodial care and services provided by a Class Member and for which NICA will make Monetary Payment are in lieu of professional residential and custodial care and services provided by a non-Class Member. NICA will not make Monetary Payment to a Class Member for residential and custodial care and services which have been provided or are being provided by anyone other than the Class Member.

6. MONETARY PAYMENT LEVELS AT WHICH CLASS MEMBERS MAY BE ELIGIBLE

To the extent that a Class Member is eligible and satisfies the criteria for receiving Monetary Payment for residential and custodial care and services after submitting a Claim For Custodial Care Benefits Form, such Monetary Payment shall be at the following levels:

(a) Hours Per Day:

(i) For Class Members who are professional health care providers, payment for medically necessary and reasonable residential and custodial care and service is limited to a maximum of twenty-four (24) hours per day (including any respite care the Class Member may require) for any one NICA Child, regardless of whether more than one Class Member is providing care and service to such NICA Child.

(ii) For all other Class Members who are not professional health care providers, payment for medically necessary and reasonable residential and custodial care and services is limited to a maximum of twenty (20) hours per day (including any respite care the Class Member may require) for any one NICA Child, regardless of whether more than one Class Member is providing care and service to such NICA Child.

(b) Payment Rates:

(i) If the Class Member is not employed prior to providing medically necessary and reasonable residential and custodial care and services to the NICA Child, the per-hour rate of pay equals the federal minimum hourly wage in effect at the time the care and services are provided.

(ii) If the Class Member is employed and elects to leave employment to provide medically necessary and reasonable residential and custodial care and services to the NICA Child, the per-hour rate of pay shall be equal to the rate established by Medicaid in Florida for private duty services provided by a "home health aide" at the time that the care and services are provided.

(iii) Notwithstanding the foregoing, if the Class Member is a professional health care provider, the per-hour rate of pay shall be no greater than the Medicaid rate in Florida in effect at the time the services are rendered, for the level of care needed by the NICA Child, not to exceed the Medicaid rate in Florida for the Class Member's license level. For example purposes only, assuming all other terms and conditions of this Agreement are satisfied, the following Medicaid rates in effect at the time of execution of this Agreement in Florida would be the maximum rates payable to a Class Member who is a professional health care provider, for reimbursable services rendered while those rates are in effect:

- A. For providing medically necessary RN level care: \$29.10 per hour.
- B. For providing medically necessary LPN level care: \$23.28 per hour.
- C. For providing medically necessary CNA, or EMT, or OTA level care, the rate is the Home Health Aide rate: \$15.00 per hour.

7. "CLAIM FOR CUSTODIAL CARE BENEFITS" FORM

(a) Any and all Class Members who seek Monetary Payment from NICA for providing medically necessary and reasonable residential and custodial care and services to a NICA Child in the past or in the future must fill out and submit a Claim For Custodial Care Benefits Form to NICA using the form attached to this Agreement as "**Exhibit A.**"

(b) Within 10 business days after issuance of the Final Judgment approving this Agreement, NICA shall: (1) serve conformed copies of the Final Judgment by U.S. Mail, return receipt requested, to all Class Members who do not opt-out of the Class, along with instructions which clearly explain the procedures and deadlines for submitting a Claim for Custodial Care Benefits Form under Sections 8 and 9 of this Agreement; and (2) post a conformed copy of the

Final Judgment, the instructions, and the Claim For Custodial Care Benefits Form on its website at www.nica.com.

8. MONETARY PAYMENT FOR MEDICALLY NECESSARY AND REASONABLE RESIDENTIAL CUSTODIAL CARE AND SERVICES PROVIDED BEFORE THE EFFECTIVE DATE, OR PROVIDED BOTH BEFORE AND AFTER THE EFFECTIVE DATE

(a) A Class Member seeking Monetary Payment for medically necessary and reasonable residential and custodial care and services (1) provided before the Effective Date of this Agreement; or (2) provided both before and after the Effective Date of this Agreement, must do the following:

(1) Submit to NICA the Claim for Custodial Care Benefits Form described in Section 7, by no later than 120 days after the date on which this Settlement Agreement and Release is approved by Final Judgment of the Court and all deadlines to seek available appellate remedies have expired.

(2) If the Class Member seeks payment for medically necessary and reasonable residential and custodial care and services provided before May 25, 2005, such Class Member must submit to NICA written evidence that the Class Member requested such payment from NICA before May 25, 2005 (the "**Written Evidence of Request**"). Examples of such Written Evidence of Request are letters, memoranda, faxes, or e-mails actually submitted to NICA before May 25, 2005 that requested that NICA pay the Class Member for providing medically necessary and reasonable residential and custodial care and services to his or her NICA Child.

(3) If the Class Member seeking payment for medically necessary and reasonable residential and custodial care and services provided before May 25, 2005, submits Written Evidence of Request to NICA, and otherwise satisfies the terms of this Agreement, the Class Member is eligible to recover payments for medically necessary and reasonable residential and custodial care and services as of the date the Written Evidence of Request was originally submitted to NICA, but in no event will NICA be required to pay any Class Member for residential and custodial care and services provided prior to May 25, 2001.

(4) If the Class Member seeking payment for medically necessary and reasonable residential and custodial care and services provided before May 25, 2005, does not have Written Evidence of Request, or if the Class Member seeks payment only for medically necessary and reasonable residential and custodial care and services provided on or after May 25, 2005, the Class Member is eligible to recover only payment for medically necessary and reasonable residential and custodial care and services under this Agreement from May 25, 2005, forward, provided such Class Member otherwise satisfies the terms of this Agreement.

(b) After NICA receives a Class Member's Claim for Custodial Care Benefits Form and Written Evidence of Request (if any), NICA shall have forty-five (45) days to make a written determination either to (1) pay the requested amount; (2) pay less than all of the

requested amount; or (3) refuse payment. Within that forty-five (45) day period, NICA shall provide written notice of that determination, and the reasons for such determination, to the Class Member by Federal Express, UPS, certified U.S. mail, or any other receipted mail delivery. If NICA offers to pay less than all of the requested amount or refuses payment, the Class Member may file a claim with the Division of Administrative Hearings ("DOAH") within the Class Member's pre-existing DOAH case against NICA, in the form of a petition to determine benefits using the form attached hereto as "**Exhibit B**" which form shall also be posted on NICA's website at www.nica.com, and shall file such claim within forty-five (45) days of the date on which the Class Member received NICA's written notification of its decision. The petition will be resolved by an Administrative Law Judge ("ALJ") pursuant to Chapter 120, Florida Statutes, and the provisions of §766.301, *et. seq.* (Supp. 1988-2001), Florida Statutes, consistent with the terms of this Agreement. Any Final Order will be subject to appeal in accordance with Section 120.68, Florida Statutes. In the DOAH proceedings, in no event shall the Class Member be entitled to payment for medically necessary and reasonable residential and custodial care and services that is above or beyond the limits of the disputed amount, or inconsistent with any of the terms set forth in this Agreement. Pending the outcome of the DOAH proceedings, NICA shall pay that portion, if any, of the Class Member's claim which is not in dispute. The resolution of any disputed Claim For Custodial Care Benefits shall be exclusively through DOAH, pursuant to the Class Member filing a petition to determine benefits, with the right to appeal to the appropriate district court of appeal, as set forth in Sections 8 and 9.

9. MONETARY PAYMENT TO CLASS MEMBERS FOR RESIDENTIAL AND CUSTODIAL CARE AND SERVICES PROVIDED ONLY AFTER THE EFFECTIVE DATE

A Class Member seeking Monetary Payment only for medically necessary and reasonable residential and custodial care and services provided after the Effective Date of this Agreement must submit to NICA the Claim For Custodial Care Benefits Form described in Section 7, no later than 30 days after the date on which the Class Member begins providing such medically necessary and reasonable residential and custodial care and services for which the Class Member expects to receive Monetary Benefits from NICA going forward. After NICA receives a Class Member's Claim For Custodial Care Benefits Form, NICA shall have forty-five (45) days to make a determination either to (1) agree to pay the requested amount going forward from the date such service began, not to exceed 30 days prior to NICA's receipt of the Claim For Custodial Care Benefits Form; (2) agree to pay less than the requested amount; or (3) refuse payment. Within that forty-five (45) day period, NICA shall provide written notice of that determination, and the reasons for such determination, to the Class Member by Federal Express, UPS, certified U.S. mail, or any other receipted mail delivery. If NICA offers to pay less than all of the requested amount or refuses payment, the Class Member may file a claim with the DOAH within that Class Member's pre-existing DOAH case against NICA, in the form of a petition to determine benefits using the form attached hereto as "**Exhibit B**," which form shall also be posted on NICA's website at www.nica.com, and shall file such claim within forty-five (45) days of the date on which the Class Member received NICA's written notification of its decision. The petition will be resolved by an ALJ pursuant to Chapter 120, Florida Statutes, and the provisions of §766.301, *et. seq.* (Supp. 1988-2001), Florida Statutes, consistent with the terms of this Agreement. Any Final Order will be subject to appeal in accordance with Section 120.68, Florida Statutes. In the DOAH proceedings, in no event shall the Class Member be

entitled to payment for medically necessary and reasonable residential and custodial care and services that is above or beyond the limits of the disputed amount, or inconsistent with any of the terms set forth in this Agreement. Pending the outcome of the DOAH proceedings, NICA shall pay that portion, if any, of the Class Member's claim which is not in dispute.

10. EFFECT ON PREVIOUS STIPULATIONS, SETTLEMENT AGREEMENTS, OR DOAH OR COURT ORDERS

(a) Nothing in this Agreement shall affect the validity or binding nature of any previous stipulation or settlement agreement between NICA, the Plaintiffs, and/or any Class Member, or of any DOAH order or court order, to the extent that such stipulation, settlement agreement or order provides for any higher level of benefits than contemplated by this Agreement.

(b) To the extent, if any, that any previous stipulation or settlement agreement between NICA, the Plaintiffs, and/or any Class Member provides for any lower level of benefits than contemplated by this Agreement, unless there is a material change in the Plaintiff's or Class Member's condition, the Plaintiff and/or Class Member shall be bound by the terms of the previous stipulation or settlement agreement.

11. MODIFICATION OF NICA'S WRITTEN MATERIALS

Within 90 days after the Court issues the Final Judgment approving this Agreement and all deadlines to seek available appellate remedies have expired, NICA shall modify and revise its forms, handbooks, materials, and internet site to reflect the rights of Class Members as established by this Agreement. NICA shall also providing training to its employees to explain the rights established by this Agreement.

12. SETTLEMENT ADMINISTRATION OF CLASS SETTLEMENT

(a) Administration. NICA shall act as the Class Administrator, and in that capacity shall supervise the claims process, administer the settlement proceeds paid by NICA, and verify and mail distributions of the payments as provided in this Agreement. Alternatively, NICA may propose a third party to serve as Class Administrator. Any third party Class Administrator proposed by NICA must be approved by Class Counsel, or if Class Counsel objects, by the Court.

(b) Scope of Responsibilities. NICA, as Class Administrator, shall have the following responsibilities:

- (1) Determine the identities of the Class Members.
- (2) Print and deliver all notices, forms, and checks required under the Agreement.
- (3) Review Claim For Custodial Care Benefits Forms submitted by Class Members and decide, subject to the requirements of this Agreement, to either (i) pay the requested amount; (ii) pay less than all of the requested amount; or (iii) refuse payment.

In addition, NICA shall provide written notice of that determination, and the reasons for such determination, to the Class Member.

(4) Otherwise act in accordance with the terms of this Agreement.

(c) NICA shall be responsible for and shall pay any and all costs associated with the administration of this Agreement. Such costs shall include but not be limited to all expenses incurred in the identification of all Class Members, printing and delivering notice forms, costs of any follow-up attempts to redeliver notices, printing and distributing checks to Class Members, and all postage related to the foregoing. Such costs shall be paid or borne separately by NICA and will not affect the Monetary Payments that any Class Member may ultimately be entitled to receive.

(d) Class Counsel shall be entitled to reasonable confirmatory discovery of the administrative process, including identification and notification to Class Members and modification of NICA's written materials.

13. CLASS NOTICE OF SETTLEMENT

(a) Within 15 days after the Effective Date, NICA shall send by Federal Express, UPS, certified U.S. mail, or any other receipted mail service, the Class Notice of this proposed settlement, substantially in the form attached hereto as "**Exhibit C**" to all persons set forth on the Class List, and shall post a copy of the Class Notice on NICA's internet website.

(b) To the extent the Class Notice is returned as "undeliverable", NICA will make a reasonable good faith attempt to locate the intended recipient.

14. OPTING OUT OF THE CLASS

(a) Any Class Member may choose to be excluded from (i.e., opt out of) the Class. To opt out of the Class, the Class Member must (1) fill out and sign the "Opt Out of the Class Form," attached to the Class Notice ("**Exhibit C**"), and (2) mail the filled out "Opt Out of the Class Form," postmarked by no later than thirty (30) days after the date the Class Notice is mailed to Class Members, to the following addresses:

NICA's Counsel: c/o Gregg D. Thomas, Esquire, Thomas & LoCicero PL, 400 N. Ashley Drive, Suite 1100, Tampa, Florida 33602.

Any person who timely and validly opts out of the Class shall have no rights or obligations under this Agreement, and NICA shall have no rights or obligation under this Agreement with respect to such persons.

(b) Within 45 days after the date that the Class Notice is mailed to Class Members, NICA will file with the Court and serve on Class Counsel a copy of all filled out Opt Out of the Class Forms received by NICA.

(c) Any Class Member who does not timely return a filled out Opt Out of the Class Form as provided in Section 14(a), shall be a Class Member for purposes of the Class Action Case and shall be bound by this Agreement, if approved.

15. OBJECTING TO THE AGREEMENT

(a) Any Class Member who has not timely opted out of the Class, and wishes to object to the proposed settlement contemplated by this Agreement, must serve on Class Counsel and NICA's counsel and file with the Clerk of Court, no later than thirty (30) days after the date the Class Notice is mailed to Class Members, a written statement of the objection, as well as the specific reasons, if any, for each objection.

(1) Said objections shall be filed and/or served at the following addresses:

(A) Office of the Circuit Clerk, Circuit Court Civil Division,
Hillsborough County Courthouse, 800 E. Twiggs Street, Tampa, Florida 33602;

(B) Class Counsel: c/o J. Daniel Clark, Esquire, Clark & Martino,
P.A., 3407 West Kennedy Blvd., Tampa, Florida 33609;

(C) NICA's Counsel: c/o Gregg D. Thomas, Esquire, Thomas &
LoCicero PL, 400 N. Ashley Drive, Suite 1100, Tampa, Florida 33602.

(2) Class Members may so object on their own or through any attorney retained at their own expense.

(3) If a Class Member retains an attorney to represent him or her, the attorney must: (a) file a Notice of Appearance with the Clerk of the Court, no later than thirty (30) days after the date the Class Notice is sent to Class Members or as the Court may otherwise direct, and (b) serve copies of same on Class Counsel and NICA's Counsel, no later than thirty (30) days after the date the Class Notice is mailed to Class Members.

(4) Any Class Member who timely files and serves a written objection may appear at the Fairness Hearing, either in person or through an attorney retained at the Class Member's expense. Class Members or their attorneys intending to make an appearance at the Fairness Hearing must serve on Class Counsel and NICA's Counsel and file with the Court, no later than thirty (30) days after the date the Class Notice is mailed to Class Members, or as the Court otherwise may direct, a Notice of Intention to Appear at the Fairness Hearing.

(5) Any Class Member who fails to comply with the provisions of this Section 15 shall waive and forfeit all rights that he or she may have to appear separately and/or object, and shall be bound by the terms of this Agreement (if approved) and by all proceedings, orders and judgments in this Class Action Case.

16. STATUS REPORTS

After the Effective Date, NICA shall file the following status reports with the Court, and serve copies on Class Counsel, reporting upon and/or confirming NICA's compliance with this Agreement:

(a) Within 30 day after the Effective Date, the status report shall address service of Class Notice and any inability to deliver Class Notice to any Class Member,

(b) Within 150 days after the date on which this Settlement Agreement and Release is approved by Final Judgment of the Court and all deadlines to seek available appellate remedies have expired, the status report shall identify all Class Members who have submitted Claim for Custodial Care Benefits Forms pursuant to Sections 7, 8, or 9 of this Agreement.

(c) Within 45 days thereafter, for each timely Claim For Custodial Care Benefits Form received by NICA, the status report shall indicate whether NICA: (1) agreed to pay the requested amount; (2) agreed to pay less than the requested amount; or (3) refused payment; (4) has not yet made a determination as to whether to pay the requested amount; and (5) whether NICA provided timely written notice of its determination to the Class Member.

(d) Within 45 days thereafter, the status report shall identify all Class Members who have filed a petition to determine benefits pursuant to Sections 7, 8, or 9 of this Agreement.

(e) Every 6 months thereafter, the status report shall identify the final disposition of such petitions to determine benefits.

NICA's duty to file and serve such status reports shall continue until any and all petitions to determine benefits timely filed by Class Members have reached final disposition and exhaustion or expiration of all appellate remedies. However, after two status reports have been filed and served under subsection (e) above, NICA or Class Counsel may file a motion, upon good cause, requesting the Court to modify or terminate NICA's obligation to continue providing status reports.

17. CLASS SETTLEMENT COURT PROCEDURES

(a) Preliminary Approval of Settlement and Approval of Notice. The Parties shall cooperate to jointly move for and schedule a hearing for an order of preliminary approval of this Agreement to be held at the earliest convenience of the Court. The joint motion shall be substantially in the form attached hereto as "**Exhibit D**", shall seek approval of a proposed Order Preliminarily Approving Settlement, substantially in the form attached hereto as "**Exhibit E**" and approval of a proposed Class Notice substantially in the form attached hereto as "**Exhibit C**." The terms of the proposed order, including the proposed schedule contained therein, are incorporated by reference. Among other things, the Order Preliminarily Approving Settlement shall:

(i) conditionally approve the proposed settlement,

(ii) approve the proposed form and method of the Class Notice as fair, adequate, reasonable, consistent with due process, and in compliance with Florida Rule of Civil Procedure 1.220;

(iii) direct NICA to post on its internet website within 15 days a copy of the Order Preliminarily Approving Settlement and the Class Notice;

(iii) direct the Class Administrator to send the Class Notice within 15 days to each Class Member by Federal Express, UPS, certified U.S. mail, or any other receipted mail delivery, in an envelope bearing the return Post Office address of NICA;

(iv) schedule a hearing to be held to determine the reasonableness, adequacy, and fairness of the proposed settlement and whether it should be approved by the Court (the "**Fairness Hearing**");

(v) provide that any Class Member who objects to the approval of this Agreement may appear at the Fairness Hearing, and show cause why the proposed settlement called for by this Agreement should not be approved as fair, reasonable and adequate and why a judgment should not be entered thereon, and further provide that any such objections or any petition to intervene by a Class Member must be in writing, and must include (1) proof that the objector or intervener is a Class Member as defined in this Agreement; (2) a statement of each objection being made; (3) a detailed description of the facts underlying each objection; (4) a detailed description of the legal authorities underlying each objection, if any; (5) a list of witnesses who may be called to testify at the Fairness Hearing, either live or by depositions or by affidavit, if any, and (6) a list of exhibits, along with copies of the exhibits, that the objector may offer during the Fairness Hearing, if any. All these documents must be both filed with the Court and delivered to Class Counsel and NICA's counsel no later than 30 days after the Class Notice is mailed; and

(vi) provide that no person shall be entitled in any way to contest the approval of the terms and conditions of this Agreement or the Final Judgment to be entered thereon, except by filing and serving written objections in accordance with the provision of subsection (v) above, and that any Class Member who fails to opt out or object in the manner prescribed in this Agreement shall be deemed to have waived, and shall be foreclosed forever from raising any objections to this settlement and/or this Agreement, or asserting claims released by this Agreement, if approved.

(b) **Final Judgment.** Within 7 days after entry of the Order Preliminarily Approving Settlement, the parties shall jointly file a motion requesting entry of a proposed Final Judgment substantially in the form attached hereto as "**Exhibit F.**" Following notice as provided herein, a hearing will be held by the Court to consider final approval of this Agreement, any timely and proper objections to the Agreement, and for entry of the proposed Final Judgment. NICA shall post on its internet website: (1) a copy of the joint motion within 3 business days after it is filed with the Court, and (2) a copy of the Final Judgment within 3 business days after it is issued. Among other things, the Final Judgment shall:

(i) approve, without material alteration, the proposed settlement, pursuant to the terms of this Agreement;

(ii) find that the terms of this Agreement are fair, reasonable and adequate to the Class;

(iii) provide that each Class Member shall be bound to this Agreement and exhibits hereto;

(iv) find that the mailing of the Class Notice in the form described herein satisfies the requirements of Rule 1.220 and the requirements of due process;

(v) dismiss with prejudice all claims released by this Agreement, and enter final judgment thereon; and

(vi) retain jurisdiction to enforce this Agreement and the Final Judgment, and to determine the amount of reasonable attorneys' fees and costs to be paid by NICA to Class Counsel.

(c) Non-Approval of Agreement.

(1) Effect of Non-Approval. If the Court does not enter the proposed Order Preliminarily Approving Settlement or the proposed Final Judgment, or if the Court enters the proposed Final Judgment but appellate review is sought and the appellate court reverses or materially modifies the Final Judgment, then this Agreement shall be canceled and terminated.

(2) Restoration to Status Quo. In the event this Agreement is terminated or canceled, or fails to become effective for any reason, then the Parties to this Agreement shall be deemed to have their respective status restored as of the date and time immediately prior to the execution of this Agreement, and they shall proceed in all respects as if this Agreement had not been executed, and shall proceed with any and all activities with respect to the Class Action Case, consistent with the applicable law and rules of the court.

(3) Non-Use of Agreement in Later Proceedings. In the event this Agreement is not approved, or is canceled or terminated, or fails to become effective for any reason, then this Agreement shall be void and has no continuing effect, and, except for the purposes specifically provided herein, no reference to the fact of a proposed settlement or the terms thereof shall be made in any court nor sought to be used by any person in any proceeding against any of the Parties as an admission or indication or evidence of any wrongdoing or liability or lack thereof or for any purpose whatsoever.

18. **DISMISSAL OF CLAIMS IN CLASS ACTION CASE**

In consideration of the terms, conditions, and covenants of this Agreement, the Parties agree that the Class Action Case (including all claims pursuant to Chapter 501, Florida Statutes) shall be dismissed with prejudice. Within 30 days of the entry of the Final Judgment and the expiration of all deadlines to seek appellate remedies, Class Counsel will promptly file with the Court a Notice of Voluntary Dismissal with Prejudice, in the form attached hereto as "**Exhibit**

G." However, such voluntary dismissal shall not affect the Court's reservation of jurisdiction as set forth in Section 17(b)(vi) above.

19. SETTLEMENT OF PLAINTIFFS' INDIVIDUAL CLAIMS

(a) Within 15 days after the date on which the Final Judgment is entered and all opportunities to seek appellate relief have expired, NICA agrees to pay Joseph Basey and Lisa Basey, as parents and natural guardians of Samantha Basey, a minor, (the "Baseys"), and the Baseys agree to accept, the total amount of \$484,354.70, in full and complete settlement of their individual claim for past medically necessary and reasonable residential custodial care and services through the date of this Agreement, exclusive of attorneys' fees and costs. Moreover, NICA agrees to continue paying the Baseys for medically necessary and reasonable residential custodial care and services provided in the future to Samantha Basey, in accordance with the terms of the Stipulation filed on August 7, 2009 in DOAH Case No. 98-005009N. The Parties hereby represent and confirm that the foregoing amount was determined in compliance with the same terms and conditions applicable to all other Class Members under Sections 4, 5 and 6 of this Agreement. The Parties also understand and agree that each Class Member's claim for benefits is separate and distinct, that the amount of the Baseys' claim shall not be deemed as an admission against NICA concerning the amount, if any, that should be awarded to any other Class Member, and that the amount paid by NICA to the Baseys or any other Class Member shall be deemed inadmissible in any proceeding involving a Claim For Custodial Care Benefits.

(b) Within 15 days after the date on which the Final Judgment is entered and all opportunities to seek appellate relief have expired, NICA agrees to pay Magdalena Rodriguez, as parent and natural guardian of Noemi Rodriguez, a minor ("Rodriguez"), and Rodriguez agrees to accept, the total amount of \$126,242.33, in full and complete settlement of her individual claim for past medically necessary and reasonable residential custodial care and services through the date of August 31, 2012, exclusive of attorneys' fees and costs. Moreover, within that same 15-day time period, NICA and Rodriguez agree to file a joint motion seeking a modification of the Stipulation filed on May 4, 2009 in DOAH Case No. 93-005556N, to provide that as of the date of September 1, 2012, Rodriguez shall be eligible to receive payment from NICA for medically necessary and reasonable residential and custodial care and services provided in the future to Noemi Rodriguez, at the rate of \$15.00 per hour, up to 18 hours per day, instead of 10 hours per day. In all other respects, the Stipulation filed on May 4, 2009 in DOAH Case No. 93-005556N shall remain in full force and effect. The Parties hereby represent and confirm that the foregoing amount was determined in compliance with the same terms and conditions applicable to all other Class Members under Sections 4, 5 and 6 of this Agreement. The Parties also understand and agree that each Class Member's claim for benefits is separate and distinct, that the amount Rodriguez's claim shall not be deemed as an admission against NICA concerning the amount, if any, that should be awarded to any other Class Member, and that the amount paid by NICA to Rodriguez or any other Class Member shall be deemed inadmissible in any proceeding involving a Claim For Custodial Care Benefits.

20. RELEASE

(a) For valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Plaintiffs and the Class Members, on behalf of themselves and their respective successors, assigns, agents, representatives, and attorneys, and all persons or entities claiming through them, hereby forever release and discharge NICA, and each of its affiliates, predecessors, successors, agents, representatives, officers, directors, employees, heirs, assigns,

attorneys, and all persons or entities claiming by, through, under or in concert with them or any of them of and from any and all claims, counterclaims, cross-claims, demands, actions, suits, causes of action, damages, liabilities, losses, payments, obligations, debts, liens, contracts, agreements, promises, judgments, costs and expenses of any kind (past, present or future, fixed or contingent, direct or indirect, in law or in equity, several or other, and known or unknown) which the Class Members now have against NICA relating to or arising from the Class Action Case (hereafter called "**Claims**").

(b) Notwithstanding anything to the contrary set forth above, the Parties expressly acknowledge and agree that the release contained in this Section 20 is not intended to apply to the obligations and representations of the Parties not set forth in this Agreement, or any claims for attorneys' fees and costs, which are hereby expressly reserved.

(c) The Parties hereto agree that the release set forth above specifically includes only the Claims released in this Agreement. The Parties expressly waive any right to assert that a Claim against NICA has, through ignorance, oversight, error, or otherwise been omitted from the scope of the released Claims, and further expressly waive any right to allege that this release does not apply to unknown or unstated residential custodial care and services claims that are within the scope of the Class Action Case.

21. FULLY INTEGRATED AGREEMENT; NO ORAL REPRESENTATIONS; VOLUNTARY EXECUTION

This Agreement is an integrated document which constitutes the entire agreement and understanding regarding the settlement between the Parties and supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter hereof. Each party further acknowledges that they have read and understood this agreement and have not executed this Settlement Agreement and Release in reliance upon any collateral promise, representation, or warranty, or in reliance on any belief as to any fact not expressly recited herein.

22. NO ORAL AMENDMENTS

This Agreement shall not be amended or modified except in writing signed by each of the Parties hereto.

23. ASSISTANCE OF COUNSEL

The Parties hereto acknowledge that they have been represented and fully advised in the preparation, negotiation, and execution of this agreement by legal counsel of their choice regarding this Agreement, that they have done so, and that this Agreement was signed of their own free will.

24. CONSTRUCTION OF AGREEMENT

The Parties hereto agree that their respective counsel cooperated in the drafting and preparation of this Agreement, and as such this Agreement is a joint agreement, which shall not be construed against any party on the basis that such party was the drafter. Further, the headings

and sub-headings in this Agreement are used for the convenience of the Parties and shall have no bearing on the scope or interpretation of the actual terms of the Agreement.

25. SEVERABLE PROVISIONS

After this Settlement Agreement is approved by Final Judgment of the Court and all deadlines to seek available appellate remedies have expired, the provisions of this Agreement shall be severable. Thereafter, if any provision of this Agreement or the application thereof to any person, place, or circumstances shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and/or such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

26. ATTORNEYS' FEES AND COSTS

NICA agrees to bear its own attorneys' fees and costs incurred in connection with the Class Action Case and related appeals, as well as the negotiations and preparation of this Agreement and resolution of this matter. NICA also agrees that Class Counsel are entitled to receive, and NICA agrees to pay them, an award of reasonable attorneys' fees and costs, in an amount to be agreed upon by the Parties within 30 days after the Effective Date, or if no such agreement is reached, in an amount determined by the Court at or before the Fairness Hearing. The Parties further agree that such award shall exclude any and all attorneys' fees and costs relating to any and all claims under Chapter 501, Florida Statutes.

27. APPLICABLE LAW AND FORUM

This Agreement shall be construed in accordance with Florida law. Any Claim For Custodial Care Benefits which is filed with NICA, pursuant to Section 8-9 of this Settlement Agreement and Release, and which is in dispute, shall be resolved pursuant to the provisions of Chapter 120, and Sections 766.301 – 766.316, Florida Statutes.

28. NONWAIVER OF PERFORMANCE

Any failure by any Party to this Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

29. COOPERATION

The Parties shall use their best efforts to cause the Court to give its preliminary and final approval of this Agreement, and resolve all remaining claims, as promptly as practicable.

30. DISPUTES

Any dispute by a Class Member concerning the applicability or meaning of any term or provision of the NICA Statute (i.e., Section 766.301 – 766.316, Florida Statutes, as in effect prior to the 2002 Amendments), including a petition to determine benefits as provided in

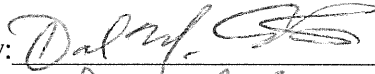
Sections 8 and 9 above, shall be resolved by the filing of a petition or claim within that Class Member's pre-existing DOAH case with NICA, and jurisdiction to adjudicate any such dispute shall be exclusively in the DOAH. Any dispute concerning the terms exclusively set forth in this Agreement shall be resolved exclusively by filing a motion in the Class Action Case, or alternatively, by filing a complaint in state court in Leon County, Florida. The Parties waive their rights, if any, to a jury trial in any such proceeding. This Agreement, and any construction thereof, shall be governed by Florida law.

31. EXECUTION IN COUNTERPARTS

This Agreement may be executed in multiple counterparts and by facsimile or email, each of which shall constitute an original, and all of which shall constitute a single agreement, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. If delivered through each party's respective counsel, facsimile signatures shall be deemed valid, original signatures.

COUNSEL FOR PLAINTIFFS AND CLASS

DATED: Sept. 17, 2012

By: 
Name: DAVID M. CALDEVILLA
FBN: 654248
Address: P.O. Box 2350
City, State Zip: TAMPA, FL 33601-2350
Telephone: 813-229-2775

PLAINTIFFS

DATED: _____, 2012

By: ATTACHED
Lisa Basey, individually, as
parent and natural guardian,
and as Class Representative

DATED: _____, 2012

By: ATTACHED
Joseph Basey, individually, as
parent and natural guardian,
and as Class Representative

DATED: _____, 2012

By: ATTACHED
Magdalena Rodriguez,
individually, as parent and
natural guardian, and as Class
Representative

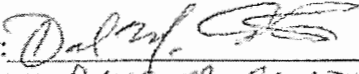
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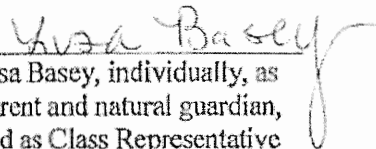
COUNSEL FOR PLAINTIFFS AND CLASS

DATED: Sept. 17, 2012

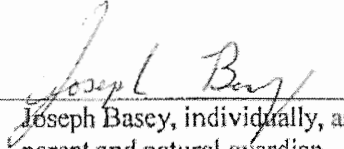
By: 
Name: DAVID M. CALDEVILLA
FBN: 654248
Address: P.O. Box 2350
City, State Zip: TAMPA, FL 33601-2350
Telephone: 813-229-2775

PLAINTIFFS

DATED: 9/17, 2012

By: 
Lisa Basey, individually, as
parent and natural guardian,
and as Class Representative

DATED: 9-17-, 2012

By: 
Joseph Basey, individually, as
parent and natural guardian,
and as Class Representative

DATED: _____, 2012

By: _____
Magdalena Rodriguez,
individually, as parent and
natural guardian, and as Class
Representative


Sections 8 and 9 above, shall be resolved by the filing of a petition or claim within that Class Member's pre-existing DOAH case with NICA, and jurisdiction to adjudicate any such dispute shall be exclusively in the DOAH. Any dispute concerning the terms exclusively set forth in this Agreement shall be resolved exclusively by filing a motion in the Class Action Case, or alternatively, by filing a complaint in state court in Leon County, Florida. The Parties waive their rights, if any, to a jury trial in any such proceeding. This Agreement, and any construction thereof, shall be governed by Florida law.

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COUNSEL FOR PLAINTIFFS AND CLASS

DATED: Sept. 17, 2012

By: 
Name: DAVID M. CALDEVILLA
FBN: 654248
Address: P.O. Box 2350
City, State Zip: TAMPA, FL 33601-2350
Telephone: 813-229-2775

PLAINTIFFS

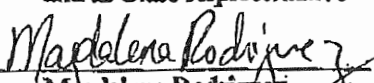
DATED: _____, 2012

By: _____
Lisa Basey, individually, as
parent and natural guardian,
and as Class Representative

DATED: _____, 2012

By: _____
Joseph Basey, individually, as
parent and natural guardian,
and as Class Representative

DATED: Sept. 18, 2012

By: 
Magdalena Rodriguez,
individually, as parent and
natural guardian, and as Class
Representative

DATED: 9/18, 2012

COUNSEL FOR FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION

By: [Signature]
Name: GREGG D. THOMAS
FBN: 223913
Address: 400 N. Ashley Drive, Suite 1106
City, State Zip: Tampa FL 33602
Telephone: 813-984-3060

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION

DATED: 9/17/, 2012

By: [Signature]
Name: STEPHAN A. FERLICK
Title: General Counsel

LIST OF EXHIBITS TO BE ATTACHED:

- Exhibit A – Claim Form
- Exhibit B – DOAH Petition Form
- Exhibit C – Class Notice
- Exhibit D – Joint Motion
- Exhibit E – Preliminary Order
- Exhibit F – Final Judgment
- Exhibit G – Notice of Voluntary Dismissal

CLAIM FOR CUSTODIAL CARE BENEFITS FORM

Instructions and Applicable Procedures:

- A. This claim form may only be used by eligible Class Members who have not excluded themselves from (or "opted out" of) the Settlement Agreement reached concerning the class action lawsuit known as *Basey, et al. v. Florida Birth-Related Neurological Injury Compensation Association*, Hillsborough County, Circuit Court Case No. 06-CA-004603. A copy of the Settlement Agreement is posted on NICA's internet website at www.nica.org. To the extent, if any, that the requirements of this claim form are inconsistent with the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.
- B. If the Class Member seeks monetary payment from NICA for medically necessary and reasonable residential and custodial care and services: (a) provided **before [DATE], 2012** (i.e., the Effective Date of the Settlement Agreement); or (b) provided both before and after **[DATE], 2012** (i.e., the Effective Date of the Settlement Agreement), the Class Member must do the following:
1. Submit the originally completed claim form to NICA, at the following address:

 2. **The claim form must be postmarked no later than [DATE], 20__** (i.e., 120 days after the date on of the Final Order and all deadlines to seek available appellate remedies have expired).
- C. If the Class Member seeks monetary payment from NICA only for medically necessary and reasonable residential and custodial care and services provided **after [DATE], 2012** (i.e., the Effective Date of the Settlement Agreement), the completed claim form to NICA must be mailed to the address listed in paragraph B.1 above and postmarked no later than 30 days from the date on which the Class Member begins providing such medically necessary and reasonable residential and custodial care and services for which the Class Member expects to receive monetary payments from NICA going forward.
- D. If insufficient space is provided to answer the questions contained in this claim form, please answer the question on a separate sheet of paper and attach it to your fully completed claim form.
- E. If you are unsure about how to answer any of the questions on this claim form, you may contact Class Counsel for additional information:

- Richard A. Gilbert, Esquire and David M. Caldevilla, Esquire, de la Parte & Gilbert, P.A., 101 E. Kennedy Blvd., Suite 2000, Tampa, FL 33602; Telephone: (813)229-2775; Website: www.dgfirm.com; or
- J. Daniel Clark, Esquire, Clark & Martino, P.A., 3407 W. Kennedy Blvd., Tampa, FL 33609; Telephone: (813) 879-0700; Website: www.clarkmartino.com.

F. After NICA receives a Class Member's fully completed claim form, the following procedures apply:

1. NICA must make a written determination within 45 days either to: (a) pay the requested amount; or (b) pay less than all of the requested amount; or (c) refuse payment.
2. Within that 45-day period, NICA must provide written notice of that determination, and the reasons for that determination, to the Class Member by Federal Express, UPS, certified U.S. mail, or any other receipted mail delivery.
3. If NICA offers to pay less than all of the requested amount or refuses to make any payment, the Class Member may file a claim with the Division of Administrative Hearings ("DOAH") within the Class Member's pre-existing DOAH case against NICA, in the form of a petition to determine benefits using the form posted on NICA's website at www.nica.com, and must file that claim within 45 of the date on which the Class Member received NICA's written notification of its decision.
4. The Class Member's petition will be resolved by a DOAH Administrative Law Judge ("ALJ") pursuant to Chapter 120, Florida Statutes, and the provisions of §766.301, *et. seq.* (Supp. 1988-2001), Florida Statutes, consistent with the terms of the Settlement Agreement. Any final order issued by the ALJ will be subject to appeal in accordance with Section 120.68, Florida Statutes.
5. In the DOAH proceedings, in no event shall the Class Member be entitled to payment for medically necessary and reasonable residential and custodial care and services that is above or beyond the limits of the disputed amount, or inconsistent with any of the terms set forth in the Settlement Agreement.
6. Pending the outcome of the DOAH proceedings, NICA must pay that portion, if any, of the Class Member's claim which is not in dispute.

Claim Form:

1. Please identify the name(s) and address(es) of the Class Member(s) submitting this claim form.

2. Please identify the relationship of the Class Member(s) (i.e., father, mother, or guardian) to the child born with a "birth-related neurological injury" (the "NICA Child"), who received and/or will receive medically necessary and reasonable residential and custodial care and services from the Class Member(s).

3. Please identify the name and DOAH case number associated with the Class Member's original petition to receive benefits from NICA for the NICA Child.

4. In order to confirm that you are a member of the Class, please answer "Yes" or "No" for each of the following questions:

- (a) Are you the parents and/or legal guardians of a NICA Child born with a "birth-related neurological injury" in the State of Florida) during the time period of January 1, 1989 through June 6, 2002? (If the answer to (a) is "No," then you are not a Class Member, and you are ineligible to participate in the Settlement Agreement.)

Yes _____ No _____

- (b) Have you ever obtained a final order which imposed upon NICA the "continuing obligation under the provisions of Section 766.31, Florida Statutes, to pay future expenses as incurred," or other substantially similar words to that effect? (If the answer to (b) is "No," then you are not a Class Member, and you are ineligible to participate in the Settlement Agreement.)

Yes _____ No _____

- (c) After that final order was issued, did you ever provide any medically necessary and reasonable residential and custodial care and services to the NICA Child without receiving full payment from NICA for such care and services? (If the answer to (c) is "No," then you are ineligible under the Settlement Agreement to apply for benefits for residential and custodial care provided in the past. *

Yes _____ No _____

- (d) ***Should you provide medically necessary residential and custodial care and services to a NICA Child in the future, you are still eligible to apply for benefits provided under the Settlement Agreement concerning those future services.**

5. Please answer the following questions for any and all medically necessary and reasonable residential and custodial care and services provided by the Class Member(s) during the time period of May 25, 2005 through [DATE], 2012 (i.e., the Effective Date of the Settlement Agreement):

- (a) During the time period of May 25, 2005 through [DATE], 2012 (i.e., the Effective Date of the Settlement Agreement), on average, approximately how many hours per month did the Class Member(s) actually provide medically necessary and reasonable residential and custodial care and services to the NICA Child, without compensation from NICA or any other third-party?

Answer: During the time period of May 25, 2005 through [DATE], 2012 (i.e., the Effective Date of the Settlement Agreement), on average, the Class Member(s) provided medically necessary and reasonable residential and custodial care and services to the NICA Child for approximately _____ hours per month, without compensation from NICA or any other third-party.

- (b) If the Class Member(s) are seeking additional monetary payments for providing medically necessary and reasonable residential and custodial care and services to the NICA Child before May 25, 2005, did the Class Member(s) ever request NICA to compensate them for such care and services before May 25, 2005?

Yes _____ No _____

- (c) If the answer to (b) was "Yes," how and when did the Class Member(s) make that request to NICA?

-
-
- (d) If the answer to Question 5(b) was "Yes," is there any written evidence that the Class Member(s) made such a request to NICA prior to May 25, 2005? (*Examples of such written evidence are letters, memoranda, faxes, or e-mails actually submitted to NICA before May 25, 2005.*)

Yes _____ No _____

- (e) If the answer to Question 5(d) was "Yes," please attach a copy of that written evidence to this claim form.

- (f) If the answer to Question 5(d) was "No," do you want NICA to consider this claim form to be a public records request to inspect and copy NICA's correspondence from the Class Member(s), in order to determine whether such written evidence is in NICA's possession? (*If the answer to (f) is "Yes," NICA will send you a written response to this request within 7 days of receiving it. If your answers to both (d) and (f) are "No," then any monetary benefits awarded will be limited to medically necessary and reasonable residential and custodial care and services provided to the neurologically injured child on or after May 25, 2005.*)

Yes _____ No _____ N.A. _____

- (g) If the answer to Question 5(d) or (f) is "Yes," on average, approximately how many hours per month did the Class Member(s) provide medically necessary and reasonable residential and custodial care and services to the NICA Child, without compensation from NICA or other third-party, during the time period between (1) the date of the Class Member's written request or May 25, 2001, whichever is later, and (2) May 25, 2005?

Answer: Between those two dates, on average, the Class Member(s) provided residential and custodial care and services to the NICA Child for approximately _____ hours per month, without compensation from NICA or other third-party.

6. Please answer the following questions if you are seeking a monetary payment for residential and custodial care and services which were provided and/or will be provided after [DATE], 2012 (i.e., the Effective Date of the Settlement Agreement):

- (a) Please identify the date after [DATE], 2012, on which the Class Member(s) began providing, or will begin providing, residential and custodial care and services to the NICA Child?

Answer: The Class Member(s) began providing, or will begin providing, residential and custodial care and services to the NICA Child on the date of _____.

- (b) Please identify the number of hours per day of residential and custodial care and services that the Class Member(s) contend are medically necessary and reasonable for the NICA Child.

Answer: The Class Member(s) contend that it is medically necessary and reasonable for our NICA Child to receive _____ hours per day of residential and custodial care and services from the Class Member(s).

7. Please identify the name of the Class Member(s) who actually provided, and/or actually will be providing, the medically necessary and reasonable residential and custodial care and services to the NICA Child, referenced in the answers to Questions 4, 5, and 6 herein.

8. Are all of the residential and custodial care and services described in the answers to Questions 4, 5, and 6 of the type normally rendered by a trained professional attendant which is beyond the scope of child care and services normally and gratuitously provided by family members or guardians to a normal, healthy child without neurological injuries?

Yes _____ No _____

9. If the answer to Question 8 is "No," approximately what percentage of the residential and custodial care and services described in the answers to Questions 4, 5, and 6 is within the scope of child care and services normally and gratuitously provided by family members or guardians to a normal, healthy child without neurological injuries?

Answer: Approximately _____% of the residential and custodial care and services described in the answers to Questions 4, 5, and 6 is within the scope of child care and services normally and gratuitously provided by family members or guardians to a normal, healthy child without neurological injuries.

10. Are the residential and custodial care and services described in the answers to Questions 4, 5, and 6 performed, and/or will they be performed, at the direction and control of a physician?

Yes _____ No _____

11. If the answer to Question 10 is "Yes," please identify the name, address, and telephone number of the physician(s) referenced in Question 10.

12. Were any of the medically necessary and reasonable residential and custodial care and services described in the answers to Questions 4, 5, and 6 provided by, and/or will they be provided by, any third-party instead of by the Class Member(s)?

Yes _____ No _____

13. If the answer to Question 12 is "Yes," please answer the following questions:

- a. What is the third-party's name, address, and telephone number?

- b. Did NICA pay any benefits to that third-party or reimburse the Class Member(s) for any medically necessary and reasonable residential and custodial care and services described in the answers to Questions 4, 5, and 6?

Yes _____ No _____

14. With respect to the answers to Questions 4, 5, and 6, did the Class Member(s) leave prior employment in order to provide the residential and custodial care and services to the NICA Child?

Yes _____ No _____

15. If the answer to Question 14 is "Yes," please identify the Class Member's prior employer, the employer's address, the Class Member's job title, and the dates of employment.

16. Are either or both the Class Members a professional health care provider?

Yes _____ No _____

17. If the answer to Question 16 is "Yes," please identify the type of professional health care provider that each Class Member is, and the typical number of hours per day of professional services provided by the Class Member(s) which are within the scope of their professional health care field and which are medically necessary and reasonable for the NICA Child?

I affirm, under penalty of perjury, that the foregoing claim form does not contain any false, incomplete or misleading information, that I have not omitted or concealed any material information, and that I have not already received reimbursement from a third party for the residential and custodial care and services described herein. This claim form is being submitted for payment by NICA under Statute 766.31, F.S., and I understand that NICA is materially and substantially relying upon this affirmation in processing this claim form.

SAMPLE - DO NOT SIGN

SAMPLE - DO NOT SIGN

Print Class Member's Name

Print Class Member's Name

Signature

Signature

Address

Address

City, State, Zip

City, State, Zip

Email Address

Email Address

Telephone Number

Telephone Number

Date

Date

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**[INSERT NAME OF PARENTS OR
GUARDIANS]**, on behalf of and as parents and
natural guardians of **[INSERT NICA CHILD'S
INITIALS]**,

Petitioners,

vs.

CASE NO. _____

**FLORIDA BIRTH-RELATED NEUROLOGICAL
INJURY COMPENSATION ASSOCIATION,**

Respondent.

_____ /

PETITION TO DETERMINE BENEFITS

Pursuant to Section 766.312(1) and/or 120.69(4)(a), Florida Statutes, the Petitioners hereby request a formal administrative hearing to determine the amount of benefits owed to them by NICA for past and/or future residential and custodial care and services provided to their neurologically injured child. In support thereof, Petitioners state the following:

1. **[INSERT NICA CHILD'S INITIALS]** was born in Florida on **[INSERT DATE OF BIRTH]** with a "birth-related neurological injury" as that term is defined by Section 766.302(2), Florida Statutes.

2. The final order previously issued in this case on or about **[INSERT FINAL ORDER DATE]** determined that the Petitioners are entitled to an award of benefits under Section 766.31(1), Florida Statutes, and imposed upon NICA the continuing obligation to pay the Petitioners' future expenses as incurred.

3. Petitioners are Class Members in the class action lawsuit styled as *Basey, et al. v. Florida Birth-Related Neurological Injury Compensation Association*, Hillsborough County Circuit Court Case No: 06-CA-004603 (the "**Class Action Case**").

4. Pursuant to the settlement agreement reached in the Class Action Case and the Court's Final Judgment approving that settlement agreement, the Petitioners submitted a timely "Claim for Custodial Benefits Form" to NICA. A copy of the settlement agreement is attached hereto as "Exhibit A." A copy of the Final Judgment entered in the Class Action Case is attached hereto as "Exhibit B." A copy of the Petitioners' claim form is attached hereto as "Exhibit C."

5. On or about [INSERT DATE], the Petitioners received NICA's written determination concerning that claim form. A copy of NICA's written determination is attached hereto as "Exhibit D."

6. The Petitioners hereby disagree with and challenge NICA's written determination, and respectfully request a formal administrative proceeding to determine the correct amount of past and/or future benefits for residential and custodial care and services, if any, owed by NICA to the Petitioners.

WHEREFORE, the Petitioners respectfully request that the Administrative Law Judge to conduct a formal administrative proceeding and enter a final order which determines and awards the correct amount of past and/or future benefits for residential and custodial care and services, if any, owed by NICA to the Petitioners, reasonable attorneys' fees and costs, and such other relief that the Administrative Law Judge deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was served by U.S. mail to Ms. Kenney Shipley, Executive Director, Florida Birth Related Neurological Injury Compensation Association, 2360 Christopher Place, Suite 1, Tallahassee, FL 32308; on this _____ day of _____, 20____.

SAMPLE - DO NOT SIGN

[INSERT SIGNATURE BLOCK, AND CLASS MEMBER'S NAME, ADDRESS, TELEPHONE NUMBER, EMAIL ADDRESS]

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

JOSEPH BASEY and LISA BASEY,
as parents and natural guardians of
Samantha Basey, a minor, individually,
and on behalf of all those similarly situated;
MAGDALENA RODRIGUEZ, a single
woman, as parent and natural guardian of
Noemi Rodriguez, a minor, individually, and
on behalf of all those similarly situated; and
the STATE OF FLORIDA on the relation of
all such persons,

Plaintiffs,

CLASS REPRESENTATION

vs.

Case No. 06-CA-004603

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY
COMPENSATION ASSOCIATION,

Division E

Defendant.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: All parents or guardians of a child born with a birth-related neurological injury in the state of Florida between January 1, 1989 and June 6, 2002, who obtained a final order which imposed upon the Florida Birth-Related Neurological Injury Compensation Association ("NICA") the "continuing obligation under the provisions of Section 766.31, Florida Statutes, to pay future expenses as incurred," or other substantially similar words to that effect, and after issuance of the final order, provided any medically necessary and reasonable residential and custodial care and services to that child without receiving full payment from NICA for such medically necessary and reasonable care and services, and/or who intend to provide such medically necessary and reasonable care and services to that child in the future (the "Class").

**THIS IS A COURT AUTHORIZED NOTICE. THIS IS NOT A
SOLICITATION FROM A LAWYER. THIS NOTICE MAY
AFFECT YOUR RIGHTS. PLEASE READ THE COMPLETE
NOTICE CAREFULLY.**

BASIC INFORMATION

- A class action lawsuit has been filed which alleges that NICA did not fully pay medically necessary and reasonable residential and custodial care benefits to parents or guardians of children born with a birth-related neurological injury in the state of Florida between January 1, 1989 and June 6, 2002.
- A Florida court has preliminarily approved a proposed settlement of that class action.
- Under certain terms and conditions described in the settlement agreement, the proposed settlement will provide an opportunity for such parents and guardians to apply for and receive monetary payment from NICA. Your rights may be affected, and you may have a choice to make now.

Your legal rights and options in this class action lawsuit include:	
ASK TO BE EXCLUDED FROM THE CLASS	If you ask to be excluded (or to opt-out) from the class action, you will not be bound by the proposed settlement agreement and will not be eligible to submit a claim for monetary payment under the settlement agreement, and you will keep your rights, if any, to sue NICA on your own about the same legal claims in this lawsuit.
STAY IN THE CLASS AND REQUEST PAYMENT	If you do not ask to be excluded (or to opt-out) from the class action, you will automatically remain in the class, and you will be eligible to submit a claim for a monetary payment from NICA within the time frame allowed. By remaining in the class, you will give up any rights to sue NICA on your own about the same legal claims in this lawsuit.
STAY IN THE CLASS AND DO NOTHING	If you do not ask to be excluded (or to opt-out) from the class action, you will automatically remain in the class. If you fail to submit a claim within the time frame allowed, by doing nothing, you will not be eligible to receive any monetary payment from NICA for medically necessary and reasonable care and services rendered in the past, and you will give up any rights to sue NICA on your own about the same legal claims raised in this lawsuit. However, you will retain the right to prospectively seek monetary benefits from NICA for medically necessary and reasonable care and services to be rendered in the future, under the terms of the settlement agreement.

- Your rights and options – and the deadlines to exercise them – are explained in this notice. To ask to be excluded, you must act before **Month 00, 0000**.

1. WHAT IS THE PURPOSE OF THIS NOTICE?

There is now pending in the Circuit Court for the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida, a class action lawsuit titled *Joseph Basey and Lisa Basey, as parents and natural guardians of Samantha Basey, a minor, and on behalf of all those similarly situated, and Magdalena Rodriguez, a single woman, as parent and natural guardian of Noemi Rodriguez, a minor, and on behalf of all those similarly situated, and the State of Florida on the relation of all such persons v. Florida Birth-Related Neurological Injury Compensation Association*, Case No. 06-CA-004603 (the "Class Action").

The Honorable Sam Pendino, Circuit Court Judge, is currently overseeing the Class Action. Judge Pendino has entered an order which certified the dispute as a class action lawsuit, and that order was affirmed by the Florida Second District Court of Appeal. A copy of Judge Pendino's order certifying the class is available from any of the lawyers identified in Section 19 below.

The parties have reached a proposed settlement of the Class Action, and the Court authorized them to send you this notice to inform you about the proposed settlement and your options. The Court has not yet decided whether to approve the settlement as final. If the Court finally approves the settlement, after objections and appeals (if any) are resolved, qualifying class members will be eligible to submit a claim for monetary payment from NICA, in accordance with certain terms and conditions described in the proposed settlement agreement.

This notice explains the lawsuit, the proposed settlement, what payments may be available, who is eligible for them, and how to make a claim for a payment under the settlement.

2. WHAT IS THE CLASS ACTION ABOUT?

NICA is an association created by the Florida Legislature in 1988 to administer the Florida Birth-Related Neurological Injury Compensation Plan "for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury claims." *See*, §766.303(1), Fla. Stat. The Plan applies "to births occurring on or after January 1, 1989...." *Id.* The statutes governing NICA are found in Sections 766.301 through 766.316, Florida Statutes.

Between January 1, 1989 and June 6, 2002, Section 766.31(1)(a), Florida Statutes (Supp. 1988-2001) stated that NICA is required to compensate eligible recipients for "[a]ctual expenses for medically necessary and reasonable ... residential, and custodial care and service." On June 7, 2002, the NICA statutes were amended, and the amendments provide that a "family member" can be reimbursed for providing "family residential or custodial care" of up to 10 hours per day and certain specified hourly rates.

Joseph Basey, Lisa Basey, and Magdalena Rodriguez ("Plaintiffs") filed a class action lawsuit against NICA on behalf of the Class described above. Plaintiffs allege that NICA has in

the past and on an ongoing and continuing basis refused to pay and/or has underpaid benefits to parents and guardians who provide medically necessary and reasonable "residential and custodial care and services" to a child born with a birth-related neurological injury from January 1, 1989 through June 6, 2002 (a "NICA Child"). Plaintiffs allege that NICA has refused to pay or has underpaid benefits either by misconstruing Section 766.31(1)(a), Florida Statutes (Supp. 1988-2001), or by retroactively applying new limitations adopted in the 2002 amendments to children born before those amendments became law. Plaintiffs contend that NICA's conduct violates prior final orders issued by the Division of Administrative Hearings ("DOAH") which imposed upon NICA the "continuing obligation under the provisions of Section 766.31, Florida Statutes, to pay future expenses as incurred," or other substantially similar words to that effect.

NICA denies the Plaintiffs' allegations and denies that it has acted improperly.

The Court has not decided whether Plaintiffs are right or whether NICA is right.

3. WHAT IS A CLASS ACTION?

In a class action, one or more people called Class Representatives (in this case, Joseph Basey, Lisa Basey, and Magdalena Rodriguez) sue on behalf of people who may have similar claims. All people with similar claims may be a Class or Class members. A single court oversees the Class Action and resolves the dispute for all persons who are Class members. The Class Action does not resolve the claims of those persons who decide to opt out of the Class.

4. WHY IS THERE A SETTLEMENT?

The Court has not decided in favor of the Plaintiffs or NICA, and NICA has not admitted any wrongdoing or legal liability. Instead, the parties agreed to a proposed settlement. That way, they avoid the risk and expense of continued litigation. Class Members who follow the procedures outlined in this Notice and who qualify under the terms of the proposed settlement may apply for and receive monetary payment for medically necessary and reasonable residential and custodial care and services they provided to their injured child. The Class Representative and the attorneys for the proposed Class believe the settlement is in the best interest of the Class Members.

5. WHO IS ELIGIBLE TO SUBMIT A CLAIM FOR MONETARY PAYMENT?

The proposed settlement provides the opportunity for all eligible Class Members to submit a claim for monetary payment for medically necessary and reasonable residential and custodial care and services provided to a Class Member's NICA Child in the past or to be provided in the future. To be eligible to receive a monetary payment, the Class Member must timely submit a properly completed claim form (see attached form), and satisfy all of the following criteria:

- (a) The Class Member provided residential and custodial care and services which are medically necessary and reasonable;
- (b) The residential and custodial care and services were/are actually provided by the Class Member to a NICA Child;
- (c) The residential and custodial care and services are of the type normally rendered by a trained professional attendant which is beyond the scope of child care and services normally and gratuitously provided by family members or guardians; and
- (d) The residential and custodial care and services were/are performed at the direction and control of a physician.

6. ARE THERE ANY EXCEPTIONS OR LIMITATIONS?

Yes, there are exceptions and limitations that may affect your eligibility to apply for a monetary payment under the proposed settlement. Even if the eligibility criteria listed in Section 5 above are satisfied, NICA will not be required to make a monetary payment to a Class Member for medically necessary and reasonable residential and custodial care and services which: (a) have been reimbursed or are reimbursable from any other source, or (b) have been provided or will be provided by any third-party that is not a Class Member.

7. IF I AM ELIGIBLE, HOW WILL THE MONETARY PAYMENTS BE CALCULATED?

If a Class Member satisfies the applicable criteria and properly submits a claim form, the following amounts and limitations will be used to calculate to the amount of monetary payment that a Class Member can recover from NICA under the proposed settlement agreement:

- (a) Hours Per Day:
 - (i) For Class Members who are professional health care providers, payment for medically necessary and reasonable residential and custodial care and service is limited to a maximum of 24 hours per day (including any respite care the Class Member may require) for any one NICA Child, regardless of whether more than one Class Member is providing medically necessary and reasonable care and service to such NICA Child.
 - (ii) For all other Class Members who are not professional health care providers, payment for medically necessary and reasonable residential and custodial care and services is limited to a maximum of 20 hours per day (including any respite care the Class Member may require) for any one NICA Child, regardless of whether more than one Class Member is providing medically necessary and reasonable care and service to such NICA Child.

(b) Payment Rates:

- (i) If the Class Member is not employed prior to providing medically necessary and reasonable residential and custodial care and services to the NICA Child, the per-hour rate of pay equals the federal minimum hourly wage in effect at the time the medically necessary and reasonable care and services are provided.
- (ii) If the Class Member is employed and elects to leave employment to provide medically necessary and reasonable residential and custodial care and services to the NICA Child, the per-hour rate of pay shall be equal to the rate established by Medicaid in Florida for private duty services provided by a "home health aide" at the time that the medically necessary and reasonable care and services are provided. The current rate is \$15 per hour, but that rate could change from time-to-time.
- (iii) Notwithstanding the foregoing, if the Class Member is a professional health care provider, the per-hour rate of pay shall be no greater than the Medicaid rate in Florida in effect at the time the services are rendered, for the level of medically necessary and reasonable care needed by the NICA Child, not to exceed the Medicaid rate in Florida for the Class Member's license level. For example purposes only, assuming all other terms and conditions of this Agreement are satisfied, the following current Medicaid rates in Florida would be the maximum rates payable to a Class Member who is a professional health care provider, for reimbursable services rendered while those rates are in effect:
 - A. For providing medically necessary RN level care: \$29.10 per hour.
 - B. For providing medically necessary LPN level care: \$23.28 per hour.
 - C. For providing medically necessary CNA, or EMT, or OTA level care, the rate is the Home Health Aide rate: \$15.00 per hour.

8. WILL THE MONETARY PAYMENT APPLY TO MEDICALLY NECESSARY AND REASONABLE CARE AND SERVICES THAT I PROVIDED TO MY CHILD IN THE PAST?

Yes, eligible Class Members can submit a claim for monetary payment for medically necessary and reasonable residential and custodial care and services provided to a NICA Child in the past, as explained in this Section.

- (1) From May 25, 2001 through May 24, 2005 - If an eligible Class Member Class Member satisfies the terms of the proposed settlement agreement, and seeks monetary payment for medically necessary and reasonable residential and custodial care and services provided on or after May 25, 2001 through May 24, 2005, the Class Member must send NICA written evidence that the Class Member requested such payment from NICA before May 25, 2005 (the "Written Evidence of Request"). Examples of such Written Evidence of Request are letters, memoranda, faxes, or e-mails actually submitted to NICA before May 25, 2005 that requested that NICA pay the Class Member for

providing medically necessary and reasonable residential and custodial care and services to his or her NICA Child. If the Class Member seeking payment for medically necessary and reasonable residential and custodial care and services provided before May 25, 2005, submits Written Evidence of Request to NICA, and otherwise satisfies the terms of the proposed settlement agreement, the Class Member is eligible to recover payments for medically necessary and reasonable residential and custodial care and services as of the date the Written Evidence of Request was originally submitted to NICA, but in no event will NICA be required to pay any Class Member for medically necessary and reasonable residential and custodial care and services provided before May 25, 2001.

- (2) **On or after May 25, 2005** – A Class Member who does not have Written Evidence of Request, can still seek monetary payment for medically necessary and reasonable residential and custodial care and services provided on or after May 25, 2005. If the Class Member seeking payment for medically necessary and reasonable residential and custodial care and services provided before May 25, 2005, does not have Written Evidence of Request, or if the Class Member seeks payment only for medically necessary and reasonable residential and custodial care and services provided on or after May 25, 2005, the Class Member is eligible to recover only payment for medically necessary and reasonable residential and custodial care and services under the proposed settlement agreement from May 25, 2005, forward, provided such Class Member otherwise satisfies the terms of the settlement agreement.

9. **WILL THE MONETARY PAYMENT APPLY TO MEDICALLY NECESSARY AND REASONABLE CARE AND SERVICES THAT I WILL PROVIDE TO MY CHILD IN THE FUTURE?**

Yes, in addition to, or in the alternative to, receiving a monetary payment for medically necessary and reasonable residential and custodial care and services provided to a Class Member's NICA Child in the past, a Class Member may also be eligible to seek prospective monetary payments for medically necessary and reasonable care and services to be provided in the future, using the same criteria summarized in Sections 5, 6, and 7 above.

10. **WHAT IS THE PROCESS FOR SUBMITTING A CLAIM FOR MONETARY PAYMENT?**

The claims process will not begin unless and until the Court issues a final order approving the proposed settlement agreement and any deadlines to appeal expire.

If and when the Court ultimately approves the proposed settlement agreement, NICA will mail you a copy of the Court's final order and written instructions on how and when to submit a claim form. The same information will be posted on NICA's website at www.nica.com.

Generally speaking, if you are seeking reimbursement for medically necessary and reasonable residential and custodial care and services provided in the past, you must submit your claim form no later than 120 days after the date of the Court's final order and all deadlines to

seek available appellate remedies have expired. If you are seeking to be paid for medically necessary and reasonable residential and custodial care and services to be provided in the future, you must submit your claim form no later than 30 days after the date on which you begin providing that medically necessary and reasonable residential and custodial care and services for which you expect to receive monetary benefits from NICA going forward. Failure to timely submit a signed and properly completed form will result in your monetary payment claim being denied.

After NICA receives a Class Member's claim form and Written Evidence of Request (if any), NICA will have 45 days to make a written determination either to (1) pay the requested amount; (2) pay less than all of the requested amount; or (3) refuse payment. Within that 45-day period, NICA shall provide written notice of that determination, and the reasons for such determination, to the Class Member.

If the Class Member disagrees with NICA's determination, the Class Member may file a claim with the Division of Administrative Hearings ("DOAH") within the Class Member's pre-existing DOAH case against NICA, using a petition to modify benefits form that will be posted on NICA's website at www.nica.com, within 45 days of receiving NICA's written notification of its decision. The petition will be resolved by an Administrative Law Judge ("ALJ") pursuant to Chapter 120, Florida Statutes, and the provisions of §766.301, et. seq. (Supp. 1988-2001), Florida Statutes, consistent with the terms of the settlement agreement. Any final order will be subject to appeal in accordance with Section 120.68, Florida Statutes. In the DOAH proceedings, in no event shall the Class Member be entitled to payment for medically necessary and reasonable residential and custodial care and services that is above or beyond the limits of the disputed amount, or inconsistent with any of the terms set forth in the proposed settlement agreement. Pending the outcome of the DOAH proceedings, NICA must pay that portion, if any, of the Class Member's claim which is not in dispute.

11. WHAT IF I ALREADY HAVE A PRE-EXISTING STIPULATION OR SETTLEMENT AGREEMENT WITH NICA, OR A PRIOR ORDER?

You may already have a pre-existing stipulation or settlement agreement with NICA, or a prior order issued by DOAH or a court, involving the issue of medically necessary and reasonable residential and custodial care and services. If so, the proposed settlement agreement will not affect the validity or binding nature of any previous stipulation, settlement agreement, or order, to the extent that stipulation, settlement agreement or order provides for any higher level of benefits than contemplated by the proposed settlement agreement. In other words, any terms of such a stipulation, settlement agreement, or order which are more favorable to you will be preserved.

On the other hand, to the extent, if any, that any previous stipulation, settlement agreement, or order provides for any lower level of benefits than contemplated by the proposed settlement agreement, the Class Member will be bound by the terms of the previous stipulation, settlement agreement, or order, unless there has been a material change in the NICA Child's condition.

12. HOW DO I JOIN THE CLASS?

To join the Class, you do not have to do anything. You will automatically remain a member of the Class unless you exclude yourself from (or "opt out" of) the Class as described below.

13. WHAT HAPPENS IF I STAY IN THE CLASS AND DO NOTHING AT ALL?

If you do not ask to be excluded (or to opt-out) from the class action, you will automatically remain in the Class, and if the proposed settlement agreement is approved by the Court, you will be bound by that agreement and entitled to all rights and benefits conferred on Class Members under that agreement.

If you fail to submit a claim form within the time frame allowed, by doing nothing, you will not be eligible to receive any monetary payment from NICA for medically necessary and reasonable care and services rendered in the past, and you will give up any rights to sue NICA on your own about the same legal claims raised in this lawsuit. However, you will retain the right to prospectively seek monetary benefits from NICA for medically necessary and reasonable care and services to be rendered in the future, under the terms of the Settlement Agreement.

14. WHAT HAPPENS IF I EXCLUDE MYSELF FROM (OR "OPT OUT" OF) THE CLASS?

If you exclude yourself from (or "opt out" of) the Class, you will not be eligible to receive any monetary payment as a result of the proposed settlement. If you do pursue your own administrative proceeding or lawsuit after you exclude yourself, you will have to hire your own lawyer for that case, and you will have to prove your claims, without the benefit of the work performed by the lawyers in this Class Action.

15. HOW DO I ASK TO BE EXCLUDED FROM (OR "OPT OUT" OF) THE CLASS?

Any Class Member may choose to be excluded from (i.e., opt out of) the Class. To opt out of the Class, the Class Member must (1) fill out and sign the "Opt Out of the Class Form," attached to this notice, and (2) return it, postmarked by no later than [DATE], 2012, to the lawyers identified on the form.

Any person who timely and validly opts out of the Class shall have no rights or obligations under the proposed settlement agreement, and NICA shall have no rights or obligation under the settlement agreement with respect to such persons.

16. HOW DO I TELL THE COURT THAT I DON'T LIKE THE SETTLEMENT?

A Class Member who does not opt out, is allowed to object to the proposed settlement. To do this, you must give reasons in writing as to why you think the Court should not approve it. The Court will consider your views. To object, you must send your written objections to the lawyers listed in Sections 18 and 19 below, with your specific reasons in writing, no later than [DATE], 2012. Class Members may object on their own or through an attorney retained at their own expense. If you retain an attorney to represent you, the attorney must file a notice of appearance with the Clerk of the Court, George Edgecomb Courthouse, 800 E. Twiggs St., Room 530, Tampa, Florida 33602, and serve copies of same on to the lawyers listed in Sections 18 and 19 below, with your specific reasons in writing, no later than [DATE], 2012, otherwise your attorney will not be allowed to make any objections at the Final Fairness hearing.

17. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is telling the Court that you don't like something about the proposed settlement. Excluding yourself is telling the Court that you don't want to be part of the proposed settlement. If you exclude yourself, you have no basis to object to the proposed settlement because the settlement will not affect your legal rights.

18. WHO ARE THE LAWYERS REPRESENTING NICA?

NICA is being represented by the following lawyers:

- Guy W. Spicola, Esquire, Law Offices of Guy W. Spicola, 3030 North Rocky Point West, Suite 150, Tampa, FL 33607; Telephone: (813) 350-7959; Website: www.guyspicolalaw.com;
- Stephen A. Ecenia, Esquire, Rutledge, Ecenia & Purnell, P.A., 119 South Monroe Street, Suite 202, Tallahassee, FL 32302; Telephone: (850)681-6788; Website: www.reuphlaw.com; and
- Gregg D. Thomas, Esquire and James J. McGuire, Esquire, Thomas & Locicero PL, Ashley Drive, Suite 1100, Tampa, FL 33602; Telephone: (813) 984-3060; Website: www.tlolawfirm.com.

19. WHO ARE THE LAWYERS REPRESENTING THE CLASS, AND HOW WILL THEY BE PAID?

The Court has decided that the law firms of de la Parte & Gilbert, P.A. and Clark & Martino, P.A., are qualified to represent all Class Members as "Class Counsel." The Class

(00353746.1)

Counsel are the following lawyers:

- Richard A. Gilbert, Esquire and David M. Caldevilla, Esquire, de la Parte & Gilbert, P.A., 101 E. Kennedy Blvd., Suite 2000, Tampa, FL 33602; Telephone: (813)229-2775; Website: www.dgfirm.com; and
- J. Daniel Clark, Esquire, Clark & Martino, P.A., 3407 W. Kennedy Blvd., Tampa, FL 33609; Telephone: (813) 879-0700; Website: www.clarkmartino.com.

You do not need to hire your own lawyer because Class Counsel is working on your behalf, free of charge. As part of the proposed settlement agreement, Class Counsel is seeking an award of their reasonable attorneys' fees and costs from NICA. Judge Pendino will decide on and approve the amount to be paid to Class Counsel at the Fairness Hearing. In any event, you will not have to pay their attorneys' fees and costs. Any attorneys' fees and costs awarded to Class Counsel will not affect the amount of monetary benefits payable to any eligible Class Members.

20. ARE THE CLASS REPRESENTATIVES BEING PAID BY NICA UNDER THE SETTLEMENT?

Yes. The Plaintiffs, Joseph Basey, Lisa Basey, and Magdalena Rodriguez, filed the Class Action lawsuit against NICA on behalf of the Class. They are members of the Class, and the Court has authorized them to serve as the "Class Representatives." As part of the ongoing litigation, the Class Representatives have already asserted their claims for monetary payments, and the proposed settlement agreement requires their claims to be determined based on the exact same terms, conditions, and limitations that will apply to all other Class Members. NICA has reviewed and approved their claims, contingent upon the Court's review and approval. The monetary payments to the Class Representative for their claims will not affect the amount of monetary benefits payable to any eligible Class Members.

21. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE PROPOSED SETTLEMENT?

The Court will hold a Fairness Hearing on [DATE], 2012 at the courthouse of the Circuit Court of the Thirteenth Judicial Circuit, 800 E. Twiggs Street, Tampa, Florida 33602. At this hearing, the Court will consider whether the proposed settlement agreement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have timely requested to speak at the hearing. The Court will also decide how much NICA must pay Class Counsel for reasonable attorney's fees and costs, which will not affect the amount of monetary benefits payable to any eligible Class Members. At or after the hearing, the Court will decide whether to finally approve the settlement, and whether to enter a Final Order directing the settlement to be implemented. We do not know how long these decisions will take.

22. DO I HAVE TO ATTEND THE FAIRNESS HEARING?

No. Class Counsel will answer any questions the Court may have. However, if you wish, you may attend the hearing at your own expense. If you send a timely written objection and a notice of your intent to appear at the Fairness Hearing, you may come in person to the Court for the Fairness Hearing or retain your own attorney to appear for you. Even if you submit a written objection, you are not required to attend the Fairness Hearing. The Court will consider your objection if it was timely submitted, regardless of whether you actually attend the hearing in person.

If you attend, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must mail to the lawyers listed in Sections 18 and 19, and file with the Court, a notice of intention to appear at the Fairness Hearing by sending a letter stating that it is your "Notice of Intention to Appear." Be sure to include your name, address, telephone number, claim information, and your signature. Your Notice of Intention to Appear must be postmarked no later than [DATE], 2012, otherwise you will not be permitted to speak or make any objection at the Final Fairness hearing.

23. ARE MORE DETAILS AND INFORMATION AVAILABLE?

A copy of the proposed settlement agreement and related documents are posted at www.nica.org. If there are any differences between this notice and the settlement agreement, the terms of the settlement agreement shall control and supersede the terms of this notice.

In addition, the entire court file can be reviewed at the Office of the Clerk of the Circuit Court of Hillsborough County, George E. Edgecomb Courthouse, 800 Twiggs Street, Fifth Floor, Tampa, FL 33602 Monday - Friday (9 a.m. - 4 p.m.).

If you want additional information or have questions, you may contact Class Counsel listed in Section 19 above, or you can retain your own lawyer at your own expense. Please do not call or write the Court or the Clerk of Court with your questions. Neither can provide legal advice regarding this Class Action to you.

"OPT OUT OF THE CLASS" FORM

OPT OUT OF THE CLASS

I want to exclude myself from (opt out of) the Class in the case of *Basey, et al. v. Florida Birth-Related Neurological Injury Compensation Association*, Circuit Court Case No. 06-CA-004603 (Hillsborough County, FL). I understand that by opting out, I will have no rights or obligations under the proposed settlement agreement, and NICA will have no rights or obligation under the settlement agreement with respect to me. I do, however, reserve my right to bring a proceeding against NICA about the claims in this matter, as part of any other legal proceeding.

SAMPLE - DO NOT SIGN

Print and Sign Father's Name

SAMPLE - DO NOT SIGN

Print and Sign Mother's Name

Print and Sign Other Legal Guardian's Name

Print Child's Initials

Address, City, State, Zip

Telephone Number(s)

Date

If you want to opt out of the Class, you must mail copies of this form, postmarked no later than [DATE], 2012, to the following lawyers:

[This is too cumbersome – we can't require notice be send to all of these lawyers. One lawyer, or one neutral party, should be sufficient.]

Class Counsel - Richard A. Gilbert, Esquire and David M. Caldevilla, Esquire, 101 E. Kennedy Blvd., Suite 2000, Tampa, FL 33602; and J. Daniel Clark, Esquire, 3407 W. Kennedy Blvd., Tampa, FL 33609

NICA's Counsel – Guy W. Spicola, Esquire, 3111 W. Martin Luther King Jr. Blvd., Suite 100, Tampa, FL 33607; Stephen A. Ecenia, Esquire, 119 South Monroe St., Suite 202, Tallahassee, FL 32302; Gregg D. Thomas, Esquire and James J. McGuire, Esquire, 400 N. Ashley Dr., Suite 1100, Tampa, FL 33602

CLAIM FOR CUSTODIAL CARE BENEFITS FORM

Instructions and Applicable Procedures:

- A. This claim form may only be used by eligible Class Members who have not excluded themselves from (or "opted out" of) the Settlement Agreement reached concerning the class action lawsuit known as *Basey, et al. v. Florida Birth-Related Neurological Injury Compensation Association*, Hillsborough County, Circuit Court Case No. 06-CA-004603. A copy of the Settlement Agreement is posted on NICA's internet website at www.nica.org. To the extent, if any, that the requirements of this claim form are inconsistent with the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.
- B. If the Class Member seeks monetary payment from NICA for medically necessary and reasonable residential and custodial care and services: (a) provided **before [DATE], 2012** (i.e., the Effective Date of the Settlement Agreement); or (b) provided both before and after **[DATE], 2012** (i.e., the Effective Date of the Settlement Agreement), the Class Member must do the following:
1. Submit the originally completed claim form to NICA, at the following address:

 2. **The claim form must be postmarked no later than [DATE], 20__** (i.e., 120 days after the date on of the Final Order and all deadlines to seek available appellate remedies have expired).
- C. If the Class Member seeks monetary payment from NICA only for medically necessary and reasonable residential and custodial care and services provided **after [DATE], 2012** (i.e., the Effective Date of the Settlement Agreement), the completed claim form to NICA must be mailed to the address listed in paragraph B.1 above and postmarked no later than 30 days from the date on which the Class Member begins providing such medically necessary and reasonable residential and custodial care and services for which the Class Member expects to receive monetary payments from NICA going forward.
- D. If insufficient space is provided to answer the questions contained in this claim form, please answer the question on a separate sheet of paper and attach it to your fully completed claim form.
- E. If you are unsure about how to answer any of the questions on this claim form, you may contact Class Counsel for additional information:

- Richard A. Gilbert, Esquire and David M. Caldevilla, Esquire, de la Parte & Gilbert, P.A., 101 E. Kennedy Blvd., Suite 2000, Tampa, FL 33602; Telephone: (813)229-2775; Website: www.dgfirm.com; or
- J. Daniel Clark, Esquire, Clark & Martino, P.A., 3407 W. Kennedy Blvd., Tampa, FL 33609; Telephone: (813) 879-0700; Website: www.clarkmartino.com.

F. After NICA receives a Class Member's fully completed claim form, the following procedures apply:

1. NICA must make a written determination within 45 days either to: (a) pay the requested amount; or (b) pay less than all of the requested amount; or (c) refuse payment.
2. Within that 45-day period, NICA must provide written notice of that determination, and the reasons for that determination, to the Class Member by Federal Express, UPS, certified U.S. mail, or any other receipted mail delivery.
3. If NICA offers to pay less than all of the requested amount or refuses to make any payment, the Class Member may file a claim with the Division of Administrative Hearings ("DOAH") within the Class Member's pre-existing DOAH case against NICA, in the form of a petition to determine benefits using the form posted on NICA's website at www.nica.com, and must file that claim within 45 of the date on which the Class Member received NICA's written notification of its decision.
4. The Class Member's petition will be resolved by a DOAH Administrative Law Judge ("ALJ") pursuant to Chapter 120, Florida Statutes, and the provisions of §766.301, *et. seq.* (Supp. 1988-2001), Florida Statutes, consistent with the terms of the Settlement Agreement. Any final order issued by the ALJ will be subject to appeal in accordance with Section 120.68, Florida Statutes.
5. In the DOAH proceedings, in no event shall the Class Member be entitled to payment for medically necessary and reasonable residential and custodial care and services that is above or beyond the limits of the disputed amount, or inconsistent with any of the terms set forth in the Settlement Agreement.
6. Pending the outcome of the DOAH proceedings, NICA must pay that portion, if any, of the Class Member's claim which is not in dispute.

Claim Form:

1. Please identify the name(s) and address(es) of the Class Member(s) submitting this claim form.

2. Please identify the relationship of the Class Member(s) (i.e., father, mother, or guardian) to the child born with a "birth-related neurological injury" (the "NICA Child"), who received and/or will receive medically necessary and reasonable residential and custodial care and services from the Class Member(s).

3. Please identify the name and DOAH case number associated with the Class Member's original petition to receive benefits from NICA for the NICA Child.

4. In order to confirm that you are a member of the Class, please answer "Yes" or "No" for each of the following questions:

- (a) Are you the parents and/or legal guardians of a NICA Child born with a "birth-related neurological injury" in the State of Florida) during the time period of January 1, 1989 through June 6, 2002? *(If the answer to (a) is "No," then you are not a Class Member, and you are ineligible to participate in the Settlement Agreement.)*

Yes _____ No _____

- (b) Have you ever obtained a final order which imposed upon NICA the "continuing obligation under the provisions of Section 766.31, Florida Statutes, to pay future expenses as incurred," or other substantially similar words to that effect? *(If the answer to (b) is "No," then you are not a Class Member, and you are ineligible to participate in the Settlement Agreement.)*

Yes _____ No _____

- (c) After that final order was issued, did you ever provide any medically necessary and reasonable residential and custodial care and services to the NICA Child without receiving full payment from NICA for such care and services? *(If the answer to (c) is "No," then you are ineligible under the Settlement Agreement to apply for benefits for residential and custodial care provided in the past. **

Yes _____ No _____

- (d) ***Should you provide medically necessary residential and custodial care and services to a NICA Child in the future, you are still eligible to apply for benefits provided under the Settlement Agreement concerning those future services.**

5. Please answer the following questions for any and all medically necessary and reasonable residential and custodial care and services provided by the Class Member(s) during the time period of May 25, 2005 through [DATE], 2012 (i.e., the Effective Date of the Settlement Agreement):

- (a) During the time period of May 25, 2005 through [DATE], 2012 (i.e., the Effective Date of the Settlement Agreement), on average, approximately how many hours per month did the Class Member(s) actually provide medically necessary and reasonable residential and custodial care and services to the NICA Child, without compensation from NICA or any other third-party?

Answer: During the time period of May 25, 2005 through [DATE], 2012 (i.e., the Effective Date of the Settlement Agreement), on average, the Class Member(s) provided medically necessary and reasonable residential and custodial care and services to the NICA Child for approximately _____ hours per month, without compensation from NICA or any other third-party.

- (b) If the Class Member(s) are seeking additional monetary payments for providing medically necessary and reasonable residential and custodial care and services to the NICA Child before May 25, 2005, did the Class Member(s) ever request NICA to compensate them for such care and services before May 25, 2005?

Yes _____ No _____

- (c) If the answer to (b) was "Yes," how and when did the Class Member(s) make that request to NICA?

-
-
- (d) If the answer to Question 5(b) was "Yes," is there any written evidence that the Class Member(s) made such a request to NICA prior to May 25, 2005? (*Examples of such written evidence are letters, memoranda, faxes, or e-mails actually submitted to NICA before May 25, 2005.*)

Yes _____ No _____

- (e) If the answer to Question 5(d) was "Yes," please attach a copy of that written evidence to this claim form.

- (f) If the answer to Question 5(d) was "No," do you want NICA to consider this claim form to be a public records request to inspect and copy NICA's correspondence from the Class Member(s), in order to determine whether such written evidence is in NICA's possession? (*If the answer to (f) is "Yes," NICA will send you a written response to this request within 7 days of receiving it. If your answers to both (d) and (f) are "No," then any monetary benefits awarded will be limited to medically necessary and reasonable residential and custodial care and services provided to the neurologically injured child on or after May 25, 2005.*)

Yes _____ No _____ N.A. _____

- (g) If the answer to Question 5(d) or (f) is "Yes," on average, approximately how many hours per month did the Class Member(s) provide medically necessary and reasonable residential and custodial care and services to the NICA Child, without compensation from NICA or other third-party, during the time period between (1) the date of the Class Member's written request or May 25, 2001, whichever is later, and (2) May 25, 2005?

Answer: Between those two dates, on average, the Class Member(s) provided residential and custodial care and services to the NICA Child for approximately _____ hours per month, without compensation from NICA or other third-party.

6. Please answer the following questions if you are seeking a monetary payment for residential and custodial care and services which were provided and/or will be provided after [DATE], 2012 (i.e., the Effective Date of the Settlement Agreement):

- (a) Please identify the date after [DATE], 2012, on which the Class Member(s) began providing, or will begin providing, residential and custodial care and services to the NICA Child?

Answer: The Class Member(s) began providing, or will begin providing, residential and custodial care and services to the NICA Child on the date of _____.

- (b) Please identify the number of hours per day of residential and custodial care and services that the Class Member(s) contend are medically necessary and reasonable for the NICA Child.

Answer: The Class Member(s) contend that it is medically necessary and reasonable for our NICA Child to receive _____ hours per day of residential and custodial care and services from the Class Member(s).

7. Please identify the name of the Class Member(s) who actually provided, and/or actually will be providing, the medically necessary and reasonable residential and custodial care and services to the NICA Child, referenced in the answers to Questions 4, 5, and 6 herein.

8. Are all of the residential and custodial care and services described in the answers to Questions 4, 5, and 6 of the type normally rendered by a trained professional attendant which is beyond the scope of child care and services normally and gratuitously provided by family members or guardians to a normal, healthy child without neurological injuries?

Yes _____ No _____

9. If the answer to Question 8 is "No," approximately what percentage of the residential and custodial care and services described in the answers to Questions 4, 5, and 6 is within the scope of child care and services normally and gratuitously provided by family members or guardians to a normal, healthy child without neurological injuries?

Answer: Approximately _____% of the residential and custodial care and services described in the answers to Questions 4, 5, and 6 is within the scope of child care and services normally and gratuitously provided by family members or guardians to a normal, healthy child without neurological injuries.

10. Are the residential and custodial care and services described in the answers to Questions 4, 5, and 6 performed, and/or will they be performed, at the direction and control of a physician?

Yes _____ No _____

11. If the answer to Question 10 is "Yes," please identify the name, address, and telephone number of the physician(s) referenced in Question 10.

12. Were any of the medically necessary and reasonable residential and custodial care and services described in the answers to Questions 4, 5, and 6 provided by, and/or will they be provided by, any third-party instead of by the Class Member(s)?

Yes _____ No _____

13. If the answer to Question 12 is "Yes," please answer the following questions:

- a. What is the third-party's name, address, and telephone number?

- b. Did NICA pay any benefits to that third-party or reimburse the Class Member(s) for any medically necessary and reasonable residential and custodial care and services described in the answers to Questions 4, 5, and 6?

Yes _____ No _____

14. With respect to the answers to Questions 4, 5, and 6, did the Class Member(s) leave prior employment in order to provide the residential and custodial care and services to the NICA Child?

Yes _____ No _____

15. If the answer to Question 14 is "Yes," please identify the Class Member's prior employer, the employer's address, the Class Member's job title, and the dates of employment.

16. Are either or both the Class Members a professional health care provider?

Yes _____ No _____

17. If the answer to Question 16 is "Yes," please identify the type of professional health care provider that each Class Member is, and the typical number of hours per day of professional services provided by the Class Member(s) which are within the scope of their professional health care field and which are medically necessary and reasonable for the NICA Child?

I affirm, under penalty of perjury, that the foregoing claim form does not contain any false, incomplete or misleading information, that I have not omitted or concealed any material information, and that I have not already received reimbursement from a third party for the residential and custodial care and services described herein. This claim form is being submitted for payment by NICA under Statute 766.31, F.S., and I understand that NICA is materially and substantially relying upon this affirmation in processing this claim form.

SAMPLE - DO NOT SIGN

Print Class Member's Name

Signature

Address

City, State, Zip

Email Address

Telephone Number

Date

SAMPLE - DO NOT SIGN

Print Class Member's Name

Signature

Address

City, State, Zip

Email Address

Telephone Number

Date

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

JOSEPH BASEY and LISA BASEY,
as parents and natural guardians of
Samantha Basey, a minor, individually, and
on behalf of all those similarly situated,
MAGDALENA RODRIGUEZ, a single
woman, as parent and natural guardian of
Noemi Rodriguez, a minor, individually and
on behalf of all those similarly situated, and
the **STATE OF FLORIDA** on the relation of
all such persons,

Plaintiffs,

vs.

**FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY
COMPENSATION ASSOCIATION,**

Defendant.

CLASS REPRESENTATION

Case No. 06-CA-004603

Division A

**JOINT MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AGREEMENT**

Pursuant to Florida Rule of Civil Procedure 1.220(e), the Plaintiffs, Joseph Basey and Lisa Basey, as parents and natural guardians of Samantha Basey, a minor, individually, and on behalf of all those similarly situated, Magdalena Rodriguez, a single woman, as parent and natural guardian of Noemi Rodriguez, a minor, individually and on behalf of all those similarly situated, and the State of Florida on the relation of all such persons, and the Defendant, Florida Birth-Related Neurological Injury Compensation Association, jointly move on the following grounds for preliminary approval of their proposed class action settlement agreement:

1. The Plaintiffs and the Defendant have entered into the proposed "Class Action Settlement Agreement and Release" (the "**Agreement**") attached hereto as "**Attachment 1.**"
2. In the third amended complaint, the Plaintiffs, both as class representatives and individually, assert causes of action against NICA for allegedly underpaying or failing to pay

Class Members for medically necessary and reasonable residential and custodial care and services provided to neurologically injured children. NICA has denied these allegations and causes of action.

3. Pursuant to the "Order on Plaintiffs' Amended Motion for Class Certification Seeking Certification of Fla.R.Civ.P. 1.220(b)(2) Class" dated August 28, 2008, this Court granted class certification of the following class:

All parents or guardians of a child born with a "birth-related neurological injury" in the State of Florida during the time period of January 1, 1989 through June 6, 2002, who obtained a final order which imposed upon NICA the "continuing obligation under the provisions of Section 766.31, Florida Statutes, to pay future expenses as incurred," or other substantially similar words to that effect, and after issuance of the final order, provided any "residential and custodial care and services" to that child without receiving full payment from NICA for such care and services, and/or who intend to provide such care and services to that child in the future.

The Florida Second District Court of Appeal affirmed that class certification order by decision issued on July 8, 2009 and mandate issued on October 12, 2009.

4. The case has been hotly contested and thoroughly litigated. The Parties entered into the Agreement after many months of negotiations and exchanges of information.

5. If the Court preliminarily approves the Agreement, all Class Members will receive reasonable notice of the settlement and its ramifications, their right to opt-out of the settlement, their right to object to the settlement, and the claims process contemplated by the settlement, and the Court will schedule a final fairness hearing pursuant to Florida Rule of Civil Procedure 1.220, to determine whether to approve the settlement proposed in the Agreement as fair, reasonable, and adequate, to determine any timely and proper objections, and to determine whether to enter a final order.

6. If the Agreement is approved by Final Judgment of the Court, the Plaintiffs would voluntarily dismiss their claims under Chapter 501, Part II, Florida Statutes and bear their own attorneys' fees and costs concerning those particular claims. With respect to the remaining

claims, the Agreement provides that Class Members who timely and properly participate in a reasonable claims process would be eligible to seek monetary payment for up to 20 hours per day for certain past and future medically necessary and reasonable custodial care provided to their injured children, and would also resolve the Plaintiffs' individual claims for benefits, as well as the Plaintiffs' reasonable attorneys' fees and costs for their claims under Chapters 120 and 766, Florida Statutes. In exchange for this consideration from NICA, the Plaintiffs and the Class Members shall be deemed to release NICA from all claims asserted in this case upon the Court's final approval of the Agreement.

7. After considerable negotiations and deliberations, the Parties and their respective counsel submit that the Agreement is fair, adequate and reasonable. Accordingly, the Parties jointly move this Court for preliminary approval of the Agreement.

8. Florida Rule of Civil Procedure 1.220(e) provides that class actions "shall not be voluntarily withdrawn, dismissed, or compromised without approval of the court after notice and hearing."

9. The trial court has the authority to conduct an appropriate inquiry regarding the fairness of a proposed class action settlement. *Hameroff v. Public Medical Assistance Trust Fund*, 911 So.2d 827 (Fla. 1st DCA 2005). After that hearing, the trial court must accept or reject the settlement in its entirety, and cannot unilaterally modify the settlement by rewriting terms of the proposed settlement. *Fung v. Fla. Joint Underwriters Ass'n*, 840 So.2d 1101 (Fla. 3d DCA 2003); *Levenson v. Am. Laser Corp.*, 438 So.2d 179 (Fla. 2d DCA 1983).

10. In this case, this Court should grant preliminary approval because the Agreement is derived from extensive, arms-length negotiations between attorneys experienced in handling and settling class actions, and because the Agreement requires appropriate notice to the Class, a reasonable opportunity to opt-out of the class or object to the proposed settlement, and establishes a reasonable claims administration process for Class Members to seek monetary

payment for up to 20 hours per day for certain past and future medically necessary and reasonable custodial care provided to their injured children.

WHEREFORE, the Parties respectfully request this Honorable Court enter an Order preliminarily approving the proposed Agreement and Class Notice, and scheduling a final fairness hearing pursuant to Florida Rule of Civil Procedure 1.220, to determine whether to approve the settlement proposed in the Agreement as fair, reasonable, and adequate, to determine any timely and proper objections, and to determine whether to enter a final order.

Respectfully submitted,
SAMPLE - DO NOT SIGN

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and

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COUNSEL FOR PLAINTIFFS

Date: _____

Respectfully submitted,
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COUNSEL FOR DEFENDANT

Date: _____

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

JOSEPH BASEY and LISA BASEY,
as parents and natural guardians of
Samantha Basey, a minor, individually, and
on behalf of all those similarly situated,
MAGDALENA RODRIGUEZ, a single
woman, as parent and natural guardian of
Noemi Rodriguez, a minor, individually and
on behalf of all those similarly situated, and
the **STATE OF FLORIDA** on the relation of
all such persons,

Plaintiffs,

vs.

**FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY
COMPENSATION ASSOCIATION,**

Defendant.

_____ /

CLASS REPRESENTATION

Case No. 06-CA-004603

Division A

**ORDER GRANTING PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AGREEMENT**

THIS CAUSE came before the Court on _____, 2012, upon the "Joint Motion for Preliminary Approval of Class Action Settlement Agreement," filed by the Plaintiffs, Joseph Basey and Lisa Basey, as parents and natural guardians of Samantha Basey, a minor, individually, and on behalf of all those similarly situated, Magdalena Rodriguez, a single woman, as parent and natural guardian of Noemi Rodriguez, a minor, individually and on behalf of all those similarly situated, and the State of Florida on the relation of all such persons, and the Defendant, Florida Birth-Related Neurological Injury Compensation Association ("NICA"). The Court, having reviewed the motion, the record, considering the arguments of counsel, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

Introduction and Preliminary Matters

1. A copy of the proposed "Class Action Settlement Agreement and Release" (the "Settlement Agreement") is attached hereto as "Attachment 1."

2. The Joint Motion for Preliminary Approval of Class Action Settlement Agreement is hereby **GRANTED** and the proposed Settlement Agreement is preliminarily approved, subject to the terms and conditions of this Order.

3. Pursuant to the "Order on Plaintiffs' Amended Motion for Class Certification Seeking Certification of Fla.R.Civ.P. 1.220(b)(2) Class" dated August 28, 2008, this Court previously certified the following class:

All parents or guardians of a child born with a "birth-related neurological injury" in the State of Florida during the time period of January 1, 1989 through June 6, 2002, who obtained a final order which imposed upon NICA the "continuing obligation under the provisions of Section 766.31, Florida Statutes, to pay future expenses as incurred," or other substantially similar words to that effect, and after issuance of the final order, provided any "residential and custodial care and services" to that child without receiving full payment from NICA for such care and services, and/or who intend to provide such care and services to that child in the future.

In that class certification order, this Court concluded that the requirements of Rule 1.220(a) and (b)(2) were satisfied. The Florida Second District Court of Appeal affirmed that class certification order by decision issued on July 8, 2009 and mandate issued on October 12, 2009.

4. Based on its review of the Settlement Agreement and based on the arguments of counsel, the Court hereby preliminarily approves the proposed settlement, and finds that: (a) the proposed settlement resulted from extensive arm's-length negotiations and Class Counsel's appropriate investigation of the claims; (b) the proposed settlement makes available valuable consideration commensurate with the alleged harm; and (c) the proposed settlement is sufficiently fair, reasonable and adequate to warrant sending notice of this action and the

proposed settlement to the Class Members and conducting a final fairness hearing on the proposed settlement.

Class Administrator

5. As contemplated by the Settlement Agreement, NICA is hereby approved to perform the role of Class Administrator, and in that capacity shall engage in the activities contemplated by the Settlement Agreement and this Order, including but not limited to timely sending the class notice, processing claims, and providing status reports to the Court and Class Counsel.

6. Alternatively, NICA may propose to retain a third party to serve as Class Administrator. If so, any third party Class Administrator proposed by NICA must be approved by Class Counsel, or if Class Counsel objects, by the Court.

7. Within 15 days of the date of this Order, NICA (or the Class Administrator) shall post a copy of this Order to NICA's internet website at www.nica.org.

Fairness Hearing

8. A _____-hour hearing (the “**Final Fairness Hearing**”) shall be conducted on _____, 2012 at _____ p.m., in the George Edgecomb Courthouse, 800 E. Twiggs Street, Room _____, Tampa, Florida 33602 to determine matters which include but are not limited to:

(a) Whether the proposed settlement of this action should be approved as fair, reasonable and adequate.

(b) Whether this action and any claims asserted herein should be dismissed pursuant to the terms of the proposed settlement.

(c) Whether the Plaintiffs and the Class Members should be bound by the release set forth in the proposed settlement.

(d) Whether Class Counsel's application for an award of attorneys' fees and expenses should be approved.

Class Notice

9. The Court hereby approves the proposed form and method of the providing class notice as fair, adequate, reasonable, and in compliance with due process, Florida Rule of Civil Procedure 1.220, and any other applicable laws.

10. The Court has considered, among other factors, the cost of giving notice by various methods, the resources of the parties, the stake of each Class Member, and the possibility that certain Class Members might desire to exclude themselves from the proposed settlement or appear individually, and finds that the notice required by this Order is the best practicable notice and is reasonably calculated, under the circumstances, to apprise the Class Members (a) of the pendency of this action, (b) of their right to exclude themselves from the Class and the proposed settlement, (c) that the proposed settlement and final judgment will bind all Class Members who do not request exclusion, and (d) that any Class Member who does not request exclusion may object to the settlement and, if he or she desires, enter an appearance personally or through counsel retained at his or her own expense. The Court further finds that the class notice form is written in plain English and should be readily understandable by Class Members. Alternatively, the Class Notice indicates that Class Members may contact Class Counsel for clarification.

11. In sum, the Court finds that the proposed notice is reasonable, constitutes due, adequate and sufficient notice to all persons entitled to be provided with notice, and meets the requirements of due process, the Florida Rules of Civil Procedure, the Constitutions of the United States and Florida, and any other applicable rules or law.

12. As contemplated by the Settlement Agreement, NICA (or the Class Administrator, if any) shall comply with the following requirements:

(a) **Class List** - Within 7 days of the date of this Order, NICA shall generate and serve on Class Counsel a "Class List" identifying the name, address, and DOAH case numbers of all Class Members who are entitled to receive the class notice and eligible to participate in the proposed settlement, and shall serve that Class List on Class Counsel.

(b) **Class Notice** - Within 15 days of the date of this Order, NICA shall send by Federal Express, UPS, certified U.S. mail, or any other receipted mail service, the class notice, substantially in the form attached to the Settlement Agreement, to all persons set forth on the Class List, and shall post a copy of this Order and the class notice on NICA's internet website (www.nica.org).

1. **Re-mailing and Additional Notice** - To the extent the Class Notice is returned as "undeliverable," NICA or the Class Administrator will make a reasonable good faith attempt to locate the intended recipient, and redeliver the Class Notice.

2. **Proof of Mailing** - At least 7 days before the Fairness Hearing, NICA or the Class Administrator shall file with the Court an affidavit providing proof of timely mailing the class notice.

(c) **Status Report** - In accordance with Section 16(a) of the Settlement Agreement, within 30 day after the date of this Order, NICA shall file and serve a status report addressing service of Class Notice and any inability to deliver Class Notice to any Class Member.

Exclusion from the Class

13. Any Class Member, other than the Class Representatives, who wishes to opt-out and be excluded from the Class must timely submit a written opt-out exclusion request in the manner set forth below:

(a) To opt-out of the Class, the Class Member must (1) fill out and sign the "Opt-out of the Class Form," attached to the Class Notice, and (2) return the filled out "Opt-out of the Class Form," postmarked by no later than 30 days after the date the Class Notice is mailed to Class Members, to the following addresses:

NICA's Counsel: c/o Gregg D. Thomas, Esquire, Thomas & LoCicero PL,
400 N. Ashley Drive, Suite 1100, Tampa, Florida 33602.

Any person who timely and validly opts-out of the Class shall have no rights or obligations under the Settlement Agreement, and NICA shall have no rights or obligation under the Settlement Agreement with respect to such persons.

(b) Within 45 days after the date that the Class Notice is mailed to Class Members, NICA will file with the Court and serve on Class Counsel a copy of all filled out Opt-out of the Class Forms received by NICA.

(c) Any Class Member who does not timely return a filled out Opt-out of the Class Form shall be a Class Member for purposes of the Class Action Case and shall be bound by the Settlement Agreement, if approved.

Objections and Other Appearances

14. Any Class Member who has not timely opted-out of the Class, and wishes to object to the proposed Settlement Agreement, must serve on Class Counsel and NICA's counsel and file with the Clerk of Court, no later than 30 days after the date the Class Notice is mailed to Class Members, a written statement of the objection, as well as the specific reasons, if any, for each objection.

(a) Said objections shall be filed and/or served at the following addresses:

(1) Office of the Circuit Clerk, Circuit Court Civil Division,
Hillsborough County Courthouse, 800 E. Twiggs Street, Tampa, Florida 33602;

(2) Class Counsel: c/o J. Daniel Clark, Esquire, Clark & Martino, P.A., 3407 West Kennedy Blvd., Tampa, Florida 33609;

(3) NICA's Counsel: c/o Gregg D. Thomas, Esquire, Thomas & LoCicero PL, 400 N. Ashley Drive, Suite 1100, Tampa, Florida 33602.

(b) Any objections or any petition to intervene by a Class Member must be in writing, and must include: (1) proof that the objector or intervener is a Class Member as defined in the Settlement Agreement; (2) a statement of each objection being made; (3) a detailed description of the facts underlying each objection; (4) a detailed description of the legal authorities underlying each objection, if any; (5) a list of witnesses who may be called to testify at the Fairness Hearing, either live or by depositions or by affidavit, if any, and (6) a list of exhibits, along with copies of the exhibits, that the objector may offer during the Fairness Hearing, if any. All these documents must be both filed with the Court and delivered to Class Counsel and NICA's counsel no later than 30 days after the Class Notice is mailed.

(c) Class Members may so object on their own or through any attorney retained at their own expense.

(d) If a Class Member retains an attorney to represent him or her, the attorney must, no later 30 days after the date the Class Notice is sent to Class Members: (1) file a Notice of Appearance with the Clerk of the Court, and (b) serve copies of same on Class Counsel and NICA's Counsel.

(e) Any Class Member who timely files and serves a written objection may appear at the Fairness Hearing, either in person or through an attorney retained at the Class Member's expense. Class Members or their attorneys intending to make an appearance at the Fairness Hearing must serve on Class Counsel and NICA's Counsel

and file with the Court, no later than 30 days after the date the Class Notice is mailed to Class Members, a Notice of Intention to Appear at the Fairness Hearing.

(f) No person shall be entitled in any way to contest the approval of the terms and conditions of the Settlement Agreement or the final order to be entered thereon, except by filing and serving written objections in accordance with the provisions of this Order. Any Class Member who fails to opt-out or object in the manner prescribed in this Order or otherwise fails to comply with this Order shall waive and forfeit all rights that he or she may have to appear separately and/or to object, shall be bound by the terms of the Settlement Agreement (if approved) and by all proceedings, orders and judgments in this case, and shall be forever foreclosed from asserting claims released by the Settlement Agreement (if approved).

Other Provisions

15. Capitalized terms used in this Order that are not otherwise defined in this Order have the meanings assigned to them in the Settlement Agreement.

16. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (a) the proposed settlement is not finally approved by the Court, or does not become final pursuant to the terms of the Settlement Agreement; or (b) the proposed settlement is terminated in accordance with the Settlement Agreement or does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the proposed settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's Orders, including this Order, shall be used or referred to for any purpose whatsoever in this or any other action or proceeding.

17. This Order shall not be construed or used as an admission, concession, declaration or finding by or against NICA of any fault, wrongdoing, breach or liability. Moreover, this Order shall not be construed or used as an admission, concession, declaration or finding by or against the Plaintiffs or the Class Members that their claims lack merit or that the relief requested in their pleadings is inappropriate, improper or unavailable, or as a waiver by any party of any defenses or claims he, she or it may have. Other than for purposes of enforcing this Order or the Settlement Agreement, if finally approved, neither this Order, nor the Settlement Agreement (or any communications or proceedings in connection therewith), shall be offered or received in evidence in this action or any other action or proceeding, or be used or asserted in any way as an admission, concession or evidence of any matter whatsoever.

18. The Court may continue the Final Fairness Hearing without further written notice.

DONE AND ORDERED, in chambers, in Tampa, Hillsborough County, Florida, this _____ day of _____, 20____, **SAMPLE - DO NOT SIGN**

Honorable Sam D. Pendino
Circuit Court Judge

Conformed copies to:

Class Counsel: Richard A. Gilbert, Esquire and David M. Caldevilla, Esquire, de la Parte & Gilbert, P.A., 101 E. Kennedy Blvd., Suite 2000, Tampa, FL 33602; and J. Daniel Clark, Esquire, Clark & Martino, P.A., 3407 W. Kennedy Blvd., Tampa, FL 33609.

NICA's Counsel: Guy W. Spicola, Esquire, Law Offices of Guy W. Spicola, 3030 North Rocky Point West, Suite 150, Tampa, FL 33607; Stephen A. Ecenia, Esquire, Rutledge, Ecenia & Purnell, P.A., 119 South Monroe Street, Suite 202, Tallahassee, FL 32302; and Gregg D. Thomas, Esquire and James J. McGuire, Esquire, Thomas & Locicero PL, Ashley Drive, Suite 1100, Tampa, FL 33602.

**IN THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

JOSEPH BASEY and LISA BASEY, as parents and natural guardians of Samantha Basey, a minor, individually, and on behalf of all those similarly situated; **MAGDALENA RODRIGUEZ**, a single woman, as parent and natural guardian of Noemi Rodriguez, a minor, individually, and on behalf of all those similarly situated; and the **STATE OF FLORIDA** on the relation of all such persons,

Plaintiffs,

CLASS REPRESENTATION

vs.

Case No.: 06-CA-004603

**FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY
COMPENSATION ASSOCIATION,**

Defendant.

_____ /

**FINAL JUDGMENT AND ORDER APPROVING
CLASS ACTION SETTLEMENT AGREEMENT**

THIS CAUSE came before the Court on _____, 2012, on the parties' "Joint Motion for Final Approval of Class Action Settlement Agreement." The Court, having considered the motion, the record, and the arguments presented, and being otherwise advised in the premises, makes the following findings of fact and conclusions of law:

WHEREAS, on or about _____, 2012, the parties have entered into that certain "Class Action Settlement Agreement and Release" together with related exhibits (collectively, the "**Settlement Agreement**") to settle this action, a copy of which is attached hereto as "**Attachment 1**;" and

WHEREAS, on _____, 2012, the Court entered its "Order Granting Preliminary Approval of Class Action Settlement Agreement" (the "**Preliminary Approval Order**"),

preliminarily approving the Settlement Agreement, ordering that notice of the proposed settlement be served on Class Members, providing those persons with an opportunity either to exclude themselves from the Class or to object to the proposed Settlement Agreement, and scheduling a Fairness Hearing;

WHEREAS, the Court has conducted a Fairness Hearing to determine whether to finally approve the proposed Settlement Agreement; and

WHEREAS, the parties have complied with the Preliminary Approval Order and the Court finds that the proposed Settlement Agreement is fair, adequate, and reasonable, and that it should be finally approved;

NOW THEREFORE, based on the submissions of the parties and Class Members, any objections, the evidence adduced at the Fairness Hearing, the record, and the argument of counsel, the Court hereby finds, and it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

1. **Incorporation of Defined Terms.** Except where otherwise noted, all capitalized terms used in this Order shall have the meanings set forth in the Settlement Agreement.

2. **Jurisdiction.** The Court has personal jurisdiction over all Class Members and has subject matter jurisdiction over this action, including, without limitation, jurisdiction to approve the proposed settlement, to grant final certification of the Class, and to settle and release all claims arising out of the transactions alleged in the action or the Released Claims.

3. **Class Certification.** Pursuant to the "Order on Plaintiffs' Amended Motion for Class Certification Seeking Certification of Fla.R.Civ.P. 1.220(b)(2) Class" (the "**Class Certification Order**") dated August 28, 2008, this Court previously certified the following class:

All parents or guardians of a child born with a "birth-related neurological injury" in the State of Florida during the time period of January 1, 1989 through June 6, 2002, who obtained a final order which imposed upon NICA the "continuing obligation under the provisions of Section 766.31, Florida Statutes, to pay future expenses as incurred," or other substantially similar words to that effect, and after issuance of the final order, provided any "residential and custodial care and services" to that child without receiving full payment from NICA for such care and services, and/or who intend to provide such care and services to that child in the future.

In that class certification order, this Court concluded that the requirements of Rule 1.220(a) and (b)(2) were satisfied. The Florida Second District Court of Appeal affirmed that class certification order by decision issued on July 8, 2009 and mandate issued on October 12, 2009. The Class that this Court previously certified is hereby finally certified for settlement purposes under Rule 1.220(b)(2), for the reasons set forth in the Class Certification Order and the Preliminary Approval Order, as well as the additional reasons set forth in this final order.

4. **Opt-Outs.** A list of those persons who have timely and properly excluded themselves from the Class (opt-outs), and who, therefore, are not bound by this Final Judgment and Order, is attached hereto as "**Attachment 2.**"

5. **Class Members.** A list of all remaining Class Members who did not opt-out is attached hereto as "**Attachment 3.**"

6. **Adequacy of Representation.** The Court finds that Class Counsel and the Plaintiffs have fully and adequately represented the Class for purposes of entering into and implementing the settlement and have satisfied the requirements of Florida Rule of Civil Procedure 1.220.

7. **Class Notice.** The Court finds that the distribution of the Class Notice, in accordance with the terms of the Settlement Agreement and the Preliminary Approval Order, and as explained in the declarations filed at or before the Fairness Hearing:

(a) constituted the best practicable notice to Class Members under the circumstances of this action;

(b) was reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of this class action, (ii) their right to exclude themselves from the Class and the proposed Settlement Agreement, (iii) their right to object to any and all aspects of the proposed Settlement Agreement, including without limitation final certification of the Class, the fairness, reasonableness or adequacy of the proposed Settlement Agreement, the adequacy of the Class's representation by the Plaintiffs or Class Counsel, the award of attorneys' fees and costs to Class Counsel and/or the individual award to the named Plaintiffs, (iv) their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) if they did not exclude themselves from the Class, (v) the relief being provided to the Class pursuant to the Settlement Agreement, and (vi) the binding effect of the orders in this action, whether favorable or unfavorable, on all persons or entities who do not request exclusion from the Class;

(c) was reasonable and constituted due, adequate, and sufficient notice to all persons or entities entitled to be provided with notice, and

(d) fully satisfied the requirements of the United States Constitution, the Florida Constitution, the Florida Rules of Civil Procedure, the Rules of this Court, and any other applicable rules or law.

8. **Claim Form.** The "Claim for Custodial Care Benefits Form" (as defined in and attached to the Settlement Agreement) and associated claims process is approved as fair, reasonable, and adequate. The Court further finds that Class Members are being provided a

reasonable amount of time in which to complete and submit claim forms, and that Class Members will be provided fair and adequate due process of law in the event that any claim results in a dispute between NICA and any Class Member.

9. **Fairness of Settlement Agreement.** The Court finds that the terms and provisions of the Settlement Agreement, including all exhibits, are fair, reasonable, and adequate, and are in full compliance with all applicable requirements of the Florida Rules of Civil Procedure and any other applicable rules or law. The Settlement Agreement is the result of lengthy, adversarial, arms-length negotiations and is not the product of collusion between parties. It has been entered into in good faith and is in the best interests of Plaintiff and the Class Members. [As further evidence of the fairness of the Settlement Agreement, out of the _____ Class Members identified, only ___ Class Members chose to opt out of the Settlement Agreement, and there were no objections filed.] The judgment of experienced counsel for both parties also is that the settlement is fair, reasonable, and adequate and should be approved. Moreover, the litigation in this matter is complex and hard-fought. The case has been hotly litigated between the parties over the span of six years, including discovery exchanged, numerous hearings, and multiple interlocutory appeals. While there would be substantial risks, expense, and uncertainties for all parties if the case were to go to trial, under the Settlement Agreement, the Class Members will have the opportunity to receive meaningful monetary awards. For all parties concerned, settlement is a desirable alternative.

10. **Settlement Agreement Approved.** Accordingly, the Settlement Agreement is hereby fully and finally approved, and the parties and Class Members are hereby directed to implement and comply with the Settlement Agreement according to its terms and provisions.

[No objections were filed. -- or -- All objections to the Settlement Agreement have been considered by the Court and are hereby overruled.]

11. **Binding Effect.** The terms of the Settlement Agreement and of this final order shall be forever binding on Plaintiff and all other Class Members, as well as their heirs, representatives, executors and administrators, successors and assigns, and those terms shall have res judicata and full preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons or entities, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in this action or are otherwise encompassed by the Release described herein.

12. **Claims process.** In accordance with Section 7 of the Settlement Agreement, the Court hereby approves the following claims process:

(a) Any and all Class Members who seek Monetary Payment from NICA for providing medically necessary and reasonable residential and custodial care and services to a NICA Child in the past or in the future must fill out and submit a "Claim for Custodial Care Benefits Form" to NICA.

(b) Within 10 business days after issuance of this final order, NICA shall: (1) serve conformed copies of this final order by U.S. Mail, return receipt requested, to all Class Members identified in Attachment 3, along with instructions which clearly explain the procedures and deadlines for submitting a Claim for Custodial Care Benefits Form under Sections 8 and 9 of the Settlement Agreement; and (2) post a conformed copy of this final order, the instructions, and the Claim For Custodial Care Benefits Form on its website at www.nica.com.

(c) Class Members seeking reimbursement for medically necessary and reasonable residential and custodial care and services provided in the past, or both in the past and the future, must submit their claim forms no later than 120 days after the date of this final order and all deadlines to seek available appellate remedies have expired.

(d) Alternatively, Class Members seeking to be paid only for medically necessary and reasonable residential and custodial care and services to be provided in the future must submit their claim forms to NICA no later than 30 days after the date on which they begin providing the medically necessary and reasonable residential and custodial care and services for which they expect to receive monetary benefits from NICA going forward.

(e) Failure to timely submit a signed and properly completed claim form will result in the Class Member's monetary payment claim being denied.

(f) After NICA receives a Class Member's completed claim form and Written Evidence of Request (if any), NICA will have 45 days to make a written determination either to (1) pay the requested amount; (2) pay less than all of the requested amount; or (3) refuse payment. Within that 45-day period, NICA shall provide written notice of that determination, and the reasons for such determination, to the Class Member.

(g) If the Class Member disagrees with NICA's determination, the Class Member may file a claim with the Division of Administrative Hearings ("DOAH") within the Class Member's pre-existing DOAH case against NICA, using a petition to determine benefits form which will be posted on NICA's website at www.nica.com. The petition must be filed with (received by) DOAH within 45 days of the date on which the Class Member receives NICA's written notification of its decision. The petition will be

resolved by an Administrative Law Judge (“ALJ”) in an administrative proceeding pursuant to Chapter 120, Florida Statutes, and the provisions of §766.301, et. seq. (Supp. 1988-2001), Florida Statutes, consistent with the terms of the Settlement Agreement. Any final order issued by the DOAH ALJ will be subject to appeal in accordance with Section 120.68, Florida Statutes. In the DOAH proceedings, in no event shall the Class Member be entitled to payment for medically necessary and reasonable residential and custodial care and services that is above or beyond the limits of the disputed amount, or inconsistent with any of the terms set forth in the Settlement Agreement. Pending the outcome of the DOAH proceedings, NICA must pay that portion, if any, of the Class Member's claim which is not in dispute.

(h) With respect to the administrative proceedings described above, any and all such disputed claims for medically necessary and reasonable residential and custodial care and services are hereby referred and/or remanded to the DOAH for determination, pursuant to Section 120.69(4)(a) and/or 766.312, Florida Statutes, and/or pursuant to this Court's inherent authority.

13. **Modification of NICA’s written materials.** Within 90 days after the date of this final order and all deadlines to seek available appellate remedies have expired, NICA shall modify and revise its forms, handbooks, materials, and internet site to reflect the rights of Class Members as established by the Settlement Agreement. NICA shall also provide training to its employees to explain the rights established by the Settlement Agreement.

14. **Status Reports.** As contemplated by Section 16 of the Settlement Agreement, NICA shall file and serve status reports, as follows:

(a) Within 150 days of the date of this Final Judgment and all deadlines to seek available appellate remedies have expired, NICA's status report shall identify all Class Members who have submitted Claim for Custodial Care Benefits Forms pursuant to Sections 7, 8, or 9 of this Agreement.

(b) Within 45 days thereafter, for each timely Claim for Custodial Care Benefits Form received by NICA, the status report shall indicate whether NICA: (1) agreed to pay the requested amount; (2) agreed to pay less than the requested amount; or (3) refused payment; (4) has not yet made a determination as to whether to pay the requested amount; and (5) whether NICA provided timely written notice of its determination to the Class Member.

(c) Within 45 days thereafter, the status report shall also identify all Class Members who have filed a petition to determine benefits pursuant to Sections 7, 8, or 9 of this Agreement.

(d) Every 6 months thereafter, the status report shall also identify the final disposition of such petitions to determine benefits.

(e) NICA's duty to file and serve such status reports shall continue until any and all petitions to determine benefits timely filed by Class Members have reached final disposition and all appellate remedies are exhausted or expired. However, after two status reports have been filed and served under subsection (d) above, NICA or Class Counsel may file a motion, upon good cause, requesting the Court to modify or terminate NICA's obligation to continue providing status reports.

15. **Plaintiffs' Individual Claims.** In accordance with Section 19 of the Settlement Agreement, the settlement of Plaintiffs' individual claims are hereby approved and such claims are resolved as follows:

(a) Within 15 days after the date of this Final Judgment and all opportunities to seek appellate relief have expired, NICA shall pay the Plaintiffs, Joseph Basey and Lisa Basey, as parents and natural guardians of Samantha Basey, a minor, (the "Baseys") the total amount of \$484,354.70, in full and complete settlement of their individual claim for past medically necessary and reasonable residential custodial care and services through the date of the Settlement Agreement, exclusive of attorneys' fees and costs. Moreover, NICA shall continue paying the Baseys for medically necessary and reasonable residential custodial care and services provided to Samantha Basey after the date of the Settlement Agreement, in accordance with the terms of the Stipulation filed on August 7, 2009 in DOAH Case No. 98-005009N. The Parties also understand and agree that each Class Member's claim for benefits is separate and distinct, that the amount Rodriguez's claim shall not be deemed as an admission against NICA concerning the amount, if any, that should be awarded to any other Class Member, and that the amount paid by NICA to Rodriguez or any other Class Member shall be deemed inadmissible in any proceeding involving a Claim For Custodial Care Benefits.

(b) Within 15 days after the date of this Final Judgment and all opportunities to seek appellate relief have expired, NICA shall pay the Plaintiff, Magdalena Rodriguez, as parent and natural guardian of Noemi Rodriguez, a minor, ("Rodriguez") the total amount of \$126,242.33 (through August 31, 2012), in full and complete settlement of her individual claim for past medically necessary and reasonable residential custodial care

and services through the date of this Agreement, exclusive of attorneys' fees and costs. Moreover, within that same 15-day time period, NICA and Rodriguez shall file a joint motion seeking a modification of the Stipulation filed on May 4, 2009 in DOAH Case No. 93-005556N, to provide that as of the date of August 31, 2012, Rodriguez shall be eligible to receive payment from NICA for medically necessary and reasonable residential and custodial care and services provided to Noemi Rodriguez in the future, at the rate of \$15.00 per hour, up to 18 hours per day, instead of 10 hours per day. In all other respects, the Stipulation filed on May 4, 2009 in DOAH Case No. 93-005556N shall remain in full force and effect. The Parties also understand and agree that each Class Member's claim for benefits is separate and distinct, that the amount Rodriguez's claim shall not be deemed as an admission against NICA concerning the amount, if any, that should be awarded to any other Class Member, and that the amount paid by NICA to Rodriguez or any other Class Member shall be deemed inadmissible in any proceeding involving a Claim For Custodial Care Benefits.

16. **Release.** In accordance with Section 20 of the Settlement Agreement, the Plaintiffs and the Class Members, on behalf of themselves and their respective successors, assigns, agents, representatives, and attorneys, and all persons or entities claiming through them, are hereby deemed to have forever released and discharged the Defendant, Florida Birth-Related Neurological Injury Compensation Association ("NICA"), and each of its affiliates, predecessors, successors, agents, representatives, officers, directors, employees, heirs, assigns, attorneys, and all persons or entitles claiming by, through, under or in concert with them or any of them of and from any and all claims, counterclaims, cross-claims, demands, actions, suits, causes of action, damages, liabilities, losses, payments, obligations, debts, liens, contracts,

agreements, promises, judgments, costs and expenses of any kind (past, present or future, fixed or contingent, direct or indirect, in law or in equity, several or other, and known or unknown) which the Class Members now have against NICA relating to or arising from the above-styled case. However, this release does not to apply to the obligations and representations of the parties set forth in the Settlement Agreement, or any claims for attorneys' fees and costs, which are hereby expressly reserved.

17. **Attorneys' Fees and Costs.** NICA shall pay reasonable attorneys' fees and costs to Class Counsel in the total amount of \$ _____, which shall be paid immediately after all opportunities to appeal this final order have expired. NICA's check shall be made payable to de la Parte & Gilbert, P.A., which shall be responsible for allocating and disbursing NICA's payment to all other Class Counsel.

18. **Dismissal of Claims.** Except for the claims process described in Paragraph 12 herein, the individual claims described in Paragraph 15, the reservation of non-released claims described Paragraph 16, and this Court's continuing jurisdiction described in Paragraph 21, the Court hereby dismisses with prejudice any and all other claims asserted in this action.

19. **No Admissions.** Neither this Final Judgment, nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to negotiate, effectuate and implement the Settlement Agreement) is, may be construed as, or may be used as, an admission or concession by or against NICA as to the validity of any claim or any actual or potential fault or liability. Additionally, neither the Settlement Agreement nor any negotiations, actions, or proceedings related to it, shall be offered or received in evidence in any action or proceeding against any party hereto in any court, administrative agency or other tribunal for any purpose whatsoever, except to enforce the provisions of this Final Judgment and the Settlement

Agreement; provided, however, that this Final Judgment and the Settlement Agreement may be filed and used in any action or other proceeding against or by any party to support a defense of res judicata, collateral estoppel, release, waiver, accord and satisfaction, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

20. **No Representations Regarding Taxes.** Neither this Court, nor the parties, nor their counsel have expressed or shall express any opinions, representations, warranties or other assurances concerning the tax consequences of the Settlement Agreement to Class Members. No opinions, representations, warranties, or other assurances shall be deemed to have been made by the parties or their counsel with respect to any such tax consequences by virtue of the Settlement Agreement or by effectuating the settlement, and the parties and their counsel shall not be responsible or liable for any such tax consequences that may occur.

21. **Continuing Jurisdiction.** Without affecting the finality hereof, the Court retains and reserves continuing jurisdiction over all matters relating to the administration, interpretation, implementation, and enforcement of the Settlement Agreement and of this final order; and of the conduct or the policies and procedures described therein, with respect to all parties thereto and all beneficiaries thereof, including all Class Members. Notwithstanding the foregoing, any dispute by a Class Member concerning the applicability or meaning of any term or provision of the NICA Statute (i.e., Section 766.301 – 766.316, Florida Statutes, as in effect prior to the 2002 Amendments), including a petition to determine benefits as provided in Paragraph 12 herein, shall be resolved by the filing of a petition or claim within that Class Member's pre-existing DOAH case with NICA, and jurisdiction to adjudicate any such dispute shall reside exclusively with DOAH. Any dispute concerning the terms exclusively set forth in the Settlement

Agreement shall be resolved exclusively by filing a motion in the above-styled case, or alternatively, by filing a complaint in state court in Leon County, Florida. The parties waive their rights, if any, to a jury trial in any such proceeding. The Settlement Agreement, and any construction thereof, shall be governed by Florida law.

DONE AND ORDERED in Chambers, in Tampa, Hillsborough County, Florida this _____ day of _____, 2012.

SAMPLE - DO NOT SIGN

HONORABLE SAM PENDINO
Circuit Court Judge

Conformed copies furnished to:

Class Counsel: Richard A. Gilbert, Esquire and David M. Caldevilla, Esquire, de la Parte & Gilbert, P.A., 101 E. Kennedy Blvd., Suite 2000, Tampa, FL 33602; and J. Daniel Clark, Esquire, Clark & Martino, P.A., 3407 W. Kennedy Blvd., Tampa, FL 33609

NICA's Counsel: Guy W. Spicola, Esquire, Law Offices of Guy W. Spicola, 3030 North Rocky Point West, Suite 150, Tampa, FL 33607; Stephen A. Ecenia, Esquire, Rutledge, Ecenia & Purnell, P.A., 119 South Monroe Street, Suite 202, Tallahassee, FL 32302; and Gregg D. Thomas, Esquire and James J. McGuire, Esquire, Thomas & Locicero PL, Ashley Drive, Suite 1100, Tampa, FL 33602

**IN THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

JOSEPH BASEY and **LISA BASEY**, as parents and natural guardians of Samantha Basey, a minor, individually, and on behalf of all those similarly situated; **MAGDALENA RODRIGUEZ**, a single woman, as parent and natural guardian of Noemi Rodriguez, a minor, individually, and on behalf of all those similarly situated; and the **STATE OF FLORIDA** on the relation of all such persons,

CLASS REPRESENTATION

Plaintiffs,

Case No.: 06-CA-004603

vs.

**FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY
COMPENSATION ASSOCIATION,**

Defendant.

_____ /

PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL

Pursuant to Florida Rules Civil Procedure 1.220(e) and 1.420, and in accordance with the Court's "Final Judgment Approving Class Action Settlement Agreement" dated ____, 2012, the Plaintiffs, Joseph Basey and Lisa Basey, as parents and natural guardians of Samantha Basey, a minor, individually, and behalf of all those similarly situated, Magdalena Rodriguez, a single woman, as parent and natural guardian of Noemi Rodriguez, a minor, individually, and on behalf of all those similarly situated, and the State of Florida on the relation of all such persons, hereby voluntarily dismiss the above-styled matter with prejudice, including but not limited to all claims for relief under Chapter 501, Part II, Florida Statutes. Notwithstanding the foregoing, as stated in paragraph 18 of the parties' Settlement Agreement and paragraph ___ of said final

judgment, nothing in this notice of voluntary dismissal shall affect the Court's reservation of jurisdiction contained in said final judgment, and this notice is contingent upon the Court's ability to continue retaining such jurisdiction and upon the Plaintiffs expressly reserving their rights to enforce the parties' Settlement Agreement, as provided in said Settlement Agreement.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was served by **Email and U.S. Mail** on Guy W. Spicola, Esquire, (Email: gspicola@tampabay.rr.com), Law Office of Guy Spicola, 3111 W. Martin Luther King Jr., Blvd., Suite 100, Tampa, Florida 33607; Stephen A. Ecenia, Esquire, (Email: steve@reuplaw.com), Rutledge, Ecenia, Purnell & Hoffman, P.A., 119 S. Monroe Street, Suite 202, P.O. Box 551, Tallahassee, Florida 32302-0551; and Gregg D. Thomas, Esquire, (Email: gthomas@tlolawfirm.com), and James McGuire, Esquire, (Email: jmcguire@tlolawfirm.com), LoCicero & Bralow PL, 400 N. Ashley Drive, Suite 1100, Tampa, Florida 33602; on this ____ day of _____, 20____.

Respectfully submitted,
SAMPLE - DO NOT SIGN

Richard A. Gilbert, FBN 180600
David M. Caldevilla, FBN 654248
de la PARTE & GILBERT, P.A.
P.O. Box 2350
Tampa, FL 33601-2350
Telephone: (813) 229-2775

and

J. Daniel Clark, FBN 0106471
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COUNSEL FOR PLAINTIFFS